



FEDERAL ELECTION COMMISSION

1125 A STREET N.W.
WASHINGTON, D.C. 20461

THIS IS THE END OF TCR # 1377

Date Filmed 6/2/62 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

Routing Cards

Objection Memos

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

- | | |
|--|---|
| ☐ (1) Classified Information | ☐ (6) Personal privacy |
| ☐ (2) Internal rules and practices | ☐ (7) Investigatory files |
| ☐ (3) Exempted by other statute | ☐ (8) Banking Information |
| ☐ (4) Trade secrets and commercial or financial information | ☐ (9) Well Information (geographic or geophysical) |
| ☒ (5) Internal Documents | |

Signed

Deborah Curry

date

5-12-82

FEC 9-21-77

2040324290



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 10, 1982

James Bopp, Jr.
BRAMES, BOPP AND HAYNES
900 Sycamore Building
19 South Sixth Street
Terre Haute, Indiana 47807

Re: MUR 1377

Dear Mr. Bopp:

This is in reference to the complaint you filed with the Commission dated March 24, 1981 concerning Planned Parent Affiliates of California. After review of the allegations of your complaint and on the basis of information provided in your complaint and information provided by the Respondent, the Commission on May 4, 1982, determined that there was reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days.

If you have any questions, please direct them to Deborah Curry at (202) 523-4529.

Sincerely,

A handwritten signature in cursive script that reads "Danny L. McDonald".

Danny L. McDonald
Vice Chairman for the
Federal Election Commission

1 2 3 4 5 6 7 8 9 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



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 10, 1982

Laurie R. Rockett
GREENBAUM, WOLF AND ERNST
437 Madison Avenue
New York, New York 10022

Re: MUR 1377

Dear Ms. Rockett:

On May 4, 1982, the Commission found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Deborah Curry at (202)523-4529.

Sincerely,

A handwritten signature in cursive script, reading "Danny L. McDonald", is written over the typed name.

Danny L. McDonald
Vice Chairman for the
Federal Election Commission

132040324292

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Planned Parenthood Affiliates) MUR 1377
of California)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session of May 4, 1982, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 1377:

1. find reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. §441b of the Federal Election Campaign Act of 1971 as amended;
2. approve the letters attached to the General Counsel's April 14, 1982 report in this matter; and
3. close the file.

Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioners Aikens and Elliott dissented.

Attest:

5-4-82

Date

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

32040324293

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Planned Parenthood Affiliates))
of California)

MUR 1377

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on April 27, 1982, do hereby certify that the Commission acted as follows in MUR 1377:

1. Failed on a vote of 2-3 to pass a motion to take no further action and close the file in this matter.

Commissioners Aikens and Elliott voted affirmatively for the motion. Commissioners Harris, McGarry, and Reiche dissented. Commissioner McDonald was not present at the time of the vote.

2. Failed on a vote of 3-2 to pass a motion to

- a) find reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. §441b of the Federal Election Campaign Act of 1971 as amended;
- b) Approve the letters attached to the General Counsel's April 14, 1982 report in this matter; and,
- c) Close the file.

Commissioners Harris, McGarry, and Reiche voted affirmatively for the motion; Commissioners Aikens and Elliott dissented; and Commissioner McDonald was not present at the time of the vote.

Attest:

4-27-82

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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April 14, 1982

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MUR 1377

Please have the attached First General Counsel's
Report distributed to the Commission on a 48 hour tally
basis. Thank you.

Attachment

cc: Curry

220403224295

SENSITIVE

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 APR 14 A 9: 30

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION: 4-14-82

MUR 1377
DATE COMPLAINT RECEIVED
BY OGC: 03/30/81
DATE OF NOTIFICATION TO
RESPONDENT: 04/01/81
STAFF MEMBER: Deborah Curry

COMPLAINANT'S NAME: National Right to Life Committee, Inc.

RESPONDENT'S NAME: Planned Parenthood Affiliates of
California

RELEVANT STATUTE: 2 U.S.C. § 441b(a), § 441b(b)(2),
§ 431(9)(B)(i) 11 C.F.R. § 114.4(c)
(3), § 114.2(b), § 100.8(b)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On March 30, 1981, the Office of General Counsel received a sworn and notarized complaint (Attachment I) from James Bopp, Jr. on behalf of the National Right to Life Committee, Inc. (hereinafter "NRLC"). The complaint alleged that Planned Parenthood Affiliates of California (hereinafter "PPAC") violated 2 U.S.C. § 441b by making a corporate contribution or expenditure in connection with a federal election.

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To support this allegation of a 2 U.S.C. § 441b violation, NRLC has submitted a document entitled "PPAC MEMO." ^{1/} Specifically, NRLC contends that an article contained in this document entitled "1980 Candidates/How They Stand on Choice" violates the criteria for voter guides required by 11 C.F.R. § 114.4(c)(3) since, by use of the + and - and the words "pro choice" and "anti-choice", the article tends to favor one candidate over another. In addition, NRLC asserts that the document was distributed to the general public and that the document suggests to readers that they pass a copy of it along to others. Therefore, NRLC concludes that such expenditures constitute a violation of 2 U.S.C. § 441b.

On April 14, 1981, the Office of General Counsel received a request by counsel representing PPAC for a 30 day extension of time. On April 27, 1981, the Office of General Counsel granted a 30 day extension. On May 22, 1981, the Office of General Counsel received from PPAC a response (Attachment II) containing a statement of facts and legal arguments. On June 1, 1981, the Office of General Counsel received a signed and sworn affidavit from Norma Clevenger, Executive Director of PPAC, (Attachment III) in support of the statement of facts. On November 13, 1981, the Office of General Counsel submitted a report to the Commission which was withdrawn for revision at the December 8,

^{1/} On April 18, 1981, the Office of General Counsel received from NRLC a more legible copy of the "PPAC MEMO." This was done pursuant to a request from this office.

320403224297

1981 Commission meeting. On November 20, 1981 PPAC submitted a supplement to its original response to the complaint.

According to the statement of facts and affidavit, PPAC was incorporated in California in 1974 as a General non-profit corporation. PPAC has no stockholders. It is a social welfare organization with tax exempt status under Section 501(c)(4) of the Internal Revenue Code. PPAC was established by the California affiliates of the Planned Parenthood Federation of American, Inc. and it is governed by a Board of Delegates of two representatives from each of the seventeen California affiliates that make up its membership. The purposes of PPAC are to promote and coordinate the provision of education, counseling and clinical services in the field of family planning, and to support or oppose legislation in the field of family planning.

FACTUAL AND LEGAL ANALYSIS

Title 2 of the United States Code, Section 441b(a), expressly prohibits corporate contributions or expenditures in connection with federal elections. See 11 C.F.R. § 114.2(b). Title 2 of the United States Code, Section 441b(2), elaborates on the meaning of contribution or expenditure stating:

For purposes of this section and section 791(h) of title 15, the term "contribution or expenditure" shall 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 election to any of the offices referred to in this section, (Emphasis Added).

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See 11 C.F.R. § 114.1(a).

However, PPAC contends that the article in question, called "1980" Candidates, How They Stand on Choice", and contained in the "PPAC MEMO" does not violate 2 U.S.C. § 441b. In its response to the complaint PPAC submits numerous legal arguments to support this contention. The arguments emphasize the press exemption, the article's compliance with 11 C.F.R. § 114.4(c)(3) and general constitutional principles.

Press Exemption

Title 2 of the United States Code, Section 431(9)(B)(i), exempts from the term "expenditure"

any news story, commentary, or editorial, distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; (Emphasis added).

See 11 C.F.R. § 100.8(b)(2).

Therefore, in order for PPAC to avail itself of this exemption, the following three elements must be shown to exist: 1) absence of control by a political party, candidate or political committee 2) a news story, commentary or editorial; and 3) dissemination through a periodical publication. Readers Digest Association, Inc. v. F.E.C., 509 Supp. 1210 S.D.N.Y. 1981, F.E.C. v. Phillips Publishing, Inc., 517 F.Supp. 1308 (D.D.C. 1981).

PPAC states in its response that it is not connected with a political party, candidate or political committee. Nor is there any evidence before the Commission that PPAC is controlled by a political party, candidate or political committee.

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The PPAC article reports the results of candidates' views on the issues of abortion, government funding of abortion, and the human life amendment. The source for the article were candidate interviews, public statements, questionnaires, voting records, and a leaflet published by the California Prof-Life Council, Inc. Although the article contains information for the reader it is not necessarily a news story, commentary, or editorial. Those classifications generally refer to reports of events which are reported in a newspaper or news periodical or on a newscast. Thus, it is necessary to determine whether the "PPAC MEMO" as distributed by the PPAC is a news periodical.

The Act does not define the meaning of "periodical publication." The Explanation and Justification of the Candidate Debate Regulations provides some guidance on the meaning of this term however. There, periodical is defined as:

a publication in bound phamplet form appearing at regular intervals (usually either weekly, biweekly, monthly or quarterly) and containing articles of news, information, opinion or entertainment, whether general or specialized interest which ordinarily derive their revenues from subscriptions and advertising.

Explanation and Justification of Candidate Debate Regulations, 44 Federal Register 76735, December 27, 1979; See A.O. 1980-109.

Thus, to be characterized as a news periodical four elements must be present: 1) a publication in bound phamplet form; 2) the publication must appear at regular intervals, 3) it must contain articles of news or information; and 4) it must derive its revenues from subscriptions or advertising.

PPAC indicates in its response that as part of its educational function, PPAC has published the "PPAC MEMO" regularly eight or nine times a year since the organization's founding. PPAC indicates that the purpose of the "PPAC MEMO" is to keep readers, who number approximately 4,500, informed on the latest developments in reproductive health issues, including proposed legislation, administrative policies, votes on legislation, court cases and the position of public officials and candidates for public office on the issues that concern its readers. PPAC asks that subscribers ^{2/} submit an annual fee of \$8.00. ^{3/} Those who receive the "PPAC MEMO" are employees and directors of PPAC's members, other family planning providers, legislators and other individuals who specifically request it.

Thus, although PPAC asserts that it should come within the news story exemption of 2 U.S.C. § 431(9)(B)(i), this is not clear. First, PPAC itself is not in the news business. It is a confederation of California affiliates of the Planned Parenthood Federation of America, Inc. and has as its purpose to promote family planning. Also, the "PPAC MEMO" is not clearly a "publication in bound pamphlet form." Indeed, as its name "PPAC

^{2/} The "PPAC MEMO" submitted with the complaint dated September - October 1980 uses the word "donation" in requesting payment and does not speak in terms of subscription rates.

^{3/} The "PPAC MEMO" submitted with the complaint dated September - October 1980 states that its price is \$5.00. However, the Clevenger affidavit states that the subscription price of the "PPAC MEMO" is \$8.00.

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MEMO" reflects, it is a rather informal document which is not bound but is stapled together. Also, the regularity of the "PPAC MEMO" is in doubt since, as respondent states, it is published eight or nine times a year.

Further, it is not certain whether or not the "PPAC MEMO" derives its revenues from subscriptions and advertising. The September-October 1980 "PPAC MEMO" uses the word "donation" in requesting payment. It is also not evident whether this fee pays for the entire cost of the "PPAC MEMO" or whether PPAC in fact funds the "PPAC MEMO" from other sources. There is also no information as to whether everyone who receives the "PPAC MEMO" pays for it or whether some individuals receive it for free.

Thus, it can not be concluded that the news story exemption of 2 U.S.C. § 431(9)(B)(i) applies.

Voter Guide

Assuming that the press exemption is not applicable to the "PPAC MEMO" and the article "1980 Candidate/How They Stand on Choice," the next defense raised by the respondent is that it should be construed as a voter guide.

Title 11 of the Code of Federal Regulations, Section 114.4(c)(3) outlines the criteria governing voter guides. It states the following:

- A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates and their positions if -
- (i) the material do not favor one candidate or political party over another; and
- (ii) the materials are obtained from a civic

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or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

The PPAC article describes the position of candidates on the issues of abortion, government funding of abortion and the human life amendment. The name of every state and federal candidate running for a major office in California in the November election is contained in the article. PPAC states that it did extensive research in order to fairly report the views of the candidates.

4/ It indicates that it used the symbols + and - next to a candidates name as a space saving device. A plus was used next to a candidates name it that candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." A minus was used to show opposition to these issues. For a candidate whose view differed from these two positions a footnote was provided with very detailed explanatory legend. In addition, PPAC included a disclaimer in the article which stated "[t]he information is presented for educational purposes only and is not intended as endorsement of any candidate."

Though PPAC cites numerous efforts to present a balanced view of candidate positions, the use of + and - tends to favor one candidate over another. This is all the more true in light of the decidedly pro-choice stance of PPAC.

4/ PPAC points out that a large part of the information used in compiling the PPAC article was originally obtained from a leaflet distributed by the California Pro-Life Council, Inc., the California affiliate of the complainant, NRLC. The leaflet distributed by the California Pro-Life Council is similar to the article contained in the "PPAC MEMO." PPAC submitted a copy of the leaflet with its response to the complaint.

Further, the "PPAC MEMO" does not technically conform to the second requirement of 11 C.F.R. § 114.4(c)(3). The second part requires that materials be obtained from a civil or other nonprofit non-partisan organization. However, PPAC is itself a nonprofit organization. It does not endorse or support nor is it connected with any political party, candidate or political committee. 5/

Finally, PPAC asserts that its right to communicate with the 4,500 PPAC subscribers is protected by the first amendment right of association. (See Attachment IV pages 52-54 of attachments). PPAC cites to the decision in the National Right to Work Committee, Inc. v. Federal Election Commission, No 80-1487, (DC. Cir. September 4, 1981 (hereinafter "NRWC") to support this contention.

However, PPAC's reliance on NRWC may be misplaced. NRWC dealt with a specific statutory reference to the term "members" and dealt with the lawful "solicitation" of individuals for contributions. In addition the facts of the NRWC operation differs markedly from that of PPAC. Consequently, it is questionable as to whether PPAC subscribers and NRWC members are

5/ 11 C.F.R. § 114.4(d)(1) contains a similar requirement of civil or nonprofit sponsorship of get out the vote drives. However, in A.O. 1980-45 the Commission found this restriction inapplicable to groups who are themselves a civic or non-partisan organization.

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similarly situated. Indeed, many of the individuals who receive the "PPAC MEMO" have no special relationship to PPAC, being family planning providers, legislators, or just the general public.

Therefore, since the PPAC article does not appear to fall within the news story exemption of 2 U.S.C. § 431(9)(B)(i) and does not come within the criteria governing voter guides in 11 C.F.R. § 114.4(C)(3), the Office of General Counsel recommends that the Commission find reason to believe that Planned Parenthood affiliates of California violated 2 U.S.C. § 441b. However, due to the apparent efforts by PPAC to comply with the regulations pertaining to voter guides, the Office of General Counsel recommends that no further action be taken and close the file.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

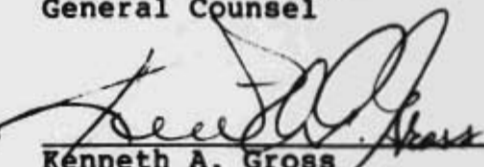
1. find reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971 as amended;
2. approve attached letters; and,

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3. close the file.

April 13, 1982
Date

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Attachments

1. Complaint (pages 1-6)
2. Response from Respondent (pages 7-46)
3. Affidavit (pages 47-51)
4. Supplemental Response from Respondent (pages 52-54)
5. Letters (two) (pages 55-56)

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Attachment I

BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

81 MAR 30 9:02

TELEPHONE
(812) 238-2421

ARNOLD H. BRAMES
JAMES BOPP, JR.
DAVID D. HAYNES

March 24, 1981

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

Dear Sir/Madam:

On behalf of the National Right to Life Committee, Inc. (NRLC), I am filing the following complaint of violation of federal election laws by Planned Parenthood Affiliates of California (PPAC), 1623 10th Street, #1, Sacramento, CA 95814. PPAC is an organization in California affiliated with Planned Parenthood of California which is designed to support legislative and administrative changes which affect family planning in California. PPAC is not a registered political action committee with the Federal Election Commission.

This complaint is to bring to the attention of the Federal Election Commission a violation of 2 U.S.C. § 441 b (a) prohibiting a corporation from making expenditures in connection with a federal election. PPAC was incorporated in the State of California on March 14, 1974.

In the fall of 1980, PPAC published a Memo which delineated the positions of federal candidates on the issue of abortion. This Memo, a copy of which is attached, described the candidates as "pro-choice" and anti-choice" by use of the symbol + or -. The distribution of this Memo was to the general public. See page 4 where the Memo suggests to the reader that they pass a copy of this Memo to others who might be interested in it.

This Memo violated § 441 b (a) since it constituted a corporate expenditure in connection with a federal election. This Memo violated the criteria for voter guides required by 11 CFR 114.4 (c) (3), since, by use of the + and - and the words "pro-choice" and "anti-choice", the material tended to favor one candidate over another.

Accordingly, we request the Federal Election Commission immediately investigate the complaint and impose appropriate fines for violation.

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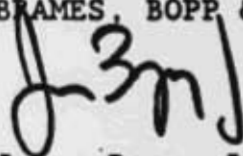
Federal Election Commission
March 24, 1981

Page Two

I have prepared the complaint and believe it is true and correct to the best of my knowledge. This complaint was not filed on behalf of or at the request or suggestion of any candidate.

Sincerely,

BRAMES, BOPP & HAYNES


James Bopp, Jr.

JB:maw
Enclosure

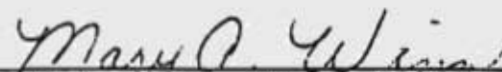
32040324308

STATE OF INDIANA, COUNTY OF VIGO, SS:

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, this 24th day of March, 1981.

Witness my hand and Notarial seal.

My Commission Expires
December 14, 1984


Mary A. Winn, Notary Public
County of Residence: Clay

Party Platforms Polarized On Abortion

Voters, being continually bombarded by campaign rhetoric as the November 4 general election draws near, must start sifting through the verbiage in order to discern just what it is candidates and political parties really support and oppose. Those voters who support reproductive freedom and equal rights for women, and who are not voting for John Anderson, may have a particularly difficult time even though major party platforms seem quite clear on the issues.

Republicans, for the first time in 40 years, have repudiated their position on equality for women by withdrawing their support for the ERA in their 1980 Party Platform.

At the same time and in an obvious attempt to attract the evangelical vote, which pollster Lou Harris reports to be about 29 percent of the voters nationwide, the Republicans called for a constitutional amendment to ban abortions and called for the appointment of federal judges at all levels of the judiciary who oppose abortion.

Senator Charles Percy, R-Illinois, called that section of the platform "the worst plank I have ever seen in any platform by the Republican Party."

By contrast, the Democratic platform takes an opposite position. Originally including the 1976 platform language which recognized the differences in thought on the abortion issue and stated an amendment to the constitution banning abortion was undesirable, the 1980 Democratic platform was altered by overwhelming passage of a minority plank which opposes government restrictions on federal funding for abortions for poor women and which declares reproductive freedom as a fundamental human right.

In addition, the Democratic plank calls for the denial of financial and other national party support to any Democratic candidate who does not support the ERA.

Of the three top presidential candidates, Anderson is the only one who has made a strong pro-choice statement. He is the only candidate to support free choice on abortion and unrestricted government funding for women unable to afford abortions.

While the Republican Party Platform appears clear on the issues of reproductive freedom and the ERA, candidate Ronald Reagan may be attempting to diffuse the absoluteness of his party's statements. In a recent Associated Press news article, Reagan, the person who signed the Therapeutic Abortion Act of 1967 liberalizing abortion in California, was reported as saying a judge's pro-abortion position may not necessarily preclude her/him from consideration as an appointee to a federal judgeship.

Other rumblings from the Reagan campaign seem to be aimed at convincing voters that he may be softening his position on abortion. Another article reported that the Reagan campaign has set up a Women's Committee. Such statements could probably be categorized as political posturing, but nonetheless, they have drawn the ire of the likes of Phyllis Schlafly and her Eagle Forum and the archconservatives represented by The Wanderer newspaper, which is already at odds with Reagan for his choice of George Bush as his vice presidential running mate.

Bush, although personally opposed to abortion, also opposes a constitutional amendment outlawing abortion and supports government funding of abortion under certain circumstances. Both these positions run contrary to the so-called "right to life" philosophy.

In three states, Kentucky, New Jersey and New York, the

Right to Life Party has qualified for the ballot. Its official anti-choice presidential candidate is Ellen McCormack. Reagan made a bid for the Party's endorsement in New York. However, his anti-choice position apparently is not strong enough for ardent "right to life" supporters.

President Carter too is having trouble with his party's platform. Carter is also personally opposed to abortion and will have difficulty supporting the party's plank and its guarantee of federally funded abortions for women unable to bear the cost of their own.

According to Sarah Weddington, an assistant to the president, "It's one of the planks he does not agree with."

While on one hand Reagan is courting the evangelica vote, on the other recent statements seemingly suggesting a softening of his position on abortion may be the result of a Harris Poll which indicates a 61-22 percent majority of all voters nationwide oppose the Republican platform plank concerning a constitutional amendment banning abortion.

In addition, although a 55-42 percent majority of white voters involved in the evangelical movement favors such an amendment, a much higher 65-30 percent majority of whites not in the movement oppose it.

Additionally, all black voters oppose such a constitutional amendment banning abortion by a 66-28 percent margin.

1980 Democratic Party Platform

We fully recognize the religious and ethical concerns which many Americans have about abortion. We also recognize the belief of many Americans that a woman has a right to choose whether and when to have a child.

The Democratic Party supports the 1973 Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or overturn the decision.

Furthermore, we pledge to support the right to be free of environmental and worksite hazards to reproductive health of men and women.

We further pledge to work for programs to improve the health and safety of pregnancy and childbirth including adequate pre-natal care, family planning counseling and services with special care to the needs of the poor, the isolated and the young.

Minority Report Adopted 2,005-956

The Democratic Party recognizes reproductive freedom as a fundamental human right. We therefore oppose government interference in the reproductive decisions of Americans, especially those government programs or legislative restrictions that deny poor Americans their right to privacy by funding or advocating one or a limited number of reproductive choices only.

Specifically, the Democratic Party opposes involuntary or uninformed sterilization for women and men, and opposes restrictions on funding for health services for the poor that deny poor women especially the right to exercise a constitutionally guaranteed right to privacy.

1980 Republican Party Platform

There can be no doubt that the question of abortion despite the complex nature of its various issues is ultimately concerned with equality of rights under the law.

(continued on page 3)

1980 Candidates/How They Stand On Choice

NOTE: To the best of our knowledge the information contained here is based on public statements by the candidates, incumbent voting records, campaign literature, interviews, answers to various questionnaires, etc. The information is presented for educational purposes only and is not intended as an endorsement of any candidate.

KEY:

+ = Pro-choice**

- = Anti-choice***

* = Incumbent

0 = No information available

x = Opposed to abortion, except under certain restrictive circumstances.

1 = Supports free choice but opposes all or unrestricted government funding.

2 = Supports parental consent/notification.

3 = Supports spousal notification.

4 = Opposes "Human Life Amendment".

5 = Supported by California Abortion Rights Action League — Political Action Committee (CARAL-PAC).

6 = Endorsed by Life Amendment Political Action Committee (LAPAC).

7 = Endorsed by National Women's Political Caucus (NWPC).

8 = Supported by National Abortion Rights Action League — Political Action Committee (NARAL-PAC).

9 = Withdrew candidacy

** Supports free choice on abortion, government funding of abortion and opposes a human life amendment to the constitution.

*** Opposes free choice on abortion, opposes government funding of abortion and supports a human life amendment to the constitution.

PRESIDENT

Caner, J. (D)* +
Anderson, J. (I) +
Reagan, R. (R) -

U.S. SENATE

Cranston, A. (D)* +
Gann, P. (R) -

CONGRESSIONAL DISTRICT

1 Johnson, M. (D)* +
Chappie, E. (R) -
2 Bork, N. (D) +
Clausen, D. (R)* +
3 Matsui, R. (D)* +
Murphy, J. (R) -
4 Fazio, V. (D)* +
Dehr, A. (R) -
5 Burton, J. (D)* +
McQuaid, D. (R) -
6 Burton, P. (D)* +
Spinosa, T. (R) -
7 Miller, G. (D)* +
St Clair, G. (R) -
8 Dellums, R. (D)* +
Hughes, C. (R) -
9 Stark, F. (D)* +
Kennedy, W. (R) -
10 Edwards, D. (D)* +
Lutton, J. (R) 0
11 Lantos, T. (D) +
Royer, B. (R)* -
12 Olsen, K. (D) +
McCloskey, P. (R)* +
13 Mineta, N. (D)* +
Gagne, W. (R) 0
14 Cerney, A. (D) +
Shumway, N. (R)* -
15 Coelho, T. (D)* +
Schwartz, R. (R) 0
16 Panetta, L. (D)* +
Roth, W. (R) -
17 Johnson, W. (D) +
Pashayan, C. (R)* -
18 Timmermans, M. (D) -
Thomas, W. (R)* -
19 Lodise, C. (D) +
Lagomarsino, R. (R)* -
20 Miller, M. (D) 0
Goldwater Jr., B. (R)* +
21 Corman, J. (D)* +
Fiedler, B. (R) 0
22 O'Donnell, P. (D) -
Moorhead, C. (R)* -
23 Borenson, A. (D)* +
Winkler, R. (R) -

24 Waxman, H. (D)* +
Cayard, R. (R) -
25 Roybal, E. (D)* +
Ferraro, R. (R) 0
26 Lioni, J. (D) 0
Rousselot, J. (R)* -
27 Peck, C. (D) +
Dornan, R. (R)* -
28 Dixon, J. (D)* +
Reid, R. (R) +
29 Hawkins, A. (D)* +
Hirt, M. (R) 0
Danielson, G. (D)* +
Platten, J.A. (R) 0
31 Dymally, M. (D) +
Grimshaw, D. (R) -
32 Anderson, G. (D)* +
Adler, J. (R) -
33 Anderson, F. (D) 0
Grisham, W. (R)* +
34 Simone, I. (D) -
Lungren, D. (R)* -
35 Lloyd, J. (D)* +
Dreier, D. (R) -
36 Brown, G. (D)* +
Stark, J. (R) -
37 Rusk, D. (D) 0
Lewis, J. (R)* -
38 Patterson, J. (D)* +
Jacobson, A. (R) -
39 Lahinen, L. (D) +
Dannemeyer, W. (R)* -
40 Dow, M. (D) +
Badham, R. (R)* -
41 Wilson, B. (D) -
Lowery, B. (R) -
42 Van Deelen, L. (D)* +
Hunter, D. (R) -
43 Metzger, T. (D) -
Burgener, C. (R)* -

STATE SENATE DISTRICT

1 Huggins, D. (D) +
Johnson, R. (R)* -
3 Rodda, A. (D)* +
Doolittle, J. (R) +
5 Garris, E. (D) 0
Marks, M. (R)* +
7 Boatwright, D. (D) 0
Jarboe, J.J. (R) -
9 Pettis, N. (D)* +
Roust, T. (R) 0
11 Alquist, A. (D)* +
Arcy, Richard 0
13 Garamend, J. (D)* -
Johnson, W. (R) +

15 Vuich, RA (D)* +
17 Mello, H. (D) +
Seastrand, E. (R) -
19 Woodlock, R. (D) +
Davis, Ed (R) -
21 Cogger, S. (D) 0
Russell, N. (R)* -
23 Roberts, D. (D)* -
White, N. (R) -
25 Boothroyd, T. (D) +
Richardson, H.L. (R)* -
27 Buckland, D. (D) +
Beverly, R. (R)* -
29 Greene, S. (D)* +
Faulkner, T. (R) -
31 Fronke, R. (D) 0
Speraw, O. (R)* -
33 Epole, B. (D) +
Campbell, W. (R)* -
35 Velasquez, L. (D) +
Briggs, J. (R)* -
37 Carpenter, P. (D)* -
Wills, D. (R) 0
39 Finnegan, D. (D) +
Ellis, J. (R)* -

STATE ASSEMBLY DISTRICT

1 Starnam, S. (R)* +
Messo, D. (P&F) 0
2 Bosco, D. (D)* +
Potts, J. (R) -
3 Garcia, G. (D) +
Harper, W. (R) -
4 Harrigan, T. (D)* +
Cock, W. (R) 0
5 Sheedy, T. (D) +
McDonnell, J. (R)* +
6 Greene, L. (D)* +
Benveniste, D. (R) -
7 Walters, N. (D)* +
Parrish, D. (R) -
8 Asala, L. (D) +
Sebastian, D. (R) -
9 Charles, A. (D) +
Flannery, W. (R)* (x)
10 Hasselbine, E. (D) -
Baker, B. (R) -
11 Campbell, R. (D) +
Birks III, W. (R) -
12 Bates, T. (D)* +
Sullivan, W. (R) -
13 Harris, E. (D)* +
Hetzmann, A. (L) -
14 Lott, B. (D)* +
15 Field, D. (D)* -
Lagomarsino, G. (R) -

ASSEMBLY DISTRICT — continued

16	Agnew A. J.	38	Ames S. J.	60	Tanner S. J.
17	Baker A. J.	39	Barber V. J.	61	Smith S. J.
18	McCarthy L. J.	40	Bates S. J.	62	Miller G. J.
19	Reagan L. J.	41	Kenney S. J.	63	Lancaster S. J.
20	Wagner G. J.	42	Henry S. J.	64	Strickland S. J.
21	Stearns S. J.	43	Berman S. J.	65	Crane S. J.
22	Bridges S. J.	44	Bates S. J.	66	Sage S. J.
23	Wasson S. J.	45	Rosen S. J.	67	Gunn S. J.
24	Conner S. J.	46	Rice S. J.	68	Leahy S. J.
25	Wick S. J.	47	Wright S. J.	69	Thompson S. J.
26	Wick S. J.	48	Waters S. J.	70	Clark S. J.
27	Wick S. J.	49	Wick S. J.	71	Wick S. J.
28	Wick S. J.	50	Wick S. J.	72	Wick S. J.
29	Wick S. J.	51	Wick S. J.	73	Wick S. J.
30	Wick S. J.	52	Wick S. J.	74	Wick S. J.
31	Wick S. J.	53	Wick S. J.	75	Wick S. J.
32	Wick S. J.	54	Wick S. J.	76	Wick S. J.
33	Wick S. J.	55	Wick S. J.	77	Wick S. J.
34	Wick S. J.	56	Wick S. J.	78	Wick S. J.
35	Wick S. J.	57	Wick S. J.	79	Wick S. J.
36	Wick S. J.	58	Wick S. J.	80	Wick S. J.
37	Wick S. J.	59	Wick S. J.		

Regs Modified

Resolution passed by the California State Assembly on October 1, 1980, regarding the modification of regulations concerning the use of state funds for the construction of abortion clinics.

The resolution states that the state shall not provide funds for the construction of abortion clinics, except in cases where the clinic is located in a rural area and the state has determined that the clinic is necessary for the health and safety of the community.

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Resolution Passes Women's Congress

The Women's Congress, a California translation of the United Nations Decade for Women Copenhagen Conference, passed the following resolution on Sunday, October 5, 1980.

Be it resolved that every woman has the inalienable right to control her own body.

Should any woman in exercising the right freely choose to have an abortion, safe and legal abortion should be available. Any government action which restricts access to abortion through limiting funding or any other means, undermines women's health and impedes the free exercise of fundamental American rights to privacy and personal decision-making in accordance with an individual's own beliefs and ethical beliefs.

Furthermore, sterilization should be available to all persons, but this must be fully protected from any coercion or abuse.

Passed by the Women's Congress on October 5, 1980.

We, the undersigned, do hereby endorse the resolution passed by the Women's Congress on October 5, 1980, and we commit ourselves to the support and defense of the resolution.

We, the undersigned, do hereby endorse the resolution passed by the Women's Congress on October 5, 1980, and we commit ourselves to the support and defense of the resolution.

Title X Awaits Senate Action

The House of Representatives in late August adopted its Appropriations Committee's recommendations for fiscal year 1981 Title X appropriations of \$166 million, or \$4 million over FY 80 restricted sites and \$194 million, or \$34 million over FY 80 sites for population control and reproductive research.

Planned Parenthood Federation of America (PPFA) stressed that these levels are far below that required to meet the need for family planning services and research. If inflation is taken into account, these funding levels will represent an actual cutback in programs.

Title X, which is the backbone of government family planning programs, provides more than 50 percent of the funding base for service providers. The cost-savings aspect of Title X has been demonstrated by the fact that the current Title X program has saved over \$100 million in the program.

In addition, the success of the Title X program is evidenced by the fact that more than 4 million women annually receive reproductive health care through its programs. Moreover, PPFA estimates that 4.5 million low and marginal income women and 7 million teenagers who are at risk of unwanted pregnancy are still unable to obtain care from either public or private providers.

The need for family planning services is particularly acute among the teenage population. Currently, the U.S. has the highest rate of adolescent pregnancy of any developed country. In the world, with more than 10 million teenagers becoming pregnant each year, most unfortunately.

More widely available contraceptive services may also have reduced the need for the more than 1.4 million abortions performed in 1979, the most current year for which complete statistics are available.

PPFA's 1981 budget request of 250,000 patients now being served will have to be dropped if the Senate does not increase the Title X program. The X program levels at least \$100 million for services needed in the program. There is no reduction in the number of Title X sites. There are no reductions in the number of Title X sites. There are no reductions in the number of Title X sites.

There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X. There is a need for Title X.

Issue 6 Rejected By Toledo Voters

Voters in Toledo Ohio this summer rejected by a two-to-one margin a proposal that would have imposed severe conditions and regulations on abortions occurring in the first twelve weeks of pregnancy.

Billed as the Maternal Health Ordinance, the Toledo proposal was drafted by a local right-to-life group and was concerned solely with regulating abortion.

The defeat of Issue 6 as it appeared on the ballot could have national implications since it is the first time since the 1973 Supreme Court decisions legalizing abortion that an anti-abortion measure was directly before the voters.

Previously elected officials have enacted similar measures in other states and some states. Most of these ordinances have been challenged in the courts and the bulk of their provisions have been declared unconstitutional.

According to Pat Donovan, editor of *Family Planning Population Reporter*, the rejection of the Toledo ordinance is also significant because it occurred in a city with a large black and ethnic population that is over 30 percent Catholic — conditions that should be fertile ground for anti-abortion proposals. Catholic precincts, however, voted against the measure by the same two-to-one margin as the city as a whole.

Had the ordinance passed, abortion foes in other communities throughout the country would have been encouraged to put the abortion issue on the ballot in a popular vote.

Patterned after the Abortion Ordinance, the Toledo measure would have imposed many of the now familiar informed consent rules, including a requirement that a physician counsel the woman seeking an abortion on a detailed description and show her photographs of the fetus, a 24-hour waiting period and sonogram and parental notification requirements.

With 40,254 to 20,629 votes, the ordinance received the easy support of the majority, issues on the ballot.

The PPAC MEMO provides you with important information on legislation and administrative changes which affect family planning in California. As we rely strictly on donations to publish the MEMO, it is our hope that those readers who have not done so will take the time to send in their \$5.00 donation for this year. Why not pass your copy on to others who might be interested in it when you are finished?

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ATTACHMENT II

7

FLORIDA OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 371-8888

CABLES
"GREWOLFFERN"
TELECOMPAR NO.
(212) 751-0843
TELEX
ITT 423007
RCA 236089

May 20, 1981

Deborah Curry, Esq.
Federal Election Commission
Washington, DC 20463

Re: Complaint No. MUR1377

Dear Ms. Curry:

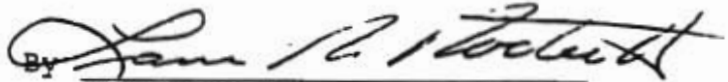
This letter is in response to the above numbered complaint filed against Planned Parenthood Affiliates of California ("PPAC") by the National Right to Life Committee, Inc.

As we discussed on May 17, we have prepared an affidavit to be signed by the Executive Director of PPAC setting forth the facts upon which the response is based, which are summarized in the Statement of Facts beginning on page 3 of the enclosed. She was, however, called away because of a serious illness in her family and was not available to sign the affidavit in time to return it to us for inclusion in the response. This will confirm that you agreed that the affidavit could be submitted separately at a later date inasmuch as all of the facts are contained in the enclosed response, in any event. We appreciate your consideration in this regard.

The enclosed response of PPAC will demonstrate, pursuant to 2 U.S.C. § 437(g)(a)(1) that no action should be taken on the basis of this complaint.

Very truly yours,

GREENBAUM, WOLFF & ERNST

By 
Laurie R. Rockett

LRR:MML
Enc.

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31 MAY 22 P2:42
GENERAL INVESTIGATIVE
DIVISION
FBI

STATEMENT OF FACTS

Planned Parenthood Affiliates of California, Inc. ("PPAC"), a non-profit corporation with headquarters in Sacramento, California, was organized in 1975 under the General Non Profit Corporation Law of the State of California. PPAC has no stockholders. It is a "social welfare" organization, exempt from federal taxation under §501(c)(4) of the Internal Revenue Code. PPAC is governed by a Board of Delegates composed of two representatives from each of the seventeen Planned Parenthood affiliates in California, which comprise its membership. These affiliates are themselves non-profit organizations which provide a variety of family planning services, both medical and educational, throughout the State of California. Each affiliate receives permission to use the service mark "Planned Parenthood" from Planned Parenthood Federation of America, Inc. ("PPFA"), a not-for-profit corporation with headquarters in New York City. PPFA is the nation's oldest and largest voluntary family planning agency, with 188 affiliates nationwide. In 1980, Planned Parenthood's 20,000 volunteers and staff provided medical, educational and counseling services to meet the family planning needs of more than 2.3 million Americans.

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RECEIVED
GENERAL INVESTIGATIVE
DIVISION

1 2 3 4 5 6 7 8 9 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

The purposes of PPAC, as stated in its amended Certificate of Incorporation, are "to promote and coordinate the provision of education, counseling and clinical services in the field of family planning, and to support or oppose legislation in the field of family planning." In keeping with this general purpose, PPAC devotes about 20% of its time to providing the California Planned Parenthood affiliates, other providers of family planning services, legislators and the media with information on reproductive health issues. As part of these educational services, PPAC has published the PPAC Memo regularly eight or nine times a year since the organization's founding.

The PPAC Memo reports on the latest developments in reproductive and health issues, including proposed legislation, administrative policies, votes on legislation, court cases and positions of public officials and candidates for public office on the issues that concern readers of the PPAC Memo. As part of its educational and lobbying functions, the PPAC Memo urges its readers to contact their legislators, public officials and individuals running for public office to make known their views on family planning issues.

The PPAC Memo is distributed to a mailing list of 4,500 persons, including employees and board members of the

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seventeen California Planned Parenthood affiliates, family planning providers, legislators and other individuals requesting it. PPAC asks that subscribers contribute \$8.00 annually for the Memo.

The article complained of herein, entitled "1980 Candidates/How they Stand on Choice" (the "PPAC Article"), was published by PPAC in Memo 7, September - October 1980. The PPAC article contained the name of every state and federal candidate running in California for major public office in the upcoming November election. Next to each candidate's name there appeared the symbol (+) or (-). The symbol (+) indicated that the candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." The symbol (-) indicated the opposite position on those issues. Where a candidate's viewpoint differed from any one of those positions, for example, "supports free choice but opposes government funding", a footnote was provided with an explanatory legend.

The information contained in the PPAC article was based on a number of sources, including public statements made by the candidates, incumbent voting records, campaign literature, interviews given to Planned Parenthood personnel by the candidates and answers to questions put to the candidates

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(11)

by other organizations. Ironically, a substantial part of the information used in compiling the PPAC article was obtained from a leaflet published by the California Pro Life Council, Inc. (Exhibit A), the California affiliate of the complainant National Right to Life Committee, Inc. That leaflet described each candidate's position on a proposed anti-abortion constitutional amendment and government funding of abortion as obtained from "voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council".

The purpose of the PPAC article was solely to provide information to interested persons about the position of candidates on the single issue of government restrictions on a woman's choice whether or not to have an abortion. As was clearly stated in its text, the article did not endorse or advocate the election or defeat of any candidate. Nor was it published in concert or cooperation with or at the suggestion of any candidate. PPAC is, of course, itself not in any way connected with any candidate, political party or political campaign. The article was, in short, non-partisan both as to source and content.

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SUMMARY OF ARGUMENT

- I. The PPAC Article is Exempt From the Provisions of the Federal Election Campaign Act Under § 431(9)(B)(i) (the "Press Exemption")
- II. Publication of the PPAC Article in No Way Violated Section 441b of the Federal Election Campaign Act
 - A. Such Publication Did Not Constitute Express Advocacy of the Election or Defeat of a Candidate
 - B. The PPAC Material Was Not Addressed to the General Public
 - C. The Publication of the PPAC Article Complied With 11 C.F.R. § 114.4(c)(3), the Regulation Governing Voter Guides
- III. If the Act were Interpreted to Prohibit the Publication of the PPAC Article, It Would Violate the U.S. Constitution

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ARGUMENT

- I. The PPAC Article is Exempt from the Provisions of the Federal Election Campaign Act Under §431(9)(B)(i) (the "Press Exemption")

The Federal Election Campaign Act (the "Act") (2 U.S.C. §431 et seq.) establishes reporting requirements for and dollar limitations on certain campaign related expenditures and prohibits corporations from making any such expenditures. To avoid conflict with the First Amendment to the U.S. Constitution, however, Section 431(9)(B)(i) of the Act, specifically exempts from the definition of "expenditure"

"any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."

The communication which is the subject of the complaint herein falls squarely within this exemption.

As set forth in the Statement of Facts, supra, the PPAC Memo is a regularly published periodical, aimed at informing interested persons of developments in law and policy related to family planning. Its article, "The Candidates, How They Stand on Choice," is clearly a "news story", reporting the results compiled from such sources as candidate interviews,

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questionnaires, voting records, and newsletters of other organizations. Moreover, even if the article were characterized as "opinion" rather than as a news story, it would still fall squarely within §431(9)(B)(i)'s exemption for "commentar[ies] or editorial[s]."

The PPAC Memo is published by PPAC, an independent non-profit organization, not owned or controlled in any way by any candidate, political party or political committee. PPAC is not, of course, itself a political committee since it makes no "contributions or expenditures" within the meaning of the Act.

The press exemption was added to the Act in 1974 by P.L. 93-443 to make plain that Congress did not intend in enacting the Act "to limit or burden in any way the First Amendment freedom of the press" and to assure the unfettered right of newspapers, TV networks and other media to cover and comment on political campaigns. House Rep. No. 93-1239, 4 (Committee on House Adm., July 30, 1974). So fundamental is this press exemption to the preservation of the constitutionality of the Act itself that the FEC's authority to investigate a complaint lodged against a corporation which publishes news stories, commentaries, or editorials is limited, in the first instance, to two questions: (1) whether the facilities publishing the news story are controlled by a

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political party, political committee or candidate, and (2) whether or not the corporate activity falls within the press entity's "legitimate press function." The Reader's Digest Association, Inc. v. Federal Election Commission, 81 Civ. 596 (PNL) (S.D.N.Y. March 19, 1981) (summarized in 49 U.S.L.W. 2614). If it is established that the activity falls within this function the Commission's inquiry must end. This limitation on the power of the FEC to investigate complaints involving the publication of a news story is:

"...based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter." Id. at 7.

The publication of the PPAC article as a regular part of the PPAC Memo was unquestionably a legitimate press function. The issue of the PPAC Memo containing the article was disseminated in the usual manner to a limited group of interested persons. No attempt was made to distribute massive numbers of free copies or saturate a critical geographic area. In addition, the article was in keeping with the usual tone and purpose of the PPAC Memo -- keeping interested persons informed

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on family planning issues, including the views of those who shape, or may shape, those issues.

The fact that the PPAC Memo might not be viewed as a publication of the "institutional press" should not affect its coverage under the exemption. The history of the First Amendment's press protection and the Supreme Court's interpretations of it indicate that it was not intended "to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it". Pennekamp v. Florida, 328 U.S. 331, 364 (1946). (Frankfurter, J., concurring). As Chief Justice Burger pointed out in his concurring opinion in First Bank of Boston v. Bellotti, 435 U.S. 765, rehearing denied, 438 U.S. 907 (1978):

"The very task of including some entities within the 'institutional press' while excluding others, whether undertaken by legislature, court, or administrative agency, is reminiscent of the abhorred licensing system of Tudor and Stuart England -- a system the First Amendment was intended to ban from this country. [citation omitted]. Further, the officials undertaking that task would be required to distinguish the protected from the unprotected on the basis of such variables as content of expression, frequency or fervor of expression, or ownership of the technological means of dissemination. Yet nothing in this Court's opinions supports such a

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confining approach to the scope of Press Clause protection." Id. at 801.

Nor, as the Chief Justice emphasized, there is there any basis for distinguishing between organizations which employ the corporate form to carry on the business of mass communications, particularly large media conglomerates, and respondent here.

"In terms of 'unfair advantage in the political process' and 'corporate domination of the electoral process' it could be argued that such media conglomerate(s) . . . pose a much more realistic threat to valid interests than do appellants and similar entities not regularly concerned with shaping popular opinion on public issues." Id. at 796-7.

Finally, the legislative history of the press exemption to the Act makes clear that Congress was aware at the time the exemption was enacted that its provisions could extend to special interest publications and that such publications could on occasion "be extremely useful and effective to certain candidates during a campaign." House Rep. No. 93-1239, at 144, Supplemental Views of Representative Bill Funzel.

It would be ironic, indeed, if the Act's press exemption were read to apply to the publications of vast profit making "media empires" controlling at once radio and television

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stations, large metropolitan newspapers and magazines of nationwide circulation, as well as paper mills and distribution services (see 435 U.S. at 796) but not to the PPAC Memo, the publication of a small non-profit corporation with a circulation of no more than 4,500 copies. Such a distinction would in no way serve §441b's purpose of keeping elections free of the influence of vast corporate wealth and would conflict directly with that of §431(9)(B)(i) to assure that the Act preserve "unfettered" the freedom of the press.

The press exemption clearly applies to the PPAC article and the FEC must, accordingly, consistent with the purpose of that exemption to preserve intact the freedom of the press, dismiss the instant complaint without further investigation.

II. Publication of the PPAC Article in
No Way Violated Section 441b of
the Federal Election Campaign Act

A. Such Publication Did Not Constitute Express
Advocacy of the Election or Defeat of a Candidate.

Although, as set forth in Point I above, the FEC is without authority to inquire as to the content of the PPAC article or the circumstances of its publication, any such inquiry would further establish that no action should be taken on the basis of the complaint. As the Statement of Facts makes clear, the PPAC article presented an objective report of the

positions of the candidates on the issue of government restrictions on a woman's choice of whether or not to have an abortion. It was published entirely independently of any candidate for federal office and it was not intended as, nor did it constitute, an endorsement or advocacy of any candidate's election or defeat. The sole aim of the PPAC article was to inform interested persons of the views of those who might shape government policies on one particular issue of great public interest. It is clear from the structure of the Act, its legislative history and relevant constitutional considerations that §441b of the Act does not reach this type of independent, objective reporting on candidates' positions but is rather directed at the express advocacy by a corporation of the election or defeat of a candidate.

Section 431 of the Act, which contains the definition of terms used in the Act as a whole, divides expenditures into two categories. The first category is "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized committees, or their agents. . ." Such expenditures, which are treated as contributions and subject to specific dollar limits, are clearly not here involved. §§ 441a(a)(1) and (7)(B)(i). A second type of expenditures, termed "independent expenditures",

are not subject to monetary restrictions but must be reported under §434. "Independent expenditures" are defined as those made "without cooperation or consultation with any candidate ... [and] not ... in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate", 2 U.S.C. §431(17), and include only expenditures "expressly advocating the election or defeat of a clearly identified candidate." §431(17). The Act thus imposes neither dollar limits nor reporting requirements on expenditures which are not made in cooperation with or at the suggestion or request of a candidate or a political committee and which do not expressly advocate a candidate's election or defeat. Such expenditures are simply outside the Act's regulatory framework.

Although the Act nowhere defines "expressly advocating", the courts have held that this term must be strictly limited in order to avoid invalidation on vagueness grounds, to "communications containing express words of advocacy of election or defeat ... such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Federal Election Commission v. AFSCME, 471 F.Supp. 315, 316 (D.D.C. 1979), citing, Buckley v. Valeo, 424 U.S. 1, 44 n. 52 (1976). Since the PPAC article is both

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"independent", in the sense of being free of the influence of any candidate, and contains no words of "express advocacy", it is outside the application of the Act.

The legislative history of §441b, which prohibits corporate expenditures in connection with federal elections, likewise makes clear that that prohibition was intended to reach only unambiguous "electioneering". Section 441b was not part of the Federal Election Campaign Act itself. It was originally contained in the Tillman Act, a statute enacted in 1907 which made it unlawful for national banks and corporations to make a money contribution "in connection with" various elections. 34 Stat. 864. Given the limitation of the original prohibition - to "money contribution" - there can be little doubt that what the 1907 Congress sought to prohibit was the use of bank or corporate funds as donations to candidate campaign treasuries.

In 1925, Congress concluded that corporations and national banks were still free to make valuable non-money contributions to political candidates and political parties to aid them in winning their elections and so amended the statute, replacing the term "money contribution" with "contribution", defining that term broadly, and extending the prohibition to other elections. 43 Stat. 1070. In

1947, labor organizations were grouped with national banks and corporations, primaries and national conventions were included with the various elections, and the prohibition was further extended to include "expenditures." The inclusion of "expenditures" in the statutory scheme was intended to "eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of the section." United States v. CIO, 335 U.S. 106, 122 (1948). That doubt had been raised, as the legislative history makes clear, by the publication by corporations of advertisements and pamphlets containing unambiguous candidate endorsements. United States v. Union of United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO), 352 U.S. 567, 580, rehearing denied, 353 U.S. 943 (1957) ("United States v. UAW-CIO").

In later cases interpreting this section, the Supreme Court re-affirmed that it applied only to active electioneering and not to statements about candidates which might or might not have the effect of influencing the public to vote for or against them. In United States v. UAW-CIO, supra, the Court held that § 441b's predecessor, 18 U.S.A. § 610, was applicable to a union's widely distributed television commercials urging the public to vote for particular candidates. The Court,

however, refused to pass on the constitutionality of the statute in the absence of more facts about the broadcast itself. Among these were "[d]id it constitute active electioneering or simply state the record of particular candidates on economic issues?" 352 U.S. at 592. Clearly, then, the term "active electioneering" does not include the kind of statements about candidates found in the PPAC Memo, which "simply state the record" of particular candidates on an issue of public interest.

That § 441b's prohibition on corporate expenditures is confined to "active electioneering" was re-affirmed more recently by Congress. In 1971, when the Federal Election Campaign Act was enacted, Congress amended §610 of Title 18 to include the present subparagraph (b) defining the term "contribution or expenditure". Congressman Hansen, the author of the amendment, explained on the floor of the House of Representatives that "[t]he effect of [the] language is to carry out the basic intent of section 610." 117 Cong. Rec. 43379. He continued by stating that:

"[t]he legislative history of section 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the

responsibility for enforcing the statute, has stated, shows instead that the purpose of section 610 is simply to ensure that '[w]hen a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used' (Brief for the United States in U.S. v. UAW; 352 U.S. 567)." 117 Cong. Rec. 43379.

Both Mr. Hansen and Congressman Thompson, a supporter of the legislation, agreed that "the basic purpose of section 610 is to prohibit active electioneering by corporations and unions for Federal candidates directed at the public at large." 117 Cong. Rec. 43380, 43384. The PPAC article, which confines itself to reporting on the positions of candidates on a single issue, clearly does not constitute the active electioneering prohibited by this Section.

B. The PPAC Article Was Not Addressed to the General Public.

As explained in the Statement of Facts, supra, the PPAC Memo was mailed to 4,500 interested persons, including members of the boards of directors of the seventeen California Planned Parenthood affiliates, various providers of family planning services, legislators and others who had expressed an interest in receiving it. It was not distributed on newsstands or otherwise made available to the general public.

The law is clear that communications which are not aimed at the general public are not within the purview of §441b's prohibition on corporate expenditures.

In United States v. CIO, supra, the Supreme Court held that §441b's predecessor, §313 of the Corrupt Practices Act, passed as part of the 1925 amendments to 18 U.S.C. §610, did not apply to the publication by a union of its regular weekly newspaper which was distributed only to union members and others entitled to receive it, even though the issue in question contained an express endorsement of a candidate. Both constitutional considerations and the intent of Congress dictated the Court's conclusion:

"If §313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubts would arise in our minds as to its constitutionality."

* * *

"It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication." 335 U.S. at 121, 123.

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The Court later distinguished the CIO case in United States v. UAW-CIO, where a union's broadcast of political advertisements on television stations was held to be within the Act's purview

"[In CIO] the organization merely distributed its house organ to its own people. The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate. . . ." 352 U.S. at 589 [Emphasis added].

In 1971, Congress amended the present section 441b with the express purpose of incorporating the holdings of CIO and United States v. UAW-CIO by exempting communications of a corporation to its stockholders and a union to its members on any subject. As Representative Hansen, the author of the amendments, said, their effect was to carry out the basic intent of § 610 "... to ensure that when a union [or corporation] undertakes active electioneering on behalf of particular Federal candidates and designed to reach the public at large, the organization's general funds ... may not be used." 117 Cong. Rec. 43379 [Emphasis added].

The Hansen amendments, in limiting the language of the exemption for communications not directed to the general public to those made to stockholders and union members, failed

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to encompass the whole area intended by the earlier Congress and compelled by the Constitution to be exempted from the Act. CIO speaks of distribution of a publication by a corporation to its customers as exempted from the coverage of the Act, 335 U.S. at 121, and elsewhere, of distribution to subscribers and purchasers and others regularly entitled to receive it. 335 U.S. at 111, 123. The clear thrust of CIO is that, in order for the Act to survive constitutional attack, corporations must, at the least, be protected in their ability to communicate with those with whom they share common interests and those with whom it is their custom to share pertinent information.

The Constitutional imperative of such a reading of the Act is even stronger when applied to a non-profit public interest organization such as PPAC than to a large commercial corporation or union. PPAC has no shareholders because it is not a profit making corporation, its members, who number only seventeen, are organizations whose purposes it was organized to further, rather than private individuals, its "executive and administrative personnel," number only four. § 441b(b)(2)(A). With what individuals, then, may PPAC lawfully communicate freely, if not with those with whom it regularly communicates and whom it is its very corporate purpose to educate and

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inform? These must be regarded as the equivalent of corporate "stockholders," or union "members". It would be ironic, indeed, if giant profit making corporations were allowed the right of unfettered communication with millions of stockholders, and unions with millions of members, while PPAC, a small nonprofit public interest corporation was not permitted to send a limited communication relating to issues fundamental to its nonprofit corporate purposes to the 4,500 interested persons who regularly receive its Memo. Such an interpretation of § 441b would certainly turn on its head the purpose of that section to keep "big money" out of politics.*

C. The Publication of the PPAC Article
Complied with 11 C.F.R. § 114.4(c)(3),
the Regulation Governing Voter Guides.

Section 11 C.F.R. 114.4(c)(3), promulgated under §441b of the Act, permits corporations to distribute voter guides to the general public "describing the candidate and their positions if--"

"(i) the materials do not favor one candidate or political party over another; and

*§441b's other purpose of protecting the interests of minority shareholders and union members is irrelevant here, since PPAC has no stockholders and only a limited number of organizational members who control the organization through representation on its Board.

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(ii) if the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party."

The PPAC Memo at issue here is in conformity with these regulations.

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The PPAC Memo does not favor one candidate or political party over another; it merely reports each candidate's position on a single issue: government restriction on a woman's choice of whether or not to have an abortion. It is based on information gathered from the candidates' public statements, interviews given to PPAC staff and other organizations, voting records and answers to questionnaires, in particular a questionnaire disseminated by the California Pro Life Council, Inc., the California affiliate of the complainant in this matter, the National Right to Life Committee, Inc. The reporting of each candidate's position was based on extensive research and evidence. No candidate was given short-shrift and thereby "favored" in the reporting of his or her views. The symbols (+) or (-) were employed to indicate whether a candidate was pro- or anti- choice because of space limitations only. Where possible a legend was provided to explain the designation. If unexplained, support

for the designation was available to anyone who wished it in PPAC's files. To require PPAC to print all of the evidence supporting its summarization of the candidates' positions would have required an enormous expansion of the Memo, which PPAC, operating on a very limited budget, could ill afford.

Moreover, while the PPAC article does not technically conform to the requirement of § 114.4(c)(ii) that it be obtained "from" a "civic or non-profit corporation which does not support or endorse candidates", as a practical matter, it does fall within the purpose of this requirement because it was in fact compiled and published by such an organization.

In Advisory Opinion 1980-45 the Commission replied to the request of PPFA's New York affiliate for an opinion as to the permissibility of a civic non-partisan corporation's sponsoring a voter registration drive. The relevant Regulation, §114.41(d), like §114.4(c), required that such drives be sponsored jointly by the corporation and a civic non-profit organization. The Commission replied,

"The regulation does not restrict the nonprofit, nonpartisan civic group by requiring it to find a corporate sponsor for voter registration drives that the nonpartisan group wishes to conduct in a manner otherwise proper under the regulation."

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The same rationale should apply to the §114.4(d) rule for voter guides. Since PPAC is itself a non-profit, non-partisan civic organization which does not support or endorse any candidate, it may, on its own, distribute a non-partisan voter guide.*

Finally, even were PPAC required to have obtained the material for its voter guide from another non-partisan civic organization, it substantially complied with this standard. A large part of the information used in compiling the PPAC article, although independently verified by PPAC staff, was originally obtained from the attached leaflet distributed by the California Pro-Life Council, Inc., the California affiliate of complainant, a non-profit California corporation which claims to be non-partisan.**

*The Commission is, in fact, now considering making a change in the present regulations, allowing any corporation or labor union to distribute non-partisan voter guides. 45 Fed. Reg. 56349 (8/25/80).

**See disclaimer on leaflet. "This information is presented as a public service for educational purposes only and does not imply endorsement."

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III. If the Act were Interpreted to Prohibit the Publication of the PPAC Article, It Would Violate the U. S. Constitution.

In dealing with provisions of the Act other than §441b, the Supreme Court has held that the statute must be interpreted, in order to avoid constitutional invalidity on the ground of vagueness, to apply only to activity which is unambiguously related to a campaign for federal office in that it is either sponsored by or carried on in cooperation with a candidate or his representatives or, if independent of such influence, expressly advocates the election or defeat of clearly identified candidates. Buckley v. Valeo, 424 U.S. 1 (1976). The necessity of such a narrow construction was made clear in Buckley,

"[The entire Act] operate[s] in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" 424 U.S. 1, 14 (1976), citing, Roth v. United States, 354 U.S. 476, 484 (1957). [Emphasis added].

Consequently, "[b]ecause First Amendment freedoms need

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breathing space to survive, government may regulate in the area only with narrow specificity." 424 U.S. at 41, n.48, citing, NAACP v. Button, 371 U.S. 415, 433 (1963).

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In dealing with a vagueness challenge to former section 608(e)(1) of the Act, which limited spending "relative to a clearly identified candidate", the Court in Buckley, accordingly, held that in order to survive constitutional challenge, the term "relative to" can mean no more than "communications that include explicit words of advocacy of election or defeat of a candidate." 428 U.S. at 43. To read the phrase more broadly, it concluded, would inhibit the free and open discussion protected by the First Amendment. For, "[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." 424 U.S. at 42. Nevertheless, even as so narrowly interpreted, the limits on independent expenditures were struck down as unconstitutional because they unjustifiably interfered with freedom of speech.

Similarly, the Court upheld the Act's reporting requirements only after an extremely narrow construction of who must report and what must be reported. The Court first

discussed the vagueness problems raised by the requirement that political committees report their contributions and expenditures. Since "political committee" was defined only in terms of the amount of its contributions and expenditures, the phrase might have been interpreted to encompass groups engaged solely in the discussion of issues. Because such an interpretation would fall outside the "core area sought to be addressed by Congress," 424 U.S. at 79, the Court held that the term referred narrowly to "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Id.

The Court next construed the Act's definition of reportable "contributions and expenditures" as payments "for the purpose of . . . influencing" a federal election. Like the "relative to" language of former section 608(e)(i), the term "for the purpose of" was undefined by the Act and presented similar vagueness problems "particularly treacherous where, as here, the violation of its terms carries criminal penalties [footnote omitted] and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights." 424 U.S. at 76-7. These provisions share "the same potential for encompassing both issue discussion and advocacy of a political result." Id. at 79. Accordingly, these

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terms were interpreted to apply only to activities unambiguously related to federal election campaigns. "Contributions" were held by the Court to include both direct and indirect contributions to a political candidate and expenditures in cooperation with or with the consent of the candidate. In the case of expenditures made independently of any candidate, "the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of §434(e) is not impermissibly broad, we construe 'expenditure'. . . to reach only funds used for communications that expressly advocate [footnote omitted] the election or defeat of a clearly identified candidate." 424 U.S. at 79-80. Thus narrowly defined, the reporting requirements were upheld.

Although Buckley did not deal with section 441b's prohibition on corporate activities "in connection with" federal elections, the same principles of narrow construction necessarily apply. The clear teaching of Buckley is that the entire Act implicates First Amendment rights and must be narrowly construed to apply only to activities which are unambiguously campaign related (either in the form of campaign contributions undertaken in cooperation with a candidate or communications which expressly advocate the election or defeat

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of a candidate) so as to avoid unconstitutional curtailment of the free discussion of issues of public importance and of candidates' qualifications. For example, even in the least onerous of the Act's provisions, the reporting requirements, expenditures not made at the behest of or with the consent of the candidate need only be reported if they expressly advocate the election or defeat of a candidate. Section 441b's total prohibition on expenditures and contributions may not be interpreted more broadly. Since the PPAC article is clearly independent and contains no such words of express advocacy, it may not, constitutionally, be included within the purview of the Act.

The fact that Section 441b involves corporations rather than individuals or other groups does not affect the application of the First Amendment in considering its validity. Where the discussion of issues of public interest is involved, the Supreme Court has clearly held that the First Amendment affords the same rights to corporations as to individuals. In First National Bank of Boston v. Bellotti, supra, the Court struck down a Massachusetts statute prohibiting, with certain exceptions, corporate spending directed at influencing the outcome of public voting on a referendum. Conceding that such a statute would be unconstitutional with regard to individuals,

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the state argued that corporate First Amendment rights could be more strictly regulated. The Court disagreed, holding that it was the content of the speech and its importance to the free exchange of ideas, not the speaker's identity, that controlled.

"The speech proposed by appellants is at the heart of the First Amendment's protection. 'The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" 435 U.S. at 776, citing Thornhill v. Alabama, 310 U.S. 88, 101-102 (1940).

More recently in Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, __ U.S. ___, 65 L.Ed.2d 319, 100 S.Ct. ___ (1980), the Court affirmed that the protections of the First Amendment extend to comment by corporations on issues of public interest. In that case the Supreme Court reversed a decision of the New York Court of Appeals which had upheld a ruling of the N.Y. Public Service Commission prohibiting the corporation from including

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inserts discussing political matters with the bills mailed to its customers.

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Numerous courts, before and since Buckley, have explicitly stated that to interpret the Act so as to regulate in any way independent communications containing no words expressly advocating election or defeat of a clearly identified candidate would raise serious questions as to its constitutionality. Most recently, in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980), it was held that a group's publication during an election campaign of the voting record of an incumbent office-holder in regard to the issue of government spending was not subject to the Act's reporting requirements. Although the materials did not expressly advocate the re-election or defeat of the incumbent, the Commission argued that their hidden purpose was to "unseat big spenders." The Court considered this irrelevant: absent express advocacy of election or defeat of a particular candidate, the group's activities did not fall within the statute. To hold that they did would be inconsistent with the firmly established principle that "the right to speak out at election time is one of the most zealously protected under the Constitution", 616 F.2d at 53, and would be antithetical to the Supreme Court's holding in

Buckley. See also, FEC v. AFSCME, supra (in order to be subject to reporting requirements for union communications to members, advertisements must contain words which expressly advocate election or defeat of a candidate); United States v. National Committee for Impeachment, 469 F.2d 1135, 1139-42 (2d Cir. 1972); A.C.L.U. v. Jennings, 366 F.Supp. 1041, 1055-57 (D.C. Cir. 1973), vacated for mootness sub nom Staats v. A.C.L.U., 422 U.S. 1030 (1975) (publication of "honor roll" of members of Congress supporting group's aims not an "expenditure" within the meaning of Act).

In addition to requiring a strict interpretation of the language of Section §441b in order to avoid overbreadth or vagueness, Buckley, in fact, raises serious doubts as to the constitutionality of §441b as applied to any speech-related independent corporate expenditures, even those which in fact expressly advocate a candidate's election or defeat. That case struck down any dollar limits on spending undertaken independently of a candidate even when thus narrowly construed. While the Court did not specifically address the prohibition on corporate expenditures, it addressed issues identical to those that would be raised under §441b.

It is frequently stated that the purpose of the total prohibition on corporate contributions and expenditures which

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are related to elections to public office is to eliminate the corruptive influence exerted by the spending of vast accumulations of wealth in connection with campaigns.. United States v. UAW-CIO, 352 U.S. at 510. The Supreme Court addressed just these issues in Buckley. In so doing it distinguished sharply between independent expenditures and contributions to a candidate.

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"[T]he independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. . . . Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, §608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse." 424 U.S. at 46-7.

Apart from the danger of corruption as such, §441b might be justified as an attempt to equalize the voice of

groups and individuals in society. This justification was also ruled to be inadequate by the Court.

"... the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed 'to secure' the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." [Citations omitted]. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. Eastern R. Conf. v. Noerr Motors, 365 U.S. 127, 139, 5 L. Ed. 2d 464, 81 S. Ct. 523 (1961)." 424 U.S. at 48-9.

These statements in Buckley, taken together with the Court's holding as to the importance of guaranteeing First Amendment rights to corporations in Bellotti, supra, raise grave doubts as to the constitutionality of §441b as applied to any independent corporate speech. Justice White, in fact, opined in his dissent in Bellotti that the two cases taken together merely "reserve the formal interment of the Corrupt Practices Act ... for another day." 435 U.S. at 821.

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Although several courts since Buckley have upheld §441b against constitutional attack, they have done so only in regard to corporate political contributions, some expressly avoiding voicing an opinion as to the validity of the act in regard to corporate speech related expenditures. See, e.g., F.E.C. v. Lance, 635 F.2d 1132, 1141-2, 1142 n.7 (5th Cir. 1981) (no speech elements involved in bank's giving overdraft loans to political candidates and, accordingly, no First Amendment constitutional questions raised); United States v. Clifford, 409 F.Supp. 1070 (E.D.N.Y. 1976); F.E.C. v. Weinstein, 462 F.Supp. 243 (S.D.N.Y. 1978).

Constitutional considerations of vagueness and overbreadth thus compel an interpretation of §441b which limits its prohibition on independent corporate expenditures to those expressly advocating the election or defeat of a candidate. Moreover, even so interpreted, the Section may well be unconstitutional. In order to avoid invalidation of the Act, it is, therefore, incumbent upon the Commission to hold that publication of the PPAC article is not an expenditure "in connection with" a federal election.

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CONCLUSION

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It is patently evident, on the basis of the this and two previous complaints filed by the National Right to Life Committee, Inc. against three separate Planned Parenthood organizations in the last six months (MUR Nos. 1318 and 1372)*, that the Committee is attempting to use § 441b of the Federal Election Campaign Act to silence Planned Parenthood and prevent it from exercising its First Amendment right to inform its members, supporters and the public concerning matters of vital public interest which are central to its valid nonprofit corporate activities.

The courts have recognized that, to prevent the chilling effect which application of the Act can have on the important First Amendment rights of the public to have unfettered access to information of public interest, the authority of the FEC to investigate complaints involving the press exemption is limited to an investigation of whether the material was in fact published as a part of the corporation's

*The first complaint against PPFA and its New York affiliate was dismissed. The second, upon which the FEC has not yet acted, alleged facts identical to those alleged in the first against PPFA.

valid press function. The facts set forth above leave no doubt that this is the case with regard to the PPAC article. The FEC must accordingly proceed no further on the instant complaint.

Were the FEC to proceed nonetheless, it is clear that it would find, on the basis of the contents of the article itself and the circumstances of its publication, no probable cause to believe that a violation had occurred. Because the PPAC article can in no way be read to constitute express advocacy of the election or defeat of any candidate and because it was published by an organization which does not participate or intervene in any election for public office, the PPAC article cannot be construed to constitute a corporate expenditure within the meaning of the Federal Election Campaign Act. And, even if 5441b were construed to apply beyond communications expressly advocating the election or defeat of a particular candidate, the PPAC article, as a communication addressed to the particular interested subscribers to the PPAC Memo, rather than to members of the public at large, is exempt from the provisions of the Act.

Moreover, the exemption contained in the Regulations of the Commission for voters' guides distributed by nonprofit civic organizations apply to the PPAC article.

It is accordingly clear from the language of the Act,

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its legislative history, court decisions interpreting the Act and the regulations of the Commission itself that publication of the PPAC article in no way constituted a violation of §441b of the Federal Election Campaign Act by PPAC.

Finally, the decisions of the federal courts, and particularly that of the Supreme Court in Buckley v. Valeo, leave no doubt that any attempt to extend the provisions of the Federal Election Campaign Act to prohibit the publication of the PPAC article would violate the constitutional rights of PPAC. To prevent invalidation of the statute on Constitutional grounds, such an interpretation should be avoided.

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California Pro Life Council, Inc.

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CALIFORNIA AFFILIATE OF THE NATIONAL RIGHT TO LIFE COMMITTEE, INC.

VOTER INFORMATION DIGEST—JUNE 1980 PRIMARY ELECTIONS THE CANDIDATES—HOW THEY STAND ON ABORTION

The following information is based on candidates' voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council.

KEY TO ABBREVIATIONS

NI ("NO INFORMATION")—Candidate has not responded or his position is unclear.

SR—Favors a STATES RIGHTS Amendment to let each state regulate abortion as it wishes.

PCL—Favors the PRESENT CALIFORNIA LAW which cuts off some, but not all, abortion funding.

R.I.D.—Wants an exception for RAPE (R), INCEST (I), or DEFECTS of the unborn child (D).

We have reported the candidates' positions on the following two questions:

#1: Does the candidate support a Human Life Amendment to the U.S. Constitution which would protect the "Right to Life" of unborn babies?

#2: Does the candidate oppose the use of government funds to pay for abortions (except to save the life of the mother)?

Most uncontested primary races, including "minor" parties, are not listed. Except as indicated, all A.I.P. candidates who responded answered "Yes-Yes."

PRESIDENT			PRESIDENT			U.S. SENATOR			U.S. SENATOR		
NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2
Jimmy Carter (D)	NO	R.I.	Ronald Reagan (R)	YES	YES	Alan Cranston (D)	NO	NO	John Schmitz (R)	YES	YES
Edward Kennedy (D)	NO	NO	George Bush (R)	SR/R.I.	R.I.	Richard Morgan (D)	YES	YES	Paul Gann (R)	NO	NO
Edmund Brown, Jr. (D)	WITHDREW		John Anderson (R)	NO	NO	David Rees (D)	YES	YES	Sam Tarty (R)	YES	YES
Lyndon LaRouche (D)	NO	NO	Benjamin Fernandez (R)	NI		Frank Thomas (D)	NI		James Ware (R)	YES	YES
Sean Downey (AIP)	YES	YES	Phil Crane (R)	WITHDREW					Ray Hanzlik (R)	NI	
John Rarick (AIP)	SR	YES							Philip Schwartz (R)	NO	YES
									Brian Hyndman (R)	NI	

CONGRESS			CONGRESS			CONGRESS			CONGRESS		
NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2
22 Carlos			27 Ed Vahen (R)	YES	YES	15 Carl Burton (D)	YES	YES	33 Paul Barnes (R)	NO	NO
Monahan (R)	YES	YES	Jerry Lewis (R)	YES	YES	Paula Ann			Gregg Hays (D)	NO	NO
Patrice			George			Paula Ann	NO		Dick Fines (D)	NI	
O'Donnell (D)	NI		Charles			Secrest (R)	YES	YES	35 Richard		
Slattery			MacKenzie (R)	NI		Rob Thomas (R)	R.I.	YES	Alphonse (D)	NO	NO
Slattery (D)	NI		Paul			Larry			Michael		
Anthony			Matthewson (R)	NI		Anna (D)	NI		Boys (D)	YES	YES
Bennington (D)	NO	NO	San Francisco (D)	NI		Carl			Don King (R)	YES	YES
Long			San Francisco (D)	NI		Forrest (D)	NO	NO	Art Larrin (D)	NI	NO
Anderson (D)	YES	YES	38 Jerry			10 Eric			36		
Robert			Palmer (D)	NO	NO	Seashore (R)	YES	YES	Don		
Winkler (R)	YES		E.L. White (R)	YES		Ramond			Philip		
24 Henry			Art Saragossan (R)	NO	YES	Race (R)	NO	NO	Moore (R)	NI	
Wasson (D)	NO	NO	40 Robert			Henry Moly (D)	NO		37 Carter		
Roberts			Ed Davis (R)	YES	YES	Ed Davis (R)	YES	YES	Wright (R)	YES	YES
25 Ed Probst (D)	NO	NO	Robert Brown (D)	NI		Robert Brown (D)	NI		Gary Smith (D)	YES	YES
Richard			Dick			James			John Smith (R)	YES	YES
Forrest (R)	NI		Gardner (R)	YES	YES	Burman (D)	NO	NO	Ford		
27 Robert			Jack Miller (R)	NI		James			39		
Donnan (R)	YES	YES	Sam Remy (D)	YES	YES	Suber (D)	NI		Stadman (R)	YES	YES
Carol Fick (D)	NO	NO	Michael Dunn (D)	NI		Don Dunn (R)	YES	YES	Rob Thomas (R)	YES	YES
Gary Owen (D)	NO	NO	41 Bob Wilson (D)	YES	YES	Long Man (D)	YES	YES	40		
			Jim Bates (D)	NO	NO	Charles			Sam		
			Art Sanders (D)	R.I.		Sandra (D)	NI		Richard		
			Ron Eustice (D)	NO	NO	Gibson			41		
						23 David			42		
						Roberts (D)	YES	YES	43		
						Harman			44		
						Walter (R)	YES	YES	45		

Upstairs At
1623 10th Street
Sacramento, California 95814
(916) 446-5247

GCC #4791

31 MAY 1 P12:17

ATTACHMENT III

(47)

May 27, 1981

Deborah Curry
Federal Election Commission
Washington, D.C. 20463

Reference: Complaint No. MUR 1377

Dear Ms. Curry:

Enclosed is my affidavit in support of the response already sent to you concerning complaint No. MUR 1377 filed against Planned Parenthood Affiliates of California on March 24, 1981. Laurie Rockett of the law firm of Greenbaum, Wolff and Ernst suggested that I send the signed affidavit directly to you to save time.

I hope you will find everything in order with our response.

Sincerely,

Norma Clevenger
Norma Clevenger, Executive Director
Planned Parenthood Affiliates of California

cc: Laurie R. Rockett
Greenbaum, Wolff & Ernst

NC:kb

RI JUN 1 P 1:21

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

31 JUN 1 9:21 PM

AFFIDAVIT OF NORMA CLEVINGER
IN RESPONSE TO COMPLAINT NO. MUR 1377

NORMA CLEVINGER, being duly sworn, deposes and
says:

1. I am the Executive Director of Planned Parenthood Affiliates of California, Inc. ("PPAC") and have continuing responsibility for the administration of all of the corporation's programs.

2. I make this statement in support of the response of PPAC to Complaint No. MUR 1377, filed against PPAC on March 24, 1981 by the law firm of Brames, Bopp & Haynes on behalf of the National Right to Life Committee, Inc.

3. PPAC was incorporated in 1974 pursuant to the General Non-Profit Corporation Law of the State of California and is exempt from taxation under § 501(c)(4) of the Internal Revenue Code.

4. PPAC was established by the California affiliates of Planned Parenthood Federation of America, Inc., now numbered seventeen, which constitute its membership. Each of these affiliates is incorporated under the General Non-Profit Corporation Law of the State of California and is exempt from taxation under § 501(c)(3) of the Internal Revenue Code. As an organization whose membership organizations are exempt under this section,

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PPAC does not participate or intervene in any campaign for public office.

5. The purposes of PPAC are to provide leadership, coordination and action to and on behalf of its members, to promote the ready availability of high quality family planning services in all areas of California and to encourage and support government policies and programs that will further this goal. Approximately 20% of PPAC's activities involve providing information on reproductive health issues to its membership, other providers of family planning services, legislators and the media. As part of these activities, PPAC publishes, eight times a year a periodical entitled PPAC Memo.

6. The purpose of the PPAC Memo is to keep its subscribers, who number approximately 4,500, informed on the latest developments in reproductive health issues, including proposed legislation, administrative policies, votes on legislation, court cases and the positions of public officials and candidates for public office on the issues that concern its readers. The individuals on the mailing list include employees and directors of PPAC's members, other family planning providers, legislators and other individuals who specifically request it. PPAC requests that subscribers contribute \$8.00 for the Memo, annually.

7. The article which is the subject of the complaint herein, published in Memo 7, September-October, 1980, was entitled "1980 Candidates/How They Stand on Choice" and provided information on the position of the individual candidates on the issue of government restrictions on a woman's choice of whether or not to have an abortion. In order to conserve space, the symbol (+) was used to indicate that a particular candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." A (-) was used to indicate opposition on those issues. In cases where a candidate's viewpoint differed from either of these positions, for example, if he supported free choice but opposed government funding, a footnote was provided with an explanatory legend.

8. The sources of the information contained in the PPAC article included public statements made by the candidates, incumbent voting records, campaign literature, interviews of the candidates by Planned Parenthood personnel and answers to questions put to the candidates by other organizations. A substantial portion of such information, although independently verified, was initially obtained from a leaflet published by the California Pro Life Council, Inc., the California affiliate of the complainant herein, National Right to Life Committee, Inc. That leaflet described each candidate's position on a proposed anti-abortion constitutional amendment and government funding of abortion as obtained

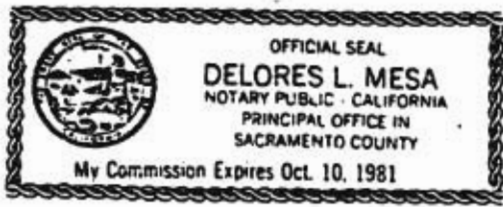
from "voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council."

9. The purpose of the PPAC article was solely to provide information to interested persons about the position of candidates on the single issue of government restrictions on a woman's choice whether or not to have an abortion. The article did not endorse or advocate the election or defeat of any candidate and was not published in concert or cooperation with or at the suggestion of any candidate.

Norma E. Clevenger
NORMA CLEVINGER
Executive Director

Sworn to and subscribed
before me this *29th* day
of May, 1981.

Delores L. Mesa
NOTARY PUBLIC



32040324357

102181
52 Ccc# 5832
Curry
NOV 20 P1:23
GREENBAUM, WOLFF & ERNST
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
437 MADISON AVENUE
NEW YORK, N. Y. 10022
Attachment IV

1212758-4010

CABLES
"GREWOLFERN"
TELECOPIER NO.
1212751-0843
TELEX
ITV 423007
RCA 238099

FLORIDA OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
13081374-6262

November 16, 1981

Deborah Curry, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: Complaint No. MUR 1377

Dear Ms. Curry:

Please consider this letter a supplement to the response of Planned Parenthood Affiliates of California (PPAC) to the above-numbered complaint. PPAC's original response was filed with the Commission on May 20, 1981.

On September 4, 1981, the Court of Appeals for the District of Columbia rendered a decision which directly supports PPAC's contention, set forth on pages seventeen through twenty-one of its original response, that the complained-of distribution of its newsletter to its regular subscribers did not fall within the ambit of the Federal Election Campaign Act's prohibition on corporate expenditures in connection with a federal election. In that decision, National Right to Work Committee, Inc. v. Federal Election Commission, No. 80-1487, (D.C. Cir. September 4, 1981), the Court of Appeals for the District of Columbia Circuit held that the term "members" as used in 2 U.S.C. § 441b(b)(4)(A)(C) of the Act (which allows non-stock corporations to solicit campaign contributions from members) must be read to include those persons who express interest in supporting the goals and philosophy of a non-profit corporation organized for political purposes.

The instant complaint charged that the publication by PPAC in its newsletter of an article entitled "1980 Candidates/How They Stand on Choice" violated 2 U.S.C. § 441b. The PPAC Article listed the candidates running for federal and state office in California. A(+) or (-) symbol next to each name summarized the candidate's positions on

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NOV 20 P4:29

-2-

the issues of legal abortion and government funding of abortions. In its original response, PPAC argued that publication and distribution of the PPAC Article did not fall within the purview of the Act because, inter alia, the newsletter was not distributed to the general public, but to its 4,500 regular subscribers. This conclusion, PPAC contended, was compelled by a line of Supreme Court cases, including U.S. v. CIO, 335 U.S. 106 (1948), and U.S. v. Union of United Automobile, Aircraft and Agricultural Workers of America (UAW-CIO), 352 U.S. 567 (1957), which had held on constitutional and statutory grounds that the Act applied to corporate communications only when they were addressed to and designed to influence the vote of the public at large. PPAC also pointed to the Act's explicit exemptions for a union's communications to its members and a corporation's to its stockholders, 2 U.S.C. § 441b(b)(2)(A), and contended that the purpose of the Act, to keep big money out of politics, would be turned on its head if the Act were held to exempt a corporation's communication to its stockholders and those of a union to its members and not communications by a small non-profit, non-stock, public interest corporation such as PPAC, to its 4,500 regular subscribers.

The decision of the Court of Appeals in Right to Work was based on similar reasoning. In that case, an enforcement proceeding had been commenced by the FEC against the National Right to Work Committee, a non-stock, non-profit corporation, for violation of 2 U.S.C. § 441b(b)(4)(A). These provisions of the Act together prohibit a corporation without capital stock from soliciting contributions to a separate segregated fund organized for campaign purposes from persons other than members of the corporation. Although its Certificate of Incorporation specifically provided that the corporation had no members, the Committee treated as "supporting" and "active" "members" individuals who made contributions to or communicated with it to express sympathy with its philosophy and goals. Slip Op. at 3, n. 1. The court held that, in order to escape constitutional invalidity on the ground of interference with the First Amendment right of association, the term "members" as used in § 441b(b)(4)(A) and (C) must be construed to include these individuals.

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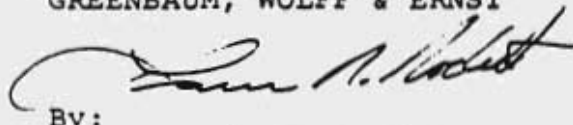
-3-

In so holding the court examined the Congressional purposes behind the Act, to keep big money out of politics and to protect individuals with dissenting minority views from coerced participation in the electoral process. As to the first, the court concluded that the mere solicitation of funds did not pose the kind of threat of corruption of a candidate created by direct contributions to the candidate and that the regulation of the latter was, accordingly, a more direct and less restrictive means of furthering the governmental purpose. As to the second interest, the court did not believe that the persons from whom the Committee solicited contributions were subject to coercion. (Cf., Respondent's reply at 21, footnote).

Although the Right to Work case dealt with a specific statutory reference to "members" not contained in § 441b(a)'s general prohibition on corporate expenditures, the reasoning underlying the decision clearly applies with even greater force to the PPAC situation. The PPAC article was not only not a contribution to a candidate for federal office but did not in any way solicit a campaign contribution for or to any candidate. Rather, it was a strictly educational piece devoted to informing the regular subscribers to the PPAC Memo, on a non-partisan basis, how all of the candidates stood on an issue of vital concern to the organization. PPAC does not and never has made contributions to any candidate's campaign, either directly or through a separate segregated fund. With the exception of state legislators who constituted less than 5% of the people to whom its article was distributed the recipients of the PPAC Memo were identical in character to those from whom the Right to Work Committee solicited campaign contributions, persons voluntarily expressing interest in and sympathy with the goals of the organization. Clearly, if communications as directly related to a federal election campaign as those of the Right to Work Committee are outside the purview of the Act, PPAC's purely informational piece addressed to a similar constituency must be also. And the constitutional basis of the Right to Work court's holding compels this conclusion. To construe the Act otherwise would, as the court stated, constitute an unjustified burden on the First Amendment right of association.

Very truly yours,

GREENBAUM, WOLFF & ERNST



By:

Laurie R. Rockett

/bf

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Attachment V

James Bopp, Jr.
BRAMES, BOPP AND HAYNES
900 Sycamore Building
19 South Sixth Street
Terre Haute, Indiana 47807

Re: MUR 1377

Dear Mr. Bopp:

This is in reference to the complaint you filed with the Commission dated March 24, 1981 concerning Planned Parent Affiliates of California. After review of the allegations of your complaint and on the basis of information provided in your complaint and information provided by the Respondent, the Commission on April , 1982, determined that there was reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days.

If you have any questions, please direct them to Deborah Curry at (202) 523-4529.

Sincerely,

1 2 3 4 5 6 7 8 9 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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Laurie R. Rockett
GREENBAUM, WOLF AND ERNST
437 Madison Avenue
New York, New York 10022

Re: MUR 1377

Dear Ms. Rockett:

On April , 1982, the Commission found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Deborah Curry at (202)523-4529.

Sincerely,

32040324362

November 25, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MUR 1377

Please have the attached Memo to the Commission distributed to the Commission for their information.
Thank you.

Attachment

cc: Curry

11749324363



SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 NOV 25 4 9: 06

November 25, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel *KAG*

SUBJECT: MUR 1377

On November 20, 1981, the Office of General Counsel received a supplement to the response of Planned Parenthood Affiliates of California in MUR 1377 (see Attachment). The Office of General Counsel is circulating this supplement for your information.

Attachments

Planned Parenthood Affiliates of California Supplement

1 2 3 4 5 6 7 8 9 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

10515
Curry
Gcc# 5832
NOV 20 21:23

GREENBAUM, WOLFF & ERNST
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
437 MADISON AVENUE
NEW YORK, N. Y. 10022

CABLES
"GREWOLFFERH"
TELECOPIER NO.
(212) 751-0843
TELEX
ITT 423007
RCA 238089

(212) 758-4010

FLORIDA OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 374-6262

November 16, 1981

NOV 20 21:29

Deborah Curry, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: Complaint No. MUR 1377

Dear Ms. Curry:

Please consider this letter a supplement to the response of Planned Parenthood Affiliates of California (PPAC) to the above-numbered complaint. PPAC's original response was filed with the Commission on May 20, 1981.

On September 4, 1981, the Court of Appeals for the District of Columbia rendered a decision which directly supports PPAC's contention, set forth on pages seventeen through twenty-one of its original response, that the complained-of distribution of its newsletter to its regular subscribers did not fall within the ambit of the Federal Election Campaign Act's prohibition on corporate expenditures in connection with a federal election. In that decision, National Right to Work Committee, Inc. v. Federal Election Commission, No. 80-1487, (D.C. Cir. September 4, 1981), the Court of Appeals for the District of Columbia Circuit held that the term "members" as used in 2 U.S.C. § 441b(b)(4)(A)(C) of the Act (which allows non-stock corporations to solicit campaign contributions from members) must be read to include those persons who express interest in supporting the goals and philosophy of a non-profit corporation organized for political purposes.

The instant complaint charged that the publication by PPAC in its newsletter of an article entitled "1980 Candidates/How They Stand on Choice" violated 2 U.S.C. § 441b. The PPAC Article listed the candidates running for federal and state office in California. A(+) or (-) symbol next to each name summarized the candidate's positions on

3 2 0 4 0 3 2 4 3 6 5

the issues of legal abortion and government funding of abortions. In its original response, PPAC argued that publication and distribution of the PPAC Article did not fall within the purview of the Act because, inter alia, the newsletter was not distributed to the general public, but to its 4,500 regular subscribers. This conclusion, PPAC contended, was compelled by a line of Supreme Court cases, including U.S. v. CIO, 335 U.S. 106 (1948), and U.S. v. Union of United Automobile, Aircraft and Agricultural Workers of America (UAW-CIO), 352 U.S. 567 (1957), which had held on constitutional and statutory grounds that the Act applied to corporate communications only when they were addressed to and designed to influence the vote of the public at large. PPAC also pointed to the Act's explicit exemptions for a union's communications to its members and a corporation's to its stockholders, 2 U.S.C. § 441b(b)(2)(A), and contended that the purpose of the Act, to keep big money out of politics, would be turned on its head if the Act were held to exempt a corporation's communication to its stockholders and those of a union to its members and not communications by a small non-profit, non-stock, public interest corporation such as PPAC, to its 4,500 regular subscribers.

The decision of the Court of Appeals in Right to Work was based on similar reasoning. In that case, an enforcement proceeding had been commenced by the FEC against the National Right to Work Committee, a non-stock, non-profit corporation, for violation of 2 U.S.C. § 441b(b)(4)(A). These provisions of the Act together prohibit a corporation without capital stock from soliciting contributions to a separate segregated fund organized for campaign purposes from persons other than members of the corporation. Although its Certificate of Incorporation specifically provided that the corporation had no members, the Committee treated as "supporting" and "active" "members" individuals who made contributions to or communicated with it to express sympathy with its philosophy and goals. Slip Op. at 3, n. 1. The court held that, in order to escape constitutional invalidity on the ground of interference with the First Amendment right of association, the term "members" as used in § 441b(b)(4)(A) and (C) must be construed to include these individuals.

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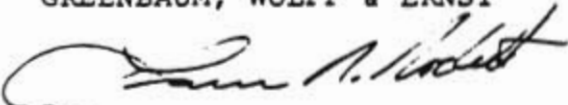
In so holding the court examined the Congressional purposes behind the Act, to keep big money out of politics and to protect individuals with dissenting minority views from coerced participation in the electoral process. As to the first, the court concluded that the mere solicitation of funds did not pose the kind of threat of corruption of a candidate created by direct contributions to the candidate and that the regulation of the latter was, accordingly, a more direct and less restrictive means of furthering the governmental purpose. As to the second interest, the court did not believe that the persons from whom the Committee solicited contributions were subject to coercion. (Cf., Respondent's reply at 21, footnote).

3 2 0 4 0 3 2 4 3 6 7

Although the Right to Work case dealt with a specific statutory reference to "members" not contained in § 441b(a)'s general prohibition on corporate expenditures, the reasoning underlying the decision clearly applies with even greater force to the PPAC situation. The PPAC article was not only not a contribution to a candidate for federal office but did not in any way solicit a campaign contribution for or to any candidate. Rather, it was a strictly educational piece devoted to informing the regular subscribers to the PPAC Memo, on a non-partisan basis, how all of the candidates stood on an issue of vital concern to the organization. PPAC does not and never has made contributions to any candidate's campaign, either directly or through a separate segregated fund. With the exception of state legislators who constituted less than 5% of the people to whom its article was distributed the recipients of the PPAC Memo were identical in character to those from whom the Right to Work Committee solicited campaign contributions, persons voluntarily expressing interest in and sympathy with the goals of the organization. Clearly, if communications as directly related to a federal election campaign as those of the Right to Work Committee are outside the purview of the Act, PPAC's purely informational piece addressed to a similar constituency must be also. And the constitutional basis of the Right to Work court's holding compels this conclusion. To construe the Act otherwise would, as the court stated, constitute an unjustified burden on the First Amendment right of association.

Very truly yours,

GREENBAUM, WOLFF & ERNST

By: 

Laurie R. Rockett

/bf

November 13, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MUR 1377

Please have the attached First General Counsel's Report distributed to the Commission on a 48 hour tally basis.

Thank you.

Attachment

cc: Curry

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11-13-81, 9:12

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION: 11-13-81

MUR 1377
DATE COMPLAINT RECEIVED
BY OGC: 03/30/81
DATE OF NOTIFICATION TO
RESPONDENT: 04/01/81
STAFF MEMBER:
Deborah Curry

COMPLAINANT'S NAME: National Right to Life Committee, Inc.

RESPONDENT'S NAME: Planned Parenthood Affiliates of California

RELEVANT STATUTE: 2 U.S.C. § 441b(a), § 441b(b)(2), § 431(9)(B)(i)
11 C.F.R. § 114.4(c)(3), § 114.2(b), § 100.8(b)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On March 30, 1981, the Office of General Counsel received a sworn and notarized complaint (Attachment I) from James Bopp, Jr. on behalf of the National Right to Life Committee, Inc. (hereinafter "NRLC"). The complaint alleged that Planned Parenthood Affiliates of California (hereinafter "PPAC") violated 2 U.S.C. § 441b by making a corporate contribution or expenditure in connection with a federal election.

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To support this allegation of a 2 U.S.C. § 441b violation, NRLC has submitted a document entitled "PPAC MEMO"^{1/}. Specifically, NRLC contends that an article contained in this document entitled "1980 Candidates/How They Stand on Choice" violates the criteria for voter guides required by 11 C.F.R. § 114.4(c)(3) since, by use of the + and - and the words "pro choice" and "anti-choice", the article tends to favor one candidate over another. In addition, NRLC asserts that the document was distributed to the general public and that the document suggests to readers that they pass a copy of it along to others. Therefore, NRLC concludes that such expenditures constitute a violation of 2 U.S.C. § 441b.

On April 14, 1981, the Office of General Counsel received a request by counsel representing PPAC for a 30 day extension of time. On April 27, 1981, the Office of General Counsel granted a 30 day extension. On May 22, 1981, the Office of General Counsel received from PPAC a response (Attachment II) containing a statement of facts and legal arguments. On June 1, 1981, the Office of General Counsel received a signed and sworn affidavit from Norma Clevenger, Executive Director of PPAC, (Attachment III) in support of the statement of facts.

According to the statement of facts and affidavit, PPAC was incorporated in California in 1974 as a General non-profit

^{1/} On April 18, 1981, the Office of General Counsel received from NRLC a more legible copy of the "PPAC MEMO." This was done pursuant to a request from this office.

corporation. PPAC has no stockholders. It is a social welfare organization with tax exempt status under § 501(c)(4) of the Internal Revenue Code. PPAC was established by the California affiliates of the Planned Parenthood Federation of America, Inc. and it is governed by a Board of Delegates of two representatives from each of the seventeen California affiliates that make up its membership. The purposes of PPAC are to promote and coordinate the provision of education, counseling and clinical services in the field of family planning, and to support or oppose legislation in the field of family planning.

FACTUAL AND LEGAL ANALYSIS

2 U.S.C. § 441b(a) expressly prohibits corporate contributions or expenditures in connection with federal elections. See also 11 C.F.R. § 114.2(b). 2 U.S.C. § 441b(b)(2) elaborates on the meaning of contribution or expenditure stating:

For purposes of this section and section 791(h) of title 15, the term "contribution or expenditure" shall 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 election to any of the offices referred to in this section, (Emphasis Added)

However, PPAC contends that the article in question, called "1980 Candidates, how They Stand on Choice", and contained in the "PPAC MEMO" is not a violation of 2 U.S.C. § 441b. In its response to the complaint PPAC submits numerous legal arguments

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to support this contention. The arguments emphasize the article's compliance with 11 C.F.R. 114.4(c)(3), the press exemption, and general constitutional principles.

11 C.F.R. § 114.4(c)(3) outlines the criteria governing voter guides. It states the following:

A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates and their positions if -
(i) the materials do not favor one candidate or political party over another; and
(ii) the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

The PPAC article describes the position of candidates on the issues of abortion and government funding of abortion and a human life amendment. The name of every state and federal candidate running for a major office in California in the November election is contained in the article. PPAC states that it did extensive research in order to fairly report the views of the candidates.^{3/} It indicates that it used the symbols + and - next to a candidates name as a space saving device. A plus was used next to a candidates name if that candidate "supports free choice on abortion, government funding of abortion and opposes a human

^{3/} PPAC points out that a large part of the information used in compiling the PPAC article was originally obtained from a leaflet distributed by the California Pro-Life Council, Inc., the California affiliate of the complainant, NRLC. The leaflet distributed by the California Pro-Life Council is similar to the article contained in the "PPAC MEMO." PPAC submitted a copy of the leaflet with its response to the complaint.

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life amendment." A minus was used to show opposition to these issues. For a candidate whose view differed from these two positions a footnote was provided with a very detailed explanatory legend. In addition, PPAC included a disclaimer in the article which stated "[t]he information is presented for educational purposes only and is not intended as endorsement of any candidate."

Though PPAC cites numerous efforts to present a balanced view of candidate positions, the use of + and - tends to favor one candidate over another. This is all the more true in light of the decidedly pro-choice (+) stance of PPAC.^{4/}

Therefore, since the PPAC article does not come within the criteria governing voter guides in 11 C.F.R. § 114.4(C)(3), the Office of General Counsel recommends that the Commission find reason to believe that Planned Parenthood affiliates of California violated 2 U.S.C. § 441b. However, due to the apparent efforts by PPAC to comply with the present regulations and in light of recent proposed regulations to clarify this area, the Office of General Counsel recommends that no further action be taken and close the file.

^{4/} PPAC also asserts the press exemption, however for a number of reasons it is unclear if they could avail themselves of this exemption, eg. whether it is a periodical.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

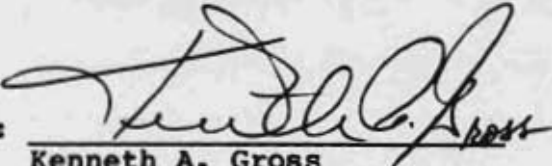
1. find reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971 as amended;
2. approve attached letters; and,
3. close the file.

Charles N. Steele
General Counsel

Date

Nov. 12, 1981

BY:


Kenneth A. Gross
Associate General Counsel

Attachments

1. Complaint (1-6)
2. Response from Respondent (7-46)
3. Affidavit (47-51)
4. Letters (two) (52-53)

3 2 0 4 0 3 2 4 3 7 1

Attachment I

BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

81 MAR 30 09:02

TELEPHONE
(812) 238-2421

ARNOLD H. BRAMES
JAMES BOPP, JR.
DAVID D. HAYNES

March 24, 1981

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

Dear Sir/Madam:

On behalf of the National Right to Life Committee, Inc. (NRLC), I am filing the following complaint of violation of federal election laws by Planned Parenthood Affiliates of California (PPAC), 1623 10th Street, #1, Sacramento, CA 95814. PPAC is an organization in California affiliated with Planned Parenthood of California which is designed to support legislative and administrative changes which affect family planning in California. PPAC is not a registered political action committee with the Federal Election Commission.

This complaint is to bring to the attention of the Federal Election Commission a violation of 2 U.S.C. § 441 b (a) prohibiting a corporation from making expenditures in connection with a federal election. PPAC was incorporated in the State of California on March 14, 1974.

In the fall of 1980, PPAC published a Memo which delineated the positions of federal candidates on the issue of abortion. This Memo, a copy of which is attached, described the candidates as "pro-choice" and anti-choice" by use of the symbol + or -. The distribution of this Memo was to the general public. See page 4 where the Memo suggests to the reader that they pass a copy of this Memo to others who might be interested in it.

This Memo violated § 441 b (a) since it constituted a corporate expenditure in connection with a federal election. This Memo violated the criteria for voter guides required by 11 CFR 114.4 (c)(3), since, by use of the + and - and the words "pro-choice" and "anti-choice", the material tended to favor one candidate over another.

Accordingly, we request the Federal Election Commission immediately investigate the complaint and impose appropriate fines for violation.

14:11A 08 MAR 30

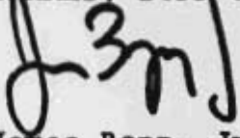
Federal Election Commission
March 24, 1981

Page Two

I have prepared the complaint and believe it is true and correct to the best of my knowledge. This complaint was not filed on behalf of or at the request or suggestion of any candidate.

Sincerely,

BRAMES, BOPP & HAYNES



James Bopp, Jr.

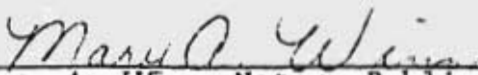
JB:maw
Enclosure

STATE OF INDIANA, COUNTY OF VIGO, SS:

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, this 24th day of March, 1981.

Witness my hand and Notarial seal.

My Commission Expires
December 14, 1984


Mary A. Winn, Notary Public
County of Residence: Clay

82040324375

Party Platforms Polarized On Abortion

Voters, being continually bombarded by campaign rhetoric as the November 4 general election draws near, must start sifting through the verbiage in order to discern just what it is candidates and political parties really support and oppose. Those voters who support reproductive freedom and equal rights for women, and who are not voting for John Anderson, may have a particularly difficult time even though major party platforms seem quite clear on the issues.

Republicans, for the first time in 40 years, have repudiated their position on equality for women by withdrawing their support for the ERA in their 1980 Party Platform.

At the same time and in an obvious attempt to attract the evangelical vote, which pollster Lou Harris reports to be about 29 percent of the voters nationwide, the Republicans called for a constitutional amendment to ban abortions and called for the appointment of federal judges at all levels of the judiciary who oppose abortion.

Senator Charles Percy, R-Illinois, called that section of the platform "the worst plank I have ever seen in any platform by the Republican Party."

By contrast, the Democratic platform takes an opposite position. Originally including the 1976 platform language which recognized the differences in thought on the abortion issue and stated an amendment to the constitution banning abortion was undesirable, the 1980 Democratic platform was altered by overwhelming passage of a minority plank which opposes government restrictions on federal funding for abortions for poor women and which declares reproductive freedom as a fundamental human right.

In addition, the Democratic plank calls for the denial of financial and other national party support to any Democratic candidate who does not support the ERA.

Of the three top presidential candidates, Anderson is the only one who has made a strong pro-choice statement. He is the only candidate to support free choice on abortion and unrestricted government funding for women unable to afford abortions.

While the Republican Party Platform appears clear on the issues of reproductive freedom and the ERA, candidate Ronald Reagan may be attempting to diffuse the absoluteness of his party's statements. In a recent Associated Press news article, Reagan, the person who signed the Therapeutic Abortion Act of 1967 liberalizing abortion in California, was reported as saying a judge's pro-abortion position may not necessarily preclude her/him from consideration as an appointee to a federal judgeship.

Other rumblings from the Reagan campaign seem to be aimed at convincing voters that he may be softening his position on abortion. Another article reported that the Reagan campaign has set up a Women's Committee. Such statements could probably be categorized as political posturing, but nonetheless, they have drawn the ire of the likes of Phyllis Schlafly and her Eagle Forum and the archconservatives represented by *The Wanderer* newspaper, which is already at odds with Reagan for his choice of George Bush as his vice presidential running mate.

Bush, although personally opposed to abortion, also opposes a constitutional amendment outlawing abortion and supports government funding of abortion under certain circumstances. Both these positions run contrary to the so-called "right to life" philosophy.

In three states, Kentucky, New Jersey and New York, the

Right to Life Party has qualified for the ballot. Its official anti-choice presidential candidate is Ellen McCormack. Reagan made a bid for the Party's endorsement in New York. However, his anti-choice position apparently is not strong enough for ardent "right to life" supporters.

President Carter too is having trouble with his party's platform. Carter is also personally opposed to abortion and will have difficulty supporting the party's plank and its guarantee of federally funded abortions for women unable to bear the cost of their own.

According to Sarah Weddington, an assistant to the president, "It's one of the planks he does not agree with."

While on one hand Reagan is courting the evangelical vote, on the other recent statements seemingly suggesting a softening of his position on abortion may be the result of a Harris Poll which indicates a 61-22 percent majority of all voters nationwide oppose the Republican platform plank concerning a constitutional amendment banning abortion.

In addition, although a 55-42 percent majority of white voters involved in the evangelical movement favors such an amendment, a much higher 65-30 percent majority of whites not in the movement oppose it.

Additionally, all black voters oppose such a constitutional amendment banning abortion by a 66-28 percent margin.

1980 Democratic Party Platform

We fully recognize the religious and ethical concerns which many Americans have about abortion. We also recognize the belief of many Americans that a woman has a right to choose whether and when to have a child.

The Democratic Party supports the 1973 Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or overturn the decision.

Furthermore, we pledge to support the right to be free of environmental and worksite hazards to reproductive health of men and women.

We further pledge to work for programs to improve the health and safety of pregnancy and childbirth including adequate pre-natal care, family planning counseling and services with special care to the needs of the poor, the isolated and the young.

Minority Report Adopted 2,005-956

The Democratic Party recognizes reproductive freedom as a fundamental human right. We therefore oppose government interference in the reproductive decisions of Americans, especially those government programs or legislative restrictions that deny poor Americans their right to privacy by funding or advocating one or a limited number of reproductive choices only.

Specifically, the Democratic Party opposes involuntary or uninformed sterilization for women and men, and opposes restrictions on funding for health services for the poor that deny poor women especially the right to exercise a constitutionally guaranteed right to privacy.

1980 Republican Party Platform

There can be no doubt that the question of abortion despite the complex nature of its various issues is ultimately concerned with equality of rights under the law.

(continued on page 3.)

1980 Candidates/How They Stand On Choice

NOTE: To the best of our knowledge the information contained here is based on public statements by the candidates, incumbent voting records, campaign literature, interviews, answers to various questionnaires, etc. The information is presented for educational purposes only and is not intended as an endorsement of any candidate.

KEY:

+ = Pro-choice**

- = Anti-choice***

* = Incumbent

0 = No information available

x = Opposed to abortion, except under certain restrictive circumstances.

1 = Supports free choice but opposes all or unrestricted government funding.

2 = Supports parental consent/notification.

3 = Supports spousal notification.

4 = Opposes "Human Life Amendment".

5 = Supported by California Abortion Rights Action League — Political Action Committee (CARAL-PAC).

6 = Endorsed by Life Amendment Political Action Committee (LAPAC).

7 = Endorsed by National Women's Political Caucus (NWPC).

8 = Supported by National Abortion Rights Action League — Political Action Committee (NARAL-PAC).

9 = Withdrew candidacy

** Supports free choice on abortion, government funding of abortion and opposes a human life amendment to the constitution.

*** Opposes free choice on abortion, opposes government funding of abortion and supports a human life amendment to the constitution.

PRESIDENT

Carter, J. (D)*
Anderson, J. (I)
Reagan, R. (R)

U.S. SENATE

Cranston, A. (D)*
Gann, P. (R)

CONGRESSIONAL DISTRICT

1 Johnson, H. (D)*
Chappie, E. (R)
2 Bork, N. (D)
Clausen, D. (R)*
3 Matsui, R. (D)*
Murphy, J. (R)
4 Fazio, V. (D)*
Dehr, A. (R)
5 Burton, J. (D)*
McQuaid, D. (R)
6 Burton, P. (D)*
Spinosa, T. (R)
7 Miller, G. (D)*
St. Clair, G. (R)
8 Dellums, R. (D)*
Hughes, C. (R)
9 Stark, F. (D)*
Kennedy, W. (R)
10 Edwards, D. (D)*
Lutton, J. (R)
11 Lantos, T. (D)
Royer, B. (R)*
12 Olsen, K. (D)
McCloskey, P. (R)*
13 Mineta, N. (D)*
Gagne, W. (R)
14 Corney, A. (D)
Shumway, N. (R)*
15 Coelho, T. (D)*
Schwartz, R. (R)
16 Panetta, L. (D)*
Roth, W. (R)
17 Johnson, W. (D)
Pashayan, C. (R)*
18 Timmermans, M. (D)
Thomas, W. (R)*
19 Lodise, C. (D)
Lagomarsino, R. (R)*
20 Miller, M. (D)
Goldwater Jr., B. (R)*
21 Corman, J. (D)*
Fiedler, B. (R)
22 O'Donnell, P. (D)
Moffatt, C. (R)*
23 Belenson, A. (D)*
Winkler, R. (R)

24 Waxman, H. (D)*
25 Cayard, R. (R)
Roybal, E. (D)*
Ferraro, R. (R)
26 Lisoni, J. (D)
Rousselot, J. (R)*
27 Peck, C. (D)
Dornan, R. (R)*
28 Dixon, J. (D)*
Reid, R. (R)
29 Hawkins, A. (D)*
Hirt, M. (R)
30 Danielson, G. (D)*
Platten, J.A. (R)
31 Dymally, M. (D)
Grimshaw, D. (R)
32 Anderson, G. (D)*
Adler, J. (R)
33 Anderson, F. (D)
Grisham, W. (R)*
34 Simone, I. (D)
Lungren, D. (R)*
35 Lloyd, J. (D)*
Dreier, D. (R)
36 Brown, G. (D)*
Stark, J. (R)
37 Rusk, D. (D)
Lewis, J. (R)*
38 Patterson, J. (D)*
Jacobson, A. (R)
39 Lahtinen, L. (D)
Dannemeyer, W. (R)*
40 Dow, M. (D)
Badham, R. (R)*
41 Wilson, B. (D)
Lowery, B. (R)
42 Van Deelen, L. (D)*
Hunter, D. (R)
43 Metzger, T. (D)
Burgener, C. (R)*

STATE SENATE DISTRICT

1 Huggins, D. (D)
Johnson, R. (R)*
3 Rodda, A. (D)*
Doolittle, J. (R)
5 Garris, E. (D)
Marks, M. (R)*
7 Boatwright, D. (D)
Jarboe, J.J. (R)
9 Petris, N. (D)*
Roust, T. (R)
11 Alquist, A. (D)*
Arey, Richard
13 Garamendy, J. (D)*
Johnson, W. (R)

15 Vuich, RA (D)*
17 Mello, H. (D)
Seastrand, E. (R)
19 Woodlock, R. (D)
Davis, Ed (R)
21 Cogar, S. (D)
Russell, N. (R)*
23 Robert, D. (D)*
White, N. (R)
25 Boothroyd, T. (D)
Richardson, H.L. (R)*
27 Buckland, D. (D)
Beverly, R. (R)*
29 Greene, B. (D)*
Faulkner, T. (R)
31 Fronke, R. (D)
Speraw, O. (R)*
33 Epole, B. (D)
Campbell, W. (R)*
35 Velasquez, L. (D)
Briggs, J. (R)*
37 Carpenter, P. (D)*
Wilts, D. (R)
39 Finnegan, D. (D)
Ellis, J. (R)*

STATE ASSEMBLY DISTRICT

1 Siaram, S. (R)*
Maso, D. (P&F)
2 Bosco, D. (D)*
Potts, J. (R)
3 Garcia, G. (D)
Hanger, W. (R)
4 Hannigan, T. (D)*
Cecil, W. (R)
5 Sheedy, T. (D)
McGrath, J. (R)*
6 Greene, L. (D)*
Benvenuti, D. (R)
7 Walters, N. (D)*
Parses, D. (R)
8 Attra, L. (D)
Sebastian, D. (R)
9 Charles, A. (D)
Filante, W. (R)*
10 Hasseltine, E. (D)
Bayer, B. (R)
11 Campbell, R. (D)
Burke III, W. (R)
12 Bates, T. (D)*
Schwan, W. (R)
13 Harris, E. (D)*
Hartmann, A. (L)
14 Lott, B. (D)*
15 Foy, J. (D)*
Morgan, G. (R)

MEMO

ASSEMBLY DISTRICT — continued

16	Agrios, A. J.	38	Alvar, S. J.	60	Farmer, S. J.
17	Agrios, A. J.	39	LaFollette, V. R.	61	Farmer, S. J.
18	Agrios, A. J.	40	Katz, P. J.	62	Farmer, S. J.
19	Agrios, A. J.	41	Katz, P. J.	63	Farmer, S. J.
20	Agrios, A. J.	42	Katz, P. J.	64	Farmer, S. J.
21	Agrios, A. J.	43	Katz, P. J.	65	Farmer, S. J.
22	Agrios, A. J.	44	Katz, P. J.	66	Farmer, S. J.
23	Agrios, A. J.	45	Katz, P. J.	67	Farmer, S. J.
24	Agrios, A. J.	46	Katz, P. J.	68	Farmer, S. J.
25	Agrios, A. J.	47	Katz, P. J.	69	Farmer, S. J.
26	Agrios, A. J.	48	Katz, P. J.	70	Farmer, S. J.
27	Agrios, A. J.	49	Katz, P. J.	71	Farmer, S. J.
28	Agrios, A. J.	50	Katz, P. J.	72	Farmer, S. J.
29	Agrios, A. J.	51	Katz, P. J.	73	Farmer, S. J.
30	Agrios, A. J.	52	Katz, P. J.	74	Farmer, S. J.
31	Agrios, A. J.	53	Katz, P. J.	75	Farmer, S. J.
32	Agrios, A. J.	54	Katz, P. J.	76	Farmer, S. J.
33	Agrios, A. J.	55	Katz, P. J.	77	Farmer, S. J.
34	Agrios, A. J.	56	Katz, P. J.	78	Farmer, S. J.
35	Agrios, A. J.	57	Katz, P. J.	79	Farmer, S. J.
36	Agrios, A. J.	58	Katz, P. J.	80	Farmer, S. J.
37	Agrios, A. J.	59	Katz, P. J.		

Regs Modified

The California Department of Social Services has announced that it has modified its regulations regarding the adoption of children. The new regulations will take effect on January 1, 1960.

The modifications are designed to simplify the adoption process and to provide more protection for the child. The new regulations will require that all adoptions be approved by the Department of Social Services.

The new regulations will also require that all adoptive parents be screened by the Department of Social Services. This screening will include a background check and an interview with the prospective parents.

The new regulations will also require that all adoptive parents be licensed by the Department of Social Services. This licensing will ensure that the adoptive parents are capable of providing a suitable home for the child.

The new regulations will also require that all adoptive parents be monitored by the Department of Social Services. This monitoring will ensure that the adoptive parents are providing a suitable home for the child.

The new regulations will also require that all adoptive parents be provided with information regarding the child's medical history and background. This information will be provided by the Department of Social Services.

Resolution Passes Women's Congress

The Women's Congress, a California translation of the United Nations Decade for Women Copenhagen Conference, passed the following resolution on Sunday, October 5, 1960.

Be it resolved that every woman has the inalienable right to control her own body.

Should any woman in exercising the right freely choose to have an abortion, safe and legal abortion should be available. Any government action which restricts access to abortion through limiting funding or any other means undermines women's health and impedes the free exercise of fundamental American rights to privacy and personal decision-making in accordance with an individual's own religious and ethical beliefs.

Furthermore, sterilization should be available to all persons, but this choice must be fully protected from any coercion or abuse.

Resolutions continued on page 2.

While we recognize the importance of the question of abortion, we also recognize the importance of the question of sterilization. We believe that the right to control one's own body is a fundamental right and that the government should not interfere with this right.

We believe that the government should provide information regarding the risks and benefits of abortion and sterilization. We believe that the government should ensure that all women have access to safe and legal abortion.

Title X Awaits Senate Action

The House of Representatives in late August adopted its Appropriations Committee's recommendations for fiscal year 1981 Title X appropriations of \$166 million, or less \$4 million. FY 80 received \$165 million and FY 79 \$164 million. FY 80 received \$165 million and FY 79 \$164 million.

Planned Parenthood Federation of America (PPFA) stressed that these levels are far below that required to meet the need for family planning services and research. If inflation is taken into account these funding levels will represent an actual cutback in programs.

Title X which is the backbone of government family planning programs provides more than 50 percent of the funding base for service providers. The cost-savings aspect raised by these Title X appropriations has been demonstrated — the current fiscal year more than \$1.60 saved for every \$1.00 invested in the program.

In addition, the success of the Title X program is evidenced by the fact that more than 4 million women annually receive reproductive health care through its programs. However, PPFA estimates that 45 million low and marginal income women and 17 million teenagers who are at risk of unwanted pregnancy are still unable to obtain care from either public or private sources.

The need for family planning services is particularly acute among the teenage population. Currently, the U.S. has the highest rate of adolescent pregnancy of any developed country. In the world, more than 10 million teenagers become pregnant each year, most unintentionally.

More widely available contraceptive services may also have reduced the need for the more than 1.4 million abortions performed in 1978 (the most current year for which complete statistics are available).

PPFA's 1980 report estimated 250,000 patients now being served will have to be dropped if the Senate does not increase the Title X FY 81 funding levels. At least \$160 million for services is needed to the program. There is no need to cut any other Title X programs. Funds are needed to provide the most effective reproductive health care to the poor, and better access to existing and new contraceptive services.

Letter to the Editor, March 28, 1981. The following information was received from the Department of Health and Human Services, Office of Family Planning, Washington, D.C. 20461. The following information was received from the Department of Health and Human Services, Office of Family Planning, Washington, D.C. 20461.

Issue 6 Rejected By Toledo Voters

Voters in Toledo Ohio this summer rejected by a two-to-one margin a proposal that would have imposed severe conditions and regulations on abortions occurring in the first twelve weeks of pregnancy.

Billed as the Maternal Health Ordinance, the Toledo proposal was drafted by a local right-to-life group and was concerned solely with regulating abortion.

The defeat of Issue 6 as it appeared on the ballot could have national impacts since it is the first time since the 1973 Supreme Court decision legalizing abortion that an anti-abortion measure was directly before the voters.

Previously elected officials have enacted similar measures in other counties and some states. Most of these ordinances have been challenged in the courts and the bulk of the provisions have been declared unconstitutional.

According to Pat Donohue, editor of Family Planning Population Reporter, the rejection of the Toledo ordinance is also significant because it occurred in a city with a large blue collar ethnic population that is over 30 percent Catholic — conditions that should be fertile ground for anti-abortion proposals. Catholic precincts, however, voted against the measure by the same two-to-one margin as the city as a whole.

Had the proposal passed, abortion foes in other communities throughout the country would have been encouraged to put the abortion issue on the ballot on a local vote.

Passed after the Abortion Ordinance, the Toledo measure would have imposed many of the now familiar informed consent rules including a requirement that a physician give the woman seeking an abortion a detailed description and show her photographs of the fetus, a 24-hour waiting period and scrupulous parental notification requirements.

Of 40,054 to 20,629, less the ordinance received the easy support of the majority of voters on the ballot.

The PPAC MEMO provides you with important information on legislation and administrative changes which affect family planning in California. As we rely strictly on donations to publish the MEMO it is our hope that those readers who have not done so will take the time to send in their \$5.00 donation for this year. Why not pass your copy on to others who might be interested in it when you are finished?

Offices: 1623 10th Street #1 Sacramento, CA 95814
916 446-6241

David Aas, Editor
Norma Cleveland, Executive Director

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Sacramento

1981
Box 176
95814

CA 95814

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(212) 755-4010

81 MAY 22 AII: 27

ATTACHMENT II

⑦

FLORIDA OFFICE
ONE BISCAYNE TOWER
8 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 371-6252

CABLES
"GREWOLPERN"
TELECOPIER NO.
(212) 751-0843
TELEX
ITT 483007
RCA 238099

May 20, 1981

Deborah Curry, Esq.
Federal Election Commission
Washington, DC 20463

Re: Complaint No. MUR1377

Dear Ms. Curry:

This letter is in response to the above numbered complaint filed against Planned Parenthood Affiliates of California ("PPAC") by the National Right to Life Committee, Inc.

As we discussed on May 17, we have prepared an affidavit to be signed by the Executive Director of PPAC setting forth the facts upon which the response is based, which are summarized in the Statement of Facts beginning on page 3 of the enclosed. She was, however, called away because of a serious illness in her family and was not available to sign the affidavit in time to return it to us for inclusion in the response. This will confirm that you agreed that the affidavit could be submitted separately at a later date inasmuch as all of the facts are contained in the enclosed response, in any event. We appreciate your consideration in this regard.

The enclosed response of PPAC will demonstrate, pursuant to 2 U.S.C. § 437(g)(a)(1) that no action should be taken on the basis of this complaint.

Very truly yours,

GREENBAUM, WOLFF & ERNST

By Laurie R. Rockett
Laurie R. Rockett

LRR:MML
Enc.

32340324381

31 MAY 22 P2:42

GERMANY

STATEMENT OF FACTS

Planned Parenthood Affiliates of California, Inc. ("PPAC"), a non-profit corporation with headquarters in Sacramento, California, was organized in 1975 under the General Non Profit Corporation Law of the State of California. PPAC has no stockholders. It is a "social welfare" organization, exempt from federal taxation under §501(c)(4) of the Internal Revenue Code. PPAC is governed by a Board of Delegates composed of two representatives from each of the seventeen Planned Parenthood affiliates in California, which comprise its membership. These affiliates are themselves non-profit organizations which provide a variety of family planning services, both medical and educational, throughout the State of California. Each affiliate receives permission to use the service mark "Planned Parenthood" from Planned Parenthood Federation of America, Inc. ("PPFA"), a not-for-profit corporation with headquarters in New York City. PPFA is the nation's oldest and largest voluntary family planning agency, with 188 affiliates nationwide. In 1980, Planned Parenthood's 20,000 volunteers and staff provided medical, educational and counseling services to meet the family planning needs of more than 2.3 million Americans.

The purposes of PPAC, as stated in its amended Certificate of Incorporation, are "to promote and coordinate the provision of education, counseling and clinical services in the field of family planning, and to support or oppose legislation in the field of family planning." In keeping with this general purpose, PPAC devotes about 20% of its time to providing the California Planned Parenthood affiliates, other providers of family planning services, legislators and the media with information on reproductive health issues. As part of these educational services, PPAC has published the PPAC Memo regularly eight or nine times a year since the organization's founding.

The PPAC Memo reports on the latest developments in reproductive and health issues, including proposed legislation, administrative policies, votes on legislation, court cases and positions of public officials and candidates for public office on the issues that concern readers of the PPAC Memo. As part of its educational and lobbying functions, the PPAC Memo urges its readers to contact their legislators, public officials and individuals running for public office to make known their views on family planning issues.

The PPAC Memo is distributed to a mailing list of 4,500 persons, including employees and board members of the

1 2 3 4 5 6 7 8 9

seventeen California Planned Parenthood affiliates, family planning providers, legislators and other individuals requesting it. PPAC asks that subscribers contribute \$8.00 annually for the Memo.

The article complained of herein, entitled "1980 Candidates/How they Stand on Choice" (the "PPAC Article"), was published by PPAC in Memo 7, September - October 1980. The PPAC article contained the name of every state and federal candidate running in California for major public office in the upcoming November election. Next to each candidate's name there appeared the symbol (+) or (-). The symbol (+) indicated that the candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." The symbol (-) indicated the opposite position on those issues. Where a candidate's viewpoint differed from any one of those positions, for example, "supports free choice but opposes government funding", a footnote was provided with an explanatory legend.

The information contained in the PPAC article was based on a number of sources, including public statements made by the candidates, incumbent voting records, campaign literature, interviews given to Planned Parenthood personnel by the candidates and answers to questions put to the candidates

22040324381



by other organizations. Ironically, a substantial part of the information used in compiling the PPAC article was obtained from a leaflet published by the California Pro Life Council, Inc. (Exhibit A), the California affiliate of the complainant National Right to Life Committee, Inc. That leaflet described each candidate's position on a proposed anti-abortion constitutional amendment and government funding of abortion as obtained from "voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council".

The purpose of the PPAC article was solely to provide information to interested persons about the position of candidates on the single issue of government restrictions on a woman's choice whether or not to have an abortion. As was clearly stated in its text, the article did not endorse or advocate the election or defeat of any candidate. Nor was it published in concert or cooperation with or at the suggestion of any candidate. PPAC is, of course, itself not in any way connected with any candidate, political party or political campaign. The article was, in short, non-partisan both as to source and content.

1 2 3 4 5 6 7 8 9 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

SUMMARY OF ARGUMENT

- I. The PPAC Article is Exempt From the Provisions of the Federal Election Campaign Act Under § 431(9)(B)(i) (the "Press Exemption")
- II. Publication of the PPAC Article in No Way Violated Section 441b of the Federal Election Campaign Act
 - A. Such Publication Did Not Constitute Express Advocacy of the Election or Defeat of a Candidate
 - B. The PPAC Material Was Not Addressed to the General Public
 - C. The Publication of the PPAC Article Complied With 11 C.F.R. § 114.4(c)(3), the Regulation Governing Voter Guides
- III. If the Act were Interpreted to Prohibit the Publication of the PPAC Article, It Would Violate the U.S. Constitution

3 2 0 4 0 3 2 4 3 8 5

ARGUMENT

- I. The PPAC Article is Exempt from the Provisions of the Federal Election Campaign Act Under §431(9)(B)(i) (the "Press Exemption")

The Federal Election Campaign Act (the "Act") (2 U.S.C. §431 et seq.) establishes reporting requirements for and dollar limitations on certain campaign related expenditures and prohibits corporations from making any such expenditures. To avoid conflict with the First Amendment to the U.S. Constitution, however, Section 431(9)(B)(i) of the Act, specifically exempts from the definition of "expenditure"

"any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."

The communication which is the subject of the complaint herein falls squarely within this exemption.

As set forth in the Statement of Facts, supra, the PPAC Memo is a regularly published periodical, aimed at informing interested persons of developments in law and policy related to family planning. Its article, "The Candidates, How They Stand on Choice," is clearly a "news story", reporting the results compiled from such sources as candidate interviews,

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questionnaires, voting records, and newsletters of other organizations. Moreover, even if the article were characterized as "opinion" rather than as a news story, it would still fall squarely within §431(9)(B)(i)'s exemption for "commentar[ies] or editorial[s]."

The PPAC Memo is published by PPAC, an independent non-profit organization, not owned or controlled in any way by any candidate, political party or political committee. PPAC is not, of course, itself a political committee since it makes no "contributions or expenditures" within the meaning of the Act.

The press exemption was added to the Act in 1974 by P.L. 93-443 to make plain that Congress did not intend in enacting the Act "to limit or burden in any way the First Amendment freedom of the press" and to assure the unfettered right of newspapers, TV networks and other media to cover and comment on political campaigns. House Rep. No. 93-1239, 4 (Committee on House Adm., July 30, 1974). So fundamental is this press exemption to the preservation of the constitutionality of the Act itself that the FEC's authority to investigate a complaint lodged against a corporation which publishes news stories, commentaries, or editorials is limited, in the first instance, to two questions: (1) whether the facilities publishing the news story are controlled by a

political party, political committee or candidate, and (2) whether or not the corporate activity falls within the press entity's "legitimate press function." The Reader's Digest Association, Inc. v. Federal Election Commission, 81 Civ. 596 (PNL) (S.D.N.Y. March 19, 1981) (summarized in 49 U.S.L.W. 2614). If it is established that the activity falls within this function the Commission's inquiry must end. This limitation on the power of the FEC to investigate complaints involving the publication of a news story is:

"...based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter." Id. at 7.

The publication of the PPAC article as a regular part of the PPAC Memo was unquestionably a legitimate press function. The issue of the PPAC Memo containing the article was disseminated in the usual manner to a limited group of interested persons. No attempt was made to distribute massive numbers of free copies or saturate a critical geographic area. In addition, the article was in keeping with the usual tone and purpose of the PPAC Memo -- keeping interested persons informed

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on family planning issues, including the views of those who shape, or may shape, those issues.

The fact that the PPAC Memo might not be viewed as a publication of the "institutional press" should not affect its coverage under the exemption. The history of the First Amendment's press protection and the Supreme Court's interpretations of it indicate that it was not intended "to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it". Pennekamp v. Florida, 328 U.S. 331, 364 (1946). (Frankfurter, J., concurring). As Chief Justice Burger pointed out in his concurring opinion in First Bank of Boston v. Bellotti, 435 U.S. 765, rehearing denied, 438 U.S. 907 (1978):

"The very task of including some entities within the 'institutional press' while excluding others, whether undertaken by legislature, court, or administrative agency, is reminiscent of the abhorred licensing system of Tudor and Stuart England -- a system the First Amendment was intended to ban from this country. [citation omitted]. Further, the officials undertaking that task would be required to distinguish the protected from the unprotected on the basis of such variables as content of expression, frequency or fervor of expression, or ownership of the technological means of dissemination. Yet nothing in this Court's opinions supports such a

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confining approach to the scope of Press Clause protection." Id. at 801.

Nor, as the Chief Justice emphasized, there is there any basis for distinguishing between organizations which employ the corporate form to carry on the business of mass communications, particularly large media conglomerates, and respondent here.

"In terms of 'unfair advantage in the political process' and 'corporate domination of the electoral process' it could be argued that such media conglomerate(s) . . . pose a much more realistic threat to valid interests than do appellants and similar entities not regularly concerned with shaping popular opinion on public issues." Id. at 796-7.

Finally, the legislative history of the press exemption to the Act makes clear that Congress was aware at the time the exemption was enacted that its provisions could extend to special interest publications and that such publications could on occasion "be extremely useful and effective to certain candidates during a campaign." House Rep. No. 93-1239, at 144, Supplemental Views of Representative Bill Funzel.

It would be ironic, indeed, if the Act's press exemption were read to apply to the publications of vast profit making "media empires" controlling at once radio and television

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stations, large metropolitan newspapers and magazines of nationwide circulation, as well as paper mills and distribution services (see 435 U.S. at 796) but not to the PPAC Memo, the publication of a small non-profit corporation with a circulation of no more than 4,500 copies. Such a distinction would in no way serve §441b's purpose of keeping elections free of the influence of vast corporate wealth and would conflict directly with that of §431(9)(B)(i) to assure that the Act preserve "unfettered" the freedom of the press.

The press exemption clearly applies to the PPAC article and the FEC must, accordingly, consistent with the purpose of that exemption to preserve intact the freedom of the press, dismiss the instant complaint without further investigation.

II. Publication of the PPAC Article in
No Way Violated Section 441b of
the Federal Election Campaign Act

A. Such Publication Did Not Constitute Express
Advocacy of the Election or Defeat of a Candidate.

Although, as set forth in Point I above, the FEC is without authority to inquire as to the content of the PPAC article or the circumstances of its publication, any such inquiry would further establish that no action should be taken on the basis of the complaint. As the Statement of Facts makes clear, the PPAC article presented an objective report of the

positions of the candidates on the issue of government restrictions on a woman's choice of whether or not to have an abortion. It was published entirely independently of any candidate for federal office and it was not intended as, nor did it constitute, an endorsement or advocacy of any candidate's election or defeat. The sole aim of the PPAC article was to inform interested persons of the views of those who might shape government policies on one particular issue of great public interest. It is clear from the structure of the Act, its legislative history and relevant constitutional considerations that §441b of the Act does not reach this type of independent, objective reporting on candidates' positions but is rather directed at the express advocacy by a corporation of the election or defeat of a candidate.

Section 431 of the Act, which contains the definition of terms used in the Act as a whole, divides expenditures into two categories. The first category is "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized committees, or their agents. . ." Such expenditures, which are treated as contributions and subject to specific dollar limits, are clearly not here involved. §§ 441a(a)(1) and (7)(B)(i). A second type of expenditures, termed "independent expenditures",

are not subject to monetary restrictions but must be reported under §434. "Independent expenditures" are defined as those made "without cooperation or consultation with any candidate ... [and] not ... in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate", 2 U.S.C. §431(17), and include only expenditures "expressly advocating the election or defeat of a clearly identified candidate." §431(17). The Act thus imposes neither dollar limits nor reporting requirements on expenditures which are not made in cooperation with or at the suggestion or request of a candidate or a political committee and which do not expressly advocate a candidate's election or defeat. Such expenditures are simply outside the Act's regulatory framework.

Although the Act nowhere defines "expressly advocating", the courts have held that this term must be strictly limited in order to avoid invalidation on vagueness grounds, to "communications containing express words of advocacy of election or defeat ... such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Federal Election Commission v. AFSCME, 471 F.Supp. 315, 316 (D.D.C. 1979), citing, Buckley v. Valeo, 424 U.S. 1, 44 n. 52 (1976). Since the PPAC article is both

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"independent", in the sense of being free of the influence of any candidate, and contains no words of "express advocacy", it is outside the application of the Act.

The legislative history of §441b, which prohibits corporate expenditures in connection with federal elections, likewise makes clear that that prohibition was intended to reach only unambiguous "electioneering". Section 441b was not part of the Federal Election Campaign Act itself. It was originally contained in the Tillman Act, a statute enacted in 1907 which made it unlawful for national banks and corporations to make a money contribution "in connection with" various elections. 34 Stat. 864. Given the limitation of the original prohibition - to "money contribution" - there can be little doubt that what the 1907 Congress sought to prohibit was the use of bank or corporate funds as donations to candidate campaign treasuries.

In 1925, Congress concluded that corporations and national banks were still free to make valuable non-money contributions to political candidates and political parties to aid them in winning their elections and so amended the statute, replacing the term "money contribution" with "contribution", defining that term broadly, and extending the prohibition to other elections. 43 Stat. 1070. In

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1947, labor organizations were grouped with national banks and corporations, primaries and national conventions were included with the various elections, and the prohibition was further extended to include "expenditures." The inclusion of "expenditures" in the statutory scheme was intended to "eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of the section." United States v. CIO, 335 U.S. 106, 122 (1948). That doubt had been raised, as the legislative history makes clear, by the publication by corporations of advertisements and pamphlets containing unambiguous candidate endorsements. United States v. Union of United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO), 352 U.S. 567, 580, rehearing denied, 353 U.S. 943 (1957) ("United States v. UAW-CIO").

In later cases interpreting this section, the Supreme Court re-affirmed that it applied only to active electioneering and not to statements about candidates which might or might not have the effect of influencing the public to vote for or against them. In United States v. UAW-CIO, supra, the Court held that § 441b's predecessor, 18 U.S.A. §610, was applicable to a union's widely distributed television commercials urging the public to vote for particular candidates. The Court,

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however, refused to pass on the constitutionality of the statute in the absence of more facts about the broadcast itself. Among these were "[d]id it constitute active electioneering or simply state the record of particular candidates on economic issues?" 352 U.S. at 592. Clearly, then, the term "active electioneering" does not include the kind of statements about candidates found in the PPAC Memo, which "simply state the record" of particular candidates on an issue of public interest.

That § 441b's prohibition on corporate expenditures is confined to "active electioneering" was re-affirmed more recently by Congress. In 1971, when the Federal Election Campaign Act was enacted, Congress amended §610 of Title 18 to include the present subparagraph (b) defining the term "contribution or expenditure". Congressman Hansen, the author of the amendment, explained on the floor of the House of Representatives that "[t]he effect of [the] language is to carry out the basic intent of section 610." 117 Cong. Rec. 43379. He continued by stating that:

"[t]he legislative history of section 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the

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responsibility for enforcing the statute, has stated, shows instead that the purpose of section 610 is simply to ensure that '[w]hen a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used' (Brief for the United States in U.S. v. UAW; 352 U.S. 567)." 117 Cong. Rec. 43379.

Both Mr. Hansen and Congressman Thompson, a supporter of the legislation, agreed that "the basic purpose of section 610 is to prohibit active electioneering by corporations and unions for Federal candidates directed at the public at large." 117 Cong. Rec. 43380, 43384. The PPAC article, which confines itself to reporting on the positions of candidates on a single issue, clearly does not constitute the active electioneering prohibited by this Section.

B. The PPAC Article Was Not Addressed to the General Public.

As explained in the Statement of Facts, supra, the PPAC Memo was mailed to 4,500 interested persons, including members of the boards of directors of the seventeen California Planned Parenthood affiliates, various providers of family planning services, legislators and others who had expressed an interest in receiving it. It was not distributed on newsstands or otherwise made available to the general public.

The law is clear that communications which are not aimed at the general public are not within the purview of §441b's prohibition on corporate expenditures.

In United States v. CIO, supra, the Supreme Court held that §441b's predecessor, §313 of the Corrupt Practices Act, passed as part of the 1925 amendments to 18 U.S.C. §610, did not apply to the publication by a union of its regular weekly newspaper which was distributed only to union members and others entitled to receive it, even though the issue in question contained an express endorsement of a candidate. Both constitutional considerations and the intent of Congress dictated the Court's conclusion:

"If §313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubts would arise in our minds as to its constitutionality."

* * *

"It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication." 335 U.S. at 121, 123.

The Court later distinguished the CIO case in United States v. UAW-CIO, where a union's broadcast of political advertisements on television stations was held to be within the Act's purview

"[In CIO] the organization merely distributed its house organ to its own people. The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate. . ."
352 U.S. at 589 [Emphasis added].

In 1971, Congress amended the present section 441b with the express purpose of incorporating the holdings of CIO and United States v. UAW-CIO by exempting communications of a corporation to its stockholders and a union to its members on any subject. As Representative Hansen, the author of the amendments, said, their effect was to carry out the basic intent of § 610 "... to ensure that when a union [or corporation] undertakes active electioneering on behalf of particular Federal candidates and designed to reach the public at large, the organization's general funds ... may not be used." 117 Cong. Rec. 43379 [Emphasis added].

The Hansen amendments, in limiting the language of the exemption for communications not directed to the general public to those made to stockholders and union members, failed

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to encompass the whole area intended by the earlier Congress and compelled by the Constitution to be exempted from the Act. CIO speaks of distribution of a publication by a corporation to its customers as exempted from the coverage of the Act, 335 U.S. at 121, and elsewhere, of distribution to subscribers and purchasers and others regularly entitled to receive it. 335 U.S. at 111, 123. The clear thrust of CIO is that, in order for the Act to survive constitutional attack, corporations must, at the least, be protected in their ability to communicate with those with whom they share common interests and those with whom it is their custom to share pertinent information.

The Constitutional imperative of such a reading of the Act is even stronger when applied to a non-profit public interest organization such as PPAC than to a large commercial corporation or union. PPAC has no shareholders because it is not a profit making corporation, its members, who number only seventeen, are organizations whose purposes it was organized to further, rather than private individuals, its "executive and administrative personnel," number only four. § 441b(b)(2)(A). With what individuals, then, may PPAC lawfully communicate freely, if not with those with whom it regularly communicates and whom it is its very corporate purpose to educate and

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inform? These must be regarded as the equivalent of corporate "stockholders," or union "members". It would be ironic, indeed, if giant profit making corporations were allowed the right of unfettered communication with millions of stockholders, and unions with millions of members, while PPAC, a small nonprofit public interest corporation was not permitted to send a limited communication relating to issues fundamental to its nonprofit corporate purposes to the 4,500 interested persons who regularly receive its Memo. Such an interpretation of § 441b would certainly turn on its head the purpose of that section to keep "big money" out of politics.*

C. The Publication of the PPAC Article
Complied with 11 C.F.R. § 114.4(c)(3),
the Regulation Governing Voter Guides.

Section 11 C.F.R. 114.4(c)(3), promulgated under §441b of the Act, permits corporations to distribute voter guides to the general public "describing the candidate and their positions if--"

"(i) the materials do not favor one candidate or political party over another; and

*§441b's other purpose of protecting the interests of minority shareholders and union members is irrelevant here, since PPAC has no stockholders and only a limited number of organizational members who control the organization through representation on its Board.

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(ii) if the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party."

The PPAC Memo at issue here is in conformity with these regulations.

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The PPAC Memo does not favor one candidate or political party over another; it merely reports each candidate's position on a single issue: government restriction on a woman's choice of whether or not to have an abortion. It is based on information gathered from the candidates' public statements, interviews given to PPAC staff and other organizations, voting records and answers to questionnaires, in particular a questionnaire disseminated by the California Pro Life Council, Inc., the California affiliate of the complainant in this matter, the National Right to Life Committee, Inc. The reporting of each candidate's position was based on extensive research and evidence. No candidate was given short-shrift and thereby "favored" in the reporting of his or her views. The symbols (+) or (-) were employed to indicate whether a candidate was pro- or anti- choice because of space limitations only. Where possible a legend was provided to explain the designation. If unexplained, support

for the designation was available to anyone who wished it in PPAC's files. To require PPAC to print all of the evidence supporting its summarization of the candidates' positions would have required an enormous expansion of the Memo, which PPAC, operating on a very limited budget, could ill afford.

Moreover, while the PPAC article does not technically conform to the requirement of § 114.4(c)(ii) that it be obtained "from" a "civic or non-profit corporation which does not support or endorse candidates", as a practical matter, it does fall within the purpose of this requirement because it was in fact compiled and published by such an organization.

In Advisory Opinion 1980-45 the Commission replied to the request of PPFA's New York affiliate for an opinion as to the permissibility of a civic non-partisan corporation's sponsoring a voter registration drive. The relevant Regulation, §114.41(d), like §114.4(c), required that such drives be sponsored jointly by the corporation and a civic non-profit organization. The Commission replied,

"The regulation does not restrict the nonprofit, nonpartisan civic group by requiring it to find a corporate sponsor for voter registration drives that the nonpartisan group wishes to conduct in a manner otherwise proper under the regulation."

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The same rationale should apply to the §114.4(d) rule for voter guides. Since PPAC is itself a non-profit, non-partisan civic organization which does not support or endorse any candidate, it may, on its own, distribute a non-partisan voter guide.*

Finally, even were PPAC required to have obtained the material for its voter guide from another non-partisan civic organization, it substantially complied with this standard. A large part of the information used in compiling the PPAC article, although independently verified by PPAC staff, was originally obtained from the attached leaflet distributed by the California Pro-Life Council, Inc., the California affiliate of complainant, a non-profit California corporation which claims to be non-partisan.**

*The Commission is, in fact, now considering making a change in the present regulations, allowing any corporation or labor union to distribute non-partisan voter guides. 45 Fed. Reg. 56349 (8/25/80).

**See disclaimer on leaflet. "This information is presented as a public service for educational purposes only and does not imply endorsement."

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III. If the Act were Interpreted to Prohibit the Publication of the PPAC Article, It Would Violate the U. S. Constitution.

In dealing with provisions of the Act other than §441b, the Supreme Court has held that the statute must be interpreted, in order to avoid constitutional invalidity on the ground of vagueness, to apply only to activity which is unambiguously related to a campaign for federal office in that it is either sponsored by or carried on in cooperation with a candidate or his representatives or, if independent of such influence, expressly advocates the election or defeat of clearly identified candidates. Buckley v. Valeo, 424 U.S. 1 (1976). The necessity of such a narrow construction was made clear in Buckley,

"[The entire Act] operate[s] in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" 424 U.S. 1, 14 (1976), citing, Roth v. United States, 354 U.S. 476, 484 (1957). [Emphasis added].

Consequently, "[b]ecause First Amendment freedoms need

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breathing space to survive, government may regulate in the area only with narrow specificity." 424 U.S. at 41, n.48, citing, NAACP v. Button, 371 U.S. 415, 433 (1963).

In dealing with a vagueness challenge to former section 608(e)(1) of the Act, which limited spending "relative to a clearly identified candidate", the Court in Buckley, accordingly, held that in order to survive constitutional challenge, the term "relative to" can mean no more than "communications that include explicit words of advocacy of election or defeat of a candidate." 428 U.S. at 43. To read the phrase more broadly, it concluded, would inhibit the free and open discussion protected by the First Amendment. For, "[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." 424 U.S. at 42. Nevertheless, even as so narrowly interpreted, the limits on independent expenditures were struck down as unconstitutional because they unjustifiably interfered with freedom of speech.

Similarly, the Court upheld the Act's reporting requirements only after an extremely narrow construction of who must report and what must be reported. The Court first

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discussed the vagueness problems raised by the requirement that political committees report their contributions and expenditures. Since "political committee" was defined only in terms of the amount of its contributions and expenditures, the phrase might have been interpreted to encompass groups engaged solely in the discussion of issues. Because such an interpretation would fall outside the "core area sought to be addressed by Congress," 424 U.S. at 79, the Court held that the term referred narrowly to "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Id.

The Court next construed the Act's definition of reportable "contributions and expenditures" as payments "for the purpose of . . . influencing" a federal election. Like the "relative to" language of former section 608(e)(i), the term "for the purpose of" was undefined by the Act and presented similar vagueness problems "particularly treacherous where, as here, the violation of its terms carries criminal penalties [footnote omitted] and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights." 424 U.S. at 76-7. These provisions share "the same potential for encompassing both issue discussion and advocacy of a political result." Id. at 79. Accordingly, these

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terms were interpreted to apply only to activities unambiguously related to federal election campaigns. "Contributions" were held by the Court to include both direct and indirect contributions to a political candidate and expenditures in cooperation with or with the consent of the candidate. In the case of expenditures made independently of any candidate, "the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of §434(e) is not impermissibly broad, we construe 'expenditure'. . . to reach only funds used for communications that expressly advocate [footnote omitted] the election or defeat of a clearly identified candidate." 424 U.S. at 79-80. Thus narrowly defined, the reporting requirements were upheld.

Although Buckley did not deal with section 441b's prohibition on corporate activities "in connection with" federal elections, the same principles of narrow construction necessarily apply. The clear teaching of Buckley is that the entire Act implicates First Amendment rights and must be narrowly construed to apply only to activities which are unambiguously campaign related (either in the form of campaign contributions undertaken in cooperation with a candidate or communications which expressly advocate the election or defeat

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of a candidate) so as to avoid unconstitutional curtailment of the free discussion of issues of public importance and of candidates' qualifications. For example, even in the least onerous of the Act's provisions, the reporting requirements, expenditures not made at the behest of or with the consent of the candidate need only be reported if they expressly advocate the election or defeat of a candidate. Section 441b's total prohibition on expenditures and contributions may not be interpreted more broadly. Since the PPAC article is clearly independent and contains no such words of express advocacy, it may not, constitutionally, be included within the purview of the Act.

The fact that Section 441b involves corporations rather than individuals or other groups does not affect the application of the First Amendment in considering its validity. Where the discussion of issues of public interest is involved, the Supreme Court has clearly held that the First Amendment affords the same rights to corporations as to individuals. In First National Bank of Boston v. Bellotti, supra, the Court struck down a Massachusetts statute prohibiting, with certain exceptions, corporate spending directed at influencing the outcome of public voting on a referendum. Conceding that such a statute would be unconstitutional with regard to individuals,

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the state argued that corporate First Amendment rights could be more strictly regulated. The Court disagreed, holding that it was the content of the speech and its importance to the free exchange of ideas, not the speaker's identity, that controlled.

"The speech proposed by appellants is at the heart of the First Amendment's protection. 'The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" 435 U.S. at 776, citing Thornhill v. Alabama, 310 U.S. 88, 101-102 (1940).

More recently in Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, ___ U.S. ___, 65 L.Ed.2d 319, 100 S.Ct. ___ (1980), the Court affirmed that the protections of the First Amendment extend to comment by corporations on issues of public interest. In that case the Supreme Court reversed a decision of the New York Court of Appeals which had upheld a ruling of the N.Y. Public Service Commission prohibiting the corporation from including

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inserts discussing political matters with the bills mailed to its customers.

Numerous courts, before and since Buckley, have explicitly stated that to interpret the Act so as to regulate in any way independent communications containing no words expressly advocating election or defeat of a clearly identified candidate would raise serious questions as to its constitutionality. Most recently, in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980), it was held that a group's publication during an election campaign of the voting record of an incumbent office-holder in regard to the issue of government spending was not subject to the Act's reporting requirements. Although the materials did not expressly advocate the re-election or defeat of the incumbent, the Commission argued that their hidden purpose was to "unseat big spenders." The Court considered this irrelevant: absent express advocacy of election or defeat of a particular candidate, the group's activities did not fall within the statute. To hold that they did would be inconsistent with the firmly established principle that "the right to speak out at election time is one of the most zealously protected under the Constitution", 616 F.2d at 53, and would be antithetical to the Supreme Court's holding in

Buckley. See also, FEC v. AFSCME, supra (in order to be subject to reporting requirements for union communications to members, advertisements must contain words which expressly advocate election or defeat of a candidate); United States v. National Committee for Impeachment, 469 F.2d 1135, 1139-42 (2d Cir. 1972); A.C.L.U. v. Jennings, 366 F.Supp. 1041, 1055-57 (D.C. Cir. 1973), vacated for mootness sub nom Staats v. A.C.L.U., 422 U.S. 1030 (1975) (publication of "honor roll" of members of Congress supporting group's aims not an "expenditure" within the meaning of Act).

In addition to requiring a strict interpretation of the language of Section §441b in order to avoid overbreadth or vagueness, Buckley, in fact, raises serious doubts as to the constitutionality of §441b as applied to any speech-related independent corporate expenditures, even those which in fact expressly advocate a candidate's election or defeat. That case struck down any dollar limits on spending undertaken independently of a candidate even when thus narrowly construed. While the Court did not specifically address the prohibition on corporate expenditures, it addressed issues identical to those that would be raised under §441b.

It is frequently stated that the purpose of the total prohibition on corporate contributions and expenditures which

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are related to elections to public office is to eliminate the corruptive influence exerted by the spending of vast accumulations of wealth in connection with campaigns.. United States v. UAW-CIO, 352 U.S. at 510. The Supreme Court addressed just these issues in Buckley. In so doing it distinguished sharply between independent expenditures and contributions to a candidate.

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"[T]he independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. . . Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, §608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse." 424 U.S. at 46-7.

Apart from the danger of corruption as such, §441b might be justified as an attempt to equalize the voice of

groups and individuals in society. This justification was also ruled to be inadequate by the Court.

"... the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed 'to secure' the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." [Citations omitted]. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. Eastern R. Conf. v. Noerr Motors, 365 U.S. 127, 139, 5 L. Ed. 2d 464, 81 S. Ct. 523 (1961)." 424 U.S. at 48-9.

These statements in Buckley, taken together with the Court's holding as to the importance of guaranteeing First Amendment rights to corporations in Bellotti, supra, raise grave doubts as to the constitutionality of §441b as applied to any independent corporate speech. Justice White, in fact, opined in his dissent in Bellotti that the two cases taken together merely "reserve the formal interment of the Corrupt Practices Act ... for another day." 435 U.S. at 821.

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Although several courts since Buckley have upheld §441b against constitutional attack, they have done so only in regard to corporate political contributions, some expressly avoiding voicing an opinion as to the validity of the act in regard to corporate speech related expenditures. See, e.g., F.E.C. v. Lance, 635 F.2d 1132, 1141-2, 1142 n.7 (5th Cir. 1981) (no speech elements involved in bank's giving overdraft loans to political candidates and, accordingly, no First Amendment constitutional questions raised); United States v. Clifford, 409 F.Supp. 1070 (E.D.N.Y. 1976); F.E.C. v. Weinstein, 462 F.Supp. 243 (S.D.N.Y. 1978).

Constitutional considerations of vagueness and overbreadth thus compel an interpretation of §441b which limits its prohibition on independent corporate expenditures to those expressly advocating the election or defeat of a candidate. Moreover, even so interpreted, the Section may well be unconstitutional. In order to avoid invalidation of the Act, it is, therefore, incumbent upon the Commission to hold that publication of the PPAC article is not an expenditure "in connection with" a federal election.

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CONCLUSION

It is patently evident, on the basis of the this and two previous complaints filed by the National Right to Life Committee, Inc. against three separate Planned Parenthood organizations in the last six months (MUR Nos. 1318 and 1372)*, that the Committee is attempting to use § 441b of the Federal Election Campaign Act to silence Planned Parenthood and prevent it from exercising its First Amendment right to inform its members, supporters and the public concerning matters of vital public interest which are central to its valid nonprofit corporate activities.

The courts have recognized that, to prevent the chilling effect which application of the Act can have on the important First Amendment rights of the public to have unfettered access to information of public interest, the authority of the FEC to investigate complaints involving the press exemption is limited to an investigation of whether the material was in fact published as a part of the corporation's

*The first complaint against PPFA and its New York affiliate was dismissed. The second, upon which the FEC has not yet acted, alleged facts identical to those alleged in the first against PPFA.

valid press function. The facts set forth above leave no doubt that this is the case with regard to the PPAC article. The FEC must accordingly proceed no further on the instant complaint.

Were the FEC to proceed nonetheless, it is clear that it would find, on the basis of the contents of the article itself and the circumstances of its publication, no probable cause to believe that a violation had occurred. Because the PPAC article can in no way be read to constitute express

advocacy of the election or defeat of any candidate and because it was published by an organization which does not participate or intervene in any election for public office, the PPAC article cannot be construed to constitute a corporate expenditure within the meaning of the Federal Election Campaign Act. And, even if §441b were construed to apply beyond communications expressly advocating the election or defeat of a particular candidate, the PPAC article, as a communication addressed to the particular interested subscribers to the PPAC Memo, rather than to members of the public at large, is exempt from the provisions of the Act.

Moreover, the exemption contained in the Regulations of the Commission for voters' guides distributed by nonprofit civic organizations apply to the PPAC article.

It is accordingly clear from the language of the Act,

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its legislative history, court decisions interpreting the Act and the regulations of the Commission itself that publication of the PPAC article in no way constituted a violation of §441b of the Federal Election Campaign Act by PPAC.

Finally, the decisions of the federal courts, and particularly that of the Supreme Court in Buckley v. Valeo, leave no doubt that any attempt to extend the provisions of the Federal Election Campaign Act to prohibit the publication of the PPAC article would violate the constitutional rights of PPAC. To prevent invalidation of the statute on Constitutional grounds, such an interpretation should be avoided.

32340324419

California Pro Life Council, Inc.

CALIFORNIA AFFILIATE OF THE NATIONAL RIGHT TO LIFE COMMITTEE, INC.

46

VOTER INFORMATION DIGEST - JUNE 1980 PRIMARY ELECTIONS THE CANDIDATES - HOW THEY STAND ON ABORTION

The following information is based on candidates' voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council.

KEY TO ABBREVIATIONS

NI ("NO INFORMATION") - Candidate has not responded or his position is unclear.

SR - Favors a STATES RIGHTS Amendment to let each state regulate abortion as it wishes.

PCL - Favors the PRESENT CALIFORNIA LAW which cuts off some, but not all, abortion funding.

R.I.D. - Wants an exception for RAPE (R), INCEST (I), or DEFECTS of the unborn child (D).

have reported the candidates' positions on the following two questions:

#1: Does the candidate support a Human Life Amendment to the U.S. Constitution which would protect the "Right to Life" of unborn babies?

#2: Does the candidate oppose the use of government funds to pay for abortions (except to save the life of the mother)?

lost uncontested primary races, including "minor" parties, are not listed. Except as indicated, all A.P. candidates who responded answered "Yes-Yes."

PRESIDENT			PRESIDENT			U.S. SENATOR			U.S. SENATOR		
NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2
Jimmy Carter (D)	NO	R.I.	Ronald Reagan (R)	YES	YES	Alan Cranston (D)	NO	NO	John Schmitz (R)	YES	YES
Edward Kennedy (D)	NO	NO	George Bush (R)	SR/R.I.	R.I.	Richard Morgan (D)	YES	YES	Paul Gann (R)	NO	NO
Edmund Brown, Jr. (D)	WITHDREW		John Anderson (R)	NO	NO	David Rees (D)	YES	YES	Sam Yorty (R)	YES	YES
Lyndon LaRouche (D)	NO	NO	Benjamin Fernandez (R)	NI		Frank Thomas (D)	NI		James Ware (R)	YES	YES
Sean Downey (AIP)	YES	YES	Phil Crane (R)	WITHDREW					Ray Hanzlik (R)	NI	
John Rarick (AIP)	SR	YES							Philip Schwartz (R)	NO	YES
									Brian Hyndman (R)	NI	

CONGRESS			CONGRESS			STATE SENATE			STATE SENATE		
NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2	NAME	Q#1	Q#2
27 Carles	YES	YES	27 Ed Vallen (R)	YES	YES	15 Carl E. Brown (R)	YES	YES	53 Paul E. Baker (R)	YES	YES
Montgomery (R)	YES	YES	27 Jerry Lewis (R)	YES	YES	15 Rose Ann			53 Cindy Wagon (D)	NO	NO
Reice			George			Reich (D)	NO		53 Dick Farned (D)	NI	
O'Donnell (D)	NI		Brackley (R)	NI		Blump Anderson			55 Richard		
Stanley			Charles			(R) White (D)	YES	YES	Lehman (D)	NO	NO
Sadler (D)	NI		MacKenzie (R)	NI		Fay Adams			Christophers		
Anthony			Bud			(R) White (D)	YES	NO	Knuth		
Benjamin (D)	NO	NO	Matthews (R)	NI		17 Eric			(R) White (D)	YES	YES
Lynch			Don Price (D)	NI		Seashore (R)	YES	YES	35 Gary Hahn (D)	NO	NO
Anderson (D)	YES	YES	18 Jerry			Kennard			David		
Robert			Patterson (D)	NO	NO	Hack (R)	NO	NO	Agnew (R)	YES	
Monckey (R)	YES		E.L. Wilson (R)	YES		Hennrich (D)	NO		Philo		
Maxman (D)	NO	NO	Art Jarosch (R)	NO	YES	19 Robert Cling (R)	YES	YES	Mary (R)	NI	
24 Henry			Edwards			Ed Davis (R)	YES	YES	37 Carter		
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Wright (R)	YES	YES
24 Robert			Edwards			Ed Davis (R)	YES	YES	Gary Smith (R)	YES	
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	John Allen (R)	YES	YES
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Dan		
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Bransford (D)	NI	
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	59 Gary Farned (D)	YES	YES
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Richard		
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Arader (D)	NO	YES
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Wardlaw		
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Wardlaw (D)	NO	YES
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	50 Sally Lamm (D)	YES	YES
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Dickie		
Maxman (D)	NO	NO	Edwards			Ed Davis (R)	YES	YES	Seymour (D)	YES	YES

Upstairs At
1623 10th Street
Sacramento, California 95814
(916) 446-5247

31 JUN 1 P12:17
ATTACHMENT III

(47)

May 27, 1981

Deborah Curry
Federal Election Commission
Washington, D.C. 20463

Reference: Complaint No. MUR 1377

Dear Ms. Curry:

Enclosed is my affidavit in support of the response already sent to you concerning complaint No. MUR 1377 filed against Planned Parenthood Affiliates of California on March 24, 1981. Laurie Rockett of the law firm of Greenbaum, Wolff and Ernst suggested that I send the signed affidavit directly to you to save time.

I hope you will find everything in order with our response.

Sincerely,

Norma Clevenger

Norma Clevenger, Executive Director
Planned Parenthood Affiliates of California

cc: Laurie R. Rockett
Greenbaum, Wolff & Ernst

NC:kb

31 JUN 1 P1:21

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OFFICE OF THE
GENERAL COUNSEL

GENERAL INDEX

48

31 JUN 1 11:21 PM

AFFIDAVIT OF NORMA CLEVINGER
IN RESPONSE TO COMPLAINT NO. MUR 1377

NORMA CLEVINGER, being duly sworn, deposes and
says:

1. I am the Executive Director of Planned
Parenthood Affiliates of California, Inc. ("PPAC") and have
continuing responsibility for the administration of all
of the corporation's programs.

2. I make this statement in support of the
response of PPAC to Complaint No. MUR 1377, filed against
PPAC on March 24, 1981 by the law firm of Brames, Bopp
& Haynes on behalf of the National Right to Life Committee,
Inc.

3. PPAC was incorporated in 1974 pursuant
to the General Non-Profit Corporation Law of the State
of California and is exempt from taxation under § 501(c)(4)
of the Internal Revenue Code.

4. PPAC was established by the California
affiliates of Planned Parenthood Federation of America,
Inc., now numbered seventeen, which constitute its
membership. Each of these affiliates is incorporated
under the General Non-Profit Corporation Law of the State
of California and is exempt from taxation under § 501(c)(3)
of the Internal Revenue Code. As an organization whose
membership organizations are exempt under this section,

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PPAC does not participate or intervene in any campaign for public office.

5. The purposes of PPAC are to provide leadership, coordination and action to and on behalf of its members, to promote the ready availability of high quality family planning services in all areas of California and to encourage and support government policies and programs that will further this goal. Approximately 20% of PPAC's activities involve providing information on reproductive health issues to its membership, other providers of family planning services, legislators and the media. As part of these activities, PPAC publishes, eight times a year a periodical entitled PPAC Memo.

6. The purpose of the PPAC Memo is to keep its subscribers, who number approximately 4,500, informed on the latest developments in reproductive health issues, including proposed legislation, administrative policies, votes on legislation, court cases and the positions of public officials and candidates for public office on the issues that concern its readers. The individuals on the mailing list include employees and directors of PPAC's members, other family planning providers, legislators and other individuals who specifically request it. PPAC requests that subscribers contribute \$8.00 for the Memo, annually.

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7. The article which is the subject of the complaint herein, published in Memo 7, September-October, 1980, was entitled "1980 Candidates/How They Stand on Choice" and provided information on the position of the individual candidates on the issue of government restrictions on a woman's choice of whether or not to have an abortion. In order to conserve space, the symbol (+) was used to indicate that a particular candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." A (-) was used to indicate opposition on those issues. In cases where a candidate's viewpoint differed from either of these positions, for example, if he supported free choice but opposed government funding, a footnote was provided with an explanatory legend.

8. The sources of the information contained in the PPAC article included public statements made by the candidates, incumbent voting records, campaign literature, interviews of the candidates by Planned Parenthood personnel and answers to questions put to the candidates by other organizations. A substantial portion of such information, although independently verified, was initially obtained from a leaflet published by the California Pro Life Council, Inc., the California affiliate of the complainant herein, National Right to Life Committee, Inc. That leaflet described each candidate's position on a proposed anti-abortion constitutional amendment and government funding of abortion as obtained

from "voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council."

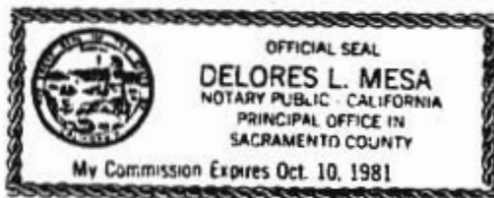
9. The purpose of the PPAC article was solely to provide information to interested persons about the position of candidates on the single issue of government restrictions on a woman's choice whether or not to have an abortion. The article did not endorse or advocate the election or defeat of any candidate and was not published in concert or cooperation with or at the suggestion of any candidate.

Norma L. Clevenger

NORMA CLEVINGER
Executive Director

Sworn to and subscribed
before me this *29th* day
of May, 1981.

Delores L. Mesa
NOTARY PUBLIC



32040324425



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Attachment IV

(52)

James Bopp, Jr.
BRAMES, BOPP AND HAYNES
900 Sycamore Building
19 South Sixth Street
Terre Haute, Indiana 47807

Re: MUR 1377

Dear Mr. Bopp:

This is in reference to the complaint you filed with the Commission dated March 24, 1981 concerning Planned Parent Affiliates of California. After review of the allegations of your complaint and on the basis of information provided in your complaint and information provided by the Respondent, the Commission on November , 1981, determined that there was reason to believe that Planned Parenthood Affiliates of California violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days.

If you have any questions, please direct them to Deborah Curry at (202)523-4529.

Sincerely,

Charles N. Steele
General Counsel

BY:

Kenneth A. Gross
Associate General Counsel

92740324126



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

53

Laurie R. Rockett
GREENBAUM, WOLF AND ERNST
437 Madison Avenue
New York, New York 10022

Re: MUR 1377

Dear Ms. Rockett:

On November , 1981, the Commission found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Deborah Curry at (202)523-4529.

Sincerely,

Charles N. Steele
General Counsel

BY:

Kenneth A. Gross
Associate General Counsel

32040324427

100682
Upstairs At
1623 10th Street
Sacramento, California 95814
(916) 446-9287

31 MAY 1 P12:17

CCC#4791

May 27, 1981

Deborah Curry
Federal Election Commission
Washington, D.C. 20463

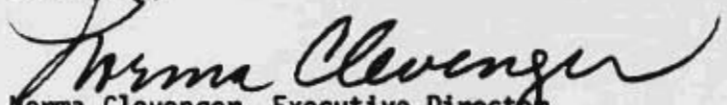
Reference: Complaint No. MUR 1377

Dear Ms. Curry:

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I hope you will find everything in order with our response.

Sincerely,


Norma Clevenger, Executive Director
Planned Parenthood Affiliates of California

cc: Laurie R. Rockett
Greenbaum, Wolff & Ernst

NC:kb

81 JUN 1 P1:21

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GENERAL COUNSEL

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GENERAL COUNSEL

81 JUN 1 81 11:21 P12:17

AFFIDAVIT OF NORMA CLEVINGER
IN RESPONSE TO COMPLAINT NO. MUR 1377

NORMA CLEVINGER, being duly sworn, deposes and
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4. PPAC was established by the California
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membership. Each of these affiliates is incorporated
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of California and is exempt from taxation under § 501(c)(3)
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membership organizations are exempt under this section,

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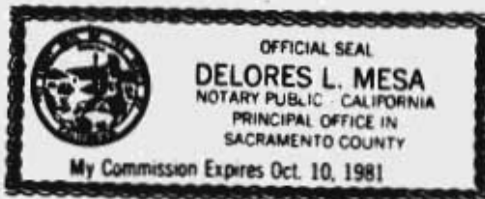
from "voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council."

9. The purpose of the PPAC article was solely to provide information to interested persons about the position of candidates on the single issue of government restrictions on a woman's choice whether or not to have an abortion. The article did not endorse or advocate the election or defeat of any candidate and was not published in concert or cooperation with or at the suggestion of any candidate.


NORMA CLEVINGER
Executive Director

Sworn to and subscribed
before me this 29th day
of May, 1981.


NOTARY PUBLIC



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PLANNED PARENTHOOD AFFILIATES OF CALIFORNIA
UPSTAIRS AT 1621 - 10TH STREET
SACRAMENTO, CALIFORNIA 95814



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81 MAY 21 1964

FROM

TO

DEBORAH CURRY

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

81 NOV 20 P 1: 29

GREENBAUM, WOLFF & ERNST
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

437 MADISON AVENUE

NEW YORK, N. Y. 10022

(212) 758-4010

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ITT 483007
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FLORIDA OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 374-6262

November 16, 1981

NOV 20 P 4: 29

Deborah Curry, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: Complaint No. MUR 1377

Dear Ms. Curry:

Please consider this letter a supplement to the response of Planned Parenthood Affiliates of California (PPAC) to the above-numbered complaint. PPAC's original response was filed with the Commission on May 20, 1981.

On September 4, 1981, the Court of Appeals for the District of Columbia rendered a decision which directly supports PPAC's contention, set forth on pages seventeen through twenty-one of its original response, that the complained-of distribution of its newsletter to its regular subscribers did not fall within the ambit of the Federal Election Campaign Act's prohibition on corporate expenditures in connection with a federal election. In that decision, National Right to Work Committee, Inc. v. Federal Election Commission, No. 80-1487, (D.C. Cir. September 4, 1981), the Court of Appeals for the District of Columbia Circuit held that the term "members" as used in 2 U.S.C. § 441b(b)(4)(A)(C) of the Act (which allows non-stock corporations to solicit campaign contributions from members) must be read to include those persons who express interest in supporting the goals and philosophy of a non-profit corporation organized for political purposes.

The instant complaint charged that the publication by PPAC in its newsletter of an article entitled "1980 Candidates/How They Stand on Choice" violated 2 U.S.C. § 441b. The PPAC Article listed the candidates running for federal and state office in California. A(+) or (-) symbol next to each name summarized the candidate's positions on

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the issues of legal abortion and government funding of abortions. In its original response, PPAC argued that publication and distribution of the PPAC Article did not fall within the purview of the Act because, inter alia, the newsletter was not distributed to the general public, but to its 4,500 regular subscribers. This conclusion, PPAC contended, was compelled by a line of Supreme Court cases, including U.S. v. CIO, 335 U.S. 106 (1948), and U.S. v. Union of United Automobile, Aircraft and Agricultural Workers of America (UAW-CIO), 352 U.S. 567 (1957), which had held on constitutional and statutory grounds that the Act applied to corporate communications only when they were addressed to and designed to influence the vote of the public at large. PPAC also pointed to the Act's explicit exemptions for a union's communications to its members and a corporation's to its stockholders, 2 U.S.C. § 441b(b)(2)(A), and contended that the purpose of the Act, to keep big money out of politics, would be turned on its head if the Act were held to exempt a corporation's communication to its stockholders and those of a union to its members and not communications by a small non-profit, non-stock, public interest corporation such as PPAC, to its 4,500 regular subscribers.

The decision of the Court of Appeals in Right to Work was based on similar reasoning. In that case, an enforcement proceeding had been commenced by the FEC against the National Right to Work Committee, a non-stock, non-profit corporation, for violation of 2 U.S.C. § 441b(b)(4)(A). These provisions of the Act together prohibit a corporation without capital stock from soliciting contributions to a separate segregated fund organized for campaign purposes from persons other than members of the corporation. Although its Certificate of Incorporation specifically provided that the corporation had no members, the Committee treated as "supporting" and "active" "members" individuals who made contributions to or communicated with it to express sympathy with its philosophy and goals. Slip Op. at 3, n. 1. The court held that, in order to escape constitutional invalidity on the ground of interference with the First Amendment right of association, the term "members" as used in § 441b(b)(4)(A) and (C) must be construed to include these individuals.

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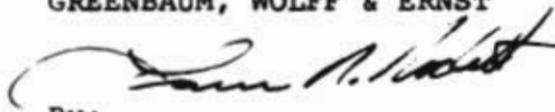
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In so holding the court examined the Congressional purposes behind the Act, to keep big money out of politics and to protect individuals with dissenting minority views from coerced participation in the electoral process. As to the first, the court concluded that the mere solicitation of funds did not pose the kind of threat of corruption of a candidate created by direct contributions to the candidate and that the regulation of the latter was, accordingly, a more direct and less restrictive means of furthering the governmental purpose. As to the second interest, the court did not believe that the persons from whom the Committee solicited contributions were subject to coercion. (Cf., Respondent's reply at 21, footnote).

Although the Right to Work case dealt with a specific statutory reference to "members" not contained in § 441b(a)'s general prohibition on corporate expenditures, the reasoning underlying the decision clearly applies with even greater force to the PPAC situation. The PPAC article was not only not a contribution to a candidate for federal office but did not in any way solicit a campaign contribution for or to any candidate. Rather, it was a strictly educational piece devoted to informing the regular subscribers to the PPAC Memo, on a non-partisan basis, how all of the candidates stood on an issue of vital concern to the organization. PPAC does not and never has made contributions to any candidate's campaign, either directly or through a separate segregated fund. With the exception of state legislators who constituted less than 5% of the people to whom its article was distributed the recipients of the PPAC Memo were identical in character to those from whom the Right to Work Committee solicited campaign contributions, persons voluntarily expressing interest in and sympathy with the goals of the organization. Clearly, if communications as directly related to a federal election campaign as those of the Right to Work Committee are outside the purview of the Act, PPAC's purely informational piece addressed to a similar constituency must be also. And the constitutional basis of the Right to Work court's holding compels this conclusion. To construe the Act otherwise would, as the court stated, constitute an unjustified burden on the First Amendment right of association.

Very truly yours,

GREENBAUM, WOLFF & ERNST



By:

Laurie R. Rockett

/bf

3 2 0 4 0 3 2 4 1 3 6

LRR

GREENBAUM, WOLFF & ERNST

437 MADISON AVENUE

NEW YORK, N. Y. 10022

Deborah Curry, Esq.
Federal Election Commission
Washington, D.C. 20463

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May 20, 1981

Deborah Curry, Esq.
Federal Election Commission
Washington, DC 20463

Re: Complaint No. MUR1377

Dear Ms. Curry:

This letter is in response to the above numbered complaint filed against Planned Parenthood Affiliates of California ("PPAC") by the National Right to Life Committee, Inc.

As we discussed on May 17, we have prepared an affidavit to be signed by the Executive Director of PPAC setting forth the facts upon which the response is based, which are summarized in the Statement of Facts beginning on page 3 of the enclosed. She was, however, called away because of a serious illness in her family and was not available to sign the affidavit in time to return it to us for inclusion in the response. This will confirm that you agreed that the affidavit could be submitted separately at a later date inasmuch as all of the facts are contained in the enclosed response, in any event. We appreciate your consideration in this regard.

The enclosed response of PPAC will demonstrate, pursuant to 2 U.S.C. § 437(g)(a)(1) that no action should be taken on the basis of this complaint.

Very truly yours,

GREENBAUM, WOLFF & ERNST

By Laurie R. Rockett
Laurie R. Rockett

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STATEMENT OF FACTS

Planned Parenthood Affiliates of California, Inc. ("PPAC"), a non-profit corporation with headquarters in Sacramento, California, was organized in 1975 under the General Non Profit Corporation Law of the State of California. PPAC has no stockholders. It is a "social welfare" organization, exempt from federal taxation under §501(c)(4) of the Internal Revenue Code. PPAC is governed by a Board of Delegates composed of two representatives from each of the seventeen Planned Parenthood affiliates in California, which comprise its membership. These affiliates are themselves non-profit organizations which provide a variety of family planning services, both medical and educational, throughout the State of California. Each affiliate receives permission to use the service mark "Planned Parenthood" from Planned Parenthood Federation of America, Inc. ("PPFA"), a not-for-profit corporation with headquarters in New York City. PPFA is the nation's oldest and largest voluntary family planning agency, with 188 affiliates nationwide. In 1980, Planned Parenthood's 20,000 volunteers and staff provided medical, educational and counseling services to meet the family planning needs of more than 2.3 million Americans.

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GENERAL

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The purposes of PPAC, as stated in its amended Certificate of Incorporation, are "to promote and coordinate the provision of education, counseling and clinical services in the field of family planning, and to support or oppose legislation in the field of family planning." In keeping with this general purpose, PPAC devotes about 20% of its time to providing the California Planned Parenthood affiliates, other providers of family planning services, legislators and the media with information on reproductive health issues. As part of these educational services, PPAC has published the PPAC Memo regularly eight or nine times a year since the organization's founding.

The PPAC Memo reports on the latest developments in reproductive and health issues, including proposed legislation, administrative policies, votes on legislation, court cases and positions of public officials and candidates for public office on the issues that concern readers of the PPAC Memo. As part of its educational and lobbying functions, the PPAC Memo urges its readers to contact their legislators, public officials and individuals running for public office to make known their views on family planning issues.

The PPAC Memo is distributed to a mailing list of 4,500 persons, including employees and board members of the

seventeen California Planned Parenthood affiliates, family planning providers, legislators and other individuals requesting it. PPAC asks that subscribers contribute \$8.00 annually for the Memo.

The article complained of herein, entitled "1980 Candidates/How they Stand on Choice" (the "PPAC Article"), was published by PPAC in Memo 7, September - October 1980. The PPAC article contained the name of every state and federal candidate running in California for major public office in the upcoming November election. Next to each candidate's name there appeared the symbol (+) or (-). The symbol (+) indicated that the candidate "supports free choice on abortion, government funding of abortion and opposes a human life amendment." The symbol (-) indicated the opposite position on those issues. Where a candidate's viewpoint differed from any one of those positions, for example, "supports free choice but opposes government funding", a footnote was provided with an explanatory legend.

The information contained in the PPAC article was based on a number of sources, including public statements made by the candidates, incumbent voting records, campaign literature, interviews given to Planned Parenthood personnel by the candidates and answers to questions put to the candidates

SUMMARY OF ARGUMENT

- I. The PPAC Article is Exempt From the Provisions of the Federal Election Campaign Act Under § 431(9)(B)(i) (the "Press Exemption")
- II. Publication of the PPAC Article in No Way Violated Section 441b of the Federal Election Campaign Act
 - A. Such Publication Did Not Constitute Express Advocacy of the Election or Defeat of a Candidate
 - B. The PPAC Material Was Not Addressed to the General Public
 - C. The Publication of the PPAC Article Complied With 11 C.F.R. § 114.4(c)(3), the Regulation Governing Voter Guides
- III. If the Act were Interpreted to Prohibit the Publication of the PPAC Article, It Would Violate the U.S. Constitution

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ARGUMENT

- I. The PPAC Article is Exempt from the Provisions of the Federal Election Campaign Act Under §431(9)(B)(i) (the "Press Exemption")

The Federal Election Campaign Act (the "Act") (2 U.S.C. §431 et seq.) establishes reporting requirements for and dollar limitations on certain campaign related expenditures and prohibits corporations from making any such expenditures. To avoid conflict with the First Amendment to the U.S. Constitution, however, Section 431(9)(B)(i) of the Act, specifically exempts from the definition of "expenditure"

"any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."

The communication which is the subject of the complaint herein falls squarely within this exemption.

As set forth in the Statement of Facts, supra, the PPAC Memo is a regularly published periodical, aimed at informing interested persons of developments in law and policy related to family planning. Its article, "The Candidates, How They Stand on Choice," is clearly a "news story", reporting the results compiled from such sources as candidate interviews,

questionnaires, voting records, and newsletters of other organizations. Moreover, even if the article were characterized as "opinion" rather than as a news story, it would still fall squarely within §431(9)(B)(i)'s exemption for "commentar[ies] or editorial[s]."

The PPAC Memo is published by PPAC, an independent non-profit organization, not owned or controlled in any way by any candidate, political party or political committee. PPAC is not, of course, itself a political committee since it makes no "contributions or expenditures" within the meaning of the Act.

The press exemption was added to the Act in 1974 by P.L. 93-443 to make plain that Congress did not intend in enacting the Act "to limit or burden in any way the First Amendment freedom of the press" and to assure the unfettered right of newspapers, TV networks and other media to cover and comment on political campaigns. House Rep. No. 93-1239, 4 (Committee on House Adm., July 30, 1974). So fundamental is this press exemption to the preservation of the constitutionality of the Act itself that the FEC's authority to investigate a complaint lodged against a corporation which publishes news stories, commentaries, or editorials is limited, in the first instance, to two questions: (1) whether the facilities publishing the news story are controlled by a

political party, political committee or candidate, and (2) whether or not the corporate activity falls within the press entity's "legitimate press function." The Reader's Digest Association, Inc. v. Federal Election Commission, 81 Civ. 596 (PNL) (S.D.N.Y. March 19, 1981) (summarized in 49 U.S.L.W. 2614). If it is established that the activity falls within this function the Commission's inquiry must end. This limitation on the power of the FEC to investigate complaints involving the publication of a news story is:

"...based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter." Id. at 7.

The publication of the PPAC article as a regular part of the PPAC Memo was unquestionably a legitimate press function. The issue of the PPAC Memo containing the article was disseminated in the usual manner to a limited group of interested persons. No attempt was made to distribute massive numbers of free copies or saturate a critical geographic area. In addition, the article was in keeping with the usual tone and purpose of the PPAC Memo -- keeping interested persons informed

on family planning issues, including the views of those who shape, or may shape, those issues.

The fact that the PPAC Memo might not be viewed as a publication of the "institutional press" should not affect its coverage under the exemption. The history of the First Amendment's press protection and the Supreme Court's interpretations of it indicate that it was not intended "to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it". Pennekamp v. Florida, 328 U.S. 331, 364 (1946). (Frankfurter, J., concurring). As Chief Justice Burger pointed out in his concurring opinion in First Bank of Boston v. Bellotti, 435 U.S. 765, rehearing denied, 438 U.S. 907 (1978):

"The very task of including some entities within the 'institutional press' while excluding others, whether undertaken by legislature, court, or administrative agency, is reminiscent of the abhorred licensing system of Tudor and Stuart England -- a system the First Amendment was intended to ban from this country. [citation omitted]. Further, the officials undertaking that task would be required to distinguish the protected from the unprotected on the basis of such variables as content of expression, frequency or fervor of expression, or ownership of the technological means of dissemination. Yet nothing in this Court's opinions supports such a

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confining approach to the scope of Press Clause protection." Id. at 801.

Nor, as the Chief Justice emphasized, there is there any basis for distinguishing between organizations which employ the corporate form to carry on the business of mass communications, particularly large media conglomerates, and respondent here.

"In terms of 'unfair advantage in the political process' and 'corporate domination of the electoral process' it could be argued that such media conglomerate(s) . . . pose a much more realistic threat to valid interests than do appellants and similar entities not regularly concerned with shaping popular opinion on public issues." Id. at 796-7.

Finally, the legislative history of the press exemption to the Act makes clear that Congress was aware at the time the exemption was enacted that its provisions could extend to special interest publications and that such publications could on occasion "be extremely useful and effective to certain candidates during a campaign." House Rep. No. 93-1239, at 144, Supplemental Views of Representative Bill Funzel.

It would be ironic, indeed, if the Act's press exemption were read to apply to the publications of vast profit making "media empires" controlling at once radio and television

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stations, large metropolitan newspapers and magazines of nationwide circulation, as well as paper mills and distribution services (see 435 U.S. at 796) but not to the PPAC Memo, the publication of a small non-profit corporation with a circulation of no more than 4,500 copies. Such a distinction would in no way serve §441b's purpose of keeping elections free of the influence of vast corporate wealth and would conflict directly with that of §431(9)(B)(i) to assure that the Act preserve "unfettered" the freedom of the press.

The press exemption clearly applies to the PPAC article and the FEC must, accordingly, consistent with the purpose of that exemption to preserve intact the freedom of the press, dismiss the instant complaint without further investigation.

II. Publication of the PPAC Article in
No Way Violated Section 441b of
the Federal Election Campaign Act

A. Such Publication Did Not Constitute Express
Advocacy of the Election or Defeat of a Candidate.

Although, as set forth in Point I above, the FEC is without authority to inquire as to the content of the PPAC article or the circumstances of its publication, any such inquiry would further establish that no action should be taken on the basis of the complaint. As the Statement of Facts makes clear, the PPAC article presented an objective report of the

positions of the candidates on the issue of government restrictions on a woman's choice of whether or not to have an abortion. It was published entirely independently of any candidate for federal office and it was not intended as, nor did it constitute, an endorsement or advocacy of any candidate's election or defeat. The sole aim of the PPAC article was to inform interested persons of the views of those who might shape government policies on one particular issue of great public interest. It is clear from the structure of the Act, its legislative history and relevant constitutional considerations that §441b of the Act does not reach this type of independent, objective reporting on candidates' positions but is rather directed at the express advocacy by a corporation of the election or defeat of a candidate.

Section 431 of the Act, which contains the definition of terms used in the Act as a whole, divides expenditures into two categories. The first category is "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized committees, or their agents. . ." Such expenditures, which are treated as contributions and subject to specific dollar limits, are clearly not here involved. §§ 441a(a)(1) and (7)(B)(i). A second type of expenditures, termed "independent expenditures",

are not subject to monetary restrictions but must be reported under §434. "Independent expenditures" are defined as those made "without cooperation or consultation with any candidate ... [and] not ... in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate", 2 U.S.C. §431(17), and include only expenditures "expressly advocating the election or defeat of a clearly identified candidate." §431(17). The Act thus imposes neither dollar limits nor reporting requirements on expenditures which are not made in cooperation with or at the suggestion or request of a candidate or a political committee and which do not expressly advocate a candidate's election or defeat. Such expenditures are simply outside the Act's regulatory framework.

Although the Act nowhere defines "expressly advocating", the courts have held that this term must be strictly limited in order to avoid invalidation on vagueness grounds, to "communications containing express words of advocacy of election or defeat ... such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Federal Election Commission v. AFSCME, 471 F.Supp. 315, 316 (D.D.C. 1979), citing, Buckley v. Valeo, 424 U.S. 1, 44 n. 52 (1976). Since the PPAC article is both

"independent", in the sense of being free of the influence of any candidate, and contains no words of "express advocacy", it is outside the application of the Act.

The legislative history of §441b, which prohibits corporate expenditures in connection with federal elections, likewise makes clear that that prohibition was intended to reach only unambiguous "electioneering". Section 441b was not part of the Federal Election Campaign Act itself. It was originally contained in the Tillman Act, a statute enacted in 1907 which made it unlawful for national banks and corporations to make a money contribution "in connection with" various elections. 34 Stat. 864. Given the limitation of the original prohibition - to "money contribution" - there can be little doubt that what the 1907 Congress sought to prohibit was the use of bank or corporate funds as donations to candidate campaign treasuries.

In 1925, Congress concluded that corporations and national banks were still free to make valuable non-money contributions to political candidates and political parties to aid them in winning their elections and so amended the statute, replacing the term "money contribution" with "contribution", defining that term broadly, and extending the prohibition to other elections. 43 Stat. 1070. In

1947, labor organizations were grouped with national banks and corporations, primaries and national conventions were included with the various elections, and the prohibition was further extended to include "expenditures." The inclusion of "expenditures" in the statutory scheme was intended to "eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of the section." United States v. CIO, 335 U.S. 106, 122 (1948).

That doubt had been raised, as the legislative history makes clear, by the publication by corporations of advertisements and pamphlets containing unambiguous candidate endorsements.

United States v. Union of United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO), 352

U.S. 567, 580, rehearing denied, 353 U.S. 943 (1957) ("United States v. UAW-CIO").

In later cases interpreting this section, the Supreme Court re-affirmed that it applied only to active electioneering and not to statements about candidates which might or might not have the effect of influencing the public to vote for or against them. In United States v. UAW-CIO, supra, the Court held that § 441b's predecessor, 18 U.S.A. §610, was applicable to a union's widely distributed television commercials urging the public to vote for particular candidates. The Court,

however, refused to pass on the constitutionality of the statute in the absence of more facts about the broadcast itself. Among these were "[d]id it constitute active electioneering or simply state the record of particular candidates on economic issues?" 352 U.S. at 592. Clearly, then, the term "active electioneering" does not include the kind of statements about candidates found in the PPAC Memo, which "simply state the record" of particular candidates on an issue of public interest.

That § 441b's prohibition on corporate expenditures is confined to "active electioneering" was re-affirmed more recently by Congress. In 1971, when the Federal Election Campaign Act was enacted, Congress amended §610 of Title 18 to include the present subparagraph (b) defining the term "contribution or expenditure". Congressman Hansen, the author of the amendment, explained on the floor of the House of Representatives that "[t]he effect of [the] language is to carry out the basic intent of section 610." 117 Cong. Rec. 43379. He continued by stating that:

"[t]he legislative history of section 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the

responsibility for enforcing the statute, has stated, shows instead that the purpose of section 610 is simply to ensure that '[w]hen a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used' (Brief for the United States in U.S. v. UAW, 352 U.S. 567)." 117 Cong. Rec. 43379.

Both Mr. Hansen and Congressman Thompson, a supporter of the legislation, agreed that "the basic purpose of section 610 is to prohibit active electioneering by corporations and unions for Federal candidates directed at the public at large." 117 Cong. Rec. 43380, 43384. The PPAC article, which confines itself to reporting on the positions of candidates on a single issue, clearly does not constitute the active electioneering prohibited by this Section.

B. The PPAC Article Was Not Addressed to the General Public.

As explained in the Statement of Facts, supra, the PPAC Memo was mailed to 4,500 interested persons, including members of the boards of directors of the seventeen California Planned Parenthood affiliates, various providers of family planning services, legislators and others who had expressed an interest in receiving it. It was not distributed on newsstands or otherwise made available to the general public.

The law is clear that communications which are not aimed at the general public are not within the purview of §441b's prohibition on corporate expenditures.

In United States v. CIO, supra, the Supreme Court held that §441b's predecessor, §313 of the Corrupt Practices Act, passed as part of the 1925 amendments to 18 U.S.C. §610, did not apply to the publication by a union of its regular weekly newspaper which was distributed only to union members and others entitled to receive it, even though the issue in question contained an express endorsement of a candidate. Both constitutional considerations and the intent of Congress dictated the Court's conclusion:

"If §313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubts would arise in our minds as to its constitutionality."

* * *

"It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication." 335 U.S. at 121, 123.

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The Court later distinguished the CIO case in United States v. UAW-CIO, where a union's broadcast of political advertisements on television stations was held to be within the Act's purview

"[In CIO] the organization merely distributed its house organ to its own people. The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate. . . ." 352 U.S. at 589 [Emphasis added].

In 1971, Congress amended the present section 441b with the express purpose of incorporating the holdings of CIO and United States v. UAW-CIO by exempting communications of a corporation to its stockholders and a union to its members on any subject. As Representative Hansen, the author of the amendments, said, their effect was to carry out the basic intent of § 610 "... to ensure that when a union [or corporation] undertakes active electioneering on behalf of particular Federal candidates and designed to reach the public at large, the organization's general funds ... may not be used." 117 Cong. Rec. 43379 [Emphasis added].

The Hansen amendments, in limiting the language of the exemption for communications not directed to the general public to those made to stockholders and union members, failed

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to encompass the whole area intended by the earlier Congress and compelled by the Constitution to be exempted from the Act. CIO speaks of distribution of a publication by a corporation to its customers as exempted from the coverage of the Act, 335 U.S. at 121, and elsewhere, of distribution to subscribers and purchasers and others regularly entitled to receive it. 335 U.S. at 111, 123. The clear thrust of CIO is that, in order for the Act to survive constitutional attack, corporations must, at the least, be protected in their ability to communicate with those with whom they share common interests and those with whom it is their custom to share pertinent information.

The Constitutional imperative of such a reading of the Act is even stronger when applied to a non-profit public interest organization such as PPAC than to a large commercial corporation or union. PPAC has no shareholders because it is not a profit making corporation, its members, who number only seventeen, are organizations whose purposes it was organized to further, rather than private individuals, its "executive and administrative personnel," number only four. § 441b(b)(2)(A). With what individuals, then, may PPAC lawfully communicate freely, if not with those with whom it regularly communicates and whom it is its very corporate purpose to educate and

inform? These must be regarded as the equivalent of corporate "stockholders," or union "members". It would be ironic, indeed, if giant profit making corporations were allowed the right of unfettered communication with millions of stockholders, and unions with millions of members, while PPAC, a small nonprofit public interest corporation was not permitted to send a limited communication relating to issues fundamental to its nonprofit corporate purposes to the 4,500 interested persons who regularly receive its Memo. Such an interpretation of § 441b would certainly turn on its head the purpose of that section to keep "big money" out of politics.*

C. The Publication of the PPAC Article
Complied with 11 C.F.R. § 114.4(c)(3),
the Regulation Governing Voter Guides.

Section 11 C.F.R. 114.4(c)(3), promulgated under §441b of the Act, permits corporations to distribute voter guides to the general public "describing the candidate and their positions if--"

"(i) the materials do not favor one candidate or political party over another; and

*§441b's other purpose of protecting the interests of minority shareholders and union members is irrelevant here, since PPAC has no stockholders and only a limited number of organizational members who control the organization through representation on its Board.

(ii) if the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party."

The PPAC Memo at issue here is in conformity with these regulations.

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The PPAC Memo does not favor one candidate or political party over another; it merely reports each candidate's position on a single issue: government restriction on a woman's choice of whether or not to have an abortion. It is based on information gathered from the candidates' public statements, interviews given to PPAC staff and other organizations, voting records and answers to questionnaires, in particular a questionnaire disseminated by the California Pro Life Council, Inc., the California affiliate of the complainant in this matter, the National Right to Life Committee, Inc. The reporting of each candidate's position was based on extensive research and evidence. No candidate was given short-shrift and thereby "favored" in the reporting of his or her views. The symbols (+) or (-) were employed to indicate whether a candidate was pro- or anti- choice because of space limitations only. Where possible a legend was provided to explain the designation. If unexplained, support

for the designation was available to anyone who wished it in PPAC's files. To require PPAC to print all of the evidence supporting its summarization of the candidates' positions would have required an enormous expansion of the Memo, which PPAC, operating on a very limited budget, could ill afford.

Moreover, while the PPAC article does not technically conform to the requirement of § 114.4(c)(ii) that it be obtained "from" a "civic or non-profit corporation which does not support or endorse candidates", as a practical matter, it does fall within the purpose of this requirement because it was in fact compiled and published by such an organization.

In Advisory Opinion 1980-45 the Commission replied to the request of PPFA's New York affiliate for an opinion as to the permissibility of a civic non-partisan corporation's sponsoring a voter registration drive. The relevant Regulation, §114.41(d), like §114.4(c), required that such drives be sponsored jointly by the corporation and a civic non-profit organization. The Commission replied,

"The regulation does not restrict the nonprofit, nonpartisan civic group by requiring it to find a corporate sponsor for voter registration drives that the nonpartisan group wishes to conduct in a manner otherwise proper under the regulation."

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The same rationale should apply to the §114.4(d) rule for voter guides. Since PPAC is itself a non-profit, non-partisan civic organization which does not support or endorse any candidate, it may, on its own, distribute a non-partisan voter guide.*

Finally, even were PPAC required to have obtained the material for its voter guide from another non-partisan civic organization, it substantially complied with this standard. A large part of the information used in compiling the PPAC article, although independently verified by PPAC staff, was originally obtained from the attached leaflet distributed by the California Pro-Life Council, Inc., the California affiliate of complainant, a non-profit California corporation which claims to be non-partisan.**

*The Commission is, in fact, now considering making a change in the present regulations, allowing any corporation or labor union to distribute non-partisan voter guides. 45 Fed. Reg. 56349 (8/25/80).

**See disclaimer on leaflet. "This information is presented as a public service for educational purposes only and does not imply endorsement."

III. If the Act were Interpreted to
Prohibit the Publication of the
PPAC Article, It Would Violate
the U. S. Constitution.

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In dealing with provisions of the Act other than
§441b, the Supreme Court has held that the statute must be
interpreted, in order to avoid constitutional invalidity on the
ground of vagueness, to apply only to activity which is
unambiguously related to a campaign for federal office in that
it is either sponsored by or carried on in cooperation with a
candidate or his representatives or, if independent of such
influence, expressly advocates the election or defeat of
clearly identified candidates. Buckley v. Valeo, 424 U.S. 1
(1976). The necessity of such a narrow construction was made
clear in Buckley,

"[The entire Act] operate[s] in an area
of the most fundamental First Amendment
activities. Discussion of public issues
and debate on the qualifications of
candidates are integral to the operation
of the system of government established
by our Constitution. The First Amendment
affords the broadest protection to such
political expression in order 'to assure
[the] unfettered interchange of ideas
for the bringing about of political and
social changes desired by the people.'" 424 U.S. 1, 14 (1976), citing, Roth v.
United States, 354 U.S. 476, 484
(1957). [Emphasis added].

Consequently, "[b]ecause First Amendment freedoms need

breathing space to survive, government may regulate in the area only with narrow specificity.'" 424 U.S. at 41, n.48, citing, NAACP v. Button, 371 U.S. 415, 433 (1963).

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In dealing with a vagueness challenge to former section 608(e)(1) of the Act, which limited spending "relative to a clearly identified candidate", the Court in Buckley, accordingly, held that in order to survive constitutional challenge, the term "relative to" can mean no more than "communications that include explicit words of advocacy of election or defeat of a candidate." 428 U.S. at 43. To read the phrase more broadly, it concluded, would inhibit the free and open discussion protected by the First Amendment. For, "[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." 424 U.S. at 42. Nevertheless, even as so narrowly interpreted, the limits on independent expenditures were struck down as unconstitutional because they unjustifiably interfered with freedom of speech.

Similarly, the Court upheld the Act's reporting requirements only after an extremely narrow construction of who must report and what must be reported. The Court first

discussed the vagueness problems raised by the requirement that political committees report their contributions and expenditures. Since "political committee" was defined only in terms of the amount of its contributions and expenditures, the phrase might have been interpreted to encompass groups engaged solely in the discussion of issues. Because such an interpretation would fall outside the "core area sought to be addressed by Congress," 424 U.S. at 79, the Court held that the term referred narrowly to "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Id.

The Court next construed the Act's definition of reportable "contributions and expenditures" as payments "for the purpose of . . . influencing" a federal election. Like the "relative to" language of former section 608(e)(i), the term "for the purpose of" was undefined by the Act and presented similar vagueness problems "particularly treacherous where, as here, the violation of its terms carries criminal penalties [footnote omitted] and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights." 424 U.S. at 76-7. These provisions share "the same potential for encompassing both issue discussion and advocacy of a political result." Id. at 79. Accordingly, these

terms were interpreted to apply only to activities unambiguously related to federal election campaigns. "Contributions" were held by the Court to include both direct and indirect contributions to a political candidate and expenditures in cooperation with or with the consent of the candidate. In the case of expenditures made independently of any candidate, "the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of §434(e) is not impermissibly broad, we construe 'expenditure'. . . to reach only funds used for communications that expressly advocate [footnote omitted] the election or defeat of a clearly identified candidate." 424 U.S. at 79-80. Thus narrowly defined, the reporting requirements were upheld.

Although Buckley did not deal with section 441b's prohibition on corporate activities "in connection with" federal elections, the same principles of narrow construction necessarily apply. The clear teaching of Buckley is that the entire Act implicates First Amendment rights and must be narrowly construed to apply only to activities which are unambiguously campaign related (either in the form of campaign contributions undertaken in cooperation with a candidate or communications which expressly advocate the election or defeat

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of a candidate) so as to avoid unconstitutional curtailment of the free discussion of issues of public importance and of candidates' qualifications. For example, even in the least onerous of the Act's provisions, the reporting requirements, expenditures not made at the behest of or with the consent of the candidate need only be reported if they expressly advocate the election or defeat of a candidate. Section 441b's total prohibition on expenditures and contributions may not be interpreted more broadly. Since the PPAC article is clearly independent and contains no such words of express advocacy, it may not, constitutionally, be included within the purview of the Act.

The fact that Section 441b involves corporations rather than individuals or other groups does not affect the application of the First Amendment in considering its validity. Where the discussion of issues of public interest is involved, the Supreme Court has clearly held that the First Amendment affords the same rights to corporations as to individuals. In First National Bank of Boston v. Bellotti, supra, the Court struck down a Massachusetts statute prohibiting, with certain exceptions, corporate spending directed at influencing the outcome of public voting on a referendum. Conceding that such a statute would be unconstitutional with regard to individuals,

the state argued that corporate First Amendment rights could be more strictly regulated. The Court disagreed, holding that it was the content of the speech and its importance to the free exchange of ideas, not the speaker's identity, that controlled.

"The speech proposed by appellants is at the heart of the First Amendment's protection. 'The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" 435 U.S. at 776, citing Thornhill v. Alabama, 310 U.S. 88, 101-102 (1940).

More recently in Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, ___ U.S. ___, 65 L.Ed.2d 319, 100 S.Ct. ___ (1980), the Court affirmed that the protections of the First Amendment extend to comment by corporations on issues of public interest. In that case the Supreme Court reversed a decision of the New York Court of Appeals which had upheld a ruling of the N.Y. Public Service Commission prohibiting the corporation from including

inserts discussing political matters with the bills mailed to its customers.

Numerous courts, before and since Buckley, have explicitly stated that to interpret the Act so as to regulate in any way independent communications containing no words expressly advocating election or defeat of a clearly identified candidate would raise serious questions as to its constitutionality. Most recently, in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980), it was held that a group's publication during an election campaign of the voting record of an incumbent office-holder in regard to the issue of government spending was not subject to the Act's reporting requirements. Although the materials did not expressly advocate the re-election or defeat of the incumbent, the Commission argued that their hidden purpose was to "unseat big spenders." The Court considered this irrelevant: absent express advocacy of election or defeat of a particular candidate, the group's activities did not fall within the statute. To hold that they did would be inconsistent with the firmly established principle that "the right to speak out at election time is one of the most zealously protected under the Constitution", 616 F.2d at 53, and would be antithetical to the Supreme Court's holding in

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Buckley. See also, FECA v. AFSCME, supra (in order to be subject to reporting requirements for union communications to members, advertisements must contain words which expressly advocate election or defeat of a candidate); United States v. National Committee for Impeachment, 469 F.2d 1135, 1139-42 (2d Cir. 1972); A.C.L.U. v. Jennings, 366 F.Supp. 1041, 1055-57 (D.C. Cir. 1973), vacated for mootness sub nom Staats v. A.C.L.U., 422 U.S. 1030 (1975) (publication of "honor roll" of members of Congress supporting group's aims not an "expenditure" within the meaning of Act).

In addition to requiring a strict interpretation of the language of Section §441b in order to avoid overbreadth or vagueness, Buckley, in fact, raises serious doubts as to the constitutionality of §441b as applied to any speech-related independent corporate expenditures, even those which in fact expressly advocate a candidate's election or defeat. That case struck down any dollar limits on spending undertaken independently of a candidate even when thus narrowly construed. While the Court did not specifically address the prohibition on corporate expenditures, it addressed issues identical to those that would be raised under §441b.

It is frequently stated that the purpose of the total prohibition on corporate contributions and expenditures which

are related to elections to public office is to eliminate the corruptive influence exerted by the spending of vast accumulations of wealth in connection with campaigns. United States v. UAW-CIO, 352 U.S. at 510. The Supreme Court addressed just these issues in Buckley. In so doing it distinguished sharply between independent expenditures and contributions to a candidate.

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"[T]he independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. . . . Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, §608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse." 424 U.S. at 46-7.

Apart from the danger of corruption as such, §441b might be justified as an attempt to equalize the voice of

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groups and individuals in society. This justification was also ruled to be inadequate by the Court.

"... the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed 'to secure' the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" [Citations omitted]. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. Eastern R. Conf. v. Noerr Motors, 365 U.S. 127, 139, 5 L. Ed. 2d 464, 81 S. Ct. 523 (1961)." 424 U.S. at 48-9.

These statements in Buckley, taken together with the Court's holding as to the importance of guaranteeing First Amendment rights to corporations in Bellotti, supra, raise grave doubts as to the constitutionality of §441b as applied to any independent corporate speech. Justice White, in fact, opined in his dissent in Bellotti that the two cases taken together merely "reserve the formal interment of the Corrupt Practices Act ... for another day." 435 U.S. at 821.

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Although several courts since Buckley have upheld §441b against constitutional attack, they have done so only in regard to corporate political contributions, some expressly avoiding voicing an opinion as to the validity of the act in regard to corporate speech related expenditures. See, e.g., F.E.C. v. Lance, 635 F.2d 1132, 1141-2, 1142 n.7 (5th Cir. 1981) (no speech elements involved in bank's giving overdraft loans to political candidates and, accordingly, no First Amendment constitutional questions raised); United States v. Clifford, 409 F.Supp. 1070 (E.D.N.Y. 1976); F.E.C. v. Weinstein, 462 F.Supp. 243 (S.D.N.Y. 1978).

Constitutional considerations of vagueness and overbreadth thus compel an interpretation of §441b which limits its prohibition on independent corporate expenditures to those expressly advocating the election or defeat of a candidate. Moreover, even so interpreted, the Section may well be unconstitutional. In order to avoid invalidation of the Act, it is, therefore, incumbent upon the Commission to hold that publication of the PPAC article is not an expenditure "in connection with" a federal election.

CONCLUSION

It is patently evident, on the basis of the this and two previous complaints filed by the National Right to Life Committee, Inc. against three separate Planned Parenthood organizations in the last six months (MUR Nos. 1318 and 1372)*, that the Committee is attempting to use § 441b of the Federal Election Campaign Act to silence Planned Parenthood and prevent it from exercising its First Amendment right to inform its members, supporters and the public concerning matters of vital public interest which are central to its valid nonprofit corporate activities.

The courts have recognized that, to prevent the chilling effect which application of the Act can have on the important First Amendment rights of the public to have unfettered access to information of public interest, the authority of the FEC to investigate complaints involving the press exemption is limited to an investigation of whether the material was in fact published as a part of the corporation's

*The first complaint against PPFA and its New York affiliate was dismissed. The second, upon which the FEC has not yet acted, alleged facts identical to those alleged in the first against PPFA.

valid press function. The facts set forth above leave no doubt that this is the case with regard to the PPAC article. The FEC must accordingly proceed no further on the instant complaint.

Were the FEC to proceed nonetheless, it is clear that it would find, on the basis of the contents of the article itself and the circumstances of its publication, no probable cause to believe that a violation had occurred. Because the PPAC article can in no way be read to constitute express advocacy of the election or defeat of any candidate and because it was published by an organization which does not participate or intervene in any election for public office, the PPAC article cannot be construed to constitute a corporate expenditure within the meaning of the Federal Election Campaign Act. And, even if §441b were construed to apply beyond communications expressly advocating the election or defeat of a particular candidate, the PPAC article, as a communication addressed to the particular interested subscribers to the PPAC Memo, rather than to members of the public at large, is exempt from the provisions of the Act.

Moreover, the exemption contained in the Regulations of the Commission for voters' guides distributed by nonprofit civic organizations apply to the PPAC article.

It is accordingly clear from the language of the Act,

its legislative history, court decisions interpreting the Act and the regulations of the Commission itself that publication of the PPAC article in no way constituted a violation of §441b of the Federal Election Campaign Act by PPAC.

Finally, the decisions of the federal courts, and particularly that of the Supreme Court in Buckley v. Valeo, leave no doubt that any attempt to extend the provisions of the Federal Election Campaign Act to prohibit the publication of the PPAC article would violate the constitutional rights of PPAC. To prevent invalidation of the statute on Constitutional grounds, such an interpretation should be avoided.

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California Pro Life Council, Inc.

CALIFORNIA AFFILIATE OF THE NATIONAL RIGHT TO LIFE COMMITTEE, INC.

VOTER INFORMATION DIGEST—JUNE 1980 PRIMARY ELECTIONS THE CANDIDATES—HOW THEY STAND ON ABORTION

The following information is based on candidates' voting records, public statements, interviews and responses to a questionnaire sent to all candidates by the California Pro Life Council.

KEY TO ABBREVIATIONS

NI ("NO INFORMATION")—Candidate has not responded or his position is unclear.

SR—Favors a STATES RIGHTS Amendment to let each state regulate abortion as it wishes.

PCL—Favors the PRESENT CALIFORNIA LAW which cuts off some, but not all, abortion funding.

R.I.D—Wants an exception for RAPE (R), INCEST (I), or DEFECTS of the unborn child (D).

We have reported the candidates' positions on the following two questions:

#1: Does the candidate support a Human Life Amendment to the U.S. Constitution which would protect the "Right to Life" of unborn babies?

#2: Does the candidate oppose the use of government funds to pay for abortions (except to save the life of the mother)?

Most uncontested primary races, including "minor" parties, are not listed. Except as indicated, all A.P. candidates who responded answered "Yes/Yes."

PRESIDENT		POSITION		PRESIDENT		POSITION		U.S. SENATOR		POSITION		U.S. SENATOR		POSITION	
		Q#1	Q#2			Q#1	Q#2			Q#1	Q#2			Q#1	Q#2
Jimmy Carter (D)		NO	R.I.	Ronald Reagan (R)		YES	YES	Alan Cranston (D)		NO	NO	John Schmitz (R)		YES	YES
Edward Kennedy (D)		NO	NO	George Bush (R)		SR/R.I.	R.I.	Richard Morgan (D)		YES	YES	Paul Gann (R)		NO	NO
Edmund Brown, Jr. (D)		WITHDREW		John Anderson (R)		NO	NO	David Rees (D)		YES	YES	Sam Yorty (R)		YES	YES
Lyndon LaRouche (D)		NO	NO	Benjamin Fernandez (R)		NI		Frank Thomas (D)		NI		James Ware (R)		YES	YES
Sean Downey (AIP)		YES	YES	Phil Crane (R)		WITHDREW						Ray Hanzlik (R)		NI	
John Rarick (AIP)		SR	YES									Philip Schwartz (R)		NO	YES
												Brian Hyndman (R)		NI	

CONGRESS		POSITION		CONGRESS		POSITION		CONGRESS		POSITION		CONGRESS		POSITION	
		Q#1	Q#2			Q#1	Q#2			Q#1	Q#2			Q#1	Q#2
22 Carlos		YES	YES	37 Ed Vallen (R)		YES	YES	15 Ross		YES	YES	8 Fred		YES	YES
Marshall (R)				Jerry Lewis (R)		YES	YES	Carl Burton (R)		YES	YES	Stevens (R)		NO	NO
George				George				Vuch (D)		NO		Don			
Pence				Brady (R)		NI		Blaine Anderson		YES	YES	Richard		YES	YES
O'Donnell (D)		NI		Charles				(R) Write in		YES	YES	Lehman (D)		NO	NO
Stanley				Maciejowski (R)		NI		For Adams		YES	NO	Christopher			
Sapiro (D)		NI		Bud				(R) Write in		YES	NO	Ruyter			
Anthony				Marshall (R)		NI		Eric		YES	YES	(R) Write in		YES	YES
Swenson (D)		NO	NO	Dan Price (D)		NI		Seastrand (R)		YES	YES	Gary Hart (D)		NO	NO
Lump				Jenny				Raymond				David			
Anderson (D)		YES	YES	Patterson (D)		NO	NO	Hatch (R)		NO	NO	Aquino (R)		YES	
Robert				E.L. Wilson (R)		YES		Henry Moly (D)		NO		Philo			
Munoz (R)		YES		Art Jacobson (D)		NO	YES	Robert Cline (R)		YES	YES	Murray (R)		NI	
Murray				40 Robert				Ed Davis (R)		YES	YES	37 Catho			
Wassman (D)		NO	NO	Bodham (R)		YES	YES	Belden Brown (D)		NI		Wright (R)		YES	YES
Roland				Dick				James				Gang Smith (R)		YES	
Carroll (R)		YES	YES	Candian (R)		YES	YES	Benson (D)		NO	NO	John Allen (R)		YES	YES
John Zieg (R)		NO	YES	Jack Litter (D)		NI		James				Fug			
25 Ed Roubal (D)		NO	NO	Basel Romon (D)		YES	YES	Robert (D)		NI		Campbell (D)		NI	
Richard				Michael Dow (D)		NI		Roumney				Jim Brea (R)		YES	YES
Fairfax (R)		NI		41 Bob Wilson (D)		YES	YES	Woodruff (R)		NI		Fred Mori (D)		YES	YES
27 Robert				Jim Bates (D)		NO	NO	David		YES	YES	Charles		NI	
Doran (R)		YES	YES	Art Sanders (D)		R.I.		Robert (D)				Santana (D)		NI	
Cathy Peck (D)		NO	NO	Ron Buckley (D)		NO	NO	Norman				Gibert			
Gary Dubin (D)		NO	NO	Rui				White (R)		YES	YES	Margith (R)		NO	YES

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81 MAY 22 AM:27

LRR

GREENBAUM, WOLFF & ERNST
437 MADISON AVENUE
NEW YORK, NEW YORK 10022

Deborah Curry Esq.
Federal Election Commission
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 27, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dara Klassel
Planned Parenthood Federation
of America, Inc.
810 Seventh Avenue
New York, New York 10019

Dear Ms. Klassel:

This letter is to confirm receipt of your written request for an extension of time on April 14, 1981. As per your conversation with Deborah Curry on Friday, April 17, 1981, you have been granted a 30 day extension in this matter. Therefore, your response is due for MUR 1377 on May 21, 1981. If you have further questions, please contact Deborah Curry, the attorney assigned to this matter at (202)523-4060.

Sincerely,

Gary L. Johansen
Assistant General Counsel

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82040324179

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TO: Dara Klassel

FROM: Gary L. Johansen

DATE: 4/27/81

TIME: 1:00 PM

1377

1 2 3 4 5 6 7 8 9 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

planned parenthood affiliates of california

100194

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81 APR 18 P 1: 05

GCC#4509

Post Office Box 1623
Sacramento, California 95814
(916) 446-5267

April 14, 1981

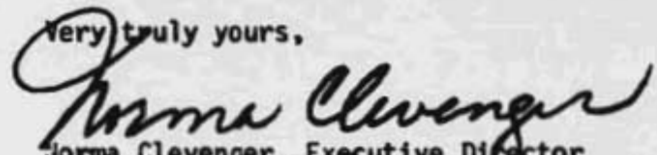
Deboran Curry
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Ms. Curry:

This is to inform you that the attorney who will be representing us in re: MUR 1377, a complaint against Planned Parenthood Affiliates of California filed by the National Right to Life Committee, will be Laurie Rocket of Greenbaum, Wolff & Ernst, 437 Madison Avenue, New York, NY 10022, (212) 758-4010.

It is our understanding that an extension has been granted in this matter. You will hear from us in more detail through our attorneys.

Very truly yours,



Norma Clevenger, Executive Director
Planned Parenthood Affiliates of California

cc: Eve Paul
Dara Klassel
Laurie Rocket

planned parenthood affiliates of california



RECEIVED

Deborah Curry
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Upstairs At
1623 10th Street
Sacramento, California 95814



**Planned Parenthood[®]
Federation of America, Inc.**

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RECEIVED

CC# 4488

81 APR 14 AM 10:08
810 Seventh Avenue
New York, New York 10019
(212) 541-7800

April 13, 1981

Deborah Curry
Federal Election Commission
Washington, DC 20463

RE: MUR 1377

Dear Ms. Curry:

This will confirm our telephone conversation of April 13, 1981 in which I requested, on behalf of Planned Parenthood Affiliates of California (PPAC), an extension of time to answer Complaint No. 1377.

PPAC received Complaint No. 1377 on April 6, 1981 and an answer demonstrating why no action should be taken on the complaint would normally be due on April 21. PPAC requests a thirty day extension of this deadline - to May 21, 1981 - for the following reasons: because of mail delays, PPAC's attorney, the firm of Greenbaum, Wolff and Ernst, did not receive the complaint until today, April 13, 1981; because this matter involves communications between New York and California, further delays are inevitable; the issues raised by the complaint involve complex questions of statutory interpretation and constitutional law.

Another letter will soon be forthcoming from PPAC, indicating that it will be represented in this matter by Greenbaum, Wolff and Ernst. In the meantime, PPAC has authorized me to request this extension of time on its behalf.

Very truly yours,

Dara Klassel

Dara Klassel
Staff Attorney

cc: Norma Clevenger, PPAC
Laurie Rockett, Greenbaum, Wolff & Ernst

APR 14 1981
12:20 PM
TELETYPE
COMMUNICATIONS
SECTION

32040324182

PLANNED PARENTHOOD-WORLD POPULATION

Planned Parenthood Federation of America, Inc.

510 Seventh Avenue

New York, N. Y. 10019

02040324403

Planned Parenthood®



POST OFFICE TO ADDRESSEE

B 52560645

FROM: DANA KLASSEL
PLANNED PARENTHOOD FEDERATION
OF AMERICA
210 SEVENTH AVENUE
NEW YORK, NY 10019

Customer Number, if any:

TO: PETERAH CURRY
FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

ORIGIN:

Initials of
Receiving
Clerk

P.O. ZIP

Date in

Time in

Weight

lbs

Postage

\$ 4.20

DESTINATION:

Date of
Delivery

Time of
Delivery

Initials of
Delivering
Employee

Signature of Addressee or Agent

DELIVERY WAS ATTEMPTED

Date

Time

Notice Left By:

EXPRESS MAIL SERVICE

LABEL 11B ☆ SEPT/80 U.S.G.P.O. 1980-318-152

100080

RECEIVED

BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

81 APR 8 AM: 24

MUR 1377

ARNOLD H. BRAMES
JAMES BOPP, JR.
DAVID D. HAYNES

TELEPHONE
(812) 236-2421

April 6, 1981

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

Attention: Ms. Debra Curry

Re: Complaint Against Planned
Parenthood Affiliates of
California

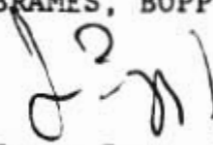
Dear Ms. Curry:

In response to our recent telephone conversation, I am enclosing a more legible copy of the PPAC Memo referred to in our complaint of March 30, 1981, against the above named organization.

If I can be of further assistance to you, do not hesitate to contact me.

Sincerely,

BRAMES, BOPP & HAYNES


James Bopp, Jr.

JB:maw
Enclosure

11 APR 8 PM: 23

Party Platforms Polarized On Abortion

Voters, being continually bombarded by campaign rhetoric as the November 4 general election draws near, must start sifting through the verbiage in order to discern just what it is candidates and political parties really support and oppose. Those voters who support reproductive freedom and equal rights for women, and who are not voting for John Anderson, may have a particularly difficult time even though major party platforms seem quite clear on the issues.

Republicans, for the first time in 40 years, have repudiated their position on equality for women by withdrawing their support for the ERA in their 1980 Party Platform.

At the same time and in an obvious attempt to attract the evangelical vote, which pollster Lou Harris reports to be about 29 percent of the voters nationwide, the Republicans called for a constitutional amendment to ban abortions and called for the appointment of federal judges at all levels of the judiciary who oppose abortion.

Senator Charles Percy, R-Illinois, called that section of the platform "the worst plank I have ever seen in any platform by the Republican Party."

By contrast, the Democratic platform takes an opposite position. Originally including the 1976 platform language which recognized the differences in thought on the abortion issue and stated an amendment to the constitution banning abortion was undesirable, the 1980 Democratic platform was altered by overwhelming passage of a minority plank which opposes government restrictions on federal funding for abortions for poor women and which declares reproductive freedom as a fundamental human right.

In addition, the Democratic plank calls for the denial of financial and other national party support to any Democratic candidate who does not support the ERA.

Of the three top presidential candidates, Anderson is the only one who has made a strong pro-choice statement. He is the only candidate to support free choice on abortion and unrestricted government funding for women unable to afford abortions.

While the Republican Party Platform appears clear on the issues of reproductive freedom and the ERA, candidate Ronald Reagan may be attempting to diffuse the absoluteness of his party's statements. In a recent Associated Press news article, Reagan, the person who signed the Therapeutic Abortion Act of 1967 liberalizing abortion in California, was reported as saying a judge's pro-abortion position may not necessarily preclude her/him from consideration as an appointee to a federal judgeship.

Other rumblings from the Reagan campaign seem to be aimed at convincing voters that he may be softening his position on abortion. Another article reported that the Reagan campaign has set up a Women's Committee. Such statements could probably be categorized as political posturing, but nonetheless, they have drawn the ire of the likes of Phyllis Schlafly and her Eagle Forum and the archconservatives represented by *The Wanderer* newspaper, which is already at odds with Reagan for his choice of George Bush as his vice presidential running mate.

Bush, although personally opposed to abortion, also opposes a constitutional amendment outlawing abortion and supports government funding of abortion under certain circumstances. Both these positions run contrary to the so-called "right to life" philosophy.

In three states, Kentucky, New Jersey and New York, the

Right to Life Party has qualified for the ballot. Its official anti-choice presidential candidate is Ellen McCormack. Reagan made a bid for the Party's endorsement in New York. However, his anti-choice position apparently is not strong enough for ardent "right to life" supporters.

President Carter too is having trouble with his party's platform. Carter is also personally opposed to abortion and will have difficulty supporting the party's plank and its guarantee of federally funded abortions for women unable to bear the cost of their own.

According to Sarah Weddington, an assistant to the president, "It's one of the planks he does not agree with."

While on one hand Reagan is courting the evangelical vote, on the other recent statements seemingly suggesting a softening of his position on abortion may be the result of a Harris Poll which indicates a 61-22 percent majority of all voters nationwide oppose the Republican platform plank concerning a constitutional amendment banning abortion.

In addition, although a 55-42 percent majority of white voters involved in the evangelical movement favors such an amendment, a much higher 65-30 percent majority of whites not in the movement oppose it.

Additionally, all black voters oppose such a constitutional amendment banning abortion by a 66-28 percent margin.

1980 Democratic Party Platform

We fully recognize the religious and ethical concerns which many Americans have about abortion. We also recognize the belief of many Americans that a woman has a right to choose whether and when to have a child.

The Democratic Party supports the 1973 Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or overturn the decision.

Furthermore, we pledge to support the right to be free of environmental and worksite hazards to reproductive health of men and women.

We further pledge to work for programs to improve the health and safety of pregnancy and childbirth including adequate pre-natal care, family planning counseling and services with special care to the needs of the poor, the isolated and the young.

Minority Report Adopted 2,005-956

The Democratic Party recognizes reproductive freedom as a fundamental human right. We therefore oppose government interference in the reproductive decisions of Americans, especially those government programs or legislative restrictions that deny poor Americans their right to privacy by funding or advocating one or a limited number of reproductive choices only.

Specifically, the Democratic Party opposes involuntary or uninformed sterilization for women and men, and opposes restrictions on funding for health services for the poor that deny poor women especially the right to exercise a constitutionally guaranteed right to privacy.

1980 Republican Party Platform

There can be no doubt that the question of abortion despite the complex nature of its various issues is ultimately concerned with equality of rights under the law.

(Continued on page 3)

1980 Candidates/How They Stand On Choice

NOTE: To the best of our knowledge the information contained here is based on public statements by the candidates, incumbent voting records, campaign literature, interviews, answers to various questionnaires, etc. The information is presented for educational purposes only and is not intended as an endorsement of any candidate.

KEY:

+ = Pro-choice**

- = Anti-choice***

• = Incumbent

0 = No information available

x = Opposed to abortion, except under certain restrictive circumstances.

1 = Supports free choice but opposes all or unrestricted government funding.

2 = Supports parental consent/notification.

3 = Supports spousal notification.

4 = Opposes "Human Life Amendment".

5 = Supported by California Abortion Rights Action League — Political Action Committee (CARAL-PAC).

6 = Endorsed by Life Amendment Political Action Committee (LAPAC).

7 = Endorsed by National Women's Political Caucus (NWPC).

8 = Supported by National Abortion Rights Action League — Political Action Committee (NARAL-PAC).

9 = Withdrew candidacy

** Supports free choice on abortion, government funding of abortion and opposes a human life amendment to the constitution.

*** Opposes free choice on abortion, opposes government funding of abortion and supports a human life amendment to the constitution.

PRESIDENT

Carter, J. (D)*
Anderson, J. (I)
Reagan, R. (R)

U.S. SENATE

Cranston, A. (D)*
Gann, P. (R)

CONGRESSIONAL DISTRICT

1 Johnson, H. (D)*
2 Chappie, E. (R)
3 Bork, N. (D)
4 Clausen, D. (R)*
5 Maisui, R. (D)*
6 Murphy, J. (R)
7 Fazio, V. (D)*
8 Dehr, A. (R)
9 Burton, J. (D)*
10 McQuaid, D. (R)
11 Burton, P. (D)*
12 Spinosa, T. (R)
13 Miller, G. (D)*
14 St. Clair, G. (R)
15 Dellums, R. (D)*
16 Hughes, C. (R)
17 Stark, F. (D)*
18 Kennedy, W. (R)
19 Edwards, D. (D)*
20 Lutton, J. (R)
21 Lantos, T. (D)
22 Royer, B. (R)*
23 Olsen, K. (D)
24 McCloskey, P. (R)*
25 Mineta, N. (D)*
26 Gagne, W. (R)
27 Cerney, A. (D)
28 Shumway, N. (R)*
29 Coelho, T. (D)*
30 Schwartz, R. (R)
31 Panetta, L. (D)*
32 Roth, W. (R)
33 Johnson, W. (D)
34 Pashayan, C. (R)*
35 Timmermans, M. (D)
36 Thomas, W. (R)*
37 Lodise, C. (D)
38 Lagomarsino, R. (R)*
39 Miller, M. (D)
40 Goldwater Jr., B. (R)*
41 Corman, J. (D)*
42 Fiedler, B. (R)
43 O'Donnell, P. (D)
44 McPherson, C. (R)*
45 Belenson, A. (D)*
46 Winkler, R. (R)

24 Waxman, H. (D)*
25 Cayard, R. (R)
26 Roybal, E. (D)*
27 Ferraro, R. (R)
28 Leoni, J. (D)
29 Rousselot, J. (R)*
30 Peck, C. (D)
31 Dornan, R. (R)*
32 Dixon, J. (D)*
33 Reid, R. (R)
34 Hawkins, A. (D)*
35 Hart, M. (R)
36 Danielson, G. (D)*
37 Platten, J. A. (R)
38 Dymally, M. (D)
39 Grimshaw, D. (R)
40 Anderson, G. (D)*
41 Adler, J. (R)
42 Anderson, F. (D)
43 Grisham, W. (R)*
44 Simone, I. (D)
45 Lungren, D. (R)*
46 Lloyd, J. (D)*
47 Dreier, D. (R)
48 Brown, G. (D)*
49 Stark, J. (R)
50 Rusk, D. (D)
51 Lewis, J. (R)*
52 Patterson, J. (D)*
53 Jacobson, A. (R)
54 Lahtinen, L. (D)
55 Dannemeyer, W. (R)*
56 Dow, M. (D)
57 Badham, R. (R)*
58 Wilson, B. (D)
59 Lowery, B. (R)
60 Van Deelen, L. (D)*
61 Hunter, D. (R)
62 Metzger, T. (D)
63 Burgener, C. (R)*

STATE SENATE DISTRICT

1 Huggins, D. (D)
2 Johnson, R. (R)*
3 Rodda, A. (D)*
4 Doolittle, J. (R)
5 Garis, E. (D)
6 Marks, M. (R)*
7 Boatwright, D. (D)
8 Jarboe, J. J. (R)
9 Petris, N. (D)*
10 Roust, T. (R)
11 Alquist, A. (D)*
12 Arley, Richard
13 Garamendi, J. (D)*
14 Johnson, W. (R)

15 Vuich, RA (D)*
16 Mello, H. (D)
17 Sessstrand, E. (R)
18 Woodlock, R. (D)
19 Davis, Ed (R)
20 Cogar, S. (D)
21 Russell, N. (R)*
22 Robert, D. (D)*
23 White, N. (R)
24 Boothroyd, T. (D)
25 Richardson, H.L. (R)*
26 Buckland, D. (D)
27 Beverly, R. (R)*
28 Greene, S. (D)*
29 Faulkner, T. (R)
30 Fronke, R. (D)
31 Speraw, O. (R)*
32 Epile, B. (D)
33 Campbell, W. (R)*
34 Velasquez, L. (D)
35 Briggs, J. (R)*
36 Carpenter, P. (D)*
37 White, D. (R)
38 Finnegan, D. (D)
39 Ellis, J. (R)*

STATE ASSEMBLY DISTRICT

1 Starnam, S. (R)*
2 Miso, D. (P&F)
3 Bosco, D. (D)*
4 Potts, J. (R)
5 Garcia, G. (D)
6 Heiger, W. (R)
7 Hannigan, T. (D)*
8 Cecil, W. (R)
9 Sheedy, T. (D)
10 McPherson, J. (R)*
11 Greene, L. (D)*
12 Benvenut, D. (R)
13 Walters, N. (D)*
14 Parnes, D. (R)
15 Asara, L. (D)
16 Sebastian, D. (R)
17 Charles, A. (D)
18 Filante, W. (R)*
19 Hasseltine, E. (D)
20 Bauer, B. (R)
21 Campbell, R. (D)
22 Birks III, W. (R)
23 Bates, T. (D)*
24 Sullivan, W. (R)
25 Harris, E. (D)*
26 Helzmann, A. (L)
27 Lohr, B. (D)*
28 McFloyd, D. (R)
29 Marguth, G. (R)

3274032-1185

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BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

C

Federal Election Commission
Att: Ms. Debra Curry
1325 K Street, N. W.
Washington, D. C. 20463



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Bopp, Jr.
900 Sycamore Building
19 South Sixth Street
Terre Haute, Indiana 47807

Dear Mr. Bopp:

This letter is to acknowledge receipt of your complaint of March 30, 1981, against Planned Parenthood Affiliates of California which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent(s) will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondent's notification. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Elissa T. Garr

BY: Elissa T. Garr
Docket Chief

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MUR 1377 CUCKY

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

1. The following service is requested (check one):
☐ Show to whom and date delivered.
☐ Show to whom, date and address of delivery.
☐ RESTRICTED DELIVERY
Show to whom and date delivered.
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
James Bopp, Jr.
19 South Sixth Street
Terre Haute, IN 47602

3. ARTICLE DESCRIPTION
REGISTERED NO. CERTIFIED NO. INSURED NO.
059646

(Always obtain signature of addressee or agent.)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY
4/3/81

5. ADDRESS (Complete only if returned)

6. UNABLE TO DELIVER BECAUSE

ALMA 100-581

4-1-81

32040324189



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Planned Parenthood Affiliates
of California
1623 10th Street #1,
Sacramento, California 95814

Re: MUR 1377

Dear Sir/Madam:

This letter is to notify you that on March 30, 1981 the Federal Election Commission received a complaint which alleges that your Committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1377. 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 your Committee in connection with this matter. Your response 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.

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.

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

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

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Letter to:
Page Two

If you have any questions, please contact Deborah Curry, the attorney assigned to this matter at 202-523-4060. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Elissa T. Garr

BY: Elissa T. Garr
Docket Chief

Enclosures

1. Complaint
2. Procedures

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151640

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APR 8 1981

4-1-81

MUR # 1377

DATE April 1, 1981

PLEASE PROVIDE THE NAMES AND ADDRESSES OF ALL RESPONDENTS WHICH ARE TO BE SENT A COPY OF THE COMPLAINT. IF A PRINCIPAL CAMPAIGN COMMITTEE IS A RESPONDENT, A CARBON COPY IS TO BE SENT TO THE CANDIDATE. PLEASE PROVIDE THE NAME AND ADDRESS OF THE CANDIDATE AND PUT A "CC" BESIDE THE CANDIDATE'S NAME. IF A CANDIDATE IS A RESPONDENT, A CARBON COPY IS TO BE SENT TO THE CANDIDATE'S PRINCIPAL CAMPAIGN COMMITTEE. PLEASE PROVIDE THE NAME AND ADDRESS OF THE PRINCIPAL CAMPAIGN COMMITTEE AND PUT A "CC" BESIDE THE COMMITTEE'S NAME. PLEASE PROVIDE THIS INFORMATION, ON THIS SHEET, WITHIN 24 HOURS OF RECEIPT OF THIS NOTICE. THANK YOU.

Respondent

1. Planned Parenthood Affiliates of
California, 1623 10th Street, #1,
Sacramento, CA. 95814

32040324192

912730

RECEIVED

MAR 13 1981

QOC #1367

81 MAR 30 09:02

BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

ARNOLD H. BRAMES
JAMES BOPP, JR.
DAVID D. HAYNES

TELEPHONE
(812) 238-2421

March 24, 1981

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

Dear Sir/Madam:

On behalf of the National Right to Life Committee, Inc. (NRLC), I am filing the following complaint of violation of federal election laws by Planned Parenthood Affiliates of California (PPAC), 1623 10th Street, #1, Sacramento, CA 95814. PPAC is an organization in California affiliated with Planned Parenthood of California which is designed to support legislative and administrative changes which affect family planning in California. PPAC is not a registered political action committee with the Federal Election Commission.

This complaint is to bring to the attention of the Federal Election Commission a violation of 2 U.S.C. § 441 b (a) prohibiting a corporation from making expenditures in connection with a federal election. PPAC was incorporated in the State of California on March 14, 1974.

In the fall of 1980, PPAC published a Memo which delineated the positions of federal candidates on the issue of abortion. This Memo, a copy of which is attached, described the candidates as "pro-choice" and anti-choice" by use of the symbol + or -. The distribution of this Memo was to the general public. See page 4 where the Memo suggests to the reader that they pass a copy of this Memo to others who might be interested in it.

This Memo violated § 441 b (a) since it constituted a corporate expenditure in connection with a federal election. This Memo violated the criteria for voter guides required by 11 CFR 114.4 (c)(3) since, by use of the + and - and the words "pro-choice" and "anti-choice", the material tended to favor one candidate over another.

Accordingly, we request the Federal Election Commission immediately investigate the complaint and impose appropriate fines for violation.

14:11A 08 MAR 1981

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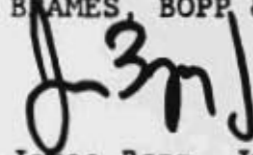
Federal Election Commission
March 24, 1981

Page Two

I have prepared the complaint and believe it is true and correct to the best of my knowledge. This complaint was not filed on behalf of or at the request or suggestion of any candidate.

Sincerely,

BRAMES, BOPP & HAYNES



James Bopp, Jr.

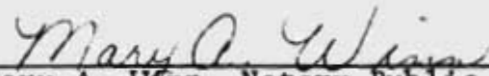
JB:maw
Enclosure

STATE OF INDIANA, COUNTY OF VIGO, SS:

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, this 24th day of March, 1981.

Witness my hand and Notarial seal.

My Commission Expires
December 14, 1984


Mary A. Winn, Notary Public
County of Residence: Clay

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PPAC MEMO

2

Planned Parenthood Affiliates of California • MEMO 7 • SEPTEMBER-OCTOBER 1980

Party Platforms Polarized On Abortion

Voters, being continually bombarded by campaign rhetoric as the November 4 general election draws near, must start sifting through the verbiage in order to discern just what the candidates and political parties really support and oppose. Those voters who support reproductive freedom and equal rights for women and who are not voting for John Anderson may have a particularly difficult time even though major party platforms seem quite clear on the issues.

Republicans for the first time in 40 years have repudiated their position on equality for women by withdrawing their support for the ERA in their 1980 Party Platform.

At the same time and in an obvious attempt to attract the evangelical vote, which pollster Lou Harris reports to be about 29 percent of the voters nationwide, the Republicans called for a constitutional amendment to ban abortions and called for the appointment of federal judges at all levels of the judiciary who oppose abortion.

Senator Charles Percy, R-Ill., called that section of the platform "the worst plank I have ever seen in any platform by the Republican Party."

By contrast, the Democratic platform takes an opposite position. Originally including the 1976 platform language which recognized the differences in thought on the abortion issue and stated an amendment to the constitution banning abortion was undesirable, the 1980 Democratic platform was altered by overwhelming passage of a minority plank which opposes government restrictions on federal funding for abortions for poor women and which declares reproductive freedom as a fundamental human right.

In addition, the Democratic plank calls for the denial of financial and other national party support to any Democratic candidate who does not support the ERA.

Of the three top presidential candidates, Anderson is the only one who has made a strong pro-choice statement. He is the only candidate to support free choice on abortion and unrestricted government funding for women unable to afford abortions.

While the Republican Party Platform appears clear on the issues of reproductive freedom and the ERA, candidate Ronald Reagan may be attempting to confuse the absoluteness of his party's positions. In a recent Associated Press news article, Reagan, the person who signed the "Therapeutic Abortion Act of 1967" (which prohibited abortion in California) was quoted as saying he "opposes abortion on demand, but not necessarily all abortions." He also stated that "abortion is an acceptable choice for women."

Reagan's statements are clearly contradictory. He is stating that he opposes abortion on demand, but at the same time he is stating that he supports abortion on demand. This is a clear attempt to confuse the voters and to make it difficult for them to make a decision on the issue of abortion.

The Wanderer

Reagan's statements are clearly contradictory. He is stating that he opposes abortion on demand, but at the same time he is stating that he supports abortion on demand. This is a clear attempt to confuse the voters and to make it difficult for them to make a decision on the issue of abortion.

Reagan's statements are clearly contradictory. He is stating that he opposes abortion on demand, but at the same time he is stating that he supports abortion on demand. This is a clear attempt to confuse the voters and to make it difficult for them to make a decision on the issue of abortion.

Right to Life Party has qualified for the ballot. Its official anti-choice presidential candidate is Ellen McCormack. Reagan made a bid for the Party's endorsement in New York. However, his anti-choice position apparently is not strong enough for ardent right-to-life supporters.

President Carter too is having trouble with his party's platform. Carter is also personally opposed to abortion and will have difficulty supporting the party's plank and its guarantee of federally funded abortions for women unable to bear the cost of their own.

According to Sarah Weddington, an assistant to the president, it is one of the planks he does not agree with.

While on one hand Reagan is courting the evangelical vote, on the other recent statements seemingly suggesting a softening of his position on abortion may be the result of a Harris Poll which indicates a 61-22 percent majority of all voters nationwide oppose the Republican platform plank concerning a constitutional amendment banning abortion.

In addition, although a 55-42 percent majority of white voters involved in the evangelical movement favors such an amendment, a much higher 65-30 percent majority of whites not in the movement oppose it.

Additionally, all black voters oppose such a constitutional amendment banning abortion by a 66-28 percent margin.

1980 Democratic Party Platform

We fully recognize the religious and ethical concerns which many Americans have about abortion. We also recognize the belief of many Americans that a woman has a right to choose whether and when to have a child.

The Democratic Party supports the 1973 Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or overturn the decision.

Furthermore, we pledge to support the right to be free of environmental and worksite hazards to reproductive health of men and women.

We further pledge to work for programs to improve the health and safety of pregnancy and childbirth including adequate pre-natal care, family planning counseling and services with special care to the needs of the poor, the isolated and the young.

Minority Report Adopted 2,005-956

The Democratic Party recognizes reproductive freedom as a fundamental human right. We therefore oppose government interference in the reproductive decisions of Americans, especially those government programs or legislative restrictions that deny poor Americans their right to privacy by funding or advocating one or a limited number of reproductive choices only.

Specifically, the Democratic Party opposes involuntary or uninformed sterilization for women and men, and opposes restrictions on funding for health services for the poor that deny poor women especially the right to exercise a constitutionally guaranteed right to privacy.

1980 Republican Party Platform

There can be no doubt that the question of abortion despite the complex nature of its various issues is ultimately concerned with equality of rights under the law.

(continued on page 3)

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1980 Candidates/How They Stand On Choice

NOTE: To the best of our knowledge the information contained here is based on public statements by the candidates, incumbent voting records, campaign literature, interviews, answers to various questionnaires, etc. The information is presented for educational purposes only and is not intended as an endorsement of any candidate.

KEY:

- + = Pro-choice**
- = Anti-choice***
- = Incumbent
- 0 = No information available
- * = Opposed to abortion except under certain restrictive circumstances
- 1 = Supports free choice but opposes all or unrestricted government funding
- 2 = Supports parental consent notification
- 3 = Supports spousal notification
- 4 = Opposes Human Life Amendment
- 5 = Supported by California Abortion Rights Action League - Political Action Committee (CARAL-PAC)
- 6 = Endorsed by Life Amendment Political Action Committee (LAPAC)
- 7 = Endorsed by National Women's Political Caucus (NWPC)
- 8 = Supported by National Abortion Rights Action League - Political Action Committee (NARAL-PAC)
- 9 = Withdrew candidacy
- ** Supports free choice on abortion, government funding of abortion and opposes a human life amendment to the constitution
- *** Opposes free choice on abortion, opposes government funding of abortion and supports a human life amendment to the constitution

132040.3324196

PRESIDENT

Carter J. D.
Anderson J. R.
Reagan R. R.

U.S. SENATE

Cranston A. D.
Gale P. R.

CONGRESSIONAL DISTRICT

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STATE ASSEMBLY DISTRICT

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MEMO

ASSEMBLY DISTRICT — continued

16 Agos A (D)
17 Brack J (R)
18 McCarthy L (D)
19 Pacer L (D)
20 Tupper J (R)
21 Sre B (D)
22 Bridges C (D)
23 Vasconcelos J
24 Conese D (D)
25 Johnson B (D)
26 Foose A (R)
27 Patterson C (R)
28 Farn S (D)
29 Anderson A (R)
30 Costa C (R)
31 Lemm K (D)
32 Bollen K (D)
33 Jensen G (D)
34 Rogers D (R)
35 Allen G (D)
36 Allen G (D)
37 Williams A (R)

38	Ahar S D
39	LaPhere M R
40	Katz R D
41	Wass R B
42	Bare J C
43	Kenned J R
44	Holms G A
45	Noah R R
46	Henry R D
47	Wells W R
48	Berman M D
49	Bales R A
50	Levin M C
51	Maclou R R
52	Ross V C
53	Ross E R
54	Parker E R
55	Ross M C
56	Diehl A B
57	Hughes J C
58	Thompson M R
59	Aster M C
60	Malburn R R
61	Moore G C
62	Diehl K R
63	Tucker C C
64	Thomas A B
65	Watt M D
66	Ross M R
67	Conner J C
68	Feast G A
69	Field R C
70	Bain R C
71	Leitch R C
72	Cooper R R
73	Adams R C
74	Reed R C
75	Tynes A C
76	Balster M D
77	Edgar M C
78	Allen R C
79	Brown M C
80	Martinez M C
81	Watt M C

60	Tanner S D
	Varasco M R
61	Smith J D
	Mourley R A
62	Nier G D
	Lanester B A
63	Young B D
	Briggs S A
64	Jung G D
	Spring D M
65	Cramer J D
	Baker C D
66	Guth J D
	Stutz C R
67	Gunn M D
	Leonard B A
68	Legas A D
	Kingwaters S A
69	Therbach C D
	Jennett R A
70	Carline K D
	Wells J A
71	Walters J A
	Aker C R
72	Robinson R D
	Sala R A
73	Magers C D
	Fitzgerald P
74	Bachman C D
	Bergeson M A
75	Graham J D
	Keele C A
76	Becker M D
	Fraser M D
77	Nage F D
	Strong R A
78	Radcliffe C D
	Tracy R A
79	Tracy R A
	Baker R A
80	Decker A D
	Green R A

Regs Modified

A grayscale photograph of a textured surface, possibly a book cover or endpaper, showing a repeating pattern of small, dark, rectangular shapes arranged in a grid-like fashion. The texture is dense and uniform across the entire frame.

Resolution Passes Women's Congress

The Women's Congress, a California translation of the United Nations Decade for Women Copenhagen Conference, passed the following resolution on Sunday, October 5, 1980:

Be it resolved that every woman has the inalienable right to control her own body.

Should any woman in exercising the right freely choose to have an abortion, safe and legal abortion should be available. Any government action which restricts access to abortion through limiting funding or any other means, undermines women's health and impedes the free exercise of fundamental American rights to privacy and personal decisions. Making mandatory abortion a crime would violate religious and ethnic beliefs.

Fuller-type steel piping should be available to a persons putting in place a suitably protected from any, con-

1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

1. 凡在本市行政区域内从事经营活动的个体工商户、企业法人、其他经济组织（以下统称“经营者”），均应当遵守本规定。

[illegible]

Issue 6 Rejected By Toledo Voters

Voters in Toledo, Ohio, this summer rejected by a two-to-one margin a proposal that would have imposed severe conditions and regulations on abortions occurring in the first twelve weeks of pregnancy.

Bled as the Marina Health Ordinance the Toledo
crops was drafted, a local health group and was
concerned as well as the local health group.

The defeat of issue 6, as it appeared on the ballot, could have national impact as it is the first time since the 1973 Supreme Court decision legalizing abortion that an anti-abortion measure was directly before the voters.

Previously elected officials have enacted similar measures in other states and some states. Most of these ordinances have been challenged in the courts and the bulk of the legislation has been declared unconstitutional.

According to Pat Donovan, editor of **Family Planning Population Reporter**, the rejection of the Toledo ordinance "is also significant because it occurred in a city with a large blue collar ethnic population that is over 30 percent Catholic—conditions that should be fertile ground for anti-abortion proposals. Catholic precincts, however, voted against the measure by the same two-to-one margin as the city as a whole."

Had the success passed abroad, foes in other communities throughout the country would have been encouraged to put the abortion issue on the national agenda.

Patterned after the Abortion Ordinance, the Toledo measure would have imposed many of the now familiar informed consent rules, including a requirement that a physician give the woman seeking an abortion a detailed description and show her photographs of the fetus, a 24-hour waiting period and spousal and parental notification requirements.

... ..

Offices: 1625 10th Street #1 Sacramento, CA 95814
 916 445-8242

David A. J. E. J.

NOA PRICE ORGANIZATION
U.S. POSTAGE
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SALVAMEN, CALIF.

1708
1709
1710

21-22-23

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BRAMES, BOPP & HAYNES
ATTORNEYS AT LAW
900 SYCAMORE BUILDING
19 SOUTH SIXTH STREET
TERRE HAUTE, INDIANA 47807

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





FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20543

THIS IS THE BEGINNING OF MUR # 1377

Date Filmed 6/2/82 Camera No. --- 2

Cameraman JDC

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FEDERAL ELECTION COMMISSION

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

82040332881

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MR. 1377.



GREENBAUM, WOLFF & ERNST
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

437 MADISON AVENUE
NEW YORK, N. Y. 10017

TELEFAX 4010

CABLES
"GREENWOLFF"
TELECOPIER NO.
(212) 751-0842
TELEX
ITY 422007
RCA 236080

FLORIDA OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 371-0202

June 24, 1982

Ms. Deborah Curry
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1377

Dear Ms. Curry:

My client, Planned Parenthood Affiliates of California ("PPAC"), wishes the following statement to be placed in the public file in response to the Federal Election Commission's finding that there is reason to believe it violated section 441b of the Federal Election Campaign Act ("the Act").

PPAC does not believe it violated the Act's prohibition on corporate contributions or expenditures "in connection with" federal elections (section 441b). PPAC believes that the article which was the subject of MUR 1377, "1980 Candidates How They Stand on Choice," was a purely educational piece which neither endorsed nor disparaged any candidate for public office. The article clearly falls within the press exemption of the Act. One of the primary activities of PPAC is provision of public information. Publication of the article is also explicitly permitted by the regulations on corporate voter guides. Moreover, the Act was never meant to cover such informational, non-partisan publications, especially when distributed to a limited audience. To construe the Act to prohibit a non-profit corporation from objectively informing its newsletter subscribers of the stance of candidates in regard to issues of concern to the organization would raise serious doubts as to the constitutionality of the Act, especially with regard to the First Amendment.

RECEIVED
60048020
02 JUN 29 12:20

02 JUN 29 14:17

GENERAL COUNCIL

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Ms. Deborah Curry

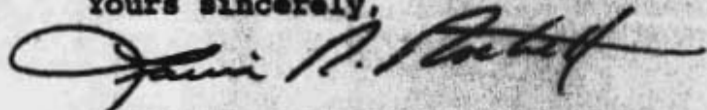
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June 24, 1982

PPAC finds it particularly ironic that much of the information for the complained of candidate chart was obtained from an almost identical leaflet published by the complainant's affiliate, California Pro-Life Council, Inc., a corporation presumably also subject to the strictures of section 44lb.

PPAC firmly believes the Commission's finding of probable cause was in error. Nevertheless, because the Commission has closed the file, PPAC does not plan at this time to appeal the decision.

Yours sincerely,



Laurie R. Rockett

cc: Norma Cleverger
Eve Paul
Dara Klassel

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02 JUN 29 12:20

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Federal Election Commission
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Washington, D.C. 20463



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
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END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1372.

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