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*\*Admitted in California only*

August 13, 1999

**VIA COURIER DELIVERY**

Mark Shonkwiler, Esq.  
General Counsel's Office  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: Faith Family & Freedom PAC  
MURs 4568, 4633, and 4634**

Dear Mr. Shonkwiler:

This response is being submitted on behalf of our client, Faith, Family & Freedom PAC ("FF&F PAC" or "Respondent"). On August 5, 1999, I received notice from the Commission regarding the above referenced matter ("Notice"). For the reasons stated below, the Commission lacks jurisdiction to find Reason To Believe ("RTB") against FF&F PAC in MUR 4736 and the matter must be closed as it relates to FF&F PAC.

Your notice indicated that:

*"As part of its consideration of Matter Under Review 4736, the Federal Election Commission ("the Commission") has found reason to believe that Faith Family & Freedom PAC and Devin Anderson, as treasurer, (referred to collectively hereinafter as "the Committee") violated 2 U.S.C. §434 and §441f, which are provisions of the Federal Election Campaign Act of 1971 as amended ("the Act")...The facts underlying the Commission's findings in MUR 4736 are virtually identical to the basis for the Commission's June 1998 findings against the Committee in MURs 4568, 4633 and 4634. Due to the related nature of those MURs, the Commission has decided to*

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*investigate MRU 4736 concurrently with its investigation in  
MURs 4568, 4633 and 4634."*

This unilateral action by the Commission to make a new RTB finding against Respondent in a new MUR is procedurally deficient under the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"). On that basis, the Commission lacks jurisdiction to move forward with a RTB finding against Faith, Family and Freedom PAC in MUR 4736.

The Act mandates that the Commission is authorized to make a RTB finding and thereafter, and only thereafter, commence an investigation based on one of two procedures. First, the filing of a complaint with the Commission by a person setting forth facts which are notarized under penalty of perjury. Under this procedure, the Commission is required to "...notify, in writing, any person alleged in a complaint..." to have committed a violation prior to the Commission conducting any vote on the Complaint, other than to dismiss the Complaint (2 U.S.C. §437g(a)(1) (emphasis added).

The alternative procedure permits a RTB finding if the Commission, "...on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities..." determines by an affirmative vote of four (4) Commissioners that it has reason to believe that a person has committed a violation, then the Commission may notify the person of the alleged violation (2 U.S.C. §437g(a)(2) (emphasis added).

The factual and legal analysis in MUR 4736 attached to the Notice provides no new information, but it appears to be merely a resuscitation of facts and findings already made previous MURs. In fact, your Notice states the facts were virtually identical to those used to make RTB findings in MURs 4568, 4633 and 4634. Therefore, there was no information ascertained in the normal course to justify this RTB finding. All those facts were generated from previous outside complaints.

From your Notice, it is apparent that MUR 4736 was generated as a result of an outside complaint. Notwithstanding the Commission's argument that the allegations are "virtually identical" to the findings against the Faith, Family & Freedom PAC in other pending MURs, when an RTB finding is made based on an outside complaint, the Commission has a statutory duty to provide a copy of the Complaint to the Respondent and enable the Respondent to submit a response to those allegations prior to the RTB vote. The Commission is statutorily prohibited from finding RTB against a Respondent based on an outside complaint without first providing notice and enabling the alleged Respondent to file a response to those allegations. The Commission failed to do that in this case and therefore, it had no authority to make the RTB finding against FF&F PAC (2 U.S.C. §437g(a)(1).

The Act also mandates that absent a finding of RTB, the Commission is prohibited from undertaking an investigation. For that reason, since the Commission was not authorized

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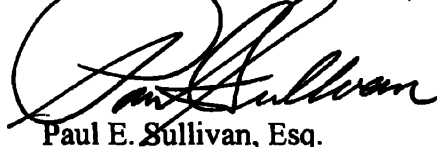
to unilaterally make a finding of RTB against Faith, Family and Freedom PAC in a new MUR, it has no jurisdiction to commence the investigation in the matter.

Notwithstanding the argument of the Commission that the allegations and the basis for the allegations are identical to previous MURs, the Respondent is entitled to have knowledge as to what person or persons filed the Complaint to make its own determination as to whether or not the facts and allegations are identical, and to make an election to submit an additional response which, at the discretion of Respondent, may include a more detailed response or legal arguments for consideration to those made in the RTB briefs in the previous MURs.

Due to the Commission's failure to observe the requisite procedures for finding RTB, the Commission lacked the jurisdiction to vote RTB in this matter. Therefore, Faith, Family & Freedom PAC, submits the FEC does not have jurisdiction over Respondent in this MUR and hereby moves the dismissal of Respondent from MUR 4736 and to close the matter as it pertains to FF&F PAC. Please take notice that Respondent also will not abide by any other requests, directions, or orders of the Commission as it relates to this matter due to a lack of jurisdiction.

Should you have questions or require further clarification on this matters, please contact me at your earliest opportunity.

Respectfully submitted,  
SULLIVAN & MITCHELL, P.L.L.C



Paul E. Sullivan, Esq.  
For the Firm

cc: Devin Anderson, Treasurer  
Faith, Family & Freedom PAC

PES/mat

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