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February 11, 2003

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**BY HAND DELIVERY**

Lawrence Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5342 (Household International)

Dear Mr. Norton:

This office represents Household International ("Household"), which has received a complaint ("Complaint") designated Matter Under Review ("MUR") 5342 by the Federal Election Commission ("FEC" or "Commission"). Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6, we hereby file this response. The Complaint in this matter is vague and, on its face, invites the Federal Election Commission to engage in a fishing expedition of all corporate communications by any corporation whatsoever: "The Federal Election Commission should immediately request copies of these employee communications, as well as any other contact between corporations and their employees this election cycle." (Complaint at 2.) For the reasons stated below, the Commission should find no reason to believe that Household violated the Federal Election Campaign Act, as amended ("FECA" or "Act").

**THE COMPLAINT**

Specifically, the Complaint references section 441b of the Federal Election Campaign Act and states that certain GOTV communications by Household, which the complainant admittedly has never seen, "appear to cross the line." A Complaint such as this is fatuous.

The sole factual basis for the alleged violations consists of vague and unsubstantiated hearsay from materials attributed to Piper Rudnick LLP ("Piper Rudnick"), an entity unaffiliated with Household. Indeed, to the extent that the Complaint alleges a violation of law it does so not based on any personal knowledge of any communications, but rather based on an apparently intentional misrepresentation of the Piper Rudnick Election Analysis upon which it relies.

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Specifically, the Complaint quotes the following statement from page 37 of a 50 page Piper Rudnick presentation attached to the Complaint:

- "Household International: Internal voter registration drive, e-mail to workers, distribute candidate position charts."

The Complaint goes on to state that "Piper Rudnick's presentation . . . describes corporate 'Get Out The Vote' (GOTV) efforts targeted at employees as partisan, part of a 'ground war,' and as comparable to GOTV efforts by labor unions, which are permitted to be partisan." However, the entire discussion of business GOTV efforts can be found on page 37 of the Piper Rudnick Analysis. While this one page does say that "Business Fully Engaged in Ground War in 2002 Elections" it says nothing about these efforts being partisan or as "comparable to GOTV efforts by labor unions, which are permitted to be partisan." Moreover, the Complaint states that "[t]he business communications to employees outlined in the Piper Rudnick analysis appear to cross this [partisan] line because the analysis emphasizes business involvement as 'pivotal in close Republican victories.'"<sup>1</sup> Here again, the Piper Rudnick analysis says nothing of the sort about these GOTV efforts. Finally, the Complaint does not have any factual basis for asserting that any alleged GOTV activity did, in fact, violate the law, rather it states that the communications identified in the Piper Rudnick analysis "should be examined for a violation of federal law."

## THE LAW<sup>2</sup>

While it is unlawful for a corporation "to make a contribution or expenditure in connection with any election," 2 U.S.C. § 441b, excluded from the definition of "expenditure" is "nonpartisan activity designed to encourage individuals to vote." *Id.* § 431(9)(B)(ii). The corresponding regulation explains that "[a]ny cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote,

<sup>1</sup> After searching the document, we found that this quote was taken out of context from another page of the Piper Rudnick analysis, which was not discussing GOTV efforts.

<sup>2</sup> The Complaint is directed at activities undertaken prior to the 2002 election. Therefore, the applicable law is that prior to the November 6, 2002, effective date of the Bipartisan Campaign Reform Act.

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except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d).” 11 C.F.R. § 100.8(b)(3).

Section 114.4 addresses “*Disbursements for communications beyond the restricted class in connection with a Federal election.*” Section 114.4(c) is entitled “*Communications by a corporation or labor organization to the general public,*” and addresses, among other things, “*Registration and voting communications*” in subsection (2), “*Official Registration and voting information*” in subsection (3) and “*Voting records*” in subsection (4).

Specifically, 11 C.F.R. §114.4(c)(2) states that

A corporation or labor organization may make registration and get-out-the-vote communications to the general public, provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party . . . A corporation . . . may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletter, brochures, or similar means of communicating with the general public.<sup>3</sup>

11 C.F.R. §114.4(c)(3) states that

(i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by official election administrators.

...

(iv) The corporation . . . shall not, in connection with any such distribution, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified

<sup>3</sup> This provision, as well as 11 C.F.R. § 114.4(c) (3) and (4) also include a prohibition against coordination with any candidate or political party. However, the Complaint does not allege such coordination, and there is no evidence of such coordination.

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political party and shall not encourage registration with any particular party.

Further, 11 C.F.R. §114.4(c)(4) states that:

A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party.

Thus, corporate expenditures for get-out-the-vote and other public voting communications are permissible provided that they do not expressly advocate the election or defeat of a clearly identified candidate and are not coordinated with a candidate or political party.

#### DISCUSSION

**A. There is No Reason to Believe a Violation Occurred Based upon the Allegations in the Complaint.**

**1. The Complaint is based upon an inaccurate interpretation of the law.**

As can be seen above, the regulations regarding communications beyond the restricted class are, in fact, quite permissive. The Complaint misunderstands this. The legal grounding of the Complaint is based upon two faulty criteria that it claims govern corporate communications beyond the restricted class. The first is an uninformed understanding of the term "nonpartisan." The second is the Complaint's patently incorrect definition of express advocacy — "express a preference for any candidate."

"Nonpartisan" is the statutory term used in the exception to the definition of "expenditure" that permits corporations to engage in "nonpartisan activity designed to encourage individuals to vote." 2 U.S.C. § 431(9)(B)(ii). The regulations governing this type of corporate activity, detailed above, provide meaning to the phrase "nonpartisan" — activity that does not expressly advocate the election or defeat of a clearly identified candidate and is not coordinated with a candidate or

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political party. If the GOTV or other corporate communications about voting satisfy this standard, then they are deemed “nonpartisan” and are permissible. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (communications must expressly advocate the election or defeat of a clearly identified candidate to be subject to § 441b).

The above described regulations also illustrate the fundamental flaw in the Complaint’s second criterion that corporations cannot engage in communications about voting that “express a preference for any candidate.” The regulations restrict the content of corporate communications based upon whether they expressly *advocate* the election or defeat of a clearly identified candidate, not whether they “express a *preference* for any candidate,” as erroneously claimed by the Complaint. (Emphasis added). Express advocacy exhorts electoral action with regard to specific candidates. 11 C.F.R. § 100.22. Expression of a “preference” is interpreted subjectively and encompasses more speech, and not necessarily that which requests electoral action. The Complaint’s more expansive standard for speech regulation is unsupported by federal law and regulations, and would violate the First Amendment of the Constitution. *See Buckley v. Valeo*, 424 U.S. 1 (1976).

Properly stated, the legal standard for evaluating the Complaint’s allegations of inappropriate corporate expenditures for get-out-the-vote and other voting communications is (1) whether the communications expressly advocated the election or defeat of a clearly identified candidate, or (2) whether they were coordinated with a candidate or political party.

**2. The Complaint does not allege a violation of the proper legal standard.**

The Complaint fails both parts of the above-described legal standard by neglecting to allege either one. First, the Complaint fails to allege that any of the Respondents’ communications contained express advocacy.<sup>4</sup> The quotes from the Complaint describing Respondents’ alleged communications do not contain, or otherwise

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<sup>4</sup> This critical omission is likely the result of two fundamental problems. First, the Complaint is based on the wrong legal standard — expression of “preference” instead of “express advocacy.” Second, the Complaint provides no record of the actual contents of the Respondents’ alleged communications that could be examined for express advocacy. Instead, the Complaint relies on a third party’s statements that do not claim that Respondents engaged in express advocacy.

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allege, express advocacy. Nor do the Complaint or the Piper Rudnick materials specify the communications to which they refer.

The Complaint's allegations against Household fail to allege any specific speech at all, let alone express advocacy. Instead, the Complaint accuses them of engaging in an "Internal voter registration drive" sending "e-mail to workers" and "distributing candidate position charts," activity that is explicitly permitted by the above-cited regulations.<sup>5</sup>

As applied to the proper legal standard, these factual allegations fail to demonstrate that Respondents have engaged in prohibited corporate communications. Federal regulations explain that the Complaint "should contain a clear and concise recitation of the facts which describe a violation." 11 C.F.R. § 111.4(3). The facts in the Complaint do not describe a violation. On this basis alone, no further action should be taken against Respondents.

**B. Communications Actually Made by Respondents Are Lawful.**

In an effort to dispose of this matter as expeditiously as possible, Respondents have attached representative copies of communications that resemble those that are opaquely described in the Complaint. An examination of these materials reveals that they are nothing more than communications that are explicitly permitted by the above-discussed regulations.

The first of these materials is a Register to Vote poster posted in Household's California facilities encouraging individuals to register to vote (A-1). The second is an e-mail sent to Household's Las Vegas Employees, again encouraging individuals to register to vote (A-2). The third is a sample of a voting record that can be found on the site listed on the posters and in the e-mail (A-3). Each of these communications complies with the restrictions found in 11 C.F.R. § 114.4(c)(2) - (4) identified above. On their face, they do not "expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party" and "do not encourage registration with any particular party."

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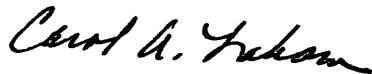
<sup>5</sup> In addition, the Complaint does not allege that Household coordinated its communications with a candidate or party, and there is no evidence of any coordination.

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**CONCLUSION**

At the outset, the Complaint must be dismissed on its face for failing to allege facts that constitute a violation of the law. Respondents have made a good-faith effort to attempt to identify communications they made that are perhaps contemplated by the Complaint. Yet, the expenditures for these communications are explicitly permitted in Federal regulations. For these reasons, the Commission should find no reason to believe that Respondents violated the Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol A. Laham".

Carol A. Laham

How many of these are you? **Register to**

**VOTE**

*We are a nation made up of many voices—  
and on Election Day,*

**Every Voice Counts**



**Deadline for Submission Deadline is:**

**October 21, 2002**

**For more information and voter registration forms, contact:**

**Micaela A. Isler**

**Political Director**

**(202) 466-3561 or**

**[maisler@household.com](mailto:maisler@household.com)**

**[www.bipac.net/household](http://www.bipac.net/household)**

**HOUSEHOLD**



Date: Ocotober 3, 2002  
To: All Las Vegas Employees  
From: Household Government Relations  
Subject: Register to Vote-Deadline Approaching!

As part of Household's ongoing good government campaign, we are offering to all employees on-site and on-line voter registration applications and instructions. We are making it even easier for you to register to vote! Voter registration applications and instructions have been made available to you over the last several weeks at the "Check it Out Board" and will continue to be available through Nevada's voter registration deadline of October 5, 2002.

Representatives from Household's Government Relations office will be on site Friday, October 4, 2002 from 10:00AM-11:00AM at the to answer any questions you may have about registering to vote in the upcoming November general elections.

You may also download the registration application and instructions guideline on-line at [www.bipac.net/household](http://www.bipac.net/household) or simply click on the Government Relations link on Housenet. For questions please contact Government Relations at 202-466-3561.

Remember, Your Vote is Your Voice!



**House PAC**  
Eligible Employees Only

**Government  
Relations Home**

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Information**

Connect with your  
State/Federal Legislator

Legislative Issues facing  
Household

Who Represents our  
Household Facilities

**Grassroots Initiatives**

Phone Campaigns

Letter Writing  
Campaigns

Get Out The Vote Drives

**Register to Vote Here!**

**Contact Household's GR  
Department**

## Florida Congressional District 11



**Representative Jim Davis (D)**  
<http://www.house.gov/jimdavis/> (web)

**Capital Address:**  
U.S. House of Representatives  
424 Cannon House Office Bldg.  
Washington DC 205150001  
(202) 225-3376 (phone)  
(202) 225-5652 (fax)

**District Address:**  
3315 Henderson Boulevard  
Suite 100  
Tampa FL 336092922  
(813) 354-9217 (phone)  
(813) 354-9514 (fax)

## Issues Important to Household International

	106-1	106-2	107-1 25	107-1 33	107-2 62	107-2	107-2
Vote:	115 on H.R.833	228 on H.R.4444	on H.R.333	on S.J.RES.6	on H.R.2341	478 on H.RES.606	484 on H.R.333
Preferred Position:	Y	Y	Y	Y	Y	Y	Y
Legislator's Vote:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Key:

106-1 115 on H.R.833: Bankruptcy Reform Act of 1999 On Passage  
H.R.833

106-2 228 on H.R.4444: to authorize extension of nondiscriminatory treatment (normal trade relations treatment to the Peoples Republic of China on final passage

107-1 25 on H.R.333: Bankruptcy Abuse Prevention and Consumer Protection Act

107-1 33 on S.J.RES.6: A joint resolution providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics On passage

107-2 62 on H.R.2341: Class Action Fairness Act

107-2 478 on H.RES.606: Waiving points of order against the conference report on H.R. 333, Bankruptcy Abuse Prevention and Consumer Protection Act.

107-2 484 on H.R.333: Bankruptcy Abuse Prevention and Consumer Protection Act, on agreeing to the senate amendment with an amendment