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FEDERAL ELECTION
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RECEIVED
FEDERAL ELECTION
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AOR 1996-11

March 21, 1996

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Request for Advisory
Opinion

To Whom It May Concern:

Pursuant to the Federal Election Campaign Act, this letter is a request for an Advisory Opinion regarding the applicability of the new regulations regarding candidate appearances at corporate-sponsored conventions to the activities of National Right to Life Conventions, Inc. ("NRLCI"), which this law firm represents. We request an advisory opinion based on the following facts and questions.

FACTS ABOUT NRLCI

NRLCI is a nonprofit membership corporation which engages in educational and lobbying activities relating to the issues of abortion, infanticide, and euthanasia. True copies of the Certificate of incorporation for NRLCI and the Articles of Incorporation of National Right to Life Conventions, Inc. are attached hereto as *Exhibit A* and *Exhibit B*, respectively. In particular, NRLCI conducts annual conventions to which it regularly invites candidates for federal office to speak on issues of interest to those attending the conventions. NRLCI is exempt from taxation under 501(c)(4) of the Internal Revenue Code (codified at 26 U.S.C.).

The only members of NRLCI are the nine members of the NRLCI Board of Directors. In addition, NRLCI has two part-time employees. NRLCI is a subsidiary of the National Right to Life Committee, Inc., which is also a nonprofit membership corporation exempt from taxation under 501(c)(4) of the Internal Revenue Code.

FACTS ABOUT THE PROPOSED ACTIVITY

1. NRLCI will be conducting a National Right to Life Convention ("the convention") from June 20 through June 22, 1996, in rented accommodations in northern Virginia.

2. Approximately one thousand individuals will be attending the convention, including members and employees of NRLCI, their families, and members of the general public.

3. Of these attendees, almost all will be members of the general public.

4. News media reporters and support staff will be free to cover all aspects of the convention, and press releases will advise many regular news media outlets of the activities of the convention, including presentations by candidate speakers.

5. The purpose of the convention is to educate the attendees concerning issues relating to pro-life concerns.

6. The discussion of issues will include a discussion of legislative issues of interest to pro-lifers, such as the partial-birth abortion bill which was passed by both houses of United States Congress in 1995.

7. NRLCI intends to invite as a convention speaker a member of the United States House of Representatives ("congressional candidate") who is currently running for reelection.

8. The congressional candidate is from another state than Virginia, and was a sponsor of the partial-birth abortion bill.

9. It is anticipated that few, if any, voters from the congressional candidate's home district will be present at the convention.

10. NRLCI also intends to invite as a convention speaker a candidate for the office of President of the United States, who is currently an incumbent member of Congress, or his representative, who will appear and speak in his behalf. (The candidate and/or his representative will be referred to herein as "candidate".)

11. NRLCI wants to ask these candidates to speak regarding legislative efforts and proposals in Congress and other issues of interest to pro-lifers.

12. Some of the topics which speakers, including candidates for federal office, may address have become campaign issues in various elections, including their own.

13. The candidate speakers will be invited to freely address issues of interest to pro-lifers, without regard to whether those issues have become an issue in their campaign for federal office.

14. NRLCI will not invite as convention speakers - or to make any appearance at the convention - any opposing candidates to those candidate speakers who have been invited and will not give any such opposing candidates an opportunity to speak or appear at the convention if the opposing candidates request such time to speak or appear.

15. NRLCI will coordinate with those candidates invited to appear as speakers, or their agents, their appearances at the convention, specifically with regard to the structure, format, and timing of the candidates' appearance and the subject which the candidate is asked to address.

16. The candidate speakers will not be paid an honorarium.

17. NRLCI will pay travel expenses for the candidate speakers to the convention from their location prior to the convention and from the convention to the location of their choice, provided that the travel expenses do not exceed reasonable costs for travel from their residence to the convention and to their residence again.

18. The travel reimbursed by NRLCI for the candidate speakers will not include any stops for campaign-related activities.

19. NRLCI will pay travel expenses from funds generated by the registration fees charged to attendees of the convention, which are part of the general treasury funds of NRLCI.

20. The planned presence of the candidate speakers will be announced in *NRL News*, a newspaper regularly published by National Right to Life Committee, Inc., and by various mailings to potential attendees, as well as in press releases.

21. Neither NRLCI nor anyone on its behalf, including the person who is designated by NRLCI to introduce the candidate, will advocate his or her election or the defeat of his or her opponent(s).

22. No campaign personnel or volunteers of the candidate will be present or, if present, will not advocate the election or defeat of any clearly identified candidate for public office.

23. Mention will be made by agents of NRLCI in introductions and in promotional materials regarding the convention of the fact that the candidate speakers are candidates for federal office.

24. Neither NRLCI nor the candidates (or their agents) will distribute or display any campaign banners, flyers, buttons, or any other campaign materials which expressly advocate the election or defeat of any clearly identified candidate for federal office or which is produced by the authorized campaign committee of any candidate.

25. Neither the candidates nor their agents will expressly advocate the election or defeat of any clearly identified candidate for public office.

26. Neither NRLCI nor the candidates (or their agents) will make any express appeals for contributions or other support for the election or defeat of any clearly identified candidate for public office.

27. The candidate speakers may participate in a press conference sponsored by NRLCI at or near the convention site before, during or after the convention in order to discuss issues of pro-life concern, where the candidate will be identified as a candidate for federal office, but where neither the candidate nor NRLCI, or any of its agents, will expressly advocate the election or defeat of any clearly identified candidate for federal office.

28. The candidate speakers will be allowed by NRLCI to make use of their appearance at the convention in their campaign, at

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the candidates sole cost, by advertising their convention appearance, or by using excerpts of their speech in campaign financed advertising.

29. The candidate speakers may participate in events sponsored by their campaign committee at the convention site which are separate from the NRLCI-sponsored convention and which are funded by the candidate's campaign committee. No NRLCI funds will be used to advertise or to conduct the candidate-sponsored event. The candidate will be allowed, at his sole cost, to advertise the candidate-sponsored event to the convention attendees. As a result, NRLCI will have knowledge of the candidate-sponsored event but will only cooperate with it to the extent set out in this paragraph.

THE APPLICABLE STATUTES & REGULATIONS

The First Amendment to the United States Constitution guarantees freedom of expression and association. As interpreted by the United States Supreme Court, these protections include political expression and association, which rights may not be infringed upon absent a compelling state interest and only by laws narrowly tailored to implement only the compelling interest identified. *Buckley v. Valeo*, 424 U.S. 1 (1976). The only interest found to be sufficiently compelling to limit free political expression and association is concern for *quid pro quo* corruption or the appearance of such corruption. *FEC v. National Conservative Political Action Committee*, 470 U.S. 480 (1985).

In 2 U.S.C. § 441(b), the United States Congress has prohibited corporate contributions or expenditures in connection with a federal election. This ban has been upheld by the United States Supreme Court, provided, in part, that there is an exception for issue advocacy, which is to be distinguished from electioneering by the bright-line express advocacy test. Electioneering is determined by examining a communication to determine from the explicit words of the communication whether they constitute the express advocacy of the election or defeat of a clearly identified candidate for federal office. See, e.g., *Buckley v. Valeo*, 424 U.S. 1; *FEC v. Massachusetts Citizens for Life ("MCFL")*, 479 U.S. 238 (1986), *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991), cert. denied sub nom. *FEC v. Keefer*, 112 S. Ct. 79 (1991).

In newly-promulgated regulations, the FEC has purportedly sought to conform its regulations to these legal dictates. In particular, the new 2 C.F.R. § 114.4 governs "[d]isbursements for Communications beyond the restricted class in connection with a Federal election," including candidate appearances at corporate-sponsored conventions to which the general public will be invited to attend. In 2 C.F.R. § 114.2(c), titled "[p]rohibitions on contributions and expenditures," the new regulations say that:

Disbursements by corporations . . . for the election-related activities described in 11 CFR . . . 114.4 will not cause those activities to be contributions or expenditures, even when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted by those sections.

In new 2 C.F.R. § 114.4(b)(1), substantial restrictions are imposed on appearances by candidates for federal office at conventions attended by those beyond a corporation's restricted class.¹ In the commentary to the new regulations, the FEC declares that

these amendment do not adversely affect the ability of corporations or labor organizations to invite their restricted class, other employees or the general public to attend a speech given by an officeholder or other prominent individual who is also a federal candidate, if the speech is not campaign-related and the individual is not appearing in his or her capacity as a candidate for Federal office. See, e.g., AOs 1980-22 and 1992-6.

60 Fed. Reg. 64,260, 64,265 (1995). The actual text of the new regulations does not contain any provision which states the substance of this commentary note. Also, there is no definition of the term "campaign-related," which is used in the comment.

QUESTIONS

Based on the foregoing facts and under the new FEC regulations governing the appearance of candidates at conventions of membership corporations to which members of the general public have been invited, an advisory opinion is sought with respect to the following questions:

1. Where in the text of the regulations is there an exception from the requirements of § 114.4(b)(1)(i) through (viii) for candidates to appear at a convention, if the speech by the candidate is not campaign-related and if the candidate is not appearing in his or her capacity as a candidate for federal office?

¹These restrictions are made applicable to nonprofit membership corporations, such as NRCI, by 2 C.F.R. § 114.4(e).

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2. If the commentary statement is not supported in the text of the regulations, is there other legal authority in the FECA or FEC regulations for the exception outlined in question 1?

3. In the above-quoted statement from the commentary, what does the phrase "campaign-related" mean and, if a candidate discusses issues that are issues in his campaign during his speech at the convention or if he or she is identified as a candidate for federal office, does either of these make his presentation "campaign-related"?

4. In the above-quoted statement from the commentary, what does the phrase "in his or her capacity as a candidate for Federal office" mean and, if a candidate discusses issues that are issues in his campaign during his speech at the convention or if he or she is identified as a candidate for federal office, does either of these make his appearance one that is "in his or her capacity as a candidate for Federal office"?

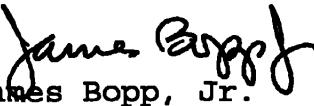
5. Based on the facts set forth herein, may NRLCI invite the candidates described and may the candidates speak as planned without violating any FEC law or regulation?

6. If the candidates may not appear as described in the facts set forth herein without violating FEC law or regulations, what specific changes must be made in the proposed plans to bring the appearances of the candidates into compliance with FEC law or regulations?

Thank you for your consideration of this matter. We await your response.

Sincerely,

BOPP, COLESON & BOSTROM


James Bopp, Jr.


Richard E. Coleson

OFFICE OF RECORDER OF DEEDS, D. C.

Corporation Division
515 D Streets, N. W.
Washington, D. C. 20001

C E R T I F I C A T E

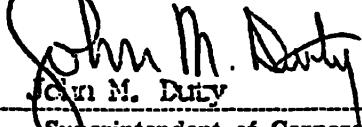
THIS IS TO CERTIFY that all provisions of the District of Columbia Non-profit Corporation Act have been complied with and ACCORDINGLY this Certificate of Incorporation

is hereby issued to the NATIONAL RIGHT TO LIFE CONVENTIONS, INC.

as of the date hereinafter mentioned.

Date October 7, 1981

MARGURITE C. STOKES
Acting Recorder of Deeds, D.C.


John M. Duty
Superintendent of Corporations

ARTICLES OF INCORPORATION

OF

NATIONAL RIGHT TO LIFE

CONVENTIONS, INC.

TO: Recorder of Deeds
Washington, D.C.

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators, of a corporation, adopt the following articles of incorporation for such corporation pursuant to the District of Columbia NON-PROFIT CORPORATION ACT (D.C. Code, Title 29, Chapter 10):

FIRST

The name of the corporation shall be the National Right to Life Conventions, Inc. (hereinafter referred to as the Corporation).

SECOND

The period of duration of the Corporation is perpetual.

THIRD

The purposes of the Corporation are:

(a) To promote respect for the worth and dignity of all human life, including the life of the unborn child from the moment of conception, by sponsoring educational speeches, seminars and conventions as the Board of Directors may from time to time determine;

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EXHIBIT B

(b) To engage in such activities as shall be set forth in the bylaws of the Corporation which will assist in the accomplishment of those purposes immediately aforementioned.

FOURTH

The members of the Corporation shall be deemed to be the Board of Directors of the National Right to Life Committee, Inc., a corporation organized under the laws of the District of Columbia.

Membership in the Corporation may be divided into such classifications as the bylaws of the Corporation may prescribe or as the Board of Directors may from time to time designate.

Subject to the provisions of the articles of incorporation of the Corporation, the conditions, terms, privileges, rights and duties of membership shall be stated or provided for in the bylaws of the Corporation.

FIFTH

The Corporation is not organized for pecuniary profit and shall not have authority to issue capital stock or shares of any kind.

Notwithstanding any other provision of these articles, the Corporation shall not carry on any activity not permitted to be carried on by a corporation exempt from Federal Income Tax under 501(c)(4) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

SIXTH

The management, affairs, business and concerns of the Corporation shall be vested in the members. However, all details of management, affairs, business and concerns of the Corporation are delegated to a Board of Directors, including the power of amending the articles of incorporation and bylaws of the Corporation, except as otherwise provided by statute.

The Executive Committee of the National Right to Life Committee, Inc., a corporation organized under the laws of the District of Columbia shall constitute the Board of Directors of the Corporation.

SEVENTH

In the event of dissolution of this Corporation or the winding up of its affairs, the property of this Corporation shall not be conveyed or distributed to any individual or organization created or operated for profit, but shall be conveyed and distributed to such other organization then operating in the continental United States for the same or similar purposes. If there be no such organization then in existence, then all assets after payment or providing for payment of all liabilities of the Corporation shall be transferred to a corporation of similar purposes; provided, however, said corporation must otherwise qualify under Section 501(c)(4) of the Internal Revenue Code of 1954, as amended.

EIGHTH

The address of the Corporation's initial registered office is:

Suite 341
National Press Building
529 14th Street, N.W.
Washington, D.C. 20045

The name of its initial registered agent at such address is:

Warren Sweeney
Suite 341
National Press Building
529 14th Street, N.W.
Washington, D.C. 20045

The principal place of business and headquarters of the Corporation shall be in a city designated by the Board of Directors. The Board of Directors may establish other offices in such place or places as it may deem expedient for the transaction of the business and the affairs of the Corporation.

NINTH

The number of Directors constituting the initial Board of Directors is nine (9), the names and addresses of the persons who are to serve as the initial Board of Directors until their successors be elected and qualified are:

John C. Willke, M.D.
7634 Pineglen Drive
Cincinnati, Ohio 45224

Mrs. Sandra Faucher
R.F.D. #6
Augusta, Maine 04330

Mrs. Jean Doyle
5203 Willow Link
Sarasota, Florida 33580

Mrs. Jane Muldoon
7535 Lime Hollow
Grand Rapids, Michigan 49506

Mrs. Margie Montgomery
132 Chenoweth Lane
Louisville, Kentucky 40207

Philip Moran, Esq.
49 Federal Street
Salem, Massachusetts 01970

Mrs. Geline B. Williams
335 Oak Lane
Richmond, Virginia 23226

Mr. Jaren Hiller
924 East Juneau Avenue
Milwaukee, Wisconsin 53202

Mrs. Darla St. Martin
4249 Nicollet Avenue
Minneapolis, Minnesota 55409

TENTH

The name and address of each incorporator is:

William J. Olson, Esq.
3814 Bent Branch Road
Falls Church, Virginia 22041

James E. Gates
4600 S. Four Mile Run Drive, #533
Arlington, Virginia 22204

Linda M. Nelson
2015 Georgian Woods Place, #41
Wheaton, Maryland 20902

William J. Olson
William J. Olson

James E. Gates
James E. Gates

Linda M. Nelson
Linda M. Nelson

Dated: October 7, 1981

DISTRICT OF COLUMBIA, ss:

I, Debra E. Blunt, a Notary Public, hereby
certify that on the 7th day of October, 1981 personally
appeared before me William J. Olson, James E. Gates and Linda M.
Nelson, who signed the foregoing document as incorporators and that the
statements contained therein are true.

Debra E. Blunt
Notary Public

My commission expires 6-1-86