FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

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

FROM: COMMISSION SECRETARY

DATE: AUGUST 21, 2008

SUBJECT: COMMENT ON DRAFT AO 2008-07
Senator David Vitter

Transmitted herewith is a timely submitted comment from Senator Vitter regarding the above-captioned matter.

Proposed Advisory Opinion 2008-07 is on the agenda for Thursday, August 21, 2008.

Attachment

SENATOR DAVID VITTER

2008 AUG 21 August 21, 2008

Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Commissioners:

I have received the two Draft Advisory Opinions prepared by your General Counsel in response to my Advisory Opinion Request (2008-7)—Draft B last night and Draft A the night before. I respectfully urge you to unanimously adopt Draft B for the following reasons.

First, Draft A proposes to directly overrule two prior and significant FEC opinions (Costello and Hilliard), and it would ignore the relevant principle clearly established by another important opinion (Kerrey). This would seem to defeat the whole purpose and spirit of advisory opinions, which is to create constant, dependable rules that others can reasonably rely on. I would hope the Commission would feel that a major reversal of precedent and guiding principles should be considered very cautiously, certainly not on a party line vote.

Second, Draft A seems to completely ignore the undisputed fact that I was singled out by the defense in the Palfrey case because of my status as a Senator. Please don't misunderstand me—I committed a very serious wrong and mistake. My only point is that others who did the same but were not notable were not similarly treated or targeted by the defense in the Palfrey litigation.

Third, and directly related to this point, I fear that Opinion A would encourage the use of similar litigation targeting and tactics against Members of Congress in the future. Unless one has vast personal resources, which most members including me do not, this can create a potentially crippling burden of attorneys fees which must be paid for with personal funds, even though the litigation or targeting is a direct result of the person's status as a Member of Congress.

Fourth, Draft A ignores the fact that the category of monitoring litigation is primarily a public relations function, which both drafts acknowledge is a permissible campaign expense. One cannot respond to what could easily be mountains of press inquiries without such monitoring. In my case, this is born out by the fact that almost all of the conference calls in this monitoring category involved my public relations specialist as a lead participant.

In closing, I urge a proper and full resolution of this issue. A tied vote will mean a complete lack of resolution in this case because pre-approval by the Senate Ethics Committee is required for the use of campaign funds for attorneys fees, and the Committee has made it clear that it awaits FEC guidance.

Respectfully submitted,

David Vitter