



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 6137
 Informed Catholic Citizens)
)

**STATEMENT OF REASONS
OF CHAIR CYNTHIA L. BAUERLY AND
COMMISSIONERS STEVEN T. WALTHER AND ELLEN L. WEINTRAUB**

This matter concerns an automated telephone call to almost 70,000 people that expressly advocated the election of John McCain and the defeat of Barack Obama in the 2008 presidential election. Informed Catholic Citizens (“ICC”), a Colorado-based 501(c)(4) organization, paid for the call. On January 19, 2011, all six Commissioners voted to find reason to believe that ICC violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations by failing to report an independent expenditure for the call and by failing to include a full disclaimer.¹ However, based on the relatively small amount of money spent on the production and dissemination of the call, the Office of General Counsel (“OGC”) subsequently recommended that the Commission exercise its prosecutorial discretion² and take no further action other than sending a letter of caution to ICC about the Act’s independent expenditure reporting and disclaimer requirements. We disagreed with OGC’s recommendation to take no

¹ Chair Bauerly, Vice Chair Hunter, and Commissioners McGahn, Petersen, Walther and Weintraub voted to find reason to believe that ICC violated 2 U.S.C. §§ 434(c), 434(g), and 441d(a) and authorize an investigation. Certification in MUR 6137, dated January 24, 2011 (“Jan. 24 Cert.”). Additionally, while the complainant alleged that ICC made prohibited corporate independent expenditures to pay for the call at issue in this matter, the Commission voted unanimously to find no reason to believe that ICC violated 2 U.S.C. § 441b in light of the holding in *Citizens United v. FEC*, ---U.S.---, 130 S.Ct. 876 (2010) (prohibition on corporate independent expenditures found unconstitutional), which rendered this allegation moot. *Id.* Finally, the complainant also alleged that ICC should have registered and complied with certain other reporting requirements as a political committee. See 2 U.S.C. §§ 433, 434. The Commission was evenly divided as to whether to find reason to believe regarding this allegation. See Jan. 24 Cert. For the reasons set forth in the First General Counsel’s Report (FGCR), we voted to find reason to believe regarding this allegation. See *id.*; FGCR at 6-12.

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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further action, and instead voted to seek a statutory penalty of \$7,500,³ as permitted under the Act. *See* 2 U.S.C. § 437g(a)(5)(A).⁴

Shortly before the 2008 election, ICC paid for an automated phone call that was placed to nearly 70,000 Colorado households featuring Fr. Bill Carmody, pastor of Holy Family parish in Colorado Springs, Colorado (the “Carmody call”). The Carmody call followed this script:

Hello, this is Fr. Bill Carmody, Pastor of Holy Family parish in Colorado Springs. I’m calling on behalf of Informed Catholic Citizens about the importance of your vote in this election.

Regardless of the spinning that some politicians have done, the Catholic Church’s opposition to the evil of abortion has always been the same and is crystal clear.

Why is it important in this election? John McCain has a record of supporting life, but in the words of Denver Archbishop Charles Chaput, Barack Obama “is the most committed abortion-rights presidential candidate of either major party” in 35 years, and the Democratic Party platform adopted in Denver is “clearly anti-life.”

There are many important issues to consider, but as Archbishop Chaput says, “every other human right depends on the right to life.”

If you have not already voted, I pray that you will search your conscience carefully and consider all the information you deem important. And, then vote like life depended on it – because it does.

This message is paid for by Informed Catholic Citizens.

ICC Response (“Resp.”), Ex. A-1.

On January 19, 2011, the Commission unanimously concluded that the Carmody call contained express advocacy and voted to find reason to believe that ICC violated the reporting

³ The term “statutory penalty” refers to a civil penalty at the statutorily-prescribed amount, which is indexed for inflation and is currently set at \$7,500. *See* 2 U.S.C. § 437g(a)(5)(A); Pub. L. 101-410, § 5(a); 11 CFR § 111.24(a)(1) (2009).

⁴ The vote to support OGC’s recommendation failed by a vote of 3-3. Vice Chair Hunter and Commissioners McGahn and Petersen voted to take no further action. We dissented. Certification in MUR 6137 (ICC), dated October 21, 2011. Subsequently, Chair Bauerly and Commissioner Weintraub voted to seek a statutory penalty, which failed by a vote of 3 to 2. Vice Chair Hunter and Commissioners McGahn and Petersen dissented. *Id.* While Commissioner Walther could not be present for the vote, he would have supported a statutory penalty for the reasons set forth herein.

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requirements in 2 U.S.C. §§ 434(c), 434(g) and 441d(a).⁵ The Commission also authorized a limited additional investigation to ascertain the amount of money spent, timing and number of recipients for the call. During the investigation, ICC produced an October 29, 2008 invoice indicating that the Carmody call cost \$2,723.92 and that the call had been made to 68,098 recipients.⁶

ICC argued that the Carmody call was not subject to any reporting or disclaimer requirements because the call script does not contain express advocacy, as it lacks "specific words" calling for the election or defeat of a federal candidate. See ICC Response at 4. We disagree. The call script compares McCain's (pro-life) and Obama's (pro-choice) positions on abortion, and then directs the recipient to "vote like life depended on it – which it does." The message is clear: vote for McCain and not for Obama. In fact, the Carmody call's message bears a striking resemblance to the "vote pro-life" message that the Supreme Court confirmed was express advocacy in *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238, 248 (1986) ("MCFL"). Therefore, all six Commissioners agreed that the Carmody call contained express advocacy, should have been reported as an independent expenditure, and required a full disclaimer under the Act.⁷

Having reached this consensus, we had hoped the Commission could have agreed on a civil penalty in this matter after the investigation revealed that ICC's message, which went unreported and contained only a partial disclaimer, reached so many voters. However, based on the Carmody call's low dollar value, OGC recommended no further action. See General Counsel Report #2 at 3-4. Nonetheless, the Act does not require penalties to be rigidly calculated based on the amount of money at issue. Rather, the Act provides that if the Commission believes a violation has been committed, as part of a conciliation agreement, the violator may be required to pay a penalty that "does not exceed the greater of [the statutory penalty] or an amount equal to any contribution or expenditure involved." 2 U.S.C. § 437g(a)(5)(A). Thus, the Commission has discretion through conciliation to seek a statutory penalty amount, notwithstanding the relatively low cost of a given expenditure. The exercise of this discretion should be based on the statutory guidelines, and the mitigating and aggravating circumstances present in any given case.

⁵ Although the Carmody call script does contain a partial disclaimer, it does not state ICC's "permanent street address, telephone number or World Wide Web address" or "that the communication is not authorized by any candidate or candidate's committee" as required by the Act. See 2 U.S.C. § 441d(a)(3); see also footnote 7 below.

⁶ The parties' submissions appear to conflict about the exact date the call was transmitted, but there is no dispute that it took place within 20 days of, but more than 24 hours before, the election. See 2 U.S.C. § 434(g)(1); see also footnote 7 below.

⁷ The Act requires any person who is not a political committee and who makes independent expenditures of at least \$250 in aggregate during a calendar year to comply with certain reporting requirements. See 2 U.S.C. § 434(c). In addition, a person making an independent expenditure in excess of \$1000 within 20 days of, but more than 24 hours before, an election must report the independent expenditure with the Commission within 24 hours. See 2 U.S.C. § 434(g)(1). Finally, the Act and Commission regulations also require all "public communications" resulting from independent expenditures (including 500 or more identical calls) to contain disclaimers stating that the communications are not authorized by any candidate or candidate committee and providing contact information for the person who paid for the communication. See 2 U.S.C. § 441d(a)(3); 11 C.F.R. §§ 100.26, 100.28, 110.11(a).

See *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, at 15-16, December 2009.

A statutory penalty is warranted here. Although the Carmody call may have been relatively inexpensive, it appears to have reached almost 70,000 recipients. Thus, while the cost was low, the potential impact was substantial. And the message conveyed – that recipients should vote for McCain over Obama – was express advocacy. Indeed, the call to action in this script is virtually identical to the message deemed to be express advocacy in *MCFL*.⁸

The civil penalties contemplated by the Act serve an important purpose – to provide an incentive for accurate and timely reporting and compliance with the other requirements of the Act and Commission regulations. Moreover, the disclosure and disclaimer provisions that ICC failed to follow “help citizens make informed choices in the political marketplace.” *Citizens United v. FEC*, —U.S.—, 130 S.Ct. 876, 914 (2009) (internal quotations omitted). The Commission should encourage compliance with these core provisions of the Act. The Commission’s failure to pursue any civil penalty risks sending the message that the Commission does not take the Act’s disclosure requirements seriously. That would be unfortunate.

11/21/2011
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Chair

11/21/11
Date

Steven T. Walther
Steven T. Walther
Commissioner

11/21/11
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

⁸ Additionally, we note that ICC, led by a former member of Congress, appears to be a sophisticated organization that was, or should have been, aware of the Act’s reporting and disclaimer requirements.

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COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION 2011 JAN 24 PM 6:19

In the Matter of)
) MUR 6137
Informed Catholic Citizens)

CELA

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary of the Federal Election Commission executive session, do hereby certify that on January 19, 2011, the Commission took the following actions in the above-captioned matter:

1. Failed on a vote of 1-5 to:
 - a. Find no reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441b.
 - b. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. §§ 433 and 434 or, in the alternative, violated 2 U.S.C. § 434(e).
 - c. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 434(g).
 - d. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441d(a).
 - e. Authorize the use of compulsory process as to the Respondent and all witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
 - f. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated June 25, 2010, as amended to reflect that the Beauprez call is also express advocacy.
 - g. Approve the appropriate letter.

Commissioner Weintraub voted affirmatively for the motion. Commissioners Bauerly, Hunter, McGahn II, Petersen and Walther dissented.

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2. Failed on a vote of 3-3 to:
- a. Find no reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441b.
 - b. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. §§ 433 and 434 or, in the alternative, violated 2 U.S.C. § 434(c).
 - c. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 434(g).
 - d. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441d(a).
 - e. Authorize the use of compulsory process as to the Respondent and all witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
 - f. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated June 25, 2010.
 - g. Approve the appropriate letter.

Commissioners Bauerly, Walther, and Weintraub voted affirmatively for the motion.

Commissioners Hunter, McGahn II and Petersen dissented.

3. Decided by a vote of 6-0 to:
- a. Find no reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441b.
 - b. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 434(c).
 - c. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 434(g).
 - d. Find reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441d(a).
 - e. Authorize the use of compulsory process as to the Respondent and all witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary, but limit the investigation to ascertain the amount of money spent on the calls, the timing of the calls, and the number of calls.
 - f. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated June 25, 2010, subject to the appropriate edits.
 - g. Approve the appropriate letter.

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Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther and Weintraub voted affirmatively for the decision.

Attest:

January 27, 2011
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

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2011 OCT 21 AM 9:48

BEFORE THE FEDERAL ELECTION COMMISSION **GELA**

In the Matter of)
) MUR 6137
Informed Catholic Citizens)

CERTIFICATION

I, Shelley E. Garr, recording secretary of the Federal Election Commission executive session, do hereby certify that on October 18, 2011, the Commission took the following actions in the above-captioned matter:

1. On a pre-meeting tally, failed on a vote of 3-3 to:
 - a. Take no further action.
 - b. Approve the appropriate letter of caution to Informed Catholic Citizens.
 - c. Close the file.

Commissioners Hunter, McGahn II, and Petersen voted affirmatively for the motion.

Commissioners Bauerly, Walther, and Weintraub dissented.

2. Failed on a vote of 2-3 to:
 - a. Proceed to pre-probable cause conciliation.
 - b. Seek a statutory penalty.

Commissioners Bauerly and Weintraub voted affirmatively for the motion.

Commissioners Hunter, McGahn II, and Petersen dissented. Commissioner Walther did not vote.

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3. Decided by a vote of 5-0 to:

- a. Close the file.
- b. Send a letter of caution.

Commissioners Bauerly, Hunter, McGahn II, Petersen, and Weintraub voted affirmatively for the decision. Commissioner Walther did not vote.

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Attest:

October 21, 2011
Date

Shelley E. Garr
Shelley E. Garr
Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 25 2011

Mario D. Nicolais, Esq.
Hackstaff Gessler, LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202

RE: MUR 6137
Informed Catholic Citizens

Dear Mr. Nicolais:

On December 3, 2008, the Federal Election Commission notified your client, Informed Catholic Citizens, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on January 19, 2011, found that there is reason to believe Informed Catholic Citizens violated 2 U.S.C. §§ 434(c), 434(g), and 441d(a), provisions of the Act. The Commission also found no reason to believe that Informed Catholic Citizens violated 2 U.S.C. § 441b. On October 18, 2011, the Commission closed its file in this matter.

Based on the information before the Commission, it appears that Informed Catholic Citizens may have violated the disclaimer and reporting provisions under 2 U.S.C. §§ 441d(a), 434(c) and 434(g) by failing to include a disclaimer in its recorded telephone calls and failing to file the required independent expenditure report. The Commission cautions Informed Catholic Citizens to take steps to ensure that its conduct is in compliance with the Act and the Commission regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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MUR 6137 (Informed Catholic Citizens)
Mr. Mario D. Nicolais
Page 2

If you have any questions, please contact April J. Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

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CLP



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 27 2011

Rebecca S. Kratz
Freedom From Religion Foundation
PO Box 750
Madison, WI 53701

RE: MUR 6137
Informed Catholic Citizens

Dear Ms. Kratz:

This is in reference to the complaint you filed with the Federal Election Commission on November 25, 2008, concerning Informed Catholic Citizens. Based on that complaint, on January 19, 2011, the Commission found that there was reason to believe Informed Catholic Citizens violated 2 U.S.C. §§ 434(c), 434(g), and 441d(a), and that there was no reason to believe Informed Catholic Citizens violated 2 U.S.C. § 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation of this matter. Also on that date, the Commission was equally divided on whether to find reason to believe that Informed Catholic Citizens violated 2 U.S.C. §§ 433 and 434. The Factual and Legal Analysis, which more fully explains the basis for the Commission's reason to believe and no reason to believe determinations, is enclosed. On October 18, 2011, the Commission closed the file in this matter. At the same time, the Commission cautioned Informed Catholic Citizens to take steps to ensure that its conduct is in compliance with the Act and the Commission regulations. A Statement of Reasons explaining the Commission's decision to close the file will be issued.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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MUR 6137 (Informed Catholic Citizens)
Rebecca S. Kratz
Page 2

The 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 me at (202) 694-1650.

Sincerely,



April J. Sands
Attorney

Enclosure
Factual and Legal Analysis

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1 Why is it important in this election? John McCain has a record of supporting life, but in
2 the words of Denver Archbishop Charles Chaput, Barack Obama "is the most committed
3 abortion-rights presidential candidate of either major party" in 35 years, and the
4 Democratic Party Platform adopted in Denver is "clearly anti-life."
5

6 There are many important issues to consider, but as Archbishop Chaput says, "every
7 other human right depends on the right to life."
8

9 If you have not already voted, I pray that you will search your conscience carefully and
10 consider all the information you deem important. And, then vote like life depended on
11 it - because it does.

12
13 This message is paid for by Informed Catholic Citizens.

14
15 "Beauprez Call"

16
17 Hello, this is Bob Beauprez. And, no, I'm not one of those politicians calling to tell you
18 how to vote. You'll figure that out on your own.
19

20 I know that there are a whole host of issues you'll consider when deciding for whom to
21 vote, including who best represents your values. What's difficult is finding really honest
22 information about the candidates and the issues most important to you - like the five non-
23 negotiables: security of human life, euthanasia, homosexual marriage, embryonic stem-
24 cell research, and human cloning.
25

26 I recently learned through the Solidarity Institute at ecatholicuhub.net that Bob Schaffer is
27 in agreement with Catholic doctrine on all five of these issues while Mark Udall is
28 opposed to every single one.
29

30 We're the Informed Catholic Citizens, and our only objective is to make sure you have all
31 the information you need to decide who you'll be voting for in this election. Thank you
32 for listening.
33

34 **III. ANALYSIS**

35 The Commission: (1) finds no reason to believe that ICC violated 2 U.S.C. § 441b;
36 (2) finds reason to believe that ICC violated 2 U.S.C. § 434(c) by failing to disclose its
37 independent expenditure; (3) finds reason to believe that ICC violated 2 U.S.C. § 434(g) by
38 failing to file a 24-hour notice of its independent expenditure; and (4) finds reason to believe that
39 ICC violated 2 U.S.C. § 441d(a) by failing to include the required disclaimer.
40

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1 **A. Corporate Expenditures**

2 In *Citizens United v. FEC*, the Supreme Court struck down as unconstitutional the Act's
3 prohibition on corporate financing of independent expenditures. *See* 130 S.Ct. 876, 913 (2010).

4 Thus, it is permissible for corporations to use general treasury funds for this purpose.

5 Accordingly, the Commission finds no reason to believe that Informed Catholic Citizens violated
6 2 U.S.C. § 441b by making a prohibited corporate expenditure in connection with the recorded
7 telephone calls.

8 **B. Independent Expenditure Reporting**

9 Under the Act, every person other than a political committee who makes independent
10 expenditures in excess of \$250 must file a report that discloses information on its expenditures
11 and identify each person who made a contribution in excess of \$200 for the purpose of furthering
12 an independent expenditure. *See* 2 U.S.C. § 434(c). The Act defines an independent expenditure
13 as any expenditure that expressly advocates the election or defeat of a clearly identified
14 candidate and is not made in concert with a candidate, a political party committee, or their
15 respective agents. 2 U.S.C. § 431(17).

16 Under the Commission's regulations, a communication contains express advocacy when
17 it uses phrases, campaign slogans, or individual words "which in context can have no other
18 reasonable meaning than to encourage the election or defeat of one or more clearly identified
19 candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,'
20 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R. § 100.22(a). The Supreme Court has
21 held that express advocacy also encompasses communications that contain "in effect an explicit
22 directive" to vote for or against a candidate. *MCFL*, 479 U.S. at 249. The fact that a message is
23 "marginally less direct than 'Vote for Smith' does not change its essential nature." *Id.* ICC

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1 argues that "express advocacy" must be read narrowly in accordance with the approach in
2 *Buckley v. Valeo*, 424 U.S. 1 (1976). Response at 3.

3 The Carmody Call contains express advocacy under 11 C.F.R. § 100.22(a) consistent
4 with Supreme Court and Commission precedent. This call is similar to the newsletter at issue in
5 *MCFL* and the "Conscience" pamphlet in MUR 5634 (Sierra Club). In *MCFL*, the Supreme
6 Court found that a newsletter which listed candidates for state and federal office and identified
7 their issue positions as supporting or opposing issues such as abortion, along with the phrases
8 "EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE," "VOTE PRO-LIFE," and the
9 disclaimer "This special election edition does not represent an endorsement of any particular
10 candidate," constituted express advocacy. *MCFL*, 479 U.S. at 238. The Court reasoned that the
11 newsletter "cannot be regarded as a mere discussion of public issues that by their nature raise the
12 names of certain politicians. Rather, it provides an explicit directive: vote for these (named)
13 candidates." *Id.*

14 In MUR 5634, the Commission found that the "Conscience" pamphlet, which compared
15 President Bush's and Senator Kerry's environmental records and contained the phrases "LET
16 YOUR CONSCIENCE BE YOUR GUIDE" and "LET YOUR VOTE BE YOUR VOICE"
17 contained express advocacy under section 100.22(a) because it provided "in effect" an explicit
18 directive to vote for the candidates whose positions were in accord with the organization. See
19 MUR 5634 Factual and Legal Analysis at 4. The Commission found probable cause to believe
20 that the Sierra Club violated 2 U.S.C. § 441b(a) based on the "Conscience" pamphlet and entered
21 into a conciliation agreement with the organization. See Certifications dated July 19, 2006 and
22 November 13, 2006. In the same matter, the Office of General Counsel recommended, and the
23 Commission found, no reason to believe that the Sierra Club violated the Act in connection with

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1 three other pamphlets. Two of the pamphlets did not contain express advocacy because a
2 reasonable interpretation was that readers were simply being directed to contact current federal
3 officeholders. MUR 5634 First General Counsel's Report at 5. A fourth pamphlet, "Dirt,"
4 which contained narratives comparing the environmental records of Present Bush and Senator
5 Kerry, did not contain express advocacy because it was consistent with the Commission's voter
6 guide regulations and encouraged readers to obtain additional information about the candidates
7 from other sources before deciding for whom to vote. *Id.* at 8.

8 The Carmody Call uses the word "vote" three times, starting in the first sentence after the
9 greeting. The Carmody Call is express advocacy under section 100.22(a) because it sets out
10 John McCain's and Barack Obama's respective positions on the subject of abortion and then
11 directs listeners to "vote like life depended on it – because it does," which has no other
12 reasonable meaning than to encourage the election of John McCain and the defeat of Barack
13 Obama. This conclusion is consistent with the Supreme Court's decision in *MCFL* in that the
14 Carmody Call's call to action to "vote like life depended on it – because it does" is an
15 unambiguous reference to John McCain's "record of supporting life," providing "in effect" an
16 explicit directive to vote for John McCain and against Barack Obama. The Carmody Call's call
17 to action is also similar to that in the MUR 5634 "Conscience" pamphlet, "LET YOUR VOTE
18 BE YOUR VOICE."

19 Although the available information does not indicate the cost or dissemination of the
20 Carmody Call, a press account cited in the Complaint regarding the Beauprez Call stated that
21 ICC "blanket[ed] the state with recorded phone calls." Mike Riley, Beauprez Robo-Calls Target
22 Udall on Values, *Denver Post*, October 23, 2008. ICC's response did not provide any
23 information regarding the cost or dissemination of the calls. The fact that the Carmody Call

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1 concerned the Presidential election also suggests that a large number of calls were made, and
2 past matters involving robocalls often involved costs well over \$1,000. See MUR 6125
3 (McClintock) (Campaign in California's 4th Congressional District spent \$7,799 for robocalls in
4 2008); MUR 5819 (U.S. Chamber of Commerce) (Chamber of Commerce spent \$2,474 for
5 approximately 50,000 calls regarding the 2006 Senate race in Hawaii); MUR 5588 (Arizona
6 Republican Party) (State party committee spent \$41,626 for state-wide calls regarding the 2004
7 Presidential election).

8 In sum, it appears that at least one of the ICC recorded calls – the Carmody Call –
9 contained express advocacy under 11 C.F.R. § 100.22(a).² See also 11 C.F.R. § 100.22(b)
10 (express advocacy includes communications that contain an “electoral portion” that is
11 “unmistakable, unambiguous, and suggestive of only one meaning” and about which “reasonable
12 minds could not differ as to whether it encourages actions to elect or defeat” a candidate).
13 Because the Carmody Call contained express advocacy and ICC likely spent over \$250 on the
14 call, ICC was subject to the independent expenditure reporting requirements of section 434(c) of
15 the Act. Accordingly, the Commission finds reason to believe that ICC violated 2 U.S.C.
16 § 434(c).

² The Beauprez Call presents a closer judgment. There are several characteristics of the Beauprez Call that bring it close to the definition of express advocacy under 11 C.F.R. § 100.22(b): the call references voting three times and was made in close proximity to the election; it references the Catholic Church's positions on five policy issues and then states that “Bob Schaffer is in agreement with Catholic doctrine on all five of these issues while Mark Udall is opposed to every single one;” and it indicates that the ICC's goal is to inform listeners to aid in their voting decision. This can be viewed as a directive to vote for the candidate in agreement with Catholic Doctrine, Bob Schaffer. However, because the Beauprez Call contains a comparison of the candidates' views on policy issues, reasonable minds could view the call as educating listeners about the positions of the candidates, similar to the MUR 5634 “Dirt” pamphlet, which the Commission concluded was more akin to a voter guide under 11 C.F.R. § 114.4(c)(5)(i).

1 **C. 24-Hour Independent Expenditure Reporting**

2 Under the Act, a person that makes independent expenditures aggregating \$1,000 or more
3 after the 20th day, but more than 24 hours, before the date of an election must file a report
4 describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1).

5 ICC's activity appears to date from November 2008; therefore, it is likely that the calls
6 were made within 20 days of the election. It is also likely that ICC spent over \$1,000 in
7 connection with the Carmody Call. Accordingly, the Commission finds reason to believe that
8 Informed Catholic Citizens violated 2 U.S.C. § 434(g) by failing to report the cost of the call as
9 an independent expenditure.

10 **D. Required Disclaimers**

11 The Act requires that persons making disbursements for communications containing
12 express advocacy provide a disclaimer as specified in the statute and regulations. 2 U.S.C.
13 § 441d. More specifically, communications that are not authorized by a candidate are required to
14 clearly state the name and permanent street address, telephone number or World Wide Web
15 address of the person who paid for the communication and state that the communication was not
16 authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

17 The Carmody Call required a disclaimer because it contained express advocacy. It
18 appears that the Carmody Call was sufficiently widespread to have constituted 500 calls of an
19 identical or substantially similar nature. *See supra* p. 5-6. The Carmody Call did not contain the
20 full required disclaimer, as it did not clearly state the address, telephone number, or website
21 address of ICC and did not state that the communication was not authorized by any candidate or
22 candidate's committee. Accordingly, the Commission finds reason to believe that Informed

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- 1 Catholic Citizens violated 2 U.S.C. § 441d(a) by failing to include the required disclaimer on a**
- 2 communication containing express advocacy.**

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FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF MUR # 6137

DATE SCANNED 11-17-11

SCANNER NO. 2

SCAN OPERATOR JMW

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