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**AGENDA DOCUMENT NO. 14-50-A**  
**AGENDA ITEM**  
**For meeting of October 9, 2014**  
**SUBMITTED LATE**

October 3, 2014

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*  
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Subject: AO 2014-12 (DNC and RNC) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on October 8, 2014.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

2  
3 Robert Bauer, Esq.  
4 Marc Elias, Esq.  
5 Graham Wilson, Esq.  
6 Counsel to the Democratic National Committee  
7 700 Thirteenth Street, NW Suite 600  
8 Washington, DC 20005

9  
10 John R. Phillippe Jr., Esq.  
11 Ashley K. Stow, Esq.  
12 Counsel to the Republican National Committee  
13 310 First Street, SE  
14 Washington, DC 20003

15  
16 Dear Messrs. Bauer, Elias, Phillippe, and Wilson, and Ms. Stow:

17 We are responding to your advisory opinion request on behalf of the Democratic National  
18 Committee and the Republican National Committee (collectively, the “Committees”) concerning  
19 the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (formerly 2  
20 U.S.C. §§ 431-457) (“FECA”), the Presidential Election Campaign Fund Act, 26 U.S.C.  
21 §§ 9001-9013 (the “Funding Statute”), and Commission regulations to the Committees’ proposal  
22 to raise funds under a separate contribution limit to finance expenses for the Committees’ 2016  
23 presidential nominating conventions. The Committees propose to raise these funds for deposit  
24 into a segregated account; alternatively, they propose to establish convention committees to raise  
25 such funds. The Commission concludes that the Committees’ proposals are impermissible  
26 because FECA and Commission regulations provide that funds raised by the Committees to pay  
27 convention expenses are contributions and, as such, are subject to the per-contributor limits on  
28 contributions to national political party committees.

29 ***Background***

30 The facts presented in this advisory opinion are based on your advisory opinion request  
31 received on August 15, 2014 (“AOR”).

1           The Committees are national committees within the meaning of 52 U.S.C. § 30101(14)  
2 (formerly 2 U.S.C. § 431(14)). Until recently, the Funding Statute entitled the Committees to  
3 receive public funds from the United States Treasury to defray expenses incurred with respect to  
4 their presidential nominating conventions. 26 U.S.C. § 9008(b)(1). But effective April 3, 2014,  
5 the Gabriella Miller Kids First Research Act, Pub. L. No. 113-94, 128 Stat. 1085 (2014) (the  
6 “Research Act”), amended the Funding Statute by terminating the Committees’ entitlement to  
7 public funds. As a result, the Committees state that they now “must identify private sources of  
8 funding for their presidential nominating conventions.” AOR at 2.

9           The Committees each propose to raise convention funds for deposit into a segregated  
10 account subject to “an additional, separate contribution limit.” *Id.* This separate limit would  
11 enable any contributor to give to the convention account the maximum amount that FECA  
12 permits the contributor to contribute to a national committee, but without having these  
13 convention-specific donations count against the contributor’s maximum permissible  
14 contributions to the national committee itself. Alternatively, the Committees wish to establish  
15 convention committees to raise funds subject to the additional, separate contribution limit.

#### 16 ***Questions Presented***

- 17       1. *May the Committees raise federal funds into segregated accounts subject to an*  
18       *additional, separate contribution limit solely to pay convention expenses?*
- 19       2. *May the Committees establish separate convention committees to raise and spend federal*  
20       *funds under a separate limit solely to pay convention expenses?*

#### 21 ***Legal Analysis and Conclusions***

- 22       1. *May the Committees raise federal funds into segregated accounts subject to an*  
23       *additional, separate contribution limit solely to pay convention expenses?*

1           No, the Committees may not raise funds into segregated accounts subject to an  
2 additional, separate contribution limit solely to pay convention expenses. Such funds would be  
3 contributions under FECA and Commission regulations and, thus, would be subject to FECA's  
4 per-contributor limits on contributions to national committees.

5           Before the Research Act, the Funding Statute entitled national committees of major and  
6 minor parties to receive public funds to defray expenses incurred with respect to their  
7 presidential nominating conventions. 26 U.S.C. § 9008(b); 11 C.F.R. § 9008.4. Commission  
8 regulations also permitted a national committee to raise "private contributions" for its convention  
9 expenses.<sup>1</sup> 11 C.F.R. § 9008.6(a)(2). The regulations required a national committee to  
10 "establish a convention committee [to] be responsible for conducting the day to day  
11 arrangements and operations of that party's Presidential nominating convention." 11 C.F.R.  
12 § 9008.3(a)(2). The convention committee received all public funds and private contributions  
13 and made all expenditures on behalf of the national committee for convention expenses. 11  
14 C.F.R. § 9008.3(a)(2). A convention committee could spend public funds and contributions only  
15 for expenses incurred with respect to the presidential nominating convention; it could not spend  
16 such funds to defray the expenses of any candidate participating in the convention. 26 U.S.C.  
17 § 9008(c); 11 C.F.R. § 9008.7(a)-(b)(1).

18           The Research Act terminated the national committees' entitlement to receive public funds  
19 for their presidential nominating conventions. Pub. L. No. 113-94, § 2(a), 128 Stat. 1085  
20 (codified at 26 U.S.C. § 9008(i)). As a result, national committees must now finance their  
21 convention expenses with funds raised from private sources.

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<sup>1</sup> The amount of contributions raised by a national committee to defray convention expenses resulted in a corresponding reduction in the amount of public funds to which it was entitled. 11 C.F.R. § 9008.6(a)(2).

1           Commission regulations provide that “[a]ll private contributions received by the national  
2 committee to defray convention expenses shall be subject to all reporting requirements,  
3 limitations and prohibitions of [FECA].” 11 C.F.R. § 9008.6(a)(3); *see also* 11 C.F.R.  
4 § 9008.8(a)(3). Under FECA and Commission regulations, a multicandidate political committee  
5 may not make contributions exceeding \$15,000 per calendar year to a national committee, and  
6 any other person may not make contributions exceeding \$32,400 (adjusted for inflation) per  
7 calendar year to a national committee. 52 U.S.C. § 30116(a)(1)(B), (2)(B) (formerly 2 U.S.C.  
8 § 441a(a)(1)(B), (2)(B)); 11 C.F.R. §§ 110.1(c)(1), 110.2(c)(1). A national committee “may not  
9 solicit, receive, or direct to another person a contribution, donation, or . . . any other thing of  
10 value, or spend any funds, that are not subject to” the foregoing limits. *See* 52 U.S.C.  
11 § 30125(a)(1) (formerly 2 U.S.C. § 441i(a)(1)).

12           Commission regulations provide that funds raised by national committees to defray  
13 “convention expenses” are “contributions.” *See* 11 C.F.R. §§ 9008.3(a)(2) (governing receipt of  
14 “contributions made for the purpose of defraying convention expenses”), 9008.3(b)(2)(i)  
15 (requiring reporting of “contributions” to convention committee), 9008.6(a)(2)-(3); *see also* 11  
16 C.F.R. § 9002.13 (providing that “contribution” has same meaning under regulations  
17 implementing Funding Statute as under 52 U.S.C. § 30101(8)(A) (formerly 2 U.S.C.  
18 § 431(8)(A)) and implementing regulations). “‘Convention expenses’ include all expenses  
19 incurred by or on behalf of a political party’s national committee or convention committee with  
20 respect to and for the purpose of conducting a presidential nominating convention or convention-  
21 related activities.” 11 C.F.R. § 9008.7(a)(4). Contributions raised by convention committees to  
22 defray convention expenses are therefore subject to the national committees’ per-contributor  
23 contribution limits: “Given that the convention committee is established, financed, maintained,

1 and controlled by the national committee, and is therefore affiliated with the national committee,  
2 it shares the national committee's . . . contribution limit." Presidential Election Campaign Fund  
3 and Federal Financing of Presidential Nominating Conventions, 59 Fed. Reg. 33,606, 33,608  
4 (June 29, 1994) (explaining why Funding Statute regulations did not need to specify limit on  
5 certain contributions to convention committees).

6 Just as contributions to a convention committee are subject to the contribution limit of the  
7 national committee that established it, contributions to a separate account established by a  
8 national committee would also be subject to the national committee's contribution limit. *See* 11  
9 C.F.R. §§ 110.1(c), 110.2(c). Accordingly, the Commission concludes that the Committees must  
10 aggregate any funds that they receive from a contributor to defray convention expenses with any  
11 other contributions that they receive from the same contributor in the same calendar year for  
12 purposes of the relevant contribution limit.

13 The Committees suggest that the Commission should treat funds raised and spent for  
14 presidential nominating conventions the same as funds raised and spent for recounts, which are  
15 subject to a separate contribution limit. But recount funds are subject to separate limits because  
16 a recount is not an "election" within the meaning of FECA. *See* Communication from the  
17 Chairman, Federal Election Commission, H.R. Doc. No. 95-44, at 40 (Jan. 12, 1977) (explaining  
18 that donations to cover costs of recounts are excluded from definition of contribution because  
19 recounts are not federal elections as defined in FECA); *see also* 52 U.S.C. § 30101(1) (formerly  
20 2 U.S.C. § 431(1)) (definition of "election"); 11 C.F.R. § 100.2 (same). For this reason,  
21 Commission regulations explicitly exempt funds received or spent with respect to recounts from

1 the definitions of “contribution” and “expenditure.” 11 C.F.R. §§ 100.91, 100.151.<sup>2</sup> In contrast,  
2 FECA specifically provides that a presidential nominating convention is an “election,” 52 U.S.C.  
3 § 30101(1)(B) (formerly 2 U.S.C. § 431(1)(B)) (defining “election” to include “convention ... of  
4 a political party which has authority to nominate a candidate”); 11 C.F.R. § 100.2(a), (e) (same),  
5 and Commission regulations do not exempt funds raised for nominating conventions from the  
6 definition of “contribution.” *See* 11 C.F.R. part 100, subparts B, C. Thus, the Commission  
7 cannot apply the particularized regulatory allowance of a separate contribution limit for recount  
8 donations to contributions given to defray convention expenses.

9         The Committees also suggest that a separate limit for convention expenses is appropriate  
10 because funds raised to pay a convention’s administrative expenses are not “for the purpose of  
11 influencing a federal election” within the meaning of FECA’s definition of “contribution.” *See*  
12 52 U.S.C. § 30101(8)(A) (formerly 2 U.S.C. § 431(8)(A)). FECA, however, does not permit a  
13 national committee — or any nonconnected political committee — to receive funds outside the  
14 per-contributor limits merely because the funds are contributed for “administrative” purposes.  
15 *See Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 198 n.19 (1981) (“If unlimited contributions for  
16 administrative support are permissible, individuals and groups . . . could completely dominate  
17 the operations and contribution policies of . . . political committees . . . .”); Advisory Opinion  
18 2010-09 (Club for Growth) at 5 (concluding that independent-expenditure-only committee's  
19 administrative expenses “are not exempt from the definition of ‘contribution’ or ‘expenditure’”

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<sup>2</sup> *See also* Advisory Opinion 2010-14 (DSCC) at 3-5 (allowing disbursements for recount activities prior to date of general election because regulatory exemptions from definitions of “contribution” and “expenditure” for recounts are not limited to post-election period); Advisory Opinion 2006-24 (NRSC *et al.*) at 6 (concluding that donations to recount fund established by candidate should not be aggregated with contributions from same persons because donations are exempt from definition of “contribution”); Advisory Opinion 2009-04 (Al Franken for U.S. Senate *et al.*) at 2-3 (applying rationale from Advisory Opinion 2006-24 (NRSC *et al.*) to donations to recount funds established by national party committee).

1 and “must be reported by the Committee . . . as contributions”).

2           In support of their suggestion, the Committees rely on the Commission’s statement in a  
3 2003 explanation and justification that convention expenses paid by convention *host committees*  
4 are not “in connection with” a federal election. *See* AOR at 6. But the Commission has long  
5 held that host committees — which are not political committees under FECA — raise and spend  
6 money on national conventions for different reasons than do national committees.<sup>3</sup> Unlike a  
7 national committee, the “principal purpose” of a host committee is “the encouragement of  
8 commerce in the municipality.” 11 C.F.R. § 9008.50(b)(3). Moreover, “host committee activity  
9 is motivated by a desire to promote the convention city and not by political considerations.”  
10 Public Financing of Presidential Candidates and Nominating Conventions, 68 Fed. Reg. 47,386,  
11 47,402 (Aug. 8, 2003). Because of these differences in the purposes for which host committees  
12 and national committees raise and spend funds, FECA and Commission regulations treat  
13 convention spending by the two types of entities differently, notwithstanding any overlap in their  
14 categories of expenses.<sup>4</sup>

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<sup>3</sup> *See* Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971, H.R. Doc. No. 95-33, 136 (1977) (stating that funds solicited and received by host committees “are not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city”); Public Financing of Presidential Candidates and Nominating Conventions, 68 Fed. Reg. 18,484, 18,504 (April 15, 2003) (stating that host committee expenses “relate[] to the provision of services primarily used by convention attendees”); *id.* at 18,508 (stating that Commission rules intend to allow host committees to pay commercially motivated expenses).

<sup>4</sup> The Committees also suggest in passing that amounts given to defray convention expenses are not contributions because the Commission has “never endorsed” treating convention committees’ payment of such expenses in coordination with candidates as in-kind contributions or coordinated party expenditures. AOR at 6. The Funding Statute and Commission regulations, however, separately prohibited national committees from using public funds to defray the expenses of any candidate participating in a convention. 26 U.S.C. § 9008(c); 11 C.F.R. § 9008.7(b)(1). Thus, a convention committee could not lawfully use public funds to pay expenses that a candidate’s committee otherwise would have had to pay itself, and the Commission has had no need to “endorse” a view on coordination in the convention context. Moreover, the Commission has not examined whether payments of convention expenses by convention committees in coordination with candidates were coordinated party expenditures because coordinated party expenditures are expenditures made by a national committee “in connection with the general election campaign” of a federal candidate, not in connection with a nominating convention. 52 U.S.C. § 30116(d) (formerly 2 U.S.C. § 441a(d)); see also 11 C.F.R. §§ 109.30, 109.32(a)(1), (b)(1), 109.34.

1           Finally, the Commission notes that nothing in the Research Act or its legislative history  
2 indicates any congressional intent to modify the Commission’s longstanding regulatory treatment  
3 of payments to defray a national committee’s convention expenses as contributions. In enacting  
4 the Research Act, Congress could have created a new framework for national party committees  
5 to fund their presidential nominating conventions at the same time that it removed the  
6 committees’ entitlement to public funds. After all, “Members of Congress often play substantial  
7 roles in [p]residential nominating conventions” and presumably would be sensitive to the  
8 challenges that the parties would face once their entitlements ended. *See Public Financing of*  
9 *Presidential Candidates and Nominating Conventions*, 68 Fed. Reg. at 47,401. As the  
10 Committees acknowledge, however, “Congress was silent” on this issue in the text of the  
11 Research Act (AOR at 2), and no Member of Congress appears to have raised any concerns  
12 about it during the debates over the bill.<sup>5</sup> Given that legislative silence, the Commission now  
13 simply applies the existing statute and regulations, which prohibit the national committees from  
14 raising more than the specified statutory limit from any single contributor.

15           2. *May the Committees establish separate convention committees to raise and spend federal*  
16 *funds under a separate limit solely to pay convention expenses?*

17           No, for the reasons set out in the answer to Question 1, above, the Committees may not  
18 establish separate convention committees to raise and spend funds under a separate limit solely

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<sup>5</sup> The only relevant statement in the legislative history of the Research Act was made by one of that bill’s chief co-sponsors:

[B]oth political parties this year actually did take the [convention] money. I can tell you as a former chief of staff on the Republican National Committee who put on the convention in 2000, they do not need it. They absolutely do not need it. They can raise all the money they need from private sources, just as their nominees raised money from private sources.

1 to pay convention expenses. The Commission notes, however, that the Research Act's  
2 amendments to the Funding Statute do not preclude a national committee from establishing a  
3 convention committee to raise contributions that comply with FECA and Commission  
4 regulations and to make expenditures to pay convention expenses.

5 This response constitutes an advisory opinion concerning the application of FECA and  
6 Commission regulations to the specific transaction or activity set forth in your request. *See* 52  
7 U.S.C. § 30108 (formerly 2 U.S.C. § 437f). The Commission emphasizes that, if there is a  
8 change in any of the facts or assumptions presented, and such facts or assumptions are material  
9 to a conclusion presented in this advisory opinion, then the requestors may not rely on that  
10 conclusion as support for their proposed activity. Any person involved in any specific  
11 transaction or activity which is indistinguishable in all its material aspects from the transaction or  
12 activity with respect to which this advisory opinion is rendered may rely on this advisory  
13 opinion. *See* 52 U.S.C. § 30108(c)(1)(B) (formerly 2 U.S.C. § 437f(c)(1)(B)). Please note that  
14 the analysis or conclusions in this advisory opinion may be affected by subsequent developments  
15 in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
16 Any advisory opinions cited herein are available on the Commission's website.

17 On behalf of the Commission,

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20  
21 Lee E. Goodman  
22 Chairman  
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