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September 21, 2005

Via Facsimile and U.S. Mail
(202) 219-3923

Ms. Mai T. Dinh
Assistant General Counsel
Federal Elections Commission
999 E. Street, N.W.
Washington, D.C. 20463

2005 SEP 26 P 1:38
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Comment on State, District, and Local Party Committee Payment of Certain Salaries and Wages

Dear Ms. Dinh:

This office is legal counsel to the Los Angeles County Democratic Central Committee, also known as the Los Angeles County Democratic Party ("LACDP"). The LACDP is a local party committee within the meaning of the Act and its implementing regulations.

This letter comments on the Notice of Proposed Rulemaking 2005-22 (regarding state, district, and local party committee payment of certain salaries and wages). Specifically, 11 CFR §§ 106.7(c) and 300.33(c) provide that a local party committee may pay an employee's salary from entirely nonfederal funds when the employee spends 25% or less of his or her time in connection with a federal election.

In Shays v. FEC, 414 F.3d 76, 112 (D.C. Cir. 2005), the D.C. Circuit found that the Commission's justification for the rule did not satisfy the requirements of the Administrative Procedure Act, 5 U.S.C. 551, et seq. The Court, in particular, found the Commission's reasoning to be questionable because, the Court believed, the Commission's interpretation could allow party committees to circumvent paying their employees with federal funds by spreading the federal work among numerous employees each spending 25% or less of their time in connection with a federal election. Shays, supra, 414 F.3d at 112.

However, as noted in the Comments of Association of State Democratic Chairs, Mark Brewer, most district and other local party committees are small grassroots organizations with few employees and limited resources--the kind of organizations which, viewed realistically, pose none of the dangers postulated by the Court. For example, the LACDP is a local party committee representing Democrats in Los Angeles County, one of the largest metropolitan areas in the

nation. A large plurality of voters in the Los Angeles metropolitan area are Democratic and, on balance, Los Angeles County is more affluent than many other areas of the country. Nevertheless, the LACDP has only two or less permanent staff members and rarely, if ever, employs more than half a dozen employees at any one time. Like other local party committees, the LACDP must compete for federal funds with federal candidates, state and federal party committees and federal PACs. Thus, as a practical matter, the LACDP usually focuses much of its limited financial resources on promoting candidates for state and local office and promoting and opposing state and local ballot measures. This focus arises out of both (1) the practical limitations on a local committee in raising "hard" federal dollars and (2) a need to limit the committee's accounting and legal expenses given its limited resources.

In light of these facts, LACDP urges the Commission to continue in effect the current rule allowing employees who devote 25 % or less of their time to activities in connection with a federal election for those local committees with a minimal number of employees even if the Commission decides to impose an allocation formula on some party committees employing such employees.¹ Although a comprehensive study of district and local party committees could possibly yield a more scientific number, the LACDP urges an exemption for committees with six or fewer employees as such committees would, as a practical matter, be hard pressed to engage in the kind of evasion scheme the Shays Court found to be so troubling.

The LACDP believes that such an exemption would not only avoid the dangers posited by the Shays Court, but also would be consistent with Congress' intent to exempt from federal funding requirements de minimis expenditures of employee time in connection with federal elections.

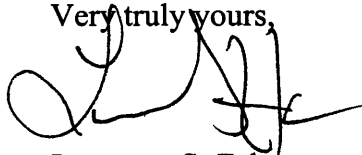
For the reasons given by the CDP in its June 3, 2005 letter, the LACDP also urges the amending of the rules to allow, but not require, party committees to use, at their option, either the same allocation for fringe benefits as are used for salaries and wages or the administrative allocation percentage.

¹ In its letter dated June 3, 2005, the California Democratic Party (CDP) urged the amendment of the Commission's regulations to exclude from the 25% threshold time spent engaged in "Federal Election Activity." LACDP agrees with the CDP that inclusion of Federal Election Activity under the threshold has no basis in the statute. Thus, 2 U.S.C. Section 431(20)(A)(iv) includes only "activities in connection with a federal election" in the 25% threshold. Accordingly, the LACDP joins in the CDP's suggestion.

Ms. Mai T. Dinh
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On behalf of the LACDP, I thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'LZ', with a long horizontal flourish extending to the right.

Laurence S. Zakson
of REICH, ADELL, CROST & CVITAN

LZ/ws

cc: Eric Bauman, Los Angeles County Democratic Party

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