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April 19, 2006

Jeff S. Jordan, Esq.  
Kim Collins, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW – Sixth Floor  
Washington, DC 20463

Re: MUR 5711

Dear Mr. Jordan and Ms. Collins:

On behalf of House Democratic Leader Nancy Pelosi and Senators Boxer and Feinstein, we are replying to a complaint filed by the California Republican Party alleging that their identification as campaign co-chairs of Democratic gubernatorial candidate Phil Angelides implicated them in a violation of 2 U.S.C. § 441i(e). This complaint is entirely meritless, having been prepared and filed without regard to the Commission's "solicitation" rules and related Advisory Opinions.<sup>1</sup>

The complaint does not point to any statement or representation whatsoever by any of the co-chairs. Instead, it makes its case out of a photograph of the three, identified as co-chairs, on the same campaign home page where there is found a link for those visitors interested in making a contribution to Mr. Angelides. This is the standard lay-out for a home page, and the link provided for donors is one among others. No statement is provided in the name of the co-chairs, nor did the co-chairs provide or authorize one, directing visitors to that link or urging them to contribute. In other words, the very predicate of the claim made here is altogether missing: there is no "solicitation," which means that none of the co-chairs could have violated 441i(e).

The Commission recently promulgated a final rule defining the term "solicit." 71 Fed. Reg. 13926 (Mar. 20, 2006). The Commission rejected the word "suggest," stressing instead that a solicitation must be one that "asks," "requests" or "recommends" a contribution sufficiently unambiguously that a "clear message" to that effect is

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<sup>1</sup> The Commission only recently promulgated a new rule to govern the application of the solicitation rules, but these rules, by mandate of the Court's decision in *Shays v FEC*, are more expansive than the ones it replaced. As noted here, because the Complaint here makes a claim under the new rules, it would have certainly failed under the older, narrow ones

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communicated. 11 C.F.R. § 300.2(m). The Complaint does not, because it cannot, allege that anything here was "requested" or "asked" or "recommended." It admits that the names and likenesses of the Respondents merely "appear," or are "featured" or "displayed," on the Angelides campaign web site. Complaint at 2.

Moreover, the Commission rules distinguish at length between "solicitations" and communications of "political support." At most, the appearance of the co-chairs, each identified as such, constitute only a statement of their "political support" for the Angelides candidacy. This type of communication is specifically exempted from treatment as a "solicitation." 11 C.F.R. § 300.2(m) And, in the recent rulemaking, the FEC also considered funds solicited and effected through a web site and concluded that a site did not constitute in and of itself a "solicitation" unless it "is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet users to such a page, or exclusively displays a link to such a page." 11 C.F.R. § 300.2(m)(1)(iii). The site in question here is none of these: it is the home page of the campaign site—or, in the Complainant's words, the campaign's "'official' website."

We note, finally, that the co-chairmanship of a campaign does not cause a campaign's solicitation activities to be imputed, as a matter of law, to the co-chairs. Federal candidates and officeholders may serve as chairs of state candidate campaigns. The FEC has considered only, and was unable to resolve, the question of whether the appearance of co-chairs on a solicitation triggered the restrictions of § 441i(e). Yet in that case, the question rested on the assumption that the communication was a solicitation. FEC Advisory Opinion 2003-3 (April 29, 2003). Here there is none.

We ask for a prompt dismissal of this complaint.

Very truly yours,



Robert F. Bauer  
Marc E. Elias

Counsel to House Democratic Leader Nancy Pelosi,  
Senator Barbara Boxer and Senator Dianne Feinstein