

July 15, 2015

By Electronic Mail

Lisa J. Stevenson
Deputy General Counsel, Law
Federal Election Commission
999 E Street, NW
Washington, DC 20463

**Re: Comments on Third-Party Appearances before the Commission to Discuss
Advisory Opinions (Agenda Document No. 15-37-A)**

Dear Ms. Stevenson:

These comments are filed on behalf of the Campaign Legal Center and Democracy 21 in regard to the Office of General Counsel's (OGC) memorandum "Third-Party Appearances before the Commission to Discuss Advisory Opinions," which is on the agenda for discussion at the Commission's July 16 meeting. The memorandum outlines a proposed procedure for allowing public participation in the Commission's consideration of advisory opinions (AO) at open meetings. With one important modification explained below, the Campaign Legal Center and Democracy 21 support the proposed procedure and the Commission's effort to increase public participation in Commission processes.

The Campaign Legal Center and Democracy 21 frequently submit comments to the Commission on advisory opinion requests (AOR) and draft advisory opinions. The Commission's current procedures for consideration of advisory opinions are very unbalanced for precisely the reasons identified in the OGC memorandum: the requester has an opportunity to present what amounts to a full oral argument to the Commission in support of its view of the law, while commenters who may have a very different (and well informed) position are afforded no opportunity to address the Commission at all. To a large extent, the requester's views of the law can go unchallenged in the meeting at which the Commission considers the AOR, and the Commission can be left with a very one-sided picture.

For this reason, the thrust of the OGC proposal is a major step in the right direction to restore balance to the advisory opinion process. But we urge the Commission to modify and improve the proposal in one important way: by allowing third parties to request to appear before the Commission when they submit comments on either the AOR or on a draft AO. As written, the proposed procedure allows a commenter to request to appear before the Commission only when it has filed comments on a draft AO. We agree that third parties should be able to request the opportunity to appear when it has filed comments on a draft AO. However, an interested third party should also be able to request the opportunity to appear when it submits comments on the AOR. Comments on the AOR typically set forth in full the commenter's view of the applicable law, and AOR comments are actually more useful to the Commission and its staff because they

are submitted earlier in the process. There is no good reason to require a commenter to re-submit its views again on a draft AO simply to qualify to appear before the Commission. Further, allowing third parties to request in their AOR comments the opportunity to appear would give the Commission and FEC staff more time to prepare for the third party's participation at the meeting. It would also give a requester who has not asked to appear before the Commission more notice and time to prepare if they decide they would like to appear along with the third party.

As frequent commenters on AOs, we note that it is often difficult to respond to draft AOs before the Commission considers the draft at an open meeting. For example, for the open meeting scheduled for this week on July 16, the draft for AO 2015-02 was received by the Commission Secretary at 2:50 p.m. on July 14.¹ The draft was made available to the public shortly after that. Members of the public were given until 5:00 p.m. on July 15—little more than twenty-four hours—to submit comments on the draft. As OGC's memorandum notes, draft AOs are sometimes circulated on the day they will be considered by the Commission. On the day of an open meeting, it is very difficult for members of the public to review a draft AO, prepare and submit comments on the draft and prepare to appear before the Commission. It would be beneficial to everyone involved in the AO process—the requester, Commissioners and FEC staff—if they had more advanced notice of a third party's appearance before the Commission.

For these reasons, we urge the Commission to adopt the proposed procedure with this modification.

Sincerely,

/s/ J. Gerald Hebert

/s/ Fred Wertheimer

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¹ AO 2015-02 Draft A, available at <http://saos.fec.gov/aodocs/201502.pdf>.

Copy to: Each Commissioner
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