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Dominique Dillenseger, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

2006 OCT 11 P 4:55

Re: MUR 5810

Dear Ms. Dillenseger:

The undersigned represents the Democratic Party of Virginia ("DPV"), and Abbi G. Easter, as Treasurer in the above mentioned matter. This matter was generated by an internal review by the Commission of reports filed by the DPV, specifically, the DPV's 2003 Mid-Year Report. According to the Commission's letter, an amended report filed by the DPV in May 2004 included \$59,672.00 in additional receipts and \$111,043.29 in additional disbursements.

Although the Commission accurately states that the financial totals increased by the amounts stated above, the Commission's Legal and Factual Analysis fails to take into account the types of receipts and expenditure that were omitted from the report, and the circumstances that led to the erroneous report. The omitted receipts are, almost exclusively, transfers made for allocation purposes between the committee's federal and non-federal account. These funds are the non-federal portion of activities which the committee reimbursed itself through the Commission's allocation regulations (See 11 C.F.R. § 106.7) and the committee materially disclosed all other income, including contributions from donors and transfers from other party committees. Ultimately, these allocation funds that were not disclosed in the original report merely flow through the federal account as part of the Commission's allocation regulations and are not federal receipts. Thus, the omitted transactions are just the type that the Commission has deemed to be of lesser importance for purposes of disclosure than federal transactions. When the

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Commission amended its administrative fine policies, it actually omitted such non-federal receipts from the calculation of administrative fines for failure to file or late filed reports. 11 C.F.R. § 111.43. In the Explanation and Justification of its amended rules, the Commission explained:

...the Commission concludes that basing a civil money penalty on "total receipts and disbursements" may unfairly inflate the level of activity for unauthorized committees that allocate expenses between Federal and non-Federal accounts ~~because a large portion of their receipts and disbursements may be attributable to non-Federal activity that must be reported through a Federal account...~~ It is both appropriate and fair to exclude from the civil money penalty calculation those receipts and disbursements solely attributable to payment of the non-Federal portion of allocated Federal/non-Federal activity. This approach ensures that the civil money penalty is proportionate to a committee's level of participation in Federal elections.

Administrative Fines, 68 Fed. Reg. 12572, 12576 (March 17, 2003)

Similarly, it appears that the omitted disbursements in these reports were transfers from the DPV's federal account to its non-federal account and were not ordinary operating expenditures of the committee. These transfers were necessitated by rules in place during 2003 that required state party committees to pay for payroll expenses for employees who did not work more than 25% in connection with federal elections in a given month solely from non-federal funds. See former 11 C.F.R. § 300.33(c)(2) (2003). Thus, these transfers to the committee's non-federal account are not significant violations for the same reasons as the allocation transfers described above.

Thus, the reports demonstrate that the overwhelming majority of the omitted disclosures were merely a shift in funds that stem from internal transfers between the committee's federal and non-federal accounts and not from any federal campaign activity.

In addition to the lack of campaign activity, the Commission must also consider the circumstances that caused the committee to fail to disclose these internal transfers at the time. During the spring of 2003, the DPV's long time accountant, Karen Nuckols, required an extended and sudden leave of absence from her accounting firm and left the DPV work to staff with little or no FEC experience. Second, during the spring of 2003, the committee hired a new executive director, FEC compliance staffer and switched banks. All of these events occurring at substantially the same time caused serious confusion among and between DPV staff and their working relationship with Ms. Nuckols' accounting firm. Due to this confusion, information regarding these internal transfers was apparently not provided to the DPV in the course of preparation of its 2003 Mid-Year FEC report. This unique circumstance is not likely to reoccur.

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In the winter of 2004, Ms: Nuckols: returned to work on the DPV account. Upon her return, Ms. Nuckols discovered these errors and her firm worked with DPV staff to audit and correct FEC reports that were prepared in her absence.

In June 2005, the DPV, at considerable expense, hired a noted political compliance firm, Political CFO's to handle all aspects of both accounting and FEC reporting for the committee. Currently, Political CFO's, which handles reporting and compliance for several Democratic state party committees, maintains the DPV accounts, reconciles the bank accounts and prepares and files all disclosure reports with the FEC. Numerous quality control measures have been put in place to ensure that all reports are filed timely and accurately.

I would further note that the 2003 Mid-Year report was not an election sensitive report and that the amendments to the report were filed in 2004, six months before the 2004 general election. Therefore, there was no public harm surrounding the failure to disclose transactions prior to the elections.

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Please contact me at your earliest convenience to discuss this matter further at
(202) 479-1111.

Sincerely



Neil Reiff
Counsel to the Democratic Party of
Virginia, and Abbi G. Easter as
Treasurer

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