



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1598

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FEDERAL ELECTION COMMISSION

12-DAY REPORT + COMMENTS

PRELIMINARY REPORT + COMMENTS

DUPLICATES OF ORIGINALS

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):

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| <input type="checkbox"/> (1) Classified Information | <input type="checkbox"/> (6) Personal privacy |
| <input type="checkbox"/> (2) Internal rules and practices | <input type="checkbox"/> (7) Investigatory files |
| <input 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

George R. Ruff

date

12-10-84

FEC 9-21-77

Robert L. Sade

12/13/84

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FEDERAL ELECTION COMMISSION

12-DAY REPORT + COMMENTS

PREFACE REPORT + COMMENTS

DUPLICATES OF ORIGINALS

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| <input checked="" type="checkbox"/> (5) Internal Documents | |

Signed

George R. Rief

date

12-10-84

FEC 9-21-77

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FEDERAL ELECTION COMMISSION

PROPOSED CONCILIATION AGREEMENT

CONCILIATION DISCUSSION

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):

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| <input type="checkbox"/> (5) Internal Documents | |

Signed

George F. Mitchell

date

12-10-84

FEDERAL ELECTION COMMISSION

ROUTING SLIPS

RFAT NOTICE

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):

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| <input checked="" type="checkbox"/> (2) Internal rules and practices | <input type="checkbox"/> (7) Investigatory files |
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| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input type="checkbox"/> (5) Internal Documents | |

Signed

George R. Hill

date

12-10-84

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1984

John T. Dolan, Chairman
National Conservative Political
Action Committee
1500 Wilson Boulevard
Suite 513
Arlington, Virginia 22209

RE: MUR 1598

Dear Mr. Dolan:

This is in reference to the complaint you filed with the Commission on November 18, 1983, concerning a communication by the Sierra Club.

Based on your complaint, the Commission determined there was reason to believe that the Sierra Club violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. After an investigation was conducted and briefs of the General Counsel and the respondent were considered, the Commission concluded on November 27, 1984, that there was no probable cause to believe that the Sierra Club violated the Act. Accordingly the file in this matter, numbered MUR 1598, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1984

H. Richard Mayberry, Jr.
Law Office of H. Richard Mayberry, Jr.
1667 K Street, N.W.
Ninth Floor
Washington, D.C. 20006

RE: MUR 1598

Dear Mr. Mayberry:

This is to advise you that after an investigation was conducted, the Commission concluded on November 27, 1984, that there is no probable cause to believe that your client violated the Act. Accordingly the file in this matter, numbered MUR 1598, has been closed. This matter will become a part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact George Rishel, the attorney assigned to handle this matter at (202) 523-4143.

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1598
The Sierra Club)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 27, 1984, do hereby certify that the Commission took the following actions in MUR 1598:

1. Decided by a vote of 4-2 to find no probable cause to believe the Sierra Club violated 2 U.S.C. § 441b(a).

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

2. Decided by a vote of 6-0 to close the file and send appropriate letters pursuant to these actions.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for this decision.

Attest:

11-29-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *cut*
DATE: November 15, 1984
SUBJECT: MUR 1598 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of November 27, 1984

Open Session

Closed Session

XX

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection []
Sensitive []
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other [X]

SENSITIVE

CIRCULATE ON BLUE PAPER

ON AGENDA - 11/27/84

DISTRIBUTION

Compliance [X]

Audit Matters []

Litigation []

Closed MUR Letters []

Status Sheets []

Advisory Opinions []

Other (see distribution below) []

SENSITIVE

RECEIVED
OFFICE OF THE FEDERAL ELECTION COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

The Sierra Club)

MUR 1598

EXECUTIVE SESSION

87 NOV 1984

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The General Counsel's brief recommending a finding of probable cause to believe a violation had occurred was mailed to counsel for the respondent Sierra Club on September 24, 1984. The respondent's answer on October 10, 1984, incorporated its previous responses to the filing of the complaint and to the Commission's finding of reason to believe. The only new material is the respondent's references to MUR 1723.

II. LEGAL ANALYSIS

The respondent makes these arguments: (1) the application of the prohibition of 2 U.S.C. § 441b to the communication in this matter infringes the respondent's First Amendment right of association; (2) the prohibition of 2 U.S.C. § 441b must be limited to active electioneering, i.e., the express advocacy of the election or defeat of a clearly-identified candidate to avoid constitutional infirmity on grounds of vagueness; and (3) the sole or exclusive purpose of the communication was to recruit new members for the Sierra Club, not to influence any Federal election.

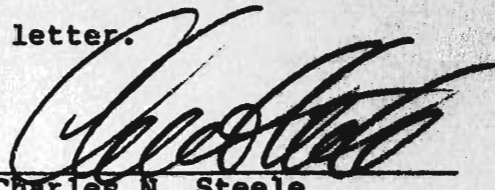
The U.S. Supreme Court recently rejected right of association and vagueness arguments similar to those advanced by the respondent with regard to the prohibition or application of 2 U.S.C. § 441b. FEC v. National Right to Work Committee, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982). The respondent's argument regarding the purpose of the communication has been treated in the General Counsel's brief. The factual circumstances in MUR 1723 are distinguishable from those in this matter in that the communication in MUR 1723 presented a nonprofit corporation's viewpoint on the issue of the financing of Federal elections and did not relate these views to any Federal election or to any candidate in a Federal election. Furthermore, contrary to the respondent's argument that the sole or exclusive purpose of the communication in this matter is to recruit new members for the Sierra Club, the communication is clearly campaign-related speech or activity masquerading as a membership recruitment plea.

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IV. RECOMMENDATIONS

1. Find probable cause to believe the Sierra Club violated 2 U.S.C. § 441b(a).
2. Approve the proposed conciliation agreement.
3. Approve the attached letter.

15 Nov 1984
Date


Charles N. Steele
General Counsel

Attachments

1. Proposed Conciliation Agreement
2. Letter to Respondent

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr.
Law Office of H. Richard Mayberry, Jr.
1667 K Street N.W., Ninth Floor
Washington, D.C. 20006

RE: MUR 1598
Sierra Club

Dear Mr. Mayberry:

On . . . , 198 . . . , the Commission determined that there is probable cause to believe your client committed a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the expenditure and dissemination related to a communication to the public.

The Commission has a duty to attempt to correct such violation 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 2

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

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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(5)

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
NINTH FLOOR
1657 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 822-8822

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GCC # 8079

October 10, 1984

VIA COURIER

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

Re: MUR # 1598 -- The Sierra Club

Dear Chairman Elliott:

In response to the General Counsel's September 24, 1984 Probable Cause Brief in the above-referenced matter, we request the Commission to consider the Sierra Club's briefs previously submitted in connection with the reason-to-believe determination. A copy is attached for your convenience as Exhibit A.

We also call the attention of the Commission to MUR # 1723 (August 15, 1984). A copy is attached as Exhibit B. In MUR # 1723 the Commission adopted an overall purpose standard as one of the tests to determine whether a corporation, Common Cause, made a contribution under the Campaign Act. The sole purpose of the Sierra Club membership development letter in MUR # 1598, like the purpose of Common Cause's anti-PAC issue campaign, clearly is not the nomination or election of candidates. See U.S. v. National Campaign For Impeachment, 469 F.2d 1135, 1141 (2d Cir. 1972), quoted in American Civil Liberties Union, Inc. v. Jennings, 366 F. Supp. 1041, 1057 (D.D.C. 1973) and the First General Counsel's Report in MUR # 1723 at 3. Accordingly, the costs associated with the Club's membership development letter, like those associated with the Common Cause campaign, do not constitute a contribution or expenditure under the Campaign Act.

For the reasons discussed in the Sierra Club's reason-to-believe briefs and based upon application of the purpose standard set forth in MUR # 1723, we respectfully request the Commission to dismiss the NCPAC complaint.

Sincerely,

H. Richard Mayberry, Jr.

H. Richard Mayberry, Jr.
Counsel to the Sierra Club

HRM:mhm
Encls.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

DEFENDANT'S
EXHIBIT
A

In the Matter of)
)
) Matter Under Review 1598
The Sierra Club)
)
_____)

RESPONDENT'S 11 C.F.R. § 111.6(a) RESPONSE

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6(a), the Sierra Club, through counsel, submits its response on the factual and legal issues in this matter.

For the reasons set forth below, there is no reason to believe the Sierra Club has committed a violation of the Federal Election Campaign Act of 1971, as amended, or the Federal Election Regulations promulgated thereunder.

I. THE SIERRA CLUB

The Sierra Club is one of this nation's premier conservation organizations dedicated to preserving the environment. Its goals are "... to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity

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to protect and restore the quality of the natural human environment; and to use all lawful means to carry out these objectives." Sierra Club Articles of Incorporation.

The Sierra Club was founded in 1892 by John Muir and has throughout this century been engaged in national efforts to protect the environment. Organized as a not-for-profit voluntary membership organization, pursuant to 26 U.S.C. § 501(c)(4), the Club is incorporated in the State of New York. Currently over 350,000 individuals are members of the Sierra Club.

Various programs implement the objectives of the Sierra Club and provide an opportunity for its members to explore, enjoy, and preserve the nation's forests, waters, wildlife, and wilderness.

The Sierra Club's national lobbying program operates to interface with the federal government to promote a national policy which is consistent with the protection of the environment to the maximum extent feasible. The scope of this work deals both with legislation pending before Congress and the actions by executive agencies. Pursuant to relevant law, the Sierra Club's separate segregated fund is involved in political action. SCCOPE, or the Sierra Club Committee on Political Education, is duly registered with the Federal Election Commission.

The multi-faceted programming of the Sierra Club contributes to the collection and dissemination of information on the environment, and provides organized opportunities for members to enjoy our national heritage.

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The Club maintains a collection of materials on conservation, natural history, and mountaineering in the William E. Colby Library. Moreover, it has responded to over 20,000 inquiries each year for information on environmental issues. The Sierra magazine reaching all members includes conservation articles of general interest. The publishing program has provided in excess of 218 titles to date, and serves as an important educational resource. To facilitate use of the environment, the Sierra Club organizes about 250 major outings per year.

Additional activities are undertaken by the Sierra Club Foundation and Sierra Club Legal Defense Fund, affiliated organizations of the Sierra Club. Issue research and publication, as well as representation in environmental litigation, complement the general Sierra Club programs.

The membership of the Sierra Club provides not only the nucleus and essence of the Club, but also the financial base for the operation of these programs. The Office of Development has chief responsibility for, among other things, the acquisition and retention of members. Audrey C. Berkovitz is the Director of Development. The primary method for acquiring new members is direct mail to individuals who are potential members. Sixty to sixty-five percent (60-65%) of all new members are generated from direct mail, solicitation letters. See Exhibit #1, Affidavit of Audrey C. Berkovitz.

The ongoing direct mail solicitation program involves the use of control and test mailings. Control mailings are those which have proven successful in attracting new members. Test

mailings are used to evaluate themes which explain Sierra Club programming, and to ascertain the degree of a theme's potential to attract new members. Unsuccessful test mailings are discontinued. Control and test mailing are vital to the Sierra Club's direct mail program and acquisition of new members.

II. STATEMENT OF THE CASE

On November 8, 1983, the National Conservative Political Committee ("NCPAC") filed a complaint with the Federal Election Commission ("FEC" or "Commission") alleging that the Sierra Club had violated the Federal Election Campaign Act. The complaint stated that a "direct-mail, fund-raising solicitation letter" sent to individuals who were not members of the Sierra Club as well as "the activities expressed and contemplated in the letter" ^{1/} constituted violations of 2 U.S.C. § 441b. The membership solicitation letter at issue (Exhibit #2) was part of the Sierra Club's direct mail program to acquire new members. It was a test mailing to evaluate the efficacy of this particular letter in attracting new members. See Exhibit #1.

^{1/} The contemplated activities of the Sierra Club discussed in the letter in no way represent violations of federal election law. The Sierra Club is permitted to make internal partisan communications to its members using "soft dollars," pursuant to 2 U.S.C. § 441b(b)(2)(A). Likewise, as long as the "hard dollars" of SCCOPE are employed, the Sierra Club can conduct partisan political activities that impact the public. See 2 U.S.C. § 441b(b)(2)(C). Political education activities (those not constituting a "contribution or expenditure") are also lawful.

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The membership solicitation letter was developed and drafted during the summer of 1983. All test letters involve substantial development and lead time prior to distribution. The letter was mailed between September 13, 1983, and September 16, 1983. A second test mailing was dispatched from October 5, 1983, to October 28, 1983. See Exhibit #1.

Because of its relatively low response rate, the Sierra Club does not currently plan to further use this mailing package to solicit new members regardless of the outcome of the instant proceedings. See Exhibit #1.

III. THE SIERRA CLUB DIRECT MAIL LETTER SOLICITING
NEW MEMBERS IS NOT A CORPORATE EXPENDITURE
CONTEMPLATED UNDER THE CAMPAIGN ACT.

A. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Campaign Act" or "Act"), codified at 2 U.S.C. § 431 et. seq., regulates corporate political activities. 2 U.S.C. § 441b(a) prohibits expenditures by unions and corporations "in connection with any election at which presidential and vice presidential electors or a Senator or Representative . . . are to be voted for." The term expenditure is defined in § 441b to include "anything of value . . . to any candidate in connection with any election." 2 U.S.C. § 441b(b)(2). The term "expenditure" is separately defined in § 431, the general definitional provision of the Act, to mean "anything of value made by any person for the purpose of influencing any election for Federal Office." 2 U.S.C. § 431(9)(A)(i) (emphasis supplied).

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Based on the legislative history, the case law, and Federal Election Commission rulings, the § 431 definition of expenditure must be viewed as a limiting constraint on the "in connection with" standard enunciated in § 441b.

The prohibition on corporate electioneering through the making of political expenditures originates with the Labor Management Relations Act of 1947, Ch. 120, § 304, 61 Stat. 159 (the "Taft-Hartley Act.") The Taft-Hartley Act amended § 313 of the Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (the "Corrupt Practices Act"), to prohibit corporate and union electioneering either by the making of political expenditures or contributions; prior to this amendment, the Corrupt Practices Act had only prohibited the making of political contributions by corporations and unions, permitting the extensive use of independent expenditures. See United States v. UAW, 352 U.S. 567, 572-574 (1957).

In explaining the prohibition on corporate and union political activity, Senator Robert Taft, the Senate floor manager of the Taft-Hartley Act, made clear that the purpose of the questioned expenditure determined its legality. Thus, although the political editorials of a newspaper owned by a corporation could be considered "in connection with a candidate's election," Senator Taft felt that no violation of the law would occur because "it is simply the ordinary operation of the particular corporation's business" (emphasis supplied) 93 Cong. Rec. 6437 (1947). Senator Taft stated that when determining the existence of a prohibited expenditure, "in each case the question is

whether or not a union or corporation is making a contribution or expenditure of funds to elect A as opposed to B" (emphasis supplied) 93 Cong. Rec. 6440 (1947).

Likewise, the Supreme Court in interpreting the Corrupt Practices Act, has stressed the importance of whether or not an expenditure was made to influence a candidate's election. In United States v. UAW, the Supreme Court in delineating the prohibition on corporate and union expenditures stated that the restriction applied to those communications "that are designed to urge the public to elect a certain candidate or party." 352 U.S. at 587 (emphasis supplied). The Supreme Court added:

The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party.

Id. at 589.

The question of intent was further highlighted in the Federal Election Campaign Act of 1971, Pub. L. 92-225, 86 Stat. 3 (1972). In this legislation, through an amendment offered by Congressman Hansen, the establishment and operation of separate segregated funds and the use of corporate and union internal political communications were explicitly permitted. See § 205 of the Federal Election Campaign Act of 1971, 86 Stat. 10. In his amendment, Congressman Hansen established the "in connection with" definition of the term "expenditure." The objective of the Hansen amendment was " . . . to codify the court decisions interpreting § 610 of title 18 of the United States Code, and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election." Remarks of

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Congressman Hansen, 117 Cong. Rec. 43379 (1971), reprinted in
Federal Election Commission, Legislative History of the Federal
Election Campaign Act of 1971, at 757 (1981) (emphasis
supplied). Representative Hansen stated in a floor discussion of
the Act:

The legislative history of § 610 demonstrates
that it was not Congress' intent in passing this
provision to completely exclude these organi-
zations from the political arena. That history,
as the Justice Department, which has the
responsibility for enforcing the statute, has
stated, shows instead that the purpose of § 610
is simply to insure that -- "When a union [or
corporation] undertakes active electioneering on
behalf of particular federal candidates and
designed to reach the public at large, [the
organization's] general funds . . . may not be
used." (Brief for the United States in U.S. v.
UAW, 352 U.S. 567.)

117 Cong. Rec. 43379, (1971) reprinted in Federal Election
Commission, Legislative History of the Federal Election Campaign
Act of 1971, at 757 (1981) (emphasis supplied).

In summary, the prohibition on corporate political
expenditures is limited to expenditures involving active
electioneering on behalf of particular federal candidates. If a
communication was not made to influence a candidate's election,
then it should not be considered a prohibited expenditure. Thus,
Miller v. American Telephone & Telegraph, 507 F.2d 759 (3rd Cir.
1974), in setting forth the elements of a violation of the prohi-
bition on corporate political expenditures, the Third Circuit
stated:

[P]laintiffs must also convince the fact finder
that the gift, whenever made, was made for the
purpose of aiding one candidate or party in a
federal election.

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The overriding trend of Commission rulings also clearly requires the existence of a "purpose to influence" a candidate's election before a prohibited expenditure is deemed to have occurred. In Advisory Opinion 1977-54, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5301, the Commission held that corporations could contribute to a statewide petition drive opposing ratification of the Panama Canal Treaty, which drive prominently featured a congressional candidate, because of the absence of a purpose to influence a federal election.

Likewise, in Advisory Opinion 1978-15, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5304, corporate expenditures that generated favorable publicity for a congressional candidate as a result of his being chairman of a fundraising campaign of the Sacramento chapter of the American Cancer Society were not considered prohibited contributions or expenditures because "the major purpose of the activity is not the nomination or defeat of a candidate" (emphasis supplied). See also Advisory Opinion 1983-23, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5728 (corporate hospitality suite for delegates attending the 1984 Republican Convention is permissible as long as no purpose exists to influence the outcome of the Convention, solicit contributions, or advocate the election or defeat of any candidate for federal election); Advisory Opinion 1981-37, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5623 (corporation may sponsor a public discussion program moderated by a Congressman as long as "the activity is not to influence the nomination or election of a candidate for Federal office"); Advisory Opinion 1978-18, Fed. Elec. Camp. Fin. Guide (CCH)

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¶ 5305 (corporate distribution of voting records of Congressmen to the Congressmen is permissible because there is no purpose to influence an election through the distribution); Advisory Opinion 1977-42, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5313 (a congressional candidate may host two radio interview programs if his "major purpose . . . was not to influence" his nomination or election (emphasis supplied)). Although all of these opinions involved activities which could be viewed as affecting an election (and therefore "in connection" with an election), the Commission found the various contemplated activities not to be corporate expenditures due to an absence of a purpose to influence an election.

The major purpose standard has also been approved by the Commission in its enforcement proceedings and sanctioned by the federal judiciary in reviewing these proceedings. In MUR # 1235, In re The Yes On Proposition 9 Committee (1980), the Federal Election Commission approved its General Counsel's recommendation that advertisements placed by a corporation organized to support a state initiative did not represent prohibited expenditures because their "major purpose," although the ads favorably mentioned a Congressional candidate, was not to influence a candidate's election:

The Commission has made it quite clear that a contribution would not necessarily occur in certain specific circumstances where the major purpose of the advertisement was not to influence a Federal election. This is especially true where there is an absence of any communication expressly advocating the election or defeat of a candidate or the solicitation of a campaign contribution.

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MUR #1235, First General Counsel's Report at 3 (June 27, 1980).

In MUR #1051, In the Matter of Congressman Les Aspin (1979), the Commission held that an advertisement by the publication Scientific American praising Congressman Les Aspin did not constitute a prohibited corporate contribution because of the major purpose of the communication:

Though Representative Aspin is a candidate within the definition of Section 431(b)(2) of the Act and though the advertisement speaks of Representative Aspin in glowing terms, the major purpose of the advertisement is not connected with Representative Aspin's election but the promotion of a magazine, Scientific American. Furthermore, the advertisement does not urge the election of Rep. Aspin to Federal office, nor does it solicit contributions to his campaign.

MUR #1051, First General Counsel's Report (November 14, 1979) at 2.

The Commission's adoption of the "major purpose" test in these advisory opinions and matters under review was judicially sanctioned in Epstein v. Federal Election Commission, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9161 (D.D.C. 1981), aff'd, No. 81-2227 (D.C. Cir. June 8, 1982) wherein the court stated:

As the courts in Phillips Publishing [517 F. Supp. 1310 (D.D.C. 1981)] and Reader's Digest [509 F. Supp. (S.D.N.Y. 1981)] have recognized, the Commission may reasonably determine that expenditures on publicity that have a purpose other than assistance of political candidate covered by the Act were not intended by Congress to be punished under the Act. Particularly is this so when the "major purpose" of the publicity is self-evidently not to advocate the election of candidate, but to promote the organization paying for the publicity.

(Emphasis supplied and brackets added.)

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In summary, based on the proceedings of the Commission, a communication is in connection with a candidate's election only if the major purpose of that communication is to influence the election of the candidate.

Constitutional considerations further narrow the ambit of the Section 441b prohibition. In Buckley v. Valeo, 424 U.S. 1, 42-44 (1976), the Court held that because of its vagueness the phrase "expenditure . . . relative to a clearly identified candidate" had to be limited to expenditures "that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Again, because of vagueness considerations, the court limited a disclosure provision that was based on a "purpose to influence" test to only those communications which "expressly advocate election or defeat of a clearly identified candidate." 424 U.S. at 80. Because the "in connection with" language of § 441b(b)(2) is more ambiguous than the "relative to a candidate" language narrowed in Buckley and because the "purpose to influence" definition contained in § 431(9)(A)(i) is virtually identical to the language found wanting in Buckley, the prohibition of 2 U.S.C. § 441b should only be applied to expenditures that expressly advocate the election or defeat of a clearly identified candidate.

Moreover, a broad construction of § 441b would not be consonant with the associational interests of the respondent. In its efforts to maintain itself and seek new members, the Sierra Club is engaged in an activity long protected under the First Amendment. See, e.g., NAACP v. Button, 371 U.S. 415 (1963). The

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associational rights of groups such as the respondent were stressed by Congressman Hansen, who stated that "every organization should be allowed to take the steps necessary for its growth and survival." 117 Cong. Rec. 43360 (1971), reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 758 (1981) (emphasis supplied). In construing the scope of Section 441b, these associational rights must be given substantial consideration.

B. FACTUAL ANALYSIS

Applying the "major purpose" test, it is manifest that the communication at issue does not constitute a prohibited corporate expenditure. The exclusive purpose of the communication is to solicit new members for the Sierra Club, not to influence a candidate's election. See Exhibit #1, Affidavit of Audrey Berkovitz, Sierra Club Director of Development.

In its letter, the Sierra Club described the history and activities of the Club. The Sierra Club, in explaining the benefits of membership, stated that members are "among the country's most informed people" with respect to current environmental developments (Exhibit #2 at 2); that members have access to numerous Sierra Club publications and local chapter activities (Exhibit #2 at 5-6); and that the Sierra Club helps protect the environment by engaging in pro-environmental court actions (Exhibit #2 at 4), legislative lobbying (Exhibit #2 at 4-5), and political efforts both through internal communications to members (Exhibit #2 at 4-5) and through the activities of the Club's

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political action committee (Exhibit #2 at 3-4). In addition, the letter described the allegedly anti-environmental actions of President Reagan and those around him (Exhibit #2 at 2-3).

Both the description of Club activities and Club objectives as well as the description of the allegedly anti-environmental actions of President Reagan were clearly undertaken to encourage individuals to join the Sierra Club. The letter states that with respect to opposing the environmental decision-making of the Reagan Administration, "[o]ne of the most effective actions you can take is to join the Sierra Club", (Exhibit #2 at 3) (emphasis in the original). The central theme of the communication at issue is simply to encourage individuals to become Sierra Club members through which the objectives of the Club will be more fully realized:

Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

Exhibit #2 at 6.

The "Green Vote" referred to in the solicitation letter is not defined in terms of particular candidates, a requirement set forth in U.S. v. UAW., 352 U.S. at 587, 589, but rather consists of those "Americans who are expressing through the ballot box their deepening concern over what is happening to our environment." (Exhibit #2 at 1). Stating that the Club can help elect pro-environmental legislators in 1984 (Exhibit #2 at 4) or that Club activities will have an impact on the 1984 elections (Exhibit #2 at 5) can in no manner be considered as an attempt to

influence the election of a particular candidate but simply constitutes a factual description of Club activities. As in the advisory opinions previously discussed, the reader is not told whom to vote for and is not solicited for contributions.

In its efforts to solicit new members from those who would consider themselves members of the "Green Vote," the Sierra Club noted in its letter that by electing pro-environmental legislators and by making the environment a campaign issue, the organization can counter anti-environmental special interest groups who will try to keep the present Administration in power (Exhibit #2 at 4). The Sierra Club had earlier noted that the "Green Vote" will help determine whether the voters will pick for office pro-environmental candidates or will the American people face an anti-environment administration in Washington. (Exhibit #2 at 1). The reader, in essence, is being told that the "Green Vote" will affect whether or not special interests will prevail and whether or not an anti-environmental administration will remain in place. The reader is not told who to vote for but is told that by joining the Sierra Club the reader will be "an important promoter of the Green Vote." (Exhibit #2 at 1.)

The situation presented is similar to that found in MUR #1372, In the Matter of Planned Parenthood Federation of America, Inc. (1981). In a fundraising letter sent out by Planned Parenthood, it was stated on the first page of the letter that pro-life organizations had drawn up a "hit list" of six incumbent Senators and Representatives in an attempt to "Purge Progressive Political Leaders." The letter identified the threatened

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legislators and also stated at 1: "Ronald Reagan strongly supports the Human Life Amendment and his candidacy is backed by a platform which these extremists helped forge." The reader of the Planned Parenthood communication was then asked at 2 to "stop the zealous minority who wish to impose their dogmatic will upon us all" (emphasis in the original).

Because the objective of the Planned Parenthood letter was to raise pro-choice concerns and to elicit support for the organization, the FEC made a no-reason-to-believe finding and closed the file. See MUR #1372, First General Counsel's Report (June 29, 1981) at 3, and July 2, 1981, Certification. Although the Sierra Club letter contains a greater number of general electoral references, such as references to the "Green Vote," it contains no greater degree of electoral candidate advocacy than that found in the Planned Parenthood letter. Like the Planned Parenthood letter, "nowhere in the letter does the [Sierra Club] indicate that it supports any candidate or that the reader should vote for any candidate." MUR # 1372, First General Counsel's Report at 3 (brackets supplied). The main purpose of both letters is simply to maintain the viability and growth of each organization.

While the Planned Parenthood letter was sent in the middle of a presidential election campaign between Messrs. Reagan and Carter, the Sierra Club's letter was mailed in September and October, 1983, over a year prior to the 1984 elections. As of the date of submission of this response, President Reagan has yet to announce his candidacy. In addition, the Reagan Bush '84

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campaign committee did not register with the Commission nor was authorized by President Reagan until October 17, 1983. See Exhibit #3. Consequently, it is dubious whether he would be a candidate as that term is used in 2 U.S.C. § 441b(b)(2). Cf. FEC v. Florida For Kennedy Committee, 681 F.2d 1281 (11th Cir. 1982); FEC v. Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981), and FEC v. Citizens for Democratic Alternatives in 1980, 655 F.2d 397 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981). Since President Reagan was not a candidate, the Campaign Act should not apply to the membership solicitation mailing at issue.

Conclusion

The sole purpose of the letter at issue is to seek new members for the Sierra Club. The letter makes several general electoral-related references but in no sense constitutes active electioneering or express advocacy. These general electoral references simply serve as a lightning rod to attract additional members. The complaint should be dismissed.

Respectfully submitted,

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

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20008
202/822-9622

Counsel to the Sierra Club

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of

The Sierra Club

)
)
) Matter Under Review 1598
)
)
)

AFFIDAVIT OF AUDREY C. BERKOVITZ

I, AUDREY C. BERKOVITZ, being first duly sworn upon oath,
depose and say:

1. I am currently employed by the Sierra Club, 530 Bush
Street, San Francisco, California 94108, in the capacity of
Director of Development.

2. In the capacity of Director of Development, my
responsibilities include, among other things, the acquisition and
retention of Sierra Club members.

3. Dues derived from members are a primary source of
income used to finance the operations and programs of the Sierra
Club.

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4. Sixty to sixty-five percent (60-65%) of all new members of the Sierra Club are generated from direct mail solicitation letters.

5. Under my supervision, the direct mail package attached hereto and the subject matter of the instant action was prepared and produced as a test mailing to solicit new members, and evaluate the efficacy of this particular letter in attracting new Sierra Club members.

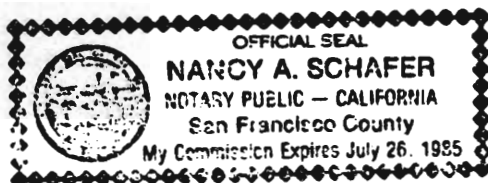
6. The referenced direct mail package was mailed to potential members between September 13 and 16, 1983 and between October 5 and 28, 1983.

7. The exclusive purpose of the referenced direct mail package was in connection with acquiring new members for the Sierra Club.

8. Due to the low response rate, the Sierra Club does not currently plan to further use the referenced direct mail package in connection with acquiring new members, or for any other purpose.

Audrey C. Berkovitz
AUDREY C. BERKOVITZ

Subscribed and sworn this before me this 5TH day
of JANUARY, 1984.



Nancy A. Schaffer
NOTARY PUBLIC

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SIERRA CLUB 530 Bush Street, San Francisco, California 94108

DEFENDANT'S
EXHIBIT

1 2

The Green Vote...

What is it?

Is it shaping America's environmental future?

Is it shaping *your* future?

What should you know about it?

For the sake of all you hold dear, read on...

Dear Friend and Fellow Citizen,

Let me start to answer those questions with another question.

How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for office candidates who had sworn to protect and defend our environment and wilderness areas?

Or will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment ... a record that has contributed to the degradation of our natural surroundings ... to the loss of public lands to commercial interests ... to the endangerment of our health by allowing industry to pollute our air and water ... and to the eradication of wilderness areas that will never again be pristine?

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

AND YOU ARE HEREBY INVITED TO BE AN IMPORTANT PROMOTER OF THE GREEN VOTE BY JOINING THE MORE THAN 350,000 OTHER AMERICANS WHO ARE MEMBERS OF THE SIERRA CLUB.

The Sierra Club is America's largest organization of environmental activists. And one of its most powerful. It is a citadel of environmental strength and sanity in the

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Since
Ronald
Reagan
took
office
in 1981,
more than
150,000
new members
joined
the Sierra
Club.

swirling combat over public policy to protect our environmental and wilderness areas. And a mighty builder of the Green Vote.

The people who belong to this renowned organization are bound together not only by their common love and respect for the outdoors -- but by a deep-seated concern about what is being done to our natural surroundings, and by a deep-rooted determination to do what they can to erase the causes of environmental harm.

As a Sierra Club Member, you will be among the country's most informed people about decisions being made behind closed doors in industrial boardrooms and Washington cloakrooms -- decisions that profoundly affect your environment and your life.

Are you paying with your health because the President is cutting back the budgets of government agencies responsible for enforcing environmental laws?

What lethal chemicals are being dumped into our water, our land and our air? And where are they being dumped? Near your home? And how are these chemicals affecting your health?

What harm -- short and long range -- will be done by the destruction of our wilderness areas?

You owe it to yourself and those you care about to know the answers to these and other critical questions. And you will know the answers as a Sierra Club Member.

You don't have to be an activist to join the Sierra Club. Your membership support alone helps make possible the Club's many, many efforts to defend and safeguard our environment as well as our wilderness areas.

The Sierra Club's leadership in environmental efforts is not new. It dates back to 1892, when the Club was first formed -- and it has continued uninterrupted for more than 91 years.

But since Ronald Reagan took office as President of the United States in 1981, the Club has had to gear up for momentous new battles to defend environmental gains. President Reagan brought with him a determination to weaken government's role in preventing industry from harming the public and its possessions. And that policy is responsible for some of the greatest threats to our environment and our wilderness areas this country has ever known.

Right now, President Reagan and those around him are attempting to regain more public confidence about their en-

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The Reagan Administration failed to take needed action to prevent acid rain, which his own appointed committee now recognizes as a major industry-caused health problem.

vironmental policies by putting a smoke screen around their disgraceful environmental record.

The Sierra Club is responsible for lifting that smoke screen, is baring the truth about that record.

President Reagan and those around him talk about safeguarding public lands, yet they try to lease the entire offshore continental United States.

They talk about protecting our wilderness, yet as I write this letter, they are continuing to remove qualified areas from wilderness protection.

They talk about defending our wildlife, yet they would open millions of acres of Alaska's national parks to trophy hunters -- with moose, Dall sheep and caribou the victims.

Their record unequivocally shows that the President and his appointed officials have not done the job they have sworn to do. They are not protecting the American people from health hazards due to pollution. They are not safeguarding publicly owned lands.

They have tried to weaken the Clean Air Act and the Clean Water Act.

They have neglected their responsibility to control hazardous chemical dumps, clean up abandoned dumps and prosecute illegal dumpers.

They have been slow in controlling the use of toxic chemicals that threaten public health.

They have tried to weaken the law designed to protect the public from environmental threats due to mining.

They have consistently sided with industry in environmental matters, arguing that what is good for industry is good for the environment.

They have tried to sell to commercial interests public lands that have important environmental values.

How do you, as a private concerned citizen, fight back against such irresponsible acts by the Administration?

One of the most effective actions you can take is to join the Sierra Club.

The Club's political action committee gave more

Through the Club's widespread public education programs, its political action committee, its powerful Legal Defense Fund, we are acting on your behalf to see that our

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The Reagan EPA has tried to lower the beneficial air pollution standards set in the Clean Air Act...has cleaned up fewer than half the toxic waste dumps scheduled for clean-up under the 1980 Superfund legislation.

dollars to
help
candidates
in the 1982
election
than any
other
environmental
political
action
committee.

environmental laws are enforced and that strict measures are taken to prevent further deterioration of our air, water and land.

We are highly effective in communicating with the nation's press to keep the public constantly well informed about environmental issues.

We take government and business to court when they are breaking the laws.

We lead the way in sparking Congressional action -- in communicating with members of Congress so that they feel the intensity of their constituents' fervor over environmental issues.

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts ... CAN help elect pro-environmental legislators in 1984 ... CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

"Green" for the verdant forests we prize so dearly.
"Green" for the mighty grass roots from which we spring.

Yes, we can do it because we have the people behind us. And more and more people are joining the Sierra Club every day. In just one year recently, more than 100,000 new members joined!

So in school room after school room, in church after church, in civic organization after civic organization, we intend to raise the issue of environmentalism on the national election agenda. In Senate races. In House races. In state and local races, even. We must, we will see that these issues get the attention of the voters.

We'll also be helping pro-environmental candidates in addressing these issues.

We're also planning workshops throughout the country to help environmental activists. And recruiting new volun-

In the last
ten years,
the Sierra
Club helped
persuade
Congress to
enact more
than 70
measures to
protect the
environment.

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teers for election work. And preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS.

You can help make them possible. By joining the Sierra Club today, you will be adding to our clout. Your membership contribution, united with those of other concerned Sierra Club Members, can make the difference between the success and failure of our endeavors.

When you join the Sierra Club, you will receive its informative and enjoyable publication called Sierra. The magazine is published every other month. And in it you'll find articles about what it is we are fighting to defend. Through first-rate writing and outstanding photos, you'll re-discover the great outdoors in all its splendor.

In Sierra, you'll also get top-notch reporting on current battles to protect those forests, parks and wilderness areas.

As a Member, you are also entitled to a discount on the Club's many books about our natural surroundings and environmental politics.

And when you accept this invitation, you not only become a Member of the Sierra Club, you also automatically become a Member of your local Club Chapter. There are 53 Chapters across the country, as well as two in Canada.

You may also be a Member of a Sierra Club Group. There are over 300 such local groups, and they provide you with the opportunity, if you choose, to meet others in your area who share your interest in and concern for the outdoors. At meetings, outings and social events, group members discuss and work together on environmental and conservation issues.

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

When you stop to realize how much the Sierra Club has contributed to the development of conservation in America ... when you consider the historic legislation that now protects our environment and our wilderness that the Sierra Club fought for so effectively ... when you consider the

You get
specific
membership
benefits...

...and become
part of
local Club
Chapters
and Groups.

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wide variety of activities, programs and publications this organization has to offer, it is no wonder more than 350,000 people now boast that they are Sierra Club Members.

It is the largest environmental lobby ... the largest organization of grass-roots activists working to protect the environment ... the only organization combining environmental lobbying, litigation, outings, grass-roots activism, and publishing ... the leading publisher of environmental books.

Yes, the Green Vote is shaping America's environmental future, is shaping your future. And the Sierra Club is the most powerful force in helping shape the Green Vote.

I suspect you're part of that vote now when you go to the polls. Here's your chance to become a more enlightened voter. And to multiply your effectiveness as an environmental voter. You do these things -- and a lot more -- through your membership in the Sierra Club.

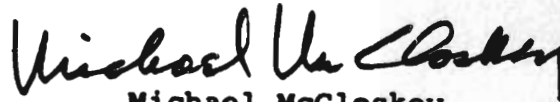
Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

And while you're at it, take advantage of the many benefits and privileges that go with Sierra Club Membership.

You'll find the enclosed Membership Form has your name and address on it. All you have to do to join is indicate your membership category and return the form with your check in the enclosed postage-free envelope.

Do it today. Election Day, 1984 is closer than you think.

Sincerely,



Michael McCloskey
Executive Director

Your Club
Membership
for just
pennies a
day.



This is your Enrollment Form for Sierra Club Membership.

**Enroll me. I *am* part of the Green Vote. And I want to
magnify my strength as an environmentally aware voter by
becoming a Member of
the Sierra Club.**

I understand that as a Sierra Club
Member, I will receive *Sierra* magazine
every other month, as well as special
discounts on Sierra Club books, and
the opportunity to take part in
local Club activities if I
choose.

Enclosed is my check for the membership category
I have indicated below.

	Individual Dues	Joint Dues
Regular	<input type="checkbox"/> \$ 29	<input type="checkbox"/> \$ 33
Supporting	<input type="checkbox"/> \$ 50	<input type="checkbox"/> \$ 54
Contributing	<input type="checkbox"/> \$100	<input type="checkbox"/> \$104
Life (per person)	<input type="checkbox"/> \$750	
Student or Senior	<input type="checkbox"/> \$ 15	<input type="checkbox"/> \$ 19

Your dues include a subscription to *Sierra* (\$3) and your regional newsletter.

To help even more, I am enclosing an extra contribution—
over and above my dues—of:

☐ \$10 ☐ \$25 ☐ \$50 ☐ \$100 ☐ Other \$_____

Telephone number, please _____
(area code) (number)

Please make your check payable to the *Sierra Club* and return it along
with this form to P.O. Box 7959, San Francisco, California 94120.



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DEFENDANT'S
EXHIBIT

3

RECEIVED AT THE FEC
83 OCT 17 AM: 17

October 17, 1983

Dear Chairman McDonald:

I have been advised that on October 17, 1983 a political committee known as Reagan-Bush '84 whose address is 440 First Street, N.W., Washington, D.C. 20001, registered with the Federal Election Commission, as my authorized campaign committee for the nomination as the Republican candidate for the office of the Presidency of the United States in 1984. Since the work of this Committee will be of great help to me at such time as I may make a formal decision to seek a second term as President, I am hereby authorizing this Committee as my principal campaign committee to allow those persons who support my candidacy to express their support in a manner that fully complies with the Federal election laws.

All correspondence directed to me with respect to this matter should be sent to my attention at the Committee's address shown above.

This statement is submitted pursuant to 11 C.F.R. § 101.1(a) in lieu of the Statement of Candidacy on FEC Form 2.

I certify that I have examined the information set forth above and to the best of my knowledge and belief it is true, correct and complete.

Sincerely,

Ronald Reagan

Mr. Danny Lee McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

cc: Vice Chairman Lee Ann Elliott

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

RECEIVED AT THE FEC
OCT 17 1983

1. (a) Name of Committee (in Full) Reagan - Bush '84	<input type="checkbox"/> Check if name or address is changed.	2. Date 83 OCT 17 AM 11:16 October 17, 1983
(b) Address (Number and Street) 440 First Street, N.W.	3. FEC Identification Number	
(c) City, State and ZIP Code Washington, D.C. 20001	4. Is this an amended Statement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

B. TYPE OF COMMITTEE (check one):

- ☒ (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- ☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)
- | | | | |
|-------------------------------------------|--------------------------------------------------|-----------------------------------|--------------------|
| Ronald Reagan
Name of Candidate | Republican
Candidate Party Affiliation | President
Office Sought |
State/District |
|-------------------------------------------|--------------------------------------------------|-----------------------------------|--------------------|
- ☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)
- ☐ (d) This committee is a _____ committee of the _____ Party.
(National, State or subordinate) (Democratic, Republican, etc.)
- ☐ (e) This committee is a separate segregated fund.
- ☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
None		

If the registering political committee has identified a "connected organization" above, please indicate type of organization:

☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records.

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
The Riggs National Bank of Washington, D.C.	1503 Pennsylvania Avenue, N.W. Washington, D.C. 20005

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Angela M. Buchanan Jackson

Type or Print Name of Treasurer

SIGNATURE OF TREASURER

October 17, 1983

Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g

For further information contact:

Federal Election Commission, Toll Free 800-424-9530, Local 202-523-4068

FEC FORM 1 (3-80)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of

The Sierra Club

)
)
) Matter Under Review 1598
)
)
)

CERTIFICATE OF FILING

I certify that on this 16th day of JANUARY,
1984, I filed the original of Respondent's 11 C.F.R. § 111.6(a)
Response with:

Charles Steele, Esquire
General Counsel
Office of the General Counsel
The Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C. 20463


H. Richard Mayberry, Jr.

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
202/822-9622

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LAW OFFICE
H. RICHARD MAYBERRY, JR.
SUITE 950
1885 NEW HALLS DRIVE AVENUE, N.W.
WASHINGTON, D.C. 20020

AREA CODE 202 822-6622

June 4, 1984

HAND DELIVERED
JUN 4 PM 1:35

VIA COURIER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review 1598

Dear Mr. Steele:

On behalf of the Sierra Club, we submit this letter with information relevant to the Commission's analysis of this matter.*/ You will find enclosed the answers of Mr. Michael McCloskey, Executive Director of the Sierra Club, to the Commission's interrogatories.

On January 6, 1984, the Sierra Club filed a brief (together with the affidavit of Audrey C. Berkovitz, Director of Development) responding to the NCPAC complaint. The Commission, on May 1, 1984, determined that there is reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a), the provision of the Campaign Act prohibiting corporate expenditures in connection with a federal election. The Sierra Club brief fully sets forth our belief that the facts in this matter do not justify a probable cause determination of a Campaign Act violation.

The affidavit of Mrs. Berkovitz previously submitted to the Commission and the answers of Mr. McCloskey submitted under oath, together with the membership solicitation letter at issue,

*/ The Commission's May 10, 1984, letter does not state "the alleged factual basis supporting the [reason-to-believe] finding" as required by 11 C.F.R. § 111.9(a). Accordingly, present procedures do not appear to comport with this regulation or 2 U.S.C. § 437g(a)(2). This response does not constitute a waiver of the right to assert procedural defects in subsequent legal proceedings.

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show beyond any doubt that the exclusive purpose of the Sierra Club mailing was to solicit new members and not to influence an election for federal office. The letter does not explicitly or implicitly endorse any candidate for office nor does it instruct its readers to oppose the candidacy of the incumbent President. The electoral references, the description of the political activities of the Sierra Club and its separate segregated fund, and statements that an individual could magnify his or her political voice through joining the Sierra Club were unmistakably designed to secure new members. The description of the political activities of the Sierra Club was but one of many descriptions of various activities undertaken by the Sierra Club that are contained in the letter at issue. The situation presented is substantially the same as that found in Matter Under Review Number 1372, In the Matter of Planned Parenthood of America Federation, Inc. (1981).

As more fully described in our January 6, 1984, brief, past Commission rulings and the legislative history of the prohibition on corporate political activity strongly suggest that the definitions of "contribution" and "expenditure" contained in 2 U.S.C. § 441b(b)(2) are limited by the "purpose of influencing" language contained in 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i). Further, based upon the Supreme Court's discussion of vagueness in Buckley v. Valeo, 424 U.S. 1, 40-44, 76-80, (1976), Section 441b must be narrowed to proscribe only those expenditures expressly advocating the election or defeat of a clearly identified candidate. Because of vagueness concerns, a communication by an individual which contains what could be construed as implicit candidate advocacy may not be regulated under the Campaign Act. Buckley v. Valeo, 424 U.S. at 76-80. These vagueness considerations are not in any way diminished when the author of the communication is a corporation.

The uncertain scope of the prohibition on corporate and union political expenditures was discussed at length by Justice Rutledge, who like the Court in Buckley v. Valeo, pondered "[w]here to draw the line between fact and comment, or comment and advocacy or opposition?" United States v. C.I.O., 335 U.S. 106, 151 n.29 (1948) (Rutledge, J., concurring). Among other things, Justice Rutledge questioned at what point the "in connection with" language was triggered:

When does the connection begin?
Obviously not with the date of the election, primary, convention or caucus. How long beforehand, with the announcement of candidacies or with

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Charles N. Steele, Esquire
June 4, 1984
Page Three

earlier though not always public efforts to induce persons to run? When does the connection end? With the selection of candidates in one case and the election of officers in the other or does it extend to activities relating to these events taking place later?

335 U.S. at 151 n.28. In concluding that the statute was vague, Justice Rutledge stated that "[o]nly a master, if any, could walk the perilous wire strung by the section's criterion." 335 U.S. at 153. Justice Rutledge's observations about the uncertain scope of the ban on corporate and union political expenditures are as accurate today as when they were made.

In determining the applicability of the § 441b prohibition to the Sierra Club membership solicitation letter, the Commission should not only consider the governmental interests underlying the statute, but also the First Amendment interests of an association to maintain its membership base and the Fifth Amendment rights of the Sierra Club not to be subject to an exceedingly vague statute with a great potential for arbitrary administrative action.

For these reasons, we believe the General Counsel should recommend there is not probable cause to believe the Sierra Club has violated § 441b(a) of the Campaign Act.

Sincerely,

H. Richard Mayberry Jr.

H. Richard Mayberry, Jr.
Counsel to the Sierra Club

Encls: Respondent's Answers to Interrogatories
cc: All Commissioners
The Sierra Club

34040491391

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE REC
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

34 AUG 10 P 3: 00

DATE AND TIME OF TRANSMITTAL BY OGC
TO THE COMMISSION 8/10/84 - 3:00

MUR NO. 1723
DATE COMPLAINT RECEIVED
BY OGC June 6, 1984
DATE OF NOTIFICATION TO
RESPONDENT June 13, 1984
STAFF MEMBER
Anne A. Weissenborn

SENSITIVE

COMPLAINANT'S NAME: National Conservative Political
Action Committee

**DEFENDANT'S
EXHIBIT**

RESPONDENT'S NAME: Common Cause

B

RELEVANT STATUTE: 2 U.S.C. §§ 431(9)(A)(i); 431(11); 441b

INTERNAL REPORTS
CHECKED: MUR Index; AO Index

SUMMARY OF ALLEGATIONS

The complaint filed by the National Conservative Political Action Committee states that on January 17, 1984, Common Cause, an incorporated entity, announced that beginning on January 18 it intended to spend \$600,000 on a media campaign which, according to Common Cause materials attached, opposes the role of "special interest political action committees" in Congress and has as its goal making "the issue of campaign finance reform a major part of the 1984 political debate." The complaint cites the statement of Common Cause President Fred Wertheimer that "[o]ur media campaign will be conducted with the Presidential calendar in mind," and stresses what is seen as Common Cause's emphasis upon the benefits to incumbents of PAC spending. The complainant argues that "the sole intended purpose of the [Common Cause] commercials

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is to affect the financing of Federal campaigns and to influence the electorate, with the probable result being a reduction in the financing of elections of incumbent members of Congress." The complainant therefore argues that the expenditures at issue are being made "in connection with" federal elections and that because Common Cause is a corporation it is in violation of 2 U.S.C. § 441b which prohibits such expenditures.

LEGAL AND FACTUAL ANALYSIS

2 U.S.C. § 441b(a) prohibits any corporation from making "a contribution or expenditure in connection with any election to any political office," including Federal office. 2 U.S.C. § 441b(b)(1) defines "contribution or expenditure" for purposes of this section as including "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section. . . ." 2 U.S.C. § 431(11) defines "person" to include a corporation. 2 U.S.C. § 431(9)(A)(i) defines "expenditure" to include "any purchase, payment, distribution, loan, advance, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office. . . ."

Neither the Act nor the Commission's regulations define the phrases "for the purpose of influencing" or "in connection with" as regards either corporate or non-corporate expenditures. However, in numerous enforcement proceedings and advisory opinions requiring application of this language to specific

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situations, the Commission has applied such tests as whether a purchased communication expressly advocated the nomination or election of a candidate, whether a communication solicited contributions to a candidate, and whether the overall purpose of the communication was advocacy of a candidacy rather than advocacy of an issue or policy. See MURs 1051, 1283, 1298 and 1531, and AOs 1977-42, 1977-54, 1978-15.

These tests have in turn been consistent with early judicial interpretations of the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. and of the predecessor of 2 U.S.C. § 441b, 18 U.S.C. § 610. "We . . . construe the Act to apply only to committees soliciting contributions or making expenditures, the major purpose of which is the nomination or election of candidates." U.S. v. National Campaign for Impeachment, 469 F.2d 1135, 1141 (2d Cir. 1972), quoted in American Civil Liberties Union, Inc. v. Jennings, 366 F. Supp. 1041, 1057 (D.D.C. 1973). See also Buckley v. Valeo, 424 U.S. 1, 23 (1976). "The evil at which Congress has struck in [18 U.S.C. § 610] is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." U.S. v. International Union Auto Workers, 352 U.S. 567, 589 (1957). "[Section] 610 would proscribe [a corporation's] expenditures only if they financed partisan communications. . . ." Ash v. Cort, 496 F.2d 416, 426 (3d Cir. 1974), reversed on other grounds, 422 U.S. 66 (1975).

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Counsel for Common Cause, in his response to the notification of the complaint in the present matter, argues that

[t]he media campaign which is the subject of NCPAC's complaint was part of Common Cause's continuing effort to promote campaign reform. The media campaign was entirely non-partisan. . . . Common Cause neither mentioned any candidate (or political party) or expressly or impliedly advocated any candidate's election or defeat. The media campaign was not designed to influence the outcome of any federal election. It did not include candidate-related speech disguised as issue advocacy. (Attachment 1, pages 1-2).

Counsel also states that the timing of the Common Cause efforts to coincide with certain presidential primaries was "because they provided a national forum in which 'issues of great significance to the country should be discussed,'" and that the "drive for election law reform" will continue after the election. (Attachment 1, page 3).

Application of the above-cited tests to the Common Cause expenditures at issue does not lead to a finding that they have been made in connection with, or for purposes of influencing, an election. The particular Common Cause statements attached to the complaint contain no references to specific, named candidates, do not solicit contributions to such candidates, and have as their primary purpose discussion of the issue of the present role of political action committees in the political process. The complainant's emphases upon an asserted intent to influence the financing of Federal elections and upon the potential impact upon incumbents in general do not meet the tests outlined above.

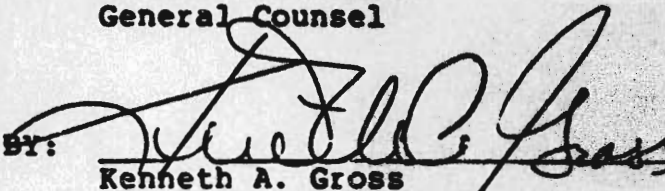
This Office recommends that the Commission find no reason to believe that Common Cause has violated 2 U.S.C. § 441b and close the file in this matter.

RECOMMENDATIONS

1. Find no reason to believe that Common Cause has violated 2 U.S.C. § 441b.
2. Close the file in this matter.
3. Approve the attached letters.

Charles N. Steele
General Counsel

August 10, 1981
Date

By: 
Kenneth A. Gross
Associate General Counsel

Attachments

1. Response from Common Cause
2. Letters (2)

84040491396

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Common Cause)

MUR 1723

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 15, 1984, the Commission decided by a vote of 6-0 to take the following actions in MUR 1723:

1. Find no reason to believe that Common Cause has violated 2 U.S.C. § 441b.
2. Close the file in this matter.
3. Approve the letters attached to the First General Counsel's Report signed August 10, 1984.

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

Attest:

8-15-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary:
Circulated on 48 hour tally basis:

8-10-84, 3:00
8-13-84, 11:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *CX*
DATE: September 24, 1984
SUBJECT: MUR 1598 - Memorandum and General Counsel's Brief

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

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []
24 Hour No Objection []
Sensitive []
Non-Sensitive []
Information [X]
Sensitive [X]
Non-Sensitive []
Other []

DISTRIBUTION

Compliance [X]
Audit Matters []
Litigation []
Closed MUR Letters []
Status Sheets []
Advisory Opinions []
Other (see distribution below) []

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

84 SEP 24 AIO: 39

September 24, 1984

MEMORANDUM

TO : The Commission
FROM : Charles N. Steel *CS*
General Counsel
SUBJECT: MUR 1598

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on September 24, 1984. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Brief
2. Letter to Respondent

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1598
Sierra Club)

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

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This matter originated with a complaint filed by the National Conservative Political Action Committee, in which it alleged that the Sierra Club had violated 2 U.S.C. § 441b with the mailing of a communication to nonmembers of the Club. The Sierra Club is a not-for-profit corporation, incorporated in the State of New York, and granted tax exempt status pursuant to 26 U.S.C. § 501(c)(4). It has established and administers a separate segregated fund, the Sierra Club Committee on Political Education ("SCCOPE"), which is registered with the Commission as a multicandidate political committee. The Club reported its disbursements during the 1982 election cycle for internal partisan communications pursuant to 11 C.F.R. § 104.6. It has not filed any such reports during the 1984 election cycle.

In September and October 1983, the Club disseminated a communication which used "The Green Vote" as its theme. The Club describes its dissemination of this communication as a "test mailing" to ascertain its effectiveness in recruiting new members of the Sierra Club. The Club also states that it does not plan to repeat the dissemination of this communication because of the low response to it.

The "Green Vote" communication asks that the recipient become part of the "Green Vote" with respect to the 1984 Federal elections by becoming a member of the Sierra Club. The communication contains numerous references to the 1984 elections, to voting, and to persons joining together to influence the outcome of the 1984 elections by supporting candidates who are favorable to the Club's policies. The Club's executive director described the use of the electoral references as a tactic to "induce persons to join the Sierra Club." See Attachment 1.

The Sierra Club mailed 255,299 "Green Vote" communications, nearly all of which went to nonmembers of the Club. It spent a total of \$52,069.54 in creating, preparing, and mailing this communication. These funds came from the Sierra Club's general treasury and were charged to the budget of the Office of Development for membership recruitment. The Office of Development's personnel and its professional consultants created and prepared the communication. The Sierra Club Committee on Political Education, the Club's separate segregated fund, and staff persons who administer SCCOPE's electoral programs did not participate in the preparation and dissemination of the "Green Vote" communication and were not aware of it or consulted with regard to it. See Attachment 1.

On May 1, 1984, the Commission found reason to believe that the Sierra Club had violated 2 U.S.C. § 441b(a) by making a corporate expenditure in connection with a Federal election. On May 10, 1984, the Commission approved a set of interrogatories

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addressed to the executive director of the Sierra Club. Responses to the Commission's finding and to the interrogatories were received on June 4 and 5, 1984

II. Legal Analysis

The Sierra Club's expenditure of \$52,000 to prepare, print, and disseminate its "Green Vote" communication to 250,000 persons outside the Club's membership was an expenditure made in connection with a Federal election. Such an expenditure is prohibited by the Federal Election Campaign Act of 1971, as amended ("the Act"), and constitutes a violation of 2 U.S.C. § 441b(a).

The Act provides:

It is unlawful ... for any corporation whatever ... to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in ... Congress are to be voted

2 U.S.C. § 441b(a). This section also defines expenditure as including "anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section" 2 U.S.C. § 441b(b)(2). The prohibition contained in this section was originally codified at 18 U.S.C. § 610 and carried criminal penalties. The 1976 amendments to the Act re-enacted this section as 2 U.S.C. § 441b(a). See Pub. L. No. 94-283, § 112, 90 Stat. 475, 486 (1976). This prohibition applies to not-for-profit corporations and membership organizations such

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as the Sierra Club. See FEC v. National Right to Work Committee, ____ U.S. ____, 103 S. Ct. 552, 74 L.Ed.2d 364 (1982).

The determination whether a contribution or expenditure is made in connection with a Federal election focuses on the existence of a nexus between the contribution or expenditure and a Federal election. See Miller v. American Telephone and Telegraph Co., 507 F.2d 759, 764 (3d Cir. 1974). When the contribution or expenditure involves a communication, this determination includes an inquiry into such factors as (1) the class to which the communication is directed, (2) the medium of the communication, (3) the timing of the communication, and (4) the electoral content of the communication. See In the Matter of The Okonite Company, MURs 200 (76) and 213 (76) (June 22, 1977). The Commission has recognized that where the distinct purpose of a corporate communication is to promote the corporation, the incidental or tangential inclusion of references having a political nature will not be considered a violation of 2 U.S.C. § 441b(a). See generally, Epstein v. FEC, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶9161 (D.D.C. Sept. 21, 1981). This determination, however, is an objective one that considers the factual context and content of the communication; it is not a subjective inquiry into the state of mind of those responsible for the communication. See, e.g., Okonite, supra; In the Matter of Cong. Les Aspin, MUR 1051 (Nov. 16, 1979).

The Act and Commission regulations specifically permit a not-for-profit membership organization to address communications

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on any subject, including partisan or electoral communications, to its membership, its executive and administrative personnel, and their families. 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. §§ 114.3 and 114.4(a). The Sierra Club disseminated its "Green Vote" communication to more than a quarter of a million persons, few of whom, if any, were Sierra Club members, executive or administrative personnel, or their families. The Club states that it attempted to remove Club members from the mailing list for the "Green Vote" communication. Thus, the Club disseminated the "Green Vote" communication to the general public, and the Club intended to do so.

The Sierra Club disseminated its "Green Vote" communication through the medium of direct mail. It spent \$8,301 for "list rental" as part of its "Green Vote" expenditure. Commission regulations recognize that direct mail communication may be treated as a type of general public communication along with broadcasting, newspapers, magazines, and billboards. See, e.g., 11 C.F.R. §§ 100.7(b)(15)(i), 100.7(b)(16), 100.7(b)(17)(i), 100.8(b)(16)(i), 100.8(b)(17), and 100.8(b)(18)(i). The Club disseminated its "Green Vote" communication in September and October, 1983 -- only a few months before the first caucuses and primaries of the 1984 congressional, senatorial, and presidential elections. Furthermore, the Club specifically linked the message of its "Green Vote" communication to the 1984 Federal elections for Congress and the Presidency. The communication itself

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concludes with the statement: "Election Day, 1984 is closer than you think."

The content of the "Green Vote" communication is replete with overt electoral and political references. The following page-by-page excerpts demonstrate the significance of this political message and refute any notion that the communication merely promotes the Sierra Club with only incidental or tangential political references:

Page 1

The Green Vote
What is it?

...

How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for office candidates who had sworn to protect and defend our environment and wilderness areas?

Or will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment ...

...

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

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Page 4

...

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts . . . CAN help elect pro-environmental legislators in 1984 . . . CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

...

So in school room after school room, in church after church, in civic organization after civic organization, we intend to raise the issue of environmentalism on the national election agenda. In Senate races. In House races. In state and local races, even. We must, we will see that these issues get the attention of the voters.

We'll also be helping pro-environmental candidates in addressing these issues.

Pages 4-5

We're also planning workshops throughout the country to help environmental activists. And recruiting new volunteers for election work. And preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS.

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You can help make them possible. By joining the Sierra Club today, you will be adding to our clout.

...

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

Page 6

...

Yes, the Green vote is shaping America's environmental future, is shaping your future. And the Sierra Club is the most powerful force in helping shape the Green Vote.

I suspect you're part of that vote now when you go to the polls. Here's your chance to become a more enlightened voter. And to multiply your effectiveness as an environmental voter

Join us. Help us build a more potent Green Vote in America

...

... Election Day, 1984 is closer than you think.

In addition to this clear political message, the "Green Vote" communication contained seven explicit references on pages 2 and 3 to President Reagan, Ronald Reagan, the Reagan Administration, or the Reagan EPA. It also described the Club's separate segregated fund, SCCOPE, and stated in the margin of pages 3 and 4: "The Club's political action committee gave more dollars to help candidates in the 1982 election than any other environmental political action committee."

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In this communication, the Club has announced a political battle plan for 1984. The Club outlined the creation of an identifiable voting block -- one that is opposed to an incumbent officeholder and candidate for re-election and one that favors candidates opposed to this present officeholder and candidate -- as well as a voting block that will support candidates of the Club's choosing. The Club calls this voting block "The Green Vote" and appeals to persons to participate in the 1984 elections as part of this group to further the group's own political well-being and to influence the outcome of the 1984 elections. The communication presents membership in the Sierra Club as the vehicle by which persons may become a part of the Green Vote and participate in, and influence the outcome of, the 1984 elections.

The political message contained in the "Green Vote" communication also precludes construing it as a nonpartisan, get-out-the-vote communication to the general public. See 2 U.S.C. § 441b(b)(2)(B) and 11 C.F.R. § 114.4(b). The communication does name a particular candidate. It does favor candidates opposed to the named candidate. It goes beyond describing acts such as voting or describing the hours and places of voting. The communication seeks to influence how that vote is cast.

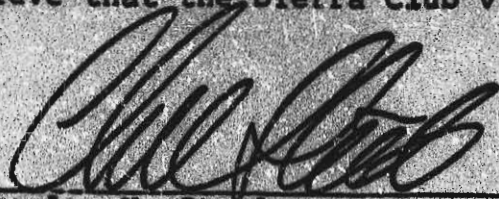
As Senator Robert A. Taft has stated: "It is a question of fact: Was the corporation using its money to influence a political election?" U.S. v. U.A.W., 352 U.S. 567, 587 n.1 (1957). In this matter, the answer is yes.

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III. General Counsel's Recommendation

Find probable cause to believe that the Sierra Club violated
2 U.S.C. § 441b(a).

21 Sep 1984
Date



Charles N. Steele
General Counsel

Attachment
Response of the Sierra Club to
Interrogatories

34040491409

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

11:54:55

IN THE MATTER OF
THE SIERRA CLUB

MATTER UNDER REVIEW 1598

RESPONDENT'S ANSWERS

TO MAY 10, 1984 INTERROGATORIES
OF THE FEDERAL ELECTION COMMISSION

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ATTACHMENT 1

(1)

1. How many green vote letters were mailed to persons other than members of the Sierra Club?

A total of 255,299 green vote letters were mailed in the test mailing. It is possible that some of these reached members of the Sierra Club, since computer systems of eliminating duplicate names are imperfect. However, it is probable that 90% of these letters reached non-members, since the intent of the mailing was to recruit new members to the Sierra Club.

2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental and postage? Please itemize.

Total itemized costs were:

Carrier envelope	3,133.18
Business reply envelope	2,241.77
Letter printing	7,481.43
Response form	3,791.12
List rentals	8,301.00
Mailhouse	4,321.72
Computer Work	3,929.07
Creative	5,093.50
Postage	13,776.75
Total	52,069.54

2(b) Who paid for this work?

This work was paid for by the Sierra Club, from the budget of the Office of Development for membership recruitment.

2(c) How and by whom was this letter prepared? In this regard, submit a list of all persons who were involved in the preparation of this letter with an explanation of each person's role in this preparation.

This letter was prepared by the Office of Development and by its professional consultants.

Persons involved were:

Audrey Berkovits, Director of Development	Final Approval
Peggy Hynd, Associate Director of Development	Approval
Kim Martin-Carroll, Director of Member Development	Project Director
Mathew Scoble, Member Development Projects Coordinator	Production
Ken Smith, firm of Craver, Mathews, Smith & Co.	Concept
Dan Cane, Craver, Mathews, Smith	Writing
Al Friedman, Craver, Mathews, Smith	Design

4. Describe any participation or involvement by the Sierra Club Committee on Political Education relating to this letter.

There was no participation by the Sierra Club Committee on Political Education in the preparation or dissemination of this letter. Specifically, the Committee and the staff persons who work on administering the Club's electoral programs did not know the letter was in preparation, and were not consulted at any stage about the contents, mailing or other aspects of the letter. The first point at which the Committee and the staff became aware that this letter existed was the receipt of the NCPAC complaint.

5. Since the Club has stated in an affidavit that this letter was sent to solicit persons to join the Club as members, please explain in full the purpose and reason for the numerous electoral references in the letter.

The electoral references in the letter were used because it was initially thought that this might induce persons to join the Sierra Club. Mentioning the Club's electoral program did not in fact produce favorable membership recruitment results. The test was thus terminated, and no further letters using electoral terms were sent out.

Testing possible "themes" in membership recruitment letters is a standard procedure in direct mail solicitations. The Sierra Club had been using the same membership recruitment letter for some time, and the results from that letter had begun to decline. This prompted the Office of Development to try to develop new letters that would more effectively recruit new members.

These interrogatories have been answered on behalf of the Respondent, the Sierra Club, by its Executive Director, Michael McCloskey.

Respectfully submitted,

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

LAW OFFICE OF
H. RICHARD MAYBERRY
Suite 960
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: 202/822-9622
Attorney for Respondent

June 5, 1984
Date

10:15 P. 4: 55

Matter under Review 1598

STATE OF CALIFORNIA

)
) SS.

COUNTY OF SAN FRANCISCO

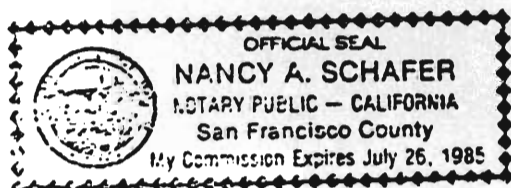
1. I am the Executive Director of the Sierra Club,

2. I have reviewed the foregoing answers to Interrogatories and affirm and swear that the answers are true and correct, to the best of my knowledge, information and belief.

Michael McCloskey
MICHAEL MCCLOSKEY

Herbert A. Schaffer
NOTARY PUBLIC

My Commission expires: JULY 26, 1985





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 24, 1984

H. Richard Mayberry, Jr., Esquire
Law Office of H. Richard Mayberry, Jr.
1667 K Street, N.W.
Ninth Floor
Washington, D.C. 20006

RE: MUR 1598
The Sierra Club

Dear Mr. Mayberry:

Based on a complaint filed with the Commission on November 18, 1983, the Commission determined on May 1, 1984, that there was reason to believe that your client, The Sierra Club, had violated 2 U.S.C. § 441b(a), a provision 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 a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel 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 position on the issues and replying to the brief of the General Counsel. 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 may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

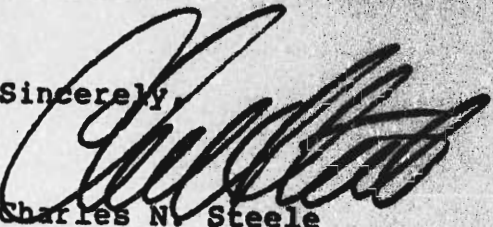
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H. Richard Mayberry, Jr., Esquire
Page 2

A finding of probable cause requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact George Fox Rishel, the attorney assigned to handle this matter, at (202) 523-4143.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

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RECEIVED
34 JUL 9 10:12
3762

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
NINTH FLOOR
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 822-9622

July 3, 1983

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review # 1598
Change of Counsel's Address

Dear Mr. Steele:

Please take note that effective on July 2, 1984, I have moved my law firm to the Ninth Floor, 1667 K Street, N.W., Washington, D.C. 20006. My telephone number remains the same at (202) 822-9622.

Sincerely,

H. Richard Mayberry, Jr.

HRM:mhm

84040491416

LAW OFFICE OF
HARD MAYBERRY, JR.
NINTH FLOOR
567 K STREET, N.W.
WASHINGTON, D.C. 20006



Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K St., N.W.
Wash., D.C. 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO:

CHARLES N. STEELE
GENERAL COUNSEL

FROM:

MARJORIE W. EMMONS/SUSAN M. TEIR *SMT*

DATE:

JUNE 19, 1984

SUBJECT:

MUR 1598 - COMPREHENSIVE INVESTIGATIVE
REPORT #1 signed June 15, 1984

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00 on Monday, June 18, 1984.

There were no objections to the Report at the time of the deadline.

84040491418



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *gch*
DATE: June 15, 1984
SUBJECT: MUR 1598 - Comp. Inv. Rpt. #1

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote	[]
Sensitive	[]
Non-Sensitive	[]
24 Hour No Objection	[x]
Sensitive	[x]
Non-Sensitive	[]
Information	[]
Sensitive	[]
Non-Sensitive	[]

Other []

DISTRIBUTION

Compliance	[x]
Audit Matters	[]
Litigation	[]
Closed MUR Letters	[]
Status Sheets	[]
Advisory Opinions	[]

Other (see distribution below) []

84040491419

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of
Sierra Club

)
)
)
MUR 1598

34 JUN 15 P 5: 16

COMPREHENSIVE INVESTIGATIVE REPORT #1

The complaint against the Sierra Club was filed on November 18, 1983, by the National Conservative Political Action Committee. On May 1, 1984, the Commission found reason to believe a violation of 2 U.S.C. § 441b had occurred, but it requested that the proposed questions to the respondent be redrafted. The revised questions were approved and sent to the respondent on May 10, 1984. The respondent requested an extension of time, to June 4, 1984, in which to answer the questions. This Office granted the request. The respondent filed its response and its answers to the questions on June 4, 1984. The answers to the Commission's factual inquiries are complete, specific and responsive. Accompanying these answers was also a statement of the respondent's legal argument. An initial evaluation of this response indicates that it is sufficient to permit a resolution of this matter.

Charles N. Steele
General Counsel

June 15, 1984
Date

BY:

Kenneth A. Gross
Associate General Counsel

600#3478

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 200
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20005
AREA CODE 202 622-8122

name R. Mayberry
Curry

June 5, 1983

14 JUN 5 PM 4:53
GENERAL INVESTIGATIVE DIVISION

VIA MESSENGER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review # ~~4586~~ 1598
Verification of Interrogatories

Dear Mr. Steele:

Please find enclosed the verified answers of Mr. Michael McCloskey to the Commission's interrogatories in the above-referenced matter. Unverified answers were previously submitted on June 4, 1984 with the Sierra Club's response to the Commission's reason to believe determination.

Sincerely,

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

34040491421

HRM:mhm
Encls.
cc: The Sierra Club

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

JUN 5 4:55

IN THE MATTER OF
THE SIERRA CLUB

MATTER UNDER REVIEW 1598

RESPONDENT'S ANSWERS
TO MAY 10, 1984 INTERROGATORIES
OF THE FEDERAL ELECTION COMMISSION

84040491422

1. How many green vote letters were mailed to persons other than members of the Sierra Club?

A total of 255,299 green vote letters were mailed in the test mailing. It is possible that some of these reached members of the Sierra Club, since computer systems of eliminating duplicate names are imperfect. However, it is probable that 90% of these letters reached non-members, since the intent of the mailing was to recruit new members to the Sierra Club.

2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental and postage? Please itemize.

Total itemized costs were:

Carrier envelope	3,133.18
Business reply envelope	2,241.77
Letter printing	7,481.43
Response form	3,791.12
List rentals	8,301.00
Mailhouse	4,321.72
Computer Work	3,929.07
Creative	5,093.50
Postage	13,776.75

Total 52,069.54

2(b) Who paid for this work?

This work was paid for by the Sierra Club, from the budget of the Office of Development for membership recruitment.

3. How and by whom was this letter prepared? In this regard, submit a list of all persons who were involved in the preparation of this letter with an explanation of each person's role in this preparation.

This letter was prepared by the Office of Development and by its professional consultants.

Persons involved were:

Audrey Berkovits, Director of Development	Final Approval
Peggy Hynd, Associate Director of Development	Approval
Kim Martin-Carroll, Director of Member Development	Project Director
Mathew Scoble, Member Development Projects Coordinator	Production
Ken Smith, firm of Craver, Mathews, Smith & Co.	Concept
Dan Cane, Craver, Mathews, Smith	Writing
Al Friedman, Craver, Mathews, Smith	Design

4. Describe any participation or involvement by the Sierra Club Committee on Political Education relating to this letter.

There was no participation by the Sierra Club Committee on Political Education in the preparation or dissemination of this letter. Specifically, the Committee and the staff persons who work on administering the Club's electoral programs did not know the letter was in preparation, and were not consulted at any stage about the contents, mailing or other aspects of the letter. The first point at which the Committee and the staff became aware that this letter existed was the receipt of the NCPAC complaint.

5. Since the Club has stated in an affidavit that this letter was sent to solicit persons to join the Club as members, please explain in full the purpose and reason for the numerous electoral references in the letter.

The electoral references in the letter were used because it was initially thought that this might induce persons to join the Sierra Club. Mentioning the Club's electoral program did not in fact produce favorable membership recruitment results. The test was thus terminated, and no further letters using electoral terms were sent out.

Testing possible "themes" in membership recruitment letters is a standard procedure in direct mail solicitations. The Sierra Club had been using the same membership recruitment letter for some time, and the results from that letter had begun to decline. This prompted the Office of Development to try to develop new letters that would more effectively recruit new members.

These interrogatories have been answered on behalf of the Respondent, the Sierra Club, by its Executive Director, Michael McCloskey.

Respectfully submitted,

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

LAW OFFICE OF
H. RICHARD MAYBERRY
Suite 960
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: 202/822-9622
Attorney for Respondent

June 5, 1984
Date

UNITED STATES OF AMERICA
BEFORE
THE FEDERAL ELECTION COMMISSION

In the matter of
The Sierra Club

Matter under Review 1598

AFFIDAVIT OF MICHAEL MCCLOSKEY

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SS.

MICHAEL MCCLOSKEY, being duly sworn upon his oath deposes
and says:

1. I am the Executive Director of the Sierra Club,

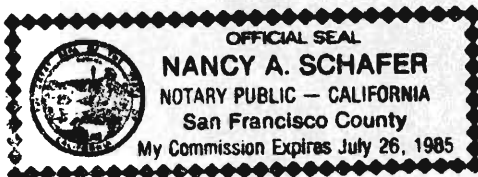
2. I have reviewed the foregoing answers to Interrogatories
and affirm and swear that the answers are true and correct, to the
best of my knowledge, information and belief.

Michael McCloskey
MICHAEL MCCLOSKEY

Subscribed and sworn to
before me in my office this
day of June, 1984

Nancy A. Schafer
NOTARY PUBLIC

My Commission expires: July 26, 1985



84040491426

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 900
1333 NEW HAMPSHIRE, N.W.
WASHINGTON, D.C. 20036

TELEPHONE (202) 822-8022

TO:

VIA CENTRAL DELIVERY COURIER

Charles N. Steele, Esq.
General Counsel
7th Floor
1325 K Street, N.W.
Wash., D.C. 20463

600-# 3470

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 800
1225 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20006

AREA CODE 202 822-8622
June 4, 1984

JUN 4 PM 4:35

VIA COURIER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review 1598

Dear Mr. Steele:

On behalf of the Sierra Club, we submit this letter with information relevant to the Commission's analysis of this matter.*/ You will find enclosed the answers of Mr. Michael McCloskey, Executive Director of the Sierra Club, to the Commission's interrogatories.

On January 6, 1984, the Sierra Club filed a brief (together with the affidavit of Audrey C. Berkovitz, Director of Development) responding to the NCPAC complaint. The Commission, on May 1, 1984, determined that there is reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a), the provision of the Campaign Act prohibiting corporate expenditures in connection with a federal election. The Sierra Club brief fully sets forth our belief that the facts in this matter do not justify a probable cause determination of a Campaign Act violation.

The affidavit of Mrs. Berkovitz previously submitted to the Commission and the answers of Mr. McCloskey submitted under oath, together with the membership solicitation letter at issue,

*/ The Commission's May 10, 1984, letter does not state "the alleged factual basis supporting the [reason-to-believe] finding" as required by 11 C.F.R. § 111.9(a). Accordingly, present procedures do not appear to comport with this regulation or 2 U.S.C. § 437g(a)(2). This response does not constitute a waiver of the right to assert procedural defects in subsequent legal proceedings.

84040491427

Charles N. Steele, Esquire
June 4, 1984
Page Two

show beyond any doubt that the exclusive purpose of the Sierra Club mailing was to solicit new members and not to influence an election for federal office. The letter does not explicitly or implicitly endorse any candidate for office nor does it instruct its readers to oppose the candidacy of the incumbent President. The electoral references, the description of the political activities of the Sierra Club and its separate segregated fund, and statements that an individual could magnify his or her political voice through joining the Sierra Club were unmistakably designed to secure new members. The description of the political activities of the Sierra Club was but one of many descriptions of various activities undertaken by the Sierra Club that are contained in the letter at issue. The situation presented is substantially the same as that found in Matter Under Review Number 1372, In the Matter of Planned Parenthood of America Federation, Inc. (1981).

As more fully described in our January 6, 1984, brief, past Commission rulings and the legislative history of the prohibition on corporate political activity strongly suggest that the definitions of "contribution" and "expenditure" contained in 2 U.S.C. § 441b(b)(2) are limited by the "purpose of influencing" language contained in 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i). Further, based upon the Supreme Court's discussion of vagueness in Buckley v. Valeo, 424 U.S. 1, 40-44, 76-80, (1976), Section 441b must be narrowed to proscribe only those expenditures expressly advocating the election or defeat of a clearly identified candidate. Because of vagueness concerns, a communication by an individual which contains what could be construed as implicit candidate advocacy may not be regulated under the Campaign Act. Buckley v. Valeo, 424 U.S. at 76-80. These vagueness considerations are not in any way diminished when the author of the communication is a corporation.

The uncertain scope of the prohibition on corporate and union political expenditures was discussed at length by Justice Rutledge, who like the Court in Buckley v. Valeo, pondered "[w]here to draw the line between fact and comment, or comment and advocacy or opposition?" United States v. C.I.O., 335 U.S. 106, 151 n.29 (1948) (Rutledge, J., concurring). Among other things, Justice Rutledge questioned at what point the "in connection with" language was triggered:

When does the connection begin?
Obviously not with the date of the election, primary, convention or caucus. How long beforehand, with the announcement of candidacies or with

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Charles N. Steele, Esquire
June 4, 1984
Page Three

earlier though not always public efforts to induce persons to run? When does the connection end? With the selection of candidates in one case and the election of officers in the other or does it extend to activities relating to these events taking place later?

335 U.S. at 151 n.28. In concluding that the statute was vague, Justice Rutledge stated that "[o]nly a master, if any, could walk the perilous wire strung by the section's criterion." 335 U.S. at 153. Justice Rutledge's observations about the uncertain scope of the ban on corporate and union political expenditures are as accurate today as when they were made.

In determining the applicability of the § 441b prohibition to the Sierra Club membership solicitation letter, the Commission should not only consider the governmental interests underlying the statute, but also the First Amendment interests of an association to maintain its membership base and the Fifth Amendment rights of the Sierra Club not to be subject to an exceedingly vague statute with a great potential for arbitrary administrative action.

For these reasons, we believe the General Counsel should recommend there is not probable cause to believe the Sierra Club has violated § 441b(a) of the Campaign Act.

Sincerely,

H. Richard Mayberry Jr.

H. Richard Mayberry, Jr.
Counsel to the Sierra Club

Encls: Respondent's Answers to Interrogatories
cc: All Commissioners
The Sierra Club

84040491429

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF
THE SIERRA CLUB

MATTER UNDER REVIEW 1598

RESPONDENT'S ANSWERS
TO MAY 10, 1984 INTERROGATORIES
OF THE FEDERAL ELECTION COMMISSION

34040491430

1. How many green vote letters were mailed to persons other than members of the Sierra Club?

A total of 255,299 green vote letters were mailed in the test mailing. It is possible that some of these reached members of the Sierra Club, since computer systems of eliminating duplicate names are imperfect. However, it is probable that 90% of these letters reached non-members, since the intent of the mailing was to recruit new members to the Sierra Club.

2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental and postage? Please itemize.

Total itemized costs were:

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Business reply envelope	2,241.77
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Mailhouse	4,321.72
Computer Work	3,929.07
Creative	5,093.50
Postage	13,776.75

Total 52,069.54

2(b) Who paid for this work?

This work was paid for by the Sierra Club, from the budget of the Office of Development for membership recruitment.

3. How and by whom was this letter prepared? In this regard, submit a list of all persons who were involved in the preparation of this letter with an explanation of each person's role in this preparation.

This letter was prepared by the Office of Development and by its professional consultants.

Persons involved were:

Audrey Berkovits, Director of Development	Final Approval
Peggy Hynd, Associate Director of Development	Approval
Kim Martin-Carroll, Director of Member Development	Project Director
Mathew Scoble, Member Development Projects Coordinator	Production
Ken Smith, firm of Craver, Mathews, Smith & Co.	Concept
Dan Cane, Craver, Mathews, Smith	Writing
Al Friedman, Craver, Mathews, Smith	Design

4. Describe any participation or involvement by the Sierra Club Committee on Political Education relating to this letter.

There was no participation by the Sierra Club Committee on Political Education in the preparation or dissemination of this letter. Specifically, the Committee and the staff persons who work on administering the Club's electoral programs did not know the letter was in preparation, and were not consulted at any stage about the contents, mailing or other aspects of the letter. The first point at which the Committee and the staff became aware that this letter existed was the receipt of the NCPAC complaint.

5. Since the Club has stated in an affidavit that this letter was sent to solicit persons to join the Club as members, please explain in full the purpose and reason for the numerous electoral references in the letter.

The electoral references in the letter were used because it was initially thought that this might induce persons to join the Sierra Club. Mentioning the Club's electoral program did not in fact produce favorable membership recruitment results. The test was thus terminated, and no further letters using electoral terms were sent out.

Testing possible "themes" in membership recruitment letters is a standard procedure in direct mail solicitations. The Sierra Club had been using the same membership recruitment letter for some time, and the results from that letter had begun to decline. This prompted the Office of Development to try to develop new letters that would more effectively recruit new members.

These interrogatories have been answered on behalf of the Respondent, the Sierra Club, by its Executive Director, Michael McCloskey.

Respectfully submitted,

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

LAW OFFICE OF
H. RICHARD MAYBERRY
Suite 960
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: 202/822-9622
Attorney for Respondent

June 4, 1984
Date

84040491433

LAW OFFICES

H. RICHARD MAYBERRY, JR.

SUITE 960

1333 NEW HAMPSHIRE, N.W.

WASHINGTON, D.C. 20036

TELEPHONE (202) 822-8622

TO:

HAND CARRIED

Charles N. Steele, Esq
General Counsel
Federal Election Commission
1325 K Street, N.W.
Wash., D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1984

H. Richard Mayberry, Jr., Esquire
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1598
Sierra Club

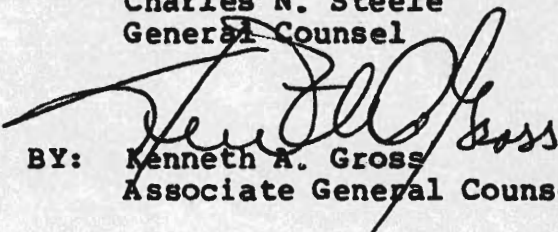
Dear Mr. Mayberry:

This is in reference to your letter dated May 24, 1984, requesting an extension until Monday, June 4, 1984, to respond to the Commission's questions in connection with its notice that it had reason to believe your client has violated the Act. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on Monday, June 4, 1984.

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

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

84040491434

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 900
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
AREA CODE 202 822-8822

6007 3305

2. shel

May 24, 1984

11:25 A.M. 10

HAND DELIVERED

George F. Rishel, Esquire
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1598 - Request for Enlargement of Time

Dear Mr. Rishel:

We respectfully request an enlargement of time up to and including June 4, 1984, to allow the Sierra Club to prepare its answers to interrogatories propounded by the Commission and to prepare additional information relevant to the Commission's analysis of this matter.

Thank you in advance for your anticipated cooperation.

Sincerely,

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

HRM:mhm

84040491435

600 3305
RCHM

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 900
1325 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20004
AREA CODE 202 832-8822

14 MAY 25 A3:10

May 24, 1984

HAND DELIVERED

George F. Rishel, Esquire
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1598 - Request for Enlargement of Time

Dear Mr. Rishel:

We respectfully request an enlargement of time up to and including June 4, 1984, to allow the Sierra Club to prepare its answers to interrogatories propounded by the Commission and to prepare additional information relevant to the Commission's analysis of this matter.

Thank you in advance for your anticipated cooperation.

Sincerely,

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

HRM:mhm

84040491436

LAW OFFICES

ARD MAYBERRY, JR.

SUITE 960

AMPSHIRE AVENUE, N.W.

NGTON, D.C. 20036

VIA CENTRAL DELIVERY COURIER

George F. Rishel, Esq.
Office of General Counsel
7th Floor
Federal Election Commission
1325 K Street, N.W.
Wash., D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 10, 1984

H. Richard Mayberry, Jr., Esquire
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1598

Dear Mr. Mayberry:

The Federal Election Commission notified you on November 23, 1983, of a complaint which alleges that your client, the Sierra Club, has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. We acknowledge receipt of your explanation of this matter which was dated January 6, 1984.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission on May 1, 1984, determined that there is reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a), a provision of the Act. Specifically, it appears that the Sierra Club has made a corporate expenditure in connection with a Federal election. 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 responses within ten days of your receipt of this notification. Additionally, please have the Executive Director of the Club submit answers to the enclosed interrogatories. It is required that the answers be submitted under oath and that they be submitted within ten days of your receipt of this letter.

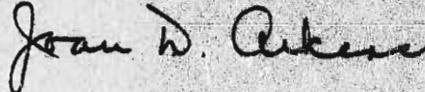
The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance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

84040491438

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 George Fox Rishel, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,



Joan D. Aikens
Commissioner

Enclosure
Procedures
One page of Interrogatories

84040491439

FEDERAL ELECTION COMMISSION

To: Executive Director
Sierra Club
530 Bush Street
San Francisco, California 94108

MUR 1598

INTERROGATORIES

These interrogatories relate to the letter soliciting persons to join the Sierra Club by becoming part of "The Green Vote" that is the subject of MUR 1598. The response shall identify and quote each interrogatory in full immediately preceding the statement of any answer. Answers shall be submitted under oath.

1. How many "Green Vote" letters were mailed to persons other than members of the Sierra Club?
- 2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental, and postage? Please itemize.
(b) Who paid for this work?
3. How and by whom was this letter prepared? In this regard, submit a list of all persons who were involved in the preparation of this letter with an explanation of each person's role in this preparation.
4. Describe any participation or involvement by the Sierra Club Committee on Political Education relating to this letter.
5. Since the Club has stated in an affidavit that this letter was sent to solicit persons to join the Club as members, please explain in full the purpose and reason for the numerous electoral references in the letter.

34040491440



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

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

DATE: MAY 10, 1984

SUBJECT: MUR 1598 - General Counsel's Report
signed May 4, 1984

You were previously notified of an objection by
Commissioner Reiche to the above-captioned report.

By memorandum this date, Commissioner Reiche
withdrew his objection and cast an affirmative vote
in this matter.

At the time of the deadline, there were no further
objections to this report.

A copy of Commissioner Reiche's memorandum is
attached.

Attachments

84040491441



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: COMMISSION SECRETARY
FROM: COMMISSIONER FRANK P. REICHE *FOR*
DATE: MAY 10, 1984
SUBJECT: MUR 1598

I wish to withdraw my objection to the General Counsel's recommendation in MUR 1598.

Please record me as voting in favor of that recommendation.

84 MAY 10 P 1: 12

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARY

84040491442



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: MAY 8, 1984
SUBJECT: OBJECTION - MUR 1598 General Counsel's
Report signed May 4, 1984

The above-named document was circulated to the
Commission on Monday, May 7, 1984 at 11:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____X_____

This matter will be placed on the Executive Session
agenda for Tuesday, May 15, 1984.

84040491443



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Cot*
DATE: May 4, 1984
SUBJECT: MUR 1598 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>
24 Hour No Objection	<input checked="" type="checkbox"/>
Sensitive	<input checked="" type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>
Information	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>

Other ☐

DISTRIBUTION

Compliance	<input checked="" type="checkbox"/>
Audit Matters	<input type="checkbox"/>
Litigation	<input type="checkbox"/>
Closed MUR Letters	<input type="checkbox"/>
Status Sheets	<input type="checkbox"/>
Advisory Opinions	<input type="checkbox"/>
Other (see distribution below)	<input type="checkbox"/>

84040491444

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of
Sierra Club

)
)
)
MUR 1598

84 MAY 4 PM 12: 26

GENERAL COUNSEL'S REPORT

SENSITIVE

Background

In accordance with the Commission's direction, the attached interrogatories have been revised and condensed. The interrogatories and the notification letter are submitted for the Commission's approval.

Recommendation

Authorize the attached interrogatories and notification letter to the Sierra Club.

Charles N. Steele
General Counsel

May 7, 1984
Date

BY:

Kenneth A. Gross
Associate General Counsel

Attachments

1. Notification Letter with Interrogatories

34040491445



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr., Esquire
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1598

Dear Mr. Mayberry:

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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 client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

ATTACHMENT 1

①

84040491446

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 George Fox Rishel, the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Enclosure
Procedures
One page of Interrogatories

84040491447

(2)

FEDERAL ELECTION COMMISSION

To: Executive Director
Sierra Club
530 Bush Street
San Francisco, California 94108

MUR 1598

INTERROGATORIES

These interrogatories relate to the letter soliciting persons to join the Sierra Club by becoming part of "The Green Vote" that is the subject of MUR 1598. The response shall identify and quote each interrogatory in full immediately preceding the statement of any answer. Answers shall be submitted under oath.

1. How many "Green Vote" letters were mailed to persons other than members of the Sierra Club?
- 2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental, and postage? Please itemize.

(b) Who paid for this work?
3. How and by whom was this letter prepared? In this regard, submit a list of all persons who were involved in the preparation of this letter with an explanation of each person's role in this preparation.
4. Describe any participation or involvement by the Sierra Club Committee on Political Education relating to this letter.
5. Since the Club has stated in an affidavit that this letter was sent to solicit persons to join the Club as members, please explain in full the purpose and reason for the numerous electoral references in the letter.

84040491448

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1598
Sierra Club)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 1, 1984, do hereby certify that the Commission took the following actions in MUR 1598:

1. Decided by a vote of 5-1 to find reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a).

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

2. Failed in a vote of 3-3 to pass a motion to approve and send the notification letter and Order to Submit Written Answers with attached interrogatories to the Sierra Club as recommended in the FEC General Counsel's report dated April 24, 1984.

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

3. Decided by a vote of 6-0 to direct the Office of General Counsel to draw up a more restricted set of interrogatories and circulate them for Commission approval on a no-objection basis.

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

Attest:

5-1-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

34040491449



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/ SUSAN M. TEIR *smt*
DATE: APRIL 27, 1984
SUBJECT: OBJECTION - MUR 1598 General Counsel's
Report signed April 24, 1984

The above-named document was circulated to the
Commission on Wednesday, April 25, 1984 at 4:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	<u>X</u>
Commissioner Elliott	<u></u>
Commissioner Harris	<u>X</u>
Commissioner McDonald	<u></u>
Commissioner McGarry	<u></u>
Commissioner Reiche	<u></u>

This matter will be placed on the Executive Session
agenda for Tuesday, May 1, 1984.

84040491450



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/SUSAN M. TEIR *SMT*
DATE: APRIL 26, 1984
SUBJECT: OBJECTION - MUR 1598 General Counsel's
Report signed April 24, 1984

The above-named document was circulated to the
Commission on Wednesday, April 25, 1984 at 4:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____X_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____

This matter will be placed on the Executive Session
agenda for Tuesday, May 1, 1984.

84040491451



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Cut*
DATE: April 25, 1984
SUBJECT: MUR 1598 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote	<input checked="" type="checkbox"/>
Sensitive	<input checked="" type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>
24 Hour No Objection	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>
Information	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>
Other	<input type="checkbox"/>

DISTRIBUTION

Compliance	<input checked="" type="checkbox"/>
Audit Matters	<input type="checkbox"/>
Litigation	<input type="checkbox"/>
Closed MUR Letters	<input type="checkbox"/>
Status Sheets	<input type="checkbox"/>
Advisory Opinions	<input type="checkbox"/>
Other (see distribution below)	<input type="checkbox"/>

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of
Sierra Club

)
)
)

MUR 1598

84 APR 25 PM 2: 32

GENERAL COUNSEL'S REPORT

I. Summary of Allegations

The complaint filed by the National Conservative Political Action Committee (NCPAC) alleges that the Sierra Club (hereinafter "Respondent") made a corporate contribution or expenditure in connection with a Federal election in violation of 2 U.S.C. § 441b. The allegation is based on a letter that the Sierra Club mailed to individuals in which it asked them to join the Club. NCPAC contends that this letter was a partisan communication by a nonprofit corporation sent to persons other than members or executive/administrative personnel of the Club.

Respondent contends that the letter was a test mailing to evaluate its efficacy in attracting new members.^{1/} It argues that because the letter was not a corporate expenditure involving active electioneering on behalf of a particular Federal candidate, it does not fall within the prohibition of 2 U.S.C. § 441b. It contends that the letter's major purpose was to solicit persons to join the club.

^{1/} An affidavit by the Sierra Club's director of development avers that because of the low response to this test mailing, the Club has no present intent to use the letter again.

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II. Factual and Legal Analysis

The Federal Election Campaign Act, as amended, provides:

It is unlawful ... for any corporation whatever ... to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in ... Congress are to be voted

2 U.S.C. § 441b(a).^{2/} This section also defines expenditure as including "anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section" 2 U.S.C. § 441b(b)(2).

These provisions represent the present codification of the predecessor provision and its legislative interpretation. See Miller v. American Telephone and Telegraph Co., 507 F.2d 759, 764 (3d Cir. 1974). In the 1940s, Congress amended § 313 of the Federal Corrupt Practices Act, the predecessor statute, then codified at 18 U.S.C. § 610, to prohibit corporate expenditures in connection with any election to a Federal office as its effort to attack the evil of the "use of corporation and union funds to influence the public at large for a particular candidate or a particular party." U.S. v. U.A.W., 352 U.S. 567, 589, 77 S.Ct. 529, 1 L.Ed.2d 563 (1957). One example of such prohibited activity noted by the Supreme Court was the Ohio C.I.O. Council's

^{2/} The respondent Sierra Club is organized as a nonprofit voluntary membership organization, pursuant to 26 U.S.C. § 501(c)(4), and incorporated in the state of New York. The statutory provision applies to such a corporation. See FEC v. National Right to Work Committee, ____ U.S. ____, 103 S.Ct. 552, 74 L.Ed.2d 364, 371 (1982).

distribution to the public of 200,000 pamphlets opposing the re-election of Senator Taft and supporting his rival. Id. at 579-84.

The respondent first argues that the prohibition of § 441b is limited to only expenditures that expressly advocate the election or defeat of a clearly identified candidate. It also argues that the prohibition applies only to communications whose major purpose is to influence a federal election. The respondent is incorrect in both arguments. The prohibition of § 441b applies to corporate expenditures made "in connection with" a federal election. Thus, the only proper inquiry is whether the Sierra Club's expenditure regarding its letter was made "in connection with" a federal election.

The Sierra Club letter contains references to both membership in the Club and the 1984 elections. The letter begins with a boldface reference to the "Green Vote." It then asks the recipient how he or she would feel when the results of the 1984 elections are announced and the voters have picked candidates who will defend the environment or the country was "faced with four years of an Administration in Washington with a shameful record regarding the environment" It then explains that the Green Vote will "play a strong role in determining" this question and describes the Green Vote as "the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment."

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(emphasis in original). The recipient is then invited to promote the Green Vote by joining the Sierra Club.

The letter describes various activities of the Club before making extensive criticisms of the President's environmental policies. It tells the recipient that to fight the Administration's policies, he or she should join the Club. It states:

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts . . . CAN help elect pro-environmental legislators in 1984 . . . CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

(emphasis in original).

The letter promises that the Club will raise environmental issues on the "national election agenda," including Senate and House races and will help "pro-environmental candidates in addressing these issues." The letter also states that the Club plans to hold workshops and recruit volunteers "for election work" and to prepare "political action handbooks and training manuals" The letter boasts that these and other Club activities will "have a tremendous impact on the outcome of the

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1984 elections." A lengthy description of the values of membership in the Sierra Club follows, concluding with another reference to the Club as "the most powerful force in helping shape the Green Vote."

The respondent argues that the Sierra Club letter is similar to the Planned Parenthood Federation of America letter in MUR 1372. See Attachment 3. Sent during the 1980 general election campaign period, that five-page letter opened with a detailed description of positions of right-to-life groups and referred to the groups' efforts to defeat Senators Bayh, Culver, McGovern, and Packwood and Representatives Udall and Fisher. The letter also noted that "Ronald Reagan strongly supports The Human Life Amendment and his candidacy is backed by a platform which these extremists help forge." The letter asked the recipient to "stand up and be counted" as a means to thwart the aims of right-to-life groups. The remaining four pages of the letter described the Planned Parenthood Federation and asked the recipient to contribute to it. The Commission found no reason to believe that Planned Parenthood violated 2 U.S.C. § 441b in that the expenditure for the letter was not made in connection with a Federal election.

The Sierra Club acknowledges that its letter contains a greater number of electoral references than the Planned Parenthood letter, but it argues that the two letters are similar regarding any § 441b violation. A comparison of the two letters shows that the differences are clear. The references to

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candidates in the Planned Parenthood letter are brief and incidental to the letter's message that solicits support for the organization. The electoral references in the Sierra Club letter are numerous and tightly intertwined with its membership solicitation appeal. Although the letter does not encourage support for any particular candidate, it does endeavor to create an identifiable voting block opposed to an incumbent officeholder and candidate for re-election.^{3/} Its criticisms of President Reagan and his policies show the favoring of candidates opposed to the President. Giving the Sierra Club letter a favorable interpretation still leads to the conclusion that the expenditure was made in connection with a federal election even if it also solicited persons to join the Club.

The Club's letter also does not fall within any specific exceptions to the definition of expenditure set forth in 2 U.S.C. § 441b(b)(2). The respondent acknowledges that the letter's distribution was not limited to members of the Club or executive and administrative personnel of the Club. The letter also is not a simple communication urging individuals to vote in the 1984 elections. It does mention a particular candidate and does appeal for the participation of an identifiable group in the

^{3/} The respondent states that the letter was mailed between September 13-16, 1983, and October 5-28, 1983, but that President Reagan did not file his statement authorizing a principal campaign committee until October 17, 1983. The respondent then argues that President Reagan was not a candidate within the use of that term in § 441b(b)(2), so that the Federal Election Campaign Act is not applicable. Section Section 441b(a) applies to expenditures made in connection with a federal election and need not relate to any specific candidacy.

Federal election process to assure its political well-being. See Advisory Opinion 1980-20, Fed. Elec. Camp. Fin. Guide (CCH) ¶5487 (1980). Thus, it is the recommendation of this Office that the expenditure for this letter falls within the prohibition of § 441b as an expenditure in connection with a federal election.

Therefore, the Commission should find reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a).

III. Recommendations

1. Find reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a).
2. Approve and send the notification letter and Order to Submit Written Answers with attached interrogatories to the Sierra Club.

Charles N. Steele
General Counsel

April 24, 1974
Date

BY:


Kenneth A. Gross
Associate General Counsel

Attachments

1. Complaint of the National Conservative Political Action Committee
2. Response of the Sierra Club
3. Planned Parenthood Letter
4. Notification letter to the Sierra Club
5. Order to Submit Written Answers with attached three pages of Interrogatories

84040491459

National Conservative Political Action Committee

GAC #1117
FBI 18

1500 wilson blvd. suite 513 arlington, va. 22209 (703) 522-2800

1598

November 8, 1983

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

NOV 18 8/12:45

Dear Sir:

This letter constitutes a complaint, filed in accordance with 2 U.S.C. 437g(a)(1), by National Conservative Political Action Committee, 1500 Wilson Boulevard, Arlington, Virginia 22209, against Sierra Club, 530 Bush Street, San Francisco, California 94108, in the belief that the respondent, Sierra Club, has violated and intends to continue violating, the provisions of 2 U.S.C. 441b, which make it unlawful for any corporation to make a contribution or expenditure in connection with a Federal election.

Upon information and belief, Sierra Club is a corporation organized under the laws of the State of California, which has been determined by the Internal Revenue Service to be an organization described in section 501(c)(4) of the Internal Revenue Code. As such, Sierra Club is a corporation subject to the provisions of 2 U.S.C. 441b, which provides that it is unlawful for any corporation to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for the foregoing offices.

Sierra Club was responsible for the production and mailing of a direct-mail, fund-raising solicitation letter, a copy of which is attached hereto, inviting individuals to join the Sierra Club. The enclosed letter was directed to an individual who is not a member of the Sierra Club, who is not one of the executive or administrative personnel of the Sierra Club and who is not a member of a family which includes one of the foregoing. Upon information and belief, copies of the letter were mailed to others similarly situated. As a consequence, the attached letter was mailed to persons outside the restricted class for partisan communications.

ATTACHMENT 1

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Federal Election Commission
November 8, 1983
Page Two

It is evident that the enclosed letter is a communication that was mailed in connection with a Federal election. The second paragraph of the letter states:

"How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?"

The letter uses the words: "vote," "voter" or "votes" fourteen times; the word "candidates" three times; and the words "election day," "elections" and "1984 national elections" six times.

Furthermore, it is evident that the letter is partisan and that it advocated the defeat of President Ronald Reagan in 1984. In the fourth paragraph of the letter, the reader is asked: "...will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment...?" In case one does not get the hint who the target of this communication is, the words "Ronald Reagan," "President Reagan," "The Reagan Administration," "the President" and "The Reagan EPA," appears nine times in the letter. Following a specific attack on President Reagan on page 3 of the letter, the Sierra Club admits, on page 4, how it intends to use its funds:

"In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a 'hands off' policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts...CAN help elect pro-environmental legislators in 1984...CAN make protection of our environment and wilderness among the key issues of the 1984 election." (Ellipses and underscoring in the original.)

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Federal Election Commission
November 8, 1983
Page Three

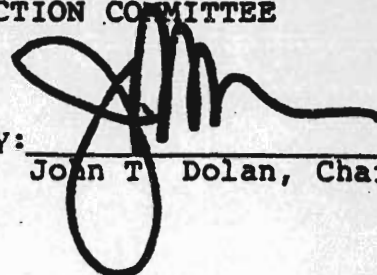
The letter goes on to state that the Sierra Club is planning on "recruiting volunteers for election work" and preparing "political action handbooks," concluding that "all these and the Club's many, many other activities are going to have a tremendous impact on the outcome of the 1984 elections."

It is clear that the attached letter of Sierra Club and the activities expressed and contemplated in the letter are clearly in violation of the provisions of 2 U.S.C. 441b.

Very truly yours,

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE

By:


John T. Dolan, Chairman

STATE OF VIRGINIA)
COUNTY OF ARLINGTON) to-wit:

On the 16th day of November, 1983, JOHN T. DOLAN, Chairman of National Conservative Political Action Committee, appeared before me, a notary public, and swore before me that the facts stated in the foregoing letter are true.


Notary Public

My Commission expires 2-18-85

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(3)

The Green Note...

What is it?
shaping *your* environmental future?
What should you know about it?

For the sake of all you hold dear,
please open immediately...

NONPROFIT ORG.



05

8 4 0 4 0 4 9 1 4 6 3



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS PERMIT No. 4096, SAN FRANCISCO, CA

POSTAGE WILL BE PAID BY ADDRESSEE

Sierra Club
P.O. Box 7959
San Francisco, CA 94120



(4)



This is your Enrollment Form for Sierra Club Membership.

Enroll me. I *am* part of the Green Vote. And I want to
magnify my strength as an environmentally aware voter by
becoming a Member of
the Sierra Club.

I understand that as a Sierra Club
Member, I will receive *Sierra* magazine
every other month, as well as special
discounts on Sierra Club books, and
the opportunity to take part in local
Club activities if I choose.

Enclosed is my check for the membership category
I have indicated below.

	Individual Dues	Joint Dues
Regular	<input type="checkbox"/> \$ 29	<input type="checkbox"/> \$ 33
Supporting	<input type="checkbox"/> \$ 50	<input type="checkbox"/> \$ 54
Contributing	<input type="checkbox"/> \$100	<input type="checkbox"/> \$104
Life (per person)	<input type="checkbox"/> \$750	
Student or Senior	<input type="checkbox"/> \$ 15	<input type="checkbox"/> \$ 19

Your dues include a subscription to *Sierra* (\$3) and your regional newsletter.

To help even more, I am enclosing
an extra contribution—over and
above my dues—of:

☐ \$10 ☐ \$25 ☐ \$50
☐ \$100 ☐ Other \$ _____

Telephone number, please

(area code)

(number)

Please make your check payable to the
Sierra Club and return it along with this form
to P.O. Box 7959, San Francisco, CA 94120.

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5



SIERRA CLUB 530 Bush Street, San Francisco, California 94102

The Green Vote...

What is it?

Is it shaping America's environmental future?

Is it shaping *your* future?

What should you know about it?

For the sake of all you hold dear, read on...

Dear Friend and Fellow Citizen,

Let me start to answer those questions with another question.

How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for office candidates who had sworn to protect and defend our environment and wilderness areas?

Or will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment ... a record that has contributed to the degradation of our natural surroundings ... to the loss of public lands to commercial interests ... to the endangerment of our health by allowing industry to pollute our air and water ... and to the eradication of wilderness areas that will never again be pristine?

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

AND YOU ARE HEREBY INVITED TO BE AN IMPORTANT PROMOTER OF THE GREEN VOTE BY JOINING THE MORE THAN 350,000 OTHER AMERICANS WHO ARE MEMBERS OF THE SIERRA CLUB.

The Sierra Club is America's largest organization of environmental activists. And one of its most powerful. It is a citadel of environmental strength and sanity in the

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Since
Ronald
Reagan
took
office
in 1981,
more than
150,000
new members
joined
the Sierra
Club.

(6)

swirling combat over public policy to protect our environmental and wilderness areas. And a mighty builder of the Green Vote.

The people who belong to this renowned organization are bound together not only by their common love and respect for the outdoors -- but by a deep-seated concern about what is being done to our natural surroundings, and by a deep-rooted determination to do what they can to erase the causes of environmental harm.

As a Sierra Club Member, you will be among the country's most informed people about decisions being made behind closed doors in industrial boardrooms and Washington cloakrooms -- decisions that profoundly affect your environment and your life.

Are you paying with your health because the President is cutting back the budgets of government agencies responsible for enforcing environmental laws?

What lethal chemicals are being dumped into our water, our land and our air? And where are they being dumped? Near your home? And how are these chemicals affecting your health?

What harm -- short and long range -- will be done by the destruction of our wilderness areas?

You owe it to yourself and those you care about to know the answers to these and other critical questions. And you will know the answers as a Sierra Club Member.

You don't have to be an activist to join the Sierra Club. Your membership support alone helps make possible the Club's many, many efforts to defend and safeguard our environment as well as our wilderness areas.

The Sierra Club's leadership in environmental efforts is not new. It dates back to 1892, when the Club was first formed -- and it has continued uninterrupted for more than 91 years.

But since Ronald Reagan took office as President of the United States in 1981, the Club has had to gear up for momentous new battles to defend environmental gains. President Reagan brought with him a determination to weaken government's role in preventing industry from harming the public and its possessions. And that policy is responsible for some of the greatest threats to our environment and our wilderness areas this country has ever known.

Right now, President Reagan and those around him are attempting to regain more public confidence about their en-

The Reagan
Administration
failed to
take needed
action to
prevent acid
rain, which
his own
appointed
committee
now
recognizes
as a major
industry-
caused
health
problem.

vironmental policies by putting a smoke screen around their disgraceful environmental record.

The Sierra Club is responsible for lifting that smoke screen, is baring the truth about that record.

President Reagan and those around him talk about safeguarding public lands, yet they try to lease the entire offshore continental United States.

They talk about protecting our wilderness, yet as I write this letter, they are continuing to remove qualified areas from wilderness protection.

They talk about defending our wildlife, yet they would open millions of acres of Alaska's national parks to trophy hunters -- with moose, Dall sheep and caribou the victims.

Their record unequivocally shows that the President and his appointed officials have not done the job they have sworn to do. They are not protecting the American people from health hazards due to pollution. They are not safeguarding publicly owned lands.

They have tried to weaken the Clean Air Act and the Clean Water Act.

They have neglected their responsibility to control hazardous chemical dumps, clean up abandoned dumps and prosecute illegal dumpers.

They have been slow in controlling the use of toxic chemicals that threaten public health.

They have tried to weaken the law designed to protect the public from environmental threats due to mining.

They have consistently sided with industry in environmental matters, arguing that what is good for industry is good for the environment.

They have tried to sell to commercial interests public lands that have important environmental values.

How do you, as a private concerned citizen, fight back against such irresponsible acts by the Administration?

One of the most effective actions you can take is to join the Sierra Club.

The Club's political action committee gave more

Through the Club's widespread public education programs, its political action committee, its powerful Legal Defense Fund, we are acting on your behalf to see that our

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The Reagan EPA has tried to lower the beneficial air pollution standards set in the Clean Air Act...has cleaned up fewer than half the toxic waste dumps scheduled for clean-up under the 1980 Superfund legislation.

8

dollars to
help
candidates
in the 1982
election
than any
other
environmental
political
action
committee.

environmental laws are enforced and that strict measures are taken to prevent further deterioration of our air, water and land.

We are highly effective in communicating with the nation's press to keep the public constantly well informed about environmental issues.

We take government and business to court when they are breaking the laws.

We lead the way in sparking Congressional action -- in communicating with members of Congress so that they feel the intensity of their constituents' fervor over environmental issues.

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts ... CAN help elect pro-environmental legislators in 1984 ... CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

"Green" for the verdant forests we prize so dearly.
"Green" for the mighty grass roots from which we spring.

Yes, we can do it because we have the people behind us. And more and more people are joining the Sierra Club every day. In just one year recently, more than 100,000 new members joined!

In the last
ten years,
the Sierra
Club helped
persuade
Congress to
enact more
than 70
measures to
protect the
environment.

So in school room after school room, in church after church, in civic organization after civic organization, we intend to raise the issue of environmentalism on the national election agenda. In Senate races. In House races. In state and local races, even. We must, we will see that these issues get the attention of the voters.

We'll also be helping pro-environmental candidates in addressing these issues.

We're also planning workshops throughout the country to help environmental activists. And recruiting new volun-

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teers for election work. And preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS.

You can help make them possible. By joining the Sierra Club today, you will be adding to our clout. Your membership contribution, united with those of other concerned Sierra Club Members, can make the difference between the success and failure of our endeavors.

When you join the Sierra Club, you will receive its informative and enjoyable publication called Sierra. The magazine is published every other month. And in it you'll find articles about what it is we are fighting to defend. Through first-rate writing and outstanding photos, you'll re-discover the great outdoors in all its splendor.

In Sierra, you'll also get top-notch reporting on current battles to protect those forests, parks and wilderness areas.

As a Member, you are also entitled to a discount on the Club's many books about our natural surroundings and environmental politics.

And when you accept this invitation, you not only become a Member of the Sierra Club, you also automatically become a Member of your local Club Chapter. There are 53 Chapters across the country, as well as two in Canada.

You may also be a Member of a Sierra Club Group. There are over 300 such local groups, and they provide you with the opportunity, if you choose, to meet others in your area who share your interest in and concern for the outdoors. At meetings, outings and social events, group members discuss and work together on environmental and conservation issues.

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

When you stop to realize how much the Sierra Club has contributed to the development of conservation in America ... when you consider the historic legislation that now protects our environment and our wilderness that the Sierra Club fought for so effectively ... when you consider the

You get
specific
membership
benefits...

...and become
part of
local Club
Chapters
and Groups.

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(10)

wide variety of activities, programs and publications this organization has to offer, it is no wonder more than 350,000 people now boast that they are Sierra Club Members.

It is the largest environmental lobby ... the largest organization of grass-roots activists working to protect the environment ... the only organization combining environmental lobbying, litigation, outings, grass-roots activism, and publishing ... the leading publisher of environmental books.

Yes, the Green Vote is shaping America's environmental future, is shaping your future. And the Sierra Club is the most powerful force in helping shape the Green Vote.

I suspect you're part of that vote now when you go to the polls. Here's your chance to become a more enlightened voter. And to multiply your effectiveness as an environmental voter. You do these things -- and a lot more -- through your membership in the Sierra Club.

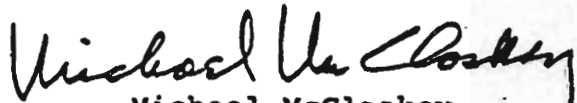
Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

And while you're at it, take advantage of the many benefits and privileges that go with Sierra Club Membership.

You'll find the enclosed Membership Form has your name and address on it. All you have to do to join is indicate your membership category and return the form with your check in the enclosed postage-free envelope.

Do it today. Election Day, 1984 is closer than you think.

Sincerely,



Michael McCloskey
Executive Director

Your Club
Membership
for just
pennies a
day.

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RECEIVED AT THE FEC
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

HAND DELIVERED

HAND DELIVERED

In the Matter of
The Sierra Club

Matter Under Review 1598

JAN 6 P2:16

RESPONDENT'S 11 C.F.R. § 111.6(a) RESPONSE

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6(a), the Sierra Club, through counsel, submits its response on the factual and legal issues in this matter.

For the reasons set forth below, there is no reason to believe the Sierra Club has committed a violation of the Federal Election Campaign Act of 1971, as amended, or the Federal Election Regulations promulgated thereunder.

I. THE SIERRA CLUB

The Sierra Club is one of this nation's premier conservation organizations dedicated to preserving the environment. Its goals are ". . . to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity

ATTACHMENT 2 (12)

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to protect and restore the quality of the natural human environment; and to use all lawful means to carry out these objectives." Sierra Club Articles of Incorporation.

The Sierra Club was founded in 1892 by John Muir and has throughout this century been engaged in national efforts to protect the environment. Organized as a not-for-profit voluntary membership organization, pursuant to 26 U.S.C. § 501(c)(4), the Club is incorporated in the State of New York. Currently over 350,000 individuals are members of the Sierra Club.

Various programs implement the objectives of the Sierra Club and provide an opportunity for its members to explore, enjoy, and preserve the nation's forests, waters, wildlife, and wilderness.

The Sierra Club's national lobbying program operates to interface with the federal government to promote a national policy which is consistent with the protection of the environment to the maximum extent feasible. The scope of this work deals both with legislation pending before Congress and the actions by executive agencies. Pursuant to relevant law, the Sierra Club's separate segregated fund is involved in political action. SCCOPE, or the Sierra Club Committee on Political Education, is duly registered with the Federal Election Commission.

The multi-faceted programming of the Sierra Club contributes to the collection and dissemination of information on the environment, and provides organized opportunities for members to enjoy our national heritage.

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The Club maintains a collection of materials on conservation, natural history, and mountaineering in the William E. Colby Library. Moreover, it has responded to over 20,000 inquiries each year for information on environmental issues. The Sierra magazine reaching all members includes conservation articles of general interest. The publishing program has provided in excess of 218 titles to date, and serves as an important educational resource. To facilitate use of the environment, the Sierra Club organizes about 250 major outings per year.

Additional activities are undertaken by the Sierra Club Foundation and Sierra Club Legal Defense Fund, affiliated organizations of the Sierra Club. Issue research and publication, as well as representation in environmental litigation, complement the general Sierra Club programs.

The membership of the Sierra Club provides not only the nucleus and essence of the Club, but also the financial base for the operation of these programs. The Office of Development has chief responsibility for, among other things, the acquisition and retention of members. Audrey C. Berkovitz is the Director of Development. The primary method for acquiring new members is direct mail to individuals who are potential members. Sixty to sixty-five percent (60-65%) of all new members are generated from direct mail, solicitation letters. See Exhibit #1, Affidavit of Audrey C. Berkovitz.

The ongoing direct mail solicitation program involves the use of control and test mailings. Control mailings are those which have proven successful in attracting new members. Test

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mailings are used to evaluate themes which explain Sierra Club programming, and to ascertain the degree of a theme's potential to attract new members. Unsuccessful test mailings are discontinued. Control and test mailing are vital to the Sierra Club's direct mail program and acquisition of new members.

II. STATEMENT OF THE CASE

On November 8, 1983, the National Conservative Political Committee ("NCPAC") filed a complaint with the Federal Election Commission ("FEC" or "Commission") alleging that the Sierra Club had violated the Federal Election Campaign Act. The complaint stated that a "direct-mail, fund-raising solicitation letter" sent to individuals who were not members of the Sierra Club as well as "the activities expressed and contemplated in the letter" ^{1/} constituted violations of 2 U.S.C. § 441b. The membership solicitation letter at issue (Exhibit #2) was part of the Sierra Club's direct mail program to acquire new members. It was a test mailing to evaluate the efficacy of this particular letter in attracting new members. See Exhibit #1.

^{1/} The contemplated activities of the Sierra Club discussed in the letter in no way represent violations of federal election law. The Sierra Club is permitted to make internal partisan communications to its members using "soft dollars," pursuant to 2 U.S.C. § 441b(b)(2)(A). Likewise, as long as the "hard dollars" of SCCOPE are employed, the Sierra Club can conduct partisan political activities that impact the public. See 2 U.S.C. § 441b(b)(2)(C). Political education activities (those not constituting a "contribution or expenditure") are also lawful.

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The membership solicitation letter was developed and drafted during the summer of 1983. All test letters involve substantial development and lead time prior to distribution. The letter was mailed between September 13, 1983, and September 16, 1983. A second test mailing was dispatched from October 5, 1983, to October 28, 1983. See Exhibit #1.

Because of its relatively low response rate, the Sierra Club does not currently plan to further use this mailing package to solicit new members regardless of the outcome of the instant proceedings. See Exhibit #1.

III. THE SIERRA CLUB DIRECT MAIL LETTER SOLICITING
NEW MEMBERS IS NOT A CORPORATE EXPENDITURE
CONTEMPLATED UNDER THE CAMPAIGN ACT.

A. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Campaign Act" or "Act"), codified at 2 U.S.C. § 431 et. seq., regulates corporate political activities. 2 U.S.C. § 441b(a) prohibits expenditures by unions and corporations "in connection with any election at which presidential and vice presidential electors or a Senator or Representative . . . are to be voted for." The term expenditure is defined in § 441b to include "anything of value . . . to any candidate in connection with any election." 2 U.S.C. § 441b(b)(2). The term "expenditure" is separately defined in § 431, the general definitional provision of the Act, to mean "anything of value made by any person for the purpose of influencing any election for Federal Office." 2 U.S.C. § 431(9)(A)(i) (emphasis supplied).

Based on the legislative history, the case law, and Federal Election Commission rulings, the § 431 definition of expenditure must be viewed as a limiting constraint on the "in connection with" standard enunciated in § 441b.

The prohibition on corporate electioneering through the making of political expenditures originates with the Labor Management Relations Act of 1947, Ch. 120, § 304, 61 Stat. 159 (the "Taft-Hartley Act.") The Taft-Hartley Act amended § 313 of the Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (the "Corrupt Practices Act"), to prohibit corporate and union electioneering either by the making of political expenditures or contributions; prior to this amendment, the Corrupt Practices Act had only prohibited the making of political contributions by corporations and unions, permitting the extensive use of independent expenditures. See United States v. UAW, 352 U.S. 567, 572-574 (1957).

In explaining the prohibition on corporate and union political activity, Senator Robert Taft, the Senate floor manager of the Taft-Hartley Act, made clear that the purpose of the questioned expenditure determined its legality. Thus, although the political editorials of a newspaper owned by a corporation could be considered "in connection with a candidate's election," Senator Taft felt that no violation of the law would occur because "it is simply the ordinary operation of the particular corporation's business" (emphasis supplied) 93 Cong. Rec. 6437 (1947). Senator Taft stated that when determining the existence of a prohibited expenditure, "in each case the question is

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whether or not a union or corporation is making a contribution or expenditure of funds to elect A as opposed to B" (emphasis supplied) 93 Cong. Rec. 6440 (1947).

Likewise, the Supreme Court in interpreting the Corrupt Practices Act, has stressed the importance of whether or not an expenditure was made to influence a candidate's election. In United States v. UAW, the Supreme Court in delineating the prohibition on corporate and union expenditures stated that the restriction applied to those communications "that are designed to urge the public to elect a certain candidate or party." 352 U.S. at 587 (emphasis supplied). The Supreme Court added:

The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party.

Id. at 589.

The question of intent was further highlighted in the Federal Election Campaign Act of 1971, Pub. L. 92-225, 86 Stat. 3 (1972). In this legislation, through an amendment offered by Congressman Hansen, the establishment and operation of separate segregated funds and the use of corporate and union internal political communications were explicitly permitted. See § 205 of the Federal Election Campaign Act of 1971, 86 Stat. 10. In his amendment, Congressman Hansen established the "in connection with" definition of the term "expenditure." The objective of the Hansen amendment was " . . . to codify the court decisions interpreting § 610 of title 18 of the United States Code, and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election." Remarks of

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Congressman Hansen, 117 Cong. Rec. 43379 (1971), reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 757 (1981) (emphasis supplied). Representative Hansen stated in a floor discussion of the Act:

The legislative history of § 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the responsibility for enforcing the statute, has stated, shows instead that the purpose of § 610 is simply to insure that -- "When a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used." (Brief for the United States in U.S. v. UAW, 352 U.S. 567.)

117 Cong. Rec. 43379, (1971) reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 757 (1981) (emphasis supplied).

In summary, the prohibition on corporate political expenditures is limited to expenditures involving active electioneering on behalf of particular federal candidates. If a communication was not made to influence a candidate's election, then it should not be considered a prohibited expenditure. Thus, Miller v. American Telephone & Telegraph, 507 F.2d 759 (3rd Cir. 1974), in setting forth the elements of a violation of the prohibition on corporate political expenditures, the Third Circuit stated:

[P]laintiffs must also convince the fact finder that the gift, whenever made, was made for the purpose of aiding one candidate or party in a federal election.

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The overriding trend of Commission rulings also clearly requires the existence of a "purpose to influence" a candidate's election before a prohibited expenditure is deemed to have occurred. In Advisory Opinion 1977-54, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5301, the Commission held that corporations could contribute to a statewide petition drive opposing ratification of the Panama Canal Treaty, which drive prominently featured a congressional candidate, because of the absence of a purpose to influence a federal election.

Likewise, in Advisory Opinion 1978-15, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5304, corporate expenditures that generated favorable publicity for a congressional candidate as a result of his being chairman of a fundraising campaign of the Sacramento chapter of the American Cancer Society were not considered prohibited contributions or expenditures because "the major purpose of the activity is not the nomination or defeat of a candidate" (emphasis supplied). See also Advisory Opinion 1983-23, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5728 (corporate hospitality suite for delegates attending the 1984 Republican Convention is permissible as long as no purpose exists to influence the outcome of the Convention, solicit contributions, or advocate the election or defeat of any candidate for federal election); Advisory Opinion 1981-37, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5623 (corporation may sponsor a public discussion program moderated by a Congressman as long as "the activity is not to influence the nomination or election of a candidate for Federal office"); Advisory Opinion 1978-18, Fed. Elec. Camp. Fin. Guide (CCH)

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¶ 5305 (corporate distribution of voting records of Congressmen to the Congressmen is permissible because there is no purpose to influence an election through the distribution); Advisory Opinion 1977-42, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5313 (a congressional candidate may host two radio interview programs if his "major purpose . . . was not to influence" his nomination or election (emphasis supplied)). Although all of these opinions involved activities which could be viewed as affecting an election (and therefore "in connection" with an election), the Commission found the various contemplated activities not to be corporate expenditures due to an absence of a purpose to influence an election.

The major purpose standard has also been approved by the Commission in its enforcement proceedings and sanctioned by the federal judiciary in reviewing these proceedings. In MUR # 1235, In re The Yes On Proposition 9 Committee (1980), the Federal Election Commission approved its General Counsel's recommendation that advertisements placed by a corporation organized to support a state initiative did not represent prohibited expenditures because their "major purpose," although the ads favorably mentioned a Congressional candidate, was not to influence a candidate's election:

The Commission has made it quite clear that a contribution would not necessarily occur in certain specific circumstances where the major purpose of the advertisement was not to influence a Federal election. This is especially true where there is an absence of any communication expressly advocating the election or defeat of a candidate or the solicitation of a campaign contribution.

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MUR #1235, First General Counsel's Report at 3 (June 27, 1980).

In MUR #1051, In the Matter of Congressman Les Aspin (1979), the Commission held that an advertisement by the publication Scientific American praising Congressman Les Aspin did not constitute a prohibited corporate contribution because of the major purpose of the communication:

Though Representative Aspin is a candidate within the definition of Section 431(b)(2) of the Act and though the advertisement speaks of Representative Aspin in glowing terms, the major purpose of the advertisement is not connected with Representative Aspin's election but the promotion of a magazine, Scientific American. Furthermore, the advertisement does not urge the election of Rep. Aspin to Federal office, nor does it solicit contributions to his campaign.

MUR #1051, First General Counsel's Report (November 14, 1979) at 2.

The Commission's adoption of the "major purpose" test in these advisory opinions and matters under review was judicially sanctioned in Epstein v. Federal Election Commission, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9161 (D.D.C. 1981), aff'd, No. 81-2227 (D.C. Cir. June 8, 1982) wherein the court stated:

As the courts in Phillips Publishing [517 F. Supp. 1310 (D.D.C. 1981)] and Reader's Digest [509 F. Supp. (S.D.N.Y. 1981)] have recognized, the Commission may reasonably determine that expenditures on publicity that have a purpose other than assistance of political candidate covered by the Act were not intended by Congress to be punished under the Act. Particularly is this so when the "major purpose" of the publicity is self-evidently not to advocate the election of candidate, but to promote the organization paying for the publicity.

(Emphasis supplied and brackets added.)

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In summary, based on the proceedings of the Commission, a communication is in connection with a candidate's election only if the major purpose of that communication is to influence the election of the candidate.

Constitutional considerations further narrow the ambit of the Section 441b prohibition. In Buckley v. Valeo, 424 U.S. 1, 42-44 (1976), the Court held that because of its vagueness the phrase "expenditure . . . relative to a clearly identified candidate" had to be limited to expenditures "that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Again, because of vagueness considerations, the court limited a disclosure provision that was based on a "purpose to influence" test to only those communications which "expressly advocate election or defeat of a clearly identified candidate." 424 U.S. at 80. Because the "in connection with" language of § 441b(b)(2) is more ambiguous than the "relative to a candidate" language narrowed in Buckley and because the "purpose to influence" definition contained in § 431(9)(A)(i) is virtually identical to the language found wanting in Buckley, the prohibition of 2 U.S.C. § 441b should only be applied to expenditures that expressly advocate the election or defeat of a clearly identified candidate.

Moreover, a broad construction of § 441b would not be consonant with the associational interests of the respondent. In its efforts to maintain itself and seek new members, the Sierra Club is engaged in an activity long protected under the First Amendment. See, e.g., NAACP v. Button, 371 U.S. 415 (1963). The

associational rights of groups such as the respondent were stressed by Congressman Hansen, who stated that "every organization should be allowed to take the steps necessary for its growth and survival." 117 Cong. Rec. 43380 (1971), reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 758 (1981) (emphasis supplied). In construing the scope of Section 441b, these associational rights must be given substantial consideration.

B. FACTUAL ANALYSIS

Applying the "major purpose" test, it is manifest that the communication at issue does not constitute a prohibited corporate expenditure. The exclusive purpose of the communication is to solicit new members for the Sierra Club, not to influence a candidate's election. See Exhibit #1, Affidavit of Audrey Berkovitz, Sierra Club Director of Development.

In its letter, the Sierra Club described the history and activities of the Club. The Sierra Club, in explaining the benefits of membership, stated that members are "among the country's most informed people" with respect to current environmental developments (Exhibit #2 at 2); that members have access to numerous Sierra Club publications and local chapter activities (Exhibit #2 at 5-6); and that the Sierra Club helps protect the environment by engaging in pro-environmental court actions (Exhibit #2 at 4), legislative lobbying (Exhibit #2 at 4-5), and political efforts both through internal communications to members (Exhibit #2 at 4-5) and through the activities of the Club's

political action committee (Exhibit #2 at 3-4). In addition, the letter described the allegedly anti-environmental actions of President Reagan and those around him (Exhibit #2 at 2-3).

Both the description of Club activities and Club objectives as well as the description of the allegedly anti-environmental actions of President Reagan were clearly undertaken to encourage individuals to join the Sierra Club. The letter states that with respect to opposing the environmental decision-making of the Reagan Administration, "[o]ne of the most effective actions you can take is to join the Sierra Club", (Exhibit #2 at 3) (emphasis in the original). The central theme of the communication at issue is simply to encourage individuals to become Sierra Club members through which the objectives of the Club will be more fully realized:

Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

Exhibit #2 at 6.

The "Green Vote" referred to in the solicitation letter is not defined in terms of particular candidates, a requirement set forth in U.S. v. UAW., 352 U.S. at 587, 589, but rather consists of those "Americans who are expressing through the ballot box their deepening concern over what is happening to our environment." (Exhibit #2 at 1). Stating that the Club can help elect pro-environmental legislators in 1984 (Exhibit #2 at 4) or that Club activities will have an impact on the 1984 elections (Exhibit #2 at 5) can in no manner be considered as an attempt to

influence the election of a particular candidate but simply constitutes a factual description of Club activities. As in the advisory opinions previously discussed, the reader is not told whom to vote for and is not solicited for contributions.

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In its efforts to solicit new members from those who would consider themselves members of the "Green Vote," the Sierra Club noted in its letter that by electing pro-environmental legislators and by making the environment a campaign issue, the organization can counter anti-environmental special interest groups who will try to keep the present Administration in power (Exhibit #2 at 4). The Sierra Club had earlier noted that the "Green Vote" will help determine whether the voters will pick for office pro-environmental candidates or will the American people face an anti-environment administration in Washington. (Exhibit #2 at 1). The reader, in essence, is being told that the "Green Vote" will affect whether or not special interests will prevail and whether or not an anti-environmental administration will remain in place. The reader is not told who to vote for but is told that by joining the Sierra Club the reader will be "an important promoter of the Green Vote." (Exhibit #2 at 1.)

The situation presented is similar to that found in MUR #1372, In the Matter of Planned Parenthood Federation of America, Inc. (1981). In a fundraising letter sent out by Planned Parenthood, it was stated on the first page of the letter that pro-life organizations had drawn up a "hit list" of six incumbent Senators and Representatives in an attempt to "Purge Progressive Political Leaders." The letter identified the threatened

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legislators and also stated at 1: "Ronald Reagan strongly supports the Human Life Amendment and his candidacy is backed by a platform which these extremists helped forge." The reader of the Planned Parenthood communication was then asked at 2 to "stop the zealous minority who wish to impose their dogmatic will upon us all" (emphasis in the original).

Because the objective of the Planned Parenthood letter was to raise pro-choice concerns and to elicit support for the organization, the FEC made a no-reason-to-believe finding and closed the file. See MUR #1372, First General Counsel's Report (June 29, 1981) at 3, and July 2, 1981, Certification. Although the Sierra Club letter contains a greater number of general electoral references, such as references to the "Green Vote," it contains no greater degree of electoral candidate advocacy than that found in the Planned Parenthood letter. Like the Planned Parenthood letter, "nowhere in the letter does the [Sierra Club] indicate that it supports any candidate or that the reader should vote for any candidate." MUR # 1372, First General Counsel's Report at 3 (brackets supplied). The main purpose of both letters is simply to maintain the viability and growth of each organization.

While the Planned Parenthood letter was sent in the middle of a presidential election campaign between Messrs. Reagan and Carter, the Sierra Club's letter was mailed in September and October, 1983, over a year prior to the 1984 elections. As of the date of submission of this response, President Reagan has yet to announce his candidacy. In addition, the Reagan Bush '84

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campaign committee did not register with the Commission nor was authorized by President Reagan until October 17, 1983. See Exhibit #3. Consequently, it is dubious whether he would be a candidate as that term is used in 2 U.S.C. § 441b(b)(2). Cf. FEC v. Florida For Kennedy Committee, 681 F.2d 1281 (11th Cir. 1982); FEC v. Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981), and FEC v. Citizens for Democratic Alternatives in 1980, 655 F.2d 397 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981). Since President Reagan was not a candidate, the Campaign Act should not apply to the membership solicitation mailing at issue.

Conclusion

The sole purpose of the letter at issue is to seek new members for the Sierra Club. The letter makes several general electoral-related references but in no sense constitutes active electioneering or express advocacy. These general electoral references simply serve as a lightning rod to attract additional members. The complaint should be dismissed.

Respectfully submitted,

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

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Washington, D.C. 20008
202/822-9622

Counsel to the Sierra Club

(28)

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of

The Sierra Club

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Matter Under Review 1598

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AFFIDAVIT OF AUDREY C. BERKOVITZ

I, AUDREY C. BERKOVITZ, being first duly sworn upon oath,
depose and say:

1. I am currently employed by the Sierra Club, 530 Bush
Street, San Francisco, California 94108, in the capacity of
Director of Development.

2. In the capacity of Director of Development, my
responsibilities include, among other things, the acquisition and
retention of Sierra Club members.

3. Dues derived from members are a primary source of
income used to finance the operations and programs of the Sierra
Club.

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4. Sixty to sixty-five percent (60-65%) of all new members of the Sierra Club are generated from direct mail solicitation letters.

5. Under my supervision, the direct mail package attached hereto and the subject matter of the instant action was prepared and produced as a test mailing to solicit new members, and evaluate the efficacy of this particular letter in attracting new Sierra Club members.

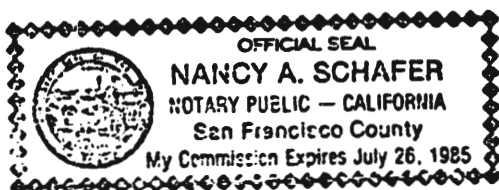
6. The referenced direct mail package was mailed to potential members between September 13 and 16, 1983 and between October 5 and 28, 1983.

7. The exclusive purpose of the referenced direct mail package was in connection with acquiring new members for the Sierra Club.

8. Due to the low response rate, the Sierra Club does not currently plan to further use the referenced direct mail package in connection with acquiring new members, or for any other purpose.

Audrey C. Berkovitz
AUDREY C. BERKOVITZ

Subscribed and sworn this before me this 5TH day
of JANUARY, 1984.



Nancy A. Schaffer
NOTARY PUBLIC



SIERRA CLUB 530 Bush Street, San Francisco, California 94108

DEFENDANT'S
EXHIBIT

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The Green Vote...

What is it?

Is it shaping America's environmental future?

Is it shaping *your* future?

What should you know about it?

For the sake of all you hold dear, read on....

Dear Friend and Fellow Citizen,

Let me start to answer those questions with another question.

How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for office candidates who had sworn to protect and defend our environment and wilderness areas?

Or will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment ... a record that has contributed to the degradation of our natural surroundings ... to the loss of public lands to commercial interests ... to the endangerment of our health by allowing industry to pollute our air and water ... and to the eradication of wilderness areas that will never again be pristine?

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

AND YOU ARE HEREBY INVITED TO BE AN IMPORTANT PROMOTER OF THE GREEN VOTE BY JOINING THE MORE THAN 350,000 OTHER AMERICANS WHO ARE MEMBERS OF THE SIERRA CLUB.

The Sierra Club is America's largest organization of environmental activists. And one of its most powerful. It is a citadel of environmental strength and sanity in the

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Since
Ronald
Reagan
took
office
in 1981,
more than
150,000
new members
joined
the Sierra
Club.

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vironmental policies by putting a smoke screen around their disgraceful environmental record.

The Sierra Club is responsible for lifting that smoke screen, is baring the truth about that record.

President Reagan and those around him talk about safeguarding public lands, yet they try to lease the entire offshore continental United States.

They talk about protecting our wilderness, yet as I write this letter, they are continuing to remove qualified areas from wilderness protection.

They talk about defending our wildlife, yet they would open millions of acres of Alaska's national parks to trophy hunters -- with moose, Dall sheep and caribou the victims.

Their record unequivocally shows that the President and his appointed officials have not done the job they have sworn to do. They are not protecting the American people from health hazards due to pollution. They are not safeguarding publicly owned lands.

They have tried to weaken the Clean Air Act and the Clean Water Act.

They have neglected their responsibility to control hazardous chemical dumps, clean up abandoned dumps and prosecute illegal dumpers.

They have been slow in controlling the use of toxic chemicals that threaten public health.

They have tried to weaken the law designed to protect the public from environmental threats due to mining.

They have consistently sided with industry in environmental matters, arguing that what is good for industry is good for the environment.

They have tried to sell to commercial interests public lands that have important environmental values.

How do you, as a private concerned citizen, fight back against such irresponsible acts by the Administration?

One of the most effective actions you can take is to join the Sierra Club.

Through the Club's widespread public education programs, its political action committee, its powerful Legal Defense Fund, we are acting on your behalf to see that our

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The Reagan EPA has tried to lower the beneficial air pollution standards set in the Clean Air Act... has cleaned up fewer than half the toxic waste dumps scheduled for clean-up under the 1980 Superfund legislation.

The Club's political action committee gave more

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teers for election work. And preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS.

You can help make them possible. By joining the Sierra Club today, you will be adding to our clout. Your membership contribution, united with those of other concerned Sierra Club Members, can make the difference between the success and failure of our endeavors.

You get
specific
membership
benefits...

When you join the Sierra Club, you will receive its informative and enjoyable publication called Sierra. The magazine is published every other month. And in it you'll find articles about what it is we are fighting to defend. Through first-rate writing and outstanding photos, you'll re-discover the great outdoors in all its splendor.

In Sierra, you'll also get top-notch reporting on current battles to protect those forests, parks and wilderness areas.

As a Member, you are also entitled to a discount on the Club's many books about our natural surroundings and environmental politics.

...and become
part of
local Club
Chapters
and Groups.

And when you accept this invitation, you not only become a Member of the Sierra Club, you also automatically become a Member of your local Club Chapter. There are 53 Chapters across the country, as well as two in Canada.

You may also be a Member of a Sierra Club Group. There are over 300 such local groups, and they provide you with the opportunity, if you choose, to meet others in your area who share your interest in and concern for the outdoors. At meetings, outings and social events, group members discuss and work together on environmental and conservation issues.

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

When you stop to realize how much the Sierra Club has contributed to the development of conservation in America ... when you consider the historic legislation that now protects our environment and our wilderness that the Sierra Club fought for so effectively ... when you consider the

(33)

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This is your Enrollment Form for Sierra Club Membership.

Enroll me. I *am* part of the Green Vote. And I want to
magnify my strength as an environmentally aware voter by
becoming a Member of
the Sierra Club.

I understand that as a Sierra Club
Member, I will receive *Sierra* magazine
every other month, as well as special
discounts on Sierra Club books, and
the opportunity to take part in
local Club activities if I
choose.

Enclosed is my check for the membership category
I have indicated below.

	Individual Dues	Joint Dues
Regular	<input type="checkbox"/> \$ 29	<input type="checkbox"/> \$ 33
Supporting	<input type="checkbox"/> \$ 50	<input type="checkbox"/> \$ 54
Contributing	<input type="checkbox"/> \$100	<input type="checkbox"/> \$104
Life (per person)	<input type="checkbox"/> \$750	
Student or Senior	<input type="checkbox"/> \$ 15	<input type="checkbox"/> \$ 19

Your dues include a subscription to *Sierra* (\$3) and your regional newsletter.

To help even more, I am enclosing an extra contribution—
over and above my dues—of:

☐ \$10 ☐ \$25 ☐ \$50 ☐ \$100 ☐ Other \$_____

Telephone number, please _____
(area code) (number)

Please make your check payable to the *Sierra Club* and return it along
with this form to P.O. Box 7959, San Francisco, California 94120.



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DEFENDANT'S
EXHIBIT

3

RECEIVED AT THE FEC
83 OCT 17 AM 11:17

October 17, 1983

Dear Chairman McDonald:

I have been advised that on October 17, 1983 a political committee known as Reagan-Bush '84 whose address is 440 First Street, N.W., Washington, D.C. 20001, registered with the Federal Election Commission, as my authorized campaign committee for the nomination as the Republican candidate for the office of the Presidency of the United States in 1984. Since the work of this Committee will be of great help to me at such time as I may make a formal decision to seek a second term as President, I am hereby authorizing this Committee as my principal campaign committee to allow those persons who support my candidacy to express their support in a manner that fully complies with the Federal election laws.

All correspondence directed to me with respect to this matter should be sent to my attention at the Committee's address shown above.

This statement is submitted pursuant to 11 C.F.R. § 101.1(a) in lieu of the Statement of Candidacy on FEC Form 2.

I certify that I have examined the information set forth above and to the best of my knowledge and belief it is true, correct and complete.

Sincerely,

Ronald Reagan

Mr. Danny Lee McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

cc: Vice Chairman Lee Ann Elliott

35

STATEMENT OF ORGANIZATION

(see reverse side for instructions)

RECEIVED AT THE FEC

FEB 17 1983

1. (a) Name of Committee (in Full) Reagan - Bush '84	<input type="checkbox"/> Check if name or address is changed.	2. Date 83 OCT 17 AM 1:16 October 17, 1983
(b) Address (Number and Street) 440 First Street, N.W.	3. FEC Identification Number	
(c) City, State and ZIP Code Washington, D.C. 20001	4. Is this an amended Statement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

5. TYPE OF COMMITTEE (check one):

- ☒ (a) This committee is a principal campaign committee. (Complete the candidate information below.)
☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Ronald Reagan Name of Candidate	Republican Candidate Party Affiliation	President Office Sought	 State/District
-------------------------------------------	--------------------------------------------------	-----------------------------------	--------------------

- ☐ (c) This committee supports/opposes only one candidate _____ (name of candidate) and is NOT an authorized committee.
☐ (d) This committee is a _____ (National, State or subordinate) committee of the _____ (Democratic, Republican, etc.) Party.
☐ (e) This committee is a separate segregated fund.
☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
None		

If the registering political committee has identified a "connected organization" above, please indicate type of organization:

- ☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records.

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee, and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
The Riggs National Bank of Washington, D.C.	1503 Pennsylvania Avenue, N.W. Washington, D.C. 20005

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Angela M. Buchanan Jackson *Angela M. Buchanan Jackson* October 17, 1983
 Type or Print Name of Treasurer SIGNATURE OF TREASURER Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

For further information contact:

Federal Election Commission, Toll Free 800-424-9530, Local 202-523-4068

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FEC FORM 113/801

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83 OCT 17 1983

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of

The Sierra Club

)
)
) Matter Under Review 1598
)
)
)

CERTIFICATE OF FILING

I certify that on this 6th day of JANUARY,
1984, I filed the original of Respondent's 11 C.F.R. § 111.6(a)
Response with:

Charles Steele, Esquire
General Counsel
Office of the General Counsel
The Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C. 20463

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

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
202/822-9622

84040491496

(37)



Dear Friend,

"TANTAMOUNT TO SEVERE PUNISHMENT . . ."

. . . That's how one dissenting Justice describes the United States Supreme Court's recent decision upholding the Hyde Amendment which denies poor women federally funded abortions.

But the so-called Right-to-Lifers are elated. The Court ruling boosts their drive to ban abortions and contraceptive devices as well.

Here are some of the goals the Right-to-Life forces have set in their campaign to outlaw all abortion and ban most methods of contraception.

- Amend The Constitution -- The votes of 34 states are needed to call a Constitutional Convention. Already the Right-to-Life forces have succeeded in winning the votes of 19 states. Congress can also vote for a Constitutional Amendment. Already the Right-to-Life forces have won nearly a majority of Congressmen and Senators in support of their Human Life Amendment. Only two-thirds are needed to bring their Human Life Amendment out of Congress and put it before the States for ratification!
- Purge Progressive Political Leaders -- In an effort to eliminate Congressmen and Senators who defend family planning rights, the Right-to-Lifers, backed by the extreme Right Wing, have mounted a massive campaign to destroy the political careers of some of this nation's most courageous leaders.

They've drawn up a "hit list" aimed at defeating men like Senators Bayh, Culver, McGovern and Packwood, and Representatives Morris Udall and Joe Fisher.

Judging from the amount of money they're spending and the recent polls I've seen, they're dangerously close to defeating some of the most effective voices we have on our side.

- On to The Presidency -- They've gone beyond Congress to the Presidency. Ronald Reagan strongly supports The Human Life Amendment and his candidacy is backed by a platform which these extremists helped forge. A platform which calls for abolition of abortion . . . passage of The Human Life Amendment . . . and -- unbelievable as it sounds -- a "litmus test" for new appointments to the federal judiciary. A test designed to insure that new judges would not decide a case in favor of abortion.

(over, please)

ATTACHMENT 3

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That is why . . .

We at PLANNED PARENTHOOD are asking you and all Americans who truly value our fundamental rights to no longer remain silent but to stand up and be counted with us to stop the zealous minority who wish to impose their dogmatic will upon us all.

PLANNED PARENTHOOD is by no means a newcomer to the human rights scene. Quite the contrary! For over sixty years we have been the acknowledged preeminent force in advancing the right of all Americans to know the facts about their bodies and in defending our right to determine our own fertility. Actually, PLANNED PARENTHOOD has been quietly helping so many millions upon millions of women, men and families for so long that we have come to be considered a highly respected part of the establishment -- the progressive, thinking establishment, at least!

But that was not always the case. What many people, even those who have directly benefited from our family-planning work, do not know is that PLANNED PARENTHOOD was founded by a determined woman who was jailed many times before she saw her dream become reality.

Margaret Sanger, an American pioneer in the truest and noblest self-sacrificing sense, was committed to seeing that the poor women in 1916 did not have their "right to life" destroyed by a cycle of oversized families and poverty. And she dedicated her own life to freeing these helpless women from a succession of unwanted pregnancies, which often led to early deaths in childbirth. And she launched her courageous crusade: To educate American parents on how to control the size of their families -- how to plan parenthood. For this "crime" she was arrested and jailed time and again. Yet, on each release from imprisonment, Margaret Sanger with quiet determination returned to her just cause: freeing women the world over from the slavery of uncontrolled reproduction.

Today, her dream -- PLANNED PARENTHOOD -- is a reality with over 100,000 supporters, 20,000 active volunteers, over 700 clinics in the United States, and with programs in 111 foreign countries. And now, more than 100 years after her birth, Margaret Sanger's memory is honored throughout the world by men and women who understand her monumental achievements for humanity.

Yet, the same kind of thinking which sent Mrs. Sanger to jail is still with us. Often it takes an ugly form. When clinics were burned we saw it explode into violence that threatened lives and property. Most importantly, this effort to impose the beliefs of some on the rest of us threatens our most cherished rights and freedoms.

-- Although seven years earlier the Supreme Court had ruled that a woman has the right to choose when and if to bear a child, the Court's Hyde decision in June of this year is a clear victory for anti-abortionists in their battle of coercion and intimidation to negate the right to choice. Thus, while polls show that the majority of Americans favor legalized abortions,

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militant anti-abortion elements have badgered Congress into cutting off all federal funds for abortions. The result: poverty-stricken women, those who most desperately need to exercise their right of choice, are forced to resort to the dangers of self-induced abortions or to the degradation of motel-room butchers.

- Where local funding for abortions is still available to those in need, the anti-abortionists are browbeating legislators into restricting or curtailing available funds. And, where they fail, they often rely on their ultimate weapon -- violence -- vandalizing the clinics which offer impoverished women their only hope for a safe abortion, and threatening the lives of the staffs.
- While the Right-to-Lifers and their right-wing allies have kept a low profile on their staunch opposition to contraception, they are now becoming more and more vociferous in demanding the banning of "the Pill" and IUDs which they term "silent abortion" methods. In their headstrong drive to outlaw these proven birth-control devices, they again demonstrate their misplaced concern for a fertilized egg over the truly living.
- With teenage pregnancies now openly acknowledged as a rampant "epidemic" (one million a year; two every minute!), there are still those who wish to force us to bury our heads in the sands of ignorance when it comes to sex education. They refuse to face the facts of life -- that sex education provides teenagers with a true understanding of their sexuality and their sexual responsibility. Sexual ignorance or misinformation gleaned on street corners leads to frightening statistics such as these: babies born to teenage mothers are two to three times more likely to die in their first year; teen maternal death risk is 60% higher than for mothers in their twenties; unwanted babies cause 80% of their teenage parents to drop out of school and usually onto welfare; clandestine and self-induced abortions threaten the lives and future health of thousands of young girls every year!

And while those who vehemently oppose legalized abortion, contraception, sex education and family planning are fighting to nullify our right to determine our own fertility, they are also threatening all our civil rights. So adamant are these short-sighted extremists to impose their beliefs upon all Americans that they are calling for a Constitutional Convention to strip all women of their right to abortion! BUT . . .

A WARNING: Once a Constitutional Convention is called -- for whatever reasons -- there is absolutely no restriction on the

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areas of this document that can be tampered with or entirely rewritten. And the extreme right-wingers, who have joined the anti-choice forces in calling for this convention, see it as their golden opportunity to remold even the Bill of Rights to their own views.

The threat of a Constitutional Convention dominated by the so-called "Pro-Life" forces is real! Already 19 state legislatures have caved in under the incredible pressure mounted by the anti-choice zealots and have passed resolutions calling for the convention. Only 15 more states have to follow suit. Then Congress would be forced -- by the Constitution itself -- to call a convention that could mean the end of personal freedoms and civil liberties we have known since this nation was founded.

If you have not fully realized the true extent of the danger facing us all, you are not alone. Many PLANNED PARENTHOOD supporters and even staff members have felt we should ignore the Right-to-Lifers and quietly continue our vital activities in the name of humanity, as we have for over 60 years. However, the recent Supreme Court ruling, which seriously abridges the right of poor women to choose, the reign of terror against pro-choice groups in the form of clinic burning and harassment of patients and the horrifying prospect of a Constitutional Convention, have welded us all into a firm resolve to . . .

STOP the insane headlong rush toward a Constitutional Convention by awakening all Americans to the real threat it poses to us all. We must create a groundswell of grassroots opposition that will silence the rantings of the anti-choice minority and the right-wing fanatics.

STOP the blatant discrimination against poor women by challenging in the Congress and the state legislatures the cut-off of funds for abortions.

STOP the rising tide of red-tape restrictions on legal abortions, foisted on municipal and state governments by anti-choice factions. The vast bulk of these regulations are purely technical barriers to prevent women from exercising their personal right to an abortion, a freedom the Supreme Court has declared as constitutionally theirs and has now seriously undermined with its Hyde decision.

STOP the further erosion of a woman's right to choose by well-funded zealots who are pushing for more restrictive legislation, more stringent court rulings, and, worst of all, a constitutional amendment that would make all abortions illegal!

STOP the return to the "dark ages" of back-room and self-induced abortions, by establishing an emergency loan program which will

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help finance safe, professional abortions for women in financial need who have been ruthlessly denied federal and state funds.

STOP the spread of teenage pregnancies which now extends across every ethnic and financial group in the nation. The only way we can curb this tragedy is by instilling in each teenager sexual understanding and responsibility, before he or she becomes another unprepared parent of yet another unwanted, unloved child.

What we at PLANNED PARENTHOOD cannot and will not stop is the uninterrupted delivery of the life-enriching services we provide, regardless of the threats against us.

However, to meet the challenge of those who wish to plunge us all back into the "sex-is-taboo" mentality of Margaret Sanger's day and, at the same time, to maintain our vital ongoing programs, places an enormous demand upon our finances.

Therefore, we at PLANNED PARENTHOOD seek your personal support.

In 1916, Margaret Sanger suffered unrelenting ridicule, arrests and jail sentences before she saw her unfailing belief in the right of all men and women to intelligently plan their parenthood become a reality in PLANNED PARENTHOOD. For the last few years, our professional medical staffs and thousands of volunteers have bravely worked under threats of harassment and violence in order to guarantee that the most personal of all our civil liberties is not destroyed.

Now, we at PLANNED PARENTHOOD do not ask that you make such a personal sacrifice. We only ask that you look to your conscience and then contribute what you can. Every dollar you send us will be immediately put to full use to help us carry on our humanitarian services, helping people the world over plan their parenthood.

Sincerely,

Faye Wattleton

Faye Wattleton
President

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

H. Richard Mayberry, Jr., Esquire
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1598

Dear Mr. Mayberry:

The Federal Election Commission notified you on November 23, 1983, of a complaint which alleges that your client, the Sierra Club, has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. We acknowledge receipt of your explanation of this matter which was dated January 6, 1984.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission on , 1984, determined that there is reason to believe that the Sierra Club has violated 2 U.S.C. § 441b(a), a provision of the Act. Specifically, it appears that the Sierra Club has made a corporate expenditure in connection with a Federal election for the purpose of influencing an election for Federal office. 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 responses within ten days of your receipt of this notification. Additionally, please have the Executive Director of the Club submit answers to the enclosed Order to Submit Written Answers. It is required that the answers be submitted under oath and that they be submitted within ten days of your receipt of this subpoena and order.

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 client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

ATTACHMENT 4

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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 George Fox Rishel, the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Enclosure
Procedures
Order with three pages of Interrogatories

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44

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Sierra Club) MUR 1598
)

ORDER TO SUBMIT WRITTEN ANSWERS

To: Executive Director
Sierra Club
530 Bush Street
San Francisco, California 94108

Pursuant to 2 U.S.C. § 437d(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 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 day of , 1984.

Lee Ann Elliott

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories (3 pages)

ATTACHMENT 5

(45)

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FEDERAL ELECTION COMMISSION

To: Executive Director
Sierra Club
530 Bush Street
San Francisco, California 94108

MUR 1598

INTERROGATORIES

These interrogatories relate to the letter soliciting persons to join the Sierra Club by becoming part of "The Green Vote" that is the subject of MUR 1598. The response shall identify and quote each interrogatory in full immediately preceding the statement of any answer. Answers shall be submitted under oath.

1. How many "Green Vote" letters were mailed to persons other than members of the Sierra Club?
- 2(a) How much money was expended in preparing and mailing this letter, including creative work, printing, list rental, and postage? Please itemize.
(b) Who paid for this work?
3. Who did the creative work for the letter/solicitation?
4. Who drafted the letter?
5. Who authorized the letter/solicitation?
6. Who printed the letter?
7. What source or sources were used for the names of the persons to whom the letter was sent?
8. How many persons joined the Sierra Club in response to this letter?
9. Has anyone who participated in the drafting, preparation, authorization, or mailing of this letter also performed any work for the Sierra Club Committee on Political Education (SCCOPE)? If so, identify the individuals or companies and describe the type of work each did for SCCOPE.
10. Were any of the individuals identified in paragraph 9 working for SCCOPE at the time the "Green Vote" letter was prepared and mailed? Describe in detail.

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Sierra Club Interrogatories
Page 2

11. Were any SCCOPE funds used to pay for the preparation or mailing of the "Green Vote" letter or used to reimburse the corporation for such costs? If so, please itemize.
12. Since 1979, in what other mailings or solicitations by the Sierra Club to nonmembers has there been specific references of support or opposition to an incumbent officeholder or candidate in a federal election? Describe in detail. Originals of such mailings may be provided instead of a written response.
13. Describe the Sierra Club's concept of "The Green Vote."
14. Did the Sierra Club hope or seek to create an identifiable group of voters known as the Green Vote? Describe in detail.
15. Did the Club seek to organize the Green Vote to oppose the policies of an incumbent officeholder? Describe in detail.
16. Did the Club seek to organize the Green Vote to oppose any person's candidacy for an elected federal office? Describe in detail.
17. Did the Club seek the participation of the Green Vote in the 1984 elections? Describe in detail.
18. Did the Club seek to affect the outcome of any federal election in 1984 through the Green Vote? Describe in detail.
19. Did the Club seek to have voters replace the present Administration with one that would have environmental policies acceptable to the Club? Describe in detail.
20. Regarding the Club's statement in the letter about "recruiting volunteers for election work,"
 - (a) what type of election work was contemplated?
 - (b) would these volunteers contact nonmembers as part of this election work?
 - (c) would the volunteers support or oppose any candidate or party in the 1984 elections?
 - (d) who would pay any expenses associated with this volunteer activity?

Describe each answer in detail.

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(47)

Sierra Club Interrogatories
Page 3

- 21(a) What kind of political action handbooks, training manuals, and cassette tapes did the Club contemplate preparing or distributing? Describe in detail. Copies of such handbooks and manuals may be submitted instead of a written response.
- (b) Who would pay for the preparation and distribution of such materials?
- (c) To whom would these materials be distributed?
- (d) How would these materials be used?
22. Does the Club plan any future mailings or solicitations to nonmembers that will make references to the 1984 elections? Describe in detail. Originals of proposed mailings may be submitted instead of a written response.

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MUR 1598
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

HAND DELIVERED

HAND DELIVERED

_____)
In the Matter of)
) Matter Under Review 1598
The Sierra Club)
)
_____)

54 JAN 6
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RESPONDENT'S 11 C.F.R. § 111.6(a) RESPONSE

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6(a), the Sierra Club, through counsel, submits its response on the factual and legal issues in this matter.

For the reasons set forth below, there is no reason to believe the Sierra Club has committed a violation of the Federal Election Campaign Act of 1971, as amended, or the Federal Election Regulations promulgated thereunder.

I. THE SIERRA CLUB

The Sierra Club is one of this nation's premier conservation organizations dedicated to preserving the environment. Its goals are ". . . to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity

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to protect and restore the quality of the natural human environment; and to use all lawful means to carry out these objectives." Sierra Club Articles of Incorporation.

The Sierra Club was founded in 1892 by John Muir and has throughout this century been engaged in national efforts to protect the environment. Organized as a not-for-profit voluntary membership organization, pursuant to 26 U.S.C. § 501(c)(4), the Club is incorporated in the State of New York. Currently over 350,000 individuals are members of the Sierra Club.

Various programs implement the objectives of the Sierra Club and provide an opportunity for its members to explore, enjoy, and preserve the nation's forests, waters, wildlife, and wilderness.

The Sierra Club's national lobbying program operates to interface with the federal government to promote a national policy which is consistent with the protection of the environment to the maximum extent feasible. The scope of this work deals both with legislation pending before Congress and the actions by executive agencies. Pursuant to relevant law, the Sierra Club's separate segregated fund is involved in political action. SCCOPE, or the Sierra Club Committee on Political Education, is duly registered with the Federal Election Commission.

The multi-faceted programming of the Sierra Club contributes to the collection and dissemination of information on the environment, and provides organized opportunities for members to enjoy our national heritage.

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The Club maintains a collection of materials on conservation, natural history, and mountaineering in the William E. Colby Library. Moreover, it has responded to over 20,000 inquiries each year for information on environmental issues. The Sierra magazine reaching all members includes conservation articles of general interest. The publishing program has provided in excess of 218 titles to date, and serves as an important educational resource. To facilitate use of the environment, the Sierra Club organizes about 250 major outings per year.

Additional activities are undertaken by the Sierra Club Foundation and Sierra Club Legal Defense Fund, affiliated organizations of the Sierra Club. Issue research and publication, as well as representation in environmental litigation, complement the general Sierra Club programs.

The membership of the Sierra Club provides not only the nucleus and essence of the Club, but also the financial base for the operation of these programs. The Office of Development has chief responsibility for, among other things, the acquisition and retention of members. Audrey C. Berkovitz is the Director of Development. The primary method for acquiring new members is direct mail to individuals who are potential members. Sixty to sixty-five percent (60-65%) of all new members are generated from direct mail, solicitation letters. See Exhibit #1, Affidavit of Audrey C. Berkovitz.

The ongoing direct mail solicitation program involves the use of control and test mailings. Control mailings are those which have proven successful in attracting new members. Test

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mailings are used to evaluate themes which explain Sierra Club programming, and to ascertain the degree of a theme's potential to attract new members. Unsuccessful test mailings are discontinued. Control and test mailing are vital to the Sierra Club's direct mail program and acquisition of new members.

II. STATEMENT OF THE CASE

On November 8, 1983, the National Conservative Political Committee ("NCPAC") filed a complaint with the Federal Election Commission ("FEC" or "Commission") alleging that the Sierra Club had violated the Federal Election Campaign Act. The complaint stated that a "direct-mail, fund-raising solicitation letter" sent to individuals who were not members of the Sierra Club as well as "the activities expressed and contemplated in the letter" 1/ constituted violations of 2 U.S.C. § 441b. The membership solicitation letter at issue (Exhibit #2) was part of the Sierra Club's direct mail program to acquire new members. It was a test mailing to evaluate the efficacy of this particular letter in attracting new members. See Exhibit #1.

1/ The contemplated activities of the Sierra Club discussed in the letter in no way represent violations of federal election law. The Sierra Club is permitted to make internal partisan communications to its members using "soft dollars," pursuant to 2 U.S.C. § 441b(b)(2)(A). Likewise, as long as the "hard dollars" of SCCOPE are employed, the Sierra Club can conduct partisan political activities that impact the public. See 2 U.S.C. § 441b(b)(2)(C). Political education activities (those not constituting a "contribution or expenditure") are also lawful.

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The membership solicitation letter was developed and drafted during the summer of 1983. All test letters involve substantial development and lead time prior to distribution. The letter was mailed between September 13, 1983, and September 16, 1983. A second test mailing was dispatched from October 5, 1983, to October 28, 1983. See Exhibit #1.

Because of its relatively low response rate, the Sierra Club does not currently plan to further use this mailing package to solicit new members regardless of the outcome of the instant proceedings. See Exhibit #1.

III. THE SIERRA CLUB DIRECT MAIL LETTER SOLICITING
NEW MEMBERS IS NOT A CORPORATE EXPENDITURE
CONTEMPLATED UNDER THE CAMPAIGN ACT.

A. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Campaign Act" or "Act"), codified at 2 U.S.C. § 431 et. seq., regulates corporate political activities. 2 U.S.C. § 441b(a) prohibits expenditures by unions and corporations "in connection with any election at which presidential and vice presidential electors or a Senator or Representative . . . are to be voted for." The term expenditure is defined in § 441b to include "anything of value . . . to any candidate in connection with any election." 2 U.S.C. § 441b(b)(2). The term "expenditure" is separately defined in § 431, the general definitional provision of the Act, to mean "anything of value made by any person for the purpose of influencing any election for Federal Office." 2 U.S.C. § 431(9)(A)(i) (emphasis supplied).

Based on the legislative history, the case law, and Federal Election Commission rulings, the § 431 definition of expenditure must be viewed as a limiting constraint on the "in connection with" standard enunciated in § 441b.

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The prohibition on corporate electioneering through the making of political expenditures originates with the Labor Management Relations Act of 1947, Ch. 120, § 304, 61 Stat. 159 (the "Taft-Hartley Act.") The Taft-Hartley Act amended § 313 of the Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (the "Corrupt Practices Act"), to prohibit corporate and union electioneering either by the making of political expenditures or contributions; prior to this amendment, the Corrupt Practices Act had only prohibited the making of political contributions by corporations and unions, permitting the extensive use of independent expenditures. See United States v. UAW, 352 U.S. 567, 572-574 (1957).

In explaining the prohibition on corporate and union political activity, Senator Robert Taft, the Senate floor manager of the Taft-Hartley Act, made clear that the purpose of the questioned expenditure determined its legality. Thus, although the political editorials of a newspaper owned by a corporation could be considered "in connection with a candidate's election," Senator Taft felt that no violation of the law would occur because "it is simply the ordinary operation of the particular corporation's business" (emphasis supplied) 93 Cong. Rec. 6437 (1947). Senator Taft stated that when determining the existence of a prohibited expenditure, "in each case the question is

whether or not a union or corporation is making a contribution or expenditure of funds to elect A as opposed to B" (emphasis supplied) 93 Cong. Rec. 6440 (1947).

Likewise, the Supreme Court in interpreting the Corrupt Practices Act, has stressed the importance of whether or not an expenditure was made to influence a candidate's election. In United States v. UAW, the Supreme Court in delineating the prohibition on corporate and union expenditures stated that the restriction applied to those communications "that are designed to urge the public to elect a certain candidate or party." 352 U.S. at 587 (emphasis supplied). The Supreme Court added:

The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party.

Id. at 589.

The question of intent was further highlighted in the Federal Election Campaign Act of 1971, Pub. L. 92-225, 86 Stat. 3 (1972). In this legislation, through an amendment offered by Congressman Hansen, the establishment and operation of separate segregated funds and the use of corporate and union internal political communications were explicitly permitted. See § 205 of the Federal Election Campaign Act of 1971, 86 Stat. 10. In his amendment, Congressman Hansen established the "in connection with" definition of the term "expenditure." The objective of the Hansen amendment was " . . . to codify the court decisions interpreting § 610 of title 18 of the United States Code, and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election." Remarks of

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Congressman Hansen, 117 Cong. Rec. 43379 (1971), reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 757 (1981) (emphasis supplied). Representative Hansen stated in a floor discussion of the Act:

The legislative history of § 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the responsibility for enforcing the statute, has stated, shows instead that the purpose of § 610 is simply to insure that -- "When a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used." (Brief for the United States in U.S. v. UAW, 352 U.S. 567.)

117 Cong. Rec. 43379, (1971) reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 757 (1981) (emphasis supplied).

In summary, the prohibition on corporate political expenditures is limited to expenditures involving active electioneering on behalf of particular federal candidates. If a communication was not made to influence a candidate's election, then it should not be considered a prohibited expenditure. Thus, Miller v. American Telephone & Telegraph, 507 F.2d 759 (3rd Cir. 1974), in setting forth the elements of a violation of the prohibition on corporate political expenditures, the Third Circuit stated:

[P]laintiffs must also convince the fact finder that the gift, whenever made, was made for the purpose of aiding one candidate or party in a federal election.

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The overriding trend of Commission rulings also clearly requires the existence of a "purpose to influence" a candidate's election before a prohibited expenditure is deemed to have occurred. In Advisory Opinion 1977-54, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5301, the Commission held that corporations could contribute to a statewide petition drive opposing ratification of the Panama Canal Treaty, which drive prominently featured a congressional candidate, because of the absence of a purpose to influence a federal election.

Likewise, in Advisory Opinion 1978-15, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5304, corporate expenditures that generated favorable publicity for a congressional candidate as a result of his being chairman of a fundraising campaign of the Sacramento chapter of the American Cancer Society were not considered prohibited contributions or expenditures because "the major purpose of the activity is not the nomination or defeat of a candidate" (emphasis supplied). See also Advisory Opinion 1983-23, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5728 (corporate hospitality suite for delegates attending the 1984 Republican Convention is permissible as long as no purpose exists to influence the outcome of the Convention, solicit contributions, or advocate the election or defeat of any candidate for federal election); Advisory Opinion 1981-37, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5623 (corporation may sponsor a public discussion program moderated by a Congressman as long as "the activity is not to influence the nomination or election of a candidate for Federal office"); Advisory Opinion 1978-18, Fed. Elec. Camp. Fin. Guide (CCH)

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¶ 5305 (corporate distribution of voting records of Congressmen to the Congressmen is permissible because there is no purpose to influence an election through the distribution); Advisory Opinion 1977-42, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5313 (a congressional candidate may host two radio interview programs if his "major purpose . . . was not to influence" his nomination or election (emphasis supplied)). Although all of these opinions involved activities which could be viewed as affecting an election (and therefore "in connection" with an election), the Commission found the various contemplated activities not to be corporate expenditures due to an absence of a purpose to influence an election.

The major purpose standard has also been approved by the Commission in its enforcement proceedings and sanctioned by the federal judiciary in reviewing these proceedings. In MUR # 1235, In re The Yes On Proposition 9 Committee (1980), the Federal Election Commission approved its General Counsel's recommendation that advertisements placed by a corporation organized to support a state initiative did not represent prohibited expenditures because their "major purpose," although the ads favorably mentioned a Congressional candidate, was not to influence a candidate's election:

The Commission has made it quite clear that a contribution would not necessarily occur in certain specific circumstances where the major purpose of the advertisement was not to influence a Federal election. This is especially true where there is an absence of any communication expressly advocating the election or defeat of a candidate or the solicitation of a campaign contribution.

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MUR #1235, First General Counsel's Report at 3 (June 27, 1980).

In MUR #1051, In the Matter of Congressman Les Aspin (1979), the Commission held that an advertisement by the publication Scientific American praising Congressman Les Aspin did not constitute a prohibited corporate contribution because of the major purpose of the communication:

Though Representative Aspin is a candidate within the definition of Section 431(b)(2) of the Act and though the advertisement speaks of Representative Aspin in glowing terms, the major purpose of the advertisement is not connected with Representative Aspin's election but the promotion of a magazine, Scientific American. Furthermore, the advertisement does not urge the election of Rep. Aspin to Federal office, nor does it solicit contributions to his campaign.

MUR #1051, First General Counsel's Report (November 14, 1979) at 2.

The Commission's adoption of the "major purpose" test in these advisory opinions and matters under review was judicially sanctioned in Epstein v. Federal Election Commission, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9161 (D.D.C. 1981), aff'd, No. 81-2227 (D.C. Cir. June 8, 1982) wherein the court stated:

As the courts in Phillips Publishing [517 F. Supp. 1310 (D.D.C. 1981)] and Reader's Digest [509 F. Supp. (S.D.N.Y. 1981)] have recognized, the Commission may reasonably determine that expenditures on publicity that have a purpose other than assistance of political candidate covered by the Act were not intended by Congress to be punished under the Act. Particularly is this so when the "major purpose" of the publicity is self-evidently not to advocate the election of candidate, but to promote the organization paying for the publicity.

(Emphasis supplied and brackets added.)

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In summary, based on the proceedings of the Commission, a communication is in connection with a candidate's election only if the major purpose of that communication is to influence the election of the candidate.

Constitutional considerations further narrow the ambit of the Section 441b prohibition. In Buckley v. Valeo, 424 U.S. 1, 42-44 (1976), the Court held that because of its vagueness the phrase "expenditure . . . relative to a clearly identified candidate" had to be limited to expenditures "that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Again, because of vagueness considerations, the court limited a disclosure provision that was based on a "purpose to influence" test to only those communications which "expressly advocate election or defeat of a clearly identified candidate." 424 U.S. at 80. Because the "in connection with" language of § 441b(b)(2) is more ambiguous than the "relative to a candidate" language narrowed in Buckley and because the "purpose to influence" definition contained in § 431(9)(A)(i) is virtually identical to the language found wanting in Buckley, the prohibition of 2 U.S.C. § 441b should only be applied to expenditures that expressly advocate the election or defeat of a clearly identified candidate.

Moreover, a broad construction of § 441b would not be consonant with the associational interests of the respondent. In its efforts to maintain itself and seek new members, the Sierra Club is engaged in an activity long protected under the First Amendment. See, e.g., NAACP v. Button, 371 U.S. 415 (1963). The

associational rights of groups such as the respondent were stressed by Congressman Hansen, who stated that "every organization should be allowed to take the steps necessary for its growth and survival." 117 Cong. Rec. 43380 (1971), reprinted in Federal Election Commission, Legislative History of the Federal Election Campaign Act of 1971, at 758 (1981) (emphasis supplied). In construing the scope of Section 441b, these associational rights must be given substantial consideration.

B. FACTUAL ANALYSIS

Applying the "major purpose" test, it is manifest that the communication at issue does not constitute a prohibited corporate expenditure. The exclusive purpose of the communication is to solicit new members for the Sierra Club, not to influence a candidate's election. See Exhibit #1, Affidavit of Audrey Berkovitz, Sierra Club Director of Development.

In its letter, the Sierra Club described the history and activities of the Club. The Sierra Club, in explaining the benefits of membership, stated that members are "among the country's most informed people" with respect to current environmental developments (Exhibit #2 at 2); that members have access to numerous Sierra Club publications and local chapter activities (Exhibit #2 at 5-6); and that the Sierra Club helps protect the environment by engaging in pro-environmental court actions (Exhibit #2 at 4), legislative lobbying (Exhibit #2 at 4-5), and political efforts both through internal communications to members (Exhibit #2 at 4-5) and through the activities of the Club's

political action committee (Exhibit #2 at 3-4). In addition, the letter described the allegedly anti-environmental actions of President Reagan and those around him (Exhibit #2 at 2-3).

Both the description of Club activities and Club objectives as well as the description of the allegedly anti-environmental actions of President Reagan were clearly undertaken to encourage individuals to join the Sierra Club. The letter states that with respect to opposing the environmental decision-making of the Reagan Administration, "[o]ne of the most effective actions you can take is to join the Sierra Club", (Exhibit #2 at 3) (emphasis in the original). The central theme of the communication at issue is simply to encourage individuals to become Sierra Club members through which the objectives of the Club will be more fully realized:

Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

Exhibit #2 at 6.

The "Green Vote" referred to in the solicitation letter is not defined in terms of particular candidates, a requirement set forth in U.S. v. UAW., 352 U.S. at 587, 589, but rather consists of those "Americans who are expressing through the ballot box their deepening concern over what is happening to our environment." (Exhibit #2 at 1). Stating that the Club can help elect pro-environmental legislators in 1984 (Exhibit #2 at 4) or that Club activities will have an impact on the 1984 elections (Exhibit #2 at 5) can in no manner be considered as an attempt to

legislators and also stated at 1: "Ronald Reagan strongly supports the Human Life Amendment and his candidacy is backed by a platform which these extremists helped forge." The reader of the Planned Parenthood communication was then asked at 2 to "stop the zealous minority who wish to impose their dogmatic will upon us all" (emphasis in the original).

Because the objective of the Planned Parenthood letter was to raise pro-choice concerns and to elicit support for the organization, the FEC made a no-reason-to-believe finding and closed the file. See MUR #1372, First General Counsel's Report (June 29, 1981) at 3, and July 2, 1981, Certification. Although the Sierra Club letter contains a greater number of general electoral references, such as references to the "Green Vote," it contains no greater degree of electoral candidate advocacy than that found in the Planned Parenthood letter. Like the Planned Parenthood letter, "nowhere in the letter does the [Sierra Club] indicate that it supports any candidate or that the reader should vote for any candidate." MUR # 1372, First General Counsel's Report at 3 (brackets supplied). The main purpose of both letters is simply to maintain the viability and growth of each organization.

While the Planned Parenthood letter was sent in the middle of a presidential election campaign between Messrs. Reagan and Carter, the Sierra Club's letter was mailed in September and October, 1983, over a year prior to the 1984 elections. As of the date of submission of this response, President Reagan has yet to announce his candidacy. In addition, the Reagan Bush '84

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campaign committee did not register with the Commission nor was authorized by President Reagan until October 17, 1983. See Exhibit #3. Consequently, it is dubious whether he would be a candidate as that term is used in 2 U.S.C. § 441b(b)(2). Cf. FEC v. Florida For Kennedy Committee, 681 F.2d 1281 (11th Cir. 1982); FEC v. Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981), and FEC v. Citizens for Democratic Alternatives in 1980, 655 F.2d 397 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981). Since President Reagan was not a candidate, the Campaign Act should not apply to the membership solicitation mailing at issue.

Conclusion

The sole purpose of the letter at issue is to seek new members for the Sierra Club. The letter makes several general electoral-related references but in no sense constitutes active electioneering or express advocacy. These general electoral references simply serve as a lightning rod to attract additional members. The complaint should be dismissed.

Respectfully submitted,


H. Richard Mayberry, Jr.

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20008
202/822-9622

Counsel to the Sierra Club

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ELECTION COMMISSION

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In the Matter of

The Sierra Club

)
)
) Matter Under Review 1598
)
)
)

AFFIDAVIT OF AUDREY C. BERKOVITZ

I, AUDREY C. BERKOVITZ, being first duly sworn upon oath, depose and say:

1. I am currently employed by the Sierra Club, 530 Bush Street, San Francisco, California 94108, in the capacity of Director of Development.

2. In the capacity of Director of Development, my responsibilities include, among other things, the acquisition and retention of Sierra Club members.

3. Dues derived from members are a primary source of income used to finance the operations and programs of the Sierra Club.

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4. Sixty to sixty-five percent (60-65%) of all new members of the Sierra Club are generated from direct mail solicitation letters.

5. Under my supervision, the direct mail package attached hereto and the subject matter of the instant action was prepared and produced as a test mailing to solicit new members, and evaluate the efficacy of this particular letter in attracting new Sierra Club members.

6. The referenced direct mail package was mailed to potential members between September 13 and 16, 1983 and between October 5 and 28, 1983.

7. The exclusive purpose of the referenced direct mail package was in connection with acquiring new members for the Sierra Club.

8. Due to the low response rate, the Sierra Club does not currently plan to further use the referenced direct mail package in connection with acquiring new members, or for any other purpose.

Audrey C. Berkovitz
AUDREY C. BERKOVITZ

Subscribed and sworn this before me this 5TH day
of JANUARY, 1984.



Nancy A. Schaffer
NOTARY PUBLIC



SIERRA CLUB 530 Bush Street, San Francisco, California 94108

SIERRA CLUB EXHIBIT

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awirling combat over public policy to protect our environment
mental and wilderness areas. And a mighty bulwark of the
Green Vote.

The Green Vote...

The people who belong to this renowned organization

and respect

for the outdoors -- but by a deep-seated concern about what

is being done to our natural surroundings, and by a deep-

rooted conviction that the causes of environmental harm

Is it shaping *your* future?

What should you know about it?

As a Sierra Club member, you are part of a country's most informed people about decisions being made

behind closed doors. In Washington, D.C., decisions that profoundly affect your environ-

ment and your life.

Dear Friend and Fellow Citizen,

Are you paying attention to the budget of government agencies respon-

Let me start to answer those questions with another question.

What lethal chemicals are being dumped into our water?

How do you think you'll feel on Wednesday, November 7,

1984, the morning after Election Day, when the results of

the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for

office candidates who had sworn to protect and defend

our environment and wilderness areas?

You owe it to yourself and those you care about to

ask these questions.

Or will you and the rest of the American people once

again be faced with four years of an Administration in

Washington with a shameful record regarding the environment

... a record that has contributed to the degradation of our

natural surroundings ... to the loss of public lands to

commercial interests ... to the endangerment of our health

by allowing industry to pollute our air and water ... and

to the eradication of wilderness areas that will never

again be pristine?

The Sierra Club's leader back to 1892, when the Club was

is not new. It dates back to 1892, when the Club was

first organized for the purpose of protecting our

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

AND YOU ARE HEREBY INVITED TO BE AN IMPORTANT PROMOTER OF THE GREEN VOTE BY JOINING THE MORE THAN 350,000 OTHER AMERICANS WHO ARE MEMBERS OF THE SIERRA CLUB.

The Sierra Club is America's largest organization of environmental activists. And one of its most powerful. It is a citadel of environmental strength and sanity in the

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Since
Ronald
Reagan
took
office
in 1981,
more than
150,000
new members
joined
the Sierra
Club.



swirling combat over public policy to protect our environmental and wilderness areas. And a mighty builder of the Green Vote.

The people who belong to this renowned organization are bound together not only by their common love and respect for the outdoors -- but by a deep-seated concern about what is being done to our natural surroundings, and by a deep-rooted determination to do what they can to erase the causes of environmental harm.

As a Sierra Club Member, you will be among the country's most informed people about decisions being made behind closed doors in industrial boardrooms and Washington cloakrooms -- decisions that profoundly affect your environment and your life.

Are you paying with your health because the President is cutting back the budgets of government agencies responsible for enforcing environmental laws?

What lethal chemicals are being dumped into our water, our land and our air? And where are they being dumped? Near your home? And how are these chemicals affecting your health?

What harm -- short and long range -- will be done by the destruction of our wilderness areas?

You owe it to yourself and those you care about to know the answers to these and other critical questions. And you will know the answers as a Sierra Club Member.

You don't have to be an activist to join the Sierra Club. Your membership support alone helps make possible the Club's many, many efforts to defend and safeguard our environment as well as our wilderness areas.

The Sierra Club's leadership in environmental efforts is not new. It dates back to 1892, when the Club was first formed -- and it has continued uninterrupted for more than 91 years.

But since Ronald Reagan took office as President of the United States in 1981, the Club has had to gear up for momentous new battles to defend environmental gains. President Reagan brought with him a determination to weaken government's role in preventing industry from harming the public and its possessions. And that policy is responsible for some of the greatest threats to our environment and our wilderness areas this country has ever known.

Right now, President Reagan and those around him are attempting to regain more public confidence about their en-

The Reagan Administration failed to take needed

action to prevent acid rain, which

his own appointed committee

now recognizes as a major

industry-caused health problem.

our health and

to the eradication of wilderness areas that will never

to what the answers to these questions.

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Environmental policies by putting a smoke screen around their disgraceful environmental record.

The Sierra Club is responsible for lifting that smoke screen, is having the truth about that record.

President Reagan and those around him talk about safeguarding public lands, yet they try to lease the entire offshore continental United States.

They talk about protecting our wilderness, yet as I write this letter, they are continuing to remove qualified areas from wilderness protection.

They talk about defending our wildlife, yet they would open millions of acres of Alaska's national parks to trophy hunters -- with moose, Dall sheep and caribou the victims.

Their record unequivocally shows that the President and his appointed officials have not done the job they have sworn to do. They are not protecting the American people from health hazards due to pollution. They are not safeguarding publicly owned lands.

They have tried to weaken the Clean Air Act and the Clean Water Act.

They have neglected their responsibility to control hazardous chemical dumps, clean up abandoned dumps and prosecute illegal dumpers.

They have been slow in controlling the use of toxic chemicals that threaten public health.

They have tried to weaken the law designed to protect the public from environmental threats due to mining.

They have consistently sided with industry in environmental matters, arguing that what is good for industry is good for the environment.

They have tried to sell to commercial interests public lands that have important environmental values.

How do you, as a private concerned citizen, fight back against such irresponsible acts by the Administration?

One of the most effective actions you can take is to join the Sierra Club.

Through the Club's widespread public education programs, its political action committee, its powerful Legal Defense Fund, we are acting on your behalf to see that our

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The Reagan
EPA has
tried to
lower the
beneficial
air pollution
standards
set in the
Clean Air
Act, has
cleaned up
fewer than
half the
toxic waste
dumps
scheduled for
clean-up
under
the 1980
Superfund
legislation.

The Club's
political action
committee
gave more

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dollars to
help
candidates
in the 1982
election
than any
other
environmental
political
action
committee.

They talk about protecting our wilderness, yet as I
qualified
We lead the way in sparking Congressional action -- in
communicating with members of Congress so that they feel the
intensity of their constituents' fervor over environmental
issues. They talk about defending our wildlands, yet they try to lease the
open millions of acres of Alaska's national parks to trophy
hunters.

President
responsible for our nation's environmental woes realize that
the 1984 election may be their last chance. They're going
to do everything within their power to keep in office an
Administration with a "hands off" policy toward those in
industry who exploit at the cost of the public's health and
well-being.

They have tried to weaken the Clean Air Act and the
control
... CAN help elect pro-environmental legislators in 1984
... CAN make protection of our environment and wilderness
among the key issues of the 1984 election.

In the last
ten years,
the Sierra
Club helped
persuade
Congress to
enact more
than 70
measures to
protect the
environment.

back
light
these issues get the attention of the voters.

environmental laws are enforced and that strict measures
are taken to prevent further deterioration of our air,
water and land.

The Sierra Club is responsible for lifting the
We are highly effective in communicating with the
nation's press to keep the public constantly well informed
about environmental issues.

guarding public lands, yet they try to lease the
We take government and business to court when they are
breaking the laws.

They talk about protecting our wilderness, yet as I
qualified
We lead the way in sparking Congressional action -- in
communicating with members of Congress so that they feel the
intensity of their constituents' fervor over environmental
issues. They talk about defending our wildlands, yet they try to lease the
open millions of acres of Alaska's national parks to trophy
hunters.

In 1984, the Sierra Club is going to have a tougher-
than-ever battle on its hands. The special interests re-
sponsible for our nation's environmental woes realize that
the 1984 election may be their last chance. They're going
to do everything within their power to keep in office an
Administration with a "hands off" policy toward those in
industry who exploit at the cost of the public's health and
well-being.

They have tried to weaken the Clean Air Act and the
control
... CAN help elect pro-environmental legislators in 1984
... CAN make protection of our environment and wilderness
among the key issues of the 1984 election.

We can do it through the Green Vote.
"Green" for the verdant forests we prize so dearly.
"Green" for the mighty grass roots from which we spring.
Yes, we can do it because we have the people behind
us. And more and more people are joining the Sierra Club
every day. In just one year recently, more than 100,000
new members joined!

So in school room after school room, in church after
church, in civic organization after civic organization, we
intend to raise the issue of environmentalism on the nation-
al election agenda. In Senate races. In House races. In
state and local races, even. We must, we will see that
these issues get the attention of the voters.

We'll also be helping pro-environmental candidates in
addressing these issues.

We're also planning workshops throughout the country
to help environmental activists. And recruiting new volun-

steers for election work and preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS. ... You can help make them possible. By joining the Sierra Club today, you will be adding to our clout. Your membership contribution, united with those of other concerned Sierra Club Members, can make the difference between the success and failure of our endeavors.

You get specific membership benefits. When you join the Sierra Club, you will receive its informative and enjoyable publication called Sierra. The magazine is published every other month. And in it you'll find articles about what it is we are fighting to defend. Through first-rate writing and outstanding photos, you'll re-discover the great outdoors in all its splendor.

In Sierra, you'll also get top-notch reporting on current battles to protect those forests, parks and wilderness areas.

As a Member, you are also entitled to a discount on the Club's many books about our natural surroundings and environmental politics.

... and become part of local Club Chapters and Groups. And when you accept this invitation, you not only become a Member of the Sierra Club, you also automatically become a Member of your local Club Chapter. There are 53 Chapters across the country, as well as two in Canada.

You may also be a Member of a Sierra Club Group. There are over 300 such local groups, and they provide you with the opportunity, if you choose, to meet others in your area who share your interest in and concern for the outdoors. At meetings, outings and social events, group members discuss and work together on environmental and conservation issues.

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

When you stop to realize how much the Sierra Club has contributed to the development of conservation in America ... when you consider the historic legislation that now protects our environment and our wilderness that the Sierra Club fought for so effectively ... when you consider the

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wide variety of activities, programs and publications this organization has to offer. It is no wonder more than 350,000 people now boast that they are Sierra Club Members.

It is the largest environmental lobby ... the largest organization of grass-roots activists working to protect the environment ... the only organization combining environmental lobbying, litigation, outings, grass-roots activism, and publishing the leading publisher of environmental books.

Yes, the Green Vote is shaping America's environmental future, is shaping your future. And the Sierra Club is the most powerful force in helping shape the Green Vote.

I suspect you're part of that vote now when you go to the polls. Here's your chance to become a more enlightened voter. And to multiply your effectiveness as an environmental voter. You do these things -- and a lot more -- through your membership in the Sierra Club.

Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

And while you're at it, take advantage of the many benefits and privileges that go with Sierra Club Membership.

Your Club Membership for just pennies a day. You'll find the enclosed Membership Form has your name and address on it. All you have to do to join is indicate your membership category and return the form with your check in the enclosed postage-free envelope.

Do it today. Election Day, 1984 is closer than you think.

Sincerely,

Michael McCloskey

Michael McCloskey
Executive Director



This is your Enrollment Form for Sierra Club Membership.

Enroll me. I *am* part of the Green Vote. And I want to magnify my strength as an environmentally aware voter by becoming a Member of the Sierra Club.

I understand that as a Sierra Club Member, I will receive *Sierra* magazine every other month, as well as special discounts on Sierra Club books, and the opportunity to take part in local Club activities if I choose.

Enclosed is my check for the membership category I have indicated below.

	Individual Dues	Joint Dues
Regular	<input type="checkbox"/> \$ 29	<input type="checkbox"/> \$ 33
Supporting	<input type="checkbox"/> \$ 50	<input type="checkbox"/> \$ 54
Contributing	<input type="checkbox"/> \$100	<input type="checkbox"/> \$104
Life (per person)	<input type="checkbox"/> \$750	
Student or Senior	<input type="checkbox"/> \$ 15	<input type="checkbox"/> \$ 19

Your dues include a subscription to *Sierra* (\$3) and your regional newsletter.

To help even more, I am enclosing an extra contribution—over and above my dues—of:

☐ \$10 ☐ \$25 ☐ \$50 ☐ \$100 ☐ Other \$ _____

Telephone number, please _____
(area code) (number)

Please make your check payable to the *Sierra Club* and return it along with this form to P.O. Box 7959, San Francisco, California 94120.



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DEFENDANT'S
EXHIBIT

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RECEIVED AT THE FEC
83 OCT 17 AM: 17

October 17, 1983

Dear Chairman McDonald:

I have been advised that on October 17, 1983 a political committee known as Reagan-Bush '84 whose address is 440 First Street, N.W., Washington, D.C. 20001, registered with the Federal Election Commission, as my authorized campaign committee for the nomination as the Republican candidate for the office of the Presidency of the United States in 1984. Since the work of this Committee will be of great help to me at such time as I may make a formal decision to seek a second term as President, I am hereby authorizing this Committee as my principal campaign committee to allow those persons who support my candidacy to express their support in a manner that fully complies with the Federal election laws.

All correspondence directed to me with respect to this matter should be sent to my attention at the Committee's address shown above.

This statement is submitted pursuant to 11 C.F.R. § 101.1(a) in lieu of the Statement of Candidacy on FEC Form 2.

I certify that I have examined the information set forth above and to the best of my knowledge and belief it is true, correct and complete.

Sincerely,

Ronald Reagan

Mr. Danny Lee McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

cc: Vice Chairman Lee Ann Elliott

84 OCT 20 9 15 AM

STATEMENT OF ORGANIZATION

(see reverse side for instructions)

RECEIVED AT THE FEC
HARD COPY

1. (a) Name of Committee (in Full) Reagan - Bush '84	<input type="checkbox"/> Check if name or address is changed.	2. Date October 17, 1983
(b) Address (Number and Street) 440 First Street, N.W.		3. FEC Identification Number
(c) City, State and ZIP Code Washington, D.C. 20001		4. Is this an amended Statement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

5. TYPE OF COMMITTEE (check one):

- ☒ (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- ☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)
- | | | | |
|-------------------|-----------------------------|---------------|----------------|
| Ronald Reagan | Republican | President | |
| Name of Candidate | Candidate Party Affiliation | Office Sought | State/District |
- ☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)
- ☐ (d) This committee is a _____ committee of the _____ Party.
(National, State or subordinate) (Democratic, Republican, etc.)
- ☐ (e) This committee is a separate segregated fund.
- ☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
None		

If the registering political committee has identified a "connected organization" above, please indicate type of organization:

- ☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records.

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address and ZIP Code	Title or Position
Angela M. Buchanan Jackson	440 First Street, N.W. Washington, D.C. 20001	Treasurer

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
The Riggs National Bank of Washington, D.C.	1503 Pennsylvania Avenue, N.W. Washington, D.C. 20005

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Angela M. Buchanan Jackson *Angela M. Buchanan Jackson* October 17, 1983
Type or Print Name of Treasurer SIGNATURE OF TREASURER Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

For further information contact:

Federal Election Commission, Toll Free 800-424-9530, Local 202-523-4068

--	--	--	--	--	--	--	--	--	--

FEC FORM 1 (3-80)

834304302490151351

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of
The Sierra Club

)
)
) Matter Under Review 1598
)
)
)

CERTIFICATE OF FILING

I certify that on this 6th day of JANUARY,
1984, I filed the original of Respondent's 11 C.F.R. § 111.6(a)
Response with:

Charles Steele, Esquire
General Counsel
Office of the General Counsel
The Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C. 20463

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

LAW OFFICE OF
H. RICHARD MAYBERRY, JR.
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
202/822-9622

84040491536



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS /JODY C. RANSOM *JCR*
DATE: DECEMBER 21, 1983
SUBJECT: MUR 1598 - First General Counsel's Report
dated December 19, 1983

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, December 20, 1983.

There were no objections to the First General Counsel's Report at the time of the deadline.

34040491537



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Cut*
DATE: December 19, 1983
SUBJECT: MUR 1598 - First General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection [X]
Sensitive [X]
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other []

DISTRIBUTION

Compliance [X]
Audit Matters []
Litigation []
Closed MUR Letters []
Status Sheets []
Advisory Opinions []
Other (see distribution below) []

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24-HOUR NO-OBJECTION MATTER

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL TUESDAY, 12-20-83, 11:00

COMMISSIONER McGARRY, AIKENS, McDONALD, ELLIOTT, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: WEDNESDAY, DECEMBER 21, 1983, 1:00

SUBJECT: MUR 1598 - First General Counsel's Report
dated December 19, 1983

() I object to the attached report.

COMMENTS: _____

Date _____ Signature _____

OBJECTIONS, SIGNED AND DATED, MUST BE RECEIVED IN THE COMMISSION SECRETARY'S OFFICE NO LATER THAN THE DATE AND TIME SHOWN ABOVE OR THE MATTER WILL BE DEEMED APPROVED. PLEASE RETURN ONLY THE VOTE SHEET TO THE SECRETARY.

84040491539

Doc
Booklet
#1

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY
OGC TO THE COMMISSION 12-19-83 1:32

MUR NO. 1598
DATE COMPLAINT RECEIVED
BY OGC November 18, 1983
STAFF MEMBER
George Fox Rishel

COMPLAINANT'S NAME: National Conservative Political
Action Committee

RESPONDENT'S NAME: Sierra Club

RELEVANT STATUTE: 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: B Index, June 20, 1983

SUMMARY OF ALLEGATIONS

The complaint filed by the National Conservative Political Action Committee (NCPAC) alleges that the Sierra Club made a corporate contribution or expenditure in connection with a federal election in violation of 2 U.S.C. § 441b. The allegation is based on a letter that the Sierra Club mailed to individuals in which it asked them to join the club. NCPAC contends that this letter was a partisan communication by a non-profit corporation sent to persons other than members or executive/administrative personnel of the club.

In the letter, the club asks the recipient to become part of the "Green Vote" in the 1984 elections. The club makes seven (7) specific references to "President Reagan", "Ronald Reagan", the "Reagan Administration", or the "Reagan EPA." Each reference comes in the context of criticizing the President's environmental

84040491540

response. We anticipate forwarding recommendations to the Commission after the receipt of the response and the completion of the initial analysis.

Charles N. Steele
General Counsel

December 18, 1963
Date

BY:

Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

84040491541

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

83 DEC 19 P 1: 41

DATE AND TIME OF TRANSMITTAL BY
OGC TO THE COMMISSION 12-19-83 1:32

MUR NO. 1598
DATE COMPLAINT RECEIVED
BY OGC November 18, 1983
STAFF MEMBER
George Fox Rishel

COMPLAINANT'S NAME: National Conservative Political
Action Committee

RESPONDENT'S NAME: Sierra Club

RELEVANT STATUTE: 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: B Index, June 20, 1983

SUMMARY OF ALLEGATIONS

The complaint filed by the National Conservative Political Action Committee (NCPAC) alleges that the Sierra Club made a corporate contribution or expenditure in connection with a federal election in violation of 2 U.S.C. § 441b. The allegation is based on a letter that the Sierra Club mailed to individuals in which it asked them to join the club. NCPAC contends that this letter was a partisan communication by a non-profit corporation sent to persons other than members or executive/administrative personnel of the club.

In the letter, the club asks the recipient to become part of the "Green Vote" in the 1984 elections. The club makes seven (7) specific references to "President Reagan", "Ronald Reagan", the "Reagan Administration", or the "Reagan EPA." Each reference comes in the context of criticizing the President's environmental

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policies or stating the club's opposition to such policies. The club also makes reference to the 1984 elections. It asks the recipient how he or she would feel, after the results of the 1984 elections are announced, if the country were "faced with four years of an Administration in Washington with a shameful record regarding the environment." The club also states:

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts . . . CAN help elect pro-environmental legislators in 1984 . . . CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

(emphasis in original).

In the letter, the club does not use any word or phrase, such as "support," "vote for," "vote against," "defeat," in reference to any person.

FACTUAL AND LEGAL ANALYSIS

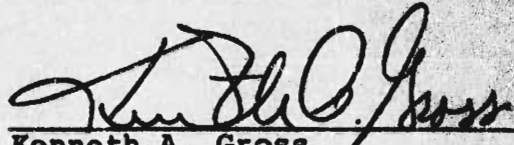
The respondent Sierra Club was notified of this complaint on November 23, 1983. Designated counsel for the respondent, H. Richard Mayberry, Jr., requested an extension of time to file a response on the club's behalf. The respondent was granted an extension of thirty days to January 10, 1984, in which to file its

response. We anticipate forwarding recommendations to the Commission after the receipt of the response and the completion of the initial analysis.

Charles N. Steele
General Counsel

December 19, 1983
Date

BY:


Kenneth A. Gross
Associate General Counsel

84040491544



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1983

H. Richard Mayberry, Jr., Esquire
Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1598

Dear Mr. Mayberry:

Your request, in your letter dated December 1, 1983, for a 30 day extension of the period in which to file a response to the NCPAC complaint on behalf of the Sierra Club is granted.

The response should be filed no later than Tuesday, January 10, 1984.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

84040491545

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 240
1222 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20004
AREA CODE 202 822-0622

61161
Rishel

61 25:23

December 1, 1983

VIA MESSENGER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1598--REQUEST FOR ENLARGEMENT OF TIME
FOR RESPONDENT'S REPLY

Dear Mr. Steele:

I respectfully request a 30-day enlargement of the period during which the Sierra Club may submit its written response to the NCPAC complaint.

The additional time is needed to be able to familiarize ourselves with the facts, to advise our client and to research the allegations of the complaint.

Thank you in advance for your anticipated cooperation.

Sincerely,

H. Richard Mayberry Jr.

H. Richard Mayberry, Jr.

HRM:jb

cc: ~~Kenneth A. Gross~~, Esquire

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GCC# 1161

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 2-20
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20038
AREA CODE 202 822-8622

Richard

DEC 1 15:23

GENERAL COUNSEL

December 1, 1983

VIA MESSENGER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1598--REQUEST FOR ENLARGEMENT OF TIME
FOR RESPONDENT'S REPLY

Dear Mr. Steele:

I respectfully request a 30-day enlargement of the period during which the Sierra Club may submit its written response to the NCPAC complaint.

The additional time is needed to be able to familiarize ourselves with the facts, to advise our client and to research the allegations of the complaint.

Thank you in advance for your anticipated cooperation.

Sincerely,

H. Richard Mayberry Jr.

H. Richard Mayberry, Jr.

HRM:jb

cc: Kenneth A. Gross, Esquire

84040491547

LAW OFFICES

ARD MAYBERRY, JR.

SUITE 960

HAMPSHIRE AVENUE, N.W.

INGTON, D.C. 20036

VIA CENTRAL DELIVERY MESSENGER

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
7th Floor
1325 K St., N.W.
Wash., D.C. 20463

840404015

LAW OFFICES

H. RICHARD MAYBERRY, JR.

SUITE 960

1333 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, D.C. 20036

VIA CENTRAL DELIVERY MESSENGER

Kenneth A. Gross, Esquire
Federal Election Commission
7th Floor
1325 K Street, N.W.
Wash., D.C. 20463

34740191

COB 1174

LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 900
1332 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
AREA CODE: 202 822-8622

November 30, 1983

11 NOV 30 4:53:32

VIA MESSENGER

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: SIERRA CLUB, MUR # 1598

Dear Mr. Steele:

Please find enclosed a statement of Designation of Counsel with respect to the above referenced matter under review. I shall be in contact on December 1, 1983 with Mr. Rishel to discuss this further.

Sincerely,

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

HRM:jb

Enclosure: Statement of Designation of Counsel

cc: Kenneth A. Gross, Esq.
George Rishel, Esq.

84040421550

BEFORE THE FEDERAL ELECTION COMMISSION

STATEMENT OF DESIGNATION OF COUNSEL

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

ADDRESS: Suite 960
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

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 The Sierra Club before the Commission.

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

Date

November 30, 1983


John A. McComb

NAME: JOHN A. McCOMB, CONSERVATION DIRECTOR
The Sierra Club

ADDRESS: 330 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

BUSINESS PHONE: (202) 547-1141

34240491551

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LAW OFFICES
H. RICHARD MAYBERRY, JR.
SUITE 880
1333 NEW HAMPSHIRE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 822-8622

TO: VIA CENTRAL DELIVERY COURIER

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
7th Floor *Receptionist*
1325 K St., N.W.

ATTENTION: GEORGE RISHEL, ESQUIRE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 23, 1983

John T. Dolan, Chairman
National Conservative Political
Action Committee
1500 Wilson Boulevard, Suite 513
Arlington, Virginia 22209

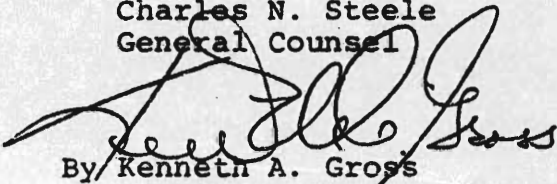
Dear Mr. Dolan:

This letter is to acknowledge receipt of your complaint which we received on November 18, 1983, against the Sierra Club which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent 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
Associate General Counsel

Enclosure

84040491553



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 23, 1983

Sierra Club
530 Bush Street
San Francisco, California 94108

Dear Sir or Madam:

This letter is to notify you that on November 18, 1983 the Federal Election Commission received a complaint which alleges that your corporation may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1598. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your corporation in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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 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.

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Page -2-
Letter to Sierra Club

If you have any questions, please contact George Rishel, the staff member assigned to this matter at (202) 523-4073. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

84040491555

National Conservative Political Action Committee

GCC #1117
P5: 13

1500 Wilson Blvd. Suite 513 Arlington, VA. 22209 (703) 522-2800

1598

November 8, 1983

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

NOV 18 1983
FBI: 45
FEDERAL COURT

Dear Sir:

This letter constitutes a complaint, filed in accordance with 2 U.S.C. 437g(a)(1), by National Conservative Political Action Committee, 1500 Wilson Boulevard, Arlington, Virginia 22209, against Sierra Club, 530 Bush Street, San Francisco, California 94108, in the belief that the respondent, Sierra Club, has violated and intends to continue violating, the provisions of 2 U.S.C. 441b, which make it unlawful for any corporation to make a contribution or expenditure in connection with a Federal election.

Upon information and belief, Sierra Club is a corporation organized under the laws of the State of California, which has been determined by the Internal Revenue Service to be an organization described in section 501(c)(4) of the Internal Revenue Code. As such, Sierra Club is a corporation subject to the provisions of 2 U.S.C. 441b, which provides that it is unlawful for any corporation to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for the foregoing offices.

Sierra Club was responsible for the production and mailing of a direct-mail, fund-raising solicitation letter, a copy of which is attached hereto, inviting individuals to join the Sierra Club. The enclosed letter was directed to an individual who is not a member of the Sierra Club, who is not one of the executive or administrative personnel of the Sierra Club and who is not a member of a family which includes one of the foregoing. Upon information and belief, copies of the letter were mailed to others similarly situated. As a consequence, the attached letter was mailed to persons outside the restricted class for partisan communications.

84040491556

Federal Election Commission
November 8, 1983
Page Two

It is evident that the enclosed letter is a communication that was mailed in connection with a Federal election. The second paragraph of the letter states:

"How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?"

The letter uses the words: "vote," "voter" or "votes" fourteen times; the word "candidates" three times; and the words "election day," "elections" and "1984 national elections" six times.

Furthermore, it is evident that the letter is partisan and that it advocated the defeat of President Ronald Reagan in 1984. In the fourth paragraph of the letter, the reader is asked: "...will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment...?" In case one does not get the hint who the target of this communication is, the words "Ronald Reagan," "President Reagan," "The Reagan Administration," "the President" and "The Reagan EPA," appears nine times in the letter. Following a specific attack on President Reagan on page 3 of the letter, the Sierra Club admits, on page 4, how it intends to use its funds:

"In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a 'hands off' policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts...CAN help elect pro-environmental legislators in 1984...CAN make protection of our environment and wilderness among the key issues of the 1984 election." (Ellipses and underscoring in the original.)

84040491557

Federal Election Commission
November 8, 1983
Page Three

The letter goes on to state that the Sierra Club is planning on "recruiting volunteers for election work" and preparing "political action handbooks," concluding that "all these and the Club's many, many other activities are going to have a tremendous impact on the outcome of the 1984 elections."

It is clear that the attached letter of Sierra Club and the activities expressed and contemplated in the letter are clearly in violation of the provisions of 2 U.S.C. 441b.

Very truly yours,

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE

By:

John T. Dolan, Chairman

STATE OF VIRGINIA)
COUNTY OF ARLINGTON) to-wit:

On the 16th day of November, 1983, JOHN T. DOLAN, Chairman of National Conservative Political Action Committee, appeared before me, a notary public, and swore before me that the facts stated in the foregoing letter are true.

Notary Public

My Commission expires 2-18-85

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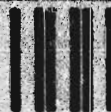
The Green Vote...

What is it?
Is it shaping *your* environmental future?
What should you know about it?

For the sake of all you hold dear,
please open immediately...



84040491559



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS PERMIT No. 4086, SAN FRANCISCO, CA

POSTAGE WILL BE PAID BY ADDRESSEE

Sierra Club
P.O. Box 7959
San Francisco, CA 94120





This is your Enrollment Form for Sierra Club Membership.

Enroll me. I *am* part of the Green Vote. And I want to
magnify my strength as an environmentally aware voter by

becoming a Member of
the Sierra Club.

I understand that as a Sierra Club
Member, I will receive *Sierra* magazine
every other month, as well as special
discounts on Sierra Club books, and
the opportunity to take part in local
Club activities if I choose.

Enclosed is my check for the membership category
I have indicated below.

	Individual Dues	Joint Dues
Regular	<input type="checkbox"/> \$ 29	<input type="checkbox"/> \$ 33
Supporting	<input type="checkbox"/> \$ 50	<input type="checkbox"/> \$ 54
Contributing	<input type="checkbox"/> \$100	<input type="checkbox"/> \$104
Life (per person)	<input type="checkbox"/> \$750	
Student or Senior	<input type="checkbox"/> \$ 15	<input type="checkbox"/> \$ 19

Your dues include a subscription to *Sierra* (\$3) and your regional newsletter.

To help even more, I am enclosing
an extra contribution—over and
above my dues—of:

☐ \$10 ☐ \$25 ☐ \$50
☐ \$100 ☐ Other \$ _____

Telephone number, please

(area code) (number)

Please make your check payable to the
Sierra Club and return it along with this form
to P.O. Box 7959, San Francisco, CA 94120.

84040491560



SIERRA CLUB 530 Bush Street, San Francisco, California 94108

The Green Vote...

What is it?

Is it shaping America's environmental future?

Is it shaping *your* future?

What should you know about it?

For the sake of all you hold dear, read on...

Dear Friend and Fellow Citizen,

Let me start to answer those questions with another question.

How do you think you'll feel on Wednesday, November 7, 1984, the morning after Election Day, when the results of the all-important 1984 national elections are announced?

Will you be jubilant that the voters picked for office candidates who had sworn to protect and defend our environment and wilderness areas?

Or will you and the rest of the American people once again be faced with four years of an Administration in Washington with a shameful record regarding the environment ... a record that has contributed to the degradation of our natural surroundings ... to the loss of public lands to commercial interests ... to the endangerment of our health by allowing industry to pollute our air and water ... and to the eradication of wilderness areas that will never again be pristine?

The "Green Vote" will play a strong role in determining what the answers to these questions will be.

The Green Vote is the rapidly growing number of Americans who are expressing through the ballot box their deepening concern over what is happening to our environment.

AND YOU ARE HEREBY INVITED TO BE AN IMPORTANT PROMOTER OF THE GREEN VOTE BY JOINING THE MORE THAN 350,000 OTHER AMERICANS WHO ARE MEMBERS OF THE SIERRA CLUB.

The Sierra Club is America's largest organization of environmental activists. And one of its most powerful. It is a citadel of environmental strength and sanity in the

8 4 0 4 0 4 9 1 5 6 1

Since
Ronald
Reagan
took
office
in 1981,
more than
150,000
new members
joined
the Sierra
Club.

swirling combat over public policy to protect our environmental and wilderness areas. And a mighty builder of the Green Vote.

The people who belong to this renowned organization are bound together not only by their common love and respect for the outdoors -- but by a deep-seated concern about what is being done to our natural surroundings, and by a deep-rooted determination to do what they can to erase the causes of environmental harm.

As a Sierra Club Member, you will be among the country's most informed people about decisions being made behind closed doors in industrial boardrooms and Washington cloakrooms -- decisions that profoundly affect your environment and your life.

Are you paying with your health because the President is cutting back the budgets of government agencies responsible for enforcing environmental laws?

What lethal chemicals are being dumped into our water, our land and our air? And where are they being dumped? Near your home? And how are these chemicals affecting your health?

What harm -- short and long range -- will be done by the destruction of our wilderness areas?

You owe it to yourself and those you care about to know the answers to these and other critical questions. And you will know the answers as a Sierra Club Member.

You don't have to be an activist to join the Sierra Club. Your membership support alone helps make possible the Club's many, many efforts to defend and safeguard our environment as well as our wilderness areas.

The Sierra Club's leadership in environmental efforts is not new. It dates back to 1892, when the Club was first formed -- and it has continued uninterrupted for more than 91 years.

But since Ronald Reagan took office as President of the United States in 1981, the Club has had to gear up for momentous new battles to defend environmental gains. President Reagan brought with him a determination to weaken government's role in preventing industry from harming the public and its possessions. And that policy is responsible for some of the greatest threats to our environment and our wilderness areas this country has ever known.

Right now, President Reagan and those around him are attempting to regain more public confidence about their en-

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The Reagan Administration failed to take needed action to prevent acid rain, which his own appointed committee now recognizes as a major industry-caused health problem.

environmental policies by putting a smoke screen around their disgraceful environmental record.

The Sierra Club is responsible for lifting that smoke screen, is baring the truth about that record.

President Reagan and those around him talk about safeguarding public lands, yet they try to lease the entire offshore continental United States.

They talk about protecting our wilderness, yet as I write this letter, they are continuing to remove qualified areas from wilderness protection.

They talk about defending our wildlife, yet they would open millions of acres of Alaska's national parks to trophy hunters -- with moose, Dall sheep and caribou the victims.

Their record unequivocally shows that the President and his appointed officials have not done the job they have sworn to do. They are not protecting the American people from health hazards due to pollution. They are not safeguarding publicly owned lands.

They have tried to weaken the Clean Air Act and the Clean Water Act.

They have neglected their responsibility to control hazardous chemical dumps, clean up abandoned dumps and prosecute illegal dumpers.

They have been slow in controlling the use of toxic chemicals that threaten public health.

They have tried to weaken the law designed to protect the public from environmental threats due to mining.

They have consistently sided with industry in environmental matters, arguing that what is good for industry is good for the environment.

They have tried to sell to commercial interests public lands that have important environmental values.

How do you, as a private concerned citizen, fight back against such irresponsible acts by the Administration?

One of the most effective actions you can take is to join the Sierra Club.

Through the Club's widespread public education programs, its political action committee, its powerful Legal Defense Fund, we are acting on your behalf to see that our

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The Reagan
EPA has
tried to
lower the
beneficial
air pollution
standards
set in the
Clean Air
Act...has
cleaned up
fewer than
half the
toxic waste
dumps
scheduled for
clean-up
under
the 1980
Superfund
legislation.

The Club's
political action
committee
gave more

dollars to
help
candidates
in the 1982
election
than any
other
environmental
political
action
committee.

environmental laws are enforced and that strict measures are taken to prevent further deterioration of our air, water and land.

We are highly effective in communicating with the nation's press to keep the public constantly well informed about environmental issues.

We take government and business to court when they are breaking the laws.

We lead the way in sparking Congressional action -- in communicating with members of Congress so that they feel the intensity of their constituents' fervor over environmental issues.

In 1984, the Sierra Club is going to have a tougher-than-ever battle on its hands. The special interests responsible for our nation's environmental woes realize that the 1984 election may be their last chance. They're going to do everything within their power to keep in office an Administration with a "hands off" policy toward those in industry who exploit at the cost of the public's health and well-being.

We here at the Sierra Club CAN counter their efforts ... CAN help elect pro-environmental legislators in 1984 ... CAN make protection of our environment and wilderness among the key issues of the 1984 election.

We can do it through the Green Vote.

"Green" for the verdant forests we prize so dearly.
"Green" for the mighty grass roots from which we spring.

Yes, we can do it because we have the people behind us. And more and more people are joining the Sierra Club every day. In just one year recently, more than 100,000 new members joined!

So in school room after school room, in church after church, in civic organization after civic organization, we intend to raise the issue of environmentalism on the national election agenda. In Senate races. In House races. In state and local races, even. We must, we will see that these issues get the attention of the voters.

We'll also be helping pro-environmental candidates in addressing these issues.

We're also planning workshops throughout the country to help environmental activists. And recruiting new volun-

In the last
ten years,
the Sierra
Club helped
persuade
Congress to
enact more
than 70
measures to
protect the
environment.

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teers for election work. And preparing political action handbooks and training manuals for environmental leaders. And producing view cassette training tapes for those leaders.

... ALL THESE AND THE CLUB'S MANY, MANY OTHER ACTIVITIES ARE GOING TO HAVE A TREMENDOUS IMPACT ON THE OUTCOME OF THE 1984 ELECTIONS.

You can help make them possible. By joining the Sierra Club today, you will be adding to our clout. Your membership contribution, united with those of other concerned Sierra Club Members, can make the difference between the success and failure of our endeavors.

When you join the Sierra Club, you will receive its informative and enjoyable publication called Sierra. The magazine is published every other month. And in it you'll find articles about what it is we are fighting to defend. Through first-rate writing and outstanding photos, you'll re-discover the great outdoors in all its splendor.

In Sierra, you'll also get top-notch reporting on current battles to protect those forests, parks and wilderness areas.

As a Member, you are also entitled to a discount on the Club's many books about our natural surroundings and environmental politics.

And when you accept this invitation, you not only become a Member of the Sierra Club, you also automatically become a Member of your local Club Chapter. There are 53 Chapters across the country, as well as two in Canada.

You may also be a Member of a Sierra Club Group. There are over 300 such local groups, and they provide you with the opportunity, if you choose, to meet others in your area who share your interest in and concern for the outdoors. At meetings, outings and social events, group members discuss and work together on environmental and conservation issues.

These groups are an integral part of the Green Vote. They are the people who are making their voices heard loudly and clearly in Washington and in legislatures throughout the land.

When you stop to realize how much the Sierra Club has contributed to the development of conservation in America ... when you consider the historic legislation that now protects our environment and our wilderness that the Sierra Club fought for so effectively ... when you consider the

You get
specific
membership
benefits...

...and become
part of
local Club
Chapters
and Groups.

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wide variety of activities, programs and publications this organization has to offer, it is no wonder more than 350,000 people now boast that they are Sierra Club Members.

It is the largest environmental lobby ... the largest organization of grass-roots activists working to protect the environment ... the only organization combining environmental lobbying, litigation, outings, grass-roots activism, and publishing ... the leading publisher of environmental books.

Yes, the Green Vote is shaping America's environmental future, is shaping your future. And the Sierra Club is the most powerful force in helping shape the Green Vote.

I suspect you're part of that vote now when you go to the polls. Here's your chance to become a more enlightened voter. And to multiply your effectiveness as an environmental voter. You do these things -- and a lot more -- through your membership in the Sierra Club.

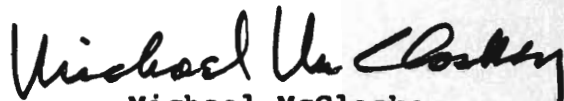
Join us. Help us build a more potent Green Vote in America. Help give our lobbyists more clout when they deal with legislators. Help our lawyers fight for your environmental rights in the courts.

And while you're at it, take advantage of the many benefits and privileges that go with Sierra Club Membership.

You'll find the enclosed Membership Form has your name and address on it. All you have to do to join is indicate your membership category and return the form with your check in the enclosed postage-free envelope.

Do it today. Election Day, 1984 is closer than you think.

Sincerely,

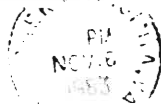


Michael McCloskey
Executive Director

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Your Club
Membership
for just
pennies a
day.

Signal Conservative Political Action Committee

son blvd. suite 513 arlington, va. 22209 (703) 522-2800



General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

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