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Office of General Counsel
Attn: Adav Noti, Acting Associate General Counsel for Policy
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

October 7, 2014

RE: Public Citizen Comment on Advisory Opinion Request 2014-12 (National Party Convention Financing)

Dear Mr. Noti:

The Republican National Committee (RNC) and the Democratic National Committee (DNC) filed with the Federal Election Commission a joint Advisory Opinion Request (AOR 2014-12) on August 15, 2014, asking the Commission to allow the party committees to raise private funds under separate contribution limits to finance their national nominating conventions.

The Advisory Opinion Request follows on the heels of legislation approved by Congress and signed into law this year by President Barack Obama (H.R. 2019) to end the public financing program for presidential nominating conventions and authorize the use of the convention funds *solely* to help finance pediatric research.

Public Citizen notes that the convention funds have not been appropriated to finance pediatric research as authorized by the law. Leaving aside Congress's failure to fulfill the commitment it made to reallocate convention funding to pediatric research, however, Public Citizen opposes opening new and potentially corrupting avenues of special interest money to the national parties. By allowing the parties to raise private funds in excess of the party contribution limits prescribed in the Federal Election Campaign Act (FECA), the Commission would be acting contrary to law. Congress's decision to eliminate public convention funding provides no authority for the Commission to override the express statutory limits on contributions to the national party committees.

A. Background of the Public Funding Program Under FECA

The presidential nominating convention public financing system was created to replace potentially corrupting, unregulated private contributions with public money in the nomination of presidential candidates, largely in response to a soft money slush fund scandal at the 1972 Republican National Convention. In May 1971, the giant International Telephone and Telegraph Corporation (IT&T) pledged up to $400,000 to attract the 1972 Republican National Convention to San Diego. The company was facing several anti-trust lawsuits under the Nixon administration. Just eight days after the selection of San Diego for the Republican convention, Attorney General Richard Kleindienst agreed to an out-of-court anti-trust

settlement with IT&T that the company considered very favorable. In the wake of this scandal, Congress approved a system of public financing for presidential elections, which included full public financing of the conventions, removing the potentially corrupting corporate money from the convention process.

1. The Law Regarding Convention Financing

FECA's public financing program for the presidential nominating conventions created a system in which the parties, in exchange for accepting reasonable spending ceilings on their conventions, would receive a block grant from the federal government to pay for nearly all convention expenses. Originally, the spending ceiling and block grant was set at $2 million, to be adjusted for inflation. FECA was soon amended to increase the spending ceiling and block grant to $4 million.

The law began to unravel after a series of controversial Federal Election Commission (FEC) advisory opinions and regulations issued in the 1980s. The FEC decided to allow corporate and union soft money to help pay for the conventions through "host committees." Originally, the FEC limited the soft money loophole for host committees and municipal funds to corporations and unions with a "local tie" to the community hosting the convention. In 2003, the FEC dismissed the requirement of a "local tie" for corporate contributions to host committees and municipal funds altogether.[1]

FEC Commissioner Thomas Harris back in the early 1980s saw the danger of these exemptions getting out of control. He wrote in a dissenting opinion: "By permitting corporations and unions to donate unlimited amounts of money to fund political conventions, the Commission is ignoring one of the clear concerns of 2 U.S.C. 441(b) and its predecessor statutes – that is, the fear of the influence of aggregated wealth on the political process."[2]

2. The Flood of Soft Money into the Conventions

Commissioner Harris' prediction that the host committee exception could become a gaping soft money loophole has come true with a vengeance. In 1976, both parties paid for their conventions almost exclusively with public funds, about $2 million each. In 1980 and 1984, the parties still relied mostly on public money to pay for their conventions, at slightly more than $4 million in 1980 and somewhat more than $7 million in 1984. Soft money had only begun to creep into the picture.

Then, in 1996, the use of privately financed "host committees" by the parties overwhelmed the public financing program. Both conventions received private funds amounting to nearly double the public grant.

In the last few nominating convention seasons, public funds made up only a modest share of the total (inflated) cost of the conventions. In 2000, for example, each party was awarded about $13.5 million to pay for its nominating convention. In reality, private sources chipped in an

[1] 11 CFR §9008.52.
[2] Commissioner Thomas Harris, Advisory Opinion 1982-27A.

additional $52 million for the Democratic convention in Los Angeles and $60 million for the Republican convention in Philadelphia. In the 2004 election, the Republicans spent $101 million on their convention and the Democrats spent $72 million, all while the official public funding grant intended to pay for the conventions was $15 million. In 2008, each party was awarded $16.4 million in public grants to pay for its convention, but total expenditures through the host committees amounted to more than $55 million for the Democratic convention and $57 million for the Republican convention.[3] In 2012, each party received a public grant of $18.3 million, but private sources added another $37 million for the Democratic convention and $55 million for the Republican convention.

B. Gabriella Miller Kids First Research Act (H.R. 2019)

Rep. Gregg Harper (R-MS) has been a long-time opponent of the presidential public financing program. After Harper was unable to persuade Congress to approve earlier legislation (H.R. 260) that would have defunded the entire public financing program, including the primary election matching grants and general election funding of presidential candidates as well as convention funding, Harper re-worked the bill in 2013. The new H.R. 1724 still called for defunding the entire presidential public financing program, but this time the funds would be authorized exclusively to finance pediatric research. The measure, then-named "Kids First Research Act of 2013," would have required that the presidential election public funds "supplement, not supplant, funds otherwise allocated by NIH for pediatric research" and "prohibits the use of such amounts for any purpose other than making grants for pediatric research described in this Act."

House Majority Leader Eric Cantor (R-VA) offered one more tweak to the legislation. After learning of the story of Gabriella Miller, a 10-year old girl who died of cancer that year, Harper and Cantor scaled back the legislation to defund only the national party conventions and authorize that funds in accounts previously maintained for convention funding be used exclusively to finance pediatric research. This bill, H.R. 2019, became known as the "Gabriella Miller Kids First Research Act."

With the blessing of party and congressional leaders, the legislation was approved by Congress and signed into law by the President, with Gabriella Miller's parents at the signing ceremony, on April 3, 2014.

The law defunds the public financing program for national party conventions and authorizes those funds to be used exclusively for pediatric research. The law further requires such funds to supplement, not supplant, funds otherwise allocated by the National Institutes of Health (NIH) for pediatric research.

To date, the public funds formerly set aside to pay for the party conventions have not been appropriated by Congress to finance pediatric research. Given that Congress has slashed funding for pediatric research over recent fiscal years, there is no indication that Congress is likely to appropriate these funds for pediatric research anytime soon, if ever.

[3] "Presidential Campaign Receipts," Federal Election Commission Web site (July 2012).

While Congress appears to have now turned its back on the noble cause of providing additional funds for pediatric research, party leaders are renewing their call to open up the floodgates of special interest money to finance party activities following passage of the Gabriella Miller Kids First Act. RNC Chairman Reince Priebus has said that now that federal funding for the party conventions will be cut off, political parties should be able to raise "soft money" to pay for their presidential nominating conventions, seeking the kind of big checks parties have not been able to collect since the passage of the landmark McCain-Feingold campaign finance law.[4] And the DNC has now joined with the RNC in requesting that the FEC unilaterally change the party contribution limits for convention funding via an advisory opinion.

C. Conclusion: National Party Committees' Proposal is Contrary to Law and Should be Rejected

Advisory Opinion Request 2014-12 from the RNC and the DNC asks that the Commission once again presume that the activities of national political parties can be separated into election-related activities and non-election-related activities, and that it permit the use ofcontributions otherwise illegal under federal law to finance activities supposedly distinct from federal elections—in this case, nominating conventions. It is precisely this artificial distinction that gave rise to "soft money" in federal elections collected and spent by the national parties and which required additional legislation – the Bipartisan Campaign Reform Act of 2002 – to close it down.

Additional advisory opinions issued by the Commission premised on this artificial distinction gave rise to host committee funding and use of other sources of corporate and union money to finance the national party conventions, despite FECA's ban on using such funds to pay for the conventions. The impact of these advisory opinions eventually rendered special interest money the primary source of funding for the conventions.

Today, the Commission is being asked by the same parties to create another loophole in federal election law. Public Citizen urges the Commission not to make the same mistake again.

The stated intent of the Gabriella Miller Kids First Research Act is being ignored by Congress. Party convention funds have not been allocated to supplement pediatric research. Before approving AOR 2014-12, the Commission should find out why Congress is not implementing the law and evaluate whether those unspent funds would still be available for appropriation to finance the conventions, if Congress chose to change course again. Until these questions are answered, the Commission should not attempt to mend what congressional and party leaders created of their own choosing.

In fact, there is no need to replace the lost public funds with additional private monies for financing the national party conventions. Even without the public funds, the national party conventions have become extravagantly financed affairs, far exceeding the level of convention expenditures envisioned under the public financing program of FECA. And while more money than ever is raised and spent on today's national party conventions, the conventions have lost much of their historic significance. The party nominees are selected well before the conventions.

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[4] Matea Gold and Phillip Rucker, "RNC chair calls for reversal of 'soft money' ban to finance conventions," *Washington Post* (March 18, 2014).

Modern nominating conventions merely formalize the nominations. Instead, the primary purposes of today's conventions are to give an electioneering boost for the nominees and to provide candidates and party leaders with an opportune time for further campaign fundraising.

More directly to the point, FECA clearly specifies limits on contributions and source prohibitions of funding for the national party committees. 2 U.S.C. §441a(1)(B) states that "no person shall make contributions … to the political committee established and maintained by a national political party … in any calendar year which, in the aggregate, exceed $25,000" (adjusted for inflation). All contributions from any person are subject to a single limit. The law does not allow for circumvention of this limit by the party committees.

2 U.S.C. §441i, effective as part of BCRA, prohibits the national party committees from soliciting, receiving or directing any contributions "not subject to the limitations, prohibitions and reporting requirements of this Act." National party committees are prohibited from raising and spending soft money and donations in excess of the contribution limits. And while 26 U.S.C. §9008 established an account for publicly financing the conventions, the law does not allow for alternative methods of financing conventions through that account above and beyond the party contribution limits and source prohibitions.

Nor do FEC regulations on party convention financing permit the party committees to raise funds for the conventions above and beyond the contribution limits and source prohibitions. While party committees may raise private funds to pay for their nominating conventions from individuals, supplanting all or part of the public funds, all "private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of Title 2, United States Code."[5]

For these reasons, the Commission should not approve the Advisory Opinion Request 2014-12 posed by the Republican and Democratic National Committees.

Sincerely,

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[5] 11 C.F.R. §9008.6(a)(3).