FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 2006-19
OF
COMMISSIONER HANS A. VON SPAKOVSKY

The Federal Election Commission has approved Advisory Opinion 2006-19 for the Los Angeles County Democratic Party Central Committee ("the LACDP") by a vote of 5-1. The opinion, dated June 5, 2006, advises the LACDP that its proposed communications to municipal election voters do not constitute "get-out-the-vote activity" under the Bipartisan Campaign Reform Act of 2002 ("BCRA"), and therefore are not subject to the restrictions and funding requirements imposed by federal campaign finance law. I voted with the majority and agree fully with the Advisory Opinion issued. I write separately only to detail the existence of additional grounds for finding that the proposed activity does not constitute Federal election activity.

The City of Long Beach, California, is holding a municipal general election on June 6, 2006. (This election is referred to both as a "run-off" election and a "concurrent" election.) The City of Long Beach held a nonpartisan primary election on April 11, 2006.[1] The election on June 6, 2006, features those races in which no candidate received a majority of the votes cast in April.[2] Incidentally, June 6 is also the date that the State of California is holding its state primary elections.[3]

The LACDP wishes to make voters aware of which candidates it has endorsed in the municipal general election and encourage voters to support these candidates. The municipal general election, like the April 11 primary, is nonpartisan. The State primary ballot, however, is partisan, and voters will cast either a Democratic or Republican ballot.

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[1] See City of Long Beach Charter, Art. XIX, § 1901 ("The primary and general municipal elections for elective officers of the City shall be held in even numbered years, on the second Tuesday in April and the first Tuesday after the first Monday in June, respectively . . . ."), available at http://cms.longbeach.gov/cityclerk/refer/charter/intro.htm.

[2] See City of Long Beach Charter, Art. XIX, § 1906 ("In the event that any candidate for nomination to an elective office shall receive a majority of the votes cast for all the candidates for nomination to such office at any primary nominating election, the candidate so receiving such majority shall be deemed to be and declared by the City Council to be elected to such office."), available at http://cms.longbeach.gov/cityclerk/refer/charter/intro.htm. Sample ballots provided by the City of Long Beach, City Clerk's Department, indicate that voters will cast votes for Mayor, City Council Member (Districts 2, 3, and 5), and Board of Education Member (District 5) on June 6.

[3] The state primary ballots include county, State, and Federal offices, along with State ballot initiative measures.

Thus, voters will not be made aware of the municipal election candidates' partisan affiliations or tendencies simply by looking at the ballot. The LACDP's desire to make its proposed communications is certainly understandable in these circumstances.

When Long Beach voters go to the polls on June 6, they will confront an unusual situation. Each polling place will feature two separate voting locations. At one location, voters will vote a ballot dedicated to the municipal candidates running for Mayor, City Council, and School Board. At the second location, voters will vote a different ballot dedicated to county, State, and Federal *primary* candidates. As the City of Long Beach's government website states:

> On Tuesday, June 6, residents will vote at one polling place on two different ballots; one for City candidates and one for State and County candidates and issues. Voters will visit two sign-in tables at the same polling place, and will use two different voting systems to cast their ballots. Absentee voters will need to vote and send in two ballots, one for the City and another for the County and State.[4]

In other words, voters will have the choice of voting one or both ballots.

According to the City of Long Beach, two ballots will be used because "Tuesday June 6th 2006 is a concurrent election, when the city's election takes place on the same day as the Statewide Primary. In the City of Long Beach, city ballots need to be cast and counted separately from the county, because the City of Long Beach uses a different voting system than the county."[5] The City of Long Beach obviously regards its municipal elections as separate and distinct from county, State, and Federal elections.

The LACDP's proposed activity relates exclusively to the municipal ballot. The Bipartisan Campaign Reform Act of 2002 ("BCRA") defined the term "Federal election activity" to include, in relevant part, "voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot)."[6] Obviously, there is no Federal candidate on the municipal ballot. Thus, not only are the proposed communications not GOTV activity, they are also not being "conducted in connection with an election in which a candidate for Federal office appears *on the ballot*." The plain and unambiguous language of the statute

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[4] http://www.longbeach.gov/news/displaynews.asp?NewsID=1756 (last visited May 22, 2006).

[5] http://www.2votetuesday.com/ (last visited May 22, 2006).

[6] 2 U.S.C. § 431(20)(A)(ii) (emphasis added).

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indicates that the LACDP's proposed activity is not "Federal election activity," and is thus not subject to the restrictions of federal campaign finance law.

June 5, 2006

Commissioner Hans A. von Spakovsky