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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JUL 15 11 20 AM '96

July 12, 1996

AOR 1996-31

JUL 12 2 22 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

N. Bradley Litchfield, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Litchfield:

Sierra Club respectfully requests an Advisory Opinion from the Commission on the application of the Federal Election Campaign Act ("FECA" or the "Act") to a proposal by the Sierra Club to disseminate voter guides and voting records through electronic media advertisements.

The Sierra Club, as part of a voter education project, is preparing voter guides to distribute to the general public. The guides will be prepared in accordance with the Federal Election Commission's ("FEC") regulations at 11 C.F.R. § 114.4. They will cover two or more candidates positions on environmental issues of particular importance to the Sierra Club's issue agenda. The guides may include other information as permitted under the regulations including biographical information on each candidate, such as offices held, community involvement and other information. 11 C.F.R. § 114.4(b)(5). Moreover, the guides will not expressly advocate the election or defeat of a particular candidate.

The Club will not contact the officeholders, candidates, their campaigns or agents with respect to the preparation or distribution of the guides or records. The information used to prepare the voter guides will be collected from publicly available sources including voting records and news articles. Candidates will not be asked to complete a questionnaire.

The guides will be distributed in printed form. See Exhibit 1. In addition, the Club proposes to disseminate the guides through television advertisements. The primary purpose of the use of electronic media is to publicize the availability of voter guides and to encourage members of the public to contact the Sierra Club to request a copy of the printed guide and to remember to vote on Election Day.

[11063-0001/DA961300.069]

The television advertisements would present the voter guide on the screen in a graphic format similar to that of the printed guides. See Exhibit 2. Thus, the candidates' positions on several environmental issues would appear on the screen. The narrator would tell viewers about the environmental issues and the candidates covered in the guide. Some of the broadcast and printed voter guides would include factual information about the campaign contributions received to date from various industry groups. See Exhibit 3. The information would be based on FEC reports filed by the candidate's committees. The viewers would then be encouraged to call the Sierra Club at an 800 number to obtain more information. The narrator would conclude by encouraging viewers to remember to vote on Election Day. See Exhibit 2. The ads would not request that the viewer vote for or against a particular candidate or political party.

Callers who wished to obtain more information or a copy of the voter guide could call the 800 number provided in the ad. The calls would be answered by Sierra Club staff in its San Francisco offices. Callers requesting more information would be sent a copy of the voter guide similar to that appearing on the broadcast. In addition, they may be sent information about the Sierra Club and an application to join the organization.

The use of electronic media to disseminate the voter guides appears to be consistent with the Commission's revised regulations, which provide that a corporation may communicate beyond its restricted class pursuant to the rules set forth in 11 C.F.R. § 114.4. The regulations address a range of activities including the dissemination of voter guides and get-out-the-vote communications. While the regulations set forth guidelines regarding the content of a voter guide (such as the requirements that the positions of two or more candidates must be covered, or that the guide may not contain express advocacy) they do not restrict the methods of distributing the guides, except generally to require the sponsoring organization to avoid coordination, cooperation and consultation with the candidate, his campaign and agents of the campaign. As discussed above, the Sierra Club's voter guides will be prepared and distributed in accordance with these requirements.

This is consistent with the Commission's practice with respect to other types of communications subject to the Act. The Commission has not restricted the methods by which communications are distributed unless the statute or regulations specifically proscribes certain types of distribution or media. Compare 11 C.F.R. § 114.3 (partisan communications) with § 100.7(b)(9) (slate cards) and § 100.7(b)(16) (exempt "volunteer" materials).

Indeed, in this case the regulations addressing communications beyond the restricted class specifically provide that a corporation may "make communications permitted under this section" through a variety of mediums including "broadcasting media, newspapers, newsletters, brochures or similar means of communication with the general public" (emphasis added). 11 C.F.R. § 114.4(c)(2). This provision appears specifically in the regulations governing registration and get-out-the-vote activities, but is equally applicable to the activity presented here. Sierra Club's advertisements would not only publicize the voter guide, but also encourage members of the general public to vote. The electronic voter guides remain faithful to the written version from which they are adapted and comply with FEC regulations at 11 C.F.R. § 114.4(c)(5)(i). Thus, the proposed methods of dissemination appear to be consistent with the regulations.

Sierra Club respectfully requests the Commission's favorable consideration of this request for an Advisory Opinion specifically approving:

- the proposal to use electronic media to broadcast voter guides to the general public;
- the proposal to include in the broadcast and printed voter guide information about campaign contributions to the candidates;
- the use of an 800 number to provide more information in the form of a voter guide to callers;
- the inclusion of a reminder to viewers or listeners to remember to vote.

Very truly yours,



B. Holly Schadler
Counsel to Sierra Club

Attachments

SIERRA CLUB 1996 VOTER GUIDE

Sierra Club urges you to be an informed voter on November 6.

Find out where the candidates for [state name] Congressional seats stand on the environment, on oil exploration in the Arctic, on funding clean water, and mass transit funding.

**Panel with information about the Sierra Club,
phone numbers for more information.**

Protecting America's Environment for our Families — for our Future.

SIERRA CLUB 1996 VOTER GUIDE**Congressional District - State Name**

	<u>John Jones</u>	<u>Fred Rogers</u>
<u>Oil Exploration in the Arctic</u>	Opposes oil exploration in Arctic¹	Favors opening Arctic for oil exploration²
<u>Funding for Clean Water Programs</u>	Voted for more funding for EPA water pollution programs³	Says EPA funding should remain at current levels⁴
<u>Funding for Mass Transit</u>	Voted to double mass transit funding⁵	Favors keeping current funding levels⁶

¹ Co-sponsored HR 15, the Arctic Wilderness Bill.

² Questionnaire, American Petroleum Institute, March 1995.

³ Vote on the Bliley amendment to the HUD/VA/EPA Appropriations Bill.

⁴ Interview, Washington Journal, March 12, 1996.

⁵ Vote on recommitting the Department of Transportation appropriations bill to double mass transit funding.

⁶ Signed the "Chamber of Commerce Plan to Balance the Budget" which calls for retaining present levels of funding for mass transit.

ADVERTISEMENT NO. 1

Client: Sierra Club
Script: "Electronic Voter Guide"
Date: 6-26-96

Visuals

Screen #1 — the screen looks like the cover of the print Voters Guide. "Voter Guide" is printed at the top. In the middle of the screen is a freeze frame of a mountain stream.

Screen #2 — the footage of the stream begins to roll (i.e., unfreezing the freeze frame). The stream moves to full screen. The stream footage could follow the water as it heads down the stream, focusing on fish and other wildlife on the way.

Screen #3 — over stream footage face up the following:

On key environmental issues

John Jones

Fred Rogers

Screen #4 — Dissolve to heading below (over the stream footage). Fade up "yes" and "no" under names one at a time.

Oil Exploration in the Arctic

John Jones

Fred Rogers

No

Yes

Audio

The environment . . . it's part of our Nation's heritage to defend and preserve.

Let's look at the records of John Jones and Fred Rogers.

Jones favors keeping oil exploration out of the Arctic wilderness . . . Rogers favors opening it up to oil exploration.

Screen #5 -- same format as #3. Dissolve to new heading and fade down yes/no. Bring up the yes/no as in #3.

**Increase Funding for
Clean Water Programs**

John Jones

Fred Rogers

Yes

No

Jones supports increased funding for EPA's water pollution programs . . . Rogers says the EPA funding should stay at current levels.

Screen #6 -- same format as #4.

Increase Funding for Mass Transit

John Jones

Fred Rogers

Yes

No

Jones has voted to double funding for mass transit . . . Rogers wants to keep funding at current levels.

Fade down Chyron.

Screen #7 -- the stream footage continues but children are now seen playing in the water. Fade up the following Chyron:

**To get your free copy,
call the Sierra Club:**

1-800-###-####

Call the Sierra Club today at 1-800-###-#### to get your free copy of the Voter Guide -- and remember to vote.

Disclaimer: Paid for by the Sierra Club.

ADVERTISEMENT NO. 2

Client: Sierra Club
Script: "Electronic Voter Guide"
Date: 6-26-96

Visuals

Screen #1 -- the screen looks like the cover of the print Voters Guide. "Voter Guide" is printed at the top. In the middle of the screen is a freeze frame of a mountain stream.

Screen #2 -- the footage of the stream begins to roll (i.e., unfreezing the freeze frame). The stream moves to full screen. The stream footage could follow the water as it heads down the stream, focusing on fish and other wildlife on the way.

Screen #3 -- over stream footage face up the following:

On key environmental issues

John Jones

Fred Rogers

Screen #4 -- Dissolve to heading below (over the stream footage). Fade up "yes" and "no" under names one at a time.

Oil Exploration in the Arctic

John Jones

Fred Rogers

No

Yes

Audio

The environment . . . it's part of our Nation's heritage to defend and preserve.

Let's look at the records of John Jones and Fred Rogers.

Jones favors keeping oil exploration out of the Arctic wilderness . . . Rogers favors opening it up to oil exploration.

Screen #5 -- same format as #3. Dissolve to new heading and fade down yes/no. Bring up the yes/no as in #3.

**Increase Funding for
Clean Water programs**

John Jones	Fred Rogers
Yes	No

Jones supports increased funding for EPA's water pollution programs . . . Rogers says the EPA funding should stay at current levels.

Screen #6 -- same format as #4.

Increase Funding for Mass Transit

John Jones	Fred Rogers
Yes	No

Jones has voted to double funding for mass transit . . . Rogers wants to keep funding at current levels.

Fade down Chyron.

Screen #7 -- same format as #4.

Contributions from Oil Industry

John Jones	Fred Rogers
\$10,000	\$42,000

FEC reports show that since January 1995, Jones has taken \$10,000 from the oil industry. Rogers has taken \$42,000 from the oil industry.

Fade down Chyron.

Screen #8 -- the stream footage continues but children are now seen playing in the water. Fade up the following Chyron:

**To get your free copy,
call the Sierra Club:**

1-800-###-####

Call the Sierra Club today at 1-800-###-#### to get your free copy of the Voter Guide -- and remember to vote.

Disclaimer: Paid for by the Sierra Club.

SIERRA CLUB 1996 VOTER GUIDE

Sierra Club urges you to be an informed voter on November 6.

Find out where the candidates for [state name] Congressional seats stand on the environment, oil exploration in the Arctic, on funding clean water, and mass transit funding.

**Panel with information about the Sierra Club,
phone numbers for more information.**

Protecting America's Environment for our Families -- for our Future.

SIERRA CLUB 1996 VOTER GUIDE

Congressional District - State Name

	John Jones	Fred Rogers
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<u>Funding for Clean Water Programs</u>	Voted for more funding for EPA clean water programs³	Says EPA funding should remain at current levels⁴
<u>Funding for Mass Transit</u>	Voted to double mass transit funding⁵	Favors keeping current fund levels⁶
<u>Contributions From the Oil Industry</u>	\$10,000⁷	\$42,000⁷
<u>Contributions From the Chemical Industry</u>	\$5,000⁷	\$76,000⁷
<u>Contributions From the Fishing Industry</u>	\$30,000⁷	\$5,000⁷

¹ Co-sponsored HR 15, the Arctic Wilderness Bill.

² Questionnaire, American Petroleum Institute, March 1995.

³ Vote on the Bliley amendment to the HUD/VA/EPA Appropriations Bill.

⁴ Interview, Washington Journal, March 12, 1996.

⁵ Vote on recommitting the Department of Transportation appropriations bill to double mass transit funding.

⁶ Signed the "Chamber of Commerce Plan to Balance the Budget" which calls for retaining present levels of funding for mass transit.

⁷ Figures from FEC reports for 1995 and the first two quarters of 1996, and include contributions from political action committees and individual employees identified as working for these industries.