

Complaint

Freedom From Religion Foundation, Inc. (FFRF) brings this complaint before the Federal Election Commission (FEC) seeking an immediate investigation and enforcement action against Informed Catholic Citizens (ICC) for violations of the Federal Election Campaign Act (FECA).

Complainant/Respondent

The complainant, FFRF, is a nonprofit organization based in Madison, Wisconsin, which works to protect the constitutional principle of separation of church and state. FFRF represents nearly 13,000 members nationwide.

The respondent, ICC, is a 501(c)(4) organization based in Colorado. ICC is a relatively new group headed by former U.S. Representative Bob Beauprez. According to the organization's website, found at <http://informedcatholics.org>, ICC's purpose is "not to make your voting decision, but to assist you in finding the truth about the candidates and information necessary to make an educated choice consistent with Catholic doctrine."

Facts

It is our information and understanding that ICC made a series of recorded phone calls to citizens in Colorado in late October 2008. FFRF was informed on Wednesday, October 29, 2008, by a concerned Colorado citizen, who is not a member of or a contributor to ICC, that ICC made a recorded call to him, which exhorted him to vote for John McCain for President. The transcript of the call is as follows:

"This is Father 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 the 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 the election? John McCain has a record of supporting life. But in the world of Denver Archbishop Charles Chaput, Barack Obama is the most committed abortion rights presidential candidate of either major party in thirty-five 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 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."

FFRF encloses 4 CDs, which include an audio version of this recorded message for your review.

Upon further research, FFRF discovered that Informed Catholic Citizens also made statewide, recorded calls concerning the Colorado Senate Race. These calls targeted Democratic Senate candidate Mark Udall. Please find enclosed a copy of an article from the Denver Post concerning these robo-calls.

Argument

FECA prohibits a corporation, including 501(c)(4) organizations, from making any contribution or expenditure in connection with any federal election. See 2 U.S.C. §441(b)(a). This prohibition includes independent expenditures. FECA defines an independent expenditure as an expenditure by a person or corporation that “expressly advocates the election or defeat of a clearly identified candidate.” 2 U.S.C. 431(7). FEC regulations define express advocacy. See 11 C.F.R. §100.22. Express advocacy can be a communication that, among other things, uses phrases like “ ‘Vote Pro-Life’ or ‘Vote Pro-Choice’ accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice.” 11 C.F.R. §100.22(a); see also *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986). In some circumstances, express advocacy also occurs when the communication,

“taken as a whole and with limited reference to external events such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—(1) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.” 11 C.F.R. §100.22(b).

Public communications include telephone banks to the general public. See 11 C.F.R. §100.26.

Informed Catholic Citizens engaged in express advocacy as defined in 11 C.F.R. §100.22(a). Father Carmody, on behalf of Informed Catholic Citizens, clearly identifies the federal candidates and then delineates their positions on abortion. He tells the recipient “John McCain has a record of supporting life” while “Barack Obama is the most committed abortion rights presidential candidate of either major party in thirty-five years.” The call ends by asking the recipient, in effect, to vote “Pro-Life.” Father Carmody says “If you have not already voted, I pray 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.”

The message also constitutes express advocacy under 11 C.F.R. §100.22(b). The content of this message unambiguously urges the listener to vote “Pro-Life.” Although the call does not specifically say, “Vote for John McCain,” it strongly suggests to vote against Barack Obama, who is identified by the caller as Pro-Choice. Furthermore, the call was made less than a week before the November 4th election. Given the context and content of the call, reasonable minds certainly could not differ as to the actions ICC was encouraging. Thus, the call was express advocacy.

As far as FFRF is aware, ICC does not fall into the qualified nonprofit corporations (QNC) exception, which would allow them to engage in express advocacy. *See Massachusetts Citizens for Life, 479 U.S. 238.* This limited exception to the general prohibition on corporate expenditures includes 501(c)(4)s that are not formed for the express purpose of promoting political ideas, do not engage in business activities, have no shareholders or person affiliated with the organization so as to have a claim to its assets or earnings and were not established by a business corporation or labor union and does not accept contributions from such entities. *See 11 C.F.R. §114.10.*

Given that ICC was established only recently, it is unclear how the organization is structured and funded. Therefore, it is unclear whether ICC would qualify as an exception. However, ICC’s two major undertakings since establishment, making robo-calls to Colorado citizens concerning two federal races, suggest that the organization’s primary purpose is to promote political ideas.

Even if ICC were deemed a QNC, it still has an obligation to report any independent expenditures aggregating over \$250. *See 11 C.F.R. §109.10(b).* If ICC spent \$1,000 or more on these calls, it was required to report the independent expenditure within twenty-four hours from the time the communication is publicly distributed. *See 11 C.F.R. 104.* As of the date of this complaint, ICC has neither registered with the FEC nor has it reported any independent expenditures made during the 2008 campaign.

FFRF requests an immediate FEC investigation to determine the status of the respondent and to determine whether the respondent violated federal law. The FEC should take appropriate action to remedy any violations.

Federal law also requires groups whose major purpose is to influence elections, and which spend \$1,000 in expenditures to register as a federal political committee. Given that the ICC is a new organization and its two major activities thus far have involved influencing the U.S. Senate race in Colorado, and the Presidential race, it appears the major purpose is to influence elections. Therefore, FFRF seeks an investigation to determine whether ICC is a federal political committee under the law. As of the date of this complaint, ICC has not filed a statement of organization, and it has not complied with reporting requirements. Accordingly, the FEC should also determine whether ICC has violated the registration and reporting laws.

Enclosures: 4 CD audios of robo-call; Denver Post article, Oct. 23, 2008

Freedom From Religion Foundation, Inc., acting through Rebecca S. Kratz, hereby verifies that the statements made in this complaint, based upon information and belief, are true.

Rebecca S. Kratz
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Signed and sworn before me this ____ th day of November, 2008.