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NATIONAL COMMISSION ON OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR - NOT SUBJECT TO FEDERAL ADVISORY COMMITTEE ACT UPON RECONSIDERATION OF B-182398, AUGUST 10, 1977, GENERAL ACCOUNTING OFFICE ADHERES TO ITS ORIGINAL POSITION THAT THE NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR (IWY) IS NOT AN "ADVISORY COMMITTEE" SUBJECT TO THE FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP. I (SUPP. V, 1975)) SINCE THERE IS NOTHING IN EXECUTIVE ORDER 11832 OR PUBLIC LAW 94-167 WHICH ASSIGNS THE COMMISSION ANY ADVISORY FUNCTIONS. WHILE IT MAY MAKE ITS OWN RECOMMENDATIONS IN THE REPORT ON THE NATIONAL CONFERENCE OF WOMEN IT SUBMITS TO CONGRESS AND THE PRESIDENT, THE COMMISSION WAS NOT "ESTABLISHED" OR "UTILIZED" FOR THIS PURPOSE. NATIONAL COMMISSION ON OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR - NATIONAL WOMEN'S CONFERENCE - SUBJECT TO FEDERAL ADVISORY COMMITTEE ACT SINCE THE NATIONAL WOMEN'S CONFERENCE, TO BE ORGANIZED BY THE NATIONAL COMMISSION ON IWY WHICH WILL, AMONG OTHER FUNCTIONS, MAKE FINDINGS AND RECOMMENDATIONS ON VARIOUS SUBJECTS TO BE SUBMITTED THROUGH THE COMMISSION'S REPORT TO THE PRESIDENT, IT IS AN ADVISORY COMMITTEE SUBJECT TO THE FEDERAL ADVISORY COMMITTEE ACT. NATIONAL COMMISSION ON OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR - STATE AND REGIONAL MEETINGS - PURPOSE - SELECTING REPRESENTATIVES TO CONFERENCE SINCE THE STATE AND REGIONAL MEETINGS, ORGANIZED UNDER PUBLIC LAW 94 167, HAVE THE SOLE STATUTORY PURPOSE OF SELECTING REPRESENTATIVES TO THE CONFERENCE, AND THEY ARE NOT REQUIRED TO MAKE RECOMMENDATIONS TO THE IWY COMMISSION AND OTHERS, THEY ARE NOT "ADVISORY COMMITTEES" UNDER THE FEDERAL ADVISORY COMMITTEE ACT AND ARE THEREFORE NOT SUBJECT TO ITS "BALANCE" REQUIREMENT WITH REGARD TO MEETING PARTICIPANTS. NOR ARE THE STATE COORDINATING COMMITTEES "ADVISORY" SINCE THEY HAVE ONLY THE OPERATIONAL ROLE OF ORGANIZING AND CONDUCTING THE STATE OR REGIONAL MEETINGS AND ARE, IN EFFECT, GRANTEES OF THE NATIONAL COMMISSION. NATIONAL COMMISSION ON OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR - NATIONAL WOMEN'S CONFERENCE - "BALANCE" REQUIREMENTS OF FEDERAL ADVISORY COMMITTEE ACT THE NATIONAL WOMEN'S CONFERENCE DOES NOT VIOLATE THE "BALANCE" REQUIREMENTS OF THE FEDERAL ADVISORY COMMITTEE ACT SINCE THE COMMISSION REGULATIONS ON ORGANIZATION AND CONDUCT OF STATE MEETINGS, WHERE CONFERENCE DELEGATES ARE SELECTED, AFFORD AN EXTREMELY BROAD BASIS FOR PARTICIPATION AND LEAVES THE DEGREE OF "BALANCE" ESSENTIALLY TO THE PARTICIPANTS THROUGH THE NORMAL DEMOCRATIC PROCESS. THE OBJECTIVE OF BALANCE GOES ONLY TO THE COMPOSITION OF THE VOTING BODIES RATHER THAN SUPPORT OR OPPOSITION ON ANY GIVEN ISSUE.

TO THE HONORABLE JESSE HELMS, UNITED STATES SENATE, NOVEMBER 2, 1977:

THIS IS IN RESPONSE TO YOUR REQUEST THAT WE UNDERTAKE THE AUDIT OF THE NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR, ORIGINALLY REQUESTED IN YOUR LETTER OF JULY 21, 1977. YOUR LETTER ASSERTS THAT THE COMMISSION MAY BE

ENGAGED IN THE "SYSTEMATIC EXCLUSION OF THOUSANDS OF WOMEN WHO ATTEMPT TO PARTICIPATE IN THE COMMISSION'S ACTIVITIES" WHICH WILL LEAD TO A "DISTORTION OF THE COMMISSION'S ADVISORY RESPONSIBILITY WHICH BOTH THWARTS ITS MANDATE AND FEDERAL LAW," PARTICULARLY WITH RESPECT TO ITS ADVOCACY OF THE EQUAL RIGHTS AMENDMENT (ERA).

YOU EXPRESS THE BELIEF THAT OUR DECISION ON THE AUDIT WAS BASED ON A MISINTERPRETATION OF THE FEDERAL ADVISORY COMMITTEE ACT OF 1972 (5 U.S.C. APP. I (1975, SUPP. V)) (FACA). IN A LETTER TO YOU, DATED AUGUST 10, 1977, B-182398, WE CONCLUDED THAT:

NEITHER EXECUTIVE ORDER NO. 11832 (JANUARY 9, 1975), WHICH CREATED THE COMMISSION, NOR PUB. L. NO. 94-167, * * * WHICH CONTINUED AND AUTHORIZED FEDERAL FUNDING FOR THE COMMISSION, SPECIFIED ANY ADVISORY RESPONSIBILITIES FOR THE COMMISSION TO ASSIST THE PRESIDENT OR ANY OTHER FEDERAL OFFICERS OR AGENCIES. ON THE CONTRARY, SECTION 2 OF THE EXECUTIVE ORDER INDICATES THAT THE COMMISSION'S ROLE IS TO PROMOTE ACTIVELY THE NATIONAL OBSERVANCE OF IWY IN THE UNITED STATES AND TO ENCOURAGE APPROPRIATE AND RELEVANT COOPERATIVE ACTIVITY IN THE FIELD OF WOMEN'S RIGHTS AND RESPONSIBILITIES. IN FACT, SUBSECTION (E) SPECIFICALLY PROVIDES THAT THE COMMISSION IS TO BE ADVISED BY GOVERNMENTAL AGENCIES AND ""THEIR PUBLIC ADVISORY COMMITTEES."

WE EXPRESSED THE VIEW THAT THE REQUIREMENT THAT THE COMMISSION SUBMIT A FINAL REPORT TO THE PRESIDENT, CONGRESS AND THE GENERAL PUBLIC AT THE CONCLUSION OF THE NATIONAL CONFERENCE WAS NOT SUFFICIENT, IN THE ABSENCE OF ANY OTHER FUNCTIONS THAT COULD BE DESCRIBED AS "ADVISORY," TO BRING THE COMMISSION WITHIN FACA'S DEFINITION OF "ADVISORY COMMITTEE."

AS YOU REQUESTED, WE HAVE RE-EXAMINED OUR OPINION OF THE APPLICABILITY OF THE FACA IN LIGHT OF CONFLICTING INTERPRETATIONS BY A FEDERAL DISTRICT COURT IN ILLINOIS AND THE JUSTICE DEPARTMENT WHICH WERE NOT CONSIDERED IN OUR FIRST LETTER. WE ALSO HAD NOT PREVIOUSLY EXAMINED THE ROLES OF THE STATE MEETINGS AND THE NATIONAL CONFERENCE TO DETERMINE WHETHER THE FACA IS APPLICABLE TO THESE ENTITIES. OUR ANALYSIS AND CONCLUSIONS ARE SET FORTH BELOW.

I

A FEDERAL DISTRICT COURT RULED IN HALL V. SIEGEL, NO. 77-1028, S.D. ILL., JUNE 8, 1977, A SUIT BROUGHT BY MEMBERS OF THE ILLINOIS GENERAL ASSEMBLY CHALLENGING VARIOUS ACTIVITIES BY THE NATIONAL COMMISSION, THAT:

THERE CAN BE LITTLE DOUBT THAT THE COMMISSION, AND EVERY GROUP ORGANIZED THEREBY OR THEREUNDER, IS AN "ADVISORY COMMITTEE" BY DEFINITION UNDER THE FEDERAL ADVISORY COMMITTEE ACT.

NO FURTHER ANALYSIS WAS PRESENTED TO SUPPORT THIS CONCLUSION EXCEPT FOR A FOOTNOTE INDICATING THAT THE COMMISSION HAD BEEN OPERATING ON THE ASSUMPTION THAT THE STATE MEETINGS AND NATIONAL CONFERENCE ARE SUBJECT TO THE FACA.

IN A LETTER TO THE COMMISSION ON JULY 7, 1976, THE JUSTICE DEPARTMENT EXPRESSED THE OPINION THAT THE COMMISSION WOULD BE COVERED BY THE FACA IF ITS REPORT TO THE PRESIDENT AT THE END OF THE NATIONAL CONFERENCE CONTAINED RECOMMENDATIONS BY THE COMMISSION ITSELF RELATING TO POSSIBLE ACTIONS BY THE PRESIDENT OR BY FEDERAL AGENCIES. WHILE ACKNOWLEDGING THAT PURELY "OPERATIONAL" GROUPS WOULD NOT BE COVERED BY THE ACT AND THAT THE COMMISSION'S FUNCTIONS WERE LARGELY

"OPERATIONAL," THE DEPARTMENT SUGGESTED THE COMMISSION COULD BE COVERED BY THE FACA UNDER SOME CIRCUMSTANCES:

THE QUESTION OF COVERAGE BY THE ADVISORY COMMITTEE ACT DEPENDS, IN PART, UPON THE COMMISSION'S ROLE WITH RESPECT TO THE REPORT ON THE CONFERENCE. THAT IS, IF THE RECOMMENDATIONS OF THE NATIONAL CONFERENCE AND THE COMMISSION'S FUNCTION IS MERELY TO COMPILE THOSE FINDINGS AND RECOMMENDATIONS AND TO ACT AS A CONDUIT FOR THE VIEWS OF THE CONFERENCE THIS WOULD NOT SEEM TO INVOLVE THE RENDERING OF ADVICE BY THE COMMISSION ITSELF. ON THE OTHER HAND, IF THE COMMISSION REVIEWS AND MODIFIES THE CONFERENCE'S RECOMMENDATIONS OR IF THE COMMISSION SUBMITS TO THE PRESIDENT, IN THE REPORT ON THE CONFERENCE OR IN ANOTHER REPORT, RECOMMENDATIONS OF THE COMMISSION FOR ACTION BY THE FEDERAL GOVERNMENT, SUCH ACTION BY THE COMMISSION WOULD SEEM TO BE A SEPARABLE ADVISORY FUNCTION. IT WOULD FOLLOW THAT, TO THE EXTENT THAT THE COMMISSION IS ENGAGED IN THAT FUNCTION, IT IS SUBJECT TO THE ADVISORY COMMITTEE ACT.

AFTER REVIEW OF THE OPINION OF THE COURT IN HALL V. SIEGEL, AND THE JUSTICE DEPARTMENT'S JULY 7, 1976, OPINION, WE ADHERE TO OUR ORIGINAL POSITION THAT THE NATIONAL COMMISSION IS NOT AN "ADVISORY COMMITTEE" SUBJECT TO THE FACA.

SECTION 3(2) OF THE FACA DEFINES THE TERM "ADVISORY COMMITTEE," IN RELEVANT PART, AS FOLLOWS:

* * * ANY COMMITTEE, BOARD, COMMISSION, COUNCIL, CONFERENCE, PANEL, TASK FORCE, OR OTHER SIMILAR GROUP, OR ANY OTHER SUBCOMMITTEE OR OTHER SUBGROUP THEREOF (HEREAFTER IN THIS PARAGRAPH REFERRED TO AS "COMMITTEE"), WHICH IS:

(A) ESTABLISHED BY STATUTE OR REORGANIZATION PLAN, OR

(B) ESTABLISHED OR UTILIZED BY THE PRESIDENT, OR

(C) ESTABLISHED OR UTILIZED BY ONE OR MORE AGENCIES, IN THE INTEREST OF OBTAINING ADVICE OR RECOMMENDATIONS FOR THE PRESIDENT OR ONE OR MORE AGENCIES OR OFFICERS OF THE FEDERAL GOVERNMENT * * *.

AS NOTED IN OUR AUGUST 10 LETTER TO YOU (AND ALSO RECOGNIZED IN THE JUSTICE DEPARTMENT'S JULY 7 OPINION), THERE IS NOTHING IN EXECUTIVE ORDER 11832 OR PUBLIC LAW 94-167 WHICH ASSIGNS THE COMMISSION ANY ADVISORY FUNCTIONS. THUS THERE IS NO BASIS TO CONCLUDE THAT THE COMMISSION WAS "ESTABLISHED" TO MAKE RECOMMENDATIONS FOR THE PRESIDENT, OR FEDERAL AGENCIES OR OFFICERS. MOREOVER, THERE IS NO INDICATION OF WHICH WE ARE AWARE THAT THE PRESIDENT OR ANY FEDERAL OFFICER OR AGENCY HAS SOUGHT TO "UTILIZE" THE COMMISSION FOR THE PURPOSE OF OBTAINING RECOMMENDATIONS.

IN OUR VIEW, THE ONLY CONCEIVABLE BASIS UPON WHICH THE COMMISSION MIGHT BE REGARDED AS AN ADVISORY COMMITTEE IS THE RATIONALE SET FORTH IN THE JUSTICE DEPARTMENT'S JULY 7 OPINION; I.E., THAT IF THE COMMISSION DECIDES TO MAKE ITS OWN RECOMMENDATIONS IN THE REPORT SUBMITTED TO THE PRESIDENT AND CONGRESS, IT WOULD AT THAT POINT BECOME AN ADVISORY COMMITTEE. CANNOT, HOWEVER, ACCEPT THE JUSTICE DEPARTMENT RATIONALE IN THIS REGARD.

FIRST, WE QUESTION WHETHER A DECISION BY THE COMMISSION ON ITS OWN INITIATIVE TO OFFER RECOMMENDATIONS WOULD BE SUFFICIENT TO INVOKE THE FACA. WHILE THERE IS NOTHING TO PREVENT THE COMMISSION FROM MAKING ITS OWN RECOMMENDATIONS, SUCH ACTION ON ITS PART WOULD NOT ALTER THE FACT THAT THE COMMISSION WAS NOT

"ESTABLISHED" OR "UTILIZED" FOR THIS PURPOSE. SECOND, UNDER THE JUSTICE DEPARTMENT APPROACH IT APPEARS THAT THE COMMISSION WOULD ONLY BECOME AN "ADVISORY COMMITTEE" ONCE IT HAD COMPLETED ITS REPORT. TREATING THE COMMISSION AS AN ADVISORY COMMITTEE AT THAT POINT IN TIME WOULD NOT SEEM TO PRODUCE ANY MEANINGFUL CONSEQUENCES IN TERMS OF THE FACA REQUIREMENTS FOR OPEN MEETINGS, ETC.

IN ANY EVENT, AT LEAST FOR THE PRESENT, THERE IS NO INDICATION THAT THE COMMISSION HAS DETERMINED TO MAKE ITS OWN RECOMMENDATIONS IN THE REPORT. THUS, EVEN IF THE JUSTICE DEPARTMENT RATIONALE IS APPLIED, THE COMMISSION WAS NOT AN ADVISORY COMMITTEE FOR PURPOSES OF THE ACTIVITIES IN QUESTION.

II

WE NEXT CONSIDER THE APPLICABILITY OF THE FACA TO THE OTHER ENTITIES ESTABLISHED PURSUANT TO PUBLIC LAW 94-167-- SPECIFICALLY, THE NATIONAL WOMEN'S CONFERENCE, THE STATE COORDINATING COMMITTEES, AND THE STATE OR REGIONAL MEETINGS-- SINCE THE STATUS OF THESE ENTITIES WAS NOT ADDRESSED IN OUR AUGUST 10 LETTER TO YOU. INITIALLY, IT IS USEFUL TO SUMMARIZE THE BASIC NATURE OF THESE ENTITIES AS PROVIDED FOR IN PUBLIC LAW 94-167.

THE NATIONAL COMMISSION IS REQUIRED TO ORGANIZE AND CONVENE A NATIONAL CONFERENCE TO BE KNOWN AS THE "NATIONAL WOMEN'S CONFERENCE." PUBLIC LAW 94-167, SEC. 2(A). THE NATIONAL WOMEN'S CONFERENCE WILL MAKE FINDINGS AND RECOMMENDATIONS ON VARIOUS SUBJECTS, AND ITS FINDINGS AND RECOMMENDATIONS ARE TO BE SUBMITTED, THROUGH THE COMMISSION'S REPORT, TO THE PRESIDENT AND THE CONGRESS. ID., SECS. 3(B), 7. STATE OR REGIONAL MEETINGS ARE TO BE HELD FOR THE PURPOSE OF SELECTING REPRESENTATIVES TO THE NATIONAL WOMEN'S CONFERENCE. ID., SEC. 6. IN ADDITION, IT APPEARS THAT A NUMBER OF THE STATE OR REGIONAL MEETINGS HAVE DEVELOPED THEIR OWN FINDINGS AND RECOMMENDATIONS FOR CONSIDERATION BY THE NATIONAL CONFERENCE. CF., PUBLIC LAW 94-167, SEC. 6(B). FINALLY, THE NATIONAL COMMISSION IS ASSIGNED THE FUNCTION OF APPOINTING COORDINATING COMMITTEES TO ORGANIZE AND CONDUCT THE STATE OR REGIONAL MEETINGS. ID., SEC. 4.

AS NOTED PREVIOUSLY, THE COURT IN HALL V. SIEGEL CONCLUDED THAT EVERY GROUP ORGANIZED BY OR UNDER THE NATIONAL COMMISSION IS AN ADVISORY COMMITTEE WITHIN THE SCOPE OF THE FACA. THE COURT CLEARLY MEANT TO INCLUDE THE NATIONAL WOMEN'S CONFERENCE AND THE STATE OR REGIONAL MEETINGS. IT IS NOT CLEAR WHETHER THE COURT MEANT TO INCLUDE THE STATE COORDINATING COMMITTEES APPOINTED BY THE COMMISSION.

THE DEPARTMENT OF JUSTICE, IN ITS OPINION OF JULY 7, 1977, REFERRED TO ABOVE, AND IN A SUBSEQUENT OPINION DATED JULY 18, 1977, ALSO CONCLUDED THAT THE NATIONAL WOMEN'S CONFERENCE AND THE STATE OR REGIONAL MEETINGS ARE ADVISORY COMMITTEES SUBJECT TO THE FACA. THE JUSTICE DEPARTMENT REASONED THAT THE NATIONAL WOMEN'S CONFERENCE IS AN ADVISORY COMMITTEE BECAUSE ONE OF ITS BASIC PURPOSES IS TO SUBMIT RECOMMENDATIONS, WHICH ARE LIKELY TO "PERTAIN TO POSSIBLE ACTION BY THE PRESIDENT OR BY FEDERAL AGENCIES."

THE STATE OR REGIONAL MEETINGS WERE CONSIDERED BY THE JUSTICE DEPARTMENT TO BE ADVISORY COMMITTEES ON TWO GROUNDS. FIRST, THE JULY 7, 1976, OPINION CONCLUDES THAT THESE MEETINGS ARE "SUBGROUPS" OF THE NATIONAL WOMEN'S CONFERENCE. SECOND, THE JULY 18, 1977, OPINION POINTS OUT THAT THE STATE OR REGIONAL MEETINGS SUBMIT REPORTS CONTAINING RECOMMENDATIONS TO THE NATIONAL COMMISSION. UNDER THE THEORY THAT THE COMMISSION IS ITSELF A FEDERAL "AGENCY," THE STATE OR REGIONAL MEETINGS ARE REGARDED AS ADVISORY COMMITTEES TO THIS "AGENCY." THERE IS NO INDICATION IN

EITHER OPINION THAT THE JUSTICE DEPARTMENT CONSIDERS THE STATE COORDINATING COMMITTEES TO BE ADVISORY COMMITTEES UNDER THE FACA.

THE OFFICE OF MANAGEMENT AND BUDGET (OMB), WHICH IS THE AGENCY CHARGED WITH THE RESPONSIBILITY OF ADMINISTERING THE FACA, HAD TAKEN THE POSITION THAT THE COMMISSION AND THE STATE OR REGIONAL MEETINGS WERE NOT ADVISORY COMMITTEES WITHIN THE MEANING OF THE ACT BECAUSE OF THEIR "OPERATIONAL" FUNCTIONS. WE HAVE BEEN INFORMALLY ADVISED BY THE OFFICE OF GENERAL COUNSEL, OMB, AND THE OMB COMMITTEE MANAGEMENT SECRETARIAT THAT, IN VIEW OF THE JUSTICE DEPARTMENT OPINIONS, THEY ARE NOW RECONSIDERING THE QUESTION AS TO WHETHER THE COMMISSION AND THE STATE OR REGIONAL MEETINGS ARE COVERED BY THE FACA. HOWEVER, OMB HAS NEVER INCLUDED THE COMMISSION OR ANY OF THE STATE OR REGIONAL MEETINGS IN ITS OFFICIAL LISTING OF ADVISORY COMMITTEES.

WE AGREE THAT THE NATIONAL WOMEN'S CONFERENCE IS AN ADVISORY COMMITTEE, SUBJECT TO THE FACA BASED ON THE ADVISORY FUNCTIONS SPECIFIED IN ITS STATUTORY MANDATE. HOWEVER, THE STATE AND REGIONAL MEETINGS HAVE AN ENTIRELY DIFFERENT FUNCTION. SECTION 6(A) OF PUBLIC LAW 94-167 SAYS NOTHING ABOUT RECOMMENDING POLICIES OR ACTIONS TO THE CONGRESS, THE PRESIDENT, THE NATIONAL COMMISSION, OR ANY OTHER FEDERAL AGENCY, NOR IS THERE ANY EVIDENCE THAT ANY "AGENCY OR OFFICERS) OF THE FEDERAL GOVERNMENT" HAS SOUGHT SUCH RECOMMENDATIONS. SEE THE DEFINITION OF "ADVISORY COMMITTEE" IN SECTION 3(2) OF THE FACA, QUOTED SUPRA. THE PRIMARY STATUTORY PURPOSE OF THE STATE AND REGIONAL MEETINGS IS TO "SELECT REPRESENTATIVES TO THE CONFERENCE." AS WE STATED ABOVE, IN CONSIDERING THE ADVISORY STATUS OF THE COMMISSION, "WHILE THERE IS NOTHING TO PREVENT THE COMMISSION FROM MAKING ITS OWN RECOMMENDATIONS, SUCH ACTION ON ITS PART WOULD NOT ALTER THE FACT THAT THE COMMISSION WAS NOT 'ESTABLISHED' OR 'UTILIZED' FOR THIS PURPOSE." SIMILARLY, THE FACT THAT SOME OF THE STATE AND REGIONAL MEETINGS CHOSE TO MAKE SUBSTANTIVE RECOMMENDATIONS TO THE COMMISSION, IN ADDITION TO ELECTING DELEGATES, DOES NOT MAKE THEM ADVISORY COMMITTEES UNDER THE FACA. THEY WERE NOT CREATED TO GIVE ADVICE TO A FEDERAL AGENCY OR OFFICER, NOR IS THERE ANY REQUIREMENT THAT THE NATIONAL WOMEN'S CONFERENCE INCLUDE ANY RECOMMENDATIONS THAT THE STATE AND REGIONAL GROUPS MAY SEND IT IN ITS OWN REPORT TO THE CONGRESS AND THE PRESIDENT, THROUGH THE COMMISSION.

THE DEPARTMENT OF JUSTICE OPINION OFFERS AN ALTERNATIVE THEORY FOR CONSIDERING THE STATE AND REGIONAL MEETINGS AS ADVISORY COMMITTEES. ARGUES THAT THE MEETINGS CONSTITUTE SUBCOMMITTEES OR SUB-GROUPS OF A PARENT ADVISORY COMMITTEE-- THE NATIONAL WOMEN'S CONFERENCE-- AND THEREFORE FIT THE DEFINITION IN SECTION 3(2) OF THE FACA. WE BELIEVE THIS INTERPRETATION STRETCHES THE LANGUAGE OF THE SECTION UNDULY. AS NOTED, THE STATUTE REFERS TO A "SUBCOMMITTEE OR OTHER SUB-GROUP THEREOF." THE ORDINARY USAGE OF THOSE WORDS CONNOTES A SMALLER SUBORDINATE BODY WHICH IS PART OF A LARGER COMMITTEE, CONFERENCE, ETC. IN THE INSTANT CASE, THE PARENT CONFERENCE DOES NOT EVEN EXIST UNTIL THE STATE AND REGIONAL MEETINGS COMPLETE THEIR TASK OF ELECTING DELEGATES. THEY ARE, OF COURSE, MUCH LARGER THAN THE PARENT BODY, WITH A VERY DIFFERENT MEMBERSHIP (THE CONFERENCE DELEGATES MAY OR MAY NOT HAVE ATTENDED THE STATE OR REGIONAL MEETINGS AT WHICH THEY WERE ELECTED), AND THEIR FUNCTIONS ARE NOT ONES DELEGATED BY THE PARENT GROUP WHICH, AGAIN, HAD NOT YET BEEN FORMED AT THE TIME THE STATE AND REGIONAL BODIES WERE MEETING. IN OTHER WORDS, WE DO NOT BELIEVE THAT THE FACA EVER CONTEMPLATED INCLUSION OF THE KINDS OF GROUPS IN QUESTION. THEREFORE, THE "BALANCE" REQUIREMENT OF THE FACA IS NOT RELEVANT IN CONSIDERING THE COMPOSITION OF THE WOMEN ATTENDING AND VOTING IN THE STATE AND REGIONAL MEETINGS, ALTHOUGH THE MATERIALS SUBMITTED PRODUCED NO EVIDENCE THAT THE COMMISSION OR THE COORDINATING COMMITTEE EXCLUDED ANY GROUP OR CLASS OF WOMEN FROM PARTICIPATING.

FINALLY, WE PERCEIVE NO BASIS ON WHICH TO CONCLUDE THAT THE STATE COORDINATING COMMITTEES ARE ADVISORY COMMITTEES SUBJECT TO THE FACA. THESE COMMITTEES HAVE ONLY THE OPERATIONAL ROLE OF ORGANIZING AND CONDUCTING THE STATE OR REGIONAL MEETINGS. THEY ARE, IN EFFECT, GRANTEES OF THE NATIONAL COMMISSION, ESTABLISHED TO CARRY OUT THE COMMISSION'S STATUTORY DUTY TO HOLD SUCH MEETINGS.

III

WHILE WE AGREE THAT THE NATIONAL WOMEN'S CONFERENCE IS SUBJECT TO THE FACA FOR THE REASONS STATED ABOVE, THE QUESTION REMAINS WHETHER ITS COMPOSITION VIOLATES THE FACA "BALANCE" REQUIREMENT. WE DO NOT BELIEVE THAT THIS IS THE CASE.

SECTION 5(B)(2) OF THE FACA PROVIDES THAT ANY LEGISLATION ESTABLISHING OR AUTHORIZING THE ESTABLISHMENT OF AN ADVISORY COMMITTEE SHALL:

* * * REQUIRE THE MEMBERSHIP OF THE ADVISORY COMMITTEE TO BE FAIRLY BALANCED IN TERMS OF THE POINTS OF VIEW REPRESENTED AND THE FUNCTIONS TO BE PERFORMED BY THE ADVISORY COMMITTEE * * *.

THE FUNDAMENTAL POINT TO BE MADE HERE IS THAT THE "MEMBERSHIP" OF THE NATIONAL WOMEN'S CONFERENCE IS ESSENTIALLY OPEN-ENDED. UNDER SECTION 3(A) OF PUBLIC LAW 94-167, THE NATIONAL WOMEN'S CONFERENCE IS TO BE COMPOSED OF:

(1) REPRESENTATIVES OF LOCAL, STATE, REGIONAL, AND NATIONAL INSTITUTIONS, AGENCIES, ORGANIZATIONS, UNIONS, ASSOCIATIONS, PUBLICATIONS, AND OTHER GROUPS WHICH WORK TO ADVANCE THE RIGHTS OF WOMEN; AND

(2) MEMBERS OF THE GENERAL PUBLIC, WITH SPECIAL EMPHASIS ON THE REPRESENTATION OF LOW-INCOME WOMEN, MEMBERS OF DIVERSE RACIAL, ETHNIC, AND RELIGIOUS GROUPS, AND WOMEN OF ALL AGES.

THE "MEMBERS" OF (I.E., REPRESENTATIVES TO) THE NATIONAL WOMEN'S CONFERENCE ARE SELECTED BY THE STATE OR REGIONAL MEETINGS "IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSION AND CONSISTENT WITH THE CRITERIA SET FORTH IN SECTION 3(A)" OF THE ACT. ID., SEC. 6(C)(1). /1/

THE COMMISSION HAS PROMULGATED REGULATIONS TO GOVERN THE ORGANIZATION AND CONDUCT OF STATE OR REGIONAL MEETINGS. 45 C.F.R.PART 1904, 42 FED.REG. 11012 ET SEQ. (FEBRUARY 25, 1977). SECTION 1904.14 OF THE COMMISSION'S REGULATIONS STATES THAT THE MEETINGS SHALL SELECT REPRESENTATIVES TO THE NATIONAL WOMEN'S CONFERENCE "ON THE PRINCIPLE OF BALANCED REPRESENTATION AS SET FORTH IN PUBLIC LAW 94-167, SEC. 3(A)(1) AND (2) * * *." MOREOVER, SECTION 1904.7(A) OF THE COMMISSION'S REGULATIONS PROVIDES:

THE VOTING BODY OF THE MEETING SHALL CONSIST OF: (1) MEMBERS OF THE COORDINATING COMMITTEE; (2) BONA FIDA RESIDENTS AGED 16 OR OVER OF THE STATE WHO HAVE BEEN REGISTERED UPON ACCEPTABLE PROOF OF RESIDENCE, AND (3) PERSONS, AGED 16 OR OVER, WHO ARE ENROLLED IN EDUCATIONAL INSTITUTIONS IN THE STATE AND ARE DULY REGISTERED AT THE MEETING.

THUS THE MEMBERSHIP OF THE NATIONAL WOMEN'S CONFERENCE IS OPEN TO ANY PERSONS WHO QUALIFY UNDER THE REQUIREMENTS SET FORTH IN THE STATUTORY AND REGULATORY PROVISIONS QUOTED ABOVE. CERTAINLY THESE REQUIREMENTS DO NOT RESTRICT THE BALANCE OF THE MEMBERSHIP, BUT AFFORD AN EXTREMELY BROAD BASE FOR PARTICIPATION. IN FACT, THE NECESSARY PRACTICAL RESULT OF THESE PROVISIONS AND REQUIREMENTS IS

TO LEAVE THE DEGREE OF "BALANCE" ESSENTIALLY TO THE PARTICIPANTS IN THE STATE AND REGIONAL MEETINGS THEMSELVES THROUGH THE NORMAL DEMOCRATIC PROCESS. WHILE THE VOTING RESULTS OF THE NATIONAL WOMEN'S CONFERENCE MAY BE OVERWHELMING IN TERMS OF SUPPORT OR OPPOSITION ON ANY GIVEN ISSUE, THE RESULTS OF VOTES TAKEN ARE IN NO WAY DISPOSITIVE (OR EVEN DIRECTLY RELEVANT) TO THE QUESTION OF BALANCE. RATHER, THE OBJECTIVE OF BALANCE GOES ONLY TO THE COMPOSITION OF THE VOTING BODIES. THE STATUTORY AND REGULATORY PROVISIONS DISCUSSED ABOVE SEEM ENTIRELY SATISFACTORY TO FULFILL THIS OBJECTIVE.

IV

WE HAVE ALSO EXAMINED THE COMPILATION OF EXCERPTED TESTIMONY FROM AD HOC HEARINGS YOU SPONSORED ON SEPTEMBER 14 AND 15, WHICH YOU SENT US WITH YOUR LETTER OF SEPTEMBER 27, 1977. EVEN IF THESE CHARGES WERE ACCEPTED AS TRUE, WE CAN FIND NO VIOLATIONS OF FEDERAL LAW WITHIN OUR JURISDICTION. FOR EXAMPLE, ALLEGATIONS CONCERNING "PORNOGRAPHIC ENTERTAINMENT" IN VIOLATION OF VARIOUS STATE LAWS SHOULD BE REFERRED TO THE APPROPRIATE STATE PROSECUTORS. ALLEGED INFRINGEMENT OF FIRST AMENDMENT RIGHTS BY "ANTI-RELIGION WORKSHOPS" MIGHT BETTER BE REFERRED TO THE JUSTICE DEPARTMENT. ALLEGATIONS CONCERNING FRAUDULENT ELECTION OF CONFERENCE DELEGATES SHOULD FIRST BE REFERRED TO THE NATIONAL COMMISSION WHICH, UNDER SECTION 6(C) OF PUBLIC LAW 94-167, HAS THE POWER TO OVERSEE SELECTION OF SUCH DELEGATES. ALLEGATIONS CONCERNING THE FAILURE OF STATE MEETINGS TO PROPERLY USE OR ADEQUATELY ACCOUNT FOR FUNDS SHOULD ALSO FIRST BE REFERRED TO THE COMMISSION, WHICH HAS AUTHORITY UNDER SECTION 1902.16 OF ITS REGULATIONS, SUPRA, TO DISALLOW ANY EXPENDITURES MADE BY COORDINATING COMMITTEES WHICH DO NOT COMPLY WITH COMMISSION REGULATIONS. ALL FEDERAL GRANT FUNDS ARE DISTRIBUTED THROUGH THE COORDINATING COMMITTEES WHICH ARE REQUIRED TO KEEP COMPLETE AND PUBLIC RECORDS OF THESE EXPENDITURES. SEE SECTION 1902.12 OF THE REGULATIONS. ALSO, WE NOTE THAT, UNDER SECTION 1903.6 OF THE REGULATIONS (AND SUBJECT TO OTHER PROVISIONS THEREOF), THE COORDINATING COMMITTEES ARE AUTHORIZED TO OTHER PROVISIONS THEREOF), THE COORDINATING COMMITTEES ARE AUTHORIZED TO RECEIVE AND USE PRIVATE CONTRIBUTIONS. WE ARE AWARE OF NOTHING TO PREVENT THE COORDINATING COMMITTEES FROM CHARGING REASONABLE REGISTRATION FEES FOR THE STATE OR REGIONAL MEETINGS.

V

IN VIEW OF THE FOREGOING, WE DO NOT FEEL THAT FURTHER AUDIT ACTIVITIES BY OUR OFFICE WOULD BE PRODUCTIVE. AS YOU POINT OUT, OUR ORIGINAL DECISION WAS BASED IN PART ON THE ABSENCE OF EVIDENCE INDICATING VIOLATIONS OF LAW (EITHER THE ANTI-LOBBYING RESTRICTION OR THE FACA). AS WE EXPLAIN ABOVE, WE ARE STILL OF THIS VIEW. HOWEVER, EVEN APART FROM THE LEGAL CONSIDERATIONS, WE SINCERELY BELIEVE THAT THERE IS LITTLE A GAO AUDIT COULD DO TO RESOLVE THE TYPES OF ALLEGATIONS WHICH HAVE BEEN RAISED.

THE ALLEGATIONS ARISE IN THE CONTEXT OF HIGHLY CONTROVERSIAL AND EMOTIONAL ISSUES, WITH VERY ACTIVE ADVOCATES ON EACH SIDE MAKING EVERY EFFORT TO "GET OUT THE VOTE." MOREOVER, THE ESSENTIAL STRUCTURE OF THE NATIONAL CONFERENCE, AND THE ANTECEDENT STATE AND LOCAL MEETINGS, IS TO LET THE MAJORITY WORK ITS WILL THROUGH THE DEMOCRATIC PROCESS. IN SUM, GIVEN THIS CONTEXT, WE BELIEVE THAT THE ALLEGATIONS RAISED ARE ALMOST INEVITABLE, AND WE FAIL TO SEE HOW GAO COULD SHED ANY LIGHT ON THEM OR PROVIDE ANY USEFUL RECOMMENDATIONS.

/1/ SECTION 4(5) OF PUBLIC LAW 94-167 REQUIRES THE COMMISSION TO "DESIGNATE SUCH ADDITIONAL REPRESENTATIVES TO THE CONFERENCE AS MAY BE NECESSARY AND APPROPRIATE

TO FULFILL THE GOALS SET FORTH IN SECTION 3(B) OF THIS ACT * * *." WHILE THE INTENT OF THIS PROVISION IS UNCLEAR, WE ASSUME THAT THE CHOICE OF REPRESENTATIVES TO THE CONFERENCE WILL FOR THE MOST PART BE LEFT TO THE STATE OR REGIONAL MEETINGS.