



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4282

DATE FILMED 10-9-56 CAMERA NO. 2

CAMERAMAN JMN

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 26 11 24 AM '95

October 25, 1995

Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Sir:

On behalf of Catholics for a Free Choice, I submit the following complaint alleging violations of the Federal Election Campaign Act (FECA) by the Roman Catholic Archdiocese of Philadelphia, Pennsylvania. It is our contention that the Archdiocese of Philadelphia violated FECA regulations in September, 1994 in conducting certain activities related to the 1994 Congressional campaigns in the state of Pennsylvania.

Background

The complaint involves preparation of a candidates' voting record (referred to in internal memoranda as a scorecard) in the fall of 1994, in which the Archdiocese of Philadelphia's Office for Public Affairs modified information included in the scorecard after having received input from one of the campaign organizations involved in the US Senate race being conducted at that time. Specifically, in September, 1994, the Archdiocesan Office for Public Affairs produced a document, intended for distribution at Catholic churches in the archdiocese, listing a series of Congressional bills and the roll call votes recorded by selected candidates for federal offices in Pennsylvania. Subsequently, this document was substantially modified based at least in part on contacts with the Senate campaign of then-US Representative Rick Santorum. This revision took the form of changing the original listing of roll call votes (Exhibits 11 and 12), thereby producing a score for Mr. Santorum's opponent, Senator Harris Wofford that was lower in the final version than it was in the original. In addition, Senate candidate Santorum, along with other candidates were eliminated in the final printed list of candidates. A side-by-side comparison of the two versions of the scorecard appears in Exhibit 13.

President
Frances Kissling
Vice Presidents
Gregory G. Lebel
Denise Shannon
Board of Directors
Angela Bonavoglia
S. Via Cancio
Stephen Collins
Mary Gordon
Mary Hunt
Daniel Maguire
Giles Milhaven
Eileen Moran
Miyra Navarro Aranguen
Rosemary Radford Ruether
Flora Rodriguez Russer
Marcela von Varano
Peter Wilderotter
Susan Wysock

Lawrence M. Noble, General Counsel
Federal Election Commission
October 25, 1995
Page Two

FEC regulations (11CFR 114.4(c)(5)) that were in effect in September, 1994, clearly state that the development of voting records must be accomplished free of involvement by political parties or candidates.

A corporation or labor organization may prepare and distribute to the general public the voting records of members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party. The decision on content and the distribution of voting records shall not be coordinated with any candidate, groups of candidates, or political party.

Current federal regulations as promulgated in January, 1995, (11CFR 114.4(b)(4), state that

A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election.

We believe that the attached exhibits show that the Archdiocese of Philadelphia was out of compliance with federal regulations in both their iterations.

Included with this cover letter are several exhibits supporting our complaint. Most notable is an internal memorandum to Bishop Edward P. Cullen, Vicar for Administration of the Archdiocese of Philadelphia, dated October 12, 1994, from Ms. Karen Keller of the Office for Public Affairs and the person responsible for production of the Archdiocese's Congressional scorecard. In it, Ms. Keller expresses her concerns that the effort is dangerously close to endorsing the candidacy of Representative Santorum. Ms. Keller cites one specific instance in which she was aware that there was communication between those developing the scorecard and representatives of the Santorum Senate campaign prior to the release of the scorecard. Ms. Keller states on page 2 of this October 12th memo that, "Rick Santorum's campaign complained of the above issue (that the original version of the scorecard made incumbent Senator Wofford look as good as or better than Representative Santorum) as well as the school choice issue." (Exhibit 15) It was following this assertion that she was directed to destroy the original scorecard and develop and print a new, significantly modified version. These points as outlined in Ms. Keller's memorandum support our allegation that the archdiocese was out of compliance with regulations in draft form at the time.

2015 / 45323

Lawrence M. Noble, General Counsel
Federal Election Commission
October 25, 1995
Page Three

FECA prohibits corporate entities from attempting to influence federal elections (2USC 441b[a]). The Philadelphia Archdiocese's preparation of its voting record in conjunction with a voter guide amounts to just such prohibited express advocacy. In a letter dated October 3, 1994 and sent to all parishes in the Philadelphia archdiocese, Mr. Charles Lewis of the archdiocesan Secretariat for External Affairs, clarifies the intent of his office's publication when he states, "This scorecard along with the voter guide which will be published in the October 20th issue of the *Catholic Standard and Times* should provide the means necessary for each parishioner to be well-informed this November" (Exhibit 14).

We have included copies of both the original scorecard (Exhibit 11) and the revised scorecard (Exhibit 12), which was eventually distributed to parishioners throughout the archdiocese and printed in the archdiocesan newspaper, *Catholic Standard and Times*, on October 20, 1994, along with the voter guide referenced in Mr. Lewis in his October 3, 1994 letter.

Conclusion

We believe that these activities constitute violations of federal election law, and we respectfully and urgently request that the Office of General Counsel initiate the complaint review process as required by law, and that the FEC

- (1) conduct a prompt and immediate investigation of the facts stated in this complaint;
- (2) enter into a conciliation with the Respondents to remedy the violations alleged in this complaint and, more importantly, to ensure that no further violations occur; and
- (3) impose any and all appropriate penalties authorized under law.

Respectfully submitted,

Frances Kissling
President

Signed before me this day _____, 1995

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Exhibits

- Exhibit 1. Individual References
- Exhibit 2. August 8, 1994 Memorandum from Ms Karen Keller, Office of Public Affairs, Archdiocese of Philadelphia, To: Mr James Bock, Archdiocesan Associate Vicar for Administration
- Exhibit 3. September 1, 1994 Memorandum of Record from Ms. Karen Keller, re: Congressional Scorecard Approval by Phil Murren
- Exhibit 4. September 1, 1994 Memorandum from Ms Karen Keller to Philip Murren, Esq., re "Enclosed Congressional Scorecard"
- Exhibit 5. September 6, 1994 letter from Philip J. Murren, Esq., to Ms Karen Keller, re "Voting Record Survey"
- Exhibit 6. September 13, 1994 Memorandum from Ms Karen Keller to Ms Gail Pedrick, Christian Coalition, re "Attached Congressional Scorecard"
- Exhibit 7. September 16, 1994 Memorandum from Ms Karen Keller to Mr. Charles Lewis, re "Attached (revised) Scorecard," noting Lewis's approval
- Exhibit 8. September 16, 1994 Memorandum from Ms Karen Keller to Mr Howard Fetterhoff, Executive Director of the Pennsylvania Catholic Conference, re "Attached (revised) Scorecard"
- Exhibit 9. September 19, 1994 Memorandum from Mr. Gregg McLaughlin, Business Manager, Archdiocesan Print Shop, to Ms Karen Keller
- Exhibit 10. September 19, 1994 Memorandum from Karen Keller to Mr Charles Lewis, Director, Office of Public Affairs, Archdiocese of Philadelphia, re "Description of a Typical Workday per Your Request," with details of destruction and reprinting of scorecards
- Exhibit 11. Archdiocese of Philadelphia Congressional Scorecard (Original Version)
- Exhibit 12. Archdiocese of Philadelphia Congressional Scorecard (Revised Version)
- Exhibit 13. Side-By-Side Comparison of Original and Revised Scorecards
- Exhibit 14. October 3, 1994 Letter from Charles Lewis, Secretary, Office of the Secretariat for External Affairs, Archdiocese of Philadelphia, to pastors of archdiocesan parishes
- Exhibit 15. October 12, 1994 Memorandum from Karen Keller, Office of Public Affairs, Archdiocese of Philadelphia, to Bishop Edward Cullen, Archdiocesan Vicar for Administration, re "Scorecard"
- Exhibit 16. November 4, 1994 News Item from the Harrisburg, Pennsylvania *Patriot News*

Individual References

The following individuals are mentioned in various pieces of correspondence. For your reference, we have identified them by their positions or affiliations.

Bock, James J. Jr.: Associate to the Vicar for Administration, Archdiocese of Philadelphia

Fetterhoff, Howard: Executive Director of the Pennsylvania Catholic Conference

Lewis, Charles G.: Director, Office of Public Affairs, Archdiocese of Philadelphia

Neary, Denise: Pro-Life Federation

Pedrick, Gail: Bucks County Coordinator, Christian Coalition

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MEMORANDUM

August 8, 1994

TO: Mr. James Bock
Associate Vicar for Administration

FR: Karen Keller
Office for Public Affairs

RE: Enclosed Congressional Scorecards

Mr. Bock,

Enclosed please find the Christian Coalition's Congressional Scorecard that I was asked to "copy" for the Archdiocese of Philadelphia's version by Mr. Charles Lewis. I have enclosed the draft of the scorecard I am working on for Mr. Lewis. I have some concerns regarding this scorecard and would like you to review it before I am asked to provide a finished brochure for distribution to our parishes.

enc.

25043745327

MEMORANDUM

September 1, 1994

TO: FILE

FR: Karen Keller
Office for School Choice

RE: Congressional Scorecard Approval by Phil Murren

Today I faxed the congressional scorecard to Mr. Phil Murren, asking him to review it and to make sure there was nothing in the scorecard that goes against the guidelines on political activity. He called me within 20 minutes of receiving the fax. He said it looked great and commended me for a job well done and said he was surprised at Borski and Santorum's votes on school choice. I asked if it was in accord with the guidelines. He said that the pluses and minuses could be questioned but it clearly states in the legend box that a plus means that the person voted in accord with the position of the Archdiocese and that a minus means the vote was in opposition with the Archdiocese's position. He said also that it was good that there were pluses and minuses for every congressman on the scorecard.

I asked Mr. Murren if he thought I should change the pluses and minuses to y's and n's or something else. He said, "I wouldn't change a thing. It looks great."

95043745328



ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299
Telephone (215) 587-3509 • Fax (215) 587-0515

OFFICE for PUBLIC AFFAIRS

MEMORANDUM

September 1, 1994

TO: Mr. Philip Murren, Esq.

FR: Karen Keller *KK*
Office for Public Affairs

RE: Enclosed Congressional Scorecard

Mr. Charles Lewis has asked me to forward the enclosed Congressional Scorecard to you for your review.

If you have any questions or if something in the scorecard is not in accord with the guidelines for political activity, you can reach me at (215) 587-3509.

Thank you for your help.

enc.

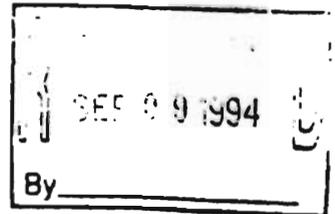
Phil Murren
9/7-232-
2142
fax

504-146329

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LAW OFFICES
BALL, SKELLY, MURREN & CONNELL

28 N SECOND STREET
P O BOX 108
HARRISBURG, PENNSYLVANIA 17108-1108
(717) 232-2721
TELECOPIER (717) 232-2142



COUNSEL TO THE FIRM
WILLIAM BENTLEY BALL

JOSEPH G SKELLY
PHILIP J MURREN
RICHARD E CONNELL
MAURAK QUINLAN
ELIZABETH S PLACE
TERESA R MCCORMACK

VIA FAX

September 6, 1994

Ms. Karen Keller
Office for Public Affairs
Archdiocese of Philadelphia
222 N. 17th Street
Philadelphia, PA 19103

RE: Voting Record Survey

Dear Ms. Keller:

I have reviewed the voting record survey brochure which you furnished me in draft form.

501(c)(3) organizations are permitted to publish such surveys, provided they do not constitute a statement of either endorsement of, or of opposition to a candidate for public office. In non-election years, such surveys are less likely to be viewed as being related to election contests. However, the IRS will look more closely at such surveys if they are published immediately prior to an election.

As I mentioned to you by telephone, the "plus" and "minus" symbol ratings utilized in the survey could draw the attention of IRS. Nevertheless, taken as a whole, the document does not appear to me to be an expression of endorsement or opposition to any particular candidate or legislator. A broad range of issues is surveyed, and each of the legislators has both positive and negative symbols beside his or her name.

If you have any further questions concerning this matter, please feel free to call.

Best regards.

Very truly yours,



Philip J. Murren

PJM/nll

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299
Telephone (215) 587-3509 • Fax (215) 587-0515

OFFICE for PUBLIC AFFAIRS

FAX SENT

VIA FACSIMILE

MEMORANDUM

September 13, 1994

TO: Ms. Gail Pedrick
Christian Coalition

FR: Karen Keller
Office for Public Affairs

RE: Attached Congressional Scorecard

Mr. Charles Lewis has asked me to forward the attached copy of the Congressional Scorecard he is sending to all Archdiocesan parishes.

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299
Telephone (215) 587-3509 • Fax (215) 587-0515

OFFICE for PUBLIC AFFAIRS

FILE COPY

** Verbal approval from Charles Lewis 9/16/94
1.45 gm*

MEMORANDUM

September 16, 1994

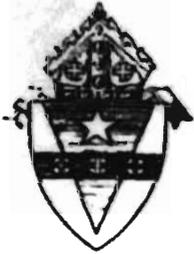
TO: Mr. Charles Lewis
FR: Karen Keller *KK*
Office for Public Affairs
RE: Attached Scorecard

Would you please review the attached scorecard to see that the changes that you have requested are made in the proper manner.

Thank you.

** Mr. Lewis indicates to KK to box to Grand Jettichoff in review.*

2604 / 45332



ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299
Telephone (215) 587-3509 • Fax (215) 587-0515

OFFICE for PUBLIC AFFAIRS

VIA FACSIMILE

MEMORANDUM

FAX SENT

September 16, 1994

TO: Mr. Howard Fetterhoff
PCC

FR: Karen Keller *KK*
Office for Public Affairs

RE: Attached Scorecard

Mr. Charles Lewis has asked me to fax the attached scorecard to you for your review before it is sent to be reprinted. If you have any questions or comments, please call our office at 215-587-3509.

Thank you for your cooperation in this matter.

attached

9604374333



ARCHDIOCESE OF PHILADELPHIA

SECRETARIAT FOR TEMPORAL SERVICES

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299 • (215) 587-3633
Fax (215) 587-2481

OFFICE for GENERAL SERVICES

MEMORANDUM

To: Mrs. Karen Keller
Special Project Consultant
Office for Public Affairs

From: Mr. Gregg McLaughlin
Business Manager / Print Shop

Date: September 19, 1994

As per your request of September 19th to "please destroy 150,000 copies of Government Score Card," this has been completed. These cards are to be reprinted.

Thank you.

2604 / 4534

MEMORANDUM

September 19, 1994

TO: Mr. Charles Lewis
Director, Office for Public Affairs

FR: Karen Keller
Office for Public Affairs

RE: Description of A Typical Workday Per Your Request

As per your request for a "15 minute by 15 minute job description" of a typical work day for me, and since I explained that everyday is somewhat different for me, I chose the typical day of Thursday, September 15, 1994 and documented everything I did that day (please see attached).

If you need any other information regarding my workday, please let me know.

Attachment

5043/45

ACCOUNT OF THURSDAY, SEPTEMBER 15, 1994 - KAREN KELLER

9:00am-9:15am - Arrived in Room 924, Logged into computer, checked to see that coffee was made (it was).

9:15am - 9:20am - Made a phone call to Gregg McLaughlin in the print shop at the request of Chuck Lewis. (Gregg was not in the office, so I left a message for him to meet me in my office).

9:20am - 9:45am - Opened mail, separated bills and Election Guide Surveys.

9:45am - 10:10am - Gregg McLaughlin met with me at my desk. I relayed my instructions from Mr. Chuck Lewis to "destroy and I mean really destroy" the 150,000 Congressional Scorecards that Mr. Lewis had asked me to have Mr. McLaughlin print and then store in the mailroom. I then requested a copy of the invoice from Printcrafters, Inc. for the scorecards.

Mr. McLaughlin then made a phone call to Printcrafters, Inc. to get a fax of the invoice. Mr. McLaughlin then told me to expect the fax.

10:00am - approx. 12noon - Fielded and returned various phone calls from pro-life leaders such as Denise Neary and Mr. Fetterhoff (PCC) who expressed their great concern that distribution of the scorecard would be disastrous because it makes Sen. Wofford look better or just as good as Rick Santorum and that the Hyde Amendment was the only pro-life vote that Sen. Wofford had ever cast.

11:30 am - A fax of the invoice from Printcrafters, Inc. for the Scorecards came in for me in the amount of \$11,775.00.

12noon - 1pm - worked on election guide surveys.

1pm- 2pm - lunch

2pm - 3:30 pm - continued working on election guide surveys.

3:30pm - I was called into Mr. Lewis' office regarding the scorecard. I was asked to: change the #1-question on the Hyde amendment for both the House and the Senate to a question prepared by Mr. Lewis on FACE (Freedom of Access to Clinic Entrances); eliminate the #3 question on Fetal Tissue for the House; eliminate the non-Archdiocesan area representatives from the scorecard; and to have 15,000 of the new scorecard printed.

I expressed concern on how the office could justify the \$11,775.00 bill from the first scorecards that I was asked to destroy. Mr. Lewis said he would take care of it.

I was also asked "in order to continue a working relationship in light of my transfer request" to provide Mr. Lewis with a "15 minute by 15 minute" description of my work day by close of day Monday, September 19, 1994.

3:50pm - 5pm - I was called into Mr. Lewis' office regarding the scorecard. I was asked to: change the #1-question on the Hyde amendment for both the House and the Senate to a question prepared by Mr. Lewis on FACE (Freedom of Access to Clinic Entrances); eliminate the #3 question on Fetal Tissue for the House; eliminate the non-Archdiocesan area representatives from the scorecard; and to have 15,000 of the new scorecard printed. I expressed concern on how the office could justify the \$11,775.00 bill from the first scorecards that I was asked to destroy. Mr. Lewis said he would take care of it.

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DESCRIPTION OF HOUSE VOTES

1. **TAXPAYER-FUNDED ABORTION.** Roll Call Vote 309. June 30, 1993. Amendment by Representative Henry Hyde (R-IL) to prevent taxpayer money from being used to pay for an abortion, except in a case of rape, incest or to save the life of the mother. Approved 256-171. Archdiocese of Philadelphia supported the Hyde Amendment.
2. **BRADY BILL.** HR 1025. November 10, 1993. A bill requiring a five-day waiting period prior to the purchase of a handgun in order to allow officials to conduct a background check. Passed 238-189. Archdiocese of Philadelphia supported this bill.
3. **FETAL TISSUE RESEARCH.** Roll Call Vote 64. March 11, 1993. Amendment to allow fetal tissue for research to be procured from abortions. Approved 250-161. Archdiocese opposed this amendment.
4. **CHOICE IN EDUCATION.** Roll Call Vote 494. October 13, 1993. Amendment by Richard Arney (R-TX) to use federal education money for vouchers, magnet schools and other mechanisms to allow parents to decide what schools their children attend. Rejected 300-130. Archdiocese supported this amendment.
5. **PROHIBITION OF GOVERNMENT-SANCTIONED HOMOSEXUAL MARRIAGES.** Roll Call Vote 315. June 30, 1993. Amendment by Ernest Istook (R-OK) to prohibit the Washington, DC government from registering live-in homosexual partners as married couples and using taxpayer funds to give them the same health care and other benefits normally reserved for married couples. Approved 253-167. Archdiocese of Philadelphia supported this amendment.

6 0 4 3 / 4 5 3 2 /
6. FAMILY/MEDICAL LEAVE ACT.
 HR 1. February 3, 1993. Requires employers of more than 50 employees to provide workers with up to 12 weeks of unpaid leave for family and personal medical emergencies. Passed 265-163. Archdiocese of Philadelphia supported this.

Pennsylvania Representative	VOTES					
	1	2	3	4	5	6
1 Foglietta	-	+	?	-	-	+
2 Blackwell	-	+	-	-	-	+
3 Borski	+	+	-	?	-	+
4 Klink	+	-	+	-	+	+
5 Clinger	+	-	+	-	+	-
6 Holden	+	-	+	-	+	+
7 Weldon	+	+	+	+	+	+
8 Greenwood	-	+	-	+	+	-
9 Shuster	+	?	+	+	+	-
10 McDade	+	+	?	?	+	+
11 Kanjoraki	+	-	+	-	+	+
12 Murtha	+	-	+	?	+	+
13 Mezvinsky	-	+	-	-	-	+
14 Coyne	-	+	-	-	-	+
15 McHale	+	+	-	-	+	+
16 Walker	+	-	+	+	+	-
17 Gekas	+	-	+	-	+	-
18 Santorum	+	-	+	-	+	-
19 Goodling	+	+	+	-	+	-
20 Murphy	+	-	+	-	+	+
21 Ridge	+	-	-	+	+	-

GUIDE TO SCORECARD SYMBOLS

+ = Voted or announced in favor of Archdiocese's position.
 - = Voted or announced against Archdiocese's position.
 ? = Did not vote and did not announce position.

Names appearing in *Italics* are Democrats.

DESCRIPTION OF SENATE VOTES

1. **TAXPAYER-FUNDED ABORTIONS.** Roll Call Vote 290. September 28, 1993. Amendment to repeal the "Hyde Amendment," which prevents taxpayer money from being used to perform abortions. Effort to repeal Hyde rejected 59-40. Archdiocese of Philadelphia opposed this effort to repeal the Hyde Amendment.
2. **FAMILY AND MEDICAL LEAVE.** S 5. February 7, 1993. Requires employers with more than 50 employees to provide their workers with up to 12 weeks of unpaid leave for family and personal medical emergencies. Passed 71-27. Archdiocese of Philadelphia supported this.
3. **BRADY BILL.** S 414. November 19, 1993. Bill requiring local officials to withhold permission for the purchase of guns for five days during which a background check on the purchaser would be conducted. There was a motion to invoke cloture to allow action on the bill. Rejected 57-41. Cloture requires 3/5 (60 votes) for passage. Because of public pressure, the Brady bill passed by voice vote on November 24, 1993. Archdiocese of Philadelphia supported this bill.
4. **SCHOOL PRAYER.** Roll Call Vote 4. January 23, 1992. Amendment by Jesse Helms (R-NC) to state the sense of the Senate that the Supreme Court should reverse its decisions prohibiting voluntary prayer and Bible reading in public schools. Rejected 38-55. Archdiocese of Philadelphia supported this amendment.
5. **AN AMENDMENT TO THE ELEMENTARY AND SECONDARY EDUCATION ACT.** August 2, 1994. This amendment to the Elementary and Secondary Education Act would cut off federal funding to any school district that promotes homosexuality on a par with heterosexual marriage. The amendment was approved 63-36. Archdiocese of Philadelphia supported this.

Senator	VOTES				
	1	2	3	4	5
Specter	-	+	-	-	+
Wofford	+	+	+	-	-

Make Your Voice Heard in Congress!

The issues addressed in this brochure are critically important to you, your family and our nation. Your Congressman and Senators were elected to represent you. Calling or writing them regularly to let them know where you stand can significantly influence their voting behavior. Their mailing addresses are:

Senator	Congressman
United States Senate U.S.	House of Representatives
Washington, DC 20510	Washington, DC 20515

Or you can reach their offices by calling the Capitol Hill switchboard at: (202) 224-3121.

In George Washington's address to officers of the army on March 15, 1783, he said, "If men are to be precluded from offering their sentiments on a matter which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led like sheep to the slaughter".

†
A PROJECT OF THE
OFFICE FOR PUBLIC AFFAIRS
ARCHDIOCESE OF PHILADELPHIA
222 NORTH SEVENTEENTH STREET
PHILADELPHIA, PA 19103-1299
PHONE: (215) 587-3509
FAX: (215) 587-0515
†

REGISTRATION AND VOTING INFORMATION

To vote on Election Day, You must meet two requirements: 1. You must be an eligible citizen.
2. You must register as a voter.

You are eligible to vote if: You are a U.S. citizen and you will be 18 years old by the day after election day and you will be a resident of your "election district" for at least 30 days before election day.

You may register in person at your County registration office (in Phila. on the 5th floor of Riverview Place at Delaware Ave. & Spring Garden St. or in Room 138 City Hall; in Suburban County courthouses). *You may also register by mail* by obtaining an application form from your neighborhood post office, library or state liquor store.

You should re-register if:

You have moved; You have changed your name-through marriage, etc.; You have failed to vote in each of the last five regularly scheduled elections; You encountered a mix-up in your registration records at the last election and needed a court order to vote.

You can vote in person at the polling place in your election district (this information can be obtained from your county board of elections) *or by absentee ballot*, if you will be absent from your county of residence because of occupations, business or duties (these can also be obtained from your county board of elections).

You may have assistance in voting only if you have indicated your need for assistance on your registration form.

****October 11, 1994 is the last day to register to vote before the November Election.**

****Absentee ballots for the November Election must be received by November 1, 1994.**

BOARDS OF ELECTION

Philadelphia:	686-3469
Bucks County:	348-6154
Delaware County:	891-4670
Chester County:	344-6410
Montgomery County:	278-3281



ARCHDIOCESE OF PHILADELPHIA

CONGRESSIONAL SCORECARD



How did your
Congressman and Senators
Vote on Issues
Critical to your Family?

DESCRIPTION OF HOUSE VOTES

1. FREEDOM OF ACCESS TO CLINIC ENTRANCES (FACE). May 5, 1994. The so-called freedom of access to clinic entrances bill would make it a federal crime to use either force or "physical obstruction" to interfere with anyone seeking to obtain or provide an abortion. In addition to criminal penalties, the bill allows abortion clinic staff, clinic clients, federal officials, state officials and certain others to file lawsuits against persons who they say have violated the act or intend to do so. Approved 241-174. Archdiocese of Philadelphia opposed this bill.

2. BRADY BILL. HR 1025. November 10, 1993. A bill requiring a five-day waiting period prior to the purchase of a handgun in order to allow officials to conduct a background check. Passed 238-189. Archdiocese of Philadelphia supported this bill.

3. CHOICE IN EDUCATION. Roll Call Vote 494. October 13, 1993. Amendment by Richard Arney (R-TX) to use federal education money for vouchers, magnet schools and other mechanisms to allow parents to decide what schools their children attend. Rejected 300-130. Archdiocese supported this amendment.

4. GOVERNMENT-SANCTIONED HOMOSEXUAL MARRIAGES. Roll Call Vote 315. June 30, 1993. Amendment by Ernest Istook (R-OK) to prohibit the Washington, DC government from registering live-in homosexual partners as married couples and using taxpayer funds to give them the same health care and other benefits normally reserved for married couples. Approved 153-167. Archdiocese of Philadelphia supported this amendment.

FAMILY/MEDICAL LEAVE ACT

HR 1. February 3, 1993. Requires employers of more than 50 employees to provide workers with up to 12 weeks of unpaid leave for family and personal medical emergencies. Passed 265-163. Archdiocese of Philadelphia supported this.

VOTES

Pennsylvania Representative

***District**

	1	2	3	4	5
1 <i>Foglietta</i>	?	+	-	-	-
2 <i>Blackwell</i>	?	+	-	-	-
3 <i>Borski</i>	+	+	?	-	+
6 <i>Holden</i>	+	-	-	+	+
7 <i>Weldon</i>	+	+	+	+	+
8 <i>Greenwood</i>	-	+	+	+	-
13 <i>Mezvinsky</i>	-	+	-	-	-
15 <i>McHale</i>	-	+	-	+	+
16 <i>Walker</i>	+	-	+	+	-

Senator

	1	2	3	4	5
<i>Specter</i>	-	+	-	-	+
<i>Wofford</i>	-	+	+	-	-

**The boundaries of the Archdiocese of Philadelphia fall within these districts.*

GUIDE TO SCORECARD SYMBOLS

- + = Voted or announced in favor of Archdiocese's position.
- = Voted or announced against Archdiocese's position.
- ? = Did not vote and did not announce position.

Names appearing in *italics* are Democrats.

WE RECOMMEND THAT THE VOTING RECORD OF EACH LEGISLATOR BE EXAMINED IN ITS ENTIRETY.

DESCRIPTION OF SENATE VOTES

1. FREEDOM OF ACCESS TO CLINIC ENTRANCES (FACE). May 5, 1994. The so-called freedom of access to clinic entrances bill would make it a federal crime to use either force or "physical obstruction" to interfere with anyone seeking to obtain or provide an abortion. In addition to criminal penalties, the bill allows abortion clinic staff, clinic clients, federal officials, state officials and certain others to file lawsuits against persons who they say have violated the act or intend to do so. Approved 69-30. Archdiocese of Philadelphia opposed this bill.

2. FAMILY AND MEDICAL LEAVE. S 5. February 4, 1993. Requires employers with more than 50 employees to provide their workers with up to 12 weeks of unpaid leave for family and personal medical emergencies. Passed 71-27. Archdiocese of Philadelphia supported this.

3. BRADY BILL. S 414. November 19, 1993. Bill requiring local officials to withhold permission for the purchase of guns for five days during which a background check on the purchaser would be conducted. There was a motion to invoke cloture to allow action on the bill. Rejected 57-41. *Cloture requires 3/5(60 votes) for passage.* Because of public pressure, the Brady bill passed by voice vote on November 24, 1993. Archdiocese of Philadelphia supported this bill.

4. SCHOOL PRAYER. Roll Call Vote 4. July 23, 1992. Amendment by Jesse Helms (R-NC) state the sense of the Senate that the Supreme Court should reverse its decisions prohibiting voluntary prayer and Bible reading in public schools. Rejected 38-55. Archdiocese of Philadelphia supported this amendment.

5. THE ELEMENTARY AND SECONDARY EDUCATION ACT. August 2, 1994. This amendment to the Elementary and Secondary Education Act would cut off federal funding to any school district that promotes homosexuality on a par with heterosexual marriage. The amendment was approved 63-36. Archdiocese of Philadelphia supported this amendment.

**Comparison of Votes Considered and Members Included
in Original and Revised Versions of Diocesan Scorecards
(Bills eliminated in revised version in italics)**

U.S. House of Representatives

Original House Scorecard

- 1. *Taxpayer-Funded Abortion*
- 2. Brady Bill
- 3. *Fetal Tissue Research*
- 4. Choice in Education
- 5. Prohibition of Government-Sanctioned Homosexual Marriages
- 6. Family/Medical Leave Act

Revised House Scorecard

- 1. FACE
- 2. Brady Bill
- 3. Choice in Education
- 4. Government-Sanctioned Homosexual Marriages
- 5. Family/Medical Leave Act

Original House Members listed (CD)

- | | |
|---------------|----------------|
| Foglietta (1) | Kanjorski (11) |
| Blackwell (2) | Murtha (12) |
| Borski (3) | Mezvinsky (13) |
| Klink (4) | Coyne (14) |
| Clinger (5) | McHale (15) |
| Holden (6) | Walker (16) |
| Weldon (7) | Gekas (17) |
| Greenwood (8) | Santorum (18) |
| Shuster (9) | Goodling (19) |
| McDade (10) | Murphy (20) |
| | Ridge (21) |

Revised House Members Listed (CD)

- | | |
|---------------|----------------|
| Foglietta (1) | Weldon (7) |
| Blackwell (2) | Greenwood (8) |
| Borski (3) | Mezvinsky (13) |
| Holden (6) | McHale (15) |
| | Walker (16) |

U.S. Senate

Original Senate Scorecard Votes

- 1. *Taxpayer-Funded Abortions*
- 2. Family/Medical Leave
- 3. Brady Bill
- 4. School prayer
- 5. Amendment to the Elementary & Secondary Education Act

Revised Senate Scorecard Votes

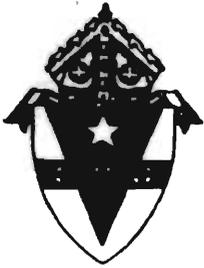
- 1. FACE
- 2. Family Medical Leave
- 3. Brady Bill
- 4. School Prayer
- 5. Elementary & Secondary Education Act

Member and Old Positive Score

- Specter (2)
- Wofford (3)

Member and New Positive Score

- Specter (2)
- Wofford (2)



ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299 • 215/587-3507 • FAX 215/587-0315

OFFICE of SECRETARIAT
for EXTERNAL AFFAIRS

October 3, 1994

Dear Monsignor/Father:

Enclosed you will find the *Congressional Scorecard* prepared by the Office for Public Affairs. We are hopeful this scorecard will assist your parishioners in making informed decisions in the upcoming November elections.

For your information, the votes were chosen by either the Archdiocesan Office responsible for the issue or the Pennsylvania Catholic Conference (PCC). The entire brochure has been reviewed by Mr. Philip Murren, Esq., counsel to the PCC for accuracy and legality.

This scorecard along with the voter guide which will be published in the October 20th issue of the *Catholic Standard and Times* should provide the means necessary for each parishioner to be well-informed this November. You may want to order additional copies of the October 20th edition of the *Catholic Standard and Times* (587-3667) for sale or distribution in your church.

We are optimistic that this project will be of great value as we enter the fall elections. We ask that you distribute the brochures in a timely manner and in a way most appropriate to your local circumstances. If you need additional copies or if you would like to offer helpful comments on future editions of the brochure, please do not hesitate to call at 587-3509.

Thank you for your support. We look forward to being of service.

May Our Lord continue to richly bless you.

Sincerely,

CHARLES G. LEWIS
Secretary

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299
Telephone (215) 587-3509 • Fax (215) 587-0515

OFFICE for PUBLIC AFFAIRS

FILE COPY

MEMORANDUM

October 12, 1994

TO: Bishop Edward P. Cullen
Vicar for Administration

FR: Karen Keller 
Office for Public Affairs

RE: Scorecard

Bishop Cullen:

Enclosed please find information that will back up the following story. I am sorry to bother you with this, but you are the only person that can help.

In August, Mr. Lewis asked me to do a scorecard like the one put out by the Christian Coalition. I was asked to do an Archdiocese version, copying most of the material. When I saw pluses and minuses in the Christian Coalition's scorecard, I was immediately concerned. I questioned this with Mr. Lewis. I was told to move ahead. I then went to Mr. Bock with the Christian Coalition version and our new one and told him of my concerns (see section 1 of folder). He picked up the scorecards, glanced at them and said "looks good to me". In that meeting, I also expressed my concern about Mr. Lewis' involvement with the Christian Coalition and also with political activity. Mr. Bock thanked me "for sharing".

Still very concerned about the scorecard, I did the scorecard because it was my job. I faxed the scorecard to Mr. Phil Murren, who shared my concerns about the pluses and minuses (see section 2 of folder). I shared Mr. Murren's insights with Mr. Lewis. Mr. Lewis still wanted it to go out. Mr. Lewis asked me to fax it to Gail Pedrick of the Christian Coalition (see section 4 of folder).

We started getting calls of complaint regarding the scorecard from Howard Fetterhoff, Denise Neary, Rick Santorum's campaign office and Gail Pedrick. I was a little disturbed that

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all of these people had gotten a copy of the scorecard when it hadn't even gone to the printer yet. The complaints from Gail Pedrick, Denise Neary and Howard Fetterhoff were that the abortion question in the scorecard was one that Harris Wofford voted with us (out of the three abortion votes this year, Mr. Wofford voted with us on 2 and against us on 1). They also complained that it made Wofford look just as good or better than Rick Santorum. Rick Santorum's campaign complained of the above issue as well as the school choice question. Mr. Santorum voted against school choice but has since changed his mind.

At first, Mr. Lewis thought we should put in a "blurb" that Mr. Santorum has changed his position on School Choice. I told Mr. Lewis I felt it was wrong to put in the blurb because we were not going to do that for all of the candidates and it would appear as if we were supporting Mr. Santorum which is against the guidelines. Mr. Lewis then spoke to Mr. Fetterhoff and then told me to change the scorecard. The 150,000 scorecards had just come in from the printer (please see section 5 of folder). Isn't it against the guidelines to support, endorse or oppose a political candidate? Isn't rearranging an Archdiocesan scorecard so that one candidate looks bad and one looks good against the guidelines? A scorecard is a scorecard and votes tell just that - how a politician voted on a particular issue. I thought the Archdiocese was non-political, a 501c3 institution? I may not agree with the particular position of a politician, but a scorecard must be fair. Take a look at the #1 question on the scorecard. Does that seem a little one-sided to you - the "so-called" bill and "against persons who they say have violated the act...?"

I had not even an hour to make changes and I was also told to give Mr. Lewis a description of my workday. I gave the scorecard to Mr. Lewis and Mr. Fetterhoff to make sure that all was ok before it went out again to be printed. They both approved it (see section 6 of folder). I sent it to be reprinted and mailed it all out with the help of Margaret Siro and Mary Wech.

It has now come to my attention that there are mistakes in the scorecard. And frankly, Bishop, I am angry to be put in this position. I have been through quite a bit here, but still remain because of my feelings for this institution. I have been a loyal employee and have given 150% of myself to this Church. Do you know what it is like to be afraid to leave your office because you do not know what will happen if you don't catch that phone call to tell the person on the other end that it is wrong to get signatures for a political candidate in the back of a church? I have been to Mr. Bock on three occasions regarding Mr. Lewis and the problem situation in this office. I am very concerned for the Archdiocese because of the amount of political activity coming out of our office. When I raised these concerns with Mr. Bock, I was told that these were "shades of gray" and the Archdiocese is too big to get into trouble with the IRS. He also said that you can watch a criminal who you know is going to rob a store but you can't do anything until he does it. What happened to preventive care? Are not the eyes and ears of three staff people in Mr. Lewis' office enough? Isn't the fact that one staff person has left, one has resigned and the other has a transfer request in sending a signal that there are major problems down here? Is anyone even praying for us? I was told by a member of the Human Resources office, "apparently, the Administration is supporting Mr. Lewis". Does the work here I do and the time I have put in here count for anything?

I know now that you are my last hope, the Office of Public Affairs' last hope. All I am asking for is that you give me a chance, that you listen to what I have to tell you. If it is indeed this Administration's policy to deal in gray areas and instead of black and white, right and wrong, than I will know that I have no place here. I would appreciate your response. Thank you for your time.

■ CAMPAIGN '94

Political scorecard becomes an issue

Conservatives press Philly archdiocese

By Brett Lieberman
States News Service

A political scorecard by the Archdiocese of Philadelphia that made Democratic Sen. Harris Wofford "look just as good or better than Rock Santorum" was destroyed and another version was printed after GOP and conservative groups objected, according to internal archdiocese documents.

The archdiocese, which spent \$12,000 printing 150,000 scorecards that rated lawmakers with a "+" or "-", destroyed them and paid \$9,000 for a second version after anti-abortion groups, the Christian Coalition and Santorum's campaign objected.

The second scorecard was rearranged to make Wofford less appealing, the documents show. This version did not include Santorum, the Republican U.S. Senate candidate, and other candidates west of Lancaster.

Archdiocese officials did not return telephone calls over a two-day period. More than 1.4 million Catholics in central and eastern Pennsylvania are in parishes under the archdiocese's jurisdiction.

Religious institutions cannot endorse candidates because of their tax-exempt status, but internal memos and the scorecards show the archdiocese made changes that favored Santorum.

The issue raises questions about whether the archdiocese bowed to pressure from conservative groups and Santorum's campaign, as well as whether the activities violated the archdiocese's tax-exempt status.

The concerns raised in the documents were over abortion and school choice votes by Santorum and Wofford, according to documents.

Santorum, as does the Catholic Church, opposes abortion in all cases, but Wofford supports abortion with some restrictions, such as a 24-hour wait. The Christian Coalition, Pennsylvania Pro-Life Federation and the Pennsylvania Catholic Conference complained that Wofford's stance on abortion in the original scorecard was in line with the church's position on that issue.

See SENATE — Back Page

For Patriot News, Bureau, P. 1, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

■ CAMPAIGN '94

Archdiocese memos track anti-Wofford pressure

SENATE — From Page A1

Santorum's campaign also complained that the scorecard gave him a "+" for a school-choice vote but the candidate later changed his position after the congressional vote.

The first scorecard showed Wofford's votes matched Catholic Church positions on three of five issues, while Santorum's votes matched only three of six church positions. The second scorecard reported Wofford voted with the church on only two of five occasions.

People mentioned in the memo as complaining about the first scorecard — Gal Pedrick, the Christian Coalition's Bucks County coordinator, and Denise Neary, of the Pro-Life Federation — refused to comment or did not re-

turn calls.

Howard Feltzhoff, executive director of the Pennsylvania Catholic Conference, said there was "just some misleading stuff in there." But he said he didn't recall what he thought should be changed.

Santorum spokesman Mike Mitalak said the campaign made one "informational" phone call to the archdiocese asking how the scorecard was calculated.

"We had received some calls from supporters of Rick's," Mitalak said. "They felt that Rick's score was not as reflective as his support for positions held by him."

The internal memos from August through mid-October detail the changes made to the scorecards at the request of the conservative groups, and concerns raised by at least one archdiocese

employee.

The employee, Karen Keller, a special projects coordinator in the archdiocese's public affairs office, questioned whether the organization could create a scorecard without jeopardizing its tax-exempt status, and she also complained that changes made in the scorecards made one candidate look better.

Keller's concerns were discussed in memos she wrote, including one Oct. 12 to Bishop Edward P. Cullen, vicar for administration.

"We started getting calls of complaint. . . I was a little disturbed that all these people had gotten a copy of the scorecard when it hadn't even gone to the printer yet," Keller wrote to Cullen. "The complaints . . . were that the abortion question in the scorecard was one that Harris

Wofford voted with us. They also complained that it made Wofford look just as good or better than Rock Santorum."

Keller confirmed she wrote the memos, but declined to comment saying, "It's not my job."

Keller, in the memo, told Cullen she was "very concerned for the archdiocese because of the amount of political activity."

But when she voiced her concerns to James Beck, associate vicar for administration, "I was told that these were 'shades of gray' and the archdiocese is not to get into [political] with the IRS."

"He said that you can watch a criminal who you know is going to rob a store but you can't do anything until he does," Keller wrote, referring to the archdiocese.

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 1, 1995

Frances Kissling
1436 U Street, NW
Suite 301
Washington, DC 20009-3997

Dear Ms. Kissling:

This is to acknowledge receipt on October 26, 1995, of your letter dated October 25, 1995. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

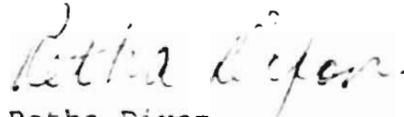
Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your

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complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,



Retha Dixon
Docket Chief

Enclosure

cc: Archdiocese of Philadelphia

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street • Philadelphia, Pennsylvania 19103-1299 • (215) 587-0511
Fax (215) 587-0512

OFFICE FOR LEGAL SERVICES

November 9, 1995

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 13 9 39 AM '95

Ms. Retha Dixon
Docket Chief of the Federal
Election Commission
Washington, D.C. 20463

Dear Ms. Dixon:

On November 6, 1995, the Archdiocese of Philadelphia received its copy of your letter to Ms. Frances Kissling advising that a group she represents, namely, Catholics for a Free Choice, has fifteen days in which to amend a complaint filed against the Archdiocese of Philadelphia for alleged violations of Federal Election Regulations during the 1994 Congressional campaign.

The Archdiocese of Philadelphia is a large institution with many departments and it would be very much appreciated if there are further communications in this matter that they be sent to the following address so that the Archdiocese might respond in a timely fashion:

Office for Legal Services
Archdiocese of Philadelphia
222 North 17th Street
Philadelphia, PA 19103-1299.

Thank you for your courtesies in this matter.

Sincerely,

M. J. Fitzgerald

Rev. Michael J. Fitzgerald, J.D., J.C.D.
Director, Office for Legal Services

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

President
Frances Kissling

November 20, 1995

MUR 4282

Vice Presidents
Gregory G. Lebel
Denise Shannon

Retha Dixon, Docket Chief
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Board of Directors
Angela Bonavoglia

Sylvia Cancio
Stephen Collins

Dear Ms Dixon

Mary Gordon
Mary Hunt

Enclosed is a second copy of our letter of complaint against the Diocese of Philadelphia. The original complaint was returned to us due to incorrect wording in the notary's statement. That language has been corrected and the signature notarized once again.

Daniel Maguire
Giles Milhaven

This correction was made within the 15-day period referred to in your letter of November 1, 1995. Unfortunately, federal government offices -- including the FEC -- were closed for the last few days of that time frame. Therefore, I am submitting this corrected letter to you today on the assumption that, due to this circumstance, you will accept the correction as timely. If this is not the case, please notify me so that I may take the necessary steps to insure the appropriate processing of this complaint.

Eileen Moran

Thank you for your assistance

Marysa Navarro Aranguren
Rosemary Radford Ruether

Yours very truly,

Flora Rodriguez Russel
Marcela von Varano

Gregory G. Lebel
Vice President for Public Policy

Peter Wilderotter
Susan Wysock



MUR 4282

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

President
Frances Kissling

October 25, 1995

Vice Presidents
Gregory G. Lebel
Denise Shannon

Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Board of Directors
Angela Bonavoglia
Sylvia Cancio

Dear Sir:

Stephen Collins
Mary Gordon
Mary Hunt

On behalf of Catholics for a Free Choice, I submit the following complaint alleging violations of the Federal Election Campaign Act (FECA) by the Roman Catholic Archdiocese of Philadelphia, Pennsylvania. It is our contention that the Archdiocese of Philadelphia violated FECA regulations in September, 1994 in conducting certain activities related to the 1994 Congressional campaigns in the state of Pennsylvania.

Daniel Maguire
Giles Milhaven
Eileen Moran

Background

Marysa Navarro Aranguen
Rosemary Radford Ruether
Flora Rodriguez-Rusler
Marcela von Vacano
Peter Wilderotter
Susan Wysock

The complaint involves preparation of a candidates' voting record (referred to in internal memoranda as a scorecard) in the fall of 1994, in which the Archdiocese of Philadelphia's Office for Public Affairs modified information included in the scorecard after having received input from one of the campaign organizations involved in the US Senate race being conducted at that time. Specifically, in September, 1994, the Archdiocesan Office for Public Affairs produced a document, intended for distribution at Catholic churches in the archdiocese, listing a series of Congressional bills and the roll call votes recorded by selected candidates for federal offices in Pennsylvania. Subsequently, this document was substantially modified based at least in part on contacts with the Senate campaign of then-US Representative Rick Santorum. This revision took the form of changing the original listing of roll call votes (Exhibits 11 and 12), thereby producing a score for Mr. Santorum's opponent, Senator Harris Wofford that was lower in the final version than it was in the original. In addition, Senate candidate Santorum, along with other candidates were eliminated in the final printed list of candidates. A side-by-side comparison of the two versions of the scorecard appears in Exhibit 13.

Lawrence M. Noble, General Counsel
Federal Election Commission
October 25, 1995
Page Two

FEC regulations (11CFR 114.4(c)(5)) that were in effect in September, 1994, clearly state that the development of voting records must be accomplished free of involvement by political parties or candidates

A corporation or labor organization may prepare and distribute to the general public the voting records of members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party. The decision on content and the distribution of voting records shall not be coordinated with any candidate, groups of candidates, or political party.

Current federal regulations as promulgated in January, 1995, (11CFR 114.4(b)(4), state that:

A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election.

We believe that the attached exhibits show that the Archdiocese of Philadelphia was out of compliance with federal regulations in both their iterations.

Included with this cover letter are several exhibits supporting our complaint. Most notable is an internal memorandum to Bishop Edward P. Cullen, Vicar for Administration of the Archdiocese of Philadelphia, dated October 12, 1994, from Ms. Karen Keller of the Office for Public Affairs and the person responsible for production of the Archdiocese's Congressional scorecard. In it, Ms. Keller expresses her concerns that the effort is dangerously close to endorsing the candidacy of Representative Santorum. Ms. Keller cites one specific instance in which she was aware that there was communication between those developing the scorecard and representatives of the Santorum Senate campaign prior to the release of the scorecard. Ms. Keller states on page 2 of this October 12th memo that, "Rick Santorum's campaign complained of the above issue (that the original version of the scorecard made incumbent Senator Wofford look as good as or better than Representative Santorum) as well as the school choice issue." (Exhibit 15) It was following this assertion that she was directed to destroy the original scorecard and develop and print a new, significantly modified version. These points as outlined in Ms. Keller's memorandum support our allegation that the archdiocese was out of compliance with regulations in draft form at the time.

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Lawrence M. Noble, General Counsel
Federal Election Commission
October 25, 1995
Page Three

FECA prohibits corporate entities from attempting to influence federal elections (2USC 441b[a]). The Philadelphia Archdiocese's preparation of its voting record in conjunction with a voter guide amounts to just such prohibited express advocacy. In a letter dated October 3, 1994 and sent to all parishes in the Philadelphia archdiocese, Mr. Charles Lewis of the archdiocesan Secretariat for External Affairs, clarifies the intent of his office's publication when he states, "This scorecard along with the voter guide which will be published in the October 20th issue of the *Catholic Standard and Times* should provide the means necessary for each parishioner to be well-informed this November." (Exhibit 14)

We have included copies of both the original scorecard (Exhibit 11) and the revised scorecard (Exhibit 12), which was eventually distributed to parishioners throughout the archdiocese and printed in the archdiocesan newspaper, *Catholic Standard and Times*, on October 20, 1994, along with the voter guide referenced in Mr. Lewis in his October 3, 1994 letter.

Conclusion

We believe that these activities constitute violations of federal election law, and we respectfully and urgently request that the Office of General Counsel initiate the complaint review process as required by law, and that the FEC

- (1) conduct a prompt and immediate investigation of the facts stated in this complaint,
- (2) enter into a conciliation with the Respondents to remedy the violations alleged in this complaint and, more importantly, to ensure that no further violations occur, and
- (3) impose any and all appropriate penalties authorized under law.

Respectfully submitted,


Frances Kissling
President

Subscribed and sworn to before me on this 10 day of October 1995

My Commission Expires
August 14, 1998

LAW OFFICES
BALL, SKELLY, MURREN & CONNELL

511 N SECOND STREET

P.O. BOX 1108

HARRISBURG, PENNSYLVANIA 17108-1108

(717) 292-6731

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JOSEPH G SKELLY
PHILIP J MURREN
RICHARD E CONNELL
MAURAK QUINLAN
ELIZABETH B PLACE
TERESA R MCCORMACK

COUNSEL TO THE FIRM
WILLIAM BENTLEY BALL

November 20, 1995

MUR 4282

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Noble:

We recently received notice of an attempted filing of a Complaint against the Archdiocese of Philadelphia by Frances Kissling on behalf of Catholics for a Free Choice. Ms. Retha Dixon, Docket Chief of the FEC, responded to Ms. Kissling by noting that the Complaint contained technical deficiencies and informing her of her right to file another Complaint correcting these technical deficiencies. If such a Complaint has been refiled, on behalf of the Archdiocese, we ask that it be summarily dismissed for the following reasons.

1. The FEC regulations referred to in the Complaint do not apply to the Archdiocese. First, the Archdiocese is not a corporation or a labor union. It is a part of the Roman Catholic Church and is not incorporated. Therefore, the limitations imposed by 11 CFR §114, et seq. (which apply to activities by corporations and labor organizations) do not apply to it. Second, the voting records which were distributed by the Archdiocese were provided to pastors of parishes within the Archdiocese to be given to parishioners of those parishes (i.e., members of the Church). They were not distributed to members of the "general public." Thus, §114.4(b) does not apply to the voting records distributed by the Archdiocese.

2. Even if one assumed, arguendo, that the above-referenced FEC regulations did apply to the Archdiocese, the activities of the Archdiocese would not have violated those regulations. First, it cannot seriously be claimed that the voting records which were distributed by the Archdiocese violated either the spirit or the letter of the regulations in question. Nor can it credibly be claimed that they favored Rep. Santorum over Sen. Wofford. The voting record addressed a range of issues of interest to the Church, upon which Sen. Wofford and Sen. Specter had voted. It accurately reflected their votes. Likewise, the voting records of

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Congressional Representatives whose congressional districts fell within the boundaries of the Archdiocese were accurately reflected. Rep. Santorum's district was not within the borders of the Archdiocese and, thus, no record of his votes was even listed in the voting record in question. Accordingly, it is inconceivable that anyone could claim that the voting record which was distributed to pastors favored Rep. Santorum over Sen. Wofford. There simply was no information available in the voting record by which any comparison of Sen. Wofford and Rep. Santorum (favorable or otherwise) could be made.

Moreover, the Supreme Court has held that the term "expenditures" under §441b refers "only to funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." FEC v. Massachusetts Citizens for Life, 479 U.S. 238; 248-249 (1986), quoting, Buckley v. Valeo, 424 U.S. 1, 80 (1976) (emphasis supplied). Indeed, a finding of "express advocacy" was held to require "the use of language such as 'vote for,' 'elect,' 'support,' etc." Id. Nothing in the voting record, attached to the Complaint as Exhibit 12, remotely constitutes such "express advocacy" for or against Sen. Wofford or Rep. Santorum.

For the above reasons, we request that any Amended Complaint against the Archdiocese be dismissed summarily. Furthermore, we note that any attempt to apply these regulations to the Archdiocese would violate the First Amendment rights guaranteed to it by the United States Constitution.

Very truly yours,



Maura K. Quinlan

MKQ/nll

cc: Rev. Michael J. Fitzgerald, J.D., J.C.D.

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 1 10 23 AM '95

MUR 4282

NAME OF COUNSEL: Maura K. Quinlan, Esquire
Philip J. Murren, Esquire

FIRM: Ball, Skelly, Murren & Connell

ADDRESS: 511 North Second Street

P.O. Box 1108

Harrisburg, PA 17108-1108

TELEPHONE: (717) 232-8731

FAX: (717) 232-2142

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11-29-95
Date

Melody Fitzpatrick
Signature

RESPONDENT'S NAME: Archdiocese of Philadelphia

ADDRESS: 222 North 17th Street

Philadelphia, PA 19103-1299

TELEPHONE: HOME() _____

BUSINESS(215) 587-0511

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 27, 1995

Gregory G. Lebel
Vice President for Public Policy
Catholics for a Free Choice
1436 U Street, NW
Washington, D.C. 20009-3997

RE: MUR 4282

Dear Mr. Lebel:

This letter acknowledges receipt on November 20, 1995, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4282. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 27, 1995

Michael J. Fitzgerald, J.D., J.C.D.
Office for Legal Services
Archdiocese of Philadelphia
222 North 17th Street
Philadelphia, PA 19103-1299

RE: MUR 4282

Dear Mr. Fitzgerald:

The Federal Election Commission received a complaint which indicates that the Archdiocese of Philadelphia, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4282. 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 the Archdiocese of Philadelphia in this matter. 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. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 27, 1995

Judith M. McVerry, Treasurer
Santorum '94
P.O. Box 10495
Pittsburgh, PA 15234

RE: MUR 4282

Dear Ms. McVerry:

The Federal Election Commission received a complaint which indicates that Santorum '94 ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4282. 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 the Committee and you, as treasurer, in this matter. 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. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: The Honorable Rick Santorum

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LAW OFFICES
BALL, SKELLY, MURREN & CONNELL

511 N SECOND STREET
P O BOX 1108

HARRISBURG, PENNSYLVANIA 17108-1108

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JOSEPH G SKELLY
PHILIP J MURREN
RICHARD E CONNELL
MAURA K QUINLAN
ELIZABETH B PLACE
TERESA R MCCORMACK

COUNSEL TO THE FIRM
WILLIAM BENTLEY BALL

December 7, 1995

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Complaint Against the Archdiocese of Philadelphia
MUR 4282

Dear Mr. Noble:

We represent the Archdiocese of Philadelphia in the above-referenced matter. This letter is filed in response to the Complaint filed by Ms. Kissling alleging violations of certain FEC regulations. For the following reasons we request that the Complaint be summarily dismissed.

1. The FEC regulations referred to in the Complaint do not apply to the Archdiocese. First, the Archdiocese is not a "corporation" or a "labor organization." It is a part of the Roman Catholic Church and is not incorporated. Therefore, the limitations imposed by 11 CFR §114 et seq. (which apply to activities by corporations and labor organizations) do not apply to it. Second, the voting records which were distributed by the Archdiocese were provided to pastors of parishes within the Archdiocese to be given to parishioners of those parishes (i.e., members of the Church). They were not distributed to members of the "general public." Thus, §114.4(b) does not apply to the voting records distributed by the Archdiocese.

2. Even if one assumed, arguendo, that the above-referenced FEC regulations did apply to the Archdiocese, the activities of the Archdiocese would not have violated those regulations. First, it cannot seriously be claimed that the voting records which were distributed by the Archdiocese violated either the spirit or the letter of the regulations in question. Nor can it credibly be claimed that they favored Rep. Santorum over Sen. Wofford.

The voting record addressed a range of issues of interest to the Church, upon which Sen. Wofford and Sen. Specter had voted. It accurately reflected their votes.

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Likewise, the voting records of Congressional Representatives whose congressional districts fell within the boundaries of the Archdiocese were accurately reflected. Rep. Santorum's district was not within the borders of the Archdiocese and, thus, no record of his votes was even listed in the voting record in question. See, Exhibit 12 attached to the Complaint. Accordingly, it is inconceivable that anyone could claim that the voting record which was distributed to pastors favored Rep. Santorum over Sen. Wofford. There simply was no information available in the voting record by which any comparison of Sen. Wofford and Rep. Santorum (favorable or otherwise) could be made.

Moreover, the Supreme Court has held that the term "expenditures" under §441b refers "only to funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." FEC v. Massachusetts Citizens for Life, 479 U.S. 238; 248-249 (1986), quoting, Buckley v. Valeo, 424 U.S. 1, 80 (1976) (emphasis supplied). Indeed, a finding of "express advocacy" was held to require "the use of language such as 'vote for,' 'elect,' 'support,' etc." Id. Nothing in the voting record, attached to the Complaint as Exhibit 12, remotely constitutes such "express advocacy" for or against Sen. Wofford or Rep. Santorum. See also, Faucher v. F.E.C., 928 F.2d 468 (1st.Cir. 1991).

For the above reasons, we request that the Amended Complaint against the Archdiocese be dismissed summarily. Furthermore, we note that any attempt to apply these regulations to the Archdiocese would violate the First Amendment rights guaranteed to it by the United States Constitution.

Very truly yours,


Maura K. Quinlan

MKQ/nll

cc: Rev. Michael J. Fitzgerald, J.D., J.C.D.

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STATEMENT OF DESIGNATION OF COUNSEL

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MUR 4282

NAME OF COUNSEL: H. Woodruff Turner; Robert L. Byer Roger M. Adelman

FIRM: Kirkpatrick & Lockhart Kirkpatrick & Lockhart

ADDRESS: 1500 Oliver Building South Lobby, 9th Floor
Pittsburgh, PA 15222 1800 M Street, N.W.
Washington, D.C.
20036

TELEPHONE: (412) 355-6500 202-778-9270

FAX: (412) 355-6501 202-778-9100

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11-30-95
Date

Judith M. McVey
Signature

RESPONDENT'S NAME: SANSEUM 94

ADDRESS: P.O. Box 10495
PITTSBURGH PA 15234

TELEPHONE: HOME()

BUSINESS()

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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KIRKPATRICK & LOCKHART LLP

1500 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222-2312

TELEPHONE (412) 355-6500
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H. WOODRUFF TURNER
(412) 355-6478
turnerhw@kl.com

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OFFICE OF GENERAL
COUNSEL
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December 14, 1995

BY FACSIMILE

Ms. Mary L. Taksar, Attorney
Central Enforcement Docket
Federal Election Commission
Washington, D.C. 20463

Re: MUR 4282

Dear Ms. Taksar:

In accordance with the previously filed Designation of Counsel, we represent the Santorum '94 Committee and Ms. Judith M. McVerry, treasurer of that committee. This letter is in response to your letter of November 27, 1995 addressed to Ms. McVerry requesting comment concerning the Complaint which is under review at the above-referenced identification number.

The Complaint does not allege any violation by Santorum '94 or its treasurer.

Our review of the facts on behalf of our clients indicates that a representative of the Santorum committee, in reaction to a complaint received from a voter in Central Pennsylvania, called a representative of the Roman Catholic Archdiocese of Philadelphia, complained that a "scorecard" prepared by the Archdiocese portrayed Senator Wofford in a better light than then-Congressman Santorum and asked how this was done. The Archdiocese representative explained the process which was followed in arriving at the "scorecard." The representative of the Santorum committee expressed his disagreement, and that was the end of the conversation.

We are aware of no further communication between any representative of the Santorum '94 Committee and the Archdiocese concerning the "scorecard." Any decision to revise the scorecard was made the Archdiocese on its own and without any coordination with or direction from the Santorum '94 Committee.

Ms. Mary L. Taksar, Attorney
December 14, 1995
Page 2

Therefore, we respectfully suggest that there would be no basis for a conclusion that Santorum '94 or its treasurer violated the Federal Election Campaign Act.

Please let me know if you require any further information. Thank you for your cooperation.

Sincerely,



H. Woodruff Turner

HWT/dmh

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 4282
Date Complaint filed: November 20, 1995
Date Activated: March 22, 1996
Staff Members: Stephan O. Kline
Tony Buckley

COMPLAINANT: Catholics for a Free Choice

RESPONDENTS: Archdiocese of Philadelphia
Santorum '94 and Judith M. McVerry, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431 (11)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.22
11 C.F.R. § 104.13(a)(1), (2)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

MUR 4282 arose from a complaint received by the Federal Election Commission ("Commission") on November 20, 1995. Catholics for a Free Choice ("Complainant") alleged that the Roman Catholic Archdiocese of Philadelphia ("Archdiocese") violated provisions of the Federal Election Campaign Act of 1971, as amended ("Act" or "FECA"). Respondents -- the Archdiocese; and Santorum '94 and Judith M. McVerry, as treasurer -- were notified of the

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complaint on November 27, 1995. The Archdiocese responded to the complaint on December 11, 1995. Santorum '94 responded to the complaint on December 18, 1995.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The FECA states that no person shall make a contribution to a candidate for federal office, or his or her authorized committee, in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political committees are prohibited from knowingly accepting any contribution in violation of Section 441a. 2 U.S.C. § 441a(f). Pursuant to 2 U.S.C. § 441a(a)(7)(B)(i), expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, his or her authorized political committees, or their agents, shall be considered to be a contribution to such a candidate. Cf. 11 C.F.R. § 109.1(b)(4) (pertaining to whether instances of express advocacy are independent or coordinated expenditures).¹

Under the Act, "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11). A contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). An expenditure includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(9)(A)(i). "[A] communication

¹ See also Colorado Republican Fed. Campaign Comm. v. FEC, 1996 WL 345766 (June 26, 1996) (to demonstrate coordination in a party committee's advertising campaign between the party committee and its candidate, there must be evidence that the party had a "general or particular understanding" with the candidate).

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made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable [in-kind] 'contribution'." AO 1988-22.

New regulations, which became effective on October 5, 1995, codified the Commission's position on the definition of "express advocacy." Express advocacy includes a number of phrases explicitly set forth in Buckley v. Valeo, 424 U.S. 1 (1976), or the communication of campaign slogans or individual words which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 C.F.R. § 100.22. A section of the new regulations provides an alternative method of showing express advocacy when taken as a whole and with limited reference to external events, such as the proximity to the election, the communication could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate because the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning.²

Pursuant to 2 U.S.C. § 434(b)(3)(A), a political committee's periodic reports of receipts and disbursements shall contain the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contributions have an aggregate amount or value in excess of \$200 within the calendar year. Pursuant to 2 U.S.C. § 434(b)(5)(A), each report shall also contain the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting to meet a candidate or committee operating expense, together with the date, amount, and purpose of

² A Maine district court in Maine Right to Life Committee, Inc. v. FEC, 914 F. Supp. 8 (D. Maine, 1996) (*motion to reconsider denied* March 12, 1996), recently declared this second method of demonstrating express advocacy to be invalid. The Commission is appealing this decision.

such operating expenditure. An in-kind contribution shall be reported as both a contribution and an expenditure by the recipient committee. See 11 C.F.R. § 104.13(a)(1), (2).

B. Complaint

Complainant states that the Archdiocese violated the Act in its preparation of a voting record or scorecard because the Archdiocese revised information included in the voting record after receiving input from the Senate campaign of then-Representative Rick Santorum who was running against the incumbent, Senator Harris Wofford. According to Complainant, the Archdiocese changed its original selection of roll call votes to produce a lower number of positions where Senator Wofford supported the Archdiocese's position. The Archdiocese also removed certain incumbents from its scorecard, including Mr. Santorum. Complainant submitted internal Archdiocese letters and documents written by Karen Keller, a special projects consultant within the Office for Public Affairs of the Archdiocese, which substantiate these allegations. Attachment 1. In these materials Ms. Keller expresses her concern that the production of the scorecard is "dangerously close to endorsing the candidacy of Representative Santorum." complaint at 2, and that there was communication between those developing the scorecard and Santorum '94.

C. Responses

1. Archdiocese of Philadelphia

The Archdiocese states that the voting record at issue was provided to pastors of parishes within the Archdiocese to be given to parishioners and was not distributed to the general public. The Archdiocese insists that the voting record accurately reflected the votes of those congressional representatives whose districts fell within the boundaries of the Archdiocese and

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that it is "inconceivable that anyone could claim that the voting record which was distributed to pastors favored Rep. Santorum over Sen. Wofford. There simply was no information available in the voting record by which any comparison of Sen. Wofford and Rep. Santorum (favorable or otherwise) could be made." Archdiocese response at 2. The Archdiocese also states that nothing in its scorecard constitutes express advocacy for or against Senator Wofford or Representative Santorum. The Archdiocese does not deny that it was contacted by the Santorum Committee regarding the scorecard, or that the scorecard was revised, at least in part, in response to concerns expressed by the Santorum Committee.

2. Santorum '94 and Judith M. McVerry, as treasurer

Santorum '94 and Judith M. McVerry, as treasurer ("Santorum Committee" or "Committee") deny violating the Act. The Santorum Committee states that it received a complaint from a voter in Central Pennsylvania about the voting record at issue in this matter. In response to that complaint, a representative from the Santorum Committee called the Archdiocese and

complained that a "scorecard" prepared by the Archdiocese portrayed Senator Wofford in a better light than then-Congressman Santorum and asked how this was done. The Archdiocese representative explained the process which was followed in arriving at the "scorecard." The representative of the Santorum committee expressed his disagreement, and that was the end of the conversation.

Santorum Committee response at 1. The Santorum Committee claims it is unaware of further communication between the Archdiocese and the Committee concerning the scorecard and any decision to revise the scorecard was made by the Archdiocese without coordination or direction from the Santorum Committee.

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D. **Analysis**

As will be set forth in more detail below, information provided by the Complainant suggests that coordination may have taken place between the Archdiocese and the Santorum Committee in connection with a scorecard distributed by the Archdiocese. It appears that the Archdiocese prepared a draft scorecard which included all of Pennsylvania's incumbent members of Congress on key votes of interest to the Archdiocese. According to information received with the complaint, the Archdiocese then faxed the draft scorecard to the Christian Coalition. Subsequently, information submitted to the Commission suggests that the Archdiocese received negative reactions to the scorecard from the Christian Coalition, the Pro-Life Federation, the Pennsylvania Catholic Conference and the Santorum Committee, because the scorecard showed that Senator Wofford supported a greater number of the Archdiocese's positions than Representative Santorum.³

According to the information received to date, it appears that at least in part as a result of contacts with the Santorum Committee, significant revisions were made to the scorecard produced and distributed by the Archdiocese. According to information received from the Complainant, the Archdiocese eliminated the voting record of Representative Santorum (and all representatives outside the boundaries of the Archdiocese) so no comparison could be made between him and Senator Wofford. Just as significant, it appears that the Archdiocese eliminated an issue on which Senator Wofford had voted in support of the Archdiocese's position, and

³ The Pennsylvania Catholic Conference appears to be a subsidiary of the United States Catholic Conference which, according to the Gale Encyclopedia of Associations, is the "[c]ivil entity of the American Catholic Bishops [which] . . . [p]rovides an organized structure and the resources needed to insure coordination, cooperation, and assistance in the public, educational, and social concerns of the Church at the national, regional, state, interdiocesan and . . . diocesan levels."

added an issue on which he had voted against the Archdiocese's position, reducing his agreement with the Archdiocese to two out of five issues. The Archdiocese ultimately destroyed 150,000 copies of the original scorecard.

In support of the allegations of coordination between the Santorum Committee and the Archdiocese, Complainant included copies of both the original and revised scorecards as well as a document comparing the two versions. Attachment 1 at 13-15. The original version included votes of interest to the Archdiocese from all of Pennsylvania's members of Congress -- 21 members of the House of Representatives and 2 Senators. The original scorecard included six House votes and five Senate votes. The revised version included nine United States Representatives -- only those members whose districts were within the Archdiocese's boundaries, thus eliminating Representative Santorum's votes. In addition, in the revised version votes on tax-payer funded abortions ("Hyde Amendment") and fetal tissue research were deleted while a vote on the Freedom of Access to Clinic Entrances Act ("FACE") was added. The new version also deleted the Hyde Amendment votes of Senators Wofford and Specter and added their votes on FACE. These revisions reduced Senator Wofford's tally of issues on which he agreed with the Archdiocese from three votes to two votes.

The Archdiocese included a concise description of each of the issues, the final vote of either House on that issue, and whether the Archdiocese supported or opposed the bill. In the center of the final scorecard is a grid showing all of the Representatives and Senators and the political parties of the members. The Archdiocese used a "+" or a "-" beside each vote to signify whether that member voted in favor of or against the Archdiocese's positions. The scorecard notes: "We recommend that the voting record of each legislator be examined in its entirety."

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The voter record does not contain the types of phrases contained in Buckley or words which can have no other reasonable meaning than to urge the election or defeat of identifiable candidates. While in some instances, the use of "+" and "-" may indicate whether a vote coincides with an organization's position and may be one of several factors which would lead the Commission to conclude that a scorecard constitutes express advocacy, standing by itself it does not appear to be enough. Besides not containing the Buckley phrases, contextually this scorecard and its accompanying cover letter do not exhort the reader to vote for or against a candidate or group of candidates. Unlike MUR 3669, in which the Commission concluded that two scorecards contained express advocacy, the final scorecard in the instant matter did not in any way characterize the voting records of the Representatives and Senators who were listed. In its scorecard, the Archdiocese, with its representations of votes of incumbents, did not rate those incumbents or draw conclusions concerning those votes. It does not appear that the contents of the voter record in and of themselves would lead to any FECA violations.

Nevertheless, there is reason to believe that the purpose of this scorecard was to influence the 1994 Federal elections, and that the costs associated with it constitute expenditures under the Act. In the cover letter to the head of parishes accompanying the scorecard, Mr. Lewis stated that "[w]e are hopeful this scorecard will assist your parishioners in making informed decisions in the upcoming November elections." Thus, while the contents of the scorecard alone are not troubling, the apparent cooperation between the Archdiocese and the Santorum Committee does raise questions.

Complainant's information, concerning how the changes in the contents of the scorecard came about, arose from internal Archdiocese documents written by Karen Keller, a special

project consultant within the Office for Public Affairs of the Archdiocese at the time of the events in question. Prior to working on these scorecards, Ms. Keller had requested a transfer from the Office for Public Affairs; this Office does not know the circumstances leading to her transfer request. It is clear from the documents, however, that while working on the scorecards, Ms. Keller frequently expressed her concerns and disapproval for the Archdiocese's actions, and believed that the scorecard was illegal. On the same day that Ms. Keller received feed-back from outside organizations pertaining to the original score-card, that she relayed the order to destroy the original scorecard, and that she expressed her concerns about the costs of the original scorecard, Ms. Keller was asked by her supervisor "in order to continue a working relationship in light of my transfer request" to provide him with a fifteen minute by fifteen minute job description of her work day. Attachment 1 at 12. In response to this implicit threat from her supervisor, Ms. Keller deliberately chose to write about the very day when the destruction of the original scorecards occurred.

Subsequent to the distribution of the final scorecard, Ms. Keller wrote to the Archdiocese's Vicar for Administration explaining what happened and expressing her concerns, asking rhetorically: "Isn't it against the guidelines to support, endorse or oppose a political candidate?" *Id.* at 18. She continued:

Do you know what it is like to be afraid to leave your office because you do not know what will happen if you don't catch that phone call to tell the person on the other end that it is wrong to get signatures for a political candidate in the back of the church? ... I am very concerned for the Archdiocese because of the amount of political activity coming out of our office. When I raised these concerns with Mr. Bock, I was told that these were "shades of gray" and the Archdiocese is too big to get into trouble with the IRS. He also said that you can watch a criminal who you know is going to rob a store but you can't do anything until he does it.

Id.

The following is a more thorough chronology pieced together from the information provided with the complaint. By August 8, 1994, Ms. Keller had completed a draft of the Archdiocese's scorecard, the format of which was based on a Christian Coalition scorecard. Her memorandum stated that she faxed the scorecard to James Bock, the Associate to the Archdiocese's Vicar for Administration, simultaneously expressing her concerns about her supervisor's involvement with the Christian Coalition and with political activity. Id. at 3 and 17. Mr. Bock approved the scorecard. On September 1, she faxed the scorecard to Phil Murren, external counsel for the Archdiocese on September 1, 1994 for legal review. Id. at 4-5. Mr. Murren approved the draft but "said he was surprised at Borski and Santorum's votes on school choice." Id. at 4-6.

On September 13, at the request of Charles Lewis, Ms. Keller's boss and Secretary of the Office of Secretariat for External Affairs, Ms. Keller sent the original scorecard to Gail Pedrick, Bucks County Coordinator of the Christian Coalition. Id. at 7 and 17.

According to Ms. Keller's fifteen by fifteen minute job description, between 9:45 and 10:10 a.m. on September 15, she contacted Gregg McLaughlin, Business Manager of the Archdiocese's print shop and "relayed my instructions from Mr. Chuck Lewis to 'destroy and I mean really destroy' the 150,000 Congressional Scorecards. . . ." Id. at 12.

Ms. Keller's memorandum indicates further that between 10:00 a.m. and 12:00 p.m. on September 15, she received phone calls from Denise Neary of the Pro-Life Federation and Howard Fetterhoff, Executive Director of the Pennsylvania Catholic Conference, "who expressed their great concern that distribution of the scorecard would be disastrous because it makes Sen. Wofford look better or just as good as Rick Santorum and that the Hyde Amendment was

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the only pro-life vote that Sen. Wofford had ever cast.” *Id.* Ms. Keller’s office was also contacted by Gail Pedrick of the Christian Coalition. Their complaints “were that the abortion questions in the scorecard was one that Harris Wofford voted with us (out of the three abortion votes this year, Mr. Wofford voted with us on 2 and against us on 1).” *Id.* at 18.

Congressman Santorum’s committee also contacted Ms. Keller’s office on at least one occasion during this period and complained about these issues as well as the school choice question. Mr. Santorum had initially voted against school choice but subsequently switched his position. The evidence that this contact occurred is based on the reference to such a call in the memorandum written by Ms. Keller to the Vicar for Administration. *Id.* at 17-18. Moreover in both the newspaper article describing these events, *id.* at 19, and the Santorum Committee’s response to the complaint, the Santorum Committee does not deny that such contact occurred. It is unclear exactly when this contact took place and to whom the Santorum representative spoke at the Archdiocese. These issues will be explored in discovery.

Apparently on September 15, Mr. Lewis discussed with Ms. Keller the possibility of putting in a blurb explaining that Congressman Santorum had changed his mind on the Choice in Education issue, but this was not done. Instead, Mr. Lewis called Mr. Fetterhoff. Ms. Keller’s memorandum indicates that at 3:30 p.m. on September 15, she was called “into Mr. Lewis’ office regarding the scorecard. I was asked to: change the #1 question on the Hyde amendment for both the House and the Senate to a question prepared by Mr. Lewis on FACE (Freedom of Access to Clinic Entrances); eliminate the #3 question on Fetal Tissue for the House; eliminate the non-Archdiocesan area representatives from the scorecard; and to have 150,000 of the new

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scorecards printed. I expressed concern on how the office could justify the \$11,775.00 bill from the first scorecards that I was asked to destroy. Mr. Lewis said he would take care of it.”

In the late afternoon of September 15, Ms. Keller made the changes requested by Mr. Lewis. *Id.* at 12. On September 16 the draft of the final version of the scorecard was approved by Mr. Lewis and Ms. Keller faxed the final version to Howard Fetterhoff for his review. *Id.* at 8-9. Mr. Fetterhoff apparently approved the final version. *Id.* at 19.

On September 19, Ms. Keller received notification from Mr. McLaughlin that the 150,000 copies of the original scorecard had been destroyed. *Id.* at 10. Sometime thereafter the new cards were printed at a cost of \$9,000. *Id.* at 19. On October 3, the final version of the scorecard was mailed to parishes within the Archdiocese under a cover letter signed by Mr. Lewis. *Id.* at 16. The scorecard was also to be published in the October 20 edition of the *Catholic Standard and Times*. *Id.*

According to the information provided by Complainant, the Archdiocese originally planned to produce a voter record based on certain votes of interest to the Archdiocese which would have included all incumbent members of Congress from Pennsylvania for use in the November 1994 general election. Although the Archdiocese may not have directly sought input from the Santorum Committee, the Committee received information about the original scorecard and contacted the Archdiocese. It appears that the Santorum Committee at the very least complained about the voter record because it seemed to portray Senator Wofford in a better light than Representative Santorum. After receiving these and other complaints the Archdiocese modified its scorecard. The new version deleted then-Representative Santorum who originally was shown to support only three out of six of the Archdiocese's positions (and all Congressman

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outside of the Archdiocese) and changed the issues so that Senator Wofford would only be shown to support two of the Archdiocese's five positions instead of three. As Advisory Opinion 1988-22 stated, a "communication made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable 'contribution.'" Pursuant to 2 U.S.C. § 441a(a)(7)(B)(i), any expenditures made for these purposes constitute contributions to the candidate.

In its response to the complaint, the Archdiocese does not deny that it was contacted by the Santorum Committee regarding the scorecard, or that the scorecard was revised, at least in part, in response to concerns expressed by the Santorum Committee. Nor does the Archdiocese otherwise contest Complainant's version of the facts. Rather, the Archdiocese only suggests that, with the scorecard it ultimately issued, no one could claim that the voting record favored Rep. Santorum over Sen. Wofford, and that the voting record did not allow any comparison of Sen. Wofford and Rep. Santorum.

The Santorum Committee takes the other side of the argument than the Archdiocese. It does not disagree with the allegation that the scorecard was changed in order to assist Congressman Santorum. Rather, it argues that the scorecard was changed by the Archdiocese without coordinating this effort with the Santorum Committee.

However, the facts suggest that, while the final version of the scorecard does not allow for a comparison between Representative Santorum and Senator Wofford, the Archdiocese appears to have changed its format so as not to damage Representative Santorum by showing him as being in agreement with the Archdiocese's positions fewer times than Senator Wofford. Indeed, it appears that Charles Lewis was especially mindful of the Santorum Committee's

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concerns, apparently suggesting at one point that a blurb be inserted in the scorecard regarding Congressman Santorum's change of mind on the "Choice in Education" issue.

In summary, the evidence in-hand suggests that the Archdiocese produced a scorecard in connection with the 1994 Federal elections, that the Archdiocese was contacted by the Santorum Committee regarding the contents of the scorecard, and that the Archdiocese changed the contents of the scorecard due, in part, to the concerns raised by the Santorum Committee. Accordingly, there is reason to believe that coordination occurred between the Archdiocese and the Santorum Committee with respect to the production and distribution of the scorecard.

Pursuant to Section 441a(a)(1)(A) of the Act, the Archdiocese was limited to a contribution of \$1,000 to the Santorum Committee. Current information shows that the Archdiocese spent approximately \$21,000 in connection with the scorecard, \$20,000 more than it could given the coordination involved. Moreover, the Santorum Committee accepted this excessive, in-kind contribution, and failed to report it as either a contribution or an expenditure.

Accordingly, this Office recommends that the Commission find reason to believe that the Archdiocese of Philadelphia violated 2 U.S.C. § 441a (a)(1)(A) by making an excessive contribution in connection with an election to federal office. This Office also recommends that the Commission find reason to believe that Santorum '94 and Judith M. McVerry, as treasurer, violated 2 U.S.C. § 441a(f) by accepting this excessive contribution and 2 U.S.C. § 434(b)(3)(A), (5)(A) by failing to report it.⁴

⁴ Complainant has also alleged that the Archdiocese is incorporated, suggesting a violation of 2 U.S.C. § 441b(a). Respondent has denied that it is incorporated. While it appears that there is no corporate entity involved, should other information become available, this Office will make the appropriate recommendations to the Commission. Furthermore, at this time, this Office is making no recommendations about the other groups involved in this matter.

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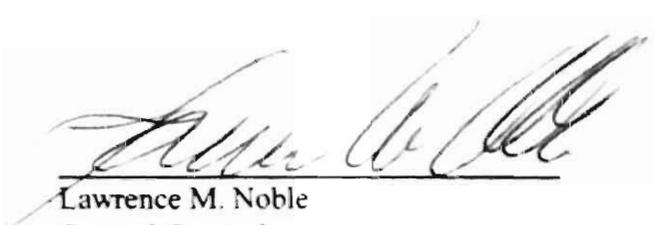
III. DISCOVERY

It appears that further investigation is warranted in this matter to fully assess the facts and circumstances surrounding the communication between the Archdiocese of Philadelphia and the Santorum Committee. To expedite this investigation, this Office recommends that the Commission approve the attached Subpoenas for the Production of Documents and Answers to Interrogatories.

IV. RECOMMENDATIONS

1. Find reason to believe that the Archdiocese of Philadelphia violated 2 U.S.C. § 441a(a)(1)(A).
2. Find reason to believe that Santorum '94 and Judith M. McVerry, as treasurer, violated 2 U.S.C. §§434(b)(3)(A), (5)(A) and 441a(f).
3. Approve the appropriate letters, attached Factual and Legal Analyses, and attached Subpoenas for the Production of Documents and Answers to Interrogatories.

3/15/91
Date


Lawrence M. Noble
General Counsel

Attachments:

1. Attachments to Complaint
2. Factual and Legal Analyses (2)
3. Proposed Subpoenas for the Production of Documents and Answers to Interrogatories (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: AUGUST 21, 1996

SUBJECT: MUR 4282 - FIRST GENERAL COUNSEL'S REPORT
DATED AUGUST 15, 1996.

The above-captioned document was circulated to the Commission
on: Friday, August 16, 1996 at 12:00

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

- Commissioner Aikens xxx
- Commissioner Elliott xxx
- Commissioner McDonald _____
- Commissioner McGarry _____
- Commissioner Potter _____
- Commissioner Thomas xxx

This matter will be placed on the meeting agenda for:
Tuesday, September 10, 1996

Please notify us who will represent your Division before the Commission
on this matter. Thank You!

2604374530

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4282
Archdiocese of Philadelphia;)
Santorum '94 and Judith M.)
McVerry, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 10, 1996, do hereby certify that the Commission took the following actions in MUR 4282:

1. Failed on a vote of 3-2 to approve the recommendations in the General Counsel's August 15, 1996 report.

Commissioners McDonald, McGarry, and Thomas voted to approve the staff recommendations. Commissioners Aikens and Elliott dissented.

2. Decided by a vote of 4-0 to close the file on MUR 4282.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Aikens was not present at the time of the vote.

Attest:

9-12-96
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

6043745331



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory G. Lebel
Vice President for Public Policy
Catholics for a Free Choice
1436 U Street, NW
Washington, D.C. 20009-3997

RE: MUR 4282
Archdiocese of Philadelphia
Santorum '94 Committee and
Judith M. McVerry, as treasurer

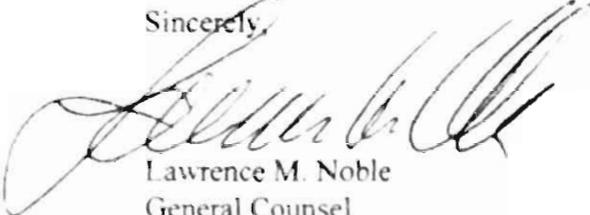
Dear Mr. Lebel:

The Federal Election Commission has reviewed the allegations contained in your complaint dated November 20, 1995. On September 10, 1996, the Commission considered your complaint, but there was an insufficient number of votes to find reason to believe the Archdiocese of Philadelphia and the Santorum '94 Committee and Judith M. McVerry, as treasurer, violated the Federal Election Campaign Act of 1971, as amended.

Accordingly, also on September 10, 1996, the Commission closed the file in this matter. A Statement of Reasons providing a basis for the Commission's decision will follow. 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).

If you have any questions, please contact Tony Buckley or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
General Counsel's Report and Certification

Celebrating the Commission's 25th Anniversary
YESTERDAY TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1996

Maura K. Quinlan, Esq.
Ball, Skelly, Murren & Connell
511 N. Second Street
P.O. Box 1108
Harrisburg, Pennsylvania 17108-1108

RE: MUR 4282
Archdiocese of Philadelphia

Dear Ms. Quinlan:

On November 27, 1995, the Federal Election Commission notified your client, the Archdiocese of Philadelphia, of a complaint alleging that it had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On September 10, 1996, the Commission considered the complaint, but there was an insufficient number of votes to find reason to believe your client violated 2 U.S.C. § 441a(a)(1)(A). Accordingly, the Commission closed its file in this matter. A Statement of Reasons providing a basis for the Commission's decision will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1996

H. Woodruff Turner, Esq.
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, Pennsylvania 15222-2312

RE: MUR 4282
Santorum '94 Committee and
Judith M. McVerry, as treasurer

Dear Mr. Turner:

On November 27, 1995, the Federal Election Commission notified your clients, Santorum '94 Committee and Judith M. McVerry, as treasurer, of a complaint alleging that they had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On September 10, 1996, the Commission considered the complaint, but there was an insufficient number of votes to find reason to believe your clients violated 2 U.S.C. §§ 434(b)(3)(A), (5)(A) and 441a(f). Accordingly, the Commission closed its file in this matter. A Statement of Reasons providing a basis for the Commission's decision will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # 4282

DATE FILMED 10-9-96 CAMERA NO. 2

CAMERAMAN JMH

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 2/14/97

 Microfilm

 Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 4282

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Assistant General Counsel Convery
Press Officer Harris

FROM: Marjorie W. Emmons/Bonnie J. Ross 
Secretary of the Commission

DATE: February 14, 1997

SUBJECT: Statement of Reasons for MUR 4282

Attached is a copy of the Statement of Reasons in MUR 4282 signed by Commissioners McDonald, McGarry, and Thomas. This was received in the Commission Secretary's Office on Thursday, February 13, 1997 at 4:08 p.m.

Attachment

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

In the Matter of)	
)	MUR 4282
Archdiocese of Philadelphia)	
Santorum '94 and)	
Judith M. McVerry, as treasurer)	

STATEMENT OF REASONS

**CHAIRMAN JOHN WARREN MCGARRY
COMMISSIONER SCOTT E. THOMAS
COMMISSIONER DANNY LEE MCDONALD**

MUR 4282 raises an important question of federal campaign finance law: whether an organization may coordinate the preparation of a communication which was made for the purpose of influencing a federal election (but does not contain express advocacy), and then publicly distribute that communication without considering the communication to be a coordinated in-kind contribution subject to the contribution limits found at 2 U.S.C. §441a. In MUR 4282, we agreed with the legal analysis of the Office of General Counsel that such a coordinated communication constituted an in-kind contribution to the federal candidate. Accordingly, we voted to approve the General Counsel's recommendation to find reason to believe a violation of 2 U.S.C. §441a occurred and to authorize an investigation into the coordination issue.

Commissioners Aikens and Elliott disagreed and blocked any investigation into the coordination issue. In particular, Commissioner Elliott argued that since there was no express advocacy in the communication, there is no limit to the amount of coordination which can exist between the sponsor of a communication and a federal candidate. We believe the failure of Commissioners Aikens and Elliott to pursue MUR 4282 is not only inconsistent with Supreme Court precedent, the statute and prior Commission actions, but it also opens a huge loophole in the contribution limits of 2 U.S.C. §441a.

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I.

The Federal Election Campaign Act ("FECA" or "the Act") provides for a \$1,000 limit on contributions by a person to a candidate and the candidate's campaign committee with respect to any election for federal office. 2 U.S.C. §441a(a)(1)(A). The Act also prohibits the knowing acceptance by candidates and political committees of contributions in excess of the §441a limitations. 2 U.S.C. §441a(f). To ensure the contribution limit is not evaded or circumvented, the statute further states that expenditures made "in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 2 U.S.C. §441a(a)(7)(B)(i).

On November 20, 1995, Catholics for a Free Choice filed a complaint with the Federal Election Commission alleging the Roman Catholic Archdiocese of Philadelphia ("Archdiocese") had made an expenditure in coordination with a federal campaign. Specifically, the complaint stated that in September, 1994, the Archdiocese had planned to distribute to Catholic churches in the diocese a document detailing certain congressional votes made by selected candidates for federal office in Pennsylvania. The complaint charged that "this document was substantially modified based at least in part on contacts with the Senate campaign of then U.S. Representative Rick Santorum." Complaint at 1. According to the complaint, the number of votes reviewed in the document was lowered in such a way that the number of "correct" votes cast by Senator Harris Wofford was reduced. Moreover, any reference to possible "incorrect" votes cast by candidate Santorum was eliminated. In its complaint, Catholics for a Free Choice included a number of exhibits including an internal memorandum from the Archdiocese offices detailing the contact with the Santorum campaign.

The Office of General Counsel prepared a report for Commission consideration that contained a factual and legal analysis of the allegations presented in the complaint as well as responses to the complaint received from the Archdiocese and the Santorum committee. The General Counsel's Report recommended that the Commission find reason to believe the Archdiocese violated 2 U.S.C. §441a by making an excessive contribution. The Report further recommended that the Santorum Committee had received an excessive contribution in violation of 2 U.S.C. §441a(f) and had failed to report its receipt of that contribution in violation of 2 U.S.C. §434(b)(3)(A) and (5)(A).

The General Counsel's Report reasoned that although there was no express advocacy in the communication, the communications should be treated as an in-kind contribution from the Archdiocese to the Santorum campaign because the Archdiocese had consulted with the Santorum campaign regarding the communication. The Report detailed the Archdiocese's known contact with the Santorum campaign. In particular, the Report found the Archdiocese had responded to changes in the communication urged by the Santorum campaign and had revised the scorecard in a way more favorable to the

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Santorum campaign. The General Counsel's Report recommended an investigation of the matter through interrogatories and requests for production of documents.

On September 10, 1996, the Commission considered the General Counsel's Report. Despite the plain evidence of coordination and the General Counsel's recommendations, only the three undersigned Commissioners voted to find reason to believe the Act had been violated and an investigation should be conducted. Commissioners Aikens and Elliott voted against such findings. Because the General Counsel's recommendations failed to receive the four affirmative votes necessary to proceed, see 2 U.S.C. §437g(a)(2), the matter was closed.

II.

Under the Act and Commission regulations, the term "contribution" means any gift, subscription, loan, advance, or anything of value made by any person "for the purpose of influencing any election for Federal office." 2 U.S.C. §431(8) (emphasis added); see also 11 CFR 100.7(a)(1). Similarly, the term "expenditure" is defined to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person "for the purpose of influencing an election for Federal office." 2 U.S.C. §431(9) (emphasis added); see also 11 CFR 100.8(a)(1). Moreover, under §441a(a)(7)(B)(i), expenditures by any person in cooperation, consultation, or concert with a candidate are considered contributions subject to the limitations of 2 U.S.C. §441a.

The factual record in this matter clearly indicates that the Archdiocese produced a scorecard for the purpose of influencing the 1994 elections, that the Santorum Committee contacted the Archdiocese regarding the contents of the scorecard, and that the Archdiocese changed the scorecard contents as a result of concerns raised by the Santorum Committee to help the Santorum campaign politically. According to internal letters and documents from the Archdiocese which were included with the complaint, Ms. Karen Keller, a special project consultant within the Office of Public Affairs of the Archdiocese, prepared for the Archdiocese a draft scorecard of how Pennsylvania's incumbent Members of Congress voted on legislation of interest to the Archdiocese. At the request of her supervisor at the Archdiocese, she faxed the draft scorecard to the Christian Coalition for comment on September 13, 1994. August 15, 1996 General Counsel's Report at Attachment I, 7 and 17. Negative reaction to the draft scorecard was swift and emphatic. On September 15, 1994, representatives from the Pro-Life Federation and the Pennsylvania Catholic Conference called Ms. Keller and "expressed their great concern that distribution of the scorecard would be disastrous because it makes Sen. Wofford look better or just as good as Rick Santorum" on legislative votes in the scorecard regarding abortion. *Id.* at 12.

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Significantly, Ms. Keller stated that at this time she also received a call from the Santorum campaign.¹ The campaign had also apparently concluded that the scorecard made Senator Wofford "look better or just as good as Rick Santorum." *Id.* Indeed, counsel for the Santorum campaign admits as much in the campaign's response to the complaint filed with the Commission:

Our review of the facts on behalf of our clients indicates that a representative of the Santorum committee, in reaction to a complaint received from a voter in central Pennsylvania, called a representative of the Roman Catholic Archdiocese of Philadelphia, complained that a "scorecard" prepared by the Archdiocese portrayed Senator Wofford in a better light than then-Congressman Santorum and asked how this was done. The Archdiocese representative explained the process which was followed in arriving at the "scorecard." The representative of the Santorum committee expressed his disagreement, and that was the end of the conversation.

December 14, 1995 Response of Santorum Committee at 1. This acknowledged consultation between the Santorum Committee and the Archdiocese, and the plain suggestion from the Committee to the Archdiocese that the communication be changed, appears to lie at the heart of 2 U.S.C. §441a(a)(7)(B)(i): expenditures made "in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." (emphasis added). Where a candidate's committee contacts an organization about a proposed ad, comments on and critiques the ad, and ultimately expresses disagreement with the proposed ad for portraying the opposing candidate "in a better light," we believe the ad should "be considered to be a contribution to such candidate." *Id.*

Apparently reacting to the complaints and criticisms of the Santorum campaign and others, Ms. Keller's supervisor at the Archdiocese directed her to make a number of changes. First, Ms. Keller's supervisor instructed her to "destroy and I mean really destroy" 150,000 printed copies of the draft scorecard. See General Counsel's Report at Attachment 1 at 12. Then, according to Ms. Keller, the Archdiocese changed its original selection of roll call votes to produce a lower number of positions where Senator Wofford supported the Archdiocese's position. Under the new version, Senator Wofford was shown to support the Archdiocese's positions on only two out of five Senate votes rather than three out of five votes according to the original scorecard. The new version also removed any reference to Representative Santorum who originally was shown to support the Archdiocese's positions on only three out of six House votes. After the 150,000

¹ Unlike the Santorum Committee, there is no indication in the record that Senator Wofford ever had received a copy of the draft statement or been afforded an opportunity to comment on the draft and its impact on the campaign for United States Senate.

copies of the original scorecard were destroyed, the Archdiocese printed a new scorecard incorporating these changes at a cost of \$9,000. *Id.* at 19.

Obviously, the Santorum campaign believed the scorecard was "for the purpose of influencing" the race for United States Senate; otherwise, the Santorum Committee never would have called the Archdiocese and complained that the original scorecard "portrayed Senator Wofford in a better light" than candidate Santorum. And, obviously, the Archdiocese believed the scorecard was "for the purpose of influencing" the Senate race; otherwise, it never would have reduced the number of votes in which Senator Wofford supported the Archdiocese and removed any reference to candidate Santorum's supporting the Archdiocese on only three out of six House votes. Indeed, the Archdiocese appears to concede the scorecard was distributed "for the purpose of influencing an election." In a cover letter to local parishes accompanying the revised version of the scorecard, Charles Lewis, Secretary of the Archdiocese's Office for External Affairs, wrote:

We are hopeful this scorecard will assist your parishioners in making informed decisions in the upcoming November elections....This scorecard...should provide the means necessary for each parishioner to be well-informed this November....We are optimistic that this project will be of great value as we enter the fall elections.

Complaint at Exhibit 14. Because the Archdiocese expenditures were "for the purpose of influencing the election" and those expenditures were coordinated with the Santorum campaign, we believe the factual record supports the General Counsel's legal conclusion that the expenditures were in-kind contributions to the Santorum Committee under 2 U.S.C. §441a(a)(7)(B)(i).

It can be argued that, perhaps, a third party simply brought an inaccuracy in the scorecard to the attention of the Santorum campaign which, in turn, notified the Archdiocese. There is no evidence in the factual record, however, to support this scenario. Moreover, such wishful thinking directly contradicts the explanation offered by the Santorum Committee itself which stated that it called the Archdiocese to complain that the scorecard presented "*Senator Wofford in a better light.*" Nowhere did the Santorum Committee represent, as it easily could have if such were the case, that the purpose of its call to the Archdiocese was only to complain of some inaccuracy contained in the scorecard. Further evidence that the call to the Archdiocese involved something other than the correction of an inaccuracy is that the changes to the scorecard were not limited to the Santorum listing (where references to all six Santorum votes were completely deleted), but were also made to Senator Wofford's listing. In our view, it seems clear that the Archdiocese changed its scorecard for political purposes after it was directly contacted by the Santorum campaign regarding the content of the scorecard.

Accordingly, we supported the General Counsel's recommendation to find reason to believe that the statute was violated and to investigate the matter.²

III.

Even with the coordination between the Archdiocese and the Santorum Committee, Commissioner Elliott argues that there was no violation of the statute. While discussing MUR 4282 at the Commission table, Commissioner Elliott stated "[t]o my way of thinking, the whole discussion of coordination is moot because there is no express advocacy in the guide, and if you don't have that you've got issue discussion and you don't have to do that independently. You can do that with all the coordination you want if there is no express advocacy." Commission Executive Session of September 10, 1996. We disagree with Commissioner Elliott's approach for a number of reasons.

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First, the Supreme Court clearly has indicated that an express advocacy test does not apply to contributions and coordinated expenditures. In *Buckley v. Valeo*, 424 U.S. 1, 46 (1976), the Supreme Court stated that "controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act." The Court defined "contribution" to "include not only contributions made directly or indirectly to a candidate, political party, or campaign committee . . . but also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate." 424 U.S. at 78 (emphasis added). The Court concluded that "[s]o defined, 'contributions' have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign." *Id.* See also *FEC v. NCPAC*, 470 U.S. 480, 492 (1985) (coordinated expenditures "are considered 'contributions' under the FECA, and as such are already subject to the FECA's \$1,000 and \$5,000 limitations in §§441a(a)(1), (2)"). It was only when the *Buckley* Court considered the statutory provisions as they applied to independent expenditures that it found the express advocacy test necessary to avoid vagueness. *Id.* at 78-79. Likewise in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986) (emphasis added), the Supreme Court specified that the express advocacy construction was necessary only for the "provision that directly regulates independent spending." In short, there is simply no constitutional basis for Commissioner Elliott's application of an express advocacy test to coordinated expenditures.

² It is no surprise that Commissioners Aikens and Elliott opposed the General Counsel's finding that there had been coordination between the Archdiocese and the Santorum Committee. Over the years, Commissioners Aikens and Elliott repeatedly have refused to proceed on a coordination theory in prior enforcement matters. See, e.g., MUR 2272 (American Medical Association Political Action Committee and Williams for Congress Committee); MUR 2766 (Auto Dealers and Drivers for Free Trade PAC and Friends of Connie Mack); MUR 3069 (National Security Political Action Committee and Bush-Quayle '88); and MUR 4204 (Americans for Tax Reform and Lewis for Congress).

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Second, Commissioner Elliott's approach runs contrary to the position taken by the Commission in previous advisory opinions. The Commission has frequently considered whether particular activities involving the participation of a Federal candidate, or communications referring to a Federal candidate, result in a contribution to or expenditure on behalf of such a candidate under the Act. The Commission has determined, for example, the financing of activities such as: (1) the solicitation, making or acceptance of contributions to the candidate's campaign or (2) communications expressly advocating the nomination, election or defeat of any candidate, will result in a contribution to or expenditure on behalf of a candidate. See, e.g., Advisory Opinions 1988-27, 1986-37, and 1986-26 at 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5934, 5875, and 5866, respectively. The above list of activities resulting in a contribution to or an expenditure on behalf of a candidate, however, is not exhaustive. In a number of advisory opinions the Commission has emphasized that "the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is 'campaign-related.'" Advisory Opinion 1990-5, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶5982 (emphasis added) citing Advisory Opinions 1988-27, 1986-37, and 1986-26. *supra*. Commissioner Elliott's approach clearly contradicts this long line of Commission precedent.

Finally, Commissioner Elliott's interpretation of the statute opens a large loophole in the statute. If her express advocacy standard were applied to coordinated expenditures under §441b, for example, it would virtually eliminate the ban on corporate and union campaign contributions. Since coordinated expenditures are made after prior discussion with candidates, Commissioner Elliott's approach would allow any corporation or union to make unlimited political expenditures to support candidates so long as the expenditures avoided "express advocacy."³ We do not believe the Congress intended the statute to be so easily evaded.

³ Further broadening the loophole, Commissioner Aikens and Elliott repeatedly have voted against finding express advocacy in even the most obvious advocacy communications. For example, in MUR 3162 (Citizens for Informed Voting in the Commonwealth), they found no express advocacy in a flyer which focused on the voter's choice between clearly identified candidates in specific elections and characterized one candidate in this direct comparison as "good" or "excellent" and the other candidate as "bad" or "very bad." There can be no doubt that the flyer which was distributed to voters only one week before election day, communicated the message that the voter receiving the flyer should vote against the "bad" candidate on election day. Cf. *United States v. Lewis Food Co.*, 366 F.2d 710, 712 (9th Cir. 1966) ("The 'Notice to Voters' was not intended to give an objective report on the voting record of public office holders . . . [but] makes it plain that, in [the corporation's] opinion, those office holders who are given low ratings on their votes . . . should not be re-elected.")

Similarly, in MUR 3616 (Nita Lowey for Congress), Commissioners Aikens and Elliott found there was no express advocacy in an advertisement featuring the candidate's name, picture, and campaign slogan that was paid for by the candidate's campaign committee and published the month before the election. See also MURs 3167/3176 (Christian Coalition); MUR 3376 (Gerry Studts for Congress Committee); MUR 3678 (Clyde Evans); and MUR 4204 (Americans for Tax Reform).

IV.

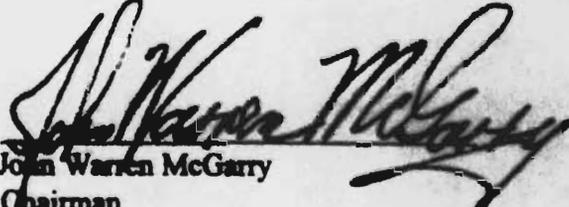
In MUR 4282, Commissioners Aikens and Elliott refused to pursue a matter on a coordination theory even though the respondent committee confessed that it had consulted with and complained to an organization that its proposed communication placed the opposing candidate in a far too favorable light. Nor were Commissioners Aikens and Elliott moved in their refusal to pursue this matter by the fact that the proposed communication was indeed later changed to the detriment of the opposing candidate. If the obvious coordination and the resulting communication in MUR 4282 lie outside the jurisdiction of the statute, it is virtually impossible to think of any circumstances under which Commissioners Aikens and Elliott might find coordinated activity falls within the reach of the statute.

The consequences of Commissioners Aikens and Elliott's approach to this and other cases are serious. By finding that the activity leading to the production of the Archdiocese scorecard did not meet their definition of impermissible coordination, Commissioners Aikens and Elliott have given the green light for corporations and unions to coordinate with candidates and create corporate or labor advertisements which influence elections, but do not contain "express advocacy." Under their approach, corporations and labor organizations may coordinate with candidates and spend unlimited sums outside of the law's prohibitions. These results are not compelled by the courts and reflect an abdication of the FEC's responsibility.

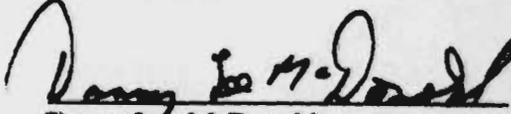
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Date


John Warren McGarry
Chairman


Scott E. Thomas
Commissioner


Danny Lee McDonald
Commissioner

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Assistant General Counsel Convery
Press Officer Harris

FROM: Marjorie W. Emmons/Bonnie J. Ross 
Secretary of the Commission

DATE: February 14, 1997

SUBJECT: Statement of Reasons for MUR 4282

Attached is a copy of the Statement of Reasons in MUR 4282 signed by Commissioners Aikens and Elliott. This was received in the Commission Secretary's Office on Thursday, February 13, 1997 at 4:15 p.m.

Attachment

97043774165



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

In the Matter of)
)
Archdiocese of Philadelphia)
Santorum '94)
Judith M. McVerry, as treasurer)

MUR 4282

STATEMENT OF REASONS

**Commissioner Joan D. Alkens
Commissioner Lee Ann Elliott**

On September 10, 1996, the Commission considered whether there was reason-to-believe that the Archdiocese of Philadelphia and the Santorum '94 Committee and Judith M. McVerry, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), 441a(a)(1)(A), and 441a(f) of the Federal Election Campaign Act (the Act). The Act provides that expenditures made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or his or her authorized political committee, shall be considered to be a contribution to such candidate, subject to the contribution limits and reporting requirements of the Act. 2 U.S.C. § 441a(a). Such expenditures are termed "coordinated" expenditures and the question presented is whether such "coordination" took place between the Archdiocese and the Santorum Committee in connection with a scorecard distributed by the Archdiocese.

1

It is undisputed that the Archdiocese initially produced a draft voter scorecard based on key votes of Pennsylvania congressmen for use in the November 1994 general election. Subsequently, after negative reactions to the scorecard from the Christian Coalition, the Pro-Life Federation, the Pennsylvania Catholic Conference and the Santorum Committee, the Archdiocese revised the scorecard. The revised version included the voting record of only those members whose districts were within the boundaries of the Archdiocese, thus eliminating Representative Santorum entirely. In addition, in the revised version, votes on tax-payer funded abortions (Hyde Amendment) and fetal tissue research were deleted and a vote on the Freedom of Access to Clinic

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Entrances Act (FACE) was added. The new version also deleted the Hyde Amendment votes of Senators Wofford and Specter and added their votes on FACE, reducing Senator Wofford's tally of issues on which he agreed with the Archdiocese from three to two.

Representative Santorum's voting record on school choice was inaccurately reflected on the draft scorecard. Rep. Santorum initially voted against school choice, but subsequently changed his position. According to counsel for the Santorum Committee:

[A] representative of the Santorum Committee, in reaction to a complaint received from a voter in Central Pennsylvania, called a representative of the Roman Catholic Archdiocese of Philadelphia, complained that a "scorecard" prepared by the Archdiocese portrayed Senator Wofford in a better light than then-Congressman Santorum and asked how this was done. The Archdiocese representative explained the process which was followed in arriving at the "scorecard." The representative of the Santorum committee expressed his disagreement, and that was the end of the conversation.

The Santorum Committee's characterization of the telephone call is confirmed by Karen Keller, a former special project consultant within the Office for Public Affairs of the Archdiocese at the time of the events in question. Ms. Keller was a disgruntled employee, who frequently expressed her concerns and disapproval of the Archdiocese's production of the scorecard. She noted in a memorandum to the Vicar of Administration that the Santorum Committee called and complained that the scorecard made Senator Wofford look just as good or better than Rep. Santorum, and that Rep. Santorum's school choice vote was inaccurately reflected. If there was any more to the telephone call, there is every reason to believe that Ms. Keller would have recorded that as well.

II

The Office of the General Council concluded that, "while the final version of the scorecard does not allow for a comparison between Representative Santorum and Senator Wofford, the Archdiocese appears to have changed its format so as not to damage Representative Santorum by showing him as being in agreement with the Archdiocese's positions fewer times than Senator Wofford." OGC report at p. 13. We disagree.

On the draft scorecard, Rep. Santorum agreed with the Archdiocese position three times on a total of six "House of Representative issues", earning him a score of "+3". Senator Wofford voted in accordance with the Archdiocese position three times on a total of five "Senate issues", also earning him a score

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of "+3". However, Rep. Santorum's vote on the school choice issue was inaccurately reflected, so he actually agreed with the Archdiocese on four out of six issues, and should have had a score of "+4". On the final scorecard, the Archdiocese eliminated two issues on which Rep. Santorum agreed with the Archdiocese position, and eliminated him from the final scorecard. Only one of the deleted issues impacted upon Senator Wofford's vote record, therefore Senator Wofford's score on the final scorecard was "+2". Rep. Santorum apparently agreed with key Archdiocese positions at least as often if not more often than did Senator Wofford.

The subsequent actions of the Archdiocese in making changes to the scorecard are hardly indicative of an agreement between the Santorum Committee and the Archdiocese to achieve a mutually desired result, and in fact were not at all beneficial to Rep. Santorum. His vote on school choice was not corrected, his vote on the FACE issue remained a mystery and he was completely eliminated from the scorecard.

III

The Santorum Committee telephone call was merely contact by a representative of a candidate's committee to complain about what they perceived as an inaccurate and unfair portrayal of Rep. Santorum's voting record. This is exactly the type of "political" speech most protected by the First Amendment. We believe that raising such contacts to the level of "coordination" would be an unwarranted chilling of free speech - making candidates choose between correcting their records or violating the Act. We could not in good conscience find coordination between the Santorum Committee and the Archdiocese under this factual scenario and therefore declined to approve the reason-to-believe recommendations.

2-13-97
Date

Joan D. Aikens
Joan D. Aikens
Commissioner

2/13/97
Date

Lee Ann Elliott/KVJ
Lee Ann Elliott
Commissioner

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 2/28/97

 Microfilm

 Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 4282

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1997

H. Woodruff Turner, Esq.
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, Pennsylvania 15222-2312

RE: MUR 4282
Santorum '94 Committee and
Judith M. McVerry, as treasurer

Dear Mr. Turner:

Enclosed please find Statements of Reasons from two sets of Commissioners explaining their votes. These document will be placed on the public record as part of the file of MUR 4282.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Tony Buckley
Attorney

Enclosures
Statements of Reasons (2)

97043775355



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 18, 1997

Maura K. Quinlan, Esq.
Ball, Skelly, Murren & Connell
511 N. Second Street
P.O. Box 1108
Harrisburg, Pennsylvania 17108-1108

RE: MUR 4282
Archdiocese of Philadelphia

Dear Ms. Quinlan:

Enclosed please find Statements of Reasons from two sets of Commissioners explaining their votes. These document will be placed on the public record as part of the file of MUR 4282.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Tony Buckley
Attorney

Enclosures
Statements of Reasons (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1997

Gregory G. Lebel
Vice President for Public Policy
Catholics for a Free Choice
1436 U Street, NW
Washington, D.C. 20009-3997

RE: MUR 4282
Archdiocese of Philadelphia
Santorum '94 Committee and
Judith M. McVerry, as treasurer

Dear Mr. Lebel:

By letter dated September 20, 1996, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against the Archdiocese of Philadelphia and the Santorum '94 Committee and Judith M. McVerry, as treasurer. Enclosed with that letter was the First General Counsel's Report.

Enclosed please find Statements of Reasons from two sets of Commissioners explaining their votes. These documents will be placed on the public record as part of the file of MUR 4282.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Tony Buckley
Attorney

Enclosures
Statements of Reasons (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 3/14/97

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 4282



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 14, 1997

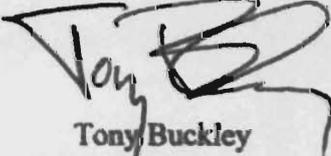
Maura K. Quinlan, Esq.
Ball, Skelly, Murren & Connell
511 N. Second Street
P.O. Box 1108
Harrisburg, Pennsylvania 17108-1108

RE: MUR 4282
Archdiocese of Philadelphia

Dear Ms. Quinlan:

Enclosed please find a copy of the First General Counsel's Report in this matter, as you requested.

Sincerely,



Tony Buckley
Attorney

Enclosure
First General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20541

Date: 3/11/98, 3/13/98

 Microfilm

 Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED RNR 4282

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: COMMISSIONERS
GENERAL COUNSEL NOBLE
STAFF DIRECTOR SURINA
PRESS OFFICER HARRIS

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES v71
COMMISSION SECRETARY

DATE: MARCH 9, 1998

SUBJECT: STATEMENT OF REASONS FOR MURs 3664, 4171
AND 4289

Attached is a copy of the Statement of Reasons in MURs 3664, 4171
and 4282 signed by Commissioners Aikens and Elliott. This was received in
the Commission Secretary's Office on MARCH 9, 1998 at 2:31 p.m.

cc: V. Convery

Attachments

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FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MURs 3664, 4171
) and 4289
)
 Bush-Quayle '92 Primary Committee, Inc.,)
 and J. Stanley Huckaby, as treasurer)
)
)
 Bush-Quayle '92 General Committee, Inc.)
 and J. Stanley Huckaby, as treasurer)
)
)
 Bush-Quayle '92 Compliance Committee,)
 Inc., and J. Stanley Huckaby, as treasurer)

STATEMENT OF REASONS

Chairman Joan D. Alkens
Commissioner Lee Ann Elliott

At issue in MURs 3664, 4171, and 4289 is the unequal and prejudicial treatment accorded the Bush-Quayle '92 Primary, General and Compliance Committees. Regrettably, our colleagues determinedly pursued reporting violations related to travel by President George Bush and Vice President Dan Quayle on Air Force I and Air Force II contrary to the recommendation of the Audit Division staff, and twenty years of precedent.

MUR 3664 was generated by a complaint filed on November 2, 1992, by the Democratic National Committee. This was a case of first impression concerning an interpretation of 11 C.F.R. § 104.11(b) as to whether estimates of expenditures for travel on Air Force I and II should appear on periodic reports before invoices for the travel were received by the Committee.¹ Since the

¹ The regulation provides in pertinent part that, "A debt or obligation, including a loan, written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the

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inception of the Federal Election Campaign Act (FECA), no incumbent presidential campaign ever reported such expenditures before receiving an invoice. The Commission never previously challenged that consistent practice, and upon amending 11 C.F.R. § 104.11(b) in 1990 the Commission stated that it intended to "follow[] current policy." See 55 Fed. Reg. 26385 (June 27, 1990).

Audit Division staff informed the Commission virtually every time MUR 3664 was placed on the Commission agenda that the Audit Division interpreted "date of incurrence" to mean the invoice date (i.e., the date demand for payment was made rather than the date services were rendered: in this matter, the date a trip was made.) The rationale presented by the Audit Division for this practice is that it is not always possible for the auditors to calculate the date a committee actually incurred a debt, hence, for administrative convenience the date of invoice is used as the "date of incurrence" in analyzing whether a violation occurred. Therefore, the matter was not referred by the Audit Division for enforcement action.

Nevertheless, the Office of the General Counsel (OGC) pursued MUR 3664. Since the Audit Division did not refer it, OGC staff hand-calculated the actual travel dates from other records provided by the Committee and used those dates, rather than invoice dates as the "date of incurrence." We believe this was excessive and unnecessary.

We expressed our reluctance to pursue MUR 3664 from the beginning. The Commission originally made reason-to-believe findings on July 20, 1993, and reaffirmed them on January 25, 1994, pursuant to the Commission's November 9, 1993, determinations regarding procedures to be followed in light of FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993) ("NRA"), petition for cert. dismissed for lack of jurisdiction, 115 S.Ct. 537 (1994). We opposed reason to believe findings, however, then-Commissioner Potter joined with our colleagues and provided the necessary fourth vote.

The next action taken by the Commission occurred on November 7, 1995, a year and ten months later. The Commission considered a general counsel's report dated October 26, 1995, which was placed on the agenda due to an objection by Commissioner Thomas. Commissioner Thomas objected because the General Counsel recommended the Commission take no further action and close the file in MUR 3664, because

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With respect to the actual debt that was not properly reported, the Committee amended its reports in accordance with the Audit Division's recommendations, and the Audit Division did not refer the issue for enforcement action. With respect to the Committee's failure to estimate debts, further action in this matter after the issue was not raised in the audit would not be the most efficient use of our limited resources. Moreover, the Committee's apparently good-faith reliance on the Air Force and the White House Travel Office to provide information concerning the number of political passengers and applicable airfare per air leg mitigates, although it does not vitiate, the Committee's failure to report estimated debt for campaign-related use of Air Force aircraft.

Although the Audit Division staff maintained that it never before or after the 1990 regulation (for the past twenty years) attempted to determine actual dates services were provided; and the General Counsel's assurance that this case was unique, Commissioner Thomas insisted that the matter be pursued. The General Counsel withdrew the report, purportedly to review it, and promised to get back to the Commission.

The next that the Commission heard about MUR 3664 was in regard to a General Counsel's Report dated August 13, 1996, which was considered by the Commission on September 10, 1996. In the nine-month interim between November 7, 1995, and August 13, 1996, MUR 3664 was transferred from the Enforcement Division to the Public Financing, Ethics & Special Projects Division and combined with two other matters, MURs 4171 and 4289, which were on the Commission agenda for the first time. The General Counsel made an abrupt about-face, recommending the Commission deny the Committee's requests to dismiss MUR 3664 but enter into pre-probable cause conciliation with the Bush-Quayle '92 General Committee on MURs 3664. OGC also recommended finding reason-to-believe and entering into pre-probable cause conciliation in MURs 4171 and 4289.

We believe the general counsel's report dated October 26, 1996, recommending the Commission take no further action in MUR 3664 was the correct disposition of this matter, and supported that recommendation. Therefore, it could have come as no surprise that we objected to the General Counsel's about-face recommendation, almost a year later, that the Commission enter into pre-probable cause conciliation with the Bush-Quayle '92 General Committee on MUR 3664. After being assured by the General Counsel of his intent to handle in this same fashion all future travel on Air Force (and Navy) campaigns of incumbent Presidents, on September 10, 1996, Commissioner Elliott reluctantly voted to approve the General Counsel's recommendations. Commissioner Aikens was absent.

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Suffice it to say that if there is any inconsistency - it is our colleagues approach to the strict interpretation of regulations in these 1992 presidential matters. For example, on August 16, 1995, these same colleagues declined to approve the General Counsel's recommendation to find reason to believe that the Clinton for President Committee and the Clinton-Gore '92 General Election Compliance Fund violated 11 C.F.R §§ 104.14(d), 9003.3(a)(1) and 9034.5(a). Rather than rehash the particulars, we have attached our Statement of Reasons in that matter, as well as our colleagues, at Attachments A and B.

II

It is simply untrue that the General Counsel was "squeezed" by our resistance to pursue MUR 3664. We had no input into the General Counsel's decision to transfer MUR 3664 from the Enforcement Division to the Public Financing, Ethics & Special Projects Division, nor into the extra 11 months thereby added to the resolution of that matter, nor into the abrupt about-face of the General Counsel's recommendations. In fact, those decisions were made in spite of our known objections.

As to the resolution of MURs 4171 and 4289, which were combined in a global conciliation agreement with MUR 3664, there was little disagreement and the Commission entered into pre-probable cause to believe conciliation negotiations with the Committees on September 10, 1996. The Committees made a counteroffer on November 4, 1996 and negotiations ensued. These unsuccessful negotiations dragged on for four-months until March 11, 1997, when the Commission rejected the Committees' counteroffer and negotiations terminated. On March 13, 1997, the Office of the General Counsel sent the Committees a letter and brief notifying them that it was prepared to recommend that the Commission find probable- cause-to-believe that the violations occurred. The Committees filed their responsive brief on April 22, 1997, and the Commission found probable-cause-to-believe on June 19, 1997, Commissioner Aikens objecting. These negotiations dragged on another four and a half months until November 4, 1997. At that time the Office of General Counsel recommended the Commission reject a counteroffer and approve a revised conciliation agreement.

During all the time that negotiations were on-going there was considerable discussion of how much and which violations were being lost each month due to the expiration of the five-year statute of limitations which applies to actions for assessment or imposition of civil penalties under the FECA. See, Federal Election Commission v. Williams, 104 F.3d 237 (9th Cir. 1996). In fact, on March 10, 1997, the General Counsel provided the Commissioners with a chart

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identifying the violations, the amount involved in each violation, and the statute of limitations attaching to each violation. The chart showed that the statute of limitations had already begun to run on some of the violations and that each month that passed more would be lost until January 1998. In January all of the violations at issue would be beyond the reach of the Commission due to the expiration of the statute of limitations.

By December 9, 1997, some nine months after the March 10 memo, when the final votes were taken on these matters, as predicted, the majority of the violations were beyond the reach of the Commission due to the expiration of the statute of limitations. Given the posture of the matters at this time, and the limited resources of this agency, we concluded that we should accept the Bush-Quayle Committee counter-offer rather than pursue litigation. Heckler v. Chaney, 470 U.S. 821 (1985).

3-6-98

Date

Joan D. Aikens

Joan D. Aikens
Chairman

1-11-98

Date

Lee Ann Elliott

Lee Ann Elliott
Commissioner

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FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20540

Statement of Reasons

**Final Audit Report of the Clinton for President Committee
Commissioners Joan D. Aikens, Lee Ann Elliott, Trevor Potter**

On December 15, 1994, the Federal Election Commission considered the Final Audit Report on the Clinton for President Committee. Unfortunately, a major recommendation in this Report that required the Clinton Committee to make a substantial repayment of taxpayer funds was blocked by three Commissioners.

This unprecedented action involved the Clinton Committee's receipt of matching funds from the U.S. Treasury in excess of its entitlement. The Commission's Audit Division found, and the General Counsel agreed, that the Clinton Committee improperly diverted over a million dollars in private contributions from the Primary Committee to a separate "legal and accounting fund" for the General Election. However, the law requires these private contributions be used to pay the remaining debts of the primary committee.

The effect of this impermissible transfer was to artificially inflate the Primary Committee's debt. This caused the U.S. Treasury to make an overpayment of taxpayer funds to the Committee to cover that debt. Accordingly, the Audit Division and General Counsel recommended the Committee repay \$1.9 million to the U.S. Treasury. We voted for this recommendation because this result was clearly required by the Commission's regulations and previous presidential audits. We regretfully conclude that our three colleagues' failure to adhere to these rules, and their vote against this recommendation, can only be considered arbitrary and capricious.

**1. Commission Regulations and Procedures Required
the Clinton Committee Make a Repayment**

The Commission's regulations at 9034.1(b) limit the amount of public funds a candidate may receive after the nomination to the net debt outstanding at the time a matching fund payment is received. To arrive at this debt calculation, all public and private contributions are subtracted from debts outstanding. Any net debt remaining would increase the candidate's

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

Page 2

entitlement to public funds to pay the debt. The long history of this regulation makes it clear that it was designed to encourage the payment of campaign debts, to the extent possible, with private contributions.^{1/}

Commission regulations at part 9003.3(a)(1)(iii) also clearly state: Contributions that are made after the convention but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election may be redesignated for the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if:

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;...

^{1/} The requirement at 11 C.F.R. § 9034.1(b) that private contributions be used to pay a committee's debts was recently upheld in Lyndon H. LaRouche: LaRouche Democratic Campaign '88 v. FEC, 28 F.3d 137 (D.C. Cir. 1994). In LaRouche, the Court stated "the language (of 9034.1(b)) would appear to be dispositive. A candidate is entitled to receive post-DOI matching payments so long as net campaign obligations remain outstanding, and the regulation defines a candidate's remaining [NOCO] as the difference between the amount of his original NOCO and the sum of the contributions received...plus matching funds received... Whenever the sum of his post-DOI receipts equal the amount of his NOCO—whether those receipts be in the form of private contributions or matching payments from the public fisc—his entitlement to further matching payments comes to an end. Even if we were to find the regulation ambiguous, which we do not, we would still have to accept the Commission's interpretation of section 9034.1(b) unless we found it plainly inconsistent with the wording of the regulation, which it is not. 28 F.3d at 140 (emphasis added).

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**Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter**

Page 3

(D) The contributions have not been submitted for matching.

(emphasis added).

This regulation was approved on a 6-0 vote by the Commission after the 1988 election cycle when a similar issue arose in the Dukakis audit. This regulation was designed to more clearly state the consistent position taken by the Commission from the first publicly financed election in 1976. In noting the need for this clearer regulation, Commissioner Thomas pointed out during the Dukakis audit that:

On its face, the (former) regulation would seem to allow the redesignation of post-primary designated contributions if the primary would have a debt afterward. However, it would be inconsistent with the Commission's congressional mandate to allow a committee to, in essence, create debt that would lead to entitlement for post ineligibility matching funds. In other words a committee should not be able to claim a net debt and hence entitlement to post ineligibility matching funds if it dissipated its permissible primary contributions to do so. Taken to its extreme, a committee could redesignate all of its unmatched contributions ... and unnecessarily create a huge deficit with a resulting claim for matching funds.

The current language of 9003.3(a)(1)(iii) pertaining to redesignation of post-primary designated contributions, effective April 8, 1987, evolved from a somewhat similar provision in the previous version of 11 C.F.R. 9003.3. However, the prior version made clear that such redesignations were permissible only if the primary committee retained sufficient funds to pay its remaining debts.

Contributions which are made after the beginning of the expenditure period but which are designated for the primary election may be deposited in the legal and accounting compliance fund provided that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign... [11 C.F.R. 9003.3(a)(1)(iii) (effective July 11, 1983).]

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**Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter**

Page 4

Though the current language did not retain this protective phrasing, there appears to have been no intent to alter the prior approach. ... Indeed, as noted, it would be contrary to public policy to allow the creation of debt and the consequent entitlement to post ineligibility matching funds. Accordingly, the Committee should be permitted to redesignate and transfer-out to the GELAC only so much of the contributions as would not leave the Committee in a net debt position. The remaining amount in question, ... cannot be redesignated and transferred-out, must be repaid by GELAC, and must therefore be included in Committee's cash on hand figure.^{2/}

In order to clarify any ambiguity that may have occurred during the 1988 Presidential audits, the Commission revised its Presidential regulations for 1992 to make absolutely clear that public and private money be used for debt retirement, and that there is limited permissibility and several prerequisites for any redesignation of private funds. See 11 C.F.R. 9003.3(a)(1)(iii) and 9034.1(b).

II. Application of These Rules to the Clinton Committee

By splitting 3-3 on two repayment motions, the Commission failed to apply these regulations to the Clinton Committee. For example, there is no question that on the date of ineligibility (i.e., the date of Clinton's nomination, July 15, 1992), the Committee had a debt of over \$7 million. Solicitations prior to July 15 had clearly solicited funds for the primary campaign and all contributions received were made payable to the Primary Committee, and deposited into the primary account. Those solicitations reminded the contributor that the contribution could be matched. In fact, the last primary solicitation sent on July 17, which solicited funds to retire the primary debt, again reminded the contributor that the contribution could be matched.^{3/}

^{2/} Quote of Commissioner Scott Thomas from the Final Audit Report on the Dukakis for President Committee, approved by Commission 6-0.

^{3/} Subsequent solicitations were mailed for contributions to the General Election Legal and Accounting and Compliance Fund (the GELAC). These contributions are not at issue here.

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**Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter**

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Contributions deposited by the Primary Committee from these solicitations totaled \$5,863,410 between July 16 and October 2, 1992. In that same time frame, the Committee submitted final matching requests totaling \$6,046,107. The Committee received this inflated amount because they did not apply all of their private funds to their net outstanding campaign obligations. Instead, the Primary Committee sought redesignations from their contributors and transferred \$2,444,557 to the GELAC. This is in direct contravention of the Commission's regulations governing matching funds. 9034.1(b).

In other words, the Committee took contributor checks directly in response to primary solicitations, deposited them into the primary account and submitted \$2,600,519 for matching funds while at the same time taking other contributions from the same solicitations and, claiming they were intended for the GELAC, transferred them to the Legal and Accounting Compliance Fund.

In the Final Audit report, the Audit Division correctly recommended that the candidate had exceeded his entitlement to further matching funds as of the date on which private contributions and matching funds could have retired all debts. This was in accord with the previously cited public funding regulations, their Explanation and Justification, and the Presidential Compliance Manual. The amount the Audit Division calculated the Committee received in excess of its entitlement on this issue was over \$2.9 million. The Audit Division recommended this amount must be repaid to the U.S. Treasury. The Office of General Counsel fully concurred with this recommendation.

In discussing this finding, our colleagues argued that because of the general redesignation language at 11 C.F.R. § 110.1 and the fact that the Committee had received redesignations from many of the contributors, that we should recognize the "contributors' intent" and allow the Committee to transfer the funds to the GELAC.

We believe this analysis is faulty in that it fails to take into account the specific language of the regulations concerning outstanding debts from a Presidential primary at §§ 9003.3(a)(1)(ii) and 9034.1(b).

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However, our colleagues' and the Committee's argument went even farther than simple redesignation. They argued that these contributions were not specifically designated for the primary in the first place but were intended for the GELAC despite the fact that some of these contributions were solicited by the Primary Committee to retire primary debt; and all specifically indicated on the solicitation that the contributions were matchable; and the checks were made to the order of the Primary Committee and were deposited in a Primary Committee account.

The result of the Commission's failure to approve Audit's recommendation left us in the impossible position of accepting the Committee's argument that contributions deposited after the convention were not primary contributions, but rather were undesignated contributions received after the primary election, and pursuant to 11 C.F.R. 110.1 were automatically general election contributions. This apparently holds true despite the fact that contributions received as part of the same solicitations were in fact deposited by the Primary Committee and matched with public funds!

Following the 3-3 split on the Audit's recommendation, which had the effect of calling these funds contributions for the GELAC, the General Counsel and Audit Division recommended that the funds received after the DOI that were matched should be declared ineligible for matching because (as our colleagues had just argued) they too were not designated for the primary. This recommendation was made because the contributions transferred by the Clinton Committee to the GELAC and the contributions that were retained by the primary committee and submitted for matching were indistinguishable in every way: they were solicited by the same mailing, mailed to the same address, made payable to the same committee and received at the same time. This motion recognized that if some of these contributions were not designated for the primary, then none were. Accordingly, the Committee would have had to make a repayment of the amount that was mismatched with public funds. Incredibly, this motion also failed on a 3-3 partisan split.

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And so the Committee has it both ways. Contributions the Committee received after the convention were considered primary contributions that were matched with public funds used to pay primary debts, while other contributions also received after the convention from the same solicitations were considered undesignated or redesignated to the GELAC -- all at the whim of the Committee.

We see no legal or logical way that these post convention contributions can be both matchable primary contributions and at the Committee's discretion also be undesignated contributions to the GELAC. Such a scheme allowed the Clinton Committee to manipulate its cash balance and debts to receive public money to which it was not entitled. In its 19 year history, the Commission has never tolerated such a result. The Commission's failure to demand repayment of this public money is inconsistent with Commission precedent and squarely at odds with the plain language of the statute and regulations, is arbitrary and capricious, and contrary to law. Failure to approve either of the two motions completely undermines the integrity of the Presidential Public Funding system and will place this agency in an untenable position in trying to enforce the law in future elections.

III. The Clinton Committee's Real Entitlement to Public Money.

In their Statement of Reasons, Commissioners McGarry, McDonald and Thomas make the extraordinary statement that their votes to block repayment actually "furthers the public financing concept" (emphasis in original) because it pumps more taxpayer money into the Clinton campaign than the rules allow. Their argument is that if public financing is good, then more public financing must be better. This philosophy, of course, turns Congress' limited public financing statutes for the primaries and the Commission's audit rules upside down: for in every Presidential audit, until this one, the Commission has sought to protect taxpayer funds by requiring Committees prove they were fully entitled to the matching funds they received.

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We believe that, at a minimum, Congress should be consulted before the Commission turns a conditional grant of public funds into a flat entitlement for maximum financing. Furthermore, such a drastic change of course should be subject to the notice and comment and other protections of a rulemaking. Finally, it is grossly improper to adopt such a free-spending standard for only one candidate (the current President of the United States), while every other campaign in the same cycle has been held to a different and stricter rule. Such a singular and capricious result is inappropriate and does not "further" the concept of public financing. Instead, it destroys the public's confidence that its money will be audited in a non-partisan manner and the rules scrupulously followed when it is given to any presidential campaign.

Joan D. Aikens
Joan D. Aikens
Commissioner

December 29, 1994
Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

December 29 '94
Date

Trevor Potter
Trevor Potter
Chairman

December 29, 1994
Date

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

STATEMENT OF COMMISSIONERS McDONALD, MCGARRY,
AND THOMAS REGARDING CLINTON CAMPAIGN AUDIT

We write this short statement to explain our principal reasons for disagreeing with the staff's recommendation to treat about \$1.5 million in funds raised by the Clinton campaign after the nomination as primary committee assets. The staff's recommendation would have resulted in an additional repayment obligation in that amount on the theory that the primary campaign debt was \$1.5 million smaller and matching funds given to the campaign to pay its debts should be returned.

First, as a matter of law, this is a case of first impression. The Commission has never addressed whether contributions coming in after the nomination with some indications they were intended for the primary, but without the specific signed writing required for proper designation as such (see 11 C.F.R. §110.1(b)(4) and Advisory Opinion 1990-30, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6006), must be treated as primary campaign assets. The staff felt that because the checks were made payable to various names such as "Clinton for President Campaign," the legal requirement for a proper designation as a primary contribution was met. We think the regulation and advisory opinion cited necessitate clearer words of designation for a particular election than that. Also, we disagree that the solicitation materials which appear to have generated some of the contributions at issue satisfy the designation standard without a contributor's signature. Maybe the regulation and advisory opinion shouldn't have been made so strict, but the signature requirement is there.

Second, assuming the contributions at issue didn't have to be treated as primary assets, we faced the policy issue of whether the Clinton campaign should be forced to treat them as such nonetheless. Because the actual intent of these post-nomination donors was ambiguous at best, because the technical requirements for designation as primary donations were not met, and because the use of public funds (rather than private contributions) to pay campaign expenses is the very essence of the public funding program, we felt it inappropriate to account for these funds in a way that would deprive the Clinton campaign of the use of public funds to pay legitimate post-primary debts. The funds at issue, which came in after the nomination, which

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subsequent to receipt were confirmed in writing by the donors to be intended for the general election legal and accounting compliance fund (GELAC), and which were not submitted for primary campaign matching funds, shouldn't be reconfigured as primary campaign assets, we believe.

The staff was of the view that if we don't treat the funds moved to the GELAC as primary assets, we should treat other post-nomination contributions submitted for primary matching as non-matchable and recoup any associated matching funds. This struck us as a "Catch 22" argument. In our view, the contributions submitted for matching can and should be treated differently. First, the Clinton campaign concedes that such contributions must apply as a primary asset, thereby reducing post-nomination entitlement for matching funds. Further, the Commission's longstanding practice, apparently, has been to treat such contributions as matchable even though the technical requirements for written designation have not been met.

What is the impact of our approach? Taxpayer funds, rather than privately raised dollars, are used to pay primary campaign expenses-- a result that furthers the public financing concept. The funds at issue are left available to the GELAC to pay for complying with the many complexities of the law-- again a result that furthers the public financing concept because it insures that candidates continue to opt for public rather than private financing.

Our approach does not undermine the responsibility of the agency to insure that public funds are not spent for things that have no relation to the primary campaign or that are not properly documented. Hundreds of thousands of dollars in the Clinton and Bush campaigns are being treated as non-qualified for these reasons. Nor does our approach undermine our review of campaigns to insure that the state-by-state and overall spending limits are adhered to by the publicly funded campaigns. The audit reports demonstrate this. All our approach does is allow the use of more public funding dollars to pay for legitimate primary campaign expenses of a publicly funded campaign. As a matter of policy, we think that is a better result than the alternative.

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Danny L. McDonald
Vice Chairman


John Warren McGarty
Commissioner


Scott E. Thomas
Commissioner

12-16-94
Date

12/16/94
Date

12/16/94
Date