



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 30, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-37

Randall A. Terry
Box 196 RD2
Harpursville, NY 13787

Dear Mr. Terry:

This responds to your letters dated September 29 and August 5, and August 4, 1992, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the airing of your radio show while you are a candidate for Federal office.

You are the Right-to-Life candidate for the House of Representatives from the 23rd District of New York. Among your opponents is Congressman Sherwood Boehlert, the Republican nominee. You have not filed a Statement of Candidacy indicating that your campaign has raised or spent \$5,000 but you are on the 1992 general election ballot as the Right-to-Life candidate and intend to raise funds. You state that, in late July 1992, you accepted the Right-to-Life Party's request to run on their ballot line.

You have also been the host of a daily radio talk show entitled "Randall Terry Live," since the beginning of May, 1992. The show "deals with all major contemporary issues, both domestic and foreign," and has a "call-in" format "in which the news of the day is discussed." You state that you do not intend to use the show to promote your candidacy or raise funds for your candidacy, and that no ads raising funds for or promoting your candidacy would be run during the show.

Randall Terry Live, Inc. produces the show which is distributed via satellite around the nation on a Christian Broadcasting Network satellite. The show airs on approximately 95 stations nationwide, but on only one station in New York State, WLNL in Horseheads, near Elmira. You state that the show does not air in the 23rd District. You note that WLNL beams into areas west

of the district, but that "the signal is almost extinct" at Binghamton which is just outside the district on the southwest side.

You state that you are a contractual employee of Randall Terry Live, Inc., and neither an owner or stockholder of the company. A family member is the sole incorporator of the company. You state that neither the family member nor the corporation has made any donations or in-kind contributions to the campaign.

You spend about 35 hours a week working for Randall Terry Live and average another 15 hours a week as a lecturer and pro-life activist. You are employed by the company at a salary of between \$23,000 and \$25,000 per year and earn roughly the same amount of money through speaking honoraria.^{1/} You have sent three tape cassettes of your show, one each for August 3, 4, and 5, 1992. Your usual format appears to be to begin with three or four news headlines, to comment on these stories, and to talk with phone-in listeners either about a specific topic for the program or general topics. There were also satirical features (i.e., on the Clinton-Gore campaign bus and on Ross Perot). The shows repeatedly attack "humanists" and "liberals." During these shows, you derogate the Clinton-Gore ticket and express support for George Bush's candidacy.^{2/}

You begin the August 3 show with a tape of a male voice saying the following:

One, I find him to be one of the most offensive people I've ever been exposed to in my life, trampling all over the constitutional rights of other people. That's not the type of people that we want representing us in any elective office.

You identify the speaker as Congressman Sherwood Boehlert and explain that he is talking about you. You then remark that, if you are one of the most offensive people he knows, then he must not know many people, because you are "a nice guy."

You ask whether you may continue to host your radio show while you are running for Federal office. This question may also be expressed as whether the expenses incurred by Randall Terry Live, Inc., or by the radio stations or network carrying the show, would be in-kind corporate contributions to your campaign.

The Act and regulations prohibit corporations from making contributions or expenditures in connection with any Federal election campaign, and prohibit any Federal candidate or campaign from knowingly accepting such a prohibited contribution or expenditure. 2 U.S.C. 441b(a); 11 CFR 114.2(b) and (c). The term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any [Federal] election." 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1).

The Commission notes your statements that your show does not air in the 23rd District. The Commission also notes your representations that you do not intend to use the show to promote your candidacy or raise funds for your candidacy, and that no ads raising funds for or promoting your candidacy would be run during the show. The Commission interprets your representations

to include a commitment to refrain from attacks on your opponents, or from soliciting funds or airing ads for those purposes. Based upon these conditions, the Commission concludes that you may continue to host your show during your candidacy without a prohibited contribution occurring.^{3/} The Commission's conclusion is based on the specific facts and representations presented and is not meant to reverse or modify any previous opinions pertaining to the participation of, or communications referring to, a Federal candidate in other activities and contexts. See Advisory Opinion 1992-5 and opinions cited therein.

The Commission expresses no opinion as to any ramifications of communications law, which is outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosure (AO 1992-5)

ENDNOTES

1/ Previous radio experience included a five-minute daily show entitled "Operation Rescue News Update" which aired from the fall of 1988 to this past summer. Between July 1991 and February 1992, you had three one-week stints and one two-week stint at hosting daily one-hour radio shows.

2/ The Commission also notes that you criticize the President on his handling of the situation in Sarajevo. After making this criticism, you state that this is proof to your listeners that you are not a "lapdog" of the Bush administration.

3/ In the absence of further facts or other contextual information, the Commission makes no determination as to the playing of the tape of Congressman Boehlert and your statements immediately subsequent to that.