




FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office 

DATE: November 20, 2013

SUBJECT: Comments on Draft AO 2013-17
(Tea Party Leadership Fund)

**Attached is a comment received from Robert E. Rutkowski.
This matter is on the November 21, 2013 Open Meeting Agenda.**

Attachment



"Robert E. Rutkowski"

11/20/2013 01:44 PM

To <secretary@fec.gov>.

cc

bcc

Subject Tea Party Group Does Not Qualify for Disclosure Exemption Originating with NAACP in Jim Crow South

Ellen L. Weintraub, Chair
Federal Election Commission
999 B Street, NW
Washington, DC 20463
(800) 424-9530
secretary@fec.gov

Re: Tea Party Group Does Not Qualify for Disclosure Exemption Originating with NAACP in Jim Crow South

Dear Chair,

Today, Democracy 21 joined with the Campaign Legal Center in filing [comments](http://www.democracy21.org/wp-content/uploads/2013/11/CLC_D21_Comments_on_AO_2013-17_TPLF_Drafts_A_and_B_11_20_13.pdf), http://www.democracy21.org/wp-content/uploads/2013/11/CLC_D21_Comments_on_AO_2013-17_TPLF_Drafts_A_and_B_11_20_13.pdf, on two draft advisory opinions released by the Federal Election Commission (FEC) that will be voted on at the FEC's public meeting tomorrow. The draft opinions have been issued in response to an advisory opinion request from the Tea Party Leadership Fund (TPLF) (AOR 2013-17), which is seeking a rarely-granted exemption from disclosure laws on the grounds that disclosure "would result in threats, harassment, or reprisals from government officials or private parties." One draft to be considered by the FEC tomorrow would grant the exemption and the other would not.

The exemption stems from a 1958 Supreme Court decision prohibiting the state of Alabama from compelling the NAACP to disclose its membership list at a time when members of the civil rights organization faced grave dangers in the Jim Crow South. The exemption has also been extended over the years to small communist and socialist organizations dating back to the Cold War, with the Socialist Workers Party's exemption being renewed by the FEC earlier this year.

The Tea Party Leadership Fund seeks to play an active role in federal elections with secret money exempt from campaign finance disclosure requirements enacted to inform voters and deter corruption. The effort by the Tea Party Leadership Fund to compare its situation with the dangerous circumstances that faced NAACP members in the 1950s is both absurd and offensive. There is no constitutional basis, no legal basis and no basis in the facts presented in this case that would entitle the Tea Party Leadership Fund to the exemption it seeks to participate in elections with secret money. Past Supreme Court decisions and past FEC rulings make clear that the Tea Party Leadership Fund is not entitled to an exemption from the law's disclosure requirements. The FEC must deny the Tea Party Leadership Fund's request and ensure that the American people are provided the information to which they are entitled under the campaign finance disclosure laws.

On October 18, the Campaign Legal Center and Democracy 21 filed comments with the FEC in response to the Tea Party group's request, detailing the history of the "threats, harassment, or reprisals" exemption and the reasons why this Tea Party group is not entitled to the exemption. In determining whether a group is entitled to the exemption, courts and the FEC must engage in a balancing test. As the Supreme Court made clear in *Buckley v. Valeo*, the exemption is only available when the "threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that [the disclosure requirement] cannot be constitutionally applied."

The FEC should reject the draft opinion that would grant the exemption to the TPLF, noting that the draft opinion omits entirely half of the relevant legal test—consideration of the public interest in disclosure by Tea Party movement organizations. Unlike the Socialist Workers Party, for example, which has never successfully elected a candidate to public office in a partisan election, the Tea Party has had significant electoral and fundraising success. TPLF itself has raised more than \$2.3 million since its creation in 2012. Tea Party movement organizations together have raised and spent tens of millions of dollars, with more than fifty Members of Congress participating in the Tea Party caucus. The public interest in disclosure by such a powerful political faction is compelling.

TPLF presented so-called "evidence" to the FEC consisting of little more than news articles about public and private criticism of the Tea Party movement, IRS scrutiny of Tea Party organizations' applications for tax-exempt status, and suspicions that the group may have been under surveillance by the Department of Homeland Security and other federal agencies based on, among other things, a report advising law enforcement agencies to be on the lookout for "rightwing extremist activity, specifically the white supremacist and militia movements." It is noteworthy that, despite the fact that TPLF has received more than \$2.3 million in contributions, it has not presented evidence of a single instance in which one of its donors was harassed. Given the generality of this so-called "evidence"—it pertains to Tea Party movement organizations, generally, not specifically to TPLF—all other Tea Party organizations would likely be entitled to any exemption granted to TPLF.

When weighed against such meager evidence, the public interest in disclosure by the TPLF clearly outweighs any probability of threats, harassment, or reprisals.

Hoping that the concerns expressed in this letter will receive the attention they deserve, I remain,

Yours sincerely,
Robert E. Rutkowski

cc: House Minority Leadership

Topeka, Kansas
PjF:
E-mail: