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BY HAND DELIVERY

Shawn Woodhead Werth  
Secretary  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Request for Early Commission Consideration of Legal Questions Arising in the Audit of Rightmarch.com PAC, Inc.

Dear Commissioners:

**I. Introduction**

On July 20, 2010 the Federal Election Commission ("FEC" or "the Commission") established a pilot program to allow entities to have legal questions considered by the Commission early in the audit process if there is a material dispute on a question of law.<sup>1</sup> We hereby request that the Commission consider two unique and material questions of law that have arisen during the Audit Division's ongoing audit of Rightmarch.com PAC, Inc.

The Commission voted to undertake an audit of Rightmarch.com PAC, Inc. ("Rightmarch") pursuant to 2 U.S.C. § 438(b) on April 8, 2010. Rightmarch subsequently provided the Audit Division with copies of its bank statements, computerized financial data files and other material pursuant to the Audit Division's requests for records. The Audit Division initiated fieldwork on October 18, 2010. On January 19, 2011, the Audit Division concluded the fieldwork with an exit conference summarizing its initial audit conclusions. At that time, Rightmarch was informed that the Audit Division would recommend that Rightmarch take corrective action regarding the reporting of independent expenditures by political committees (2 U.S.C. §§ 434(b)&(g) and 11 C.F.R. § 104.4) and the continuous reporting of debts (2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11).

<sup>1</sup> Federal Election Commission, Policy Statement Establishing a Pilot Program for Requesting Consideration of Legal Questions by the Commission, 75 Fed. Reg. 42088 (July 20, 2010).

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Before Rightmarch incurs the considerable expense of amending all of its reports for the 2007-2008 election cycle to comply with the Audit Division's initial recommendations regarding the reporting of independent expenditures and debts, Rightmarch requests that the Commission determine whether this reporting is, in fact, required. Such a determination now will resolve whether expensive corrective reporting (if any) needs to take place later.

### II. Unresolved Questions of Law

1. A nonconnected committee has a multi-year fundraising contract with a telemarketing firm that requires the weekly calculation of the vendor's operating expenses vs. the revenue generated while the contract is in force. Any shortfall is called a "contingency fee" and is constantly being re-calculated on a weekly basis as new receipts come in to offset prior operating expenses. The contract also requires the calculation of any "debt" owed by the political committee to the vendor *at the termination of the contract*. The contract is governed by the laws of Arizona. While it is clear that any debt owed at the conclusion of the contract is a reportable debt under the Commission's regulations, is an ever-changing weekly contingency fee a "debt" subject to the reporting requirement of 11 C.F.R. 104.11?

2. A nonconnected committee has a multi-year fundraising contract with a telemarketing firm to make fundraising solicitations to a nationwide audience. The scripts identify one or more federal officeholders but do not refer to them as candidates or mention any election. The overwhelming majority of the calls (93%) are made in a non-election year. The scripts are primarily related to opposing those office holder's positions on particular issues, such as immigration, to raise money for the nonconnected committee. The expenses for these solicitations are being reported as operating expenses under the Commission's regulations. Must they also be reported as independent expenditures under 2 U.S.C. 431(17)?

Both of these issues raise material questions of federal law, including novel and complex questions regarding the interplay between federal and state law governing debts incurred by a nonconnected political committee.

### III. Brief Argument

Federal law requires a nonconnected political committee to report the nature and amount of outstanding debts owed by the committee. 2 U.S.C. § 434(b)(8). Neither the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. §§ 431 through 455, nor the Commission's regulations define the term "debt" for purposes of the Act. Instead, "[t]he Commission has long held that State law governs whether an alleged debt in fact exists, what the amount of the debt is and which persons or entities are responsible for paying a debt." Advisory Opinion 1989-2 at 2. See also Advisory Opinions 1995-7, 1988-44, 1981-42, 1979-1, 1975-102 and Karl Rove & Co. v. Thornburgh, 39 F.3d 1273, 1280-81 (5th Cir. 1994)(citing Advisory

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Opinion 1989-2 for the proposition that state law supplies the answer to the question of who may be liable for campaign committee debts).

The Commission's pilot program requires that a committee seeking Commission consideration of a material question of law that arises during the audit process submit a request within 15 days of a determination by the Audit Division if the committee is required to take corrective action. The Audit Division has informed Rightmarch that any request for Commission consideration would have to be submitted by February 8, 2010. Given the novelty and complexity of the legal issues raised by the audit, Rightmarch respectfully requests that the Commission extend the time for submitting a complete request for consideration by thirty days until March 10, 2011 so that Rightmarch may submit evidence and fully brief the Commission on the two legal issues raised by this audit. Such an extension would be consistent with the Commission's standard practice in enforcement cases.<sup>2</sup>

Sincerely,

  
Craig Engle

  
Brett G. Kappel

cc: Alex Boniewicz  
Audit Manager  
Audit Division

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<sup>2</sup> Federal Election Commission, Guidebook for Complainants and Respondents on the FEC Enforcement Process at 10 (Dec. 2009).