FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY

DATE: May 24, 2006

SUBJECT: SUPPLEMENTAL COMMENTS
DRAFT AO 2006-19

Transmitted herewith are timely submitted supplemental comments from Paul S. Ryan, Associate Legal Counsel, on behalf of The Campaign Legal Center and Democracy 21, regarding the above-captioned matter.

The proposed draft advisory opinion is on the agenda for Thursday, May 25, 2006.

Attachment

May 24, 2006

By Electronic Mail

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Supplemental Comments on Advisory Opinion Request 2006–19

Dear Mr. Norton:

These supplemental comments are filed on behalf of the Campaign Legal Center and Democracy 21 in regard to AOR 2006–19, an advisory opinion request submitted by the Los Angeles County Democratic Party (LACDP), seeking advice on "[w]hether the LACDP's anticipated member communications . . . constitute[] 'federal election activity' and must be allocated and paid for in part with federally qualified funds pursuant to 11 C.F.R. Section 300.33." AOR 2006–19 at 3.

The Campaign Legal Center and Democracy 21 initially filed comments in response to AOR 2006–19 on May 22, 2006. The Commission then announced on May 23 that it was extending the comment period until noon on May 24. For the reasons set forth in our May 22 comments, we strongly agree with the Commission's Office of General Counsel (OGC) that "[b]ecause the activities in question constitute Federal election activity, LACDP must pay for those activities entirely with Federal funds or a mix of Federal funds and Levin funds." May 18 Draft AO 2006–19 at 1.

Even if the Commission *incorrectly* concludes that the LACDP's proposed activities do not constitute "Federal election activity," the LACDP must nevertheless either pay the costs of its proposed activities with Federal funds, or allocate the costs using a mixture of Federal and non-Federal funds pursuant to 11 C.F.R. §§ 106.7(c)(5) and (d)(3).

Section 106.7(c)(5) of the Commission's regulations provides that a party's "expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register or vote . . . *that do not qualify as Federal election activities*, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts." 11 C.F.R. § 106.7(c)(5) (emphasis added). Section 106.7(d)(3) establishes the allocation ratios for "voter drive activities that are not Federal election activities," requiring the use of at least 21% Federal funds in Senate election years such as this one. 11 C.F.R. § 106.7(d)(3)(iii).

In short, regardless of whether the Commission determines that the LACDP's proposed activities constitute "Federal election activity," the Commission must advise the LACDP that it is required by Federal law to use at least some Federal funds to pay for its proposed activities.

Respectfully,

/s/ Fred Wertheimer

Fred Wertheimer
Democracy 21

/s/ J. Gerald Hebert

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Copy to: Each Commissioner
Commission Secretary