



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
302 North Office Building
Harrisburg, PA 17120

PEDRO A. CORTÉS
Secretary of the Commonwealth

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November 1, 2007

Jeffrey L. Mazzella, President
Center for Individual Freedom
113 South Columbus Street, Suite 310
Alexandria, VA 22314

Dear Mr. Mazzella:

This purpose of this letter is to notify you that the Center for Individual Freedom (CFIF) must: (i) immediately cease and desist from airing advertisements advocating the candidacy of Judge Maureen Lally-Green for the Pennsylvania Supreme Court in the municipal election to be held on November 6, 2007; or (ii) by no later than 3:00 p.m. today, Thursday, November 1, explain to our satisfaction how your ads comply with the Pennsylvania Election Code.

As the Chief Election Officer in Pennsylvania, I hereby inform you that CFIF's ads are in violation of the Pennsylvania Election Code, specifically the provision commonly known as the corporate prohibition found in section 1633, and the Stipulated Judgment that the CFIF reached with the Pennsylvania Office of Attorney General (OAG). If you fail to cease and desist from airing these advertisements or explain their legality to our satisfaction, we will seek an appropriate remedy at law.

The Department of State (Department) understands that CFIF is a non-profit 501(c)(4) corporation, and that it is using corporate funds to finance this ad. Section 1633 of the Pennsylvania Election Code, 25 P.S. § 3253(a), prohibits corporations from making any "expenditure in connection with the election of any candidate or for any political purpose whatever." An "expenditure" is defined as any spending "for the purpose of influencing the outcome of an election" (Section 1621(d)(1) of the Election Code, 25 P.S. § 3241(d)(1)). If CFIF has not used corporate funds to finance this ad, please inform us. However, in that case, CFIF would be required to have registered and reported as a political committee in compliance with sections 1624 and 1626 of the Election Code, 25 P.S. §§ 3244 & 3246, which CFIF has not done. In either case, CFIF is violating the Pennsylvania Election Code.

The advertisement being aired in Pennsylvania does not inform, discuss, promote or oppose and is completely devoid of any issue of public policy. It merely promotes Judge

Lally-Green and her virtues and concludes by asking Pennsylvanians to "[t]hank Judge Lally-Green for supporting Pennsylvania families" after making statements about her "tough stands on violent criminals." It is clear that CFIF paid for the advertisement given the attribution to CFIF contained in it.

This advertisement violates the standard established in *Buckley v. Valeo*, 424 U.S. 1 (1976) distinguishing permissible advertisements concerning public issues and advertisements that advocate for a candidate for public office. Due to the fact that this ad is being aired in the week immediately preceding the municipal election, the advertisement leaves the listener or viewer with the clear request to thank Judge Lally-Green by voting for her. Because the Supreme Court used the phrase "such as" when it included examples of express advocacy, it was not limiting individuals to the few examples that the Court cited. This advertisement clearly identifies Judge Lally-Green, is solely and exclusively focused on Judge Lally-Green, and the ending line leaves no doubt that it is express advocacy.

Finally, and most importantly, this ad is not truly an issue ad. While the ad references "tough stands cracking down on violent criminals" that the Judge has taken during her career, it is not an advertisement on an issue. Rather, as exemplified by its various references, it is an endorsement of the judge. This ad is in stark contrast with the ad that the United States Supreme Court considered recently in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007). This advertisement is a campaign ad which we understand to have been paid for with corporate funds and expressly advocates the election of a clearly identified candidate during the week before Election Day. Therefore, unless you have a satisfactory explanation regarding the legality of the ad, you must cease and desist from airing this ad upon receipt of this letter.

Please have your attorney contact Albert H. Masland, Chief Counsel, or Louis Lawrence Boyle, Deputy Chief Counsel, at (717) 783-0736 by 3:00 p.m. today with your reply.

Sincerely,



Pedro A. Cortés

PAC/llb

c: The Honorable Thomas Corbett, Attorney General, Commonwealth of Pennsylvania
The Honorable Joseph W. Carroll, District Attorney of the County of Chester
The Honorable G. Michael Green, District Attorney of the County of Delaware
The Honorable Lynne Abraham, District Attorney of the City of Philadelphia
John F. Smith, III, Esquire