



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

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

**FROM: *MWD* Marjorie W. Emmons/Mary W. Dove *MWD*
Secretary of the Commission**

DATE: February 22, 1999

SUBJECT: COMMENTS: PROPOSED AO 1999-1

Transmitted herewith is a timely submitted comment from Mark Greene.

Proposed Advisory Opinion 1999-1 is on the agenda for Thursday, February 25, 1999.

Attachment:

2 pages

Mark Greene
10149 Stoneleigh Drive
Benbrook, Texas 76126-3024
817-249-3190 FAX 817-249-8072

February 20, 1999

Commission Secretary
Federal Election Commission
999 E. Street NW
Washington, DC 20463

VIA FAX (202)208-3333

Cc: Office of General Counsel
VIA FAX (202)219-3923

Re: Comment AOR1999-01

Sirs:

Your having suffered through my various legalistic pleadings in this matter already, I will attempt to be brief and pointed in my comment in favor of the "Yes Draft," and not unduly dismissive of the "No Draft."

In *Federalist No. 39*, James Madison simply and eloquently outlined the principle under which this opinion has been sought: "It is *essential* to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic."

Once again, the founders displayed an uncanny precognition of how their fledgling government might evolve, built in such protections as they could devise, and made clear the need for vigilance. In the basic design of the system the separation of powers was an overriding concern, as was the worry of an entrenched aristocracy attaining and exercising control counter to both republican and democratic ideals. The badge of modern aristocracy is unquestionably wealth, and the current rules virtually dictate that one be a member to participate. I believe Madison would shudder to see what we have wrought thus far.

As I've stated in previous correspondences, this request is as much one of principle as of specific details, and the "Yes" draft recognizes and appreciates this fact. In the specific, anything less than adoption of the "Yes" draft will end my efforts and aspirations for this cycle, and for the foreseeable future. So long as the system remains substantially unchanged regarding the monies and time required to compete, I see no way that I or any other average American can effectively compete against an entrenched incumbent. Indeed, when a candidate, whether challenger or incumbent, must raise more than \$1,200.00 per day, every day, including weekends, is there any wonder that Congress has such a difficult time focusing on the nation's business? Is

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there any wonder that there seems to be such a disconnect between the people and their alleged representatives? While this request is not specifically about campaign finance reform, the underlying principle is the same. If normal hard-working everyday Americans have limited access or influence, how can we pretend to operate under a representative form of government? How long, indeed, under such conditions can our noble experiment continue?

In addressing the premise of the "No Draft" you are to consider, the underlying legal reasoning seems to be that (1) the uses to which I might put campaign salary would be in violation of existing "per se" restrictions, and that (2) my services would be available as needed by the campaign regardless of remuneration.

The first point I concede with the following caveat, namely that the incumbent opponent will continue to receive taxpayer-funded salary throughout the election cycle, and I'm certain will use these monies to handle just the sort of personal household expenditures that I and every other hard working American face. Nowhere in the Constitution or founder's documents have I seen any clause, directive or implication that descending into bankruptcy or placing your family in privation is a perquisite to attain elective office. Quite the contrary; in the real world such tendencies generally do and should spell disaster and failure for any aspiring candidate.

The second premise is even more egregiously erroneous. I assure you that my services will not be available and my candidacy will not exist if I know in advance that my family will suffer irreparable financial harm from my running. They have already conceded more than I should ask in allowing me to offer myself up for this intrusive, demanding and often thankless task. I know that I am not alone in this respect, and that there are many good and qualified servants across the nation who have not risen to the challenge based solely on the fear of financial ruin should they make the offer. Indeed, it has been rather disheartening as I've discussed my potential candidacy with supporters, that invariably among the first questions asked is "Can you afford it?"

In closing, let me state first that I've not addressed the "Yes Draft" in detail because I feel the strength of the opinion is apparent on its face. It recognizes the principles of fairness, inclusion and equal access that I believe the founders had in mind at the outset. Today there is great hue and cry to "restore civility" to our public lives. The commission has an historic opportunity to take a first step, by fostering a principle of fairness and by denigrating the influence of wealth to its proper stature. Wealth is not a civilizing influence, contrary to what some might claim. Neither is it an appropriate "filter" to determine fitness for public service. Neither is it an appropriate yardstick to determine a person's value to or in society. Please allow me to compete and serve my country. Thank you for your consideration.

Respectfully,



Mark Greene