

0-44-77

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December 14, 1977

Marilyn J. Morheuser, Esq.  
American Civil Liberties Union  
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45 Academy Street  
Newark, New Jersey 07102

Re: The New Jersey Campaign Contributions and Expenditures  
Reporting Act, Chapter 83, Laws of 1973 as  
Amended and Supplemented ("the Act")  
Your Letter dated October 14, 1977  
Opinion # (0-44-77)

Dear Ms. Morheuser:

Your letter of October 14, 1977 to the New Jersey Election  
Law Enforcement Commission ("the Commission"), including a  
request for an exemption from the requirements of the New Jersey  
Campaign Contributions and Expenditure Reporting Act ("the Act"),  
has been forwarded to me for reply.

The Act requires the reporting by a political committee  
and candidate of the names and address of all contributors  
who donate over \$100 to the candidate or campaign committee.  
Under Section 6 of the Act, it is the duty of the Commission  
"to enforce the provisions of this Act". While N.J.A.C.  
19:25-1.4 empowers the Commission to "relax" the regulations  
of the Commission to further the ends of justice, nowhere  
in the Act is there a provision enabling the Commission to  
grant an exemption from any of the provisions of the Act  
itself. It is generally recognized that administrative agencies  
do not have the authority to rule on the constitutionality of  
statutes which they are empowered to enforce. Fischer v.  
Township of Bedminster 5 N.J. 534. Therefore, if the Socialist  
Workers Party campaign organization or its candidate, Richard  
Ariza, accepts any contribution from any person which aggregates  
in excess of \$100, they are obligated to report the names  
and addresses of the contributors of any such contributions  
pursuant to Sections 8 and 16 of the Act.

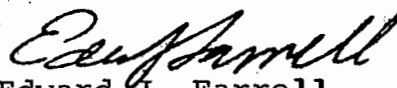
The Commission recognizes the fact that the Supreme Court,  
in Buckley v. Valeo, acknowledged the possible inapplicability  
of disclosure requirements to candidates and parties who could  
demonstrate serious injury of the sort at stake in NAACP v.

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Alabama, i.e. exposure to economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility. The Commission does not have before it facts which would satisfy the standard of proof required by the Supreme Court in Buckley.

Even if the Socialist Workers Party were able to provide a factual record from which to draw the presumption of a chilling effect if disclosure were required, there appears no basis for the Commission to hold hearings and grant exemptions from the disclosure requirements of the Act. In the statutory schemes of Minnesota and California, as distinguished from New Jersey, there was explicit authority for the Commissions involved to grant exemptions from the states' respective election law disclosure provisions. In New Jersey, there is no express authority for the grant of an exemption for minor or unpopular parties. Moreover, the mandatory nature of the filing requirements and ministerial duties of the New Jersey Election Law Enforcement Commission do not provide a basis for inferring such authority. Therefore, in the absence of a judicial determination or legislative enactment empowering the Commission to grant exemptions from the provisions of the Act, it is the position of the Commission that all candidates and political campaign committees must make disclosures as required by the Act.

Yours very truly,



Edward J. Farrell  
Legal Counsel

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