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June 11, 2003

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**BY HAND DELIVERY**

Mr. Jeff S. Jordan  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5342

Dear Mr. Jordan:

On June 5, 2003, I received from you a copy of a Complaint filed against the Business-Industry Political Action Committee's Institute for Political Analysis ("BIPAC"), and your letter dated June 3, 2003, explaining that transmittal of the Complaint was delayed by five months due to an oversight by the Commission. Nonetheless, I have already executed and submitted a Statement of Designation of Counsel on behalf of BIPAC. (Letter from Jan Witold Baran to Alva E. Smith of 1/15/2003.) In addition, my February 10, 2003, letter to you addressed the alleged violations contained in the Complaint against BIPAC which I was able to discern from identical copies of the Complaint that were filed against other respondents that I represent in this MUR.

As I stated in the February 10, 2003, letter which I incorporate herein by reference, the Commission should find no reason to believe that BIPAC, or any other respondent to this MUR, violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint's sole factual basis for BIPAC's alleged violation is the following vague and unsubstantiated hearsay that the Complaint attributes to an entity unaffiliated with BIPAC:

Business and Industry Political Action Committee  
(BIPAC): Develop voter guide for 5,000  
companies/20 million employees.

This meager statement fails to allege a violation of the Act. Corporations, including not-for-profit corporations like BIPAC, are expressly allowed to develop voter guides according to Commission regulations found at 11 C.F.R. § 114.4(c). Entitled "*Communications by a corporation or labor organization to the general public*," section 114.4(c) addresses, among other things, "*Registration and voting*

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*communications*,” “*Voting records*,” and “*Voting guides*” disseminated by corporations. Corporations are permitted to engage in all of these types of communications provided that they do not (1) “expressly advocate” the election or defeat of a clearly identified candidate, or (2) coordinate the communications with a candidate or political party. 11 C.F.R. § 114.4(c)(2), (4), (5)(i).

The Complaint fails to allege that BIPAC disseminated a “voter guide” that either contained express advocacy, or was coordinated with particular candidates or political parties. Therefore, the Commission should find no reason to believe that BIPAC committed a violation of the Act on this basis alone.

The Complaint’s inability to state a legally cognizable claim is not its only deficiency. The Complaint alleges that BIPAC impermissibly developed a “voter guide.” A “voter guide” is a communication that compares the relative position of candidates on political issues. 11 C.F.R. § 114.4(c)(5). Acknowledging the fact, as more fully developed in my letter of February 10, 2003, that the Complaint is replete with overly general language and erroneous interpretations of the law, perhaps the Complaint meant to assert a claim against BIPAC for posting “voting records” on its website.<sup>1</sup> “Voting records” are communications that indicate how Members of Congress voted on particular bills. 11 C.F.R. § 114.4(c)(4). BIPAC posts “voting records” on its publicly available website as expressly permitted by 11 C.F.R. § 114.4(c)(4) discussed above. BIPAC members are permitted to take this information and mold it to develop their own specialized voting records. BIPAC’s voting records do not contain express advocacy.<sup>2</sup> Therefore, BIPAC’s expenditures for posting voting records on its website are permissible.

In conclusion, the Complaint must be dismissed on its face for failing to allege facts that constitute a violation of the law. BIPAC, and all other respondents to this MUR, 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 by Federal regulations. For these

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<sup>1</sup> The attempt here to read into the Complaint a claim that is not specifically stated brings into stark relief the Complaint’s failure to “contain a clear and concise recitation of the facts which describe a violation” as required by 11 C.F.R. § 111.4(d)(3).


<sup>2</sup> The voting records indicate BIPAC’s preferred position on congressional bills in relation to the votes cast by officeholders. This is not express advocacy because it does not advocate a particular electoral result. Rather, it is a statement of BIPAC’s position on issues and specific bills voted on by Congress.

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reasons, the Commission should find no reason to believe that BIPAC, or any of the other respondents to this MUR violated the Act.

Sincerely,



Jan Witold Baran