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MEMORANDUM

VIA EMAIL

To: Whom It May Concern
From: Remcho, Johansen & Purcell
Date: February 21, 2008
Re: The American Leadership Project (Our File No.: 2439.1)

The American Leadership Project was established to amplify the primary election's focus on issues of importance to the middle class – the economy, jobs, education, healthcare and the mortgage crisis. It is an unincorporated association organized under the auspices of Internal Revenue Code section 527. It is not associated with, and is not coordinating with, any federal candidate or candidate's committee.

ALP will not air any advertisements that contain express advocacy on behalf of a federal candidate. It is soliciting funds to air advertisements that meet its purpose of highlighting the issues enumerated above, all of which it believes are important to middle class families and should be discussed and debated during the weeks prior to the upcoming primary elections. ALP's major purpose is to convey information and urge consideration of those important issues during a time when viewers are paying closer attention to such matters. As the U.S. Supreme Court recently stated: "Issue advocacy conveys information and educates. An issue ad's impact on an election, if it exists at all, will come only after the voters hear the information and choose -- uninvited by the ad -- to factor it into their voting decisions." *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (June 25, 2007).

In *Wisconsin Right to Life*, Chief Justice Roberts, writing for the Court, agreed that an advocacy group has a constitutional right, protected by the First Amendment, to air issue ads in the days prior to an election without being constrained by the contribution and expenditure limitations of BCRA, even if those ads mention a federal candidate. The Court said:

Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor.

Subsequently, on December 26, 2007 the Federal Election Commission issued new regulations implementing the Supreme Court's decision. 72 Fed. Reg. 72899. Those regulations confirm that only communications containing express advocacy or the "functional equivalent of express advocacy" are subject to BCRA's funding restrictions. In particular, electioneering communications are *permissible* if they (1) do not mention any election, candidacy, political party, opposing candidate, or voting by the general public; (2) do not take a position on a candidate's character, qualifications, or fitness for office; and (3) focus on a legislative, executive or judicial issue while urging the public to adopt a particular position and contact the candidate on the issue. Even if the electioneering communication could be construed as taking a position on a candidate's qualifications, the communication is *permissible* if it contains content that would support a determination that a communication has an interpretation other than as an appeal to vote for or against a candidate by, for example, focusing on a public policy issue and urging the public to contact the candidate about the issue. In cases of doubt, the FEC's position is that "any doubt will be resolved in favor of permitting the communication."

Of note, the FEC gave as a specific example of a *permissible communication* the following advertisement, airing in the weeks just prior to a congressional election:

It's our land, our water. America's environment must be protected. But in just 18 months, Congressman Ganske has voted 12 out of 12 times to weaken environmental protections. Congressman Ganske even voted to let corporations continue releasing cancer-causing pollutants into our air. Congressman Ganske voted for the big corporations who lobbied these bills and gave him thousands of dollars in contributions. Call Congressman Ganske. Tell him to protect America's environment. For our families. For our future.

Although ALP is not a political committee for purposes of BCRA, and will not be subject to BCRA's funding restrictions, it will have reporting requirements with the FEC as well as the IRS. As required by law, every time the ALP spends \$10,000 or more on an electioneering communication, it will file within 24 hours a report with the FEC that lists its donors of \$1,000 or more. Those reports will be publicly accessible on the FEC website.