

CATHOLICS
FOR
CHOICE

IN GOOD CONSCIENCE

General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463.

November 20, 2008

To Whom It May Concern:

I write to request that the Federal Election Commission (the “Commission”) take immediate action against Population Research Institute, Inc. (“PRI”), a Virginia corporation, which has used its corporate resources to expressly advocate for the election of John McCain in violation of 2 U.S.C. § 441b.

On or about October 30, 2008, less than one week prior to the 2008 general election in which Senators John McCain and Barack Obama were each seeking the office of President of the United States as the nominees of their respective parties, PRI published an issue of its weekly electronic newsletter, the *Weekly Briefing*. A copy of the newsletter is enclosed. In the newsletter, PRI expressly urged readers to “Vote pro-life” in the upcoming election and described John McCain as having “a perfect pro-life voting record” while describing Barack Obama as “consistently voting against the unborn.”

The Federal Election Campaign Act (“FECA”) prohibits any corporation from making an expenditure in connection with any presidential election.¹ Under FECA, an “expenditure” includes a “payment... made by any person for the purpose of influencing any election for Federal office,” excluding certain statutory exceptions such as those for news stories and communications to members.² The Supreme Court significantly limited the scope of this prohibition, but approved the prohibition as applied to communications that “expressly advocate the election or defeat of a federal candidate.”³ Commission regulations include in the definition of such express advocacy “any communication that

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[u]ses phrases such as ... 'vote Pro-Life' or 'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice."⁴

The PRI *Weekly Briefing* appears to be a communication by the corporation, made using corporate resources. In the colophon at the end of the newsletter, the copyright to the material is claimed for PRI, making it clear that this is not a use of PRI's resources for individual volunteer activity.⁵ There is no disclaimer or other indication that the cost of the communication was paid by any political committee, as would be required if a federal political committee, rather than PRI, had paid for the expenditure.⁶

Although corporations are permitted to make, under certain circumstances, expenditures for express advocacy communications to members and certain employees or shareholders, this communication was not limited to such audiences.⁷ The communication was apparently sent to any person who signed up to receive such newsletters on the PRI website. There was no apparent requirement that such persons be a member of PRI's "restricted class."

It therefore seems clear that PRI's expenditures to prepare and distribute this newsletter constitute an illegal corporate expenditure for a communication that expressly advocated the election of John McCain and the defeat of Barack Obama less than one week before the election in which these candidates were running for the office of President of the United States.

Although the penalty to be assessed against PRI might be small, it is important that the Commission nonetheless take action against PRI. It is possible that PRI expended relatively little of its funds to make this communication – perhaps just the salary and benefits paid to staff to draft, prepare, send the newsletter; the allocated cost of the Internet services and software tools used to send the message; and the allocated portion of PRI's overhead expenses. However, failure to act against PRI will encourage other corporations to make similar illegal expenditures, emboldened by the belief that even blatant violations will go unpunished if they can be accomplished at a low enough cost. The Commission, in considering the regulation of low-cost Internet communications, had the opportunity to exempt all such communications from regulation under FECA, but the Commission chose only to exempt certain expenditures for communications by individuals, not corporations.⁸

We therefore request that you take appropriate action to hold PRI accountable for this violation of federal election law.

Sincerely,

Jon O'Brien
President

Enc./ ...

I, _____, a Notary Public, hereby certify that on the _____ day of _____ 20__, Jon O'Brien appeared before me and signed the foregoing document and has averred that the statements therein contained are true.

Notary Public

¹ 2 U.S.C. § 441b.

² 2 U.S.C. § 431(9).

³ *Buckley v. Valeo*, 424 U.S. 1, 44 (1976).

⁴ 11 C.F.R. § 100.22(a).

⁵ 11 C.F.R. § 114.9(a) permits employees of a corporation to "make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election." (Strangely, the copyright for this 2008 newsletter is dated 2007, presumably because PRI has failed to update its newsletter template.)

⁶ 11 C.F.R. § 110.11(a)(1).

⁷ 11 C.F.R. § 114.3.

⁸ Internet Communications, Final Rules and Transmittal to Congress, 7 Fed. Reg. 18,589 (April 12, 2006).