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July 27, 2012

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VIA FACSIMILE

Anthony Herman, Esquire
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request 2012-26

Dear Mr. Herman:

On behalf of our client, the National Defense PAC ("NDP"), we submit these initial comments on Advisory Opinion Request 2012-26 ("AOR"). At this initial stage, we respectfully request that the Federal Election Commission ("Commission") decline to consider the AOR on an expedited basis for the reasons set forth below. As the Commission is undoubtedly aware, the AOR raises important issues that will have a significant impact on the broader regulated community. Given the scope of the potential compliance issues involved, the Commission should afford an appropriate amount of time to respond to inquiries and receive comments from a broad cross-section of the regulated community on this important issue, especially in light of the Commission's recent focus on recordkeeping and reporting issues in enforcement matters generated by referrals from the audit and the reports analysis divisions.

Pur simply, the Commission should either decline to answer the questions presented in the AOR and initiate a rulemaking that provides the regulated community with notice and an opportunity to comment on the notice of proposed rulemaking, or it should consider the AOR under the standard sixty-day review process pursuant to 11 C.F.R. §112.4(a). This is a situation where the Commission must provide the proper answers to the questions in an appropriate manner that provides practical guidance, not a quick answer that will sow further confusion and lead to a plethora of enforcement actions as members of the regulated community implement this fundraising tool.

The AOR fails to satisfy the criteria under 11 C.F.R. § 112.4(b) for consideration on an expedited twenty-day basis. Specifically, Commission regulations state that the request must be submitted by a candidate or his or her authorized committee within sixty days of the date of an election in which the candidate is on the ballot. *Id.* § 112.4(b)(1). In addition, there must be a request for guidance concerning "a specific transaction or activity related to the election." *Id.* § 112.4(b)(2).

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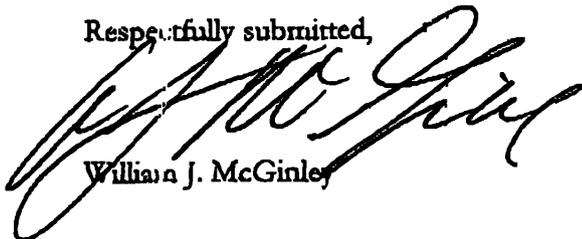
The request must also explain the connection between the specific transaction or activity and the election in order to be eligible to invoke the expedited, twenty-day period. *Id.* While the AOR submitted by the potential vendors is joined by the treasurer of a principal campaign committee, the requestors have failed to identify a specific transaction or activity that is related to the campaign's upcoming primary election. Instead, the request merely seeks guidance concerning the compliance duties and responsibilities of the vendors and the treasurers of potential campaign clients – transactions and activities that are utterly unrelated to the upcoming primary election. Thus, the AOR fails to satisfy the criteria for consideration on a twenty-day expedited basis.

In addition, the issues raised in the AOR will have a significant impact all political committees, and their treasurers, and should be answered through the rulemaking process. As stated in the AOR, the Commission specifically reserved comment “as to particulars of political committees’ recordkeeping and reporting requirements under the Act and Commission regulations” in FEC AO 2012-17. *See* AOR at 1 n.1; FEC AO 2012-17 at 6 n.10. Political committee treasurers and the compliance professional community need practical, detailed guidance so that they can satisfy their compliance, recordkeeping and reporting requirements under the Act and Commission regulations – guidance that is best provided through the rulemaking process. The rulemaking process – including the notice and comment requirements – will encourage participation in the decision-making process from the relevant stakeholders, including the opportunity to hear testimony from political committees and vendors who will be directly affected by the outcome of this request.

Finally, we reserve the right to supplement this comment on the merits of the AOR and any draft advisory opinions published for consideration by the Commission.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



William J. McGinley

cc: The Honorable Caroline C. Hunter
Chair
The Honorable Ellen L. Weintraub
Vice Chair
The Honorable Cynthia L. Bauerly
Commissioner

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**The Honorable Donald F. McGahn II
Commissioner**

**The Honorable Matthew S. Petersen
Commissioner**

**The Honorable Steven T. Walther
Commissioner**