**Republican National Committee**

**Counsel's Office**

June 3, 2005

Ms. Mai T. Dinh
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

**VIA ELECTRONIC MAIL: FEAdef@fec.gov**

Dear Ms. Dinh:

By and through the undersigned counsel, the Republican National Committee submits the following limited comments regarding the Commission's Notice of Proposed Rulemaking on the Definition of Federal Election Activity, 70 Fed. Reg. 23,068 (May 4, 2005). We thank the Commission for the opportunity to comment in writing on this Proposed Rulemaking and respectfully reserve the right to expand upon these comments at a later date. These specific comments will address the following topics raised in the Commission's notice: (1) the scope of "voter registration activity;" (2) the definition of "get-out-the-vote activity;" and (3) the inclusion of voter list acquisitions in the definition of "voter identification."

## VOTER REGISTRATION ACTIVITY

The current definition of "voter registration activity" should be maintained.[1] The Commission's 2002 view that "individualized contact for the specific purpose of assisting individuals with the process of registering to vote" is an appropriate standard to use in implementing the term.[2] Therefore, the Commission should reject a definition of "assist" that amounts to "encouragement + direction."

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[1] See 11 C.F.R. § 100.24(a)(2).

[2] Final Rule: Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,067 (July 29, 2002).

The term "voter registration activity" must necessarily refer to some identifiable, bounded range of activity. The most sensible way to define this range is by reference to the end-goal of voter registration, namely, the *actual* registration of a voter. A "mere exhortation" to register to vote does nothing whatsoever to add a name to the voter registration rolls, and therefore should not be regarded as "voter registration activity." Registering a voter demands some contact with an individual combined with some assistance in completing the formal registration process (*e.g.*, providing forms to unregistered individuals and submitting their completed forms to the appropriate registrar).

Perhaps giving someone directions as to how he or she may register to vote moves a step beyond "mere exhortation," and a step closer to producing an actual registration. However, providing directions is still mere speech which, in this context, certainly does nothing to directly produce a registered voter. In a different context, the Commission excludes from regulation "merely providing information or guidance as to the requirement of particular law."[3] Providing information on the law in that instance is not considered direction or solicitation. With respect to "voter registration activity," providing information on the registration process (which is a matter of state law) should not be considered "assistance."

## GET–OUT-THE-VOTE

The Commission's current regulation defining get-out-the-vote activity appears generally reasonable and understandable. GOTV involves a contact with a potential voter at a level that reaches beyond mere encouragement. Therefore, GOTV activity should continue to be limited to those voter activities that are designed to actually "assist" the voter.

The Commission specifically seeks comment on whether the activities listed in the get-out-the-vote definition at 11 C.F.R. § 100.24(a)(3)(i) – (ii) should be enhanced, narrowed or further specified in any way. Because adding or subtracting from those examples may generate more confusion among the regulated community, the Commission should consider eliminating the examples altogether.

## VOTER IDENTIFICATION – LIST ACQUISITION

The Shays court indicated "that one may obtain a voter list and not be engaged in an activity aimed at identifying voters."[4] This plainly obvious fact, which the Commission relied upon to justify 11 C.F.R. § 100.24(a)(4) in 2002, was set aside by the court because the Commission failed to prove that Congress had intended to exclude activities that were not actually aimed at "voter identification." The Court then foreclosed the most sensible solution – namely, consider voter list acquisition to be "voter identification" activity when the purpose

[3] See 11 C.F.R. §§ 300.2(m), (n) (definitions of "to solicit" and "to direct").

[4] Shays v. FEC, 337 F.Supp.2d 28, 108 (D.D.C. 2004).

behind the acquisition is voter identification – by declaring that the intent behind voter list acquisition is irrelevant.[5]

The Commission's decision not to appeal this ruling means it has no choice but to include voter list acquisition as a form of "voter identification."

Under these circumstances the date of "purchase," rather than the date of "use," should be the standard applied to determine whether the acquisition of the voter list falls within the federal election activity window of 11 C.F.R. § 100.24(a)(1). Administratively, that approach is more consistent with the current reporting regime. Additionally, the date of purchase better reflects the notion of "acquisition" than does date of use. Practically, a "use" test would be virtually impossible for the regulated community to apply and for the Commission to regulate.

Again, we appreciate this opportunity to provide these specific comments for the Commission's consideration.

Respectfully submitted,

__/s/_____
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[5] Id. ("But whatever the intent, inherent in the acquisition of such a list is the identification of voters.").