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VIA SERS.FEC.GOV

Federal Election Commission
Attn: Amy L. Rothstein, Assistant General Counsel
1050 First Street NE
Washington, DC 20463

Re: Comments on Party Segregated Accounts (REG 2014-10, REG 2019-04)

Dear Commissioners:

The Republican National Committee (“RNC”), National Republican Senatorial Committee (“NRSC”), and National Republican Congressional Committee (“NRCC”) (collectively, the “Republican Committees”), by and through counsel, submit these comments in response to a request by the Federal Election Commission (“Commission” or “FEC”) for additional public input concerning two pending rulemaking petitions, both of which ask the Commission to promulgate regulations regarding national party committee segregated accounts. The first petition, filed by the Perkins Coie LLP Political Law Group in January 2016 (“Perkins Coie Petition”), asked the Commission to adopt comprehensive regulations concerning national party committee segregated accounts. The second petition, filed by the Campaign Legal Center and the Center for Responsive Politics in August 2019 (“CLC/CRP Petition”), urged the Commission to promulgate regulations and revise reporting forms to facilitate public disclosure of national party committee segregated account transactions.

As national party committees, the Republican Committees created segregated accounts following the enactment of the Consolidated and Further Continuing Appropriations Act, 2015 (the “Appropriations Act”). In the nearly 10 years since, the Republican Committees have each reasonably developed their own internal guidelines and procedures for administering their segregated accounts based upon the plain meaning of the Appropriations Act’s statutory text as well as a careful review of the legislative history.

If the Commission decides—nearly a decade after the Appropriations Act was enacted—to commence a rulemaking concerning the scope of permissible segregated account expenses, the Republican Committees strongly believe that the rulemaking process should not be conducted during the final months before a presidential election and should be thoughtful, deliberate, and allow ample time and opportunity for all stakeholders to actively participate. The Republican Committees are concerned, in particular, that a rushed rulemaking proceeding initiated in the midst of a presidential election year could potentially result in regulations with unintended consequences. As outlined below, however, some aspects of the Perkins Coie Petition and the CLC/CRP Petition are more straightforward. Should the Commission decide to

commence a rulemaking concerning these limited topics, it could be feasible and appropriate to do so on a more typical rulemaking timeline.

Specifically, if the Commission decides to initiate a rulemaking in response to either the Perkins Coie Petition or the CLC/CRP Petition, the Republican Committees respectfully request that the Commission postpone the effective date of any new regulations until January 1 of a new calendar year. It would be highly disruptive and administratively difficult for national party committees to implement changes required by any new regulations—particularly those that involve reporting and accounting procedures—in the middle of a calendar year.

As noted above, there are several straightforward aspects of the Perkins Coie Petition and the CLC/CRP Petition that the Commission could prioritize should it decide to commence a rulemaking this year. For example:

- The Commission could amend 11 C.F.R. §§ 110.1(c) and 110.2(c) to add the contribution limits to national party committee segregated accounts.
- The Commission could amend 11 C.F.R. §§ 109.30-109.34 to reflect the Appropriations Act's mandate that disbursements from national party committee segregated accounts made on behalf of a federal candidate do not count toward the coordinated party expenditure limits at 52 U.S.C. § 30116(d). Relatedly, the Commission could add new exemptions to the definitions of "contribution" and "expenditure" at 11 C.F.R. § 100.71 *et seq.* and 11 C.F.R. § 100.130 *et seq.* to further clarify that disbursements from the national party committee segregated accounts on behalf of a federal candidate are not "contributions" to or "expenditures" on behalf of that candidate, but must nevertheless be reported as disbursements. Such exemptions would clarify that a disbursement from a national party committee segregated account on behalf of a federal candidate does not result in an in-kind contribution from the national party committee to the federal candidate.
- The Commission could amend 11 C.F.R. §§ 102.6(a) and 110.3(c) to confirm that a national party committee may make unlimited transfers of funds from a segregated account to the same type of segregated account of another national party committee of the same political party.
- The Commission could adopt a regulation to clarify that a national party committee has the option of paying for permissible segregated account expenses using funds from either the segregated account or from its general operating account.
- The Commission could adopt a regulation to clarify that a national party committee may, but is not required to, allocate expenses attributable to its general operating account and a segregated account. National party committees should be able to allocate such expenses based on any reasonable allocation method. Moreover, national party committees should be able to transfer funds among their general operating accounts and segregated accounts to effect the allocations.
- The Commission could adopt a regulation to clarify that a national party committee may pay for segregated account expenses either directly from the segregated account or, alternatively, from its general operating account, which is later reimbursed by the

segregated account. There should not be a deadline by which such reimbursements must occur.

- The Commission could adopt a regulation to reflect the instruction in the Appropriations Act's legislative history that a national party committee may pay for the costs of fundraising for a segregated account using funds from that segregated account.¹

In terms of reporting the activity of national party committee segregated accounts, the Republican Committees have found the Commission's interim guidance to be clear and administratively workable.² If the Commission decides to commence a rulemaking that focuses on reporting issues, one option would be to codify this guidance as a regulation. Although the Republican Committees would not be opposed to reporting segregated account receipts and disbursements on separate line numbers, they oppose the creation of a new reporting schedule and complex allocation reporting requirements. The Republican Committees believe that the latter is unnecessary and would unduly burden national party committees. Any reporting framework should preserve the flexibility for national party committees to pay for segregated account expenses either directly from their general operating accounts (with or without subsequent reimbursement from the appropriate segregated account) or directly from their segregated accounts. Alternatively, the Republican Committees are not opposed to the Commission issuing further guidance that instructs national party committees to use uniform terminology to identify transactions relating to segregated accounts (e.g., "HQ," "Legal," "Conv.").

The Republican Committees greatly appreciate the Commission providing them with this opportunity to comment on the Perkins Coie Petition and the CLC/CRP Petition.

Respectfully Submitted,

/s/ Michael E. Toner

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¹ See 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid); 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner).

² FEC, *FEC Issues Interim Reporting Guidance for National Party Committee Accounts* (Feb. 13, 2015), <https://www.fec.gov/updates/fec-issues-interim-reporting-guidance-for-national-party-committee-accounts>.