



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1802

Date Filmed 1/2/85 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

ROUTINE SLIPS & ASSIGNMENT FORM & MEMO
FROM DOCKET RE: ADDRESSES OF RESPONDENTS &
COMPLAINANT.

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act; 5 U.S.C. Section 552(b):

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- | | | | |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/> | (1) Classified Information | <input type="checkbox"/> | (6) Personal privacy |
| <input checked="" type="checkbox"/> | (2) Internal rules and practices | <input type="checkbox"/> | (7) Investigatory files |
| <input type="checkbox"/> | (3) Exempted by other statute | <input type="checkbox"/> | (8) Banking Information |
| <input type="checkbox"/> | (4) Trade secrets and commercial or financial information | <input type="checkbox"/> | (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> | (5) Internal Documents | | |

Signed *Alfred Lewis*
date 12-26-84



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *CW*
DATE: November 28, 1984
SUBJECT: MUR 1802 - First General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

CIRCULATIONS

48 Hour Tally Vote [x]
Sensitive [X]
Non-Sensitive []
24 Hour No Objection []
Sensitive []
Non-Sensitive []
Information []
Sensitive []
Non-Sensitive []
Other []

DISTRIBUTION

Compliance [X]
Audit Matters []
Litigation []
Closed MUR Letters []
Status Sheets []
Advisory Opinions []
Other (see distribution below) []

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1984

Ira Glasser
Executive Director
American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

RE: MUR 1802

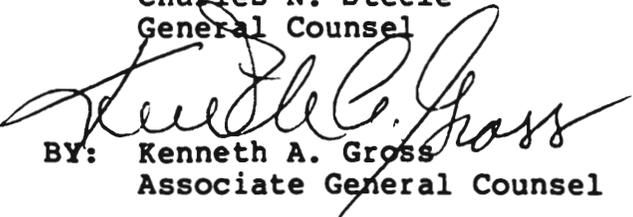
Dear Mr. Glasser:

On October 12, 1984, the Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on December 3, 1984, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1984

J. Wesley Watkins
Executive Director
American Civil Liberties Union
of the National Capital Area
600 Pennsylvania Avenue, S.E.
Suite 301
Washington, D.C. 20003

RE: MUR 1802

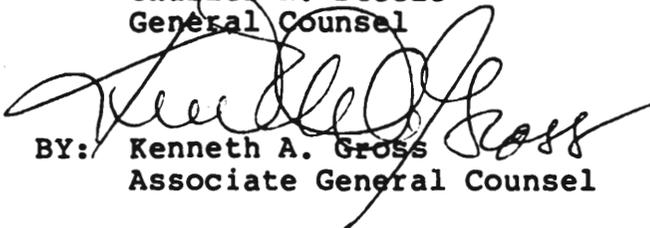
Dear Mr. Watkins:

On October 12, 1984, the Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on December 3, 1984, determined that on the basis of the information in the complaint and information provided by the American Civil Liberties Union, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1984

John T. Dolan
Chairman
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

RE: 1802

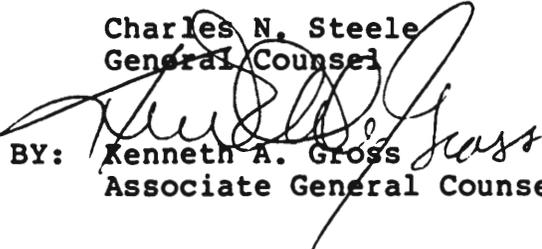
Dear Mr. Dolan:

The Federal Election Commission has reviewed the allegations of your complaint dated September 28, 1984, and determined that on the basis of the information provided in your complaint and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), has been committed. Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a) (8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a) (1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1802
American Civil Liberties Union)
Ira Glasser, Executive Director)
)
American Civil Liberties Union of)
the National Capital Area)
J. Wesley Watkins, Executive Director)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 3, 1984, the Commission decided by a vote of 6-0 to take the following actions in MUR 1802:

1. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 2 U.S.C. § 441d.
2. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 100.8(b)(4).
3. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 104.6.
4. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 114.3(a)(1).

(continued)

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5. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 114.3(c).
6. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 2 U.S.C. § 441b(a).
7. Approve the letters attached to the First General Counsel's Report signed November 28, 1984.
8. Close the file.

Commissioners Aikens, Elliott, Harris, McDonald,
McGarry and Reiche voted affirmatively in this matter.

Attest:

12-4-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary:
Circulated on 48 hour tally basis:

11-28-84, 4:20
11-29-84, 11:00

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SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE FEC
SECRETARY

84 NOV 28 P 4: 20

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 11/28/84
4:15

MUR # 1802
DATE OF COMPLAINT RECEIVED
BY OGC: 10/05/84
DATE OF NOTIFICATION TO
RESPONDENT: 10/12/84
STAFF MEMBER: Stephen Levin

COMPLAINANT'S NAME: National Conservative Political Action
Committee
John T. Dolan, Chairman

RESPONDENTS' NAMES: American Civil Liberties Union
Ira Glasser, Executive Director

American Civil Liberties Union of the
National Capital Area
J. Wesley Watkins, Executive Director

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d
2 U.S.C. § 441d(a)(3)

11 C.F.R. § 100.8(b)(4)
11 C.F.R. § 104.6
11 C.F.R. § 109.1(b)(2)
11 C.F.R. § 114.3(a)(1)
11 C.F.R. § 114.3(c)

RELEVANT ADVISORY
OPINIONS: A.O. 1984-14
A.O. 1984-17

SUMMARY OF ALLEGATIONS

On October 5, 1984, the National Conservative Political
Action Committee (hereinafter "NCPAC") filed a complaint with the
Commission against the American Civil Liberties Union and the
American Civil Liberties Union of the National Capital Area
("ACLU"). The complaint alleges that ACLU, a non-profit
corporation under the laws of New York and the District of

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Columbia, violated the provisions of 2 U.S.C. § 441d by making expenditures for the purpose of financing communications which expressly advocate the defeat of Ronald Reagan without including the necessary disclaimer in those communications. The communications were in the form of direct mailings conducted by ACLU to both its members and to the general public. The complaint further alleges that the communications which were sent to ACLU's members failed to conform with the requirements of 11 C.F.R. § 100.8(b)(4), § 104.6, § 114.3(a)(1), and § 114.3(c). The complaint also suggests a possible violation by ACLU of 2 U.S.C. § 441b(a), which prohibits corporations from making any contributions or expenditures in connection with a federal election.

FACTUAL AND LEGAL ANALYSIS

The subject of this complaint by NCPAC is direct mailings conducted by ACLU to both members of the organization and to the general public. These mailings attempted to raise money and attract new members to ACLU by describing their "efforts to combat a wide range of civil liberties violations by all levels of government" (quoting ACLU's response). Those "descriptions" included criticisms of various policies of the Reagan Administration which serve as the basis for NCPAC's complaint.

NCPAC's allegation that ACLU violated 2 U.S.C. § 441d in the course of these mailings rests on the conclusion that such communications required the inclusion of a disclaimer. According to that section, anytime anyone makes an expenditure with the intention of financing communications which expressly advocate

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the defeat, in this case, of a candidate who is clearly identified; or anytime anyone solicits a contribution through any direct mailing, that communication, if it is "not authorized by a candidate, an authorized political committee of a candidate, or its agents," must include a disclaimer which clearly indicates "the name of the person who paid for the communication" and that "the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a)(3). It is true that no such disclaimer appeared in these mailings. However, upon review of the mailings in question, this Office concludes that no such disclaimer was necessary.

As listed above, there are two possible situations which would require disclaimers when such communications are not authorized by any candidate or candidate's committee, as is the case here; first, when there is express advocacy of the election or defeat of a clearly identified candidate; and second, when there is a solicitation for contributions through direct mail. Neither of those situations is analogous to the matter at hand.

Of primary importance is the fact that there is no express advocacy included within the communications in question in this case. In Buckley v. Valeo, 424 U.S. 1 (1975), the Supreme Court held that in order for such communications to be considered express advocacy they must be "unambiguously related to the campaign of a particular federal candidate." Buckley, 424 U.S. at 80. The Court provided an illustrative list of terms which, if used, would be considered examples of express advocacy (words like "vote for," "vote against," "elect," and "defeat"); a list

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which was codified in regulations promulgated by the Commission in adopting the definition of express advocacy used in Buckley. 11 C.F.R. § 109.1(b)(2). In this matter, the communications did not reach those standards in that the mailings were confined to discussions of issues, not elections or candidates. That point is more clearly made by reviewing the way Ronald Reagan's name and the topic of the presidential election were discussed in the context of ACLU's mailings. Following are several typical examples:

Civil liberties will be at great risk in the months ahead, as the Reagan Administration seems bent on imposing its narrow and repressive views of morality and private family life on its citizens at home, and on stifling debate and dissent on its military adventures abroad.

Ronald Reagan is promising fundamentalist heaven and constitutional regression this year in the form of PRAYER IN THE SCHOOLS, BANNING OF ABORTIONS, BLACKLISTING, CENSORSHIP, DENIAL OF DUE PROCESS, and CAPITAL PUNISHMENT. All these are the President's promises in his unholy alliance with the Moral Majority and the New Right.

(For additional examples, see the complete text of ACLU's mailings, included as Attachment I.)

The second situation under which a disclaimer would be required is one where the direct mailing solicits a contribution. A contribution is anything of value provided by someone for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). Since, as previously established, nothing in these communications could be read as constituting any sort of electioneering, such solicitations, although they did request money for the organization, could not be said to have been for the purpose of influencing a Federal election. In fact, such activity would be antithetical to the purposes of the

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organization. ACLU's by-laws prohibit the group from becoming involved in any way with political campaign activity. As the organization explained in its response:

From its inception to this very day, the ACLU has been a nonpartisan issue organization.... We have never involved ourselves in partisan politics. We have never endorsed, supported or opposed any candidate for elective office....

These communications in question are consistent with ACLU's organizational intentions and, as such, cannot be said to have been issued for the purpose of influencing a federal election. Therefore, these solicitations are not considered contributions for purposes of 2 U.S.C. § 441d(a)(3) and, as such, did not require the inclusion of disclaimers. Accordingly, this Office recommends the Commission find that there is no reason to believe that ACLU violated 2 U.S.C. § 441d(a)(3) by not including disclaimers in their direct mailings.

The complaint further alleges that ACLU's mailings violated 11 C.F.R. §§ 100.8(b)(4), 104.6, 114.3(a)(1) and 114.3(c). This Office recommends the Commission find that there is no reason to believe that ACLU violated any of the regulations cited above for the following reasons.

Section 100.8(b)(4) permits corporations to incur costs for communications to their members/stockholders (a restricted class) without having those costs considered expenditures for the purposes of the Federal Election Campaign Act ("FECA" or the "Act") so long as the corporation is not organized primarily for the purpose of influencing a Federal election. Upon reviewing ACLU's mailings, it is quite evident that such is not the

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purpose for which the corporation was organized. It has already been established that ACLU is an issues oriented, not election oriented, group.

Section 100.8(b)(4) does contain an exception specifying that when such communication costs incurred by a corporation exceed \$2,000 per election, they must be reported to the Commission. That exception only applies, however, to communications which are "primarily devoted" to "expressly advocating the election or defeat of a clearly identified candidate." Such a reporting requirement is inapplicable to communications which are "primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate." As previously established, there is no evidence of any express advocacy in ACLU's mailings. Clearly then, both because these mailings were devoid of any express advocacy and because these mailings were devoted to subjects other than express advocacy of any candidate, these mailings were free of any violation of 11 C.F.R. § 100.8(b)(4).

Accordingly, ACLU's mailings were also not in violation of 11 C.F.R. § 104.6 as alleged. Section 104.6 governs the reporting requirements of corporations which must file reports pursuant to 11 C.F.R. § 100.8(b)(4), as outlined above. Since ACLU does not fall within the category of those corporations with such reporting responsibilities, it follows that ACLU's mailings cannot therefore be in violation of 11 C.F.R. § 104.6.

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The complaint also alleges violations of 11 C.F.R. § 114.3(a)(1) and § 114.3(c). The pertinent part of the former section prohibits a corporation from making "contributions or expenditures for partisan communications" to people outside of the corporation's restricted class, i.e., its members/stockholders, thus prohibiting such communications to the general public "in connection with a federal election." While it is true that ACLU's mailings were distributed beyond the corporation's restricted class, i.e., to the general public, the allegation nevertheless fails on several grounds. First, in order to be considered a contribution or expenditure for the purposes of the Act, such contribution or expenditure must be made "for the purpose of influencing" a Federal election. As was established in a prior section of this report, ACLU's mailings were made for the purpose of informing people about issues, not for the purpose of influencing an election. As such, they cannot be considered expenditures or contributions for the purpose of the Act and therefore ACLU's mailings were not violative of 11 C.F.R. § 114.3(a)(1) on those grounds.

Furthermore, in order for such communications to violate that section, they must be made "in connection with a federal election." As has been previously established, ACLU's mailings do not relate in any way to any election. The United States Court of Appeals for the Third Circuit required that in order for a contribution or expenditure to be regarded as being in

connection with a federal election, a nexus must be established between the alleged contribution or expenditure and the federal election in question. Miller v. AT&T, 507 F.2d 759, 764 (1974).

In the matter at hand, no such nexus has been established. All the communications in question concern themselves with issues and do not mention or discuss elections or candidates in an electoral posture. Their mention of Ronald Reagan, for example, is only related to his disagreement with ACLU on various issues. He is not described in any way which could be construed as active electioneering by ACLU. Thus, these communications cannot be considered to be "in connection with a federal election" and therefore do not fall within the purview of 11 C.F.R. § 114.3(a)(1).

Finally, in order for communications to constitute violations of 11 C.F.R. § 114.3(a)(1) and § 114.3(c), as alleged, such communications must be considered partisan. Throughout these regulations, the word "partisan" is used to connote support of or connection with a particular candidate or party. The communications in question here are not election oriented in any way. As such they can hardly be considered partisan communications within the meaning of 11 C.F.R. § 114.3(a)(1) and § 114.3(c) and, thus represents another reason why ACLU cannot be held to have violated those regulations.

In its final allegation, NCPAC, by referring to AO 1984-14, suggests that ACLU violated 2 U.S.C. § 441b(a), under which it is

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unlawful for any corporation "to make a contribution or expenditure in connection with any election." AO 1984-14 involved a situation where voting guides (containing voting records) were distributed, which characterized certain answers or certain issues as right and wrong and as such were determined to be violative of 2 U.S.C. § 441b. However, a situation more analogous to the one at hand existed in AO 1984-17, which distinguished election or candidate oriented communications which would be considered contributions or expenditures in connection with an election and, as such, would be unlawful (such as those cited in AO 1984-14), from issue oriented communications which would not be considered contributions or expenditures in connection with an election and therefore would be permissible (such as those cited in AO 1984-17).

The communications in question here clearly fall within the latter category. They do not do any "electioneering," i.e., they do not refer to anyone as a candidate and they do not mention the subject of voting in any election. They are strictly issue oriented and they do not make any connection between the issues raised and any election. As such, this Office recommends the Commission find that there is no reason to believe that ACLU violated 2 U.S.C. § 441b(a).

RECOMMENDATIONS

1. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 2 U.S.C. § 441d.
2. Find no reason to believe that the American Civil Liberties

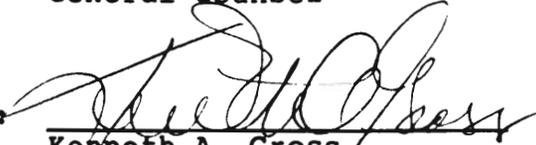
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Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 100.8(b)(4).

3. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 104.6.
4. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 114.3(a)(1).
5. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 11 C.F.R. § 114.3(c).
6. Find no reason to believe that the American Civil Liberties Union or the American Civil Liberties Union of the National Capital Area violated 2 U.S.C. § 441b(a).
7. Approve attached letters.
8. Close the file.

Charles N. Steele
General Counsel

November 28, 1964
Date

By: 
Kenneth A. Gross
Associate General Counsel

Attachments

- Attachment I (Copy of ACLU mailings)
- Letter to Complainant
- Letter to Respondent

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I was pleased last year to proclaim 1983 the Year of the Bible. But, you know, a group called the ACLU severely criticized me for doing that. Well, I wear their indictment like a badge of honor.

--Ronald Reagan
January 26, 1984



Dear ACLU Supporter:

Ronald Reagan is promising fundamentalist heaven and constitutional regression this year -- in the form of PRAYER IN THE SCHOOLS, BANNING OF ABORTIONS, BLACKLISTING, CENSORSHIP, DENIAL OF DUE PROCESS, and CAPITAL PUNISHMENT. All these are the President's promises in his unholy alliance with the Moral Majority and the New Right.

Those were issues on which we hoped we had prevailed. But, as Roger Baldwin once said, "No fight for civil liberties ever stays won." By presiding over a return to the 50's mentality, Mr. Reagan seems intent on proving Mr. Baldwin right. The President even went so far as to award the nation's highest civilian medal to his McCarthy-era hero, Whittaker Chambers.

Worse yet, the Reagan program actually appears politically popular. This is why your support of the American Civil Liberties Union is more important than ever.

The ACLU is in a unique position to challenge all of Reagan's assaults on civil liberties. And the ACLU of the National Capital Area continues to be in the vanguard of this fight.

ATTACHMENT I

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Your affiliate continues the struggle to protect the Constitution through litigation, education, and persuasion.

FREEDOM OF SPEECH AND ASSEMBLY: Our cases cover a wide range of situations: from White House and Capitol grounds demonstrations to censorship of Metro Ads and student publications. Cases are currently pending in Federal courts at every level, including the Supreme Court.

DUE PROCESS OF LAW: Speedy trials, unlawful searches and seizures, police brutality, and governmental surveillance are but a few of the issues currently on our docket. In addition we are investigating the Secret Service commitments to St. Elizabeths Hospital of "suspicious" persons in proximity to the White House.

DISCRIMINATION: Each month we process numerous new complaints of discrimination in hiring, promotion and layoffs.

We are continuing our efforts for **POLITICAL REFUGEES**, planning a conference for **STUDENT EDITORS** and **STUDENT LEADERS**, and we must be prepared to respond to the multitude of other problems that bombard us daily.

But to do any of this, ~~and to maintain our~~ extensive legal program -- especially in the face of Reagan's continued attacks on civil liberties -- we need your contributions.

All of these activities require money in addition to membership dues, which are devoted to political issues. The ACLU/NCA Fund is the vehicle for all of our litigation, as well as for research and education projects.

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Only 10% of our members make additional contributions to keep the Fund alive. We must expand that group if we are to fulfill our role in the National Capital area.

If each of our members made a \$25 donation to the ACLU Fund, we could begin an expansion of our program. But not all of our members can afford to give that, so we need the rest of you to contribute at least \$100 to our efforts. More if you can. Less if you can't.

But please donate. And wear the enclosed ACLU Badge of Honor to proclaim your devotion to civil liberties.

As noted journalist Eric Sevareid recently said, "There are ugly little clouds on the horizon of civil liberties once again. You just can't get lazy about this. . . . You can defend civil liberties only as long as you still have them; they are their own defense; that is their unique nature."

Help defend your constitution! Send your tax-deductible contribution to the ACLU Fund today.


J. Wesley Watkins
Executive Director
ACLU of the National Capital Area

P.S. Send your \$100 today and we'll send you more badges.

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600 Pennsylvania Avenue, S.E. □ Suite 301
Washington, D.C. 20003

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ACLU

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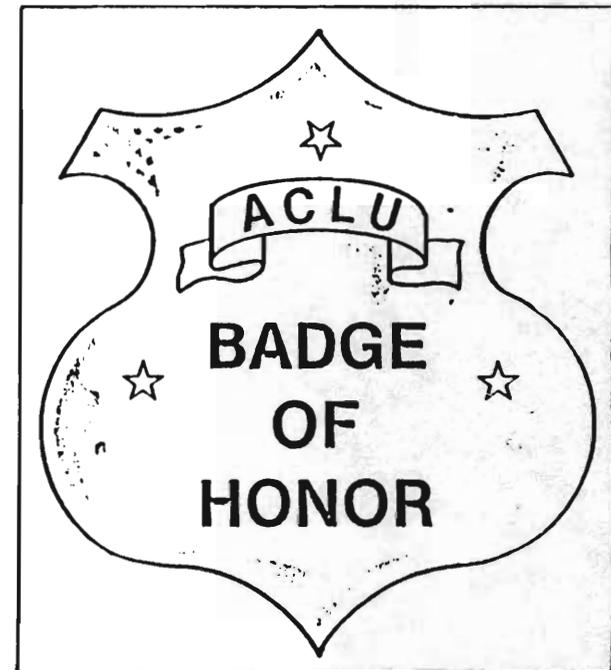
I'll wear my badge of honor proudly.

I know that civil liberties are under attack and ACLU is defending my constitution.
That's why I am enclosing:

\$25 \$50 \$100 Other _____

Please make your tax-deductible contribution payable to the ACLU Fund.

American Civil Liberties Union Fund of the National Capital Area
600 Pennsylvania Avenue, S.E./Suite 301 Washington, D.C. 20003



6



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 10694 WASHINGTON D.C.

POSTAGE WILL BE PAID BY ADDRESSEE

American Civil Liberties Union Fund
of the National Capital Area
600 Pennsylvania Avenue, SE/Suite 301
Washington, DC 20003



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American Civil Liberties Union

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Dear ACLU Member:

With your help this past year we have won some important victories for civil liberties:

o We have won a broad ruling in the Supreme Court that prevents local and state governments from interfering with any woman's right to choose abortion.

o We have stopped the Justice Department from inhibiting the importation of foreign films that disagree with official government policy.

o We have delayed -- but only temporarily -- implementation of an Executive Order that would have imposed lifetime censorship on government officials and former government officials.

o We have helped defeat various measures to bring sectarian prayer into public schools, to use public funds to support private religious schools and other measures to breach the constitutional barrier between Church and State.

o We are winning the day-to-day battles in small towns and big cities that don't make the headlines: victories against book censorship, against police and institutional abuses, against racial and sexual discrimination.

That's the good news.

You already know the bad news. You already know that some of the victories we win in Congress and in the courts are being subverted by the Executive Branch.

When Congress and the courts act to stitch civil liberties into the fabric of our democratic system, the Reagan Administration re-acts by unraveling that fabric. There are scores of such unravelings, and they are becoming more numerous and more brazen. Here are a few of the more outrageous ones:

o Congress refused to dismantle the Freedom of Information Act. The Reagan Administration reacted with an order allowing hundreds of thousands of documents to be classified beyond the reach of the Freedom of Information Act.

(over)

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o Congress refused to abolish the Civil Rights Commission. The Reagan Administration reacted by attempting to dislodge bi-partisan Commissioners before completion of their terms and replace them with candidates who parrot the Administration's views. That strategem has been temporarily derailed with the help of ACLU lobbying together with other civil rights and civil liberties groups.

o Congress guards its right to participate in foreign policy and its exclusive power to declare war. The Reagan Administration usurps that power by initiating full-scale military actions and then claiming that they are not acts of war. The special significance of this step to us as civil libertarians is that in denying Congress its role, the Administration is simultaneously denying the American people both the information and forum we need to participate in a broad-based, informed debate on policy that affects our very lives.

o Congress specifically rejected a rule that would force federally funded family planning clinics to notify parents of birth control assistance to teen-agers. But the Reagan Administration issued a regulation re-inserting this requirement into implementation of the law. The ACLU secured a nationwide injunction against enforcement of this regulation, and as this letter is written, the government is deciding whether to contest the injunction. The indications are that it will.

We are proud of the victories we have won and are encouraged by your steadfast support which made those victories possible. But it would be self-deception to claim that the climate for civil liberties has improved during the past twelve months. It hasn't. The best we can say is that without our efforts and your help, the picture would be much bleaker than it is.

Civil liberties will be at great risk in the months ahead, as the Reagan Administration seems bent on imposing its narrow and repressive views of morality and private family life on its citizens at home, and on stifling debate and dissent on its military adventures abroad.

We hope we can count on you now, as we have in the past, to see us through this critical period. You are part of a handful of Americans whose commitment to liberty makes a difference in the outcome of our struggles.

Please renew your membership -- if possible at a higher level than before -- today.

Sincerely,

Ira Glasser

Ira Glasser
Executive Director

84240493410

ACLU Membership Renewal

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THANK YOU FOR YOUR CONTRIBUTIONS DURING THE PAST YEAR AMOUNTING TO \$20

AT THIS CRUCIAL TIME, I WANT TO HELP ACLU BY SETTING MY CONTRIBUTION AT:

() \$20 () \$30 () _____

PLEASE CONTINUE MY MEMBERSHIP THROUGH FEBRUARY 1985.

- To make sure your contribution is properly credited, please return this portion of the form with your check.
- Please make your check payable to ACLU.
- If you have already sent your payment, please disregard this notice.

(OVER PLEASE)

YOUR DUES ARE SHARED WITH THE ACLU OF VIRGINIA

ACLU

132 WEST 43rd STREET

NEW YORK, NEW YORK, 10036

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YOUR ACLU RENEWAL

- Extends your subscription to Civil Liberties and your local newsletter.
- Permits your participation in elections of your local ACLU Board of Directors.
- Continues your membership in both national and local ACLU.

A word about your contribution: More than half of it supports the ACLU office in the state where you live. The rest supports national programs, including the Washington Legislative Office. Basic minimum dues are \$20 for an individual; \$30 for joint members; and \$5 for limited income members like students and retired people.

But most members understand that these basic minimums are not nearly enough to maintain an effective local presence where most Civil Liberties battles are fought, nor to maintain the strong national presence needed now more than ever.

That is why we ask you to contribute above the minimum. We are grateful for whatever you can give. We hope that you will give as much as you can.

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From the Desk of

Norman Dorsen

You may have missed the letter I recently sent you, and so I'm enclosing a copy.

In the past you have been especially generous to the ACLU, and I hope you will continue that support in this year of many challenges for civil liberties.

Norman Dorsen

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American Civil Liberties Union
132 West 43rd Street
New York, N.Y. 10036



Membership Renewal
Notice Enclosed

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American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

American Civil Liberties Union

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Dear ACLU Member:

By the time you read this letter, we pray that the agony of Baby Jane Doe and her parents will be over.

But for those of us who value the independence and freedom of action promised to all Americans under our Constitution, and who reject government supervision and control over our personal lives -- a time of serious trouble may be just beginning.

Generally, when we ask you to renew your ACLU membership we recount our victories of the past year and outline the challenges that lie ahead -- a sort of check list of what your support has accomplished and why we continue to need it in the months to come.

~~We are departing from that formula because we believe that the Baby Doe case is more than a heart-wrenching human tragedy: it epitomizes the mean-spirited and meddling role that government under the Reagan Administration plays, and the relentless fanaticism with which it pursues its goals. It describes what ACLU is doing to preserve individual liberty in this darkening atmosphere.~~

In October, 1983, Baby Jane Doe was born in New York with spina bifida, hydrocephalus, microcephaly, bilateral upper extremity spasticity, a prolapse rectum and a malformed brain stem.

Baby Doe's parents were faced with a terrible choice. They could choose either conservative treatment -- antibiotics therapy -- which has achieved success in preventing the infections that can be fatal in these circumstances, or the radical step of surgery to drain the water from the infant's brain. The surgery would not correct any of the malformations -- Baby Doe would remain hopelessly and permanently impaired both mentally and physically, but the surgery does have a lower immediate mortality rate than antibiotic therapy, although the longer term outlook is not promising in either case. But surgery involves a significantly greater risk of pain and disability for Baby Doe: recurring urinary tract infections, kidney infections, skin infections, loss of function in her legs and edemas of the limbs.

Baby Doe's parents chose to spare their daughter this futile pain. After consulting with specialists and surgeons,

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American Civil Liberties Union

132 West 43rd Street New York, New York 10036

Ira Glasser
Executive Director

Dear Fellow Citizen,

You must forgive me for writing you in this blunt way. But I don't know any combination of eloquent words that will make my request any more appealing or more urgent.

When it comes to your most precious rights and liberties being threatened right this moment, fancy rhetoric is not what you need.

What I am asking you to do is to sit down right now and send a contribution -- as generous as possible despite today's hard times -- to a group of lawyers.

These are not the kind of lawyers who are retained by huge corporations and the government. Nor do they get media coverage by representing the very rich. But these equally talented men and women every day go into courts across the land defending your rights, your liberties.

They are the lawyers of the American Civil Liberties Union.

Yes, even though you may never actually meet any ACLU lawyer, or never need their help personally, every time they defend any American's right they are defending yours as well.

And while your civil liberties are your most precious rights, don't think our lawyers are paid vast sums of money. In fact, a tremendous amount of the legal services we provide are donated, given to the ACLU by members of the bar who realize just how critical it is to defend civil liberties.

But the law and the courts are very expensive avenues of maintaining our cherished freedoms. And that is why we must ask every American who shares the belief that our civil liberties are among our most priceless possessions to kick in, to contribute to the process of safeguarding them.

I realize that, no doubt, you have often given, and given generously to some truly worthwhile causes -- either in the name of our environment, better government, better health, women's rights -- to one or more of many vital concerns.

I also realize that these kinds of contributions bring with them a great sense of immediate reward. Knowing that because of you some

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endangered species will be saved, or some child will not starve, is certainly heartwarming.

And, let's face it, when you contribute to the ACLU I cannot promise that any right or liberty will be forever safe. Indeed, history proves just the opposite.

Even when you and I win a decisive battle in defense of individual rights we must maintain the strength and vigilance to counter renewed threats. For example . . .

-- In 1926, the ACLU defended the right of a public school teacher to teach evolution. That was the famous Scopes "Monkey Trial."

BUT . . . in 1982, we again had to defend that right in Arkansas and Louisiana, where religious zealots had succeeded in passing laws that would require teachers to teach "creation science" according to the Bible's literal account of divine creation.

-- In 1972, the ACLU went before the U.S. Supreme Court to successfully establish the constitutional right of a woman to choose an abortion.

BUT . . . in 1982, ten years later, the ACLU was again before that same court seeking to have declared unconstitutional a series of local ordinances that would severely restrict and virtually prohibit abortion in many communities.

-- In 1933, the ACLU won an historical anti-censorship decision permitting the distribution of James Joyce's Ulysses in the United States.

BUT . . . in 1982, we again had to fight in the Supreme Court against book burners who had attempted to ban books by Kurt Vonnegut, Bernard Malamud, Jonathan Swift and other authors from a Long Island, New York, school library.

-- In 1964, the ACLU opened its Southern Regional Office in Atlanta, Georgia, to represent Blacks in the civil rights movement. That same year we won the historic case that established the "one person, one vote" principle nationwide.

BUT . . . in 1982, we were back in the courts again seeking to block illegal schemes designed to make it impossible for Blacks to be elected in many Southern communities.

You see, the process of defending civil liberties never stops.

And when too many Americans sit back, complacently believing that their rights are safe and secure and no longer are willing to do something to defend them, then you and I are in danger. Big danger.

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Today there are important cases lurking just around the corner. A case to defend the free speech of an unpopular group . . . or a case to defend the rights of mental patients in hospitals . . . or a case to defend your rights.

And when those cases come up, you and I must be prepared to fight for the civil liberties granted to each of us under our Bill of Rights.

That's why, as Executive Director of the American Civil Liberties Union, I am writing to you today to invite you to become a member. In times like these when far too many Americans are taking their civil liberties for granted, the ACLU needs the help of caring citizens like you.

I fear that the defeat of some of the "headline" candidates and causes of the New Right and Moral Majority in Congress, and modest gains made by advocates of civil liberties in the recent elections could lull us into a sense of complacency.

But history has taught us time and time again that just because an individual politician is labeled a "Democrat," a "Republican" or even a "liberal," we cannot depend upon him or her to stand against the winds of intolerance and intimidation in Congress and in the state legislatures.

Sometimes I think that the cause of civil liberty would be better served if the Jerry Falwells and the Jesse Helmses of this world were still making headline news.

Not really, of course. But, the point is that when outrageous goals and statements by the anti-civil liberties forces make the headlines, the people of goodwill tend to get concerned, get involved and do something to protect their civil liberties.

The New Right and the Moral Majority -- like Joseph McCarthy before them -- now seem to be passing out of the bright lights of the press -- and of public concern.

And those citizens who opposed their moralistic zeal and feared the political effects of their tactics of fear and intimidation are beginning to relax.

But, you and I cannot relax our guard. We must not relax our guard.

Although 1982 was a banner year for the ACLU in defending and reaffirming basic civil liberties, it also cost us dearly. Our resources were depleted in our fight for victory. And 1983 presents a new and frightening challenge.

Today we face a new -- and even more formidable -- barrier to civil liberties. The Reagan Administration is quietly subverting and sabotaging both the mandates of the courts and the will of Congress.

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Through Executive Orders, by budgetary decisions and through outrageous political appointments, they have put our civil liberties -- your freedoms -- at frightening risk.

Just in recent weeks there is evidence that failure to enforce civil rights laws will continue . . . efforts to circumvent the Voting Rights Act will continue . . . Reagan's attacks on nuclear freeze advocates, including smears that they "want to weaken America and are Soviet fronts," will continue . . . attacks on the authority of federal courts to enforce constitutional rights will continue . . . efforts to exempt the CIA from the Freedom of Information Act and thus reinstitute a "secret government" will continue . . . encouragement of illegal searches by police will continue . . .

THE THREAT IS REAL. AND THE THREAT WILL CONTINUE -- AND GROW -- UNLESS THE ACLU AND THE CARING CITIZENS WHO SUPPORT IT ONCE MORE RALLY TO DEFEAT THOSE WHO SEEK TO IMPOSE THEIR "VISION" OF AMERICA AT THE EXPENSE OF OUR CONSTITUTION AND THE BILL OF RIGHTS.

BUT . . . the attacks on our fundamental rights cannot be repelled by rhetoric. Extraordinary skill, technical expertise and experience are required. So is the generosity of caring, concerned Americans like you.

The ACLU needs to replenish its resources for the continuing battle ahead. And that's why the ACLU needs and deserves your support as a member.

Your membership dues or contribution to the ACLU is like the premium on an insurance policy. It enables the ACLU to meet the threats -- new and repeat threats -- year after year.

Your membership dues, when coupled with those of nearly 250,000 other caring Americans, help the ACLU meet the recurring threats to all of our civil liberties.

You have benefitted from many past ACLU victories. Today, please show that you care. Demonstrate your concern and commitment to your own civil liberties by becoming a member of the AGLU.

I have enclosed your personal Membership Acceptance Form with this letter. Please accept my invitation to become a member by completing and returning your Membership Acceptance Form to me today.

Sincerely,

Ira Glasser
Executive Director

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Membership Acceptance Form

- I accept your invitation to become a member of the American Civil Liberties Union. I care about my civil liberties and those of my fellow Americans. I want to help the ACLU stand guard as a vigilant defender of those liberties.
- To help keep the ACLU strong and vigilant I am enclosing my voluntary membership dues.

American Civil Liberties Union

Membership	Individual	Joint
Basic	<input type="checkbox"/> \$20	<input type="checkbox"/> \$30
Contributing	<input type="checkbox"/> \$35 *	<input type="checkbox"/> \$50
Sustaining	<input type="checkbox"/> \$75	<input type="checkbox"/> \$75
Supporting	<input type="checkbox"/> \$125	<input type="checkbox"/> \$125
Life	<input type="checkbox"/> \$1,000	<input type="checkbox"/> \$1,000

* Every membership in this amount makes our fight that much easier.

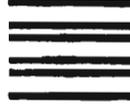
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As a member of the ACLU, you will receive...

- A subscription to *Civil Liberties*, to keep you up-to-date on major challenges to your rights and freedoms.
- Membership in the local ACLU chapter in your area and all periodicals and bulletins published by your local chapter.
- Voting rights to elect the members of the Board of Directors of your ACLU chapter.

American Civil Liberties Union
132 West 43rd Street New York, New York 10036

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New York, New York 10036

Attention: Ira Glasser
Executive Director

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ACLU

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Trans. to
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Notes

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with social workers and with their religious advisors, they decided against surgery and for antibiotic therapy.

At this point, two different entities injected themselves into the tragedy. The first was a so-called "Right-to-Life" advocate who wanted to be appointed as Baby Doe's guardian so that he could insist on radical surgery. Two New York state appellate courts rejected this strategem.

Simultaneously, the U.S. Department of Health and Human Services asked a New York child protective agency to investigate the case on the grounds that Baby Doe was being denied medically indicated treatment and, in effect, being neglected by her parents. The state agency found that the parents' decision did not constitute neglect.

The conclusive rulings of the state courts and the findings of the state agency should have ended the matter. But not under this Administration.

The Reagan Justice Department then began a bizarre proceeding in Federal District Court. It sued the hospital under the Rehabilitation Act (an excellent piece of legislation for whose passage ACLU lobbied long and hard) which requires that no handicapped person can be denied the benefits of any program which received Federal funds.

Baby Doe is a handicapped person -- the government's theory goes -- and the hospital is denying her the benefit of surgery and therefore may be violating the Act. The government should be given Baby Doe's medical records to ascertain whether Baby Doe is being discriminated against by the hospital. The government's action ignores:

- 1) The hospital is not denying Baby Doe surgery. It will perform it if the parents choose that option.
- 2) The hospital is forbidden by law to perform surgery on an infant without a parent's consent.
- 3) The parents are not receiving federal funds and they are not subject to the government's jurisdiction.
- 4) Through their earlier complaint to the state agency, the federal government already has all of Baby Doe's relevant medical records.

The Federal District Court noted ~~all of the above and threw out the government's case.~~ But the Reagan Administration has decided to appeal, and to continue to harass the anguished parents.

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In the absence of parental neglect or abuse, we do not believe the government should be poking its nose into family life and appointing itself to review and reverse parental decisions about their children.

Remember, this is the same Administration that campaigned on the slogan of getting government off the backs of the people.

The ACLU entered this case as "friend of the court" and the Judge took special notice of the high quality of the brief by the New York Civil Liberties Union.

Make no mistake about it. The Baby Doe case is not just a matter of bad judgment on the part of a few over-zealous officials. It is part of a carefully orchestrated plan to force Americans to submit to its narrow and sectarian view of private relationships.

Other parts of this plan include the Administration's regulation requiring family planning clinics to inform parents when teen age girls request birth control information -- the notorious "squeal" rule. ACLU has secured an injunction against the enforcement of this regulation.

More recently, the ACLU has sued to declare the Administration-sponsored Adolescent Family Life Act unconstitutional. Among other things, this Act permits grants to sectarian religious institutions such as parochial schools to promote "family centered sex education," or, as one training manual put it, to "share the Christian message" about sin and immorality.

We can be sure that the Reagan Administration intends to pursue its goal of forcing its own "personal morality" on Americans.

And you can be sure that the ACLU will continue to battle them every step of the way.

We know the government has a bottomless well of money, and that our own financial resources are pitifully small in comparison. But if we can just even up the financial odds a little -- perhaps by as little as 15% to 20% -- we believe that the intelligence, the skill and the dedication of our 5,000 volunteer lawyers will make up the rest of the difference. With your help, we can win.

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We hope we can count on your renewal -- now -- to see us through this highly-charged issue.

Please renew your membership today -- if possible at a higher level than before.

Sincerely,

Ira Glasser

Ira Glasser
Executive Director

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ACLU Membership Renewal

THANK YOU FOR YOUR CONTRIBUTIONS DURING THE PAST YEAR AMOUNTING TO \$20

AT THIS CRUCIAL TIME, I WANT TO HELP ACLU BY SETTING MY CONTRIBUTION AT:

() \$20 () \$30
() _____

PLEASE CONTINUE MY MEMBERSHIP THROUGH FEBRUARY 1985.

- To make sure your contribution is properly credited, please return this portion of the form with your check.
- Please make your check payable to ACLU.
- If you have already sent your payment, please disregard this notice.

(OVER PLEASE)

YOUR DUES ARE SHARED WITH THE ACLU OF VIRGINIA

ACLU

132 WEST 43rd STREET

NEW YORK, NEW YORK, 10036

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YOUR ACLU RENEWAL

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American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

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American Civil Liberties Union
132 West 43rd Street
New York, N. Y. 10036

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Notice



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ACLU

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National Headquarters
132 West 43 Street
New York, NY 10036
(212) 944-9800

Norman Dorsen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

Eleanor Holmes Norton
CHAIR
NATIONAL ADVISORY COUNCIL

October 29, 1984

Charles N. Steele
General Counsel
Federal Election Commission
1325 K St., N.W.
Washington, D.C. 20463

Re: MUR 1802

Dear Mr. Steele:

This letter is in response to your communication of October 12th, forwarding the complaint made against the American Civil Liberties Union (ACLU) by the National Conservative Political Action Committee (NCPAC). It should also be treated as a response to a similar complaint advanced against our affiliate, the ACLU of the National Capital Area.

The NCPAC complaint is based upon four ACLU membership and fundraising letters which describe various aspects of the ACLU's activities and seek financial and membership support for our continued battles against government violations of civil liberties. You have requested that we respond to these charges.

Our response is outrage. Your communication is the very embodiment of the kind of official violation of civil liberties that the ACLU exists to combat. As you should know perfectly well, the material contained in the letters that NCPAC complains of are not and, under the First Amendment, cannot be within the Commission's permissible scope of inquiry.

From its inception to this very day, the ACLU has been a nonpartisan issue organization which has as its only mission the protection and advancement of civil liberties through litigation, legislative activity and public education. We

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GENERAL COUNSEL

Charles N. Steele
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October 29, 1984

have never involved ourselves in partisan politics. We have never endorsed, supported or opposed any candidate for elective office - federal, state or local. We believe that support for civil liberties is and must be essentially a nonpartisan activity. Our institutional by-laws and our organizational nature prohibit our involvement in political campaign activity.

Despite our strict avoidance of partisan politics, we certainly do not shy away from vigorous criticism of elected officials, including the President of the United States, when we believe their actions threaten civil liberties. And assuming such criticism is justified, we never stay our hand just because an official is running for election. Indeed, we believe that this is the time when the public pays the greatest attention to the civil liberties records of such individuals, and when therefore public discussion by groups like the ACLU is most urgent.

The letters which form the basis of the NCPAC complaint reflect our traditional practice. None of the four letters contains any statement - directly or indirectly, explicitly or implicitly - that even comes close to "expressly advocating the election or defeat of a clearly identified candidate". Indeed, at least two of the letters were sent at times when the public officials mentioned were not even candidates for office. One letter was mailed in early 1983, the other at the end of 1983. Nor was any of these letters sent "for the purpose of influencing any election for Federal office" within any sensible, let alone constitutional, definition of that language. These letters did not mention any person's candidacy for elective office, did not refer to any partisan affiliation, and did not advocate an electoral outcome. Indeed, we did not even urge people to vote.

What we did do, however, was urge people to continue to support the ACLU and its work through renewed membership and financial support. In that connection we described our efforts to combat a wide range of civil liberties violations by all levels of government. And in that context we detailed and sharply criticized those policies of the Reagan Administration which, in our view, have posed and continue to pose grave danger to civil liberties. We vehemently attacked the government's actions to suppress information and discussion about military

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and foreign policy, to intrude into the privacy and sanctity of the individual, the family and the home, to obliterate the critical separation of church and state, and to abandon effective enforcement of civil rights. We concluded one letter by noting: "Civil liberties will be at great risk in the months ahead, as the Reagan Administration seems bent on imposing its narrow and repressive views of morality and private family life on its citizens at home, and on stifling debate and dissent in its military adventures abroad."

We had thought that the First Amendment was all about our right - or anyone else's - to criticize the policies of the President of the United States. And to do so without any fear of being subjected to even the slightest threat of official inquiry, let alone to the entire range of civil and criminal enforcement machinery that lurks behind your letter.

We thought the FEC had been made to understand that as well.

For a decade, the ACLU and other issue-oriented groups were involved in a series of cases that have established one point with clear and unwavering clarity: speech and discussion addressed to public issues which do not expressly advocate a partisan electoral outcome cannot be subjected to any regulation under the Federal Election Campaign Act (FECA) regardless of whether political candidates or governmental officials are identified, criticized or praised as part of such discussions. Whether on grounds of statutory interpretation or First Amendment imperatives, the rationale for this settled rule of law is that governmental regulation of such issue speech is too treacherous and open-ended an invitation to official repression, and too broad an intrusion on the great and critical variety of public issue speech in our democratic society. As the Supreme Court has repeatedly observed, speech on such issues is the "essence of self-government".

The members of the Commission know the pertinent cases as well as we do, since the FEC or its predecessors were involved in every such case.

And you lost every time.

The very first enforcement suit under the brand new Federal Election Campaign Act of 1971 was not against Clement Stone or the Committee to Re-elect the President (CREEP), for

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Charles N. Steele
Page 4
October 29, 1984

the millions of dollars that poured into Richard Nixon's campaign coffers in 1972. Instead, the targets were a handful of dissenters who had sponsored a two-page advertisement in The New York Times urging the impeachment of President Nixon and applauding the few Members of Congress who supported impeachment. The government's theory was that the advertisement was a partisan communication "for the purpose of influencing" the outcome of the 1972 elections. The United States Court of Appeals for the Second Circuit ruled otherwise: The Act could only be applied to groups whose major purpose was partisan; otherwise, the Act would have the "abhorrent" and "intolerable" consequence of "regulating the expression of opinion on fundamental issues of the day". United States v. National Committee for Impeachment, 469 F.2d 1135, 1142 (2d Cir. 1972). The government did not even appeal that ruling.

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Concerned that the government's position in the Impeachment case threatened ACLU's issue advocacy, we filed our own lawsuit to permit us to sponsor an advertisement, shortly before the 1972 elections, criticizing the Nixon Administration's anti-busing policies and praising the members of Congress who had resisted the President on that issue. The court ruled that the portion of the Act which treated our advertisement as "on behalf of" the campaigns of members of Congress and "in derogation of" candidate Nixon "establishes impermissible prior restraints, discourages free and open discussion of matters of public concern and as such must be declared an unconstitutional means of effectuating legislative goals". With respect to other portions of the Act, which would have treated the ACLU as a "political committee", the three-judge court panel, in order to avoid "serious constitutional questions", followed the lead of the Impeachment Committee case and ruled that issue groups whose primary purpose is not the election of candidates cannot be covered by the Act. The court was confident that this would solve the problem: "We are satisfied that by so constricting the reaches of Title III the fears of constitutional infringements expressed by plaintiffs will be eliminated. They and other groups concerned with the open discourse of views on prominent national issues may, under both this ruling and that of the Second Circuit, comfortably continue to exercise these rights and feel secure that by doing so their associational rights will not be encroached." American Civil Liberties Union v. Jennings, 366 F. Supp. 1041 (D.D.C. 1973) (three-judge court), vacated as moot, 422 U.S. 1030 (1975).

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These assurances proved short lived. In 1974, Congress enacted a new provision intentionally designed to regulate issue groups like ACLU and others that rated candidates and voting records on issues of concern to the organizations. The law stipulated that public discussion of the positions of candidates on issues would be deemed "for the purpose of influencing" voters and elections and would subject those groups to FEC regulation. We filed suit again, and the entire United States Court of Appeals unanimously ruled this provision unconstitutional. Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975) (en banc). The court found that the statute aimed at the non-partisan discussion of issues of public interest, that such issue discussions "hardly threaten the purity of elections" and, conversely, that such discussions are "vital and indispensable to a free society and an informed electorate". Further, the court held that basing regulation on a standard such as a "purpose" or "design" to "influence" is hopelessly vague: "Public discussion of issues which are also campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussion of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting and elections. In this milieu, where do 'purpose' and 'design' 'to influence' draw the line?" 519 F.2d at 875. In light of the unacceptable vagueness and overbroad reach of this section, the court ruled it unconstitutional.

Once again, the Commission did not even appeal that point to the Supreme Court, and that portion of the law was later repealed.

Other questions in the Buckley case were reviewed by the Supreme Court, which reaffirmed the clear point that the FECA restrictions could only be applied to groups or individuals whose communications "expressly advocate" the election or defeat of a clearly identified candidate or a particular election result.

We thought that these decisions had finally and certainly laid the matter to rest. But, like the mythical phoenix rising from the ashes, the FEC kept resurrecting the attempts to suppress nonpartisan issue speech.

In 1976, a union of municipal employees circulated a "Nixon-Ford" poster to its members during the elections. The poster depicted President Ford wearing a button reading "Pardon Me" and embracing former President Nixon. It also contained a quote from President Ford stating: "I can say from the bottom of my heart - the President of the U.S. is innocent, and he is right." The FEC filed suit and a federal judge dismissed your complaint on the ground that the poster contained no "express advocacy" under the settled law: "...although the poster includes a clearly identified candidate and may have tended to influence voting, it contains communication on a public issue widely debated during the campaign. As such, it is the type of political speech which is protected from regulation..." under the FECA. Federal Election Commission v. AFSCME, 471 F. Supp. 315, 317 (D.D.C. 1979). You did not appeal that ruling.

In 1978 the Commission, again ignoring the clear law, filed suit against a handful of individuals on Long Island who spent a grand total of \$135 to prepare and hand out pamphlets describing the voting record of their local Congressman on tax reform issues and "big government". As the court would later put it, even though the pamphlets contained not a word of anything "which would rationally be termed express advocacy", you took these people to court to punish them for free speech. ACLU defended those individuals and the entire Second Circuit unanimously rejected your position as "totally meritless" and dismissed your suit. Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980) (en banc). The Commission did not appeal that ruling either.

The short of it is that in every case where the question of issue advocacy has come up, the courts have ruled against your position and held that such advocacy cannot be regulated under the Act. Moreover, not only have you lost each of these cases, but in all of the reported decisions, not even one judge has ever agreed with your position. Perhaps that is why Chief Judge Kaufman of the Second Circuit pointed to your "insensitivity to First Amendment values" in bringing the enforcement suit against the tax protestors. Indeed, he found the entire proceeding "perverse" and a reflection of the constant dangers of having a bureaucratic agency in the business of scrutinizing and inspecting political expression.

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Other judges have similarly warned that your proceedings and investigations are wholly different from those regulatory agencies that monitor corporate, commercial or labor activities. You regulate free speech which is at the heart of the First Amendment and which has never before been subject to bureaucratic scrutiny. See Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981). That imposes upon the Commission the obligation to exercise your powers in a way that poses the least danger to our system of free expression. In the tax reform case, Chief Judge Kaufman found that the Commission "has failed abysmally to meet this awesome responsibility". 616 F.2d at 55.

Here, too, you will have failed to meet your responsibility if you proceed any further with this investigation on the basis of the NCPAC complaint. Such action would be in excess of your statutory authority and flatly violative of the First Amendment. These severe statutory and constitutional problems are compounded by the ill-defined and imprecise nature of your own regulations.

As we examine NCPAC's claim that we have violated certain regulations, we confront two major difficulties. First, NCPAC's allegations are so general and unspecific that we are uncertain as to what NCPAC accuses us of having done or not having done. Second, even were we able to piece together NCPAC's conclusory assertions, the regulations that we are accused of violating fail even to define the most critical phrases and terminology.

For example, the NCPAC letter states: "NCPAC has reason to believe that the membership communications were mailed to members of ACLU without having complied with the provisions of 11 CFR 114.3 (a) (1) and (c) or 11 CFR 100.8 (b) (4) and 104.6." This charge raises the implicit question as to whether, under Part 114 of the FEC regulations, the ACLU communications with its members can be considered "partisan." Part 114 repeatedly uses the phrase "partisan communication," and imposes certain obligations where an entity is engaging in "partisan communications." Thus, it is remarkable to discover that Part 114 of the regulations does not even define "partisan communication," a term upon which that entire regulatory section turns. Nor is any definition of this phrase to be found in the broader definitional section of the regulations or in the statute itself. Given this glaring deficiency the regulations provide no support for NCPAC's allegation that the ACLU is engaged in "partisan communication" within the meaning of the FEC regulations.

B 4 0 4 0 4 9 3 4 3 7

But, even assuming arguendo, that the materials appended to the NCPAC letter could somehow be described as "partisan," the question remains as to what specific requirements of 11 CFR 114.3 the ACLU might be said to have violated. Thus, if the ACLU communications with its members are considered "partisan," the ACLU might be faced with the reporting obligations of 11 CFR 100.8 (b)(4) and 104.6. Upon closer scrutiny, however, neither of these provisions impose any reporting obligations upon the ACLU.

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Section 100.8 (b)(4) provides, in pertinent part, that "[a]ny cost incurred for any communication by a membership organization to its members...is not an expenditure [for reporting purposes] so long as the membership organization..is not organized primarily for the purpose of influencing the...election of any individual to Federal office, except that the costs... directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate...shall, if those costs exceed \$2,000 per election, be reported to the Commission." Section 104.6 of the regulations is to the same effect. There can be no serious claim that the ACLU is "organized primarily for the purpose of influencing" the election. Similarly, one cannot seriously argue that the communications, at issue here, "expressly advocate the election or defeat of a candidate." See Federal Election Commission v. Central Long Island Tax Reform Immediately, 616 F.2d 45 (2nd Cir. 1980). It is thus apparent that no reasonable reading of 11 CFR 114.3, 11 CFR 100.8 (b)(4) and 11 CFR 104.6 or of the ACLU communications with its members can lead to the conclusion that the ACLU was in any way required to comply with those regulations.

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A similar conclusion must be reached with respect to ACLU material which was mailed to potential members. In challenging ACLU communications with potential new members, NCPAC relies upon a recent advisory opinion of the Commission (AO 1984-14). It characterizes the advisory opinion as holding "that a membership organization which compiled voter guides may not distribute such material to the general public if they imply a right or wrong answer or a weak record." The advisory opinion relied upon by NCPAC is, of course, distinguishable from the present situation. For here, the communication at issue has none of the common characteristics of a "voter guide." It does not describe

Charles N. Steele
Page 9
October 29, 1984

the voting record of a legislator. And it is not designed as a "box score" for voters. However, if AO 1984-14 is to be interpreted as extending to the instant communication; and if, as a consequence, the Commission takes the position that issue-oriented membership organizations cannot freely criticize a public official and describe his or her record as "weak" with respect to certain issues; such a stance would impermissibly constrict public discourse in violation of the First Amendment. Indeed, given all the court rulings in this area that we describe above, for the Commission to adopt such a position could only be viewed as an act of official lawlessness.

Conclusion

Our concern in all of this is not just your complaint against the ACLU. Should you pursue the baseless charges, we have the resources and experience to defend our rights of speech and association. We are very much concerned, however, about the impact of your actions on a wide variety of other, less well-established issue advocacy groups whose reaction to letters like the one we received will be to curtail their free speech for fear of becoming entangled in your enforcement machinery. For this reason, it is not enough that you simply decline to proceed further with the complaint against the ACLU. We insist that you take steps, by advisory opinion or regulatory amendment, to make clear that the FEC will honor the distinction between "express advocacy" and issue speech that a decade of law has fashioned. In fact, we hereby request, pursuant to 2 U.S.C. Section 437, that you issue an advisory opinion to the effect that the ACLU communications at issue here - or any similar communications by other similar groups - do not fall within the reach of the FECA or its regulations.

Our founder, Roger Baldwin, always warned that "no fight for civil liberties ever stays won". By your actions, the FEC has proven him correct.

Sincerely,



American Civil Liberties Union

by Ira Glasser
Executive Director

Counsel:

Arthur N. Eisenberg
Joel M. Gora

84040493439



American Civil Liberties Union of the National Capital Area

600 Pennsylvania Avenue, S.E. □ Suite 301 □ Washington, D.C. 20003 □ 202-544-1076

GCC#5404

Gerson

October 29, 1984

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1802

Dear Mr. Gross:

This responds to your letter of October 12, 1984, reporting your receipt of a complaint against the ACLU of the National Capital Area and requesting our response.

This is to inform you that the ACLU of the National Capital Area adopts as its response in this matter the response of the American Civil Liberties Union to the identical complaint, which was also filed against it.

Sincerely yours,


J. Wesley Watkins
Executive Director

34 OCT 30 11:57
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

84040493440

Lawrence H. Mirel, *Chairperson* • H. Stewart Dunn, Jr., *Vice-Chairperson* • Lois Schiffer, *Treasurer* • Elinor Horwitz, *Secretary*

EXECUTIVE BOARD: Adrienne Barth, Frederick B. Abramson, Earl Callen, Sara-Ann Determan, David Drachler, Charles T. Duncan, James F. Fitzpatrick, Albert A. Foer, David B. Isbell, David I. Joseph, Franklin E. Kameny, Robert Kapp, Barry Katz, Patricia A. King, Warner Lawson, Jr., Ann Kernan Macrory, Audrey Rowe, Robert B. Schwenger, Paul Silverman, Helene Toiv, Michael J. Walsh, Jr., Thomas S. Williamson, Jr., Arno Winard, Hal Witt

J. Wesley Watkins, *Executive Director* • Arthur B. Spitzer, *Legal Director*

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463



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Federal Election C

Official Business
Penalty for Private Use \$300

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SPECIAL DELIVERY

Kenneth A. Gross, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *ct*
DATE: October 15, 1984
SUBJECT: MUR 1802 - Memorandum to The Commission

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

84040493443

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[]	Compliance	[X]
Sensitive	[]	Audit Matters	[]
Non-Sensitive	[]	Litigation	[]
24 Hour No Objection	[]	Closed MUR Letters	[]
Sensitive	[]	Status Sheets	[]
Non-Sensitive	[]	Advisory Opinions	[]
Information	[]	Other (see distribution below)	[]
Sensitive	[]		
Non-Sensitive	[]		
Other	[X]		

INFORMATION - SENSITIVE
EXPEDITED COMPLAINT -
CIRCULATE ON PINK PAPER

*National Conservative
Political Action Committee*

*1001 Prince Street
Alexandria, Virginia 22314*

RECEIVED AT THE FEC
GCC # 5003
84 OCT 5 AM 11:30

*John T. Dolan
National Chairman*

September 28, 1984

*MUR
1802 (709) 684-1800*

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sir:

This letter constitutes a complaint filed pursuant to 2 U.S.C. 437g by the National Conservative Political Action Committee ("NCPAC"), a registered independent political action committee, against the American Civil Liberties Union ("ACLU"), which has apparently violated the provisions of 2 U.S.C. 441d in making expenditures for the purpose of financing communications which expressly advocate the defeat of Ronald Reagan.

Attached hereto and made a part of this complaint are copies of the direct mailings produced by ACLU which violate 2 U.S.C. 441d. The name and address of the recipient of the mailings have been excised; no other alterations to the mailings have been made.

NCPAC has reason to believe that the membership communications were mailed to members of ACLU without having complied with the provisions of 11 CFR 114.3(a)(1) and (c) or 11 CFR 100.8(b)(4) and 104.6.

NCPAC has reason to believe that the other communications addressed to "Fellow Citizen" were mailed to the general public.

NCPAC has reviewed the records of the Commission and ascertained that ACLU is not a registered political action committee.

The lack of an outright admonition to vote against President Reagan in the upcoming Presidential election does not defeat the clear intent and purpose of ACLU in advocating the defeat of President Reagan as set forth in the enclosed direct mailings.

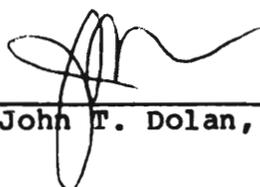
84240493441

Federal Election Commission
September 28, 1984
Page Two

NCPAC notes that by AO 1984-14, the Commission ruled that a membership organization which compiled voter guides may not distribute such material to the general public if they imply a right or wrong answer or a weak record. In that same advisory opinion it was noted that favoring one candidate over the other in the context of an election indicates an election-influencing purpose.

Very truly yours,

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE

By: 
John F. Dolan, Chairman

COMMONWEALTH OF VIRGINIA)
CITY OF ALEXANDRIA) to-wit:

Sworn to before me this 15th day of ~~September~~ ^{October}, 1984,
by JOHN T. DOLAN, as Chairman of National Conservative Political
Action Committee, under the penalty of perjury and subject to the
provisions of section 1001 of Title 118 of the United States
Code.


Notary Public

My Commission Expires: 11/21/86

84040493445

I was pleased last year to proclaim 1983 the Year of the Bible. But, you know, a group called the ACLU severely criticized me for doing that. Well, I wear their indictment like a badge of honor.

--Ronald Reagan
January 26, 1984



Dear ACLU Supporter:

Ronald Reagan is promising fundamentalist heaven and constitutional regression this year -- in the form of PRAYER IN THE SCHOOLS, BANNING OF ABORTIONS, BLACKLISTING, CENSORSHIP, DENIAL OF DUE PROCESS, and CAPITAL PUNISHMENT. All these are the President's promises in his unholy alliance with the Moral Majority and the New Right.

Those were issues on which we hoped we had prevailed. But, as Roger Baldwin once said, "No fight for civil liberties ever stays won." By presiding over a return to the 50's mentality, Mr. Reagan seems intent on proving Mr. Baldwin right. The President even went so far as to award the nation's highest civilian medal to his McCarthy-era hero, Whittaker Chambers.

Worse yet, the Reagan program actually appears politically popular. This is why your support of the American Civil Liberties Union is more important than ever.

The ACLU is in a unique position to challenge all of Reagan's assaults on civil liberties. And the ACLU of the National Capital Area continues to be in the vanguard of this fight.

84040493446

Your affiliate continues the struggle to protect the Constitution through litigation, education, and persuasion.

FREEDOM OF SPEECH AND ASSEMBLY: Our cases cover a wide range of situations: from White House and Capitol grounds demonstrations to censorship of Metro Ads and student publications. Cases are currently pending in Federal courts at every level, including the Supreme Court.

DUE PROCESS OF LAW: Speedy trials, unlawful searches and seizures, police brutality, and governmental surveillance are but a few of the issues currently on our docket. In addition we are investigating the Secret Service commitments to St. Elizabeths Hospital of "suspicious" persons in proximity to the White House.

DISCRIMINATION: Each month we process numerous new complaints of discrimination in hiring, promotion and layoffs.

We are continuing our efforts for **POLITICAL REFUGEES**, planning a conference for **STUDENT EDITORS** and **STUDENT LEADERS**, and we must be prepared to respond to the multitude of other problems that bombard us daily.

But to do any of this, and to maintain our extensive legal program -- especially in the face of Reagan's continued attacks on civil liberties -- we need your contributions.

All of these activities require money in addition to membership dues, which are devoted to political issues. The ACLU/NCA Fund is the vehicle for all of our litigation, as well as for research and education projects.

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Only 10% of our members make additional contributions to keep the Fund alive. We must expand that group if we are to fulfill our role in the National Capital area.

If each of our members made a \$25 donation to the ACLU Fund, we could begin an expansion of our program. But not all of our members can afford to give that, so we need the rest of you to contribute at least \$100 to our efforts. More if you can. Less if you can't.

But please donate. And wear the enclosed ACLU Badge of Honor to proclaim your devotion to civil liberties.

As noted journalist Eric Sevareid recently said, "There are ugly little clouds on the horizon of civil liberties once again. You just can't get lazy about this. . . . You can defend civil liberties only as long as you still have them; they are their own defense; that is their unique nature."

Help defend your constitution! Send your tax-deductible contribution to the ACLU Fund today.


J. Wesley Watkins
Executive Director
ACLU of the National Capital Area

P.S. Send your \$100 today and we'll send you more badges.

84040493448

84040493449

600 Pennsylvania Avenue, S.E. □ Suite 301
Washington, D.C. 20003



ACLU



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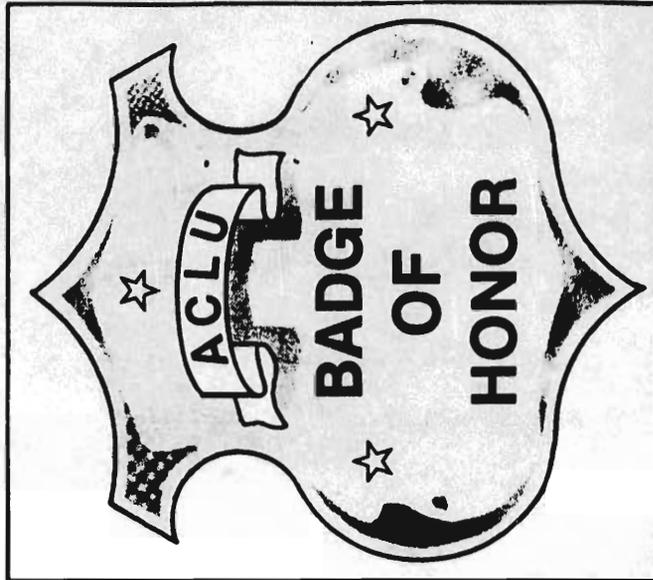
I'll wear my badge of honor proudly.

I know that civil liberties are under attack and ACLU is defending my constitution.
That's why I am enclosing:

\$25 \$50 \$100 Other _____

Please make your tax-deductible contribution payable to the ACLU Fund.

American Civil Liberties Union Fund of the National Capital Area
600 Pennsylvania Avenue, S.E./Suite 301 Washington, D.C. 20003



BUSINESS REPLY MAIL

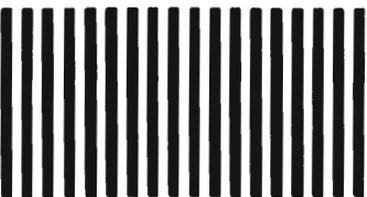
FIRST CLASS PERMIT NO. 10894 WASHINGTON D.C.

POSTAGE WILL BE PAID BY ADDRESSEE

**American Civil Liberties Union Fund
of the National Capital Area
600 Pennsylvania Avenue, SE/Suite 301
Washington, DC 20003**



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



1 5 4 3 6 4 0 4 0 4 8

American Civil Liberties Union

Dear ACLU Member:

With your help this past year we have won some important victories for civil liberties:

o We have won a broad ruling in the Supreme Court that prevents local and state governments from interfering with any woman's right to choose abortion.

o We have stopped the Justice Department from inhibiting the importation of foreign films that disagree with official government policy.

o We have delayed -- but only temporarily -- implementation of an Executive Order that would have imposed lifetime censorship on government officials and former government officials.

o We have helped defeat various measures to bring sectarian prayer into public schools, to use public funds to support private religious schools and other measures to breach the constitutional barrier between Church and State.

o We are winning the day-to-day battles in small towns and big cities that don't make the headlines: victories against book censorship, against police and institutional abuses, against racial and sexual discrimination.

That's the good news.

You already know the bad news. You already know that some of the victories we win in Congress and in the courts are being subverted by the Executive Branch.

When Congress and the courts act to stitch civil liberties into the fabric of our democratic system, the Reagan Administration re-acts by unraveling that fabric. There are scores of such unravelings, and they are becoming more numerous and more brazen. Here are a few of the more outrageous ones:

o Congress refused to dismantle the Freedom of Information Act. The Reagan Administration reacted with an order allowing hundreds of thousands of documents to be classified beyond the reach of the Freedom of Information Act.

(over)

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o Congress refused to abolish the Civil Rights Commission. The Reagan Administration reacted by attempting to dislodge bi-partisan Commissioners before completion of their terms and replace them with candidates who parrot the Administration's views. That strategem has been temporarily derailed with the help of ACLU lobbying together with other civil rights and civil liberties groups.

o Congress guards its right to participate in foreign policy and its exclusive power to declare war. The Reagan Administration usurps that power by initiating full-scale military actions and then claiming that they are not acts of war. The special significance of this step to us as civil libertarians is that in denying Congress its role, the Administration is simultaneously denying the American people both the information and forum we need to participate in a broad-based, informed debate on policy that affects our very lives.

o Congress specifically rejected a rule that would force federally funded family planning clinics to notify parents of birth control assistance to teen-agers. But the Reagan Administration issued a regulation re-inserting this requirement into implementation of the law. The ACLU secured a nationwide injunction against enforcement of this regulation, and as this letter is written, the government is deciding whether to contest the injunction. The indications are that it will.

We are proud of the victories we have won and are encouraged by your steadfast support which made those victories possible. But it would be self-deception to claim that the climate for civil liberties has improved during the past twelve months. It hasn't. The best we can say is that without our efforts and your help, the picture would be much bleaker than it is.

Civil liberties will be at great risk in the months ahead, as the Reagan Administration seems bent on imposing its narrow and repressive views of morality and private family life on its citizens at home, and on stifling debate and dissent on its military adventures abroad.

We hope we can count on you now, as we have in the past, to see us through this critical period. You are part of a handful of Americans whose commitment to liberty makes a difference in the outcome of our struggles.

Please renew your membership -- if possible at a higher level than before -- today.

Sincerely,



Ira Glasser
Executive Director

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84040493454

ACLU Membership Renewal

2

THANK YOU FOR YOUR CONTRIBUTIONS DURING THE PAST YEAR AMOUNTING TO \$20

AT THIS CRUCIAL TIME, I WANT TO HELP ACLU BY SETTING MY CONTRIBUTION AT:

\$20 \$30

PLEASE CONTINUE MY MEMBERSHIP THROUGH FEBRUARY 1985.

- To make sure your contribution is properly credited, please return this portion of the form with your check.
- Please make your check payable to ACLU.
- If you have already sent your payment, please disregard this notice.

(OVER PLEASE)

YOUR DUES ARE SHARED WITH THE ACLU OF VIRGINIA

ACLU

132 WEST 43rd STREET

NEW YORK, NEW YORK, 10036

YOUR ACLU RENEWAL

- Extends your subscription to Civil Liberties and your local newsletter.
- Permits your participation in elections of your local ACLU Board of Directors.
- Continues your membership in both national and local ACLU.

A word about your contribution: More than half of it supports the ACLU office in the state where you live. The rest supports national programs, including the Washington Legislative Office. Basic minimum dues are \$20 for an individual; \$30 for joint members; and \$5 for limited income members like students and retired people.

But most members understand that these basic minimums are not nearly enough to maintain an effective local presence where most Civil Liberties battles are fought, nor to maintain the strong national presence needed now more than ever.

That is why we ask you to contribute above the minimum. We are grateful for whatever you can give. We hope that you will give as much as you can.

84340493455

From the Desk of

Norman Dorsen

You may have missed
the letter I recently sent
you, and so I'm enclosing
a copy.

In the past you
have been especially
generous to the ACLU, and
I hope you will con-
tinue that support in this
year of many challenges
for civil liberties.

Norman Dorsen

84040493456



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
SECRETARY

84 OCT 15 P4:18

October 15, 1984

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel
By: Kenneth A. Gross
Associate General Counsel
SUBJECT: MUR 1802

SENSITIVE

On October 5, 1984, the National Conservative Political Action Committee (hereinafter "NCPAC") filed a complaint against the American Civil Liberties Union ("ACLU"), the respondent, alleging that ACLU violated 2 U.S.C. § 441d by "making expenditures for the purpose of financing communications which expressly advocate the defeat of Ronald Reagan." NCPAC further alleges that the ACLU violated 11 C.F.R. § 100.8(b)(4), § 104.6, § 114.3(a)(1) and § 114.3(c) in the course of its direct mailings both to the organization's members and to the general public.

Recommendations will be forwarded at the close of the 15 day response period or upon receipt of the responses.

84040493457



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 12, 1984

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

Ira Glasser
Executive Director
American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

RE: MUR 1802

Dear Mr. Glasser:

This letter is to notify you that on October 5, 1984, the Federal Election Commission received a complaint which alleges that you and the American Civil Liberties Union violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1802. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing, that no action should be taken against you and the American Civil Liberties Union in connection with this matter. You may respond to the allegations made against you within 15 days of receipt of this letter. The complaint may be dismissed by the Commission prior to receipt of the response if the alleged violations are not under the jurisdiction of the Commission or if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission dismiss the complaint, you and the American Civil Liberties will be notified by mailgram. If no response is filed within the 15 day statutory requirement, the Commission may take further action based on available information.

You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response to this notification, we have enclosed a pre-addressed, postage paid, special delivery envelope.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

34740493458

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission, in writing, that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Matthew Gerson, the staff person assigned to this matter at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

By: *Kenneth A. Gross (KAG)*
Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope

84040493459



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 12, 1984

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

J. Wesley Watkins
Executive Director
ACLU of the National
Capital Area
600 Pennsylvania Avenue, S.E.
Suite 301
Washington, D.C. 20003

RE: MUR 1802

Dear Mr. Watkins:

This letter is to notify you that on October 5, 1984, the Federal Election Commission received a complaint which alleges that you and the ACLU of the National Capital Area violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1802. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing, that no action should be taken against you and the ACLU of the National Capital Area in connection with this matter. You may respond to the allegations made against you within 15 days of receipt of this letter. The complaint may be dismissed by the Commission prior to receipt of the response if the alleged violations are not under the jurisdiction of the Commission or if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission dismiss the complaint, you and the ACLU of the National Capital Area will be notified by mailgram. If no response is filed within the 15 day statutory requirement, the Commission may take further action based on available information.

You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response to this notification, we have enclosed a pre-addressed, postage paid, special delivery envelope.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

94040493460

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission, in writing, that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Matthew Gerson, the staff person assigned to this matter at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A Gross (CG)
By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope

84040493461



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

October 12, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John T. Dolan
National Chairman
National Conservative
Political Action Committee
1001 Prince Street
Alexandria, Virginia 22314

Dear Mr. Dolan:

This letter is to acknowledge receipt of your complaint which we received on October 5, 1984, against J. Wesley Watkins, American Civil Liberties Union of the National Capital Area, Ira Glasser and American Civil Liberties Union which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent(s) will be notified of this complaint within 24 hours. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this Office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Please be advised that this matter shall remain confidential in accordance with 2 U.S.C. § 437g(a)(B) and § 437g(a)(12)(A) unless the respondent notifies the Commission in writing that they wish the matter to be made public.

Sincerely,

Charles N. Steele
General Counsel

By: *Kenneth A. Gross*
Kenneth A. Gross
Associate General Counsel

Enclosure

84040493462

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● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):
 Show to whom and date delivered
 Show to whom, date, and address of delivery ..
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:
 John T. DeLam, Natl. Chrm.
 NCPA
 1001 Prince St
 New, Va. 22314

4. TYPE OF SERVICE:
 REGISTERED INSURED
 CERTIFIED COO
 EXPRESS MAIL

ARTICLE NUMBER _____

I have received the article described above.
 (Always obtain signature of addressee or agent)

SIGNATURE Address Authorized agent
Cheryl Wilma

DATE OF DELIVERY *10/15*

POSTMARK _____

5. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: _____
 7a. EMPLOYER'S DETAILS _____

10-12-84

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3811, Dec. 1980

American Civil Liberties Union
132 West 43rd Street
New York, N.Y. 10036



**Membership Renewal
Notice Enclosed**

84040493464

8 4 0 4 0 4 9 3 4 6 5

American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

American Civil Liberties Union

(4)

Dear ACLU Member:

By the time you read this letter, we pray that the agony of Baby Jane Doe and her parents will be over.

But for those of us who value the independence and freedom of action promised to all Americans under our Constitution, and who reject government supervision and control over our personal lives -- a time of serious trouble may be just beginning.

Generally, when we ask you to renew your ACLU membership we recount our victories of the past year and outline the challenges that lie ahead -- a sort of check list of what your support has accomplished and why we continue to need it in the months to come.

~~We are departing from that formula because we believe that the Baby Doe case is more than a heart-wrenching human tragedy: it epitomizes the mean-spirited and meddling role that government under the Reagan Administration plays, and the relentless fanaticism with which it pursues its goals. It describes what ACLU is doing to preserve individual liberty in this darkening atmosphere.~~

In October, 1983, Baby Jane Doe was born in New York with spina bifida, hydrocephalus, microcephaly, bilateral upper extremity spasticity, a prolapse rectum and a malformed brain stem.

Baby Doe's parents were faced with a terrible choice. They could choose either conservative treatment -- antibiotics therapy -- which has achieved success in preventing the infections that can be fatal in these circumstances, or the radical step of surgery to drain the water from the infant's brain. The surgery would not correct any of the malformations -- Baby Doe would remain hopelessly and permanently impaired both mentally and physically, but the surgery does have a lower immediate mortality rate than antibiotic therapy, although the longer term outlook is not promising in either case. But surgery involves a significantly greater risk of pain and disability for Baby Doe: recurring urinary tract infections, kidney infections, skin infections, loss of function in her legs and edemas of the limbs.

Baby Doe's parents chose to spare their daughter this futile pain. After consulting with specialists and surgeons,

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American Civil Liberties Union

132 West 43rd Street New York, New York 10036

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Ira Glasser
Executive Director

Dear Fellow Citizen,

You must forgive me for writing you in this blunt way. But I don't know any combination of eloquent words that will make my request any more appealing or more urgent.

When it comes to your most precious rights and liberties being threatened right this moment, fancy rhetoric is not what you need.

What I am asking you to do is to sit down right now and send a contribution -- as generous as possible despite today's hard times -- to a group of lawyers.

These are not the kind of lawyers who are retained by huge corporations and the government. Nor do they get media coverage by representing the very rich. But these equally talented men and women every day go into courts across the land defending your rights, your liberties.

They are the lawyers of the American Civil Liberties Union.

Yes, even though you may never actually meet any ACLU lawyer, or never need their help personally, every time they defend any American's right they are defending yours as well.

And while your civil liberties are your most precious rights, don't think our lawyers are paid vast sums of money. In fact, a tremendous amount of the legal services we provide are donated, given to the ACLU by members of the bar who realize just how critical it is to defend civil liberties.

But the law and the courts are very expensive avenues of maintaining our cherished freedoms. And that is why we must ask every American who shares the belief that our civil liberties are among our most priceless possessions to kick in, to contribute to the process of safeguarding them.

I realize that, no doubt, you have often given, and given generously to some truly worthwhile causes -- either in the name of our environment, better government, better health, women's rights -- to one or more of many vital concerns.

I also realize that these kinds of contributions bring with them a great sense of immediate reward. Knowing that because of you some

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endangered species will be saved, or some child will not starve, is certainly heartwarming.

And, let's face it, when you contribute to the ACLU I cannot promise that any right or liberty will be forever safe. Indeed, history proves just the opposite.

Even when you and I win a decisive battle in defense of individual rights we must maintain the strength and vigilance to counter renewed threats. For example . . .

-- In 1926, the ACLU defended the right of a public school teacher to teach evolution. That was the famous Scopes "Monkey Trial."

BUT . . . in 1982, we again had to defend that right in Arkansas and Louisiana, where religious zealots had succeeded in passing laws that would require teachers to teach "creation science" according to the Bible's literal account of divine creation.

-- In 1972, the ACLU went before the U.S. Supreme Court to successfully establish the constitutional right of a woman to choose an abortion.

BUT . . . in 1982, ten years later, the ACLU was again before that same court seeking to have declared unconstitutional a series of local ordinances that would severely restrict and virtually prohibit abortion in many communities.

-- In 1933, the ACLU won an historical anti-censorship decision permitting the distribution of James Joyce's Ulysses in the United States.

BUT . . . in 1982, we again had to fight in the Supreme Court against book burners who had attempted to ban books by Kurt Vonnegut, Bernard Malamud, Jonathan Swift, and other authors from a Long Island, New York, school library.

-- In 1964, the ACLU opened its Southern Regional Office in Atlanta, Georgia, to represent Blacks in the civil rights movement. That same year we won the historic case that established the "one person, one vote" principle nationwide.

BUT . . . in 1982, we were back in the courts again seeking to block illegal schemes designed to make it impossible for Blacks to be elected in many Southern communities.

You see, the process of defending civil liberties never stops.

And when too many Americans sit back, complacently believing that their rights are safe and secure and no longer are willing to do something to defend them, then you and I are in danger. Big danger.

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Today there are important cases lurking just around the corner. A case to defend the free speech of an unpopular group . . . or a case to defend the rights of mental patients in hospitals . . . or a case to defend your rights.

And when those cases come up, you and I must be prepared to fight for the civil liberties granted to each of us under our Bill of Rights.

That's why, as Executive Director of the American Civil Liberties Union, I am writing to you today to invite you to become a member. In times like these when far too many Americans are taking their civil liberties for granted, the ACLU needs the help of caring citizens like you.

I fear that the defeat of some of the "headline" candidates and causes of the New Right and Moral Majority in Congress, and modest gains made by advocates of civil liberties in the recent elections could lull us into a sense of complacency.

But history has taught us time and time again that, just because an individual politician is labeled a "Democrat," a "Republican" or even a "liberal," we cannot depend upon him or her to stand against the winds of intolerance and intimidation in Congress and in the state legislatures.

Sometimes I think that the cause of civil liberty would be better served if the Jerry Falwells and the Jesse Helmses of this world were still making headline news.

Not really, of course. But, the point is that when outrageous goals and statements by the anti-civil liberties forces make the headlines, the people of goodwill tend to get concerned, get involved and do something to protect their civil liberties.

The New Right and the Moral Majority -- like Joseph McCarthy before them -- now seem to be passing out of the bright lights of the press -- and of public concern.

And those citizens who opposed their moralistic zeal and feared the political effects of their tactics of fear and intimidation are beginning to relax.

But, you and I cannot relax our guard. We must not relax our guard.

Although 1982 was a banner year for the ACLU in defending and reaffirming basic civil liberties, it also cost us dearly. Our resources were depleted in our fight for victory. And 1983 presents a new and frightening challenge.

Today we face a new -- and even more formidable -- barrier to civil liberties. The Reagan Administration is quietly subverting and sabotaging both the mandates of the courts and the will of Congress.

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Through Executive Orders, by budgetary decisions and through outrageous political appointments, they have put our civil liberties -- your freedoms -- at frightening risk.

Just in recent weeks there is evidence that failure to enforce civil rights laws will continue . . . efforts to circumvent the Voting Rights Act will continue . . . Reagan's attacks on nuclear freeze advocates, including smears that they "want to weaken America and are Soviet fronts," will continue . . . attacks on the authority of federal courts to enforce constitutional rights will continue . . . efforts to exempt the CIA from the Freedom of Information Act and thus reinstitute a "secret government" will continue . . . encouragement of illegal searches by police will continue . . .

THE THREAT IS REAL. AND THE THREAT WILL CONTINUE -- AND GROW -- UNLESS THE ACLU AND THE CARING CITIZENS WHO SUPPORT IT ONCE MORE RALLY TO DEFEAT THOSE WHO SEEK TO IMPOSE THEIR "VISION" OF AMERICA AT THE EXPENSE OF OUR CONSTITUTION AND THE BILL OF RIGHTS.

BUT . . . the attacks on our fundamental rights cannot be repelled by rhetoric. Extraordinary skill, technical expertise and experience are required. So is the generosity of caring, concerned Americans like you.

The ACLU needs to replenish its resources for the continuing battle ahead. And that's why the ACLU needs and deserves your support as a member.

Your membership dues or contribution to the ACLU is like the premium on an insurance policy. It enables the ACLU to meet the threats -- new and repeat threats -- year after year.

Your membership dues, when coupled with those of nearly 250,000 other caring Americans, help the ACLU meet the recurring threats to all of our civil liberties.

You have benefitted from many past ACLU victories. Today, please show that you care. Demonstrate your concern and commitment to your own civil liberties by becoming a member of the ACLU.

I have enclosed your personal Membership Acceptance Form with this letter. Please accept my invitation to become a member by completing and returning your Membership Acceptance Form to me today.

Sincerely,



Ira Glasser
Executive Director

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Membership Acceptance Form

- I accept your invitation to become a member of the American Civil Liberties Union. I care about my civil liberties and those of my fellow Americans. I want to help the ACLU stand guard as a vigilant defender of those liberties.
- To help keep the ACLU strong and vigilant I am enclosing my voluntary membership dues.

American Civil Liberties Union

Membership	Individual	Joint
Basic	<input type="checkbox"/> \$20	<input type="checkbox"/> \$30
Contributing	<input type="checkbox"/> \$35 *	<input type="checkbox"/> \$50
Sustaining	<input type="checkbox"/> \$75	<input type="checkbox"/> \$75
Supporting	<input type="checkbox"/> \$125	<input type="checkbox"/> \$125
Life	<input type="checkbox"/> \$1,000	<input type="checkbox"/> \$1,000

* Every membership in this amount makes our fight that much easier.

As a member of the ACLU, you will receive...

- A subscription to *Civil Liberties*, to keep you up-to-date on major challenges to your rights and freedoms.
- Membership in the local ACLU chapter in your area and all periodicals and bulletins published by your local chapter.
- Voting rights to elect the members of the Board of Directors of your ACLU chapter.

American Civil Liberties Union
 132 West 43rd Street New York, New York 10036

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Executive Director

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with social workers and with their religious advisors, they decided against surgery and for antibiotic therapy.

At this point, two different entities injected themselves into the tragedy. The first was a so-called "Right-to-Life" advocate who wanted to be appointed as Baby Doe's guardian so that he could insist on radical surgery. Two New York state appellate courts rejected this strategem.

Simultaneously, the U.S. Department of Health and Human Services asked a New York child protective agency to investigate the case on the grounds that Baby Doe was being denied medically indicated treatment and, in effect, being neglected by her parents. The state agency found that the parents' decision did not constitute neglect.

The conclusive rulings of the state courts and the findings of the state agency should have ended the matter. But not under this Administration.

The Reagan Justice Department then began a bizarre proceeding in Federal District Court. It sued the hospital under the Rehabilitation Act (an excellent piece of legislation for whose passage ACLU lobbied long and hard) which requires that no handicapped person can be denied the benefits of any program which received Federal funds.

Baby Doe is a handicapped person -- the government's theory goes -- and the hospital is denying her the benefit of surgery and therefore may be violating the Act. The government should be given Baby Doe's medical records to ascertain whether Baby Doe is being discriminated against by the hospital. The government's action ignores:

- 1) The hospital is not denying Baby Doe surgery. It will perform it if the parents choose that option.
- 2) The hospital is forbidden by law to perform surgery on an infant without a parent's consent.
- 3) The parents are not receiving federal funds and they are not subject to the government's jurisdiction.
- 4) Through their earlier complaint to the state agency, the federal government already has all of Baby Doe's relevant medical records.

The Federal District Court noted all of the above and threw out the government's case. But the Reagan Administration has decided to appeal, and to continue to harass the anguished parents.

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In the absence of parental neglect or abuse, we do not believe the government should be poking its nose into family life and appointing itself to review and reverse parental decisions about their children.

Remember, this is the same Administration that campaigned on the slogan of getting government off the backs of the people.

The ACLU entered this case as "friend of the court" and the Judge took special notice of the high quality of the brief by the New York Civil Liberties Union.

Make no mistake about it. The Baby Doe case is not just a matter of bad judgment on the part of a few overzealous officials. It is part of a carefully orchestrated plan to force Americans to submit to its narrow and sectarian view of private relationships.

Other parts of this plan include the Administration's regulation requiring family planning clinics to inform parents when teen age girls request birth control information -- the notorious "squeal" rule. ACLU has secured an injunction against the enforcement of this regulation.

More recently, the ACLU has sued to declare the Administration-sponsored Adolescent Family Life Act unconstitutional. Among other things, this Act permits grants to sectarian religious institutions such as parochial schools to promote "family centered sex education," or, as one training manual put it, to "share the Christian message" about sin and immorality.

We can be sure that the Reagan Administration intends to pursue its goal of forcing its own "personal morality" on Americans.

And you can be sure that the ACLU will continue to battle them every step of the way.

We know the government has a bottomless well of money, and that our own financial resources are pitifully small in comparison. But if we can just even up the financial odds a little -- perhaps by as little as 15% to 20% -- we believe that the intelligence, the skill and the dedication of our 5,000 volunteer lawyers will make up the rest of the difference. With your help, we can win.

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We hope we can count on your renewal -- now -- to see us through this highly-charged issue.

Please renew your membership today -- if possible at a higher level than before.

Sincerely,

Ira Glasser

Ira Glasser
Executive Director

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ACLU Membership Renewal

THANK YOU FOR YOUR CONTRIBUTIONS DURING THE PAST YEAR AMOUNTING TO \$20

AT THIS CRUCIAL TIME, I WANT TO HELP ACLU BY SETTING MY CONTRIBUTION AT:

\$20 \$30

PLEASE CONTINUE MY MEMBERSHIP THROUGH FEBRUARY 1985.

- To make sure your contribution is properly credited, please return this portion of the form with your check.
- Please make your check payable to ACLU.
- If you have already sent your payment, please disregard this notice.

(OVER PLEASE)

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ACLU

132 WEST 43rd STREET

NEW YORK, NEW YORK, 10036

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YOUR ACLU RENEWAL

- Extends your subscription to Civil Liberties and your local newsletter.
- Permits your participation in elections of your local ACLU Board of Directors.
- Continues your membership in both national and local ACLU.

A word about your contribution: More than half of it supports the ACLU office in the state where you live. The rest supports national programs, including the Washington Legislative Office. Basic minimum dues are \$20 for an individual; \$30 for joint members; and \$5 for limited income members like students and retired people.

But most members understand that these basic minimums are not nearly enough to maintain an effective local presence where most Civil Liberties battles are fought, nor to maintain the strong national presence needed now more than ever.

That is why we ask you to contribute above the minimum. We are grateful for whatever you can give. We hope that you will give as much as you can.

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American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

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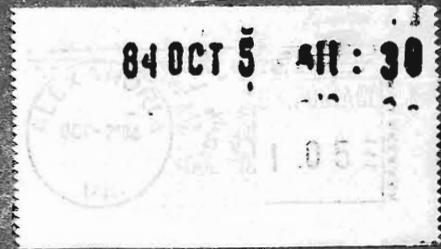


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