

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITY08, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:07-cv-00053 (RWR)
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

**MOTION OF THE CAMPAIGN LEGAL CENTER AND DEMOCRACY 21  
TO PARTICIPATE AS AMICI CURIAE  
WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

The Campaign Legal Center (the “CLC”) and Democracy 21 respectfully move this Court for leave to participate in this case as *amici curiae* in support of Defendant Federal Election Commission (the “FEC”) in the above-captioned matter and to file the attached Memorandum in Support of Defendant.<sup>1</sup>

As grounds for this motion, *amici* would show unto the Court that:

1. The CLC is a nonpartisan, nonprofit organization which works in the area of campaign finance law, and participates in state and federal court litigation throughout the nation regarding disclosure, political advertising, contribution limits, enforcement issues, and other campaign finance matters. It also participates in rulemaking and advisory opinion

---

<sup>1</sup> The CLC and Democracy 21 originally attempted to file the Memorandum in Support of Defendant, along with a motion for leave to participate, electronically on April 11, 2007. It has since come to *amici*’s attention that these electronically-filed documents were not received by the Court and were not entered into the docket. The documents were, however, served on the parties in the case on April 11, 2007. *See infra* paragraphs 8-10 for further details regarding the April filing. *Amici* are resubmitting their April 11, 2007 Memorandum in Support of Defendant with this motion.

proceedings at the FEC to ensure that the agency is properly enforcing federal election laws and files complaints with the FEC requesting that enforcement actions be taken against individuals or organizations which violate the law.

2. Democracy 21 is a nonprofit, nonpartisan organization dedicated to making democracy work for all Americans. Democracy 21, and its education arm, Democracy 21 Education Fund, work to eliminate the undue influence of big money in American politics and to ensure the integrity and fairness of government decisions and elections. The organization promotes campaign finance reform and other political reforms to accomplish these goals. It also participates in rulemakings and advisory opinion proceedings, and other administrative proceedings, at the FEC.
3. The CLC and Democracy 21 have provided legal counsel to parties and *amici* in numerous campaign finance cases at the federal and state court levels, including representing intervening defendants in *McConnell v. FEC*, 540 U.S. 93 (2003). More recently Democracy 21 and the CLC have represented parties and *amici* in the following cases relating to the interpretation of the federal campaign finance laws: *Shays v. FEC* (“*Shays I*”), 337 F. Supp. 2d 28 (D.D.C. 2004), *motion for stay denied*, 340 F. Supp. 2d 39 (D.D.C. 2004), *aff’d*, 414 F.3d 76 (D.C. Cir. 2005), *reh’g denied*, Oct. 21, 2005; *Shays v. FEC* (“*Shays II*”), 424 F. Supp. 2d 100 (D.D.C. 2006), *motion for further relief denied* (D.D.C. Aug. 30, 2007);

and *Shays v. FEC* (“*Shays III*”), No. 06–CV–1247 (D.D.C. Sept. 12, 2007).<sup>2</sup>

4. The present case concerns a challenge brought under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A), and the First Amendment of the U.S. Constitution to a recent advisory opinion issued by the FEC, which found that plaintiff Unity08 was a “political committee,” subject to the restrictions and obligations of the Federal Election Campaign Act (“FECA”), 2 U.S.C. §§ 431 *et seq.* See Advisory Opinion 2006-20 (Oct. 10, 2006). The analysis of “political committee” status under FECA and the legal obligations of political committees are key issues in campaign finance law, and directly impact the interests of the *amici curiae*.
5. Both the CLC and Democracy 21 were active in the administrative proceedings that gave rise to this case. In response to Unity08’s request for an advisory opinion, the CLC and Democracy 21 filed comments with the FEC on June 19, 2006, arguing that Unity08’s campaign-related goals, and its expenditures for this purpose, demonstrated that it is a “political committee,” pursuant to 2 U.S.C. § 431(4)(A). The CLC and Democracy 21 also filed supplemental comments with the FEC on August 23, 2006, urging adoption of the draft advisory opinion issued by the FEC’s General Counsel on July 13, 2006.
6. The CLC and Democracy 21 wish to continue their participation in the Unity08 matter by filing the attached memorandum. *Amici* believe that

---

<sup>2</sup> The CLC and Democracy 21 also participated as counsel in the two most recent campaign finance cases in the United States Supreme Court: *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), and *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007).

this brief will assist the Court's understanding of the statutes, FEC regulations and case law relating to the question of when a group becomes a "political committee" under the federal campaign finance laws.

7. Counsel for Plaintiffs Unity08 *et al.* (John James Duffy, Jr.) and counsel for Defendant FEC (David Brett Kolker) have been contacted about their consent to the *amici* participation of the CLC and Democracy 21 in this case. Counsel for Defendant has consented to the participation, and counsel for Plaintiffs has not consented.
8. The motion for leave to participate as *amici curiae* and the attached memorandum were originally filed electronically on April 11, 2007. *See* copy of *amici*'s April 11, 2007 email to the Clerk, attached as Exhibit A. This was the date that defendant FEC filed its motion for summary judgment. Counsel for *amici* also served the papers upon counsel for plaintiffs and defendant via email and first-class mail. *See* copy of original motion, proposed order and certificate of service, attached as Exhibit B.
9. *Amici* have since learned, however, that the Court did not receive the papers filed via email on April 11, 2007, and that the papers were not entered into the case docket.<sup>3</sup>

---

<sup>3</sup> On April 11, 2007, counsel for *amici* sent the motion and accompanying memorandum to the email address [dcd\\_cmecf\\_ms@dcd.uscourts.gov](mailto:dcd_cmecf_ms@dcd.uscourts.gov), as provided by the Supplement to the Local Rules. *See* Clerk's Office General Information & Civil Filing Procedures, at Section II(F)(3)(a), *available at* <http://www.dcd.uscourts.gov/LocalRulesSupplement.pdf>. Prior to emailing the motion and memorandum to the Court, counsel for *amici* called the Office of the Clerk regarding electronic filing procedures, and a staff member confirmed that this was the proper email address. Counsel has since been informed that the correct email address was [dcd\\_cmecf@dcd.uscourts.gov](mailto:dcd_cmecf@dcd.uscourts.gov), not the email address used on April 11, 2007, [dcd\\_cmecf\\_ms@dcd.uscourts.gov](mailto:dcd_cmecf_ms@dcd.uscourts.gov), which was apparently defunct, although we received no notice of that at the time we made the submission in April.

10. The CLC and Democracy 21 respectfully request that the Court allow the resubmission of their April 11, 2007 Memorandum in Support of Defendant. Defendant FEC's motion for summary judgment has not yet been decided, and indeed, oral argument has not yet been scheduled. Therefore, *amici's* memorandum is still timely, and participation by *amici* will not delay these proceedings in any way or burden any party.

WHEREFORE, premises considered, the CLC and Democracy 21 respectfully pray that this Court will grant this motion and permit their participation in this case as *amici curiae*. A proposed Order is attached.

**Respectfully submitted,**

/s/ J. Gerald Hebert  
J. GERALD HEBERT  
(D.C. Bar No. 447676)  
PAUL S. RYAN  
(D.C. Bar No. 502514)  
THE CAMPAIGN LEGAL  
CENTER  
1640 Rhode Island Ave., N.W.  
Suite 650  
Washington, D.C. 20036  
Tel: (202) 736-2200

Counsel for Movant Campaign Legal  
Center

/s/ Donald J. Simon  
Donald J. Simon  
(D.C. Bar No. 256388)  
SONOSKY, CHAMBERS,  
SACHSE,  
ENDRESON & PERRY, LLP  
1425 K Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 682-0240

Fred Wertheimer  
(D.C. Bar No. 154211)  
DEMOCRACY 21  
1875 I Street, N.W.  
Suite 500  
Washington, D.C. 20005  
(202) 429-2008

Counsel for Movant Democracy 21

**Dated: December 19, 2007.**

# **Exhibit A**

**From:** Paul Ryan  
**Sent:** Wednesday, April 11, 2007 3:37 PM  
**To:** 'dcd\_cmecf\_ms@dcd.uscourts.gov'  
**Subject:** Unity08, et al. v. Federal Election Commission, No. 1:07-cv-00053 (RWR)

**Attachments:** CLC and D21 Motion for Leave to Participate as Amici Curiae.pdf; CLC and D21 Amici Brief in Unity 08.pdf

To the Office of the Clerk:

Please find attached the following pdf documents to be filed in *Unity08, et al. v. Federal Election Commission*, No. 1:07-cv-00053 (RWR):

(1) Motion of the Campaign Legal Center and Democracy 21 to Participate as Amici Curiae with Supporting Memorandum of Points and Authorities, proposed order and certificate of service; and

(2) Memorandum of Campaign Legal Center and Democracy 21 as Amici Curiae in Support of Defendant Federal Election Commission.

Thank you for your attention.

PSR

---

Paul Seamus Ryan  
FEC Program Director  
& Associate Legal Counsel  
The Campaign Legal Center  
1640 Rhode Island Ave. NW, Ste. 650  
Washington, DC 20036  
Office Ph. (202) 736-2200  
Mobile Ph. (202) 262-7315  
Fax (202) 736-2222  
CLC Blog: <http://www.clcblog.org>  
CLC Web Site: <http://www.campaignlegalcenter.org>

---

Sign up for The Campaign Legal Center Blog at: <http://www.campaignlegalcenter.org/signup.html>



## **Exhibit B**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITY08, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:07-cv-00053 (RWR)
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

**MOTION OF THE CAMPAIGN LEGAL CENTER AND DEMOCRACY 21  
TO PARTICIPATE AS AMICI CURIAE  
WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

The Campaign Legal Center (the “CLC”) and Democracy 21 respectfully move this Court for leave to participate in this case as *amici curiae* in support of Defendant Federal Election Commission (the “FEC”) in the above-captioned matter and to file the attached Memorandum in Support of Defendant.

As grounds for this motion, *amici* would show unto the Court that:

1. The CLC is a nonpartisan, nonprofit organization which works in the area of campaign finance law, and participates in state and federal court litigation throughout the nation regarding disclosure, political advertising, contribution limits, enforcement issues, and other campaign finance matters. It also participates in rulemaking and advisory opinion proceedings at the FEC to ensure that the agency is properly enforcing federal election laws and files complaints with the FEC requesting that enforcement actions be taken against individuals or organizations which violate the law.

2. Democracy 21 is a nonprofit, nonpartisan organization dedicated to making democracy work for all Americans. Democracy 21, and its education arm, Democracy 21 Education Fund, work to eliminate the undue influence of big money in American politics and to ensure the integrity and fairness of government decisions and elections. The organization promotes campaign finance reform and other political reforms to accomplish these goals. It also participates in rulemakings and advisory opinion proceedings, and other administrative proceedings, at the FEC.
3. The CLC and Democracy 21 have provided legal counsel to parties and *amici* in numerous campaign finance cases at the federal and state court levels, including representing intervening defendants in *McConnell v. FEC*, 540 U.S. 93 (2003). More recently Democracy 21 and the CLC have represented parties and *amici* in the following cases relating to the interpretation of the federal campaign finance laws: *Shays v. FEC* (“*Shays I*”), 337 F. Supp. 2d 28 (D.D.C. 2004), *motion for stay denied*, 340 F. Supp. 2d 39 (D.D.C. 2004), *aff’d*, 414 F.3d 76 (D.C. Cir. 2005), *reh’g denied*, Oct. 21, 2005; *Shays v. FEC* (“*Shays II*”), 424 F. Supp. 2d 100 (D.D.C. 2006), *motion for further relief filed* (D.D.C. Apr. 3, 2007); and *Shays v. FEC* (“*Shays III*”), No. 06–CV–1247 (D.D.C. summary judgment motion filed, Dec. 8, 2006).<sup>1</sup>
4. The present case concerns a challenge brought under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A), and the First Amendment of the

---

<sup>1</sup> The CLC and Democracy 21 also participated as counsel in the two most recent campaign finance cases in the United States Supreme Court: *Randall v. Sorrell*, 126 S.Ct. 2479 (2006), and *Wisconsin Right to Life v. FEC*, No. 04-1581, 546 U.S. 410 (2006), *remanded to* 2006 WL 3746669 (D.D.C. Dec. 21, 2006), *on appeal to* No. 06-970 (opening brief filed, Feb. 23, 2007).

U.S. Constitution to a recent advisory opinion issued by the FEC, which found that plaintiff Unity08 was a “political committee,” subject to the restrictions and obligations of the Federal Election Campaign Act (“FECA”), 2 U.S.C. §§ 431 *et seq.* See Advisory Opinion 2006-20 (Oct. 10, 2006). The analysis of “political committee” status under FECA and the legal obligations of political committees are key issues in campaign finance law, and directly impact the interests of the *amici curiae*.

5. Both the CLC and Democracy 21 were active in the administrative proceedings that gave rise to this case. In response to Unity08’s request for an advisory opinion, the CLC and Democracy 21 filed comments with the FEC on June 19, 2006, arguing that Unity08’s campaign-related goals, and its expenditures for this purpose, demonstrated that it is a “political committee,” pursuant to 2 U.S.C. § 431(4)(A). The CLC and Democracy 21 also filed supplemental comments with the FEC on August 23, 2006, urging adoption of the draft advisory opinion issued by the FEC’s General Counsel on July 13, 2006.
6. The CLC and Democracy 21 wish to continue their participation in the Unity08 matter by filing the attached memorandum. *Amici* believe that this brief will assist the Court’s understanding of the statutes, FEC regulations and case law relating to the question of when a group becomes a “political committee” under the federal campaign finance laws.
7. Counsel for Plaintiff Unity08 (John James Duffy, Jr.) and counsel for Defendant FEC (David Brett Kolker) have been contacted about their consent to the *amici*

participation of the CLC and Democracy 21 in this case. Counsel for Defendant has consented to the participation, and counsel for Plaintiffs has not consented.

8. This filing is timely because this motion and the attached memorandum are being filed on the date that the principal brief of defendant FEC is due. Moreover, participation by *amici* will not delay these proceedings in any way or burden any party.

WHEREFORE, premises considered, the CLC and Democracy 21 respectfully pray that this Court will grant this motion and permit their participation in this case as *amici curiae*. A proposed Order is attached.

**Respectfully submitted,**

/s/ J. Gerald Hebert  
J. GERALD HEBERT  
(D.C. Bar No. 447676)  
PAUL S. RYAN  
(D.C. Bar No. 502514)  
THE CAMPAIGN LEGAL CENTER  
1640 Rhode Island Ave., N.W.  
Suite 650  
Washington, D.C. 20036  
Tel: (202) 736-2200

Counsel for Movant Campaign Legal Center

Donald J. Simon  
(D.C. Bar No. 256388)  
SONOSKY, CHAMBERS, SACHSE,  
ENDRESON & PERRY, LLP  
1425 K Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 682-0240

Fred Wertheimer  
(D.C. Bar No. 154211)  
DEMOCRACY 21  
1875 I Street, N.W.  
Suite 500  
Washington, D.C. 20005  
(202) 429-2008

Counsel for Movant Democracy 21

**Dated: April 11, 2007**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITY08, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:07-cv-00053 (RWR)
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

**ORDER**

Pending before the Court is a motion by the CAMPAIGN LEGAL CENTER and DEMOCRACY 21 for leave to appear in this cause as *amici curiae* and to file the Memorandum in Support of Defendant Federal Election Commission. For good cause shown, the motion for leave to participate as *amici curiae* by the Campaign Legal Center and Democracy 21 is hereby GRANTED and the Memorandum of *Amici Curiae* shall be filed in this case.

This \_\_\_\_ day of April, 2007.

\_\_\_\_\_  
United States District Judge

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion with supporting memorandum and proposed order have been filed via email, pursuant to Part I(II)(F) of the “Clerk’s Office General Information & Civil Filing Procedures” (Documents Exempt From the CM/ECF System), on this 11<sup>th</sup> day of April, 2007. In addition, the following counsel have been served with copies of the foregoing motion for leave to participate *amici curiae* with supporting memorandum of points and authorities and proposed order via email (where email addresses are available and known) and via first-class mail, postage pre-paid.

### **Attorneys Representing Plaintiffs:**

Robert Elijah Jordan III  
John James Duffy, Jr.  
Rhonda M. Bolton  
Anthony A. Onorato  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave., N.W.  
Washington, DC 20036  
(202) 429-3000

### **Attorneys Representing Defendants:**

David Brett Kolker  
Adav Noti  
Steve Nicolaoas Hajjar  
Vivian Clair  
FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463  
(202) 694-1650

/s/ J. Gerald Hebert  
J. Gerald Hebert



**Proposed Order and Certificate of Service  
For December 19, 2007 Motion and Memorandum**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITY08, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:07-cv-00053 (RWR)
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

**ORDER**

Pending before the Court is a motion by the CAMPAIGN LEGAL CENTER and DEMOCRACY 21 for leave to appear in this cause as *amici curiae* and to file the Memorandum in Support of Defendant Federal Election Commission. For good cause shown, the motion for leave to participate as *amici curiae* by the Campaign Legal Center and Democracy 21 is hereby GRANTED and the Memorandum of *Amici Curiae* shall be filed in this case.

This \_\_\_\_ day of December, 2007.

\_\_\_\_\_  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion with supporting memorandum and proposed order have been filed via email, pursuant to Part I(II)(F) of the “Clerk’s Office General Information & Civil Filing Procedures” (Documents Exempt From the CM/ECF System), on this 19<sup>th</sup> day of December, 2007. In addition, the following counsel have been served with copies of the foregoing motion for leave to participate *amici curiae* with supporting memorandum of points and authorities and proposed order via email (where email addresses are available and known) and via first-class mail, postage pre-paid.

### **Attorneys Representing Plaintiffs:**

John James Duffy, Jr.  
Robert Elijah Jordan III  
Rhonda M. Bolton  
Anthony A. Onorato  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave., N.W.  
Washington, DC 20036  
(202) 429-3000

### **Attorneys Representing Defendants:**

David Brett Kolker  
Vivian Clair  
Adav Noti  
Steve Nicolaoas Hajjar  
FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463  
(202) 694-1650

/s/ J. Gerald Hebert  
J. Gerald Hebert