Perkins Coie

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE: 202.628.6600
FAX: 202.434.1690
www.perkinscoie.com

Brian G. Svoboda
PHONE: 202.434.1654
FAX: 202.434.1690
EMAIL: bsvoboda@perkinscoie.com

June 3, 2005

Mai Dinh, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Definition of Federal Election Activity

Dear Ms. Dinh:

My firm is general counsel to the Democratic Legislative Campaign Committee ("the DLCC"). I appreciate the opportunity to comment on behalf of the DLCC on the above-referenced Notice of Proposed Rulemaking. The DLCC believes that the Commission should alter the definition of "Federal election activity" as little as possible, especially insofar as it affects the activities of associations or groups of State and local candidates or officeholders.

The DLCC consists of Democratic state legislators from across the country. It exclusively supports Democratic state legislative candidates, Democratic state legislative caucuses, and others whose efforts create a positive environment for Democratic state legislative candidates. It does not make contributions or expenditures for the purpose of influencing federal elections. It complies with the campaign finance laws of the various states in making donations and engaging in other activities.

The DLCC operates under the assumption that it is "an association or similar group of candidates for State or local office or of individuals holding State or local office," as that term is used in 2 U.S.C. § 441i(b)(1), despite the fact that the term is defined neither in BCRA nor in Commission rules. Accordingly, the DLCC has organized its

activities to comply with the restrictions on Federal election activity now set forth in Commission rules.

As an organization devoted wholly to electing candidates for nonfederal office, the DLCC's task in complying with BCRA's Federal election activity restrictions has been relatively simple. It curtails references to Federal candidates in its public communications; it conducts no voter registration or generic campaign activity as those terms are now defined; and it pays no employees to engage in activities in connection with federal elections. To the extent it conducts or supports get-out-the-vote or voter identification efforts, it focuses strictly on efforts that refer solely to state or local candidates.

The Commission's proposed rules would significantly broaden the definition of Federal election activity. This, in turn, would raise two practical problems for the DLCC and non-party legislative caucuses, whose activities otherwise generally fall beyond the scope of Federal campaign finance law.

First, the proposed rules would further federalize purely state and local election activity. It would do so without any evidence, or even the credible suggestion of any corruptive effect on federal officeholders or candidates; and without any evidence that legislative committees functioned as vehicles to evade BCRA. There is absolutely no evidence in the legislative history of BCRA that Congress decided to regulate purely nonfederal activities to the extent now proposed here.

By causing the Federal election activity restrictions to be triggered by the simple acquisition of a voter list, and by removing the exemptions that now permit the DLCC and non-party caucuses to conduct get-out-the-vote and voter identification activities that refer solely to state or local candidates, the proposed rules would dramatically narrow the range of what these organizations can freely do at the state and local levels, without federal government regulation. Other potential changes which the Commission has not yet proposed, and yet on which it now seeks public comment, would narrow the range of permissible conduct even further. The DLCC strongly urges the Commission to resist expanding, to the extent possible, the range of conduct that triggers Federal election activity under the rules.

Second, the proposed rules would complicate gravely the planning of state legislative support efforts. The DLCC and its caucuses spent the last election cycle familiarizing themselves with extremely complex federal rules affecting the financing and conduct of their activities. If the proposed rules are adopted, then they would spend the

current election cycle having to re-learn revised versions of these same rules. Moreover, the Commission even suggests that they may face the daunting prospect of registering as political committees and complying with Commission allocation rules at 11 C.F.R. § 106.6, in order to continue doing what they now lawfully do. *See* 70 Fed. Reg. at 23,070.

The Commission need not seriously ask what the "impact" of such a course on "groups of non-Federal candidates" would be. *Id.* It would radically and unfavorably change their day-to-day operations, with enormous increases in cost and inefficiency, for no legitimate purpose. It is ironic that the Commission would view its allocation rules as a historic source of confusion for federally registered PACs, and yet suggest that they should be applied to now-unregistered groups engaged wholly in nonfederal activity. *See* Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 Fed. Reg. 68,056, 68,059 (2004).

Given the lack of any record evidence whatsoever to suggest that legislative campaigns in 2004 undermined the effective functioning of BCRA, it should be clear to the Commission that the DLCC and legislative caucuses are bystanders in a war among others over the scope and direction of that law. The Commission ought to minimize the collateral damage in that war. Accordingly, the DLCC respectfully submits that the Commission, to the maximum extent permitted by the court's judgment in *Shays v. FEC,* 337 F. Supp.2d 28 (D.D.C. 2004), should leave the definition of Federal election activity undisturbed. The practical consequences of leaving the current scheme in place are minimal, if any. For wholly nonfederal groups like the DLCC and non-party caucuses, the practical consequences of adopting the proposed rules would be grave indeed.

The DLCC respectfully requests the opportunity to testify at the public hearing on this matter.

Very truly yours,

Brian G. Svoboda
Counsel to the DLCC