



FEDERAL ELECTION COMMISSION
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2006 MAY 25 A 8:18

May 25, 2006

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel *LHN*

James A. Kahl
Deputy General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Mai T. Dinh *MTD*
Assistant General Counsel

Robert M. Knop *RMK*
Attorney

Subject: Draft AO 2006-19

AGENDA ITEM

For Meeting of: 5-25-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 25, 2006.

Attachment

1 ADVISORY OPINION 2006-19

2
3 Laurence S. Zakson, Esq.
4 Reich, Adell, Crost & Cvitan
5 3550 Wilshire Boulevard, Suite 2000
6 Los Angeles, CA 90010

DRAFT

7
8 Dear Mr. Zakson:

9
10 We are responding to your advisory opinion request on behalf of the Los Angeles
11 County Democratic Party Central Committee (“LACDP”) concerning the application of
12 the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission
13 regulations to certain get-out-the vote (“GOTV”) activities LACDP is planning to
14 undertake in connection with an election to be held on June 6, 2006. Because the
15 activities in question constitute Federal election activity, LACDP must pay for those
16 activities entirely with Federal funds or a mix of Federal funds and Levin funds.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letters received on
19 May 8 and May 10, 2006.

20 LACDP is a local party committee that is registered with the Commission as a
21 political committee. On June 6, 2006, the voters in the City of Long Beach (“Long
22 Beach”), located within Los Angeles County, will vote for local candidates in the non-
23 partisan, general election as well as for Federal candidates in the primary election.
24 LACDP intends to make pre-recorded, electronically dialed telephone calls and send
25 direct mail to voters registered as Democrats in Long Beach between May 22 and June 2,
26 2006. Sample scripts of these telephone calls and a draft of the direct-mail piece are
27 attached to this advisory opinion. *See* Attachment A. Among other things, the telephone
28 scripts urge Democratic voters to vote for the mayoral candidate endorsed by LACDP on

1 June 6, 2006. The direct-mail piece identifies municipal candidates endorsed by LACDP.
2 Both the telephone scripts and the direct-mail piece state the date on which the election
3 will be held. *See id.* Neither the telephone scripts nor the direct-mail piece refer to any
4 candidate for Federal office.

5

6 ***Question Presented***

7 *Do LACDP's planned communications to registered Democrats in Long Beach,*
8 *California constitute "Federal election activity" that must be paid for entirely with*
9 *Federal funds or a mix of Federal funds and Levin funds?*

10

11 ***Legal Analysis and Conclusions***

12 Yes, LACDP's planned communications to registered Democrats in Long Beach,
13 California constitute "Federal election activity" that must be paid for entirely with
14 Federal funds or a mix of Federal funds and Levin funds.

15 The Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81
16 (2002) ("BCRA"), amended the Act by adding a new term, "Federal election activity"
17 ("FEA"), to describe certain activities that State, district, and local party committees must
18 pay for with either Federal funds or a combination of Federal and Levin funds.¹ 2 U.S.C.
19 431(20) and 441i(b)(1). BCRA's requirements regarding FEA apply to all State, district,

¹ "Federal funds" are funds subject to the amount limitations, source prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). "Levin funds" are funds raised by State, district, and local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

1 and local party committees and organizations, regardless of whether they are registered as
2 political committees with the Commission.

3 As amended by BCRA, the Act specifies that voter identification, GOTV activity,
4 and generic campaign activity (collectively, “Type II FEA”) constitute FEA only when
5 these activities are conducted “in connection with an election in which a candidate for
6 Federal office appears on the ballot.” 2 U.S.C. 431(20)(A)(ii). As part of the definition
7 of “Federal election activity,” the Commission also defined the phrase “in connection
8 with an election in which a candidate for Federal office appears on the ballot” (“Type II
9 FEA time period”). *See* 11 CFR 100.24(a)(1). *See* Explanation and Justification for
10 Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft
11 Money; *see also* Explanation and Justification for Interim Final Rule on Definition of
12 Federal Election Activity, 71 Fed. Reg. 14357 (March 22, 2006). In States such as
13 California that conduct primaries, the Type II FEA time period begins on the date of the
14 earliest filing deadline for access to the primary election ballot for Federal candidates and
15 ends on the date of the general election, up to and including the date of any general runoff
16 election.² *See* 11 CFR 100.24(a)(1)(i). Thus the Type II FEA time period in California
17 in 2006 is from March 10, 2006 to November 7, 2006.³

18 The Type II FEA time period, however, does not apply to GOTV activity and
19 voter identification conducted in connection with a non-Federal election if: (1) the non-
20 Federal election is held on a date separate from a date of any Federal election; and (2) the

² In States that do not hold primary elections, the Type II FEA time period begins on January 1 of each even-numbered year and ends on the date of the general election. *See* 11 CFR 100.24(a)(1)(i).

³ This date assumes that there will be no general runoff election.

1 GOTV activity or voter identification refers exclusively to non-Federal candidates
2 participating only in that non-Federal election. *See* 11 CFR 100.24(a)(1)(iii)(A)(1).

3 The definition of “Federal election activity” also includes a definition of “get-out-
4 the-vote activity.” *See* 11 CFR 100.24(a)(3). “Get-out-the-vote activity” means
5 “contacting registered voters by telephone, in person, or by other individualized means,
6 to assist them in engaging in the act of voting.” *Id.* The definition provides a non-
7 exhaustive list of activities that constitute GOTV activity, such as “providing to
8 individual voters information such as the date of the election, the times when polling
9 places are open, and the location of particular polling places.” *See* 11 CFR
10 100.24(a)(3)(i).

11 The activities that LACDP plans to conduct meet the definition of
12 “get-out-the-vote activity.” LACDP plans to contact registered Democratic voters in
13 Long Beach, California by telephone or by direct mail, which is also a form of
14 “individualized means.” In addition, the sample telephone scripts and direct-mail piece
15 you supplied identify one or more municipal candidate(s), indicate that those candidates
16 have been endorsed by the Democratic Party, and include the date of the election.
17 Because providing the date of the election is one of the GOTV activities identified in 11
18 CFR 100.24(a)(3), LACDP’s telephone scripts and direct-mail piece constitute GOTV
19 activities, regardless of whether they indicate the times when the polls are open or the
20 voter’s particular polling location.

21 The GOTV activities that LACDP plans to undertake fall within the Type II FEA
22 time period for California. Although the planned GOTV communications would focus

1 on local candidates and would not mention any Federal candidate, they would not be
2 “limited to non-Federal elections” under 11 CFR 100.24(a)(1)(iii) because a Federal
3 election will also be held on June 6, 2006 and voters will cast ballots for Federal
4 candidates on that date. Thus, LACDP’s planned GOTV activities would be Federal
5 election activity under 11 CFR 100.24. Consequently, LACDP must pay for these
6 activities with either Federal funds or a combination of Federal and Levin funds. *See* 11
7 CFR 300.33(a)(2). If LACDP chooses to pay for the activity with a combination of
8 Federal and Levin funds, it must allocate its disbursements for that activity according to
9 the relevant allocation percentage in 11 CFR 300.33(b). Because Senate candidates are
10 on the ballot in California this year, LACDP must use Federal funds to pay for at least 21
11 percent of its planned GOTV activity. *See* 11 CFR 300.33(b)(3).

12 This response constitutes an advisory opinion concerning the application of the
13 Act and Commission regulations to the specific transaction or activity set forth in your
14 request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any
15 of the facts or assumptions presented, and such facts or assumptions are material to a
16 conclusion presented in this advisory opinion, then the requestor may not rely on that
17 conclusion as support for its proposed activity.

18

19
20
21
22
23
24
25
26

Sincerely,

Michael E. Toner
Chairman

Bob Foster Script

Hi, this is Eric Bauman, Chair of the LA County Democratic Party, with an important message for the registered Democrats at your home.

Election Day is Tuesday, June 6th. In the race for Long Beach Mayor, Bob Foster is the officially endorsed candidate of the Democratic Party.

He is an exceptional candidate who shares our values and has great ideas for Long Beach, including plans to clean up the Port, attract new high wage jobs and add 100 new police officers.

Please remember to vote for Bob Foster on Tuesday, June 6th.

This is a member communication paid for by the LA County Democratic Party. Not authorized by any candidate or committee.

Bob Foster Script-2

Hi, this is Eric Bauman, Chair of the LA County Democratic Party, with an important message for the registered Democrats at your home.

Election Day is Tuesday, June 6th, and your vote for Bob Foster for Mayor is critical to the future of our city.

Long Beach needs an experienced leader who will put our needs first, expand the police department and protect our coast line.

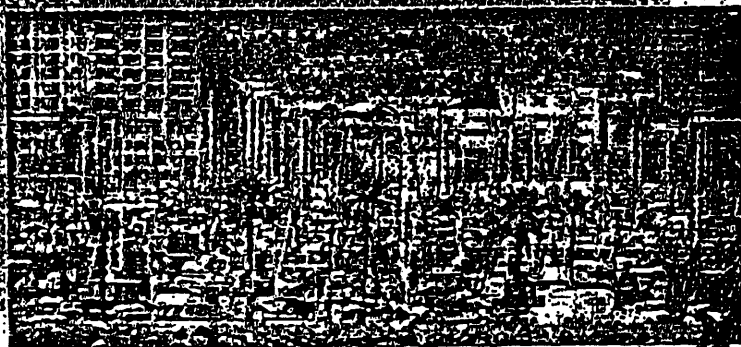
Please vote for Bob Foster for Mayor – for the future of our city.

This is a member communication paid for by the LA County Democratic Party. Not authorized by any candidate or committee.

Official Democratic Party Voter Guide for Long Beach

Election Day Tuesday, June 6, 2006

Provided by the
Los Angeles County
Democratic Party



Los Angeles County Democratic Party

Dear Democratic Party Member,

The candidates on this Voter Guide have received the official endorsement of the Los Angeles County Democratic Party. This is a membership communication to the registered Democratic voter at this address. Your elected representatives to the LACDP (Los Angeles County Democratic Central Committee) have evaluated and voted to support the candidates listed herein.

Inclusion on this Voter Guide is not specifically authorized by any candidate or ballot measure committee. Unlike "for-profit" slate mailers, we do not sell space on this voter guide. Candidates are included in our guide because they support the beliefs and ideals of the Democratic Party, not because they bought a listing.

Eric Bauman

Eric C. Bauman, Chair

Paid for by the
Los Angeles County Democratic Party.
Not authorized by any candidate or
committee. FPPC #744554 FEC # C00300731

PRESORTED
STANDARD
PAID
Permit No. 14954
Los Angeles, CA

Find Your Polling Place:
www.lavote.net

ATTACHMENT A
Page 3 of 4



The Los Angeles County Democratic Party Endorses These Long Beach Candidates:

BOB FOSTER ...Long Beach Mayor



Helps Our Kids. Bob is a Trustee for the California State University system and has served on the boards of the Aquarium of the Pacific and the Long Beach Library Foundation.

Crime Fighter. Dedicated to reducing crime, Bob has a sensible plan to add 100 new police officers and is endorsed by local police officers and firefighters.

Proven Environmental Leader. Bob will fight to clean up the Port and reduce diesel emissions. He is endorsed by the Sierra Club.

Created New Jobs in Long Beach. Bob is a creative business leader with the contacts to attract new high wage jobs for our city.

Democrats are United for Bob Foster. Bob is endorsed by the L.A. County Democratic Party.

- Bob Foster Long Beach Mayor
- Suja Lowenthal Long Beach City Council, District 2
- Audrey S. Loftin Long Beach City Council, District 3
- Gerrie Schipske Long Beach City Council, District 5
- David Barton Long Beach Unified School Board, District 7