FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: **The Commission**
Staff Director
General Counsel
Public Disclosure and Media Relations Division

FROM: **Commission Secretary's Office** DCB

DATE: **May 23, 2019**

SUBJECT: **Comment on Draft Interpretive Rule on Paying for Cybersecurity Using Party Segregated Accounts**

Transmitted herewith is a comment from Mr. Adav Noti and Mr. Brendan Fischer on behalf of the Campaign Legal Center.

Attachment

May 23, 2019

Lisa Stevenson, Esq.
Acting General Counsel
1050 First Street NE
Washington DC 20463

RE: Comment on Draft Interpretive Rule on Paying for Cybersecurity Using Party Segregated Account (Agenda Doc. No. 19-21-A)

Dear Ms. Stevenson,

Campaign Legal Center respectfully submits this comment in response to the Commission document entitled "Draft Interpretive Rule on Paying for Cybersecurity Using Party Segregated Account," which the Commission made public on or about May 21, 2019, for its May 23 open meeting.

CLC concurs wholeheartedly with the comment submitted yesterday in this matter by Democracy 21. As Democracy 21 notes, federal law provides the Commission no statutory authority to take the proposed action, the Commission has done nothing to delineate impermissible uses of the relevant accounts, and the Commission's plan to promulgate the rule without public notice and comment flagrantly violates the Administrative Procedure Act.

In addition, we note that one Commissioner has described the draft rule as being modeled on S. 1569, the Federal Campaign Cybersecurity Assistance Act. Campaign Legal Center supports that bill, but the Commission's proposed rule omits one of the legislation's most critical provisions: that "cybersecurity products or services . . . that are provided at less than fair-market value to a political committee or a candidate for Federal office . . . other than in accordance with [the bill], shall be considered an in-kind contribution." Such a provision is necessary to make clear that the new rule would supplant, not supplement, the Commission's prior rulings in this area. Otherwise, the rule would simply add another invented exception to

the Commission's record of statutory derogations. *See, e.g.,* Advisory Opinion 2018-11 (Microsoft) (concluding that corporate contributions do not violate federal ban on corporate contributions).

We respectfully urge the Commission to reject the proposed rule.

Sincerely,

/s/ Adav Noti
Adav Noti
Senior Director, Trial Litigation

/s/ Brendan Fischer
Brendan Fischer
Director, Federal Reform Program