



FEDERAL ELECTION COMMISSION

1125 K STREET NW  
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 1651

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FEDERAL ELECTION COMMISSION

Internal Memos and Notes

Routing Slips

Rough Drafts

Conciliation Discussions

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):

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

Signed

*[Handwritten Signature]*

date

10/29/85

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FOR #

1651

10/4/85

Date of Close-out Letters (Mailing Date)

CONTENT CHECK-OFF

- Close-Out Letter(s)
- Final OGC Report or Memorandum or Conciliation Agreement(s)
- Respondent(s) Reply to Brief(s)
- General Counsel's Brief(s)
- Respondent's Reply to RTB Finding
- First General Counsel's Report
- Respondent's Reply to the Complaint
- Original Complaint(s) (If Any)
- Other Report or Correspondence\*
- All Certifications\*\*

*Rgich*

Preparer of the Summary File

Date

10/29/85

File Reviewed by

*[Signature]*

\* To be included if, in the opinion of the staff member, it is important.

\*\* Certifications of Commission actions should be placed in the Summary File prior to the documents which formed the basis of the action and in reverse chronological order.

(Revised 7/5/83)

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 4, 1985

The Honorable Tony Coelho  
Chairman, Democratic Congressional  
Campaign Committee  
400 North Capitol Street  
Suite 319  
Washington, D.C. 20001

RE: MUR 1651

Dear Representative Coelho:

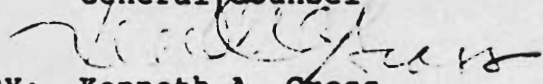
The Federal Election Commission has reviewed the allegations in your complaint dated March 16, 1984. On November 27, 1984, the Commission found reason to believe that the person or persons identified as "concerned citizen" violated the Federal Election Campaign Act of 1971, as amended ("the Act"). On February 4, 1985 the Commission found reason to believe that the Act was violated by Larry Flynt; Hustler Magazine, Inc. and Larry Flynt, as publisher; and Larry Flynt Publications, Inc. and Larry Flynt, as publisher.

The Commission, on September 17, 1985, considered the matter but found no probable cause to believe that Larry Flynt violated the Act and failed to find probable cause to believe that the corporate respondents violated the Act. Two commissioners voted in favor of finding probable cause and three commissioners opposed finding probable cause as to the corporate respondents. Accordingly, the Commission decided to close the file in this matter. The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should further information come to your attention which you believe establishes a violation of the Act, please contact Robert Raich, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele  
General Counsel

  
BY: Kenneth A. Gross

Associate General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20463

October 4, 1985

Mr. H. Richard Mayberry, Jr.  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651  
"A Concerned Citizen"  
Larry Flynt  
Hustler Magazine, Inc. and  
Larry Flynt, as publisher  
Larry Flynt Publications, Inc.  
and Larry Flynt, as publisher

Dear Mr. Mayberry:

On February 11, 1985, the Commission notified you that it found reason to believe your clients had violated sections of the Federal Election Campaign Act of 1971, as amended.

On September 17, 1985, the Commission considered the matter but found no probable cause to believe that Larry Flynt violated the Act and failed to find probable cause to believe that the corporate respondents violated the Act. Two commissioners voted to find probable cause and three commissioners opposed finding probable cause against the corporate respondents. Accordingly, the Commission decided to close the file in this matter.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear in the public record, please do so within ten days.

If you have any questions, please direct them to Robert Raich, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
"A Concerned Citizen" )  
 )  
Larry Flynt )  
Hustler Magazine, Inc. and ) MUR 1651  
Larry Flynt, as publisher )  
Larry Flynt Publications, Inc.)  
and Larry Flynt, as )  
publisher )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 17, 1985, do hereby certify that the Commission took the following actions in MUR 1651:

1. Decided by a vote of 5-0 to find no probable cause to believe that Larry Flynt violated 2 U.S.C. § 441d(a).

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

2. Failed in a vote of 2-3 to pass a motion to find probable cause to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc., and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441b and 441d(a).

Commissioners McDonald and McGarry voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented. Commissioner Harris was not present.

(continued)

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3. Decided by a vote of 5-0 to
- a) Close the file in this matter.
  - b) Direct the Office of General Counsel to send appropriate letters.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Harris was not present.

Attest:

9-17-85

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

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**SENSITIVE**

**EXECUTIVE SESSION**

**SEP 17 1985**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 "A Concerned Citizen" )  
 )  
 Larry Flynt ) MUR 1651  
 Hustler Magazine, Inc. and )  
 Larry Flynt, as publisher )  
 Larry Flynt Publications, Inc.)  
 and Larry Flynt, as )  
 publisher )

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REC'D  
OFFICE OF THE  
GENERAL COUNSEL  
FEDERAL ELECTION COMMISSION

**GENERAL COUNSEL'S REPORT**

**BACKGROUND**

The Commission has found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine Inc., and Larry Flynt, as publisher ("Hustler, Inc."), and Larry Flynt Publications, Inc. and Larry Flynt, as publisher ("LFP"), violated 2 U.S.C. §§ 441d(a) and 441b.

On July 3, 1985, the General Counsel mailed the Respondents' counsel a brief and letter notifying the Respondents of the General Counsel's intent to recommend to the Commission that it find probable cause to believe that Hustler, Inc. and LFP violated 2 U.S.C. § 441d(a) and 441b. On June 28, 1985, the General Counsel circulated that brief to the Commission. On August 9, 1985, the Respondents' counsel responded to that General Counsel's Brief after requesting an extension of time to answer (See Attachment 1, hereinafter "Reply Brief").

**LEGAL ANALYSIS**

The November 1983 issue of Hustler Magazine contained an advertisement that lauded the accomplishments of, and urged support for, President Reagan and the Republican party.

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("Hustler Advertisement"). The Huster Advertisement also solicited contributions to the Republican National Committee ("RNC") and contained the correct address to which to mail contributions to the RNC. It did not contain an adequate disclaimer statement.

The General Counsel relies upon the Brief submitted to the Commission on June 28, 1985 for the legal analysis of the matter. This report will only address the Respondents' two principal arguments.

1. Scope of the Press Exemption

The Respondents object to the General Counsel's reiteration that the press exemption only covers new stories, commentaries, and editorials and does not encompass all compositions published by a media corporation. (See Reply Brief pages 3 & 4). The Respondents contend that Hustler had a practice of publishing parodies, that the Hustler Advertisement was such a parody, and that the General Counsel misinterpreted Reader's Digest and Philips Publishing because those cases stand for the proposition that the press exemption covers activities that fall within a periodical's "legitimate press function" or "its magazine publishing function." Reader's Digest, 509 F. Supp. at 1214-15. See also Philips Publishing, 517 F. Supp. at 1313.\*

\*/ In Federal Election Commission v. Phillips Publishing Co., 517 F. Supp. 1308 (D.D.C. 1981), the court held that printing and distributing a letter soliciting subscriptions was a normal, legitimate press function and therefore was covered by the press exemption. Similarly, in Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981), the court concluded that (Footnote Continued)

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However, it is precisely the General Counsel's argument that when the media corporation published a composition that contained a political advertisement or political solicitation, it was no longer acting within its legitimate press function. Congress and the courts have permitted only those compositions that disseminate news, information and opinion; they did not exempt media corporations from every aspect of the prohibition on corporate political activity (See General Counsel's Brief at page 4).

2. The Purpose of the Hustler Advertisement

Respondents assert that the General Counsel did not apply the "purpose test" to this matter. See Phillips Publishing, 517 F. Supp. at 1313. As the General Counsel's Brief states, one cannot readily discern Hustler's "purpose" from the text of the composition at issue. It was clear that the Falwell Advertisement was a "parody" because it said on its face that it was an, "AD PARODY-NOT TO BE TAKEN SERIOUSLY". See Attachment 9 to the General Counsel's Brief. It was also clear that the other compositions cited by counsel were "parodies" because they were so outrageous and absurd that they were easily recognizable as parody or satire. See Attachments 11, 12, and 13 to the General Counsel's Brief. However, the composition at issue was so realistic that most readers would conclude that the Hustler Advertisement was a genuine advertisement and not a commentary in the form of parody. The Hustler Advertisement advocated Ronald

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(Footnote Continued)

dissemination of a tape for the purposes of publicizing the magazine would fall within the press entity's legitimate functions, and would be covered by the exemption.

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Reagan's reelection, praised the Republican party in general and the RNC in particular, solicited contributions, and contained a disclaimer statement and generally utilized a format typical of political advertisements. Nothing on the face of the advertisement provided any indication that its "purpose" was other than the solicitation of political contributions. The General Counsel refers the Commission to the composition at issue and its Brief at pages 5 through 8. In the opinion of the General Counsel, the Hustler advertisement constitutes a solicitation for contributions to a political committee.

**LARRY FLYNT'S PERSONAL LIABILITY**

Mr. Flynt's affidavit in this matter states that he did not place the Hustler Advertisement in his personal capacity. Therefore, there does not appear to be probable cause to believe Mr. Flynt violated 2 U.S.C. § 441d(a).

**DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

**RECOMMENDATIONS**

1. Find no probable cause to believe that Larry Flynt violated 2 U.S.C. § 441d(a).

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2. Find probable cause to believe that Hustler Magazine Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc., and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441b and 441d(a).
3. Approve and send the proposed conciliation agreement with Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher.
4. Approve and send the attached letter.

9/11/85  
Date

Charles N. Steele  
Charles N. Steele  
General Counsel

**Attachments**

1. Respondents' reply Brief received by the Commission on August 9, 1985.
2. Proposed Conciliation Agreement.
3. Letter to Respondents' Counsel

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Respondents' position with respect to the General Counsel's recommendation that the Commission find probable cause to believe respondents violated the Campaign Act remains the same as was stated in the March 7 response to the Commission's reason to believe finding. In addition, the legal and factual arguments asserted in the March 7 response are equally relevant to the General Counsel's probable cause brief. In order to avoid needless duplication, we hereby incorporate by reference the March 7 response and respond herein to the new arguments raised by the General Counsel in its Brief.

I. The Scope of the 2 U.S.C. § 431(9)(B)(i) Press Exemption

Although 2 U.S.C. § 441b of the Campaign Act prohibits any corporation from making a contribution or expenditure in connection with a federal election, the statute specifically exempts:

[A]ny . . . commentary, or editorial distributed through the facilities of any . . . magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

As the General Counsel notes, the legislative history of the press exemption "shows that Congress desired a broad

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exemption coextensive with the First Amendment." Brief at 4.<sup>1/</sup>  
Despite this clear legislative history, the General Counsel attempts to read a limitation into the press exemption by suggesting that the Reader's Digest case supports the proposition that the press exemption only covers "compositions that disseminate news, information and opinion." Brief at 4. See Reader's Digest Association, 509 F. Supp. at 1214.

This suggestion of the General Counsel ignores the plain language of 2 U.S.C. § 431(9)(B)(i) (which includes the words "commentary" and "editorial" in describing what compositions are covered by the exemption), as well as the clear rule of Reader's Digest and Federal Election Commission v. Phillips Publishing, 517 F. Supp. 1308 (D.D.C. 1981). Far from limiting the scope of the press exemption, the Reader's Digest and Phillips Publishing cases stand for the proposition that the press exemption covers those activities that fall within a periodical's "legitimate

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<sup>1/</sup> The House Report specifically noted the broad nature of the press exemption: "[I]t is not the intent of Congress in the present legislation to limit or burden in any way the First Amendment freedoms of press and of association. Thus, [the press exemption] assures the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns." H.R. Rep. No. 1239, 93d Cong. 2d Sess. 4 (1974) (emphasis supplied). See also Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1312 (D.D.C. 1981). The General Counsel attempts to read a limitation into this broad statement by claiming that the Report only exempts those compositions that "cover and comment on political campaigns." Brief at 4. Since the press may wish to "cover and comment" on politicians during non-election years, this interpretation completely ignores the broad protection afforded to political speech by the first amendment.

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press function" or "its magazine publishing function." Reader's Digest, 509 F. Supp. at 1214-15. See also Phillips Publishing, 517 F. Supp. at 1313.

More crucially, the General Counsel's discussion of the scope of the press exemption completely fails to address the issue of what test should be used to judge the applicability of the exemption to a given composition. In their March 7, 1985 submission, respondents argued that the test is the purpose of the composition--the test applied in the Phillips Publishing case. See Phillips Publishing, 517 F. Supp. at 1313. The applicability of the purpose test has been affirmed by other courts and by the Commission. See Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396-97 (D.C. Cir. 1981); Epstein v. Federal Election Commission, Fed. Election Camp. Fin. Guide (CCH) ¶ 9161 (D.D.C. Sept. 23, 1981); "Donation of Television Airtime to Political Parties," Advisory Opinion 1982-44, Federal Election Camp. Fin. Guide (CCH) ¶ 5691 (Aug. 27, 1982); First General Counsel's Report at 4, In the Matter of Planned Parenthood Affiliates, MUR 1377 (Apr. 14, 1982). As argued below, the General Counsel's failure to address this issue removes any semblance of objectivity from his discussion of whether the Hustler parody is protected by the press exemption.

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II. The Hustler Parody Clearly Falls Within the Scope of the 2 U.S.C. § 431(9)(B)(i) Press Exemption

The General Counsel does not dispute that Hustler magazine has a practice of publishing satires and parodies. Brief at 5. It is also uncontroverted that the purpose of the Hustler parody was to serve as a commentary by Hustler magazine on political parties and political contribution solicitations. See Affidavit of Larry Flynt at ¶ 7 and Affidavit of Michael Heimowitz at ¶ 3. The details of the publication of Hustler parody, as set forth in the affidavits previously submitted by respondents, are also not disputed by the General Counsel. It is further uncontroverted that the publication of satires or parodies is entirely consistent with the normal or legitimate press function of Hustler.

Since the General Counsel does not dispute that the purpose of the Hustler parody, as evidenced by respondents' affidavits, was to parody political parties and political contribution solicitations, and since the General Counsel does not deny that the publication of such satires or parodies is part of Hustler's normal or legitimate press function, the Hustler parody is clearly exempt from the requirements of 2 U.S.C. §§ 441b and 441d(a). Essentially, the General Counsel does not dispute that the Hustler parody meets the test for what compositions are covered by the press exemption set forth in Reader's Digest and Phillips Publishing. There is no basis in law or in fact for the General Counsel's assertions that the Hustler parody "specifically solicited contributions" and

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"facilitated and participated in political fundraising activities." Brief at 4, 7.

In contrast to the specific purpose test used in Reader's Digest and Phillips Publishing, as well as in other election law cases and in Commission actions, the General Counsel employs an undifferentiated subjective standard in arguing that the Hustler parody is actually a real solicitation for contributions to the Republican party. The General Counsel argues that "[m]ost readers would conclude that the Hustler advertisement is a genuine advertisement and not a commentary." Brief at 5. The General Counsel also argues that the Hustler parody, in contrast to the other advertisement parodies in the November 1983 issue, is not "easily recognizable" as a satire or parody and is "extremely realistic." Brief at 5-6. Because the Hustler parody contained the correct address of the Republican party and an apparent solicitation for contributions, along with a disclaimer statement similar in format to those required by the Campaign Act, the General Counsel concludes that the Hustler parody must be a real solicitation and that "Hustler went beyond the press exemption's limits." Brief at 6-8.

Conjecture as to subjective reader reaction to the Hustler parody, however, is irrelevant to the question of whether the Hustler parody is protected by the press exemption. Indeed, the General Counsel is unable to cite any legal authority to support his subjective test, nor does he present any factual authority as to how the Hustler parody was, in fact, interpreted. Whether the

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first amendment protects a press composition from the requirements of the Campaign Act should not depend on completely speculative assertions as to what "most readers would conclude."

The General Counsel also maintains that an accurate disclaimer is necessary to inform readers who was responsible for placing the parody in Hustler. Brief at 8. This suggestion assumes that respondents had a duty to provide such a disclaimer. Because the composition is a parody to which the press exemption applies, however, respondents had no such duty.

### III. Larry Flynt Did Not Violate the Campaign Act

The General Counsel, after reviewing an affidavit filed in this matter by Mr. Larry Flynt, concluded that Mr. Flynt, in his personal capacity, did not violate 2 U.S.C. § 441d(a) of the Campaign Act. Brief at 9. This conclusion, and the resulting recommendation to the Commission, is based upon the General Counsel's acknowledgement that Mr. Flynt did not personally place the Hustler parody in the November 1983 issue. Respondents support the General Counsel's recommendation, as far as it goes, because it follows a correct assessment that there is no evidence personally connecting Mr. Flynt with the Hustler parody. However, because it is respondents' position that the Hustler parody falls squarely within the press exemption of the Campaign Act, neither Mr. Flynt, nor the other respondents in this matter, should be found by the Commission to have violated the Campaign Act in any way.

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Conclusion

Accordingly, there is no legal or factual basis for the General Counsel's recommendation that the Commission find probable cause to believe respondents violated the Campaign Act. The General Counsel is unable to produce any evidence to show that the Hustler parody was meant to be an actual solicitation for contributions on behalf of the Republican party, and the General Counsel has failed to identify what legal test should be used to determine whether the 2 U.S.C. § 431(9)(B)(i) press exemption applies to respondents. Respondents have argued, citing appropriate authority, that the Hustler parody was intended as a parody and as such, falls within the scope of the press exemption. Respondents therefore were not required to comply with relevant provisions of the Campaign Act in placing the Hustler parody in the November 1983 issue of Hustler.

For the foregoing reasons, respondents respectfully request that the Commission apply the 2 U.S.C. § 431(9)(B)(i) press exemption to the Hustler parody, find no probable cause to believe respondents violated 2 U.S.C. §§ 441b and 441d(a) and close the file in this matter under review.

Respectfully submitted,

DATE:

August 19, 1985

H. Richard Mayberry Jr.  
H. Richard Mayberry Jr.

85040554990

*Stephen M. Griffin*  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr.  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651  
"A Concerned Citizen"  
Larry Flynt  
Hustler Magazine, Inc. and  
Larry Flynt, as publisher  
Larry Flynt Publications, Inc.  
and Larry Flynt, as  
publisher

Dear Mr. Mayberry:

On . . . , 1985, the Commission determined that there is probable cause to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, committed violations of 2 U.S.C. §§ 441d(a) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended, in connection with an advertisement placed in the November 1983 issue of Hustler magazine. At that time, the Commission also determined that there is no probable cause to believe that Larry Flynt, in his individual capacity, violated 2 U.S.C. § 441d(a).

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

Attachment 3

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Letter to H. Richard Mayberry  
Page 2

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Matt Gerson, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

Enclosure  
Conciliation Agreement

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Att 3, p. 2

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 632-8622

July 16, 1985

GCC# 8620  
Gerson

GENERAL COUNSEL

P2: 45

BY MESSENGER

Matthew Gerson, Esquire  
Office of General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: MUR 1651 - Request for Enlargement of Time

Dear Mr. Gerson:

On behalf of our clients, Larry Flynt, Larry Flynt Publications, Inc., and Hustler Magazine, Inc., we hereby request an enlargement of time until August 9, 1985 in order to respond to the General Counsel's Brief, which we recieved on July 5, 1985, in the above-referenced matter.

This additional time is required to advise our clients and to properly respond to the General Counsel's Brief. An exceptionally heavy caseload and previously scheduled staff vacations makes the current fifteen-day response schedule difficult if not impossible to meet.

Thank you in advance for your anticipated cooperation with this request.

Sincerely,

*H. Richard Mayberry, Jr.*  
H. Richard Mayberry, Jr.

HRM/reh  
cc: David Kahn, Esquire

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LAW OFFICE OF  
**H. RICHARD MAYBERRY, JR.**  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006

BY MESSENGER

Matthew Gerson, Esquire  
Office of General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

JUL 16 P 2: 45

GENERAL COUNSEL

GCC#8259

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

85 AUG 9 11 41 AM  
GENERAL COUNSEL

In Re: )  
)  
)  
Larry Flynt, Hustler )  
Magazine, Inc. and Larry )  
Flynt, as publisher, and )  
Larry Flynt Publications, )  
Inc., and Larry Flynt, as )  
publisher )

MUR 1651

RESPONSE TO GENERAL COUNSEL'S  
PROBABLE CAUSE BRIEF

Respondents in the captioned matter hereby respond to the Brief of the General Counsel, received July 5, 1985, whereby the General Counsel concluded that the Federal Election Commission ("Commission") had probable cause to believe that respondents had violated 2 U.S.C. §§ 441d and 441b of the Federal Election Campaign Act of 1971, as amended ("Campaign Act") because of their publication of a parody of political parties and political contribution solicitations that appeared in the November 1983 issue of Hustler magazine (hereinafter the "Hustler parody").

On March 7, 1985, respondents filed with the Commission a detailed response to the Commission's earlier reason to believe finding. Respondents argued that the Hustler parody is not subject to the requirements of the Campaign Act because it is squarely within the scope of the 2 U.S.C. § 431(9)(B)(i) press exemption.

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Respondents' position with respect to the General Counsel's recommendation that the Commission find probable cause to believe respondents violated the Campaign Act remains the same as was stated in the March 7 response to the Commission's reason to believe finding. In addition, the legal and factual arguments asserted in the March 7 response are equally relevant to the General Counsel's probable cause brief. In order to avoid needless duplication, we hereby incorporate by reference the March 7 response and respond herein to the new arguments raised by the General Counsel in its Brief.

I. The Scope of the 2 U.S.C. § 431(9)(B)(i) Press Exemption

Although 2 U.S.C. § 441b of the Campaign Act prohibits any corporation from making a contribution or expenditure in connection with a federal election, the statute specifically exempts:

[A]ny . . . commentary, or editorial distributed through the facilities of any . . . magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

As the General Counsel notes, the legislative history of the press exemption "shows that Congress desired a broad

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exemption coextensive with the First Amendment." Brief at 4.<sup>1/</sup> Despite this clear legislative history, the General Counsel attempts to read a limitation into the press exemption by suggesting that the Reader's Digest case supports the proposition that the press exemption only covers "compositions that disseminate news, information and opinion." Brief at 4. See Reader's Digest Association, 509 F. Supp. at 1214.

This suggestion of the General Counsel ignores the plain language of 2 U.S.C. § 431(9)(B)(i) (which includes the words "commentary" and "editorial" in describing what compositions are covered by the exemption), as well as the clear rule of Reader's Digest and Federal Election Commission v. Phillips Publishing, 517 F. Supp. 1308 (D.D.C. 1981). Far from limiting the scope of the press exemption, the Reader's Digest and Phillips Publishing cases stand for the proposition that the press exemption covers those activities that fall within a periodical's "legitimate

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<sup>1/</sup> The House Report specifically noted the broad nature of the press exemption: "[I]t is not the intent of Congress in the present legislation to limit or burden in any way the First Amendment freedoms of press and of association. Thus, [the press exemption] assures the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns." H.R. Rep. No. 1239, 93d Cong. 2d Sess. 4 (1974) (emphasis supplied). See also Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1312 (D.D.C. 1981). The General Counsel attempts to read a limitation into this broad statement by claiming that the Report only exempts those compositions that "cover and comment on political campaigns." Brief at 4. Since the press may wish to "cover and comment" on politicians during non-election years, this interpretation completely ignores the broad protection afforded to political speech by the first amendment.

press function" or "its magazine publishing function." Reader's Digest, 509 F. Supp. at 1214-15. See also Phillips Publishing, 517 F. Supp. at 1313.

More crucially, the General Counsel's discussion of the scope of the press exemption completely fails to address the issue of what test should be used to judge the applicability of the exemption to a given composition. In their March 7, 1985 submission, respondents argued that the test is the purpose of the composition--the test applied in the Phillips Publishing case. See Phillips Publishing, 517 F. Supp. at 1313. The applicability of the purpose test has been affirmed by other courts and by the Commission. See Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396-97 (D.C. Cir. 1981); Epstein v. Federal Election Commission, Fed. Election Camp. Fin. Guide (CCH) ¶ 9161 (D.D.C. Sept. 23, 1981); "Donation of Television Airtime to Political Parties," Advisory Opinion 1982-44, Federal Election Camp. Fin. Guide (CCH) ¶ 5691 (Aug. 27, 1982); First General Counsel's Report at 4, In the Matter of Planned Parenthood Affiliates, MUR 1377 (Apr. 14, 1982). As argued below, the General Counsel's failure to address this issue removes any semblance of objectivity from his discussion of whether the Hustler parody is protected by the press exemption.

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.. II. The Hustler Parody Clearly Falls Within the Scope of the 2 U.S.C. § 431(9)(B)(i) Press Exemption

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The General Counsel does not dispute that Hustler magazine has a practice of publishing satires and parodies. Brief at 5. It is also uncontroverted that the purpose of the Hustler parody was to serve as a commentary by Hustler magazine on political parties and political contribution solicitations. See Affidavit of Larry Flynt at ¶ 7 and Affidavit of Michael Heimowitz at ¶ 3. The details of the publication of Hustler parody, as set forth in the affidavits previously submitted by respondents, are also not disputed by the General Counsel. It is further uncontroverted that the publication of satires or parodies is entirely consistent with the normal or legitimate press function of Hustler.

Since the General Counsel does not dispute that the purpose of the Hustler parody, as evidenced by respondents' affidavits, was to parody political parties and political contribution solicitations, and since the General Counsel does not deny that the publication of such satires or parodies is part of Hustler's normal or legitimate press function, the Hustler parody is clearly exempt from the requirements of 2 U.S.C. §§ 441b and 441d(a). Essentially, the General Counsel does not dispute that the Hustler parody meets the test for what compositons are covered by the press exemption set forth in Reader's Digest and Phillips Publishing. There is no basis in law or in fact for the General Counsel's assertions that the Hustler parody "specifically solicited contributions" and

"facilitated and participated in political fundraising activities." Brief at 4, 7.

In contrast to the specific purpose test used in Reader's Digest and Phillips Publishing, as well as in other election law cases and in Commission actions, the General Counsel employs an undifferentiated subjective standard in arguing that the Hustler parody is actually a real solicitation for contributions to the Republican party. The General Counsel argues that "[m]ost readers would conclude that the Hustler advertisement is a genuine advertisement and not a commentary." Brief at 5. The General Counsel also argues that the Hustler parody, in contrast to the other advertisement parodies in the November 1983 issue, is not "easily recognizable" as a satire or parody and is "extremely realistic." Brief at 5-6. Because the Hustler parody contained the correct address of the Republican party and an apparent solicitation for contributions, along with a disclaimer statement similar in format to those required by the Campaign Act, the General Counsel concludes that the Hustler parody must be a real solicitation and that "Hustler went beyond the press exemption's limits." Brief at 6-8.

Conjecture as to subjective reader reaction to the Hustler parody, however, is irrelevant to the question of whether the Hustler parody is protected by the press exemption. Indeed, the General Counsel is unable to cite any legal authority to support his subjective test, nor does he present any factual authority as to how the Hustler parody was, in fact, interpreted. Whether the

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first amendment protects a press composition from the requirements of the Campaign Act should not depend on completely speculative assertions as to what "most readers would conclude."

The General Counsel also maintains that an accurate disclaimer is necessary to inform readers who was responsible for placing the parody in Hustler. Brief at 8. This suggestion assumes that respondents had a duty to provide such a disclaimer. Because the composition is a parody to which the press exemption applies, however, respondents had no such duty.

### III. Larry Flynt Did Not Violate the Campaign Act

The General Counsel, after reviewing an affidavit filed in this matter by Mr. Larry Flynt, concluded that Mr. Flynt, in his personal capacity, did not violate 2 U.S.C. § 441d(a) of the Campaign Act. Brief at 9. This conclusion, and the resulting recommendation to the Commission, is based upon the General Counsel's acknowledgement that Mr. Flynt did not personally place the Hustler parody in the November 1983 issue. Respondents support the General Counsel's recommendation, as far as it goes, because it follows a correct assessment that there is no evidence personally connecting Mr. Flynt with the Hustler parody. However, because it is respondents' position that the Hustler parody falls squarely within the press exemption of the Campaign Act, neither Mr. Flynt, nor the other respondents in this matter, should be found by the Commission to have violated the Campaign Act in any way.

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Conclusion

Accordingly, there is no legal or factual basis for the General Counsel's recommendation that the Commission find probable cause to believe respondents violated the Campaign Act. The General Counsel is unable to produce any evidence to show that the Hustler parody was meant to be an actual solicitation for contributions on behalf of the Republican party, and the General Counsel has failed to identify what legal test should be used to determine whether the 2 U.S.C. § 431(9)(B)(i) press exemption applies to respondents. Respondents have argued, citing appropriate authority, that the Hustler parody was intended as a parody and as such, falls within the scope of the press exemption. Respondents therefore were not required to comply with relevant provisions of the Campaign Act in placing the Hustler parody in the November 1983 issue of Hustler.

For the foregoing reasons, respondents respectfully request that the Commission apply the 2 U.S.C. § 431(9)(B)(i) press exemption to the Hustler parody, find no probable cause to believe respondents violated 2 U.S.C. §§ 441b and 441d(a) and close the file in this matter under review.

Respectfully submitted,

DATE:

August 9, 1985

H. Richard Mayberry Jr.  
H. Richard Mayberry Jr.

85040555003

*Stephen M. Griffin*  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents

85040555004



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr.  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651

Dear Mr. Mayberry:

This is in reference to your letter dated July 16, 1985, requesting an extension until August 9, 1985 to respond to the General Counsel's Brief. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due no later than August 9, 1985.

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

Sincerely,

Charles N. Steele  
General Counsel

  
By: Kenneth A. Gross  
Associate General Counsel

85040535005

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 622-0622

Gerson

JUL 16 P 2: 45

July 16, 1985

BY MESSENGER

Matthew Gerson, Esquire  
Office of General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: MUR 1651 - Request for Enlargement of Time

Dear Mr. Gerson:

On behalf of our clients, Larry Flynt, Larry Flynt Publications, Inc., and Hustler Magazine, Inc., we hereby request an enlargement of time until August 9, 1985 in order to respond to the General Counsel's Brief, which we recieved on July 5, 1985, in the above-referenced matter.

This additional time is required to advise our clients and to properly respond to the General Counsel's Brief. An exceptionally heavy caseload and previously scheduled staff vacations makes the current fifteen-day response schedule difficult if not impossible to meet.

Thank you in advance for your anticipated cooperation with this request.

Sincerely,

*H. Richard Mayberry, Jr.*  
H. Richard Mayberry, Jr.

HRM/reh  
cc: David Kahn, Esquire

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr.  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651

Dear Mr. Mayberry:

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

Sincerely,

Charles N. Steele  
General Counsel

By: Kenneth A. Gross  
Associate General Counsel

85040555007



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
OFFICE OF THE FEC  
COMMISSION SECRETARY

85 JUL 8 P 2: 57

July 8, 1985

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele *ONS*  
General Counsel *1/2m*

SUBJECT: Erratum: MUR 1651

**SENSITIVE**

On June 28, 1985, the General Counsel's Office transmitted to you and the Respondents the General Counsel's Brief on the legal and factual issues involved in MUR 1651. The cover memorandum accompanying the Brief transmitted to you inadvertently stated that the General Counsel intends to recommend that the Commission find no probable cause to believe that the Respondents violated the Act. In fact, as the Brief states, the General Counsel intends to recommend that the Commission find probable cause to believe that the Respondents violated the Act.

This Office will report to the Commission after reviewing the Respondents' reply to the General Counsel's Brief.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

June 28, 1985

RECEIVED  
OFFICE OF THE FEC  
COMMISSION SECRETARY  
85 JUN 28 11:18

MEMORANDUM

TO: The Commission  
FROM: Charles N. Steele *CNS*  
General Counsel  
SUBJECT: MUR #1651

Attached for the Commission's review is a brief stating the General Counsel's position on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the Respondents of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe were mailed on June 28, 1985. Following receipt of the Respondents' reply to this notice, this Office will make a further report to the Commission.

Attachments

- 1. Brief
- 2. Letter to Respondents' Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

|                                |   |          |
|--------------------------------|---|----------|
| In the Matter of               | ) |          |
|                                | ) |          |
| "A Concerned Citizen"          | ) | MUR 1651 |
|                                | ) |          |
| Larry Flynt                    | ) |          |
| Hustler Magazine, Inc.         | ) |          |
| and Larry Flynt, as publisher  | ) |          |
| Larry Flynt Publications, Inc. | ) |          |
| and Larry Flynt, as publisher  | ) |          |

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

The Commission received a complaint concerning a full page advertisement in the November 1983 issue of Hustler Magazine (hereinafter "Hustler Advertisement"). The Hustler Advertisement lauded the accomplishments of, and urged support for, President Reagan and the Republican party. It also solicited contributions to the Republican National Committee (hereafter "RNC") and contained the correct address to which to mail contributions to the RNC. However, the Hustler Advertisement did not contain an adequate disclaimer statement. It merely stated: "PAID FOR BY A CONCERNED CITIZEN." See Attachment 1.

It was extremely difficult to determine the identity of the so-called "Concerned Citizen." Communications with Hustler Magazine representatives to find out this information proved futile. Thus, the Commission, on November 27, 1984, could only find reason to believe that, "the person or persons identified as 'Concerned Citizen' violated the Act." The Commission sent the reason to believe notification to, "'Concerned Citizen' care of the Republican National Committee." The RNC's counsel responded

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that it did not know the "Concerned Citizen's" identity. See Attachment 2.

In an effort to identify the "Concerned Citizen," the Commission issued an Order to Submit Written Answers to Larry Flynt Publications, Inc. ("LFP"). See Attachment 3.

Larry Flynt responded that Larry Flynt, the publisher of Hustler Magazine, Inc., "placed the said advertisement." Mr. Flynt objected to the question asking who "paid for the said advertisement." See Attachment 4.

On the basis of the foregoing information, the Commission, on February 11, 1985, found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc., and Larry Flynt, as publisher, and LFP and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b.

The reason to believe notification letter mailed to Mr. Flynt contained an Order to Submit Written Answers. See Attachment 5. Mr. Flynt's answer to every part of every question except one was:

Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Readers Digest Association v. F.E.C..... Privileged under First Amendment. See Attachment 6.

Mr. Flynt's counsel submitted other documents that revealed that Mr. Flynt, in his capacity as Hustler's publisher and editor, prepared and published the advertisement, "as a political parody of the Republican party." See Attachments 7 and 8.

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It is the General Counsel's Opinion that the so-called "political parody" was a political advertisement that facilitated, and participated in, political fundraising. Thus, the Hustler Advertisement did not fall within the "media exemption" and was an unlawful corporate expenditure.

## II. LEGAL ANALYSIS

The Act prohibits "any corporation whatever" from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a). That prohibition applies to all media corporations unless their activities fall within the specific exemption for:

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. § 431(9)(B)(1)

Because Hustler magazine is not owned or controlled by a political party, political committee, or candidate, the issue is whether 2 U.S.C. § 431(9)(B)(i) exempts a media corporation from the Act's prohibition against corporate expenditures when that corporation publishes a composition that specifically solicits contributions to a political party.

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1. The Media Exemption

The media exemption is designed to avoid a conflict between the Act and the First Amendment. Indeed, the legislative history shows that Congress desired a broad exemption coextensive with the First Amendment. Importantly, Congress expressly limited the exemption to news stories, commentaries and editorials; the press was not exempted from every aspect of the prohibition on corporate political activity. Thus, corporations are subject to laws of general applicability and if a composition, e.g., an advertisement or solicitation, is not a news story, commentary, or editorial, it is prohibited as a corporate contribution. See Branzburg v. Hayes, 408 U.S. 665 682-83 (1972).

It is difficult to discern which compositions Congress meant to include in the exemption. The House report suggests that only those compositions that "cover and comment on political campaigns" are exempted<sup>1/</sup>. In Reader's Digest Association, Inc. v. F.E.C., 509 F.Supp 1210 (S.D.N.Y. 1981), the court concluded that the statute only permits those compositions that disseminate news, information and opinion. The Hustler advertisement, however, specifically solicited contributions and, by definition, did not exclusively comment or provide opinion on, or disseminate news about, the campaign.

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<sup>1/</sup> "Those clauses make it plain that it is not the intent of Congress in the present legislation to limit or burden in any way the First Amendment freedom of the press and association. [§431(9)(B)(1)] assures the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239 93d Cong., 2d Sess. 4 (1974).

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A. Is the Hustler Advertisement A Commentary?

i. Parody

Despite Mr. Flynt's referring to the Hustler Advertisement as an advertisement, he asserts that it is a parody of the Republican party, and, presumably, commentary about American political campaigns. See Attachment 7. Counsel's "Response" states that Hustler has a practice of publishing satire and parodies.

As a part of its satirical function, Hustler often prints advertisements which are not actual advertisements but which appear to be. In fact the November 1983 issue of Hustler contained three such advertisements in addition to the [Hustler] advertisement." See Attachment 8, pp. 5-6.

Most readers would conclude that the Hustler advertisement is a genuine advertisement and not a commentary. See Attachment 1. In addition, one composition counsel refers to specifically identifies itself as a parody by including the statement: "AD PARODY - NOT TO BE TAKEN SERIOUSLY". See Attachment 9 (the "Falwell parody"). The Falwell parody was also listed in the index under the title, "FICTION- Ad & Personality Parody." See Attachment 10. Other "parodies" cited by counsel were an apparent advertisement for Metropolitan Life Insurance and an apparent advertisement for Toyota cars. See Attachments 11 and 12. The magazine includes several other fictitious or "satirical" compositions and advertisements including one in which the Pope appears in a Hustler subscription solicitation. See Attachment 13.

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Each of these so-called parodies, in contrast to the Hustler Advertisement at issue, are outrageous and absurd and easily recognizable as parody or satire. Each of them easily fall within the dictionary definition of parody: a feeble or ridiculous imitation. Webster's Ninth New Collegiate Dictionary 857 (1984).

Thus, while the so-called parodies that counsel refers to may demonstrate that one of Hustler Magazine's normal and legitimate functions is to entertain its readers with this type of satire, the Hustler Advertisement is extremely realistic and not readily recognized as satire. In fact, Hustler's rebuttal argument is weakened because the magazine identified the Falwell parody as a parody and failed to identify the Hustler Advertisement as parody when its satirical nature was unclear.

ii. Solicitation

The Hustler Advertisement concluded by stating:

Support your local Republican Party or send your contributions to the Republican National Committee, 310 1st Street S.E., Washington, DC. 20003. See Attachment 1.

The fact that the realistic looking advertisement contained a direct solicitation for financial support and provided the RNC's complete mailing address 2/ is convincing evidence that this composition was not the type of commentary that Congress sought to protect. It is the General Counsel's opinion that even if the

2/ Hustler Magazine's research director provided the Commission with an August 10, 1983 inter office memorandum confirming that prior to the Hustler Advertisement's publication, he had confirmed by telephone that the address included in the Hustler Advertisement was the proper address for Republican contributions. See Attachment 14.

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majority of the Hustler Advertisement contained protected commentary, once Hustler facilitated and participated in political fundraising activities it went beyond the normal and legitimate functions of a press entity. See F.E.C. v. Phillips Pub., Inc., 517 F. Supp. 1308, 1313 (D.D.C. 1981).

iii. The Disclaimer Statement:  
"Paid for by A Concerned Citizen"

8 5 0 4 0 5 5 0 1 6  
In addition to the text's advocating Ronald Reagan's reelection, praising the Republican party in general and the RNC in particular, soliciting contributions, and utilizing a format typical of political advertisements, the Hustler Advertisement contains a disclaimer statement similar in format to that which is required to be on all political solicitations. The Act includes the disclaimer requirement so an audience can easily identify one who makes political communications. By not clearly identifying the "Concerned Citizen," see 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(a)(1)(iv)(A), or notifying readers that the Hustler Advertisement was an "Ad Parody - Not To Be Taken Seriously", or giving readers the opportunity to recognize that the Hustler Advertisement was political commentary, Hustler went beyond the press exemption's limits. Counsel's response misses the essence of the disclaimer requirement by stating:

The mere fact that the Republican advertisement was in Hustler demonstrates that it is a parody or satirical commentary, not an actual solicitation for contributions to or endorsement of the Republican party. It is highly improbable that the Republican party would place or authorize such a solicitation in the pages of Hustler magazine. See Attachment 8, p. 6.

The Act provides an incredulous reader the opportunity to look to the disclaimer to find out what entity chose a particular advertisement or forum. Counsel's suggestion that it is unnecessary to provide an accurate disclaimer in this instance is refuted by the procedural facts of this case; both the entity who initially brought the Hustler Advertisement to the Commission's attention and the Commission were unable to identify who might be responsible for the solicitation. In fact, it took a formal Order from the Commission before the Commission ascertained the identity of the entity responsible for the solicitation. The law entitles people confronted by political solicitations, as well as the Commission, to an immediate reference to the solicitor's identity.

### III. CONCLUSIONS

The General Counsel concludes that the Hustler Advertisement is not a news story, editorial or commentary protected by the media exemption. In this case, a media corporation violated 2 U.S.C. 441b by making an expenditure to publish an advertisement that facilitated and sought to aid political fundraising activities by soliciting contributions to the RNC. This Office recommends that the Commission find probable cause to believe that Hustler Magazine, Inc., and Larry Flynt, as publisher, and LFP and Larry Flynt, as publisher, violated 2 U.S.C. § 441b. Such a finding would deter media corporations from soliciting contributions in this manner and, thus, making corporate contributions.

The General Counsel also concludes that the solicitation required an adequate disclaimer statement. 2 U.S.C. § 441d.

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Because the media corporation is subject to the § 441d requirements by 2 U.S.C. § 431(11), this Office recommends that the Commission find probable cause to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and LFP and Larry Flynt, as publisher, violated 2 U.S.C. § 441d(a).

Mr. Flynt's affidavit states that he did not place the Hustler Advertisement in his personal capacity. See Attachment 7. Therefore, this Office does not recommend that the Commission find probable cause to believe that Mr. Flynt violated 2 U.S.C. § 441d(a).

#### IV. RECOMMENDATIONS

1. Find probable cause to believe that Hustler Magazine, Inc., and Larry Flynt, as publisher, and Larry Flynt Publications, Inc., and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441b and 441d(a).

Date

6/27/85

Charles N. Steele  
General Counsel

*Charles N. Steele*

#### Attachments

1. The "Hustler Advertisement" published in the November 1983 issue of Hustler magazine.
2. Letter dated December 17, 1984 from RNC Chief Counsel.
3. Order to Submit Written Answers issued to Larry Flynt Publications on December 7, 1984.
4. Larry Flynt's response to the December 7, 1984 Order received January 10, 1985.
5. Order to Submit Written Answers issued to Larry Flynt, et al. on February 11, 1985.
6. Mr. Flynt's response to the February 11, 1985 Order received by the Commission March 11, 1985.
7. Mr. Flynt's Affidavit.
8. Counsel's "Response" received March 7, 1985.
9. The "Falwell parody" printed on the inside front cover of the November 1983 issue of Hustler Magazine.
10. Index to the 1983 issue of Hustler Magazine.
11. The Metropolitan Life Insurance "parody" printed on the inside back cover of the November 1983 issue of Hustler Magazine.
12. The Toyota "parody" printed on the back cover of the November 1983 issue of Hustler magazine.
13. The Hustler subscription solicitation.
14. Memorandum from Mike Heimowitz to Glenn Hunter on August 10, 1983.

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STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.

- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee, 310 1st Street SE, Washington, D.C. 20003.

Attachment I

85040555019

Republican  
National  
Committee

600  
G-CCF 6044  
Received 12/19/84  
*Perin*

E. Mark Braden  
Chief Counsel

Catherine E. Gensior  
Michael A. Hess  
Deputy Chief Counsels

December 17, 1984

Lee Ann Elliott, Chairman  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C. 20463

ATTN: Thomas J. Whitehead

RE: MUR 1651  
Concerned Citizen

Dear Chairman Elliott:

I am responding to your December 11th letter to Concerned Citizen,  
c/o Republican National Committee.

Please be advised that no one claiming themselves as "a Concerned  
Citizen" resides at, or is associated with, the Republican National  
Committee. The Republican National Committee did not place an  
advertisement in the November, 1983, edition of Hustler magazine.  
No official or officer of the Republican National Committee had any  
prior knowledge, or has any present knowledge, of the party or  
parties purchasing this advertisement. No one at the Republican  
National Committee is aware of any contributions received which  
were a result of this particular advertisement.

If you should have questions in regard to my response, please do  
not hesitate to contact my office.

Very truly yours,



E. Mark Braden

EMB:jd

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10:58

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 1651  
 )  
 )  
 )

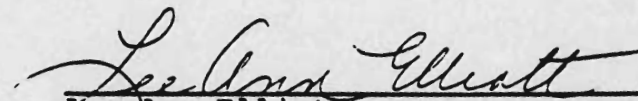
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt Publications  
2029 Century Park East  
Suite 3800  
Los Angeles, California 90067

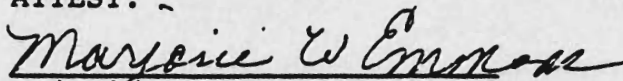
Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within \_\_\_\_\_ days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this *7th* day of *December*, 1984.

  
\_\_\_\_\_  
Lee Ann Elliott  
Chairman

ATTEST: -

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories

Attachment III

**INTERROGATORIES**

These interrogatories accompanied an Order to Submit Written Answers issued by the Commission on February 7, 1985

**INTRODUCTION:** In the November 1983, edition of Hustler magazine, there appeared a full page advertisement which began with the text: "Strengthening America's Economy Took Long Hours and Sweat and a President Who Knew How To Say NO." and ended with the text: "Paid for by a Concerned Citizen. Support your local Republican Party or send your contributions to the Republican National Committee. 310 1st Street, S.E. Washington, D.C. 20003."

In connection with that advertisement, you are directed to submit the following information:

1. The complete name and address of the person or persons who placed the said advertisement.
2. The name and address of the person or persons who paid for the said advertisement.

8504055022

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

\_\_\_\_\_)  
MATTER UNDER REVIEW 1651 )  
\_\_\_\_\_)

ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal Election Commission's Interrogatories of December 11, 1984, as follows:

INTERROGATORY NO. 1: The complete name and address of the person or persons who placed the said advertisement.

ANSWER:

Larry Flynt  
Publisher  
Hustler Magazine, Inc.  
2029 Century Park East, Suite 3800  
Los Angeles, California 90067

INTERROGATORY NO. 2: The name and address of the person or persons who paid for the said advertisement.

ANSWER: Objection. The administrative practices and procedures of 2 U.S.C. § 437g. including but not limited to notification of the allegations of the complaint, have not been complied with.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 1985.

  
\_\_\_\_\_  
Larry Flynt

Attachment IV

3504055025

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 "A Concerned Citizen" )  
 )  
 and ) MUR 1651  
 )  
 Larry Flynt, Hustler )  
 Magazine, Inc. and Larry )  
 Flynt, as publisher, and )  
 Larry Flynt Publications, )  
 Inc., and Larry Flynt, as )  
 publisher. )

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt, individually and in his  
 capacity as publisher of Larry Flynt  
 Publications, Inc. and Hustler Magazine, Inc.  
 Suite 3800  
 2029 Century Park East  
 Los Angeles, California 90067

Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its  
 investigation in the above-styled matter, the Federal Election  
 Commission hereby orders you to submit written answers to the  
 questions attached to this Order.

Such answers must be submitted under oath and must be  
 forwarded within ten days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission  
 has hereunto set her hand in Washington, D.C. on this 11th day of  
 February, 1985.

*Joan D. Aikens*  
 \_\_\_\_\_  
 Joan D. Aikens  
 Vice Chairman

ATTEST:  
*Marjorie W. Emmons*  
 \_\_\_\_\_  
 Marjorie W. Emmons  
 Secretary to the Commission

Attachment II

8504055024

## QUESTIONS TO LARRY FLYNT

Attached is a photocopy of the advertisement printed at page eight of the November 1983 issue of Hustler Magazine that is at issue in MUR 1651. Hereinafter that advertisement is referred to as the "Concerned Citizen's Advertisement" or "CCA."

1. The CCA states that it was, "PAID FOR BY A CONCERNED CITIZEN." Who or what is/are the individual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in the CCA? Please identify that (those) individual(s) or entity(ies) by name, address, occupation, daytime (PST) telephone number, corporate status and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc.
2. Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.
3. If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.
4. If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?
5. What was the typical or normal procedure for procuring advertising space in the November, 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.
- 5a. Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and

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Questions to Larry Flynt  
Page 2

relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement?. Include copies of any receipts pertaining to the order and payment.

6. Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

8504055026

ALL 6196

UNITED STATES OF AMERICA

BEFORE

THE FEDERAL ELECTION COMMISSION

In Re:

Larry Flynt, Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc., and Larry Flynt, as publisher.

MUR 1651

ANSWERS TO INTERROGATORIES OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal Election Commission's Interrogatories of February 11, 1985 as follows:

INTERROGATORY NO. 1: The CCA states that it was, "PAID FOR BY A CONCERNED CITIZEN." Who or what is/are the individual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in the CCA? Please identify that (those) individual(s) or entity(ies) by name, address, occupation, daytime (PST) telephone number, corporate status and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

Attachment VI

3504055027

INTERROGATORY NO. 2: Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 3: If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 4: If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

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INTERROGATORY NO. 5: What was the typical or normal procedure for procuring advertising space in the November 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

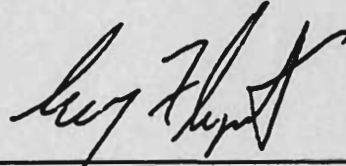
INTERROGATORY NO. 5(a): Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 6: Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

ANSWER: No.

I declare under penalty of perjury that the foregoing answers to interrogatories is true and correct. Executed on March , 1985.



---

LARRY FLYNT

85040555030

UNITED STATES OF AMERICA  
Before  
THE FEDERAL ELECTION COMMISSION

---

Larry Flynt, Hustler Magazine, Inc. and  
Larry Flynt, as Publisher and Larry Flynt  
Publications, Inc., and Larry Flynt, as  
Publisher.

---

MUR 1651

AFFIDAVIT OF LARRY FLYNT

Larry Flynt deposes and states:

1. I am publisher and editor of Hustler Magazine. The address of Hustler Magazine, Inc. is Suite 3800, 2029 Century Park East, Los Angeles, California 90067 and its telephone number is (213) 556-9200.

2. Hustler is a monthly magazine which publishes, among other things, articles and features which parody or satirize contemporary politics and culture.

3. Hustler derives its revenues from selling the magazine and advertising.

Attachment VII

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4. My responsibilities as publisher are of a creative nature to select and determine the editorial direction and policy for the magazine and then as editor to implement those directions and policies. Accordingly, as the editor, I have responsibility for the selection of articles and features of the magazine.

5. In my capacity as publisher and editor, I caused to be published in the November 1983 issue of Hustler the Republican advertisement which is the subject matter of MUR 1651, and which is attached as Exhibit "A" to this Affidavit.

6. In the summer of 1983, I decided to publish a parody of the Republican party. I directed Kelly Garrett, Editorial Director, to secure an article to serve as a starting point in the drafting process. I received from Bill Nirenberg, Director of Special Projects, a 1980 Time Magazine article, and redrafted it in August 1983 to be the Republican advertisement at issue. The Republican advertisement was printed in September 1983. I was not a candidate and Hustler was not owned or controlled directly or indirectly, by any political party or political committee when I decided to cause the publication of the Republican advertisement which is the subject matter of MUR 1651. Further, I was not a candidate and Hustler was not owned or controlled, directly or indirectly, by any political party or political committee when the November 1983 issue of Hustler was printed.

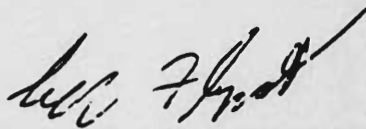
7. The purpose of the Republican advertisement was to satirize American political parties. No third person or organization purchased this advertisement.

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8. The Republican advertisement was not made with any direct or indirect contact with the White House, a Reagan-Bush re-election committee, the Republican National Committee or a local Republican party.

9. I did not place the Republican advertisement in my personal capacity. Larry Flynt Publications owns Hustler Magazine, and it is not otherwise involved in this matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March , 1985.



---

LARRY FLYNT

85040555033

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

In Re:  
  
Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher

MUR 1651

RESPONSE

The Respondents, by and through counsel, respond to the Democratic Congressional Campaign Committee ("DCCC") complaint challenging the lawfulness of a Republican advertisement in the the November 1983 issue of Hustler magazine as follows:

I. Statement of the Case<sup>1/</sup>

Hustler is a monthly magazine which publishes, among other things, articles and features which often parody or satirize contemporary politics and culture. Hustler derives its revenues from the sale of the magazine and advertising. Larry Flynt is publisher and editor of Hustler magazine. See Affidavit of Larry Flynt.

<sup>1/</sup> The procedural history of this action is generally set forth in the Respondents' Motion To Vacate The Reason To Believe Determination which is filed concurrently with this response.

Attachment VIII

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In the summer of 1983, Flynt decided to run a political parody of the Republican Party. He requested his editorial director, Kelly Garrett, to secure an article which would serve as a starting point to prepare the advertisement. Garrett in turn asked Michael Heimowitz, director of the research department, to comply with the Flynt request. Heimowitz secured a Time magazine advertisement from which the November 1983 Republican advertisement was taken. Flynt drafted the parody which is attached to this response as Exhibit #1. The purpose of the placement of the Republican advertisement in the November 1983 issue was to serve as a parody of the Republican Party. The advertisement was printed in September 1983. See Affidavits of Larry Flynt, Michael Heimowitz and Kelly Garrett.

II. The Hustler Advertisement Is Exempt From  
Federal Election Commission Regulation Under 2  
U.S.C. § 431(9)(B)(i)

Press activities in general and the Hustler advertisement in particular are exempt from regulation under the Federal Election Campaign Act of 1971, as amended ("Campaign Act").

A. The Nature And Scope Of The 2 U.S.C.  
§ 431(9)(B)(i) Press Exemption

The Campaign Act makes it illegal for any corporation to make a contribution or expenditure in connection with a Federal election. 2 U.S.C. § 441b(a). The statute creates an exclusion for:

[A]ny . . . commentary, or editorial distributed through the facilities of any . . . magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i) (the "press exemption"). See also, 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

In enacting the press exemption into law, Congress clearly intended to protect the press from government censorship and regulation of its activities:

[I]t is not the intent of Congress in the present legislation to limit or burden in any way the First Amendment freedoms of press and of association. Thus, [the press exemption] assures the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns.

H.R. Rep. No. 1239, 93rd Cong. 2nd Sess. 4 (1974) (emphasis added).

Only with this protection could the press fulfill its historic role of facilitating public debate on issues which may be controversial and not representative of majority opinion. Government investigation has a profound negative effect on the press and the First Amendment guarantees:

[F]reedom of the press is substantially eroded by an investigation of the press, even if 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. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the exemption.

Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981).

Accordingly, "[t]he legislative history of this section . . . indicates that Congress meant for the exception to be a

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broad one." Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1312 (D.D.C. 1981).

In Federal Election Commission v. Phillips Publishing, Inc. the court adopted from the Reader's Digest case, a circumspect two-step procedure for addressing substantial allegations that a press entity has violated federal election laws:

[T]he initial inquiry is limited to whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question. [citations omitted] If the press entity is not controlled or owned by a political party or candidate and is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.

517 F. Supp. at 1313.

Succinctly stated, the essential test for whether the activities in question fall within the press exemption is whether the activities fall within the periodical's "legitimate press function" or "its magazine publishing function." Reader's Digest at 1214-1215.

In Phillips Publishing the court evaluated whether the communication at issue was part of the publisher's normal functions as a press entity by examining the purpose of the communication at issue in that case -- solicitation materials. The court found: "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press

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functions, the press exemption applies." 517 F. Supp. 1313. The analysis of the press exemption in Reader's Digest Association and Phillips Publishing and the relevance of the purpose test have been adopted by other courts and the Commission. See Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396-397 (D.C. Cir. 1981); Epstein v. Federal Election Commission, Fed. Elec. Camp. Fin. Guide (CCH) ¶9161 (D.D.C. 1981); Advisory Opinion 1982-44, Fed. Elec. Camp. Fin. Guide (CCH) ¶5691 (August 27, 1982); In the Matter of Planned Parenthood Affiliates of California, MUR 1377, First General Counsel's Report at 4 (April 14, 1982). This analysis is applicable to the instant matter.

B. The Hustler Advertisement Is Within The Ambit Of The 2 U.S.C. § 431(9)(b)(i) Press Exemption

The Hustler advertisement clearly falls within the press exemption. The Hustler advertisement was intended to be a commentary by Hustler magazine on political parties and political contribution solicitations in the form of a parody or satire of a real solicitation for contributions. See, Affidavit of Larry Flynt at ¶7 and Michael Heimowitz at ¶3. This parody or satire was entirely consistent with the normal or legitimate press function of Hustler as a magazine which satirizes political activities and American culture.

Hustler magazine has a practice of publishing satires and parodies. As part of its satirical function, Hustler often prints advertisements which are not actual advertisements but which appear to be. In fact the November 1983 issue of Hustler

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contained three such advertisements in addition to the Republican advertisement. One was an apparent advertisement for Campari on the inside front cover, featuring a picture of Jerry Falwell. A second was an apparent advertisement for Metropolitan Life Insurance, appearing on the inside back cover. A third apparent advertisement for Toyota automobiles appeared on the back cover of the magazine. See Affidavit of Kelly Garrett, ¶2. Like the Republican advertisement, all three of these advertisements appear, upon first impression, to be actual advertisements. Also like the Republican advertisement, upon closer inspection and taking into account the context of Hustler magazine, the advertisements are clearly parodies or satires of actual advertisements.

The mere fact the Republican advertisement was in Hustler demonstrates that it is a parody or satirical commentary, not an actual solicitation for contributions to or endorsement of the Republican Party. It is highly improbable that the Republican Party would place or authorize such a solicitation in the pages of Hustler magazine. Moreover, it is also improbable that the Republicans would express themselves on the topic of their achievements in office in the terms "LONG HOURS AND SWEAT" which was printed in one-inch capital letters and repeated twice in the parody. Larry Flynt was not a candidate when the decision was made to publish and print the advertisement. Hustler magazine was not owned or controlled by the Republican Party or any other political party, political committee or candidate when the Republican advertisement parody was approved for publication and

printed. See Affidavit of Larry Flynt. Realistically, the Hustler advertisement did not benefit any candidate or the Republican Party.

There is no question whatsoever that Hustler is a magazine or periodical publication within the meaning of 2 U.S.C. § 431(9)(B)(i). Hustler is a publication in bound pamphlet form published each month of the year containing articles and information on various political, cultural, economic and other topics, and deriving its revenues from sales of the magazine and advertising.

The Republican advertisement thus meets all elements of the press exemption as set out by the Commission in Matter Under Review 1377 and the courts in Reader's Digest and Phillips Publishing. As a parody or satire it is not an "expenditure" within the meaning of the Campaign Act and is therefore not subject to the requirements of 2 U.S.C. §§ 441b and 441d(a).

Since the 2 U.S.C. § 441(9)(B)(i) press exemption clearly applies to the Republican advertisement, the Commission should take no further action and close the file in MUR 1651. In accordance with the procedures set out in the Reader's Digest Association case:

[U]ntil and unless the press exemption were found inapplicable, the FEC is barred from investigating the substance of the complaint. . . . Indeed all such investigation is permanently barred by the statute until it is shown that the press exemption is not applicable.

509 F. Supp. 1215. "Given the overriding protection of the First Amendment in this area," no further inquiry or action is

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warranted in MUR 1651. See In The Matter of Penthouse Magazine  
MUR 296(76), General Counsel's Preliminary Legal Analysis at 2  
(November 30, 1976).

Conclusion

For these reasons we respectfully request the Commission  
apply the press exemption to the Republican advertisement and  
close the file as to Hustler, and publisher Larry Flynt, in this  
matter under review. Since Larry Flynt in his personal capacity  
and Larry Flynt Publications were not directly involved, the  
action should be also dismissed as to these named respondents.

Respectfully submitted,

DATE: 3/7/85

H. Richard Mayberry, Jr.  
H. Richard Mayberry, Jr.

Stephen M. Griffin  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents

85040555041

I, Michael Heimowitz, do declare as follows:

1. I am over the age of eighteen and I know of no reason why I could not competently testify to the facts as set forth herein.

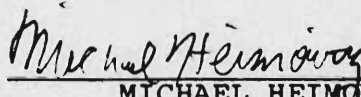
2. During the summer of 1983, I was employed by Hustler Magazine, Inc. as the Director of the Research Department. Part of my duties include finding various articles or information when requested to do so by the editorial staff.

3. Sometime during the summer of 1983, I was asked by Kelly Garrett to find an advertisement by the Republican Party to run in Hustler magazine as something which would be a joke just because the advertisement ran in a magazine like Hustler magazine.

4. After approximately two weeks of searching through various publications for an advertisement by the Republican Party, I found an advertisement in Time magazine. While I do not recall exactly which advertisement I found, I believe the advertisement from the October 27, 1980 issue of Time magazine, which advertisement is attached hereto as Exhibit "A", is the advertisement I submitted in response to Mr. Garrett's request.

5. A few days after submitting the advertisement I had found published in Time magazine, I received a manuscript of the advertisement which appeared on page 8 of the November 1983 issue of Hustler magazine.

I declare under penalty of perjury that the foregoing is true and correct and that the declaration was executed this 6th day of March, 1985 at Los Angeles, California.

  
MICHAEL HEIMOWITZ

8504055042

# “ The American Spirit is still there... ”

ready to blaze into life if you and I are willing to do what has to be done; the practical, down-to-earth things that will stimulate our economy, increase productivity and put America back to work.

“The time is now to limit federal spending; to insist on a stable monetary reform and to free ourselves from imported oil.

“The time is now to resolve that the basis of a firm and principled foreign policy is one that takes the world as it is and seeks to change it by leadership and example; not by lecture and harangue.

“The time is now to say that while we shall seek new friendships and expand and improve others, we shall not do so by breaking our word or casting aside old friends and allies.

“The American people, the most generous on earth, who created the highest standard of living, are not going to accept the notion that we can only make a better world for others by moving backwards ourselves. Those who believe we can have no business leading the nation.

“When those in leadership give us tax increases and tell us we must also do with less, have they thought about those who have always had less — especially the minorities? This is like telling them that just as they step on the first rung of the ladder of opportunity, the ladder is being pulled up...our message will be: we have to move ahead, but we're not going to leave anyone behind.”

—Ronald Reagan; acceptance speech, July 17, 1980.

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Like most Americans, we are concerned about the direction in which our nation has been led during the last four years. We believe in this special land and the special people who have come together to create a climate in which opportunity exists for all. We are not willing to watch the American Dream destroyed by those who are either unwilling or unable to carry the mantle of leadership.

That is why we are devoting

our resources and energies to the goal of electing Ronald Reagan, the next President of the United States. We urge you to study the words, on this page,

and decide for yourself whether this country can afford another four years of economic and political chaos or whether it is time to return to policies which will permit those who come after us to share in the Promise of America.

Richard DeVos

*Richard M. DeVos* *Carl Vanderpool* by VanAndel

I, Kelly Garrett, do<sup>5</sup> hereby depose and declare as follows:

1. I am over the age of eighteen and I know of no reason why I could not competently testify to the facts set forth herein.

2. During the summer of 1983, approximately sometime in June 1983 to September 1983 while I was the Editorial Director for Hustler Magazine, I was told by Larry Flynt that he wanted to publish an advertisement by the Republican Party in Hustler Magazine as a satirical joke or comment. Mr. Flynt wanted to publish the advertisement by the Republican Party as something obviously absurd and incongruous with the overall contents and nature of the magazine. As I recall Mr. Flynt came up with his idea in the context of running various advertisement parodies, such as the "Falwell" and "Metropolitan Life", and "Toyota" parodies which were also published in the same issue as the advertisement parody of the Republican Party.

3. In keeping with Mr. Flynt's request to find an advertisement by the Republican Party, I told Michael Heimowitz to find an advertisement by the Republican Party which could be submitted to Mr. Flynt for his approval for use in Hustler magazine as a parody.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 6th day of March, 1985 at Los Angeles, California.

  
KELLY GARRETT

85040555044

# Jerry Falwell talks about his first time.\*



FALWELL: My first time was in an outhouse outside Lynchburg, Virginia.

INTERVIEWER: Wasn't it a little cramped?

FALWELL: Not after I kicked the goat out.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell!"

Campari, like all liquor, was made to mix you up. It's a light, 48-proof, refreshing spirit, just mild enough to make you drink too much before you know you're schnockered. For your first time, mix it with orange juice. Or maybe some white wine. Then you won't remember anything the next morning. *Campari. The mixable that smarts.*

INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Looks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we were drunk off our God-fearing asses on Campari, ginger ale and soda—that's called a Fire and Brimstone—at the time. And Mom looked better than a Baptist whore with a

\$100 donation.

INTERVIEWER: Campari in the crapper with Mom... how interesting. Well, how was it?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: Did you ever try it again?

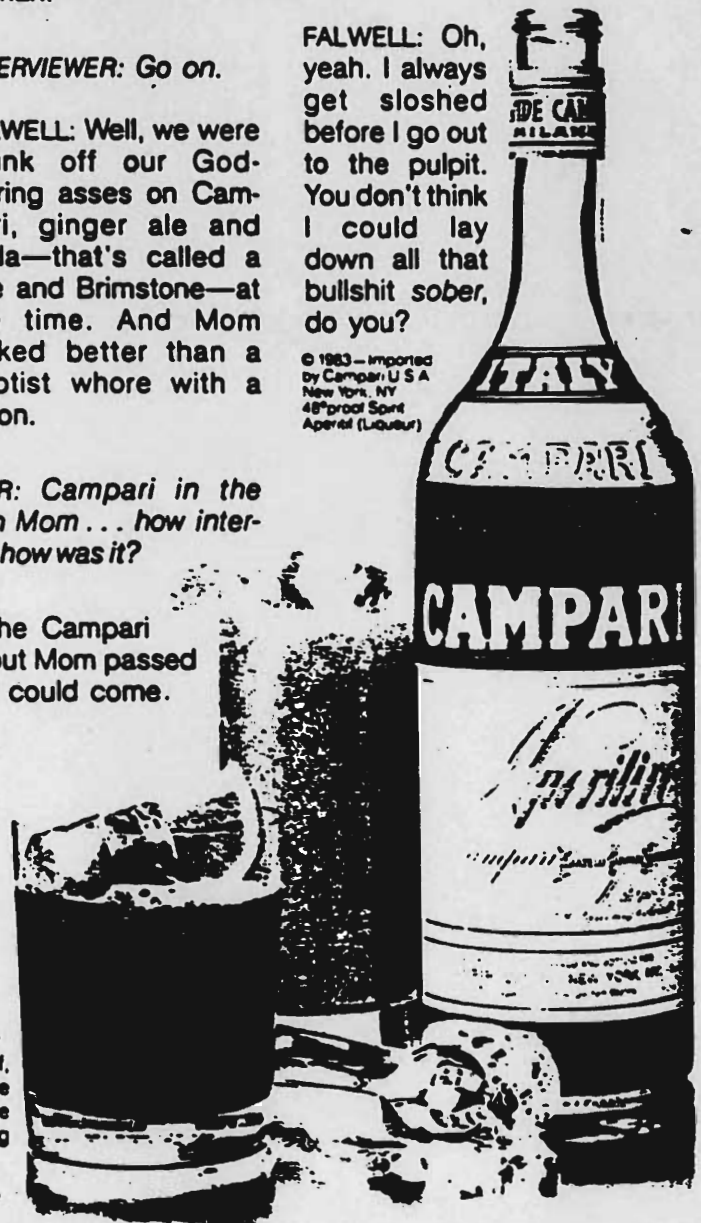
FALWELL: Sure...

lots of times. But not in the outhouse. Between Mom and the shit, the flies were too much to bear.

INTERVIEWER: We meant the Campari.

FALWELL: Oh, yeah. I always get sloshed before I go out to the pulpit. You don't think I could lay down all that bullshit sober, do you?

© 1983—Imported by Campari U.S.A. New York, NY 48° proof Spirit Aperol (Liquor)



**CAMPARI** You'll never forget your first time.

\*AD PARODY—NOT TO BE TAKEN SERIOUSLY

Attachment IX

# HUSTLER

**2**  
**FICTION**  
Ad & Personality Parody

**5**  
**PUBLISHER'S STATEMENT**

**9**  
**FEEDBACK**

**15**  
**ADVISE & CONSENT**

**17**  
**BITS & PIECES**  
AIDS Suicide Plan,  
"Sex Tapes" Preview  
... and More  
Edited by Bruce Halford

**27**  
**X-RATED REVIEWS**

**34**  
**THE PHONE-SEX RAGE: AMERICA'S NEWEST HOTLINE**  
Report by Rita Greene

**38**  
**CLASSICAL MOVES**  
Photography by Clive McLean

**50**  
**CONFESSIONS OF MEN WHO DRESS LIKE WOMEN**  
Interview by Anton Golan

**55**  
**SHASA: DIVING FOR PLEASURE**  
Photography by James Bond

**65**  
**TINSLEY IN REVIEW**  
The Greatest Cartoons  
by Dwayne Tinsley



**70**  
**ASHLEY: SHE LOVES HER MEAT**  
Centerfold Photography  
by Matt Klatt

**80**  
**HUSTLER HUMOR**

**82**  
**THE FINAL ORBIT**  
Fiction by Ted Newson

**86**  
**PAMELA: HOT JEWELS**  
Photography by  
Matt Klatt

**94**  
**GUEST OPINION**  
Madalya Murray O'Hair

**101**  
**BEAVER HUNT**  
Sumptuous Selection

**106**  
**BEAVER SPOTLIGHT**

**113**  
**SEX PLAY**  
Understanding Stats  
by Steve Campbell

**117**  
**KINKY KORNER**  
Confessions of a Voyeur  
by Al Theodore

**119**  
**HONEY**  
Honey and the Vampire  
Text by Bruce Halford and  
Art by Tom Garst

**123**  
**MAIL-ORDER FEEDBACK**  
Girls and Girls Together

NOVEMBER 1983 VOLUME 10 NUMBER 5

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TX 1-378-363

Attachment X

# SHE HAD PLENTY OF LIFE INSURANCE. UNFORTUNATELY, HER PIMP DIED.



Today almost every hooker understands how important it is to have life insurance. The streets can get pretty rough. But what if her *pimp* is offed? Who's going to find new johns? Who's going to supply the smack? Clearly, his loss would create financial hardships for her and the two

mulatto kids he left behind.

With Metropolitan Street Life's new Whore Plus plan, a prostitute can get permanent insurance protection that provides door-to-door Cadillac service, up to three fixes daily and a big black motherfucker with a gun — just as if your main man was

*still around*. What do we ask in return for a safe future? 50% of the action. That's probably a better deal than he gave you. And we won't beat you upside the head.



## METROPOLITAN STREET LIFE

Professionals Helping Professionals

Attachment **XI**

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# TOYOTA



From those nice people  
who brought you Pearl Harbor.

Attachment XII

# "Oh, God. I Love It!"

85040535042

# HUSTLER

OCTOBER 1983 \$3.50

FOR THE REST OF THE WORLD  
GRAFFITI FOR THE '80s

THE POPE Likes Valley Girls

GEORGE BUSH HAS A.I.D.S.

Lech Walesa Sports Cop Deformal '84

EROBICS gives you AF RIPS

It's a lonely job being the Pope. At times it can be very boring here in the Vatican. With all the ring-kissing, Church policy-making, divine guidance of more than 500 million Catholics and worrying about poor Lech Walesa, just getting a few moments alone to enjoy a good magazine is a blessing. HUSTLER makes those moments fulfilling by bringing the Pontiff the finest investigative articles and features, startling profiles, unadorned photos and the most beautiful women in the world. See the magazine today and subscribe to HUSTLER—the magazine with the most sex appeal.

**SUBSCRIBE TODAY!**  
I want to subscribe to HUSTLER magazine.  
I am enclosing a check for \$10.00 (1 year) or \$20.00 (2 years) or \$30.00 (3 years).  
I am enclosing a bill for my credit card. (Circle one)  
I am enclosing a bill for my Discover/Charge/Amex card. (Circle one)  
I am enclosing a bill for my Visa/MC card. (Circle one)  
I am enclosing a bill for my other card. (Circle one)  
I am enclosing a bill for my other card. (Circle one)

Attachment XIII

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
Phone \_\_\_\_\_  
Signature \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_  
Date \_\_\_\_\_  
As requested enclosed is unopened copies of HUSTLER magazine from which to choose what you want.  
U.S. \$10.00 1 year @ \$3.50  
U.S. \$20.00 2 years @ \$3.50  
U.S. \$30.00 3 years @ \$3.50  
Foreign (add postage)  
U.S. \$12.00 1 year @ \$3.50  
U.S. \$24.00 2 years @ \$3.50  
U.S. \$36.00 3 years @ \$3.50

# HOSTILER

INTER OFFICE

August 10, 1983

**To:** Glenn Hunter  
**From:** Mike Heimowitz  
**Re:** Republican ad parody

The proper address for Republican contributions is:

Republican National Committee  
310 1st Street SE  
Washington, DC 20003

This was confirmed by telephone.

85040535050

Attachment XIV



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

H. Richard Mayberry, Esquire  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651  
Larry Flynt, Hustler Magazine,  
Inc. and Larry Flynt, as  
publisher, Larry Flynt  
Publications, Inc. and Larry Flynt,  
as publisher

Dear Mr. Mayberry:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on February 4, 1985, found reason to believe that your clients violated 2 U.S.C. §§ 441b and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441b and 441d(a). The Commission may or may not approve the General Counsel's recommendations.

Submitted for your review is a brief stating the General Counsel's position on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the General Counsel's brief. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

8504055051

H. Richard Mayberry  
Page 2

Should you have any questions, please contact Matt Gerson  
the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

*Charles N. Steele*  
Charles N. Steele  
General Counsel

Enclosure

85040555052



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 6, 1985

H. Richard Mayberry, Esquire  
1667 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Mayberry:

On February 11, 1985, the Federal Election Commission notified you that it had found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 7, 1985, the Commission received your motion to vacate those reason to believe determinations. You contend that your clients did not have an opportunity to respond to the complaint prior to the Commission's rendering its determination.

As you are aware, the anonymous nature of the complaint caused the Commission to carry out its investigation without knowing the identity of the respondent, "A Concerned Citizen." As a result, the Commission did as much as possible to insure that all potential respondents were informed of all of the case's pertinent facts. For example, your clients knew of the investigation from its inception, the General Counsel provided you with a photocopy of the advertisement in question, and the statement preceding the December 11, 1984 interrogatories to Mr. Flynt included the text of the inadequate disclaimer and the citation thereto. Lastly, the letter notifying the respondent of the Commission's finding stated the basis for that determination and contained a photocopy of the original complaint.

Although externally generated complaints identify the person alleged to have violated the Act, the Commission's investigation into those matters often discloses facts that may implicate additional parties and possible violations. Thereafter, the Commission may find reason to believe and then notify the internally generated respondents. As discussed above, your clients received a sufficient amount of information about the case because they knew of the investigation from its inception, had a copy of the advertisement in question, and were provided a photocopy of the original complaint. Therefore, the Commission denied your motion to vacate the reason to believe determinations.

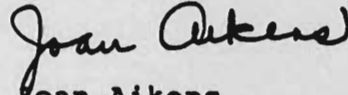
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H. Richard Mayberry, Esquire  
Page 2

Although it is duplicative of the information that the Commission has already provided to you, attached is the General Counsel's factual and legal analysis of this case. If you wish to further supplement your response, please do so within the next ten days.

If you have any questions, please do not hesitate to call Matt Gerson, the staff person assigned to this matter, at 202-523-4143.

Sincerely, .



Joan Aikens  
Vice Chairman

Enclosure  
General Counsel's Factual and Legal Analysis

35040555054

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of                    )  
  )  
"A Concerned Citizen"            )       MUR 1651

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 30, 1985, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 1651:

1. Deny the Respondents' motion that the Commission vacate its reason to believe determination, and approve and send the factual and legal analysis attached to the General Counsel's report dated April 22, 1985.
2. Approve and send the letter attached to the General Counsel's report dated April 22, 1985.

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

Attest:

5-1-85

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

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**SENSITIVE**

BEFORE THE FEDERAL ELECTION COMMISSION

FILED  
FED  
COMMISSION

In the Matter of )  
 )  
"A Concerned Citizen" )

MUR 1651

25 APR 24 1985 2:48

**GENERAL COUNSEL'S REPORT**

Summary

On February 11, 1985, the Commission found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. § 441d(a) and 441b. On March 7, 1985, the Commission received a motion to vacate those reason to believe determinations. See Attachment 1. The Respondents contend that since they did not have an opportunity to respond to the complaint prior to the Commission's rendering its determination, they have been denied due process.

Background

On March 16, 1984, the Commission received a complaint from Democratic Congressional Campaign Committee Chairman Tony Coelho concerning a full page advertisement in the November 1983 issue of Hustler Magazine. The advertisement violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1) because it did not contain an adequate disclaimer. It merely stated: "PAID FOR BY A CONCERNED CITIZEN."

It has been extremely difficult to determine the identity of the so-called "Concerned Citizen." Communications with Hustler Magazine representatives to find out this information proved

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futile. Thus, the Commission, on November 27, 1984, could only find reason to believe that, "the person or persons identified as 'Concerned Citizen' violated the Act." The Commission sent the reason to believe notification to "Concerned Citizen" care of the Republican National Committee. The RNC's counsel responded that it did not know the "Concerned Citizen's" identity.

On December 7, 1984, the Commission issued an Order to Submit Written Answers to Larry Flynt Publications, Inc. ("LFP"). The interrogatories were preceded by a statement including the inadequate disclaimer statement and the citation to the disputed advertisement. In addition, this Office provided LFP's counsel with a photocopy of the disputed advertisement. Larry Flynt responded that, Larry Flynt, Hustler Magazine, Inc.'s publisher, "placed the said advertisement." In response to a question asking who "paid for the said advertisement," Mr. Flynt stated:

Objection. The administrative practices and procedures of 2 U.S.C. § 437g. (sic) including but not limited to notification of the allegations of the complaint, have not been complied with.

On the basis of the foregoing information, the Commission found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and LFP and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b. Mr. Flynt, LFP, and Hustler are hereinafter referred to as "Respondents".

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The reason to believe notification letter specified the Commission's findings. It also stated:

The Commission's investigation began as a result of a March 16, 1984 complaint filed with the Commission. The complaint, a copy of which is enclosed, contained a photocopy of a political solicitation published in the November 1983 issue of Hustler Magazine. The political solicitation did not contain the disclaimer statement that the Act requires. You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such materials, along with your answers to the enclosed questions, within ten days of your receipt of this notification.

The questions were submitted as an Order from the Commission.

On March 7, 1985, after receiving an extension of time in which to answer, the Respondents requested that the Commission vacate its reason to believe determination. The Respondents argued that the Commission found reason to believe against them without providing an opportunity to respond to the complaint. It is the General Counsel's opinion that the Commission need not vacate its reason to believe determination because the Commission provided the Respondents with a sufficient amount of information to satisfy the notice requirements governing internally generated matters.

Factual and Legal Analysis

The Federal Election Campaign Act expressly provides that a respondent be notified of an allegation against him and provided an opportunity to demonstrate that the Commission should take no action. With regard to externally generated matters, the

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Commission must notify the respondent within five days of receipt of the complaint. 11 C.F.R. § 111.5(a). The Commission must then wait fifteen days before it makes any findings against the respondent. 11 C.F.R. § 111.6(a). On internally generated matters, the Commission may find reason to believe prior to notifying the respondent. After its finding, however, the Commission must notify the respondent setting forth the sections of the statute or regulations at issue and the factual basis supporting the finding. 11 C.F.R. § 119.(a). The notification shall also include a staff report setting forth the legal basis and the alleged facts supporting the determination.

Respondents' motion is predicated on the belief that this was an externally generated MUR. However, the DCCC's complaint did not name these Respondents. Therefore, the General Counsel believes that the Commission made its finding against these Respondents on the basis of internal generation. The Commission often discovers additional facts during its investigations of externally generated matters and thereafter notifies additional respondents. Also, under these unusual circumstances, the General Counsel did as much as possible to insure that all potential respondents were informed of all of the pertinent facts of the case. For example, Hustler Magazine had knowledge of the investigation from its inception, the Respondents had a copy of the advertisement in question, and the statement preceding the December 11, 1984 interrogatories included the text of the

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inadequate disclaimer and the citation thereto. Finally, the letter notifying the Respondents of the Commission's reason to believe findings stated the basis for that determination and contained the original complaint. In addition, the Respondents have had, and continue to have, the opportunity to provide evidence refuting the Commission's threshold determination. Therefore, this Office recommends that the Commission deny the Respondents' motion to vacate the reason to believe determination. However, even though it is duplicative of information that the Commission has already provided to the Respondents, attached is a separate factual and legal analysis of the case that this Office recommends be sent to the Respondents at this time.

Subpeona Enforcement

After finding reason to believe against the Respondents, the Commission authorized the issuance of an Order to Submit Written Answers. On February 11, 1985, the Commission sent that order to Larry Flynt individually and in his capacity as publisher of Larry Flynt Publications, Inc. and Hustler Magazine, Inc. This Office granted Counsel permission to provide an unsigned copy of Mr. Flynt's answers on the due date with the understanding that Mr. Flynt would promptly provide a signed copy. When the signed copy arrived three days after the due date, it was not submitted under oath despite the Order's demand.

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Mr. Flynt's answer to every part of every question except one was:

Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. F.E.C. ... Privileged under First Amendment.  
See Attachment 2.

While Mr. Flynt did not formally answer the Commission's questions, information provided in other documents disclosed the majority of the information sought. Thus, this Office does not believe it is necessary for the Commission to authorize subpoena enforcement at this time. Instead, the General Counsel's Office will proceed to the briefing stage.

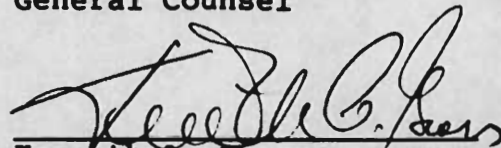
RECOMMENDATION

1. Deny the Respondents' motion that the Commission vacate its reason to believe determination approve and send the attached factual and legal analysis.
2. Approve and send the attached letter.

Charles N. Steele  
General Counsel

April 22, 1985

BY:

  
Kenneth A. Gross  
Associate General Counsel

Attachments

1. Respondents' Motion to Vacate Reason to Believe Determination.
2. Answers to the Commission's Interrogatories received March 7, 1985.
3. General Counsel's Factual and Legal Analysis
4. Letter to counsel.

85040555061

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

In Re:

Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher

MUR 1651

MOTION TO VACATE REASON TO BELIEVE DETERMINATION

Respondents, by and through counsel, move the Federal Election Commission (the "Commission") to vacate its Reason To Believe Determination in this compliance proceeding. In support of this motion, Respondents state:

1. On March 16, 1984, the Democratic Congressional Campaign Committee ("DCCC") filed a complaint with the Commission in connection with the publication of an advertisement in the November 1983 issue of Hustler magazine. This externally generated complaint was designated MUR 1651.

2. On December 11, 1984, the Commission ordered Larry Flynt Publications to submit written answers to questions in MUR 1651. The Commission's cover letter to the Order states "The Commission does not consider you a respondent in this matter, but rather a witness only."

Attachment I

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3. In response to the Commission's Order, Larry Flynt answered that Larry Flynt, publisher of Hustler Magazine, Inc., placed the Hustler advertisement attached to the Commission's cover letter and Order.

4. On February 11, 1985, the Commission mailed a letter informing respondents of the February 4, 1985 Reason To Believe Determination that Larry Flynt, individually and in his corporate capacities, Hustler, and Larry Flynt Publications had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Campaign Act"). This letter was received by counsel on February 13, 1985. Prior to February 13, 1985, respondents had not received a copy of the DCCC complaint.

5. The Campaign Act provides the procedure for a compliance action initiated by an externally generated complaint:

Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint.

2 U.S.C. § 437g(a)(1).

7. Federal Election regulation, 11 C.F.R. § 111.6, provides:

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(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 C.F.R. § 111.6(a).

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8. The due process rights contained in the procedure set forth in Section 437g are mandatory for "the failure to include [election law violation] charges [in the notice of a complaint or in the General Counsel's Brief] eliminated any possibility of ensuring the defendants a fair opportunity to demonstrate that no action should be taken or otherwise respond to the FEC charges." The Commission regulation is the "clear and unmistakable duty of the FEC." Federal Election Commission v. National Rifle Association of America, 553 F. Supp. 1331, 1332, 1337 (D.D.C. 1983).

9. Respondents did not receive a copy of the March 16, 1984 DCCC complaint until after the reason to believe determination was made by the Commission.

10. Respondents have been denied the opportunity to respond to the charges contained in the DCCC complaint before the reason to believe determination in derogation of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6.

For these reasons, Respondents respectfully request the Commission to vacate its reason to believe finding. In making this motion, the respondents recognize the initial difficulty in the identification of the person who placed the advertisement. The concern of the Commission is to process complaints in a timely manner in conformance with the due process requirement of the Campaign Act. Accordingly, the respondents' response to the DCCC complaint is being filed concurrently with this motion to avoid further delay of these proceedings. However, we request that this motion be considered prior to the response to the charges. This will provide the Commission with an opportunity to make the reason to believe finding with additional relevant information which we believe will lead to the dismissal of this action without such a determination.

Respectfully submitted,

DATE:

3/7/85

H. Richard Mayberry, Jr.  
H. Richard Mayberry, Jr.

Stephen M. Griffin  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents

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UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

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In Re:

Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher.

MUR 1651

ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal  
Election Commission's Interrogatories of February 11, 1985 as  
follows:

INTERROGATORY NO. 1: The CCA states that it was, "PAID  
FOR BY A CONCERNED CITIZEN." Who or what is/are the indivi-  
dual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in  
the CCA? Please identify that (those) individual(s) or  
entity(ies) by name, address, occupation, daytime (PST) telephone  
number, corporate status and relationship to Larry Flynt, Hustler  
Magazine, Inc. and Larry Flynt Publications, Inc.

ANSWER: Objection. Not relevant to applicability of 2  
U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest  
Association v. Federal Election Commission, 509 F. Supp. 1210,  
1214 (S.D.N.Y. 1981). Privileged under First Amendment.

Attachment II

35040555066

INTERROGATORY NO. 2: Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 3: If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 4: If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

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INTERROGATORY NO. 5: What was the typical or normal procedure for procuring advertising space in the November 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 5(a): Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

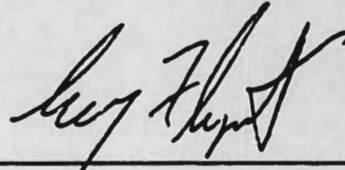
ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 6: Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

ANSWER: No.

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I declare under penalty of perjury that the foregoing answers to interrogatories is true and correct. Executed on March , 1985.



---

LARRY FLYNT

85040555069

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Larry Flynt MUR NO. 1651  
Hustler Magazine, Inc. and  
Larry Flynt, as publisher  
Larry Flynt Publications, Inc. and  
Larry Flynt, as publisher

On March 16, 1984, the Commission received a complaint from Democratic Congressional Campaign Committee Chairman Tony Coelho concerning a full page advertisement in the November 1983 issue of Hustler Magazine. The advertisement lauded the accomplishments of, and urged support for, President Reagan and the Republican Party. It also solicited contributions to local Republican parties and the Republican National Committee ("RNC"). The advertisement violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1) because it did not contain a disclaimer clearly stating the name of the person who paid for the communication and whether it was authorized by any candidate or candidate's committee. It merely stated: "PAID FOR BY A CONCERNED CITIZEN."

It has been difficult to determine the identity of the entity or individual calling itself, "A Concerned Citizen." Despite communications with Hustler Magazine representatives, the Commission, on November 27, 1984, could only find reason to believe that, "the person or persons identified as 'Concerned Citizen' violated the Act." On December 11, 1984, the Commission sent a reason to believe notification to:

Concerned Citizen  
c/o Republican National Committee

Attachment III

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In a December 17, 1984 letter to the Commission, the RNC's Chief Counsel explained that the RNC does not know the "Concerned Citizen's" identity.

On December 7, 1984, the Commission, in an effort to identify the "Concerned Citizen", issued an Order to Submit Written Answers to Larry Flynt Publications, Inc. ("LFP"). On January 10, 1985, Larry Flynt, publisher of Hustler Magazine, Inc. and LFP, responded through counsel after requesting an extension of time to answer. The response states that Larry Flynt, Hustler Magazine, Inc's publisher, "placed the said advertisement." In response to a question asking who "paid for the said advertisement," Mr. Flynt responds:

Objection. The administrative practices and procedures of 2 U.S.C. § 437g. including but not limited to notification of the allegations of the complaint, have not been complied with (sic).

The General Counsel's Office is, nonetheless, of the opinion that Mr. Flynt's statement adequately identifies those responsible for the above mentioned violation.

Disclaimer

The advertisement at issue solicits a contribution because it concludes:

Support your local Republican Party or send your contributions to the Republican National Committee, 310 1st Street, S.E., Washington, D.C. 20003.

The Commission has recognized that when an individual or entity encourages or solicits contributions to a third party, the

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solicitation is subject to § 441d(a). A.O. 1980-145. Indeed, the regulations specifically state:

For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication. 11 C.F.R. § 110.11(a)(1)(iv)(A).

Therefore, if Mr. Flynt placed the advertisement individually, he violated the Act because "A Concerned Citizen" does not clearly identify him. If Mr. Flynt placed the advertisement on behalf of either of the corporations for which he is publisher, the responsible corporation is subject to the requirement as if it were an individual and may not solicit any contribution through a magazine or any other type of general public political advertising without including an appropriate disclaimer. 2 U.S.C. § 431(11).

The General Counsel's Office recommends therefore, that the Commission find reason to believe that Larry Flynt individually and Hustler Magazine, Inc. and Larry Flynt, as publisher, and/or Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. § 441d(a).

Corporate Contributions

If Hustler Magazine, Inc. or LFP placed and/or paid for the solicitation, there may also be a 2 U.S.C. § 441b violation. That provision states that it is unlawful for any corporation to make a contribution or expenditure in connection with any federal

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election. Therefore, the General Counsel's Office recommends that the Commission find reason to believe that LFP and Hustler Magazine, Inc. and their publisher, Larry Flynt, violated 2 U.S.C. § 441b.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

H. Richard Mayberry, Esquire  
1667 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Mayberry:

On February 11, 1985, the Federal Election Commission notified you that it had found reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 7, 1985, the Commission received your motion to vacate those reason to believe determinations. You contend that your clients did not have an opportunity to respond to the complaint prior to the Commission's rendering its determination.

As you are aware, the anonymous nature of the complaint caused the Commission to carry out its investigation without knowing the identity of the respondent, "A Concerned Citizen." As a result, the Commission did as much as possible to insure that all potential respondents were informed of all of the case's pertinent facts. For example, your clients knew of the investigation from its inception, the General Counsel provided you with a photocopy of the advertisement in question, and the statement preceding the December 11, 1984 interrogatories to Mr. Flynt included the text of the inadequate disclaimer and the citation thereto. Lastly, the letter notifying the respondent of the Commission's finding stated the basis for that determination and contained a photocopy of the original complaint.

Although externally generated complaints identify the person alleged to have violated the Act, the Commission's investigation into those matters often discloses facts that may implicate additional parties and possible violations. Thereafter, the Commission may find reason to believe and then notify the internally generated respondents. As discussed above, your clients received a sufficient amount of information about the case because they knew of the investigation from its inception, had a copy of the advertisement in question, and were provided a photocopy of the original complaint. Therefore, the Commission denied your motion to vacate the reason to believe determinations.

Attachment IV

3504055074

H. Richard Mayberry, Esquire  
Page 2

Although it is duplicative of the information that the Commission has already provided to you, attached is the General Counsel's factual and legal analysis of this case. If you wish to further supplement your response, please do so within the next ten days.

If you have any questions, please do not hesitate to call Matt Gerson, the staff person assigned to this matter, at 202-523-4143.

Sincerely,

John Warren McGarry  
Chairman

Enclosure  
General Counsel's Factual and Legal Analysis

85040535075

ACCT# 6773

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1647 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 622-8622

March 11, 1985

BY MESSENGER

Matthew Gerson, Esquire  
Office of the General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: Matter Under Review 1651

Dear Mr. Gerson:

In follow-up to your March 8, 1985 telephone conference with Stephen Griffin of this firm, please substitute the enclosed executed Answers to Interrogatories and Affidavit of Larry Flynt for unexecuted copies of the same documents which were previously submitted with the reply in the above-referenced action. Moreover, please find enclosed a second affidavit of Michael Heimowitz providing additional information relevant to the proposition that the advertisement in question was a parody.

Should you have any questions on this, please do not hesitate to contact either myself or Steve Griffin.

Sincerely,

*H. Richard Mayberry, Jr.*  
H. Richard Mayberry, Jr.

HRM/reh  
Enclosures  
cc: David Kahn, Esquire

65040555076

March 11 1985

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

11/14/88

In Re:

Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher.

MUR 1651

ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal  
Election Commission's Interrogatories of February 11, 1985 as  
follows:

INTERROGATORY NO. 1: The CCA states that it was, "PAID  
FOR BY A CONCERNED CITIZEN." Who or what is/are the indivi-  
dual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in  
the CCA? Please identify that (those) individual(s) or  
entity(ies) by name, address, occupation, daytime (PST) telephone  
number, corporate status and relationship to Larry Flynt, Hustler  
Magazine, Inc. and Larry Flynt Publications, Inc.

ANSWER: Objection. Not relevant to applicability of 2  
U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest  
Association v. Federal Election Commission, 509 F. Supp. 1210,  
1214 (S.D.N.Y. 1981). Privileged under First Amendment.

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INTERROGATORY NO. 2: Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 3: If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 4: If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

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INTERROGATORY NO. 5: What was the typical or normal procedure for procuring advertising space in the November 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 5(a): Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

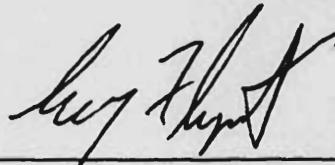
ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 6: Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

ANSWER: No.

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I declare under penalty of perjury that the foregoing answers to interrogatories is true and correct. Executed on March , 1985.



---

LARRY FLYNT

05040555030

UNITED STATES OF AMERICA  
Before  
THE FEDERAL ELECTION COMMISSION

---

Larry Flynt, Hustler Magazine, Inc. and  
Larry Flynt, as Publisher and Larry Flynt  
Publications, Inc., and Larry Flynt, as  
Publisher.

---

MUR 1651

AFFIDAVIT OF LARRY FLYNT

Larry Flynt deposes and states:

1. I am publisher and editor of Hustler Magazine. The address of Hustler Magazine, Inc. is Suite 3800, 2029 Century Park East, Los Angeles, California 90067 and its telephone number is (213) 556-9200.

2. Hustler is a monthly magazine which publishes, among other things, articles and features which parody or satirize contemporary politics and culture.

3. Hustler derives its revenues from selling the magazine and advertising.

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4. My responsibilities as publisher are of a creative nature to select and determine the editorial direction and policy for the magazine and then as editor to implement those directions and policies. Accordingly, as the editor, I have responsibility for the selection of articles and features of the magazine.

5. In my capacity as publisher and editor, I caused to be published in the November 1983 issue of Hustler the Republican advertisement which is the subject matter of MUR 1651, and which is attached as Exhibit "A" to this Affidavit.

6. In the summer of 1983, I decided to publish a parody of the Republican party. I directed Kelly Garrett, Editorial Director, to secure an article to serve as a starting point in the drafting process. I received from Bill Nirenberg, Director of Special Projects, a 1980 Time Magazine article, and redrafted it in August 1983 to be the Republican advertisement at issue. The Republican advertisement was printed in September 1983. I was not a candidate and Hustler was not owned or controlled, directly or indirectly, by any political party or political committee when I decided to cause the publication of the Republican advertisement which is the subject matter of MUR 1651. Further, I was not a candidate and Hustler was not owned or controlled, directly or indirectly, by any political party or political committee when the November 1983 issue of Hustler was printed.

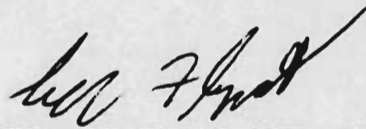
7. The purpose of the Republican advertisement was to satirize American political parties. No third person or organization purchased this advertisement.

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8. The Republican advertisement was not made with any direct or indirect contact with the White House, a Reagan-Bush re-election committee, the Republican National Committee or a local Republican party.

9. I did not place the Republican advertisement in my personal capacity. Larry Flynt Publications owns Hustler Magazine, and it is not otherwise involved in this matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March , 1985.



---

LARRY FLYNT

85040535083

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

## AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.

- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
510 1st Street SE, Washington, D.C. 20005.

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DECLARATION

I, Michael Heimowitz, do declare as follows:

1. I am the Research Director for Hustler magazine and I have made my declaration on March 6, 1985, concerning the Republican advertisement which was published in the November 1983 issue of Hustler.

2. After making my declaration, I continued searching for more information concerning this matter.

3. In searching I went through my memo file and found a copy of my August 10, 1983 memo to Glenn Hunter, who was the managing editor of Hustler at that time. As noted in that memo, the Republican advertisement was understood by me to be an "ad parody" and not a legitimate advertisement by or for the Republican Party.

I declare under penalty of perjury that the foregoing is true and correct and that I have executed this declaration this 7th day of March, 1985, at Los Angeles, California.

*Michael Heimowitz*  
MICHAEL HEIMOWITZ

35040335035

# HUSTLER

INTER OFFICE

August 10, 1983

**To:** Glenn Hunter  
**From:** Mike Heimowitz  
**Re:** Republican ad parody

The proper address for Republican contributions is:

Republican National Committee  
310 1st Street SE  
Washington, DC 20003

This was confirmed by telephone.

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RECEIVED AT THE FEC  
**HAND DELIVERED**  
85 MAR 7 P4:49

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

In Re:

Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher

MUR 1651

RESPONSE

The Respondents, by and through counsel, respond to the Democratic Congressional Campaign Committee ("DCCC") complaint challenging the lawfulness of a Republican advertisement in the the November 1983 issue of Hustler magazine as follows:

I. Statement of the Case<sup>1/</sup>

Hustler is a monthly magazine which publishes, among other things, articles and features which often parody or satirize contemporary politics and culture. Hustler derives its revenues from the sale of the magazine and advertising. Larry Flynt is publisher and editor of Hustler magazine. See Affidavit of Larry Flynt.

<sup>1/</sup> The procedural history of this action is generally set forth in the Respondents' Motion To Vacate The Reason To Believe Determination which is filed concurrently with this response.

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In the summer of 1983, Flynt decided to run a political parody of the Republican Party. He requested his editorial director, Kelly Garrett, to secure an article which would serve as a starting point to prepare the advertisement. Garrett in turn asked Michael Heimowitz, director of the research department, to comply with the Flynt request. Heimowitz secured a Time magazine advertisement from which the November 1983 Republican advertisement was taken. Flynt drafted the parody which is attached to this response as Exhibit #1. The purpose of the placement of the Republican advertisement in the November 1983 issue was to serve as a parody of the Republican Party. The advertisement was printed in September 1983. See Affidavits of Larry Flynt, Michael Heimowitz and Kelly Garrett.

II. The Hustler Advertisement Is Exempt From Federal Election Commission Regulation Under 2 U.S.C. § 431(9)(B)(i)

Press activities in general and the Hustler advertisement in particular are exempt from regulation under the Federal Election Campaign Act of 1971, as amended ("Campaign Act").

A. The Nature And Scope Of The 2 U.S.C. § 431(9)(B)(i) Press Exemption

The Campaign Act makes it illegal for any corporation to make a contribution or expenditure in connection with a Federal election. 2 U.S.C. § 441b(a). The statute creates an exclusion for:

[A]ny . . . commentary, or editorial distributed through the facilities of any . . . magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i) (the "press exemption"). See also, 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

In enacting the press exemption into law, Congress clearly intended to protect the press from government censorship and regulation of its activities:

[I]t is not the intent of Congress in the present legislation to limit or burden in any way the First Amendment freedoms of press and of association. Thus, [the press exemption] assures the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns.

H.R. Rep. No. 1239, 93rd Cong. 2nd Sess. 4 (1974) (emphasis added).

Only with this protection could the press fulfill its historic role of facilitating public debate on issues which may be controversial and not representative of majority opinion. Government investigation has a profound negative effect on the press and the First Amendment guarantees:

[F]reedom of the press is substantially eroded by an investigation of the press, even if 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. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the exemption.

Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981).

Accordingly, "[t]he legislative history of this section . . . indicates that Congress meant for the exception to be a

broad one." Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1312 (D.D.C. 1981).

In Federal Election Commission v. Phillips Publishing, Inc. the court adopted from the Reader's Digest case, a circumspect two-step procedure for addressing substantial allegations that a press entity has violated federal election laws:

[T]he initial inquiry is limited to whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question. [citations omitted] If the press entity is not controlled or owned by a political party or candidate and is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.

517 F. Supp. at 1313.

Succinctly stated, the essential test for whether the activities in question fall within the press exemption is whether the activities fall within the periodical's "legitimate press function" or "its magazine publishing function." Reader's Digest at 1214-1215.

In Phillips Publishing the court evaluated whether the communication at issue was part of the publisher's normal functions as a press entity by examining the purpose of the communication at issue in that case -- solicitation materials. The court found: "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press

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functions, the press exemption applies." 517 F. Supp. 1313. The analysis of the press exemption in Reader's Digest Association and Phillips Publishing and the relevance of the purpose test have been adopted by other courts and the Commission. See Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396-397 (D.C. Cir. 1981); Epstein v. Federal Election Commission, Fed. Elec. Camp. Fin. Guide (CCH) ¶9161 (D.D.C. 1981); Advisory Opinion 1982-44, Fed. Elec. Camp. Fin. Guide (CCH) ¶5691 (August 27, 1982); In the Matter of Planned Parenthood Affiliates of California, MUR 1377, First General Counsel's Report at 4 (April 14, 1982). This analysis is applicable to the instant matter.

B. The Hustler Advertisement Is Within The Ambit Of The 2 U.S.C. § 431(9)(b)(i) Press Exemption

The Hustler advertisement clearly falls within the press exemption. The Hustler advertisement was intended to be a commentary by Hustler magazine on political parties and political contribution solicitations in the form of a parody or satire of a real solicitation for contributions. See, Affidavit of Larry Flynt at ¶7 and Michael Heimowitz at ¶3. This parody or satire was entirely consistent with the normal or legitimate press function of Hustler as a magazine which satirizes political activities and American culture.

Hustler magazine has a practice of publishing satires and parodies. As part of its satirical function, Hustler often prints advertisements which are not actual advertisements but which appear to be. In fact the November 1983 issue of Hustler

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contained three such advertisements in addition to the Republican advertisement. One was an apparent advertisement for Campari on the inside front cover, featuring a picture of Jerry Falwell. A second was an apparent advertisement for Metropolitan Life Insurance, appearing on the inside back cover. A third apparent advertisement for Toyota automobiles appeared on the back cover of the magazine. See Affidavit of Kelly Garrett, ¶2. Like the Republican advertisement, all three of these advertisements appear, upon first impression, to be actual advertisements. Also like the Republican advertisement, upon closer inspection and taking into account the context of Hustler magazine, the advertisements are clearly parodies or satires of actual advertisements.

The mere fact the Republican advertisement was in Hustler demonstrates that it is a parody or satirical commentary, not an actual solicitation for contributions to or endorsement of the Republican Party. It is highly improbable that the Republican Party would place or authorize such a solicitation in the pages of Hustler magazine. Moreover, it is also improbable that the Republicans would express themselves on the topic of their achievements in office in the terms "LONG HOURS AND SWEAT" which was printed in one-inch capital letters and repeated twice in the parody. Larry Flynt was not a candidate when the decision was made to publish and print the advertisement. Hustler magazine was not owned or controlled by the Republican Party or any other political party, political committee or candidate when the Republican advertisement parody was approved for publication and

printed. See Affidavit of Larry Flynt. Realistically, the Hustler advertisement did not benefit any candidate or the Republican Party.

There is no question whatsoever that Hustler is a magazine or periodical publication within the meaning of 2 U.S.C. § 431(9)(B)(i). Hustler is a publication in bound pamphlet form published each month of the year containing articles and information on various political, cultural, economic and other topics, and deriving its revenues from sales of the magazine and advertising.

The Republican advertisement thus meets all elements of the press exemption as set out by the Commission in Matter Under Review 1377 and the courts in Reader's Digest and Phillips Publishing. As a parody or satire it is not an "expenditure" within the meaning of the Campaign Act and is therefore not subject to the requirements of 2 U.S.C. §§ 441b and 441d(a).

Since the 2 U.S.C. § 441(9)(B)(i) press exemption clearly applies to the Republican advertisement, the Commission should take no further action and close the file in MUR 1651. In accordance with the procedures set out in the Reader's Digest Association case:

[U]ntil and unless the press exemption were found inapplicable, the FEC is barred from investigating the substance of the complaint. . . . Indeed all such investigation is permanently barred by the statute until it is shown that the press exemption is not applicable.

509 F. Supp. 1215. "Given the overriding protection of the First Amendment in this area," no further inquiry or action is

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warranted in MUR 1651. See In The Matter of Penthouse Magazine  
MUR 296(76), General Counsel's Preliminary Legal Analysis at 2  
(November 30, 1976).

Conclusion

For these reasons we respectfully request the Commission  
apply the press exemption to the Republican advertisement and  
close the file as to Hustler, and publisher Larry Flynt, in this  
matter under review. Since Larry Flynt in his personal capacity  
and Larry Flynt Publications were not directly involved, the  
action should be also dismissed as to these named respondents.

Respectfully submitted,

DATE: 3/7/85

H. Richard Mayberry, Jr.  
H. Richard Mayberry, Jr.

Stephen M. Griffin  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents

85040555094

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

## AND A PRESIDENT WHO KNEW HOW TO SAY NO.

85040555095

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

### REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee, 310 1st Street SE, Washington, D.C. 20003.

UNITED STATES OF AMERICA  
Before  
THE FEDERAL ELECTION COMMISSION

---

Larry Flynt, Hustler Magazine, Inc. and  
Larry Flynt, as Publisher and Larry Flynt  
Publications, Inc., and Larry Flynt, as  
Publisher.

---

MUR 1651

AFFIDAVIT OF LARRY FLYNT

Larry Flynt deposes and states:

1. I am publisher and editor of Hustler Magazine. The address of Hustler Magazine, Inc. is Suite 3800, 2029 Century Park East, Los Angeles, California 90067 and its telephone number is (213) 556-9200.
2. Hustler is a monthly magazine which publishes, among other things, articles and features which parody or satirize contemporary politics and culture.
3. Hustler derives its revenues from selling the magazine and advertising.

85040555096

4. My responsibilities as publisher are of a creative nature to select and determine the editorial direction and policy for the magazine and then as editor to implement those directions and policies. Accordingly, as the editor, I have responsibility for the selection of articles and features of the magazine.

5. In my capacity as publisher and editor, I caused to be published in the November 1983 issue of Hustler the Republican advertisement which is the subject matter of MUR 1651, and which is attached as Exhibit "A" to this Affidavit.

6. In the summer of 1983, I decided to publish a parody of the Republican party. I directed Kelly Garrett, Editorial Director, to secure an article to serve as a starting point in the drafting process. I received from Michael Heimowitz, Director of Research, a 1980 Time Magazine article, and redrafted it in August 1983 to be the Republican advertisement at issue. The Republican advertisement was printed in September 1983. I was not a candidate and Hustler was not owned or controlled, directly or indirectly, by any political party or political committee when I decided to cause the publication of the Republican advertisement which is the subject matter of MUR 1651. Further, I was not a candidate and Hustler was not owned or controlled, directly or indirectly, by any political party or political committee when the November 1983 issue of Hustler was printed.

7. The purpose of the Republican advertisement was to satirize American political parties. No third person or organization purchased this advertisement.

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8. The Republican advertisement was not made with any direct or indirect contact with the White House, a Reagan-Bush re-election committee, the Republican National Committee or a local Republican party.

9. I did not place the Republican advertisement in my personal capacity. Larry Flynt Publications owns Hustler Magazine, and it is not otherwise involved in this matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March , 1985.

---

LARRY FLYNT

85040555098

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

## AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

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- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

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The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20003.

8 5 0 4 0 5 5 0 9 9

I, Michael Heimowitz, do declare as follows:

1. I am over the age of eighteen and I know of no reason why I could not competently testify to the facts as set forth herein.

2. During the summer of 1983, I was employed by Hustler Magazine, Inc. as the Director of the Research Department. Part of my duties include finding various articles or information when requested to do so by the editorial staff.

3. Sometime during the summer of 1983, I was asked by Kelly Garrett to find an advertisement by the Republican Party to run in Hustler magazine as something which would be a joke just because the advertisement ran in a magazine like Hustler magazine.

4. After approximately two weeks of searching through various publications for an advertisement by the Republican Party, I found an advertisement in Time magazine. While I do not recall exactly which advertisement I found, I believe the advertisement from the October 27, 1980 issue of Time magazine, which advertisement is attached hereto as Exhibit "A", is the advertisement I submitted in response to Mr. Garrett's request.

5. A few days after submitting the advertisement I had found published in Time magazine, I received a manuscript of the advertisement which appeared on page 8 of the November 1983 issue of Hustler magazine.

I declare under penalty of perjury that the foregoing is true and correct and that the declaration was executed this 6th day of March, 1985 at Los Angeles, California.

*Michael Heimowitz*  
\_\_\_\_\_  
MICHAEL HEIMOWITZ

8504055100

# “ The American Spirit is still there... ”

ready to blaze into life if you and I are willing to do what has to be done; the practical, down-to-earth things that will stimulate our economy, increase productivity and put America back to work.

“The time is now to limit federal spending; to insist on a stable monetary reform and to free ourselves from imported oil.

“The time is now to resolve that the basis of a firm and principled foreign policy is one that takes the world as it is and seeks to change it by leadership and example; not by lecture and harangue.

“The time is now to say that while we shall seek new friendships and expand and improve others, we shall not do so by breaking our word or casting aside old friends and allies.

“The American people, the most generous on earth, who created the highest standard of living, are not going to accept the notion that we can only make a better world for others by moving backwards ourselves. Those who believe we can have no business leading the nation.

“When those in leadership give us tax increases and tell us we must also do with less, have they thought about those who have always had less — especially the minorities? This is like telling them that just as they step on the first rung of the ladder of opportunity, the ladder is being pulled up...our message will be: we have to move ahead, but we're not going to leave anyone behind.

—Ronald Reagan; acceptance speech, July 17, 1980.

8 5 0 4 0 5 5 1 0 1



Like most Americans, we are concerned about the direction in which our nation has been led during the last four years. We believe in this special land and the special people who have come together to create a climate in which opportunity exists for all. We are not willing to watch the American Dream destroyed by those who are either unwilling or unable to carry the mantle of leadership. That is why we are devoting



our resources and energies to the goal of electing Ronald Reagan, the next President of the United States. We urge you to study the words, on this page, and decide for yourself whether this country can afford another four years of economic and political chaos or whether it is time to return to policies which will permit those who come after us to share in the Promise of America.

Richard DeVos

Jay VanAndel

I, Kelly Garrett, do hereby depose and declare as follows:

1. I am over the age of eighteen and I know of no reason why I could not competently testify to the facts set forth herein.

2. During the summer of 1983, approximately sometime in June 1983 to September 1983 while I was the Editorial Director for Hustler Magazine, I was told by Larry Flynt that he wanted to publish an advertisement by the Republican Party in Hustler Magazine as a satirical joke or comment. Mr. Flynt wanted to publish the advertisement by the Republican Party as something obviously absurd and incongruous with the overall contents and nature of the magazine. As I recall Mr. Flynt came up with his idea in the context of running various advertisement parodies, such as the "Falwell" and "Metropolitan Life", and "Toyota" parodies which were also published in the same issue as the advertisement parody of the Republican Party.

3. In keeping with Mr. Flynt's request to find an advertisement by the Republican Party, I told Michael Heimowitz to find an advertisement by the Republican Party which could be submitted to Mr. Flynt for his approval for use in Hustler magazine as a parody.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 6th day of March, 1985 at Los Angeles, California.

  
KELLY GARRETT

8504055102

Rec'd 6/7/86  
THE FEC  
**HAND DELIVERED**  
85 MAR 7 P 4: 48

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

In Re:

Larry Flynt, Hustler  
Magazine, Inc. and Larry  
Flynt, as publisher, and  
Larry Flynt Publications,  
Inc., and Larry Flynt, as  
publisher.

MUR 1651

APR 5 1985

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ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal  
Election Commission's Interrogatories of February 11, 1985 as  
follows:

INTERROGATORY NO. 1: The CCA states that it was, "PAID  
FOR BY A CONCERNED CITIZEN." Who or what is/are the indivi-  
dual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in  
the CCA? Please identify that (those) individual(s) or  
entity(ies) by name, address, occupation, daytime (PST) telephone  
number, corporate status and relationship to Larry Flynt, Hustler  
Magazine, Inc. and Larry Flynt Publications, Inc.

ANSWER: Objection. Not relevant to applicability of 2  
U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest  
Association v. Federal Election Commission, 509 F. Supp. 1210,  
1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 2: Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 3: If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 4: If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

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INTERROGATORY NO. 5: What was the typical or normal procedure for procuring advertising space in the November 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 5(a): Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.

ANSWER: Objection. Not relevant to applicability of 2 U.S.C. § 431(9)(B)(i) press exemption. See Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981). Privileged under First Amendment.

INTERROGATORY NO. 6: Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

ANSWER: No.

I declare under penalty of perjury that the foregoing answers to interrogatories are true and correct. Executed on March \_\_, 1985.

LARRY FLYNT

85040555106

RECEIVED AT THE FEC  
HAND-DELIVERED  
85 MAR 7 14:48

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

In Re: )  
 )  
Larry Flynt, Hustler )  
Magazine, Inc. and Larry )  
Flynt, as publisher, and )  
Larry Flynt Publications, )  
Inc., and Larry Flynt, as )  
publisher )

MUR 1651

MOTION TO VACATE REASON TO BELIEVE DETERMINATION

Respondents, by and through counsel, move the Federal Election Commission (the "Commission") to vacate its Reason To Believe Determination in this compliance proceeding. In support of this motion, Respondents state:

1. On March 16, 1984, the Democratic Congressional Campaign Committee ("DCCC") filed a complaint with the Commission in connection with the publication of an advertisement in the November 1983 issue of Hustler magazine. This externally generated complaint was designated MUR 1651.

2. On December 11, 1984, the Commission ordered Larry Flynt Publications to submit written answers to questions in MUR 1651. The Commission's cover letter to the Order states "The Commission does not consider you a respondent in this matter, but rather a witness only."

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3. In response to the Commission's Order, Larry Flynt answered that Larry Flynt, publisher of Hustler Magazine, Inc., placed the Hustler advertisement attached to the Commission's cover letter and Order.

4. On February 11, 1985, the Commission mailed a letter informing respondents of the February 4, 1985 Reason To Believe Determination that Larry Flynt, individually and in his corporate capacities, Hustler, and Larry Flynt Publications had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Campaign Act"). This letter was received by counsel on February 13, 1985. Prior to February 13, 1985, respondents had not received a copy of the DCCC complaint.

5. The Campaign Act provides the procedure for a compliance action initiated by an externally generated complaint:

Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint.

2 U.S.C. § 437g(a)(1).

7. Federal Election regulation, 11 C.F.R. § 111.6, provides:

(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 C.F.R. § 111.6(a).

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8. The due process rights contained in the procedure set forth in Section 437g are mandatory for "the failure to include [election law violation] charges [in the notice of a complaint or in the General Counsel's Brief] eliminated any possibility of ensuring the defendants a fair opportunity to demonstrate that no action should be taken or otherwise respond to the FEC charges." The Commission regulation is the "clear and unmistakable duty of the FEC." Federal Election Commission v. National Rifle Association of America, 553 F. Supp. 1331, 1332, 1337 (D.D.C. 1983).

9. Respondents did not receive a copy of the March 16, 1984 DCCC complaint until after the reason to believe determination was made by the Commission.

10. Respondents have been denied the opportunity to respond to the charges contained in the DCCC complaint before the reason to believe determination in derogation of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6.

For these reasons, Respondents respectfully request the Commission to vacate its reason to believe finding. In making this motion, the respondents recognize the initial difficulty in the identification of the person who placed the advertisement. The concern of the Commission is to process complaints in a timely manner in conformance with the due process requirement of the Campaign Act. Accordingly, the respondents' response to the DCCC complaint is being filed concurrently with this motion to avoid further delay of these proceedings. However, we request that this motion be considered prior to the response to the charges. This will provide the Commission with an opportunity to make the reason to believe finding with additional relevant information which we believe will lead to the dismissal of this action without such a determination.

Respectfully submitted,

DATE: \_\_\_\_\_

3/7/85

H. Richard Mayberry, Jr.  
H. Richard Mayberry, Jr.

Stephen M. Griffin  
Stephen M. Griffin

LAW OFFICE OF H. RICHARD MAYBERRY, JR.  
Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006  
(202) 822-9622

Attorneys for Respondents



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 26, 1985

H. Richard Mayberry, Jr.  
1667 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 1651

Dear Mr. Mayberry:

We have received your February 19, 1985, request to provide Larry Flynt, Larry Flynt Publications, Inc., and Hustler Magazine, Inc. an extension of time to respond to the interrogatories you received from the Commission on February 13, 1985. Although a response is due within ten days of the receipt of interrogatories, you may submit your response by March 7, 1985.

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

Sincerely,

Charles N. Steele  
General Counsel

BY:   
Associate General Counsel

8504055111

MCC # 6704

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006

(202) 622-9622  
February 19, 1985

BY MESSENGER

Matthew Gerson, Esquire  
Office of the General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RECEIVED

Re: MUR 1651 - Request for Enlargement  
of Time

Dear Mr. Gerson:

On behalf of our clients, Larry Flynt, Larry Flynt Publications, Inc., and Hustler Magazine, Inc., we hereby request an enlargement of time until March 15, 1985 in order to respond to the interrogatories we received from the Commission on February 13, 1985, and to submit factual and legal materials relevant to the Commission's analysis of this matter.

This additional time is required to undertake the factual and legal research necessary to advise our clients on these matters, and to prepare the appropriate responses. Moreover, our present election law caseload causes conflicting business demands upon the attorneys of our firm. The current ten-day response schedule is difficult if not impossible to meet and would create a substantial hardship.

Thank you in advance for your anticipated cooperation.

Sincerely,

*H. Richard Mayberry, Jr.*  
H. Richard Mayberry, Jr.

HRM/reh  
cc: David Kahn, Esquire

8504055112



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 11, 1985

H. Richard Mayberry, Esquire  
1667 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Mayberry:

On December 7, 1984, the Federal Election Commission authorized the issuance of an order to submit written answers to interrogatories to your clients, Larry Flynt Publications, Inc. and its publisher, Larry Flynt.

Upon review of the response contained in your January 10, 1985 letter to the General Counsel's office, the Commission, on February 4, 1985, determined that there is reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission's investigation began as a result of a March 16, 1984 complaint filed with the Commission. The complaint, a copy of which is enclosed, contained a photocopy of a political solicitation published in the November 1983 issue of Hustler Magazine. The political solicitation did not contain the disclaimer statement that the Act requires. You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such materials, along with your answers to the enclosed questions, within ten days of your receipt of this notification.

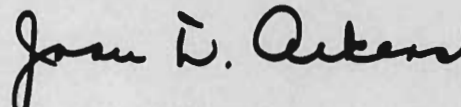
The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your committee, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

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H. Richard Mayberry, Esquire  
Page 2

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

Sincerely,



Joan D. Aikens  
Vice Chairman

Enclosures

- Original Complaint
- Procedures
- Order to Submit Written Answers
- Questions to Larry Flynt

8504055114

COMPLAINT

BEFORE

THE FEDERAL ELECTION COMMISSION

16 P 3: 29

March 16, 1984

Democratic Congressional )  
 Campaign Committee )  
 v. )  
 "Concerned Citizen: )  
 Financing Illegal Anonymous )  
 Communications on behalf of the )  
 Republican National Committee )

MUR 1051

8504055115

The Democratic Congressional Campaign Committee (DCCC) files this Complaint pursuant to 2 U.S.C. §437g(a)(1), seeking enforcement of the Federal Election Campaign Act requirement that general public political advertising carry clear notice of financial sponsorship.

A flagrant violation of this sponsorship notice requirement appears in connection with a paid political advertisement in the November, 1983 issue of Hustler magazine. This advertisement solicits political support and contributions on behalf of the Republican party generally, and the Republican National Committee (at 310 First Street, S.E., Washington, D.C. 20003) in particular. The advertisement is, however, anonymous. In fact, the sponsor of the advertisement makes a point of anonymity, by assuming the name "concerned citizen."

This anonymous appeal for financial and political support for the Republican National Committee, in a magazine of national circulation, clearly violates the requirement of a clear notice of sponsorship under §441d of the Federal Election Campaign Act of 1981, as amended, ("FECA") and the Federal Election Commission regulations.

In support of this complaint, DCCC states as follows:

1. The November 1983 issue of Hustler magazine carried a full-page advertisement on page eight, copy attached, which lauds the Republican party for accomplishments since the election of President Ronald Reagan in 1980. President Reagan is named specifically in this advertisement.

2. The full-page advertisement carries a "tag line" or closing slogan which reads: "REPUBLICAN. We Won't Stop Until It's Right."

3. The advertisement concludes with a general appeal for support of "your local Republican Party," and a specific appeal for "contributions to the Republican National Committee, 310 First Street, S.E., Washington, D.C., 20003."

4. The advertisement in Hustler carries no identification of the person or persons who prepared and paid for this advertisement. The advertisement states only that it was "paid for by a concerned citizen."

5. The FECA provides, in pertinent part, that:

Whenever any person...solicits any contribution...(the solicitation) shall clearly state the person who paid for the communication....

2 U.S.C. §441(a)(3).; Section 441d requires that this statement of sponsorship appear on any solicitation of contributions made through, inter alia, a "magazine...or any other type of general public political advertising...." 2 U.S.C. §441d(a). Hustler is a magazine with national circulation.

6. The Federal Election Commission's regulations state, in pertinent part, that:

For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

11 C.F.R. 110.11(a)(1)(iv)(A). This sponsorship notice requirement applicable to solicitations on behalf of a political committee was promulgated by the Federal Election Commission on May 13, 1983. This regulation was designed expressly to clarify that "all communications... that solicit contributions must contain a disclaimer (sponsorship notice) if they are made through a form of general public political advertising." (emphasis supplied.) 48 FR 8809; see also 48 FR 21553 (announcement of effective date.) The Hustler advertisement appearing in the November, 1983 issue specifically directs to the general public a solicitation on behalf of the Republican National Committee, which is "a political committee which is not an authorized committee of a candidate...." The advertisement carrying this solicitation, however, does not state the name, in full or in part, of "the person who paid for the communication."

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7. The Federal Election Commission has held that contribution "solicitations" occur when solicitations are directed to the general public on behalf of "third parties," and not only when solicitations seek contributions for the solicitor. See, e.g., Advisory Opinions 1980-46 and 1980-145. It is, therefore, immaterial whether the Republican National Committee financed the Hustler solicitation in whole or in part, because the FECA requires that any solicitation benefitting this committee carry clear sponsorship identification.

8. The FECA does not define the term "solicitation," but the legislative history makes clear the term is to be interpreted broadly. For example, Representative Hays of Ohio stated:

(We) determined that any action (that) could fairly be considered a request for a contribution should be treated as a solicitation.

122 Cong. Rec. 43779 (daily ed. May 3, 1976.)

9. The Federal Election Commission has ruled that a "solicitation" occurs when published political statements encourage or otherwise facilitate the making of contributions for Federal election-related purposes. See, e.g., Advisory Opinions 1979-13, 1979-66 and 1982-65. The November Hustler advertisement implicitly encourages contributions to the Republican party generally ("Support your local Republican Party"), and explicitly requests contributions for the Republican National Committee. The advertisement further facilitates the making of such contributions by providing a complete and full address, with zip code, for the Republican National Committee.

10. The FECA requires that sponsorship identification associated with solicitations must "clearly state the name of the person who paid for the communication." 2 U.S.C. §441d. The Federal Election Commission's regulations require that this clear statement include "the full name" of the person or persons paying for the solicitation. 11 CFR §110.11(a)(iv)(A). The advertisement in the November, 1983 edition of Hustler, financed on behalf of the Republican National Committee, does not carry the full name, or any name whatever, of the person paying the cost of this advertisement. The advertisement identifies only that it was paid by "a concerned citizen."

11. Accordingly, the November, 1983 Hustler advertisement financed on behalf of the Republican National Committee clearly violates §441(d) of the FECA because:

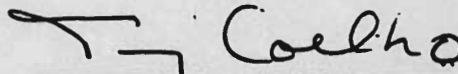
- (a) it includes a solicitation for contributions directed to the general public through a magazine of general public distribution;
- (b) the solicitation is made on behalf of a political committee, the Republican National Committee, which is not an authorized committee of a candidate; and

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(c) the identification of sponsorship appearing in the advertisement--"paid for by a concerned citizen"-- fails to meet statutory standards for a clear statement of sponsorship, including the requirement that the "full name" of the person or persons paying for the communication be disclosed.

WHEREFORE, the DCCC respectfully requests that the Federal Election Commission promptly initiate and complete enforcement action pursuant to 2 U.S.C. §437g, including the imposition of any and all appropriate civil penalties. Expedited FEC enforcement action is requested so that the public may know the identity of the "concerned citizen" financing this advertisement, and the relationship of that "concerned citizen" to the Republican National Committee.

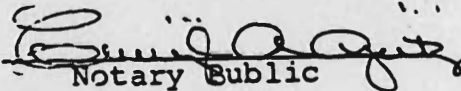
Respectfully submitted,



TONY COELHO, CHAIRMAN  
Democratic Congressional  
Campaign Committee  
Suite 319  
400 North Capitol Street  
Washington, D.C. 20001  
(202) 789-2920

Attachment . . . . .

Subscribed and sworn to  
before me this 16<sup>th</sup>  
day of March, 1984.



Notary Public

My Commission Expires January 1, 1987.

8504055118

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget,

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN.

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20003.

8504055119

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 "A Concerned Citizen" )  
 and ) MUR 1651  
 Larry Flynt, Hustler )  
 Magazine, Inc. and Larry )  
 Flynt, as publisher, and )  
 Larry Flynt Publications, )  
 Inc., and Larry Flynt, as )  
 publisher. )

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt, individually and in his  
 capacity as publisher of Larry Flynt  
 Publications, Inc. and Hustler Magazine, Inc.  
 Suite 3800  
 2029 Century Park East  
 Los Angeles, California 90067

Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its  
 investigation in the above-styled matter, the Federal Election  
 Commission hereby orders you to submit written answers to the  
 questions attached to this Order.

Such answers must be submitted under oath and must be  
 forwarded within ten days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission  
 has hereunto set her hand in Washington, D.C. on this 11th day of  
 February, 1985.

Jean D. Aikens  
 Jean D. Aikens  
 Vice Chairman

ATTEST:  
Marjorie W. Emmons  
 Marjorie W. Emmons  
 Secretary to the Commission

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## QUESTIONS TO LARRY FLYNT

Attached is a photocopy of the advertisement printed at page eight of the November 1983 issue of Hustler Magazine that is at issue in MUR 1651. Hereinafter that advertisement is referred to as the "Concerned Citizen's Advertisement" or "CCA."

1. The CCA states that it was, "PAID FOR BY A CONCERNED CITIZEN." Who or what is/are the individual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in the CCA? Please identify that (those) individual(s) or entity(ies) by name, address, occupation, daytime (PST) telephone number, corporate status and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc.
2. Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.
3. If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.
4. If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?
5. What was the typical or normal procedure for procuring advertising space in the November, 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.
- 5a. Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and

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relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement?. Include copies of any receipts pertaining to the order and payment.

6. Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

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STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20003.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE: JANUARY 11, 1985

SUBJECT: MUR 1651 - Order

The attached order, which was Commission approved on February 4, 1985 by a vote of 6-0, has been signed and sealed this date.

8504055124

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 1651  
"A Concerned Citizen" )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 4, 1985, the Commission decided by a vote of 6-0 to take the following actions in MUR 1651:

1. Find reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a).
2. Find reason to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b.
3. Approve the Order to Submit Written Answers and Questions attached to the General Counsel's Report signed January 31, 1985.
4. Approve the letters attached to the General Counsel's Report signed January 31, 1985.

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

Attest:

2-5-85

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

Received in Office of Commission Secretary: 1-31-85, 12:54  
Circulated on 48 hour tally basis: 1-31-85, 4:00

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FEDERAL ELECTION COMMISSION  
 WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary  
 FROM: Office of General Counsel *CW*  
 DATE: January 31, 1985  
 SUBJECT: MUR 1651 - General Counsel's Report

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

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

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**SENSITIVE**

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
OFFICE OF THE FEC  
COMMISSION SECRETARY

In the Matter of  
"A Concerned Citizen"

)  
)  
)  
)

MUR 1651

05 JAN 31 12:54

**GENERAL COUNSEL'S REPORT**

On March 16, 1984, the Commission received a complaint from Democratic Congressional Campaign Committee Chairman Tony Coelho concerning a full page advertisement in the November 1983 issue of Hustler Magazine. The advertisement lauded the accomplishments of, and urged support for, President Reagan and the Republican Party. It also solicited contributions to local Republican Parties and the Republican National Committee ("RNC"). The advertisement violated 2 U.S.C. § 441d(a) and 11 C.F.R. 110.11(a)(1) because it did not contain a disclaimer clearly stating the name of the person who paid for the communication and whether it was authorized by any candidate or candidate's committee. It merely stated: "PAID FOR BY A CONCERNED CITIZEN". See Attachment 1.

It has been difficult to determine the identity of the entity or individual calling itself, "A Concerned Citizen". Despite communications with Hustler Magazine representatives, the Commission, on November 27, 1984, could only find reason to believe that, "the person or persons identified as 'Concerned Citizen' violated the Act." On December 11, 1984, the Commission sent a reason to believe notification to:

Concerned Citizen  
c/o Republican National Committee

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In a December 17, 1984 letter to the Commission, the RNC's Chief Counsel explained that the RNC does not know the "Concerned Citizen's" identity. See Attachment 2.

On December 7, 1984, the Commission, in an effort to identify the "Concerned Citizen", issued an Order to Submit Written Answers to Larry Flynt Publications, Inc. ("LFP"). On January 10, 1985, Larry Flynt, publisher of Hustler Magazine, Inc. and LFP, responded through counsel after requesting an extension of time to answer. See Attachment 3. The response states that, Larry Flynt, Hustler Magazine, Inc.'s publisher, "placed the said advertisement." In response to a question asking who, "paid for the said advertisement," Mr. Flynt responds:

Objection. The administrative practices and procedures of 2 U.S.C. § 437g. including but not limited to notification of the allegations of the complaint, have not been complied with (sic).

The General Counsel's Office is, nonetheless, of the opinion that Mr. Flynt's statement adequately identifies those responsible for the above mentioned violation.

Disclaimer

The advertisement at issue solicits a contribution because it concludes:

Support your local Republican Party or send your contributions to the Republican National Committee, 310 1st Street, S.E., Washington, D.C. 20003

The Commission has recognized that when an individual or entity encourages or solcits contributions to a third party, the

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solicitation is subject to § 441d(a). A.O. 1980-145. Indeed, the regulations specifically state:

For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

11 C.F.R. 110.11(a)(1)(iv)(A).

Therefore, if Mr. Flynt placed the advertisement individually, he violated the Act because "A Concerned Citizen" does not clearly identify him. If Mr. Flynt placed the advertisement on behalf of either of the corporations for which he is publisher, the responsible corporation violated 2 U.S.C. § 441d(a) because a corporation is subject to the requirement as if it were an individual and may not solicit any contribution through a magazine or any other type of general public political advertising without including an appropriate disclaimer. 2 U.S.C. § 431(11).

The General Counsel's Office recommends therefore, that the Commission find reason to believe that Larry Flynt individually and Hustler Magazine, Inc. and Larry Flynt, as publisher, and/or Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. § 441d(a).

#### Corporate Contributions

If Hustler Magazine, Inc. or LFP placed and/or paid for the solicitation, there may also be a 2 U.S.C. § 441b violation. That provision states that it is unlawful for any corporation to make a contribution or expenditure in connection with any federal election. A charge of this nature could be complicated by the

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fact that the publishing companies may attempt to assert the news story exemption codified at 2 U.S.C. § 431(9)(B)(i). That provision states that:

The term expenditure does not include any news story, commentary, or editorial distributed through the facilities of any . . . magazine or other periodical publication. . .

It is unlikely that the text in question falls within this exemption since Mr. Flynt refers to it as an advertisement in his answer. In addition, the text in no way appears to be a news story, commentary or editorial; the text is not identified as editorial comment and is presented with a "disclaimer", albeit unsatisfactory, that makes it appear like an advertisement. Therefore, the General Counsel's Office is of the opinion that LFP and Hustler Magazine, Inc. and their publisher, Larry Flynt, violated 2 U.S.C. § 441b.

Recommendations

1. Find reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a).
2. Find reason to believe that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b.
3. Approve the attached Order to Submit Written Answers and Questions attached thereto.

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4. Approve the attached letters.

Charles N. Steele  
General Counsel

January 31, 1985  
Date

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

Attachments

1. Photocopy of the advertisement at issue published in the November 1983 issue of Hustler Magazine.
2. December 17, 1984 letter from the RNC's Chief Counsel to the Commission Chairman.
3. January [ ], 1985 Answer to the Commission's Interrogatories executed by Larry Flynt.
4. Order to Submit Written Answers.
5. Questions to Respondent.
6. Letter to Respondent's Counsel.

8504055131

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan, and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

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The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20003.

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**Republican  
National  
Committee**

**E. Mark Braden**  
Chief Counsel

**Catherine E. Gensior**  
**Michael A. Hess**  
Deputy Chief Counsels

CONFIDENTIAL  
GCC#6044  
34 DEC 19 11:43

December 17, 1984

Lee Ann Elliott, Chairman  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C. 20463

ATTN: Thomas J. Whitehead

RE: MUR 1651  
Concerned Citizen

Dear Chairman Elliott:

I am responding to your December 11th letter to Concerned Citizen,  
c/o Republican National Committee.

Please be advised that no one claiming themselves as "a Concerned  
Citizen" resides at, or is associated with, the Republican National  
Committee. The Republican National Committee did not place an  
advertisement in the November, 1983, edition of Hustler magazine.  
No official or officer of the Republican National Committee had any  
prior knowledge, or has any present knowledge, of the party or  
parties purchasing this advertisement. No one at the Republican  
National Committee is aware of any contributions received which  
were a result of this particular advertisement.

If you should have questions in regard to my response, please do  
not hesitate to contact my office.

Very truly yours,

E. Mark Braden

EMB:jd

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DEC 19 11:58

**INTERROGATORIES**

INTRODUCTION: In the November 1983, edition of Hustler magazine, there appeared a full page advertisement which began with the text: "Strengthening America's Economy Took Long Hours and Sweat and a President Who Knew How To Say NO." and ended with the text: "Paid for by a Concerned Citizen. Support your local Republican Party or send your contributions to the Republican National Committee. 310 1st Street, S.E. Washington, D.C. 20003."

In connection with that advertisement, you are directed to submit the following information:

1. The complete name and address of the person or persons who placed the said advertisement.
2. The name and address of the person or persons who paid for the said advertisement.

8504055134

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

\_\_\_\_\_)  
\_\_\_\_\_)  
MATTER UNDER REVIEW 1651 )  
\_\_\_\_\_)  
\_\_\_\_\_)

ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal Election Commission's Interrogatories of December 11, 1984, as follows:

INTERROGATORY NO. 1: The complete name and address of the person or persons who placed the said advertisement.

ANSWER:

Larry Flynt  
Publisher  
Hustler Magazine, Inc.  
2029 Century Park East, Suite 3800  
Los Angeles, California 90067

INTERROGATORY NO. 2: The name and address of the person or persons who paid for the said advertisement.

ANSWER: Objection. The administrative practices and procedures of 2 U.S.C. § 437g, including but not limited to notification of the allegations of the complaint, have not been complied with.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 1985.

  
\_\_\_\_\_  
Larry Flynt

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 "A Concerned Citizen" )  
 )  
 and ) MUR 1651  
 )  
 Larry Flynt, Hustler )  
 Magazine, Inc. and Larry )  
 Flynt, as publisher, and )  
 Larry Flynt Publications, )  
 Inc., and Larry Flynt, as )  
 publisher. )

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt, individually and in his  
 capacity as publisher of Larry Flynt  
 Publications, Inc. and Hustler Magazine, Inc.  
 Suite 3800  
 2029 Century Park East  
 Los Angeles, California 90067

Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its  
 investigation in the above-styled matter, the Federal Election  
 Commission hereby orders you to submit written answers to the  
 questions attached to this Order.

Such answers must be submitted under oath and must be  
 forwarded within ten days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission  
 has hereunto set his hand in Washington, D.C. on this \_\_\_\_ day of  
 February, 1985.

\_\_\_\_\_  
 John Warren McGarry  
 Chairman

ATTEST:

\_\_\_\_\_

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QUESTIONS TO LARRY FLYNT

Attached is a photocopy of the advertisement printed at page eight of the November 1983 issue of Hustler Magazine that is at issue in MUR 1651. Hereinafter that advertisement is referred to as the "Concerned Citizen's Advertisement" or "CCA."

1. The CCA states that it was, "PAID FOR BY A CONCERNED CITIZEN." Who or what is/are the individual(s) or entity(ies) referred to as "A CONCERNED CITIZEN" in the CCA? Please identify that (those) individual(s) or entity(ies) by name, address, occupation, daytime (PST) telephone number, corporate status and relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc.
2. Who paid for the CCA? Did the individual or entity whom you identified in response to question One above, in fact, pay for the CCA? If not, what individual(s) or entity(ies) did pay for the CCA? How much was the payment? How was payment tendered? When was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement? Include copies of any receipts pertaining to the order and payment.
3. If the entity you identified as "A Concerned Citizen" is Larry Flynt Publications, Inc. or Hustler Magazine, Inc., please state the name, address, occupation, daytime (PST) telephone number, and position or areas of responsibility of the individual or individuals who made the decision to place the CCA and prepared the text of the CCA.
4. If the individual you identified as "A Concerned Citizen" is Larry Flynt, please identify the capacity in which Mr. Flynt purchased the advertising space, i.e., did Mr. Flynt purchase the advertisement space as an individual or in his capacity as publisher of Larry Flynt Publications, Inc. or Hustler Magazine, Inc. or in any other capacity?
5. What was the typical or normal procedure for procuring advertising space in the November, 1983 Hustler Magazine? Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the November 1983 Hustler Magazine in the normal course of business.
- 5a. Please explain in detail how the space for the CCA was procured specifically comparing that procurement with the procedures outlined in question five above. How was Hustler Magazine informed of the interest in placing the CCA in Hustler Magazine? Identify the individual(s) or entity(ies) who made the specific request by name, address, occupation, daytime (PST) telephone number, corporate status, and

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relationship to Larry Flynt, Hustler Magazine, Inc. and Larry Flynt Publications, Inc. How was the order placed? How was payment tendered? To whom was payment tendered? What individual or entity physically tendered and/or transferred and/or authorized the funds to pay for the CCA's placement?. Include copies of any receipts pertaining to the order and payment.

6. Did the individual(s) or entity(ies) that you identified as "A Concerned Citizen" in question One above have any direct contact with, or guidance, direction or instruction from, the White House, a Reagan-Bush reelection committee, the Republican National Committee or any local Republican Party regarding the CCA? Please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of the people who participated in the communications, the date of the communications and the specific nature of the communication. Please include notes from, or transcripts or copies of, those communications, if any.

85040535138



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

H. Richard Mayberry, Esquire  
1667 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Mayberry:

On December 7, 1984, the Federal Election Commission authorized the issuance of an order to submit written answers to interrogatories to your clients, Larry Flynt Publications, Inc. and its publisher, Larry Flynt.

Upon review of the response contained in your January 10, 1985 letter to the General Counsel's office, the Commission, on February , 1985, determined that there is reason to believe that Larry Flynt violated 2 U.S.C. § 441d(a) and that Hustler Magazine, Inc. and Larry Flynt, as publisher, and Larry Flynt Publications, Inc. and Larry Flynt, as publisher, violated 2 U.S.C. §§ 441d(a) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission's investigation began as a result of a March 16, 1984 complaint filed with the Commission. The complaint, a copy of which is enclosed, contained a photocopy of a political solicitation published in the November 1983 issue of Hustler Magazine. The political solicitation did not contain the disclaimer statement that the Act requires. You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such materials, along with your answers to the enclosed questions, within ten days of your receipt of this notification.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your committee, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

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H. Richard Mayberry, Esquire  
Page 2

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

Sincerely,

John Warren McGarry  
Chairman

Enclosures

Original Complaint  
Procedures  
Order to Submit Written Answers  
Questions to Larry Flynt

85040555140

CXC # 6355

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 822-9822

January 10, 1985

15 JAN 10 P 3:22

BY MESSENGER

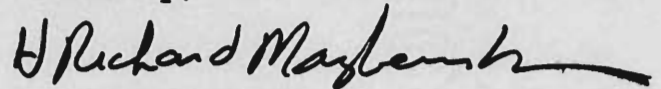
Matthew Gerson, Esquire  
Office of the General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: Matter Under Review 1651

Dear Mr. Gerson:

Please find enclosed a Statement of Designation of Counsel and the answers of Mr. Larry Flynt to the Commission's interrogatories in the above-referenced matter.

Sincerely,



H. Richard Mayberry, Jr.

HRM:reh  
Encl.  
cc: David Kahn

8504055141

UNITED STATES OF AMERICA  
BEFORE  
THE FEDERAL ELECTION COMMISSION

\_\_\_\_\_)  
\_\_\_\_\_)  
MATTER UNDER REVIEW 1651 )  
\_\_\_\_\_)  
\_\_\_\_\_)

ANSWERS TO INTERROGATORIES  
OF THE FEDERAL ELECTION COMMISSION

NOW COMES Larry Flynt and makes answer to the Federal  
Election Commission's Interrogatories of December 11, 1984, as  
follows:

INTERROGATORY NO. 1: The complete name and address of the  
person or persons who placed the said advertisement.

ANSWER:

Larry Flynt  
Publisher  
Hustler Magazine, Inc.  
2029 Century Park East, Suite 3800  
Los Angeles, California 90067

INTERROGATORY NO. 2: The name and address of the person or  
persons who paid for the said advertisement.

ANSWER: Objection. The administrative practices and  
procedures of 2 U.S.C. § 437g, including but not limited to  
notification of the allegations of the complaint, have not been  
complied with.

I declare under penalty of perjury that the foregoing is  
true and correct. Executed on January 11, 1985.

  
\_\_\_\_\_  
Larry Flynt

8504055142

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
DEC 31 1984  
LEGAL DEPT.

STATEMENT OF DESIGNATION OF COUNSEL

NAME OF COUNSEL: H. RICHARD MAYBERRY, JR., ESQUIRE

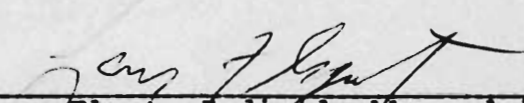
ADDRESS: Ninth Floor  
1667 K Street, N.W.  
Washington, D.C. 20006

TELEPHONE: (202) 822-9622

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Federal Election Commission ("Commission") and to act on behalf of Larry Flynt or L.F.P., Inc. (Larry Flynt Publications) before the Commission.

Pursuant to relevant Commission rules and regulations, and the District of Columbia Code of Professional Responsibility, all communications are to be directed to my counsel until such time as you are otherwise notified.

January 2, 1985  
Date

  
Larry Flynt, Individually and in his capacity as publisher of LFP, Inc.

NAME: Larry Flynt  
Publisher  
LFP, Inc.

ADDRESS: Suite 3800  
2029 Century Park East  
Los Angeles, California 90067

BUSINESS PHONE: (213) 556-9200

3504055143

GCCT#6118  
Gerson

LAW OFFICE OF  
H. RICHARD MAYBERRY, JR.  
NINTH FLOOR  
1667 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 622-9622

December 28, 1984

BY COURIER

Matthew Gerson, Esquire  
Office of the General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

24 DEC 28 1984  
F 4: 36  
GENERAL COUNSEL

Re: MUR 1651

Dear Mr. Gerson:

On behalf of our client, Larry Flynt Publications, we hereby request an enlargement of time until January 7, 1985 in order to respond to the the interrogatories propounded on December 11, 1984 in the above-referenced matter. The Commission's letter transmitting the interrogatories apparently was delayed in the Christmas mail. We, as counsel, were not aware of the interrogatories until December 26, 1984, and did not have a copy of the interrogatories until December 27, 1984. Previously scheduled vacations for our staff during this holiday period make an earlier response highly improbable if not impossible.

Thank you in advance for your consideration of this motion for an enlargement of time.

Sincerely,

*H Richard Mayberry, Jr.*  
H. Richard Mayberry, Jr.

HRM:mhm  
cc: David Kahn, Esquire

6504055144



**Republican  
National  
Committee**

**E. Mark Braden**  
Chief Counsel

**Catherine E. Gensior**  
**Michael A. Hess**  
Deputy Chief Counsels

RECEIVED  
OFFICE OF THE FEC  
COMMISSION SECRETARY  
GCC#6044  
84 DEC 19 P 1:43

December 17, 1984

Lee Ann Elliott, Chairman  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C. 20463

ATTN: Thomas J. Whitehead

RE: MUR 1651  
Concerned Citizen

Dear Chairman Elliott:

I am responding to your December 11th letter to Concerned Citizen,  
c/o Republican National Committee.

Please be advised that no one claiming themselves as "a Concerned Citizen" resides at, or is associated with, the Republican National Committee. The Republican National Committee did not place an advertisement in the November, 1983, edition of Hustler magazine. No official or officer of the Republican National Committee had any prior knowledge, or has any present knowledge, of the party or parties purchasing this advertisement. No one at the Republican National Committee is aware of any contributions received which were a result of this particular advertisement.

If you should have questions in regard to my response, please do not hesitate to contact my office.

Very truly yours,

E. Mark Braden

EMB:jd

14  
19  
P 3:58  
GENERAL COUNSEL

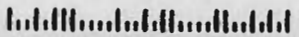
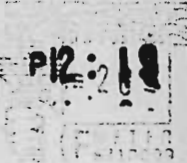
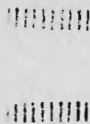
8504055145



Republican  
National  
Committee

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Lee Ann Elliott, Chairman  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C. 20463





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 11, 1984

Concerned Citizen  
c/o Republican National Committee  
310 1st Street, S.E.  
Washington, D.C. 20003

RE: MUR 1651  
Concerned Citizen

TO WHOM IT MAY CONCERN:

On November 27, 1984, the Federal Election Commission determined that there is reason to believe a person who represents himself or herself as "Concerned Citizen, violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 110.11(a)(iv)(A) by failing to include a proper disclaimer on an advertisement that appeared in the November 1983 edition of Hustler magazine. Inasmuch as the address used in the advertisement (Copy Attached) is 310 1st Street, S.E., Washington, D.C. 20003, we are forwarding this letter to the care of Republican National Committee.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within ten days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

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

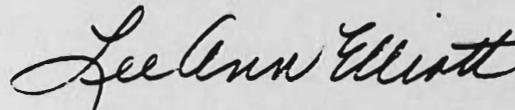
8504055147

Concerned Citizen  
MUR 1651  
Page 2

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Thomas J. Whitehead, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,



Lee Ann Elliott  
Chairman

Enclosures  
Procedures  
Designation of Counsel Statement  
Copy of Advertisement

8504055148

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee.

8 5 0 4 0 5 5 1 4 9



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 11, 1984

Larry Flynt Publications  
2029 Century Park East  
Suite 3800  
Los Angeles, California 90067

RE: MUR 1651

Dear Sir:

The Federal Election Commission, established in April, 1975, has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, Internal Revenue Code of 1954. In connection with an investigation being conducted by the Commission, the attached order which requires you provide certain information has been issued. The Commission does not consider you a respondent in this matter; but rather a witness only.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. That section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. However, you are required to submit the information under oath within ten days of your receipt of this subpoena and order.

If you have any questions, please direct them to Thomas J. Whitehead, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele  
General Counsel

BY:   
Kenneth A. Gross  
Associate General Counsel

Enclosure  
Order  
Questions

8504055150

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 1651

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt Publications  
2029 Century Park East  
Suite 3800  
Los Angeles, California 90067

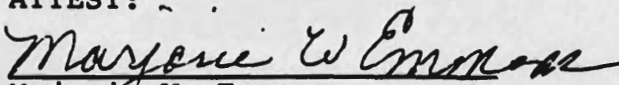
Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within \_\_\_\_\_ days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 7<sup>th</sup> day of December, 1984.

  
Lee Ann Elliott  
Chairman

ATTEST:

  
Majorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories

8504055151

**INTERROGATORIES**

**INTRODUCTION:** In the November 1983, edition of Hustler magazine, there appeared a full page advertisement which began with the text: "Strengthening America's Economy Took Long Hours and Sweat and a President Who Knew How To Say NO." and ended with the text: "Paid for by a Concerned Citizen. Support your local Republican Party or send your contributions to the Republican National Committee. 310 1st Street, S.E. Washington, D.C. 20003."

In connection with that advertisement, you are directed to submit the following information:

1. The complete name and address of the person or persons who placed the said advertisement.
2. The name and address of the person or persons who paid for the said advertisement.

3504055152



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE: DECEMBER 7, 1984

SUBJECT: MUR 1651 - Order

The attached order was Commission approved on  
December 6, 1984 by a vote of 4-1. It has been signed  
and sealed this date.

8504055153

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Unknown Respondent(s) ) MUR 1651

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 6, 1984, the Commission authorized by a vote of 4-1 the order and cover letter to Larry Flynt Publications, 2029 Century Park East, Suite 3800, Los Angeles, California 90067, as submitted with the General Counsel's Report signed December 3, 1984.

Commissioners Elliott, Harris, McDonald and McGarry voted affirmatively in this matter; Commissioner Aikens dissented and Commissioner Reiche did not cast a vote.

Attest:

12-6-84  
Date

Godoy C. Ransom  
for Marjorie W. Emmons  
Secretary of the Commission

8504055154

Received in Office of Commission Secretary: 12-4-84, 8:55  
Circulated on 48 hour tally basis: 12-4-84, 11:00



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
)  
)  
)

MUR 1651

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry Flynt Publications  
2029 Century Park East  
Suite 3800  
Los Angeles, California 90067

Pursuant to 2 U.S.C. § 437g(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within \_\_\_\_\_ days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this \_\_\_\_\_ day of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Lee Ann Elliott  
Chairman

ATTEST:

\_\_\_\_\_  
Majorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories

6504055156



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Larry Flynt Publications  
2029 Century Park East  
Suite 3800  
Los Angeles, California 90067

RE: MUR 1651

Dear Sir:

The Federal Election Commission, established in April, 1975, has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, Internal Revenue Code of 1954. In connection with an investigation being conducted by the Commission, the attached order which requires you provide certain information has been issued. The Commission does not consider you a respondent in this matter; but rather a witness only.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. That section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. However, you are required to submit the information under oath within ten days of your receipt of this subpoena and order.

If you have any questions, please direct them to Thomas J. Whitehead, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
Order  
Questions

8504055157

**INTERROGATORIES**

**INTRODUCTION:** In the November 1983, edition of Hustler magazine, there appeared a full page advertisement which began with the text: "Strengthening America's Economy Took Long Hours and Sweat and a President Who Knew How To Say NO." and ended with the text: "Paid for by a Concerned Citizen. Support your local Republican Party or send your contributions to the Republican National Committee. 310 1st Street, S.E. Washington, D.C. 20003."

In correction with that advertisement, you are directed to submit the following information:

1. The complete name and address of the person or persons who placed the said advertisement.
2. The name and address of the person or persons who paid for the said advertisement.

8504055158



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ JODY C. RANSOM *JCR*

DATE: DECEMBER 6, 1984

SUBJECT: COMMENTS RE: MUR 1651 General Counsel's  
Report signed December 3, 1984

Attached is a copy of Commissioner Aikens' vote sheet with comments regarding her objection for record purposes only and a misspelling in the interrogatories.

Attachment:  
copy of vote sheet

85040555159

**SENSITIVE**



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

Date and Time Transmitted: TUESDAY, 12/4/84 AT 11:00

COMMISSIONER: MCGARRY, AIKENS, McDONALD, ELLIOTT, REICHE, HARRIS

RETURN TO COMMISSION SECRETARY BY THURSDAY, 12/6/84 AT 11:00 A.M.

SUBJECT: MUR 1651 General Counsel's Report  
signed December 3, 1984.

- ( ) I approve the recommendation
- (✓) I object to the recommendation

04 DEC 6 11:09 AM '84  
 RECEIVED  
 FEDERAL ELECTION COMMISSION

COMMENTS: for record only - not to be placed  
on agenda  
In interrogatories - misspelling of wrong  
word used? "Correction:"

Date: 12-5-84 Signature: J. D. Aikens

A DEFINITE VOTE IS REQUIRED. ALL BALLOTS MUST BE SIGNED AND DATED.  
 PLEASE RETURN ONLY THE BALLOT TO THE COMMISSION SECRETARY.  
 PLEASE RETURN BALLOT NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

From the Office of the Commission Secretary

8504055160

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of            )  
                                  )  
Unknown Respondent(s)    )

MUR 1651

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 27, 1984, do hereby certify that the Commission decided by a vote of 5-1 to find reason to believe that the person or persons identified as "Concerned Citizen" has violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11(a)(1)(iv)(A) in connection with the events described in MUR 1651.

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

Attest:

11-30-84  
Date

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

85040555161

**SENSITIVE**

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

RECEIVED  
OFFICE OF THE  
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT 84 NOV 20 P 3: 49

DATE AND TIME OF TRANSMITTAL BY OGC  
TO THE COMMISSION 11/20/84 - 3:45

MUR NO. 1651  
DATE COMPLAINT RECEIVED  
BY OGC March 16, 1984  
DATE OF NOTIFICATION TO  
RESPONDENT \_\_\_\_\_  
STAFF MEMBERS  
Edwards/Whitehead

COMPLAINANT'S NAME: Honorable Tony Coelho  
Democratic Congressional Campaign Committee

RESPONDENT'S NAME: Unknown Respondent(s)

RELEVANT STATUTE: 2 U.S.C. § 441a  
11 C.F.R. § 110.11(a)(1)(iv)(A)

INTERNAL REPORTS  
CHECKED: None

FEDERAL AGENCIES  
CHECKED: None

**SUMMARY OF ALLEGATIONS**

By letter of March 16, 1984, the Democratic Congressional Campaign Committee alleged that an anonymous appeal for financial and political support for the Republican Party generally and the Republican National Committee specifically had been published in Hustler magazine. (See Attachment 1). The Committee alleged that the advertisement failed to contain a proper disclaimer under 2 U.S.C. § 441a and 11 C.F.R. § 110.11(a)(1)(iv)(A). The advertisements called for contributions to be sent to the Republican National Committee, 310 First Street, S.E., Washington, D.C. 20003. Complainant was unable to furnish anything more than a copy of the questioned advertisement.

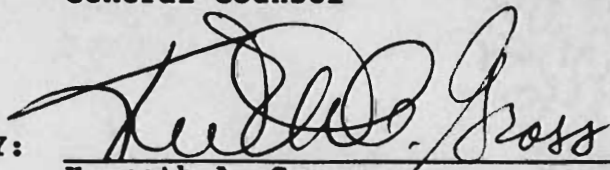
8504055162

**FACTUAL AND LEGAL ANALYSIS**

Since the receipt of the complaint, several attempts have been made to determine the identity of the anonymous so-called "Concerned Citizen." The last contact with the magazine was with a representative who, although he indicated that he had the information about the advertiser and would send it to us, has not done so as of the date of this report. On November 19, 1984, this Office spoke with counsel for the complainant and advised him of the difficulty that we have experienced up to now. We further advised him that he should supply any further information concerning the identity of the respondent. If further information is not forthcoming, we will have no alternative but to recommend the dismissal of this matter. See MUR 1228.

Charles N. Steele  
General Counsel

November 20, 1984  
Date

BY:   
Kenneth A. Gross  
Associate General Counsel

Attachment

8504055163

# HUSTLER

2

## FICTION

Ad & Personality Parody

5

## PUBLISHER'S STATEMENT

9

## FEEDBACK

15

## ADVISE & CONSENT

17

## BITS & PIECES

AIDS Suicide Plan,  
"Sex Tapes" Preview  
... and More

Edited by Bruce Helford

27

## X-RATED REVIEWS

34

## THE PHONE-SEX RAGE: AMERICA'S NEWEST HOTLINE

Report by Rita Greene

38

## CLASSICAL MOVES

Photography by Clive McLean

50

## CONFESSIONS OF MEN WHO DRESS LIKE WOMEN

Interview by Anton Golan

55

## SHASA: DIVING FOR PLEASURE

Photography by Justin Rand

65

## TINSLEY IN REVIEW

The Greatest Cartoons  
by Dwayne Tinsley



70

## ASHLEY: SHE LOVES HER MEAT

Centerfold Photography  
by Matt Klatt

80

## HUSTLER HUMOR

82

## THE FINAL ORBIT

Fiction by Ted Newman

86

## PAMELA: HOT JEWELS

Photography by  
Matt Klatt

94

## GUEST OPINION

Madalya Murray O'Hair

101

## BEAVER HUNT

Sumptuous Selection

106

## BEAVER SPOTLIGHT

113

## SEX PLAY

Understanding Sex  
by Steve Campbell

117

## KINKY KORNER

Confessions of a Voyeur  
by Al Theodore

119

## HONEY

Honey and the Vampire  
Text by Bruce Helford and  
Art by Tom Garst

123

## MAIL-ORDER FEEDBACK

Girls and Girls Together

NOVEMBER 1983 VOLUME 10 NUMBER 5

8 5 0 4 0 5 5 5 1 6 4

TX 1-378-363

# Jerry Falwell talks about his first time.\*



FALWELL: My first time was in an outhouse outside Lynchburg, Virginia.

INTERVIEWER: Wasn't it a little cramped?

FALWELL: Not after I kicked the goat out.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell!"

Campari, like all liquor, was made to mix you up. It's a light, 48-proof, refreshing spirit, just mild enough to make you drink too much before you know you're schnockered. For your first time, mix it with orange juice. Or maybe some white wine. Then you won't remember anything the next morning. *Campari. The mixable that smarts.*

INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Looks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we were drunk off our God-fearing asses on Campari, ginger ale and soda—that's called a Fire and Brimstone—at the time. And Mom looked better than a Baptist whore with a

\$100 donation.

INTERVIEWER: Campari in the crapper with Mom... how interesting. Well, how was it?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: Did you ever try it again?

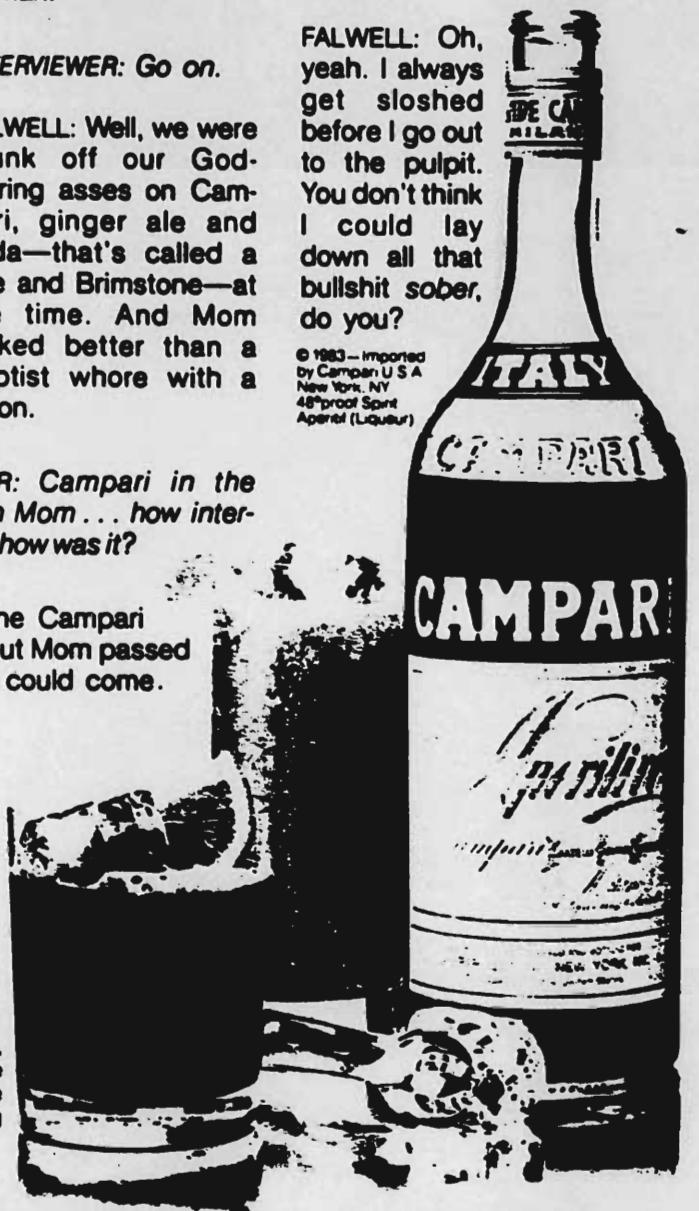
FALWELL: Sure...

lots of times. But not in the outhouse. Between Mom and the shit, the flies were too much to bear.

INTERVIEWER: We meant the Campari.

FALWELL: Oh, yeah. I always get sloshed before I go out to the pulpit. You don't think I could lay down all that bullshit sober, do you?

© 1983 - Imported by Campari U.S.A. New York, NY. 48° proof Spirit. Apertif (Liquor).



**CAMPARI** You'll never forget your first time.

\*AD PARODY—NOT TO BE TAKEN SERIOUSLY

# TOYOTA



**From those nice people  
who brought you Pearl Harbor**

# SHE HAD PLENTY OF LIFE INSURANCE. UNFORTUNATELY, HER PIMP DIED.



Today almost every hooker understands how important it is to have life insurance. The streets can get pretty rough. But what if her *pimp* is offed? Who's going to find new johns? Who's going to supply the smack? Clearly, his loss would create financial hardships for her and the two

mulatto kids he left behind.

With Metropolitan Street Life's new Whore Plus plan, a prostitute can get permanent insurance protection that provides door-to-door Cadillac service, up to three fixes daily and a big black motherfucker with a gun — just as if your main man was

*still around*. What do we ask in return for a safe future? 50% of the action. That's probably a better deal than he gave you. And we won't beat you upside the head.



## METROPOLITAN STREET LIFE

Professionals Helping Professionals

"Oh, God. I Love It!"

**HUSTLER**  
 FOR THE BEST OF THE WORLD  
 GRAFFITI FOR THE '80s.  
 THE POPE Likes Valley Girls  
 Lech Walesa Sports Cars  
 DeLores  
 GEORGE BUSH HAS A.I.D.S.  
 AEROBICS gives you AFRPES

It's a lonely job being the Pope's...  
 times it can be very boring...  
 the Vatican. With all the...  
 blessing, Church policy-making, in-  
 vine guidance of more than 500 mil-  
 lion Catholics and worrying about  
 poor Lech Walesa, just getting a few  
 moments alone to enjoy a good mag-  
 azine is a blessing. HUSTLER  
 makes those moments fulfilling by  
 bringing the Pontiff the finest in-  
 vestigative articles and...  
 startling profiles, unadorned  
 and the most beautiful  
 in the world. See the  
 why and subscribe  
 HUSTLER—the magazine  
 that's never out of  
 your mind.

**SUBSCRIBE TODAY!**

1 Year \$12.00  
 6 Months \$7.00

Send no money now! We'll bill you later. If you prefer, we'll bill you now. If you're outside the U.S., we'll bill you later. If you're outside the U.S., we'll bill you later.

Send no money now! We'll bill you later. If you prefer, we'll bill you now. If you're outside the U.S., we'll bill you later. If you're outside the U.S., we'll bill you later.

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Signature \_\_\_\_\_

NO MONEY NOW! We'll bill you later. If you prefer, we'll bill you now. If you're outside the U.S., we'll bill you later. If you're outside the U.S., we'll bill you later.

NO MONEY NOW! We'll bill you later. If you prefer, we'll bill you now. If you're outside the U.S., we'll bill you later. If you're outside the U.S., we'll bill you later.

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

- Cut the cancerous, wasteful social-welfare programs from a devastatingly bloated budget.

- Instituted tax cuts that will benefit all Americans.
- Brought inflation to its lowest point in years so that those who work can afford the good life this nation offers.

Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee, 510 1st Street SE, Washington, D.C. 20003.

6304033169

604 2187  
RECEIVED AT THE REG

**PERKINS, COIE, STONE, OLSEN & WILLIAMS**

84 APR 19 11:02

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SEATTLE OFFICE  
1900 WASHINGTON BUILDING  
SEATTLE, WASHINGTON 98101  
TELEPHONE: (206) 682-8770  
CABLE "PERKINS SEATTLE"  
TELEX: 32-0319

1110 VERMONT AVENUE, N.W.  
WASHINGTON, D.C. 20005  
TELEPHONE: (202) 887-9030  
FACSIMILE (202) 223-2088  
TELEX: 44-0277

BELLEVUE OFFICE  
ONE BELLEVUE CENTER  
SUITE 1800  
411 - 108TH AVENUE N.E.  
BELLEVUE, WASHINGTON 98004  
TELEPHONE: (206) 453-6880

ANCHORAGE OFFICE  
SUITE 301  
420 "L" STREET  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 279-8561

PLEASE REPLY TO WASHINGTON, D.C. OFFICE

PORTLAND OFFICE  
ONE MAIN PLACE  
SUITE 1800  
101 S.W. MAIN STREET  
PORTLAND, OREGON 97204  
TELEPHONE: (503) 288-4400

April 16, 1984

*MUR 1651*  
*Edwards*  
11  
P 1:53

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

Dear Mr. Edwards:

At your request, the Democratic Congressional Campaign Committee sought to locate and provide you with a complete copy of the edition of Hustler in which there appeared the advertisement, on behalf of the Republican National Committee, addressed in the DCCC's recent complaint. Unfortunately, we were unable to locate this edition.

We assume that the issue in question should be available upon request to Hustler, should the Commission wish to pursue this further. We regret that we could not be more helpful on this score, but all of our attempts to find the copy from which this advertisement was photocopied or to secure another copy in the Washington metropolitan area, were unavailing.

Very truly yours,

*Robert F. Bauer*  
Robert F. Bauer

RFB/taw

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IRKINS, COIE, STONE, OLSEN & WILLIAMS

1110 VERMONT AVENUE, N. W.

WASHINGTON, D. C. 20005

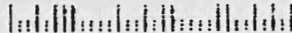


APR 19

4:01

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

504055171





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 21, 1984

The Honorable Tony Coelho  
Chairman  
Democratic Congressional  
Campaign Committee  
400 North Capitol Street  
Suite 319  
Washington, D. C. 20001

Dear Mr. Coelho:

This letter is to acknowledge receipt of your complaint which we received on March 16, 1984, against Concerned Citizen which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within five days.

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. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Cheryl Thomas at (202) 523-4073.

Sincerely,

Charles N. Steele  
General Counsel

By

*Kenneth A. Gross (Signature)*  
Kenneth A. Gross  
Associate General Counsel

Enclosure

8504055172

COMPLAINT  
BEFORE  
THE FEDERAL ELECTION COMMISSION

RECEIVED  
MAR 16 P 3: 29

March 16, 1984

Democratic Congressional )  
Campaign Committee )  
 )  
v. )  
 )  
"Concerned Citizen: )  
Financing Illegal Anonymous )  
Communications on behalf of the )  
Republican National Committee )  
 )  
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MUR 1651

8 5 0 4 0 5 5 5 1 7 3

The Democratic Congressional Campaign Committee (DCCC) files this Complaint pursuant to 2 U.S.C. §437g(a)(1), seeking enforcement of the Federal Election Campaign Act requirement that general public political advertising carry clear notice of financial sponsorship.

A flagrant violation of this sponsorship notice requirement appears in connection with a paid political advertisement in the November, 1983 issue of Hustler magazine. This advertisement solicits political support and contributions on behalf of the Republican party generally, and the Republican National Committee (at 310 First Street, S.E., Washington, D.C. 20003) in particular. The advertisement is, however, anonymous. In fact, the sponsor of the advertisement makes a point of anonymity, by assuming the name "concerned citizen."

This anonymous appeal for financial and political support for the Republican National Committee, in a magazine of national circulation, clearly violates the requirement of a clear notice of sponsorship under §441d of the Federal Election Campaign Act of 1981, as amended, ("FECA") and the Federal Election Commission regulations.

In support of this complaint, DCCC states as follows:

1. The November 1983 issue of Hustler magazine carried a full-page advertisement on page eight, copy attached, which lauds the Republican party for accomplishments since the election of President Ronald Reagan in 1980. President Reagan is named specifically in this advertisement.

2. The full-page advertisement carries a "tag line" or closing slogan which reads: "REPUBLICAN. We Won't Stop Until It's Right."

3. The advertisement concludes with a general appeal for support of "your local Republican Party," and a specific appeal for "contributions to the Republican National Committee, 310 First Street, S.E., Washington, D.C. 20003."

4. The advertisement in Hustler carries no identification of the person or persons who prepared and paid for this advertisement. The advertisement states only that it was "paid for by a concerned citizen."

5. The FECA provides, in pertinent part, that:

Whenever any person...solicits any contribution...(the solicitation) shall clearly state the person who paid for the communication....

2 U.S.C. §441(a)(3). Section 441d requires that this statement of sponsorship appear on any solicitation of contributions made through, inter alia, a "magazine...or any other type of general public political advertising...." 2 U.S.C. §441d(a). Hustler is a magazine with national circulation.

6. The Federal Election Commission's regulations state, in pertinent part, that:

For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

11 C.F.R. 110.11(a)(1)(iv)(A). This sponsorship notice requirement applicable to solicitations on behalf of a political committee was promulgated by the Federal Election Commission on May 13, 1983. This regulation was designed expressly to clarify that "all communications... that solicit contributions must contain a disclaimer (sponsorship notice) if they are made through a form of general public political advertising." (emphasis supplied.) 48 FR 8809; see also 48 FR 21553 (announcement of effective date.) The Hustler advertisement appearing in the November, 1983 issue specifically directs to the general public a solicitation on behalf of the Republican National Committee, which is "a political committee which is not an authorized committee of a candidate...." The advertisement carrying this solicitation, however, does not state the name, in full or in part, of "the person who paid for the communication."

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7. The Federal Election Commission has held that contribution "solicitations" occur when solicitations are directed to the general public on behalf of "third parties," and not only when solicitations seek contributions for the solicitor. See, e.g., Advisory Opinions 1980-46 and 1980-145. It is, therefore, immaterial whether the Republican National Committee financed the Hustler solicitation in whole or in part, because the FECA requires that any solicitation benefitting this committee carry clear sponsorship identification.

8. The FECA does not define the term "solicitation," but the legislative history makes clear the term is to be interpreted broadly. For example, Representative Hays of Ohio stated:

(We) determined that any action (that) could fairly be considered a request for a contribution should be treated as a solicitation.

122 Cong. Rec. 43779 (daily ed. May 3, 1976.)

9. The Federal Election Commission has ruled that a "solicitation" occurs when published political statements encourage or otherwise facilitate the making of contributions for Federal election-related purposes. See, e.g., Advisory Opinions 1979-13, 1979-66 and 1982-65. The November Hustler advertisement implicitly encourages contributions to the Republican party generally ("Support your local Republican Party"), and explicitly requests contributions for the Republican National Committee. The advertisement further facilitates the making of such contributions by providing a complete and full address, with zip code, for the Republican National Committee.

10. The FECA requires that sponsorship identification associated with solicitations must "clearly state the name of the person who paid for the communication." 2 U.S.C. §441d. The Federal Election Commission's regulations require that this clear statement include "the full name" of the person or persons paying for the solicitation. 11 CFR §110.11(a)(iv)(A). The advertisement in the November, 1983 edition of Hustler, financed on behalf of the Republican National Committee, does not carry the full name, or any name whatever, of the person paying the cost of this advertisement. The advertisement identifies only that it was paid by "a concerned citizen."

11. Accordingly, the November, 1983 Hustler advertisement financed on behalf of the Republican National Committee clearly violates §441(d) of the FECA because:

- (a) it includes a solicitation for contributions directed to the general public through a magazine of general public distribution;
- (b) the solicitation is made on behalf of a political committee, the Republican National Committee, which is not an authorized committee of a candidate; and

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(c) the identification of sponsorship appearing in the advertisement--"paid for by a concerned citizen"-- fails to meet statutory standards for a clear statement of sponsorship, including the requirement that the "full name" of the person or persons paying for the communication be disclosed.

WHEREFORE, the DCCC respectfully requests that the Federal Election Commission promptly initiate and complete enforcement action pursuant to 2 U.S.C. §437g, including the imposition of any and all appropriate civil penalties. Expedited FEC enforcement action is requested so that the public may know the identity of the "concerned citizen" financing this advertisement, and the relationship of that "concerned citizen" to the Republican National Committee.

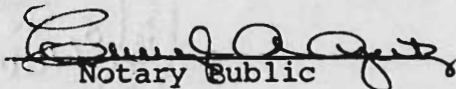
Respectfully submitted,



TONY COELHO, CHAIRMAN  
Democratic Congressional  
Campaign Committee  
Suite 319  
400 North Capitol Street  
Washington, D.C. 20001  
(202) 789-2920

Attachment

Subscribed and sworn to  
before me this 16<sup>th</sup>  
day of March, 1984.

  
Notary Public

My Commission Expires January 1, 1987.

8504055176

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

Once upon a time this country was in the hands of a party that believed in "idle optimism." Its economic plan was "Let's wait and see if things improve on their own."

But nothing happened. Nothing good. Productivity dropped, and unemployment began an almost-uncontrollable climb. The people needed a change, and in 1980 they voted Republican. They knew that Ronald Reagan and the Republican Party were ready to administer the cure, even if it seemed a bit hard to swallow at times. They knew that the Administration would put in the long hours and sweat necessary to revive the ailing economy.

In only three years the Republican leadership has already:

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Washington is getting a breath of fresh air. And it's replacing the stale and polluted atmosphere left by an impotent administration that talked to the people but never listened. The Republicans hear you, even as they toil to keep America's free-enterprise system strong.

The other party worked long and hard too. It's not easy to bring the world's most powerful nation into the world's weakest economic position. But if you're on the job and starting to enjoy the fruits of your labors again, you know the Republicans have the country back on the road to greatness.

You know what we've done so far. Let us finish the job.

## REPUBLICANS.

We won't stop until it's right.

PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20005.

85040555177



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 16, 1984

MEMORANDUM: To the File

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

*Re: DCCC v. Concerned Citizens*

On March 16, 1984, I spoke to Marty Frank in Congressman Coelho's office who is familiar with a complaint filed on this day by DCCC v. Concerned Citizens, et al. I indicated to Mr. Frank that the complaint was not sworn to although it was notarized. Mr. Frank said that he would re-file the complaint this afternoon, properly sworn to. I indicated to him that if we did not receive the re-filed complaint today that we would send out our rejection letter as an improper complaint. However, if the complaint is re-filed today, there will not be any need to formally reject the improper complaint since it would merely cross with the re-filing of the proper complaint.

*I also indicated there may be a problem with the anonymous resp. but we will explore that further.*

*On anonymous issue see I think Senior Citizens PAC - ~~was~~ a car ~~was~~ ~~was~~ had a white back*

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COMPLAINT  
BEFORE  
THE FEDERAL ELECTION COMMISSION

March 16, 1984

MAR 16 1984  
FUR 20

Democratic Congressional )  
Campaign Committee )  
 )  
v. )  
 )  
"Concerned Citizen: )  
Financing Illegal Anonymous )  
Communications on behalf of the )  
Republican National Committee )  
 )  
 )

8504055179

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- (b) the solicitation is made on behalf of a political committee, the Republican National Committee, which is not an authorized committee of a candidate; and

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(c) the identification of sponsorship appearing in the advertisement--"paid for by a concerned citizen"-- fails to meet statutory standards for a clear statement of sponsorship, including the requirement that the "full name" of the person or persons paying for the communication be disclosed.

WHEREFORE, the DCCC respectfully requests that the Federal Election Commission promptly initiate and complete enforcement action pursuant to 2 U.S.C. §437g, including the imposition of any and all appropriate civil penalties. Expedited FEC enforcement action is requested so that the public may know the identity of the "concerned citizen" financing this advertisement, and the relationship of that "concerned citizen" to the Republican National Committee.

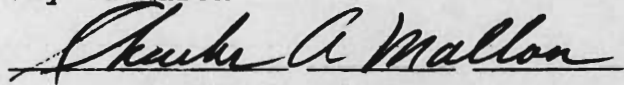
Respectfully submitted,



TONY COELHO, CHAIRMAN  
Democratic Congressional  
Campaign Committee  
Suite 319  
400 North Capitol Street  
Washington, D.C. 20001  
(202) 789-2920

Attachment

Given my hand and seal this 16 th  
day od March 1984



Charles A. Mallon  
Notary Public, Dist. of Columbia  
Commission Expires, Sept. 30, 1984

8504055182

STRENGTHENING AMERICA'S ECONOMY TOOK

# LONG HOURS AND SWEAT

AND A PRESIDENT WHO KNEW HOW TO SAY NO.

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PAID FOR BY A CONCERNED CITIZEN

Support your local Republican Party or send your contributions to the Republican National Committee,  
310 1st Street SE, Washington, D.C. 20003.

8 5 0 4 0 5 5 1 8 3



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.  
WASHINGTON, D.C. 20463

85040555184

THIS IS THE BEGINNING OF MUR # 1051

Date Filmed 11/13/85 Camera No. ---2

Cameraman AS