

State of Rhode Island

Before the Rhode Island Board of Elections

In Re: Citizens for Representative Government,
Edward O'Brien, ACLU of Rhode Island,
Common Cause of Rhode Island, H. Philip West, Jr.,
NEA/RI and Guy Dufault

January 5, 2005

Board of Elections
50 Branch Avenue
Providence, RI 02904

COMPLAINT

Dear Board of Election members:

The undersigned complainant files this complaint in the public interest and requests that the Rhode Island Board of Elections conduct an investigation for the purpose of determining whether Citizens for Representative Government, an organization which expended funds for advocacy purposes regarding ballot question two in the November 2004 election, and Edward O'Brien, acting as Chairman and Treasurer of Citizens for Representative Government and ACLU of Rhode Island, Common Cause of Rhode Island, H. Philip West, Jr., NEA/RI, and Guy Dufault have violated Campaign Contributions and Expenditures Reporting Law.

1. An article in the Providence Journal (Exhibit I) "Coalition urges voters to oppose a Convention," October 19, 2004 lists the following groups of "Citizens for Representative Government" at a press conference October 18:
 2. American Association of University Women, RI
 3. Common Cause of Rhode Island
 4. National Association of Social Workers, RI Chapter
 5. NEA/RI
 6. Ocean State Action
 7. Planned Parenthood of RI
 8. Poverty Institute at RIC
 9. RI ACORN
 10. RI affiliate, American Civil Liberties Union
 11. RI Affirmative Action Coalition
 12. RI AFL-CIO
 13. RI Alliance for Lesbian and Gay Civil Rights
 14. RI Civil Rights Roundtable
 15. RI Commission for Human Rights
 16. RI Federation of Teachers and Health Professionals
 17. RI Jobs with Justice
 18. RI Ministers Alliance

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19. RI Latino Political Action Committee
20. 2 to 1: The Coalition to Preserve Choice
21. Urban League of RI
22. Women's Health and Education Fund
23. Working Rhode Island

Part of the article read:

The coalition members, calling themselves the "Citizens for Representative Government," stood before a sign that urged people to "Reject 2; Costs \$2 million; And could do more harm than good."

A preparatory commission that studied what issues could be addressed at a Convention had estimated the price tag of a Convention could be \$2 million or more, depending on how the Assembly decides to structure and staff it.

Steven Brown, director of the Rhode Island Affiliate of the American Civil Liberties Union, said the costs were not limited to the Convention itself, but should include the campaigns that would be run by people hoping to secure the 75 delegate seats, one for each House district. Another speaker added on the price tag for interest groups' lobbying efforts for and against any proposed amendments.

Brown said the last Convention showed such bodies pose a "significant danger to civil rights." For example, he noted, the last Convention changed the rules regarding when convicted felons become eligible again to vote.

He said the Constitution is "not some student's 10th-grade essay that every few years we get together and edit it to try to make it look a little better." Brown also expressed concern that delegates, who do not have to stand for reelection, are less accountable for their actions than lawmakers.

H. Philip West Jr., executive director of Common Cause of Rhode Island, said a Convention serves as a way out for citizens when the Assembly refuses to pass a bill to put an important amendment before voters.

"The question is whether people need that safety valve right now," he said.

West maintains the better route to change is through the legislature, where proposals can be publicly debated and refined before passage.

2. The ACLU website lists the following groups in "Citizens for Representative Government" (Exhibit II).

1. American Assn. of University Women/RI
2. Common Cause of RI
3. Hotel Employees & Restaurant Employees, Local #217
4. National Assn. of Social Workers/RI Chapter

5. NEARI
6. Ocean state Action
7. Planned Parenthood of RI
8. Poverty Institute
9. RI ACORN
10. RI Affiliate, American Civil Liberties Union
11. RI Affirmative Action Coalition
12. RI AFL/CIO
13. RI Alliance for Lesbian and Gay Civil Rights
14. RI Civil Rights Round Table
15. RI Commission for Human Rights
16. RI Federation of Teachers and Health Professionals
17. RI Jobs with Justice
18. RI Ministers' Alliance
19. RI Latino Political Action Committee
20. RI Now
21. 2 to 1: The Coalition to Preserve Choice
22. Urban League of RI
23. URI Chapter/American Association of University Professors
24. Women's Health and Education Fund
25. Working Rhode Island

The ACLU webpage www.riaclu.org states, "In a victory for civil liberties, voters on November 2 rejected Question 2, the call for a Constitutional Convention. The ACLU had joined with other Rhode Island organizations in opposing the convention, citing potential dangers to fundamental civil rights." (Exhibit III)

3. The December 2004 Common Cause Rhode Island Report (a newsletter) tells of their participation with fourteen (14) other groups in "Citizens for Representative Government" advocating against Question 2 on the ballot this past November. (Exhibit IV) It states "Common Cause and its coalition partners urged voters to REJECT the call for a Constitutional Convention." Groups in the Coalition were listed as:

1. American Association of University Women (AAUW)
2. American Civil Liberties Union (ACLU)
3. Common Cause of RI (CCRI)
4. National Association of Social Workers (NASWRI)
5. National Education Association (NEARI)
6. Ocean state Action (OSA)
7. Planned Parenthood/RI
8. RI Affirmative Action Coalition
9. RI Alliance for Lesbian and Gay Civil Rights
10. RI Civil Rights Round Table
11. RI Commission for Human Rights
12. RI Jobs with Justice
13. RI American Federation of Teachers (RIAFT)
14. The Poverty Institute

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15. Urban League of RI (ULRI)

4. A flyer (Exhibit V) expressed particular support for Ballot Question One regarding separation of powers issue and particular opposition to Ballot Question Two regarding the Constitutional Convention. It sets forth the positions of these "citizen groups" in paragraph form under the heading: "Question 1 is RIGHT. Question 2 is WRONG. Citizen groups urge a 'No' vote on Question 2." This flyer was available at the Common Cause Annual Meeting on October 12, 2004.

In the final paragraph of this flyer, the following is specifically stated:

In short, the risk posed by a Constitutional Convention is great but the benefits are few. Question 1/Separation of Powers represents a huge, historic change for the better in Rhode Island State Government. Common Cause believes that Question 2/Constitutional Convention would be a costly exercise that would distract from the work of implementing Separation of Powers.

Thereafter, the following list of organizations is listed as "Coalition urging a 'No' vote on Question 2":

ACLU/RI
Common Cause/RI
National Association of Social Workers/RI
NEA/RI
Ocean State Action
Planned Parenthood/RI
RI Affirmative Action Coalition
RI Alliance for Lesbian and Gay Civil Rights
RI Civil Rights Round Table
RI Commission for Human Rights
RI Jobs with Justice
RI/AFT
The Poverty Institute
Urban League of RI

5. The ACLU produced a green tri-fold handbill (Exhibit VI), with their postal indicia, in opposition to Question Two regarding the Constitutional Convention, stating, "vote 'No' on Question 2 – Reject 2 – Constitutional Convention. Costs \$2 million. And could do more harm than good." This handbill was also available at public forums.

The inside portion of this tri-fold handbill sets forth the particular arguments that the ACLU offers to reject the Constitutional Convention. This handbill specifically lists the following twenty-two (22) groups in opposition to Question 2:

1. American Assn. of University Women/RI
2. Common Cause of RI

3. National Assn. of Social Workers/RI Chapter
 4. NEA/RI
 5. Ocean state Action
 6. Planned Parenthood of RI
 7. Poverty Institute
 8. RI ACORN
 9. RI Affiliate, American Civil Liberties Union
 10. RI Affirmative Action Coalition
 11. RI AFL/CIO
 12. RI Alliance for Lesbian and Gay Civil Rights
 13. RI Civil Rights Round Table
 14. RI Commission for Human Rights
 15. RI Federation of Teachers and Health Professionals
 16. RI Jobs with Justice
 17. RI Ministers' Alliance
 18. RI Latino Political Action Committee
 19. 2 to 1: The Coalition to Preserve Choice
 20. Urban League of RI
 21. Women's Health and Education Fund
 22. Working Rhode Island
6. On November 4, 2004, Citizens for Representative Government filed with the Board of Elections a Board-generated form, "Notice of Organization" (CF-1), and failed to designate itself as one of the four (4) choices printed on the Notice which include the following: candidate or officeholder, political party committee, political action committee (PAC) or corporation supporting or opposing a ballot question (these last two designations require that the back of this form be completed). (Exhibit VII)

Citizens for Representative Government created an unauthorized category by drawing in a box, checking it off, and handwriting the words "non PAC coalition."

The address listed for this unauthorized category, "non PAC coalition", 9 Court House Lane, E.G., RI 02818, with the telephone number 952-7464 and no email address. The Chairman/Treasurer is designated as Edward O'Brien, who signed as such under oath on October 28, 2004.

The campaign account depository is listed as Citizens Bank, with a checking account as the type of the account.

Edward O'Brien signed an Affidavit with the title of "Chairman, Treasurer", on October 28, 2004 as the party responsible for all reporting requirements in the section of this Notice which requests "additional information required from PAC or corporation", although this section also contains a handwritten statement that purports to designate Citizens for Representative Government in an unauthorized category, "a coalition not a PAC". This section also states that Citizens for Representative Government intends to advocate for the rejection of "No. 2".

The response "no" is checked on this Notice to the following statement: "The membership and/or contributor base of the Political Action Committee is derived from the employees of one corporation or business entity or from one business or professional group or association or labor union."

7. On November 4, 2004, Edward O'Brien, on behalf of Citizens for Representative Government, filed with the Board of Elections a "Schedule of Independent Expenditures" (CF-8), a Board-generated form which clearly states as follows: "Persons Not Acting in Concert with Others". (Exhibit VIII) This Schedule CF-8 is certified under oath by signatory, Edward O'Brien, designated as Chair. Below is set forth the information provided on this Schedule, as filed:

Expenditures made by Citizens for Representative Government on Ballot Question No. 2 regarding a constitutional convention, in opposition thereto are set forth below:

Date	Amount	Paid To	Purpose
10-28-04	\$1750.00	Global Marketing	phone calling
10-28-04	\$9986.00	Cox Communications	cable TV ads
10-28-04	\$4876.00	Citadel Communications	radio ads
10-28-04	\$4997.00	Clear Channel	radio ads
11-1-04	\$1175.40	Signs by Tomorrow	signs

8. On November 4, 2004, Edward O'Brien, on behalf of Citizens for Representative Government, filed with the Board of Elections a "Schedule of Contributions Received" (CF-3). (Exhibit IX) This document does not contain a date stamp demonstrating when it was filed with the Board of Elections. It does appear on the Board of Elections' website as part of the filing on November 4, 2004. It is designated as a two (2) page document with total contributions listed as \$26,000. Below is set forth the information provided on this Schedule, as filed:

Contributor	Amount	Receipt Date	Deposit Date
RIFTHP (listed as PAC/political party committee name)	\$7500	10-28-04	10-28-04
NEA RI (listed as PAC/political party committee name)	\$7500	10-28-04	10-28-04
ACLU Rhode Island (listed as PAC/political party committee name)	\$2500	10-28-04	10-28-04
Ocean State Action	\$1500	no date listed	no date listed

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RI AFL-CIO	\$4000	no date listed	no date listed
Working RI	\$3000	no date listed	no date listed

9. Many people reported receiving phone messages against Question No. 2. One set of messages was from Common Cause with Phil West's voice and the other set was from NEA/RI. The NEA/RI calls mentioned Phil West and Common Cause as being against Question No. 2.
10. An article from the *Pawtucket Times*, "Clean Government fingers fellow reformers", dated November 5, 2004, (Exhibit X), states as follows:

After a news story appeared in Thursday's Times pointing out that Citizens for Representative Government, the coalition formed to oppose Question 2 on last Tuesday's ballot -- a referendum to call a constitutional convention -- had not filed any reports with the state Board of Elections, the group filed a Notice of Organization and a Schedule of Independent Expenditures with the elections board. It provided no information on where any of the \$22,804.40 that it spent came from.

At the top of the Notice of Organization form there are four categories by which a group is supposed to define itself: a candidate or officeholder; a political party committee; a political action committee (PAC) or a corporation supporting or opposing a ballot question. Each category has a box to check that corresponds with the group filing.

Citizens for Representative Government, in a form filed by Edward O'Brien, drew a fifth box with an "x" in it and the handwritten description "non-PAC coalition."

"They've got themselves a big problem," Arruda told The Times. "The law is absolutely clear. Advocates for or opposed to a ballot question must form a corporation or PAC. They don't have the ability to oppose a ballot question.

"This is pretty serious," Arruda asserted. "It is undermining the very process of elections and ballot questions."

O'Brien could not be reached for comment. Guy Dufault of Working Rhode Island, who provided The Times with copies of the reports the group filed Thursday, could not be reached for comment.

Steven Brown, executive director of the ACLU of RI, one of the groups that formed the coalition, said Citizens for Representative Government, which was dormant for some time, formed just a couple of weeks before the election and spent all of its money just days before the election, so it had not been required to file campaign finance reports previous to that...

...H. Philip West Jr., executive director of Common Cause, another of the groups in the coalition, said he had recognized the need to file reports and urged that the group do so, but added that Common Cause "has no hand in the fiscal management of the coalition".

11. The NEA PAC contributed \$24,800 to candidates and political parties in 2004 as of October 25, 2004. The summary is below:

Jan 1 – March 31	\$2,975	(Exhibit XI)
Apr 1 – June 30	\$6,175	(Exhibit XII)
Aug 17 – Sept 6	\$1,000	(Exhibit XIII)
Sept 7 – Oct 4	\$4,850	(Exhibit XIV)
Oct 5 – Oct 25	<u>\$9,800</u>	(Exhibit XV)
	\$24,800	total

The Summary of Campaign Activity (CF-2) for periods ending September 6, 2004 and October 4, 2004 did not list these contributions on line 4a (campaign expense).

In the report for the period ending Oct 25, 2004 the NEA PAC listed a donation of \$7,500 on Oct 15, 2004 to Citizens for Representative Government, identifying it as "accounts payable" and "Opposing a ballot initiative".

12. Common Cause filed a "Schedule of Independent Expenditures" (CF-8) opposing Question No. 2, November 8, 2004. (Exhibit XVI) They list expenditures on Oct 25, 2004 for printing, mailing service and postmaster for 2,200 flyers. Phil West signed for Common Cause under the statement on the form that reads, "The person named below certifies that such person in making the expenditure(s) was not 'acting in concert with any other person or group' as defined in Section 17-25-23 of the Rhode Island General Laws".
13. On November 17, 2004 the Board of Elections sent correspondence to Steve Brown, Executive Director of the ACLU of Rhode Island, notifying it that it had come to the attention of the Board that the ACLU of Rhode Island had expended money to advocate for the rejection of a ballot question in the November election. (Exhibit XVII) This correspondence specifically cites *R.I. Gen. Laws* § 17-25-10(b) and *R.I. Gen. Laws* § 17-25-3, and based upon such provisions states as follows:
- This office requests that the ACLU of Rhode Island provide the necessary disclosures to be compliant with the Rhode Island Campaign Contributions and Expenditures Reporting Act. A "Schedule of Independent Expenditures" (Form CF-8) has been provided for your convenience.
14. In an article in the *Providence Journal*, November 18, 2004, "Election Spending Reports Probed," (Exhibit XVIII), it is stated:

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...Richard Thornton, the supervising accountant at the Board of Elections, said he is looking into a variety of groups that may need to disclose what they spent on lobbying efforts for ballot issues such as improvements at the University of Rhode Island, money to renovate the Cranston Street Armory and historic preservation grants.

Thornton said he is also investigating whether some groups that filed a "schedule of independent expenditures" form are eligible to do so.

The form indicates a person or group spent more than \$100 to advocate for or against a ballot measure, but does not require any disclosure of the money's source. In addition to individuals, the board has historically allowed nonprofit corporations such as the Greater Providence Chamber of Commerce to file in this category.

But Thornton said it remains unclear whether coalitions that formed specifically to support or contest an issue can file under the rule -- as some have done -- particularly if they have not incorporated.

"That is the \$64,000 question," he said, adding that he expected to "seek guidance" on the issue from the Board of Elections' lawyer and potentially from the board itself.

The other option would be to require such coalitions to file as political action committees. Under rules for PACs, they would have to disclose both fundraising and spending, abide by financial caps, and could not have taken any money from corporations. The rules would be a particular problem for groups such as the Complete Quonset Coalition, which reported raising nearly \$125,000 -- almost exclusively from businesses -- to advocate for a bond issue to upgrade the industrial site.

Another coalition, Citizens for Representative Government, which lobbied against a Constitutional Convention, filed a mishmash of paperwork that is still being sorted out, Thornton said. The group included union-backed issues organizations, as well as advocacy groups such as Common Cause of Rhode Island and the Rhode Island Affiliate of the American Civil Liberties Union.

The coalition filed a notice of organization on a form used for PACs, creating a new and unauthorized category for itself of "Non-PAC Coalition," and submitted a related contributions form. But it also disclosed its spending using the forms for the other category: groups with independent expenditures.

In addition, Thornton said he was also looking into the Right Now Coalition for Reform, which advocated for passage of a separation-of-powers constitutional amendment. So far, he said, it appears the group spent money "above and beyond" what a related political action committee has reported.

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Common Cause Executive Director H. Philip West Jr., who participated in the Right Now coalition, said Common Cause had disclosed its own spending on the ballot measure, that the PAC would be disclosing additional spending, and individual member groups would probably pay off other outstanding bills.

"It's a disaster; it really is," West said of the widespread confusion swirling around the spending report requirements.

The Board of Elections has indicated it will return after the elections to a more stringent interpretation of who qualifies for the "independent expenditures" form.

But West said the law itself should be changed to make sure an individual company -- for example, Harrahs Entertainment -- could not spend unlimited amounts of money to push a referendum while opponents are constrained by spending limits.

Both Clay, of Operation Clean Government, and Thornton, at the Board of Elections, said the legislature was supposed to clarify the boundaries years ago, but never did. Clay, whose group argued vigorously but unsuccessfully in support of a Constitutional Convention, said the questions should have been resolved "before it went this far."

In a related matter, Thornton said he is also looking into spending by the union coalition Working Rhode Island, which ran television advertising urging voters to turn away from Governor Carcieri, and by implication, Republican Assembly candidates, in the general election.

Thornton sent a letter to the group Oct. 29 asking it to disclose the money it spent "for advocacy purposes" and included an independent expenditures form for the group to fill out.

But on Nov. 9, the group's secretary/treasurer, Robert A. Walsh Jr., responded that the group does not believe it has to reveal its spending because "no funds were expended to support or defeat a candidate for office in the last election cycle."

Said Thornton this week: "It certainly seemed from the ads I saw they were taking an advocacy position.

"It's an open issue, let's put it that way," he said.

15. An editorial, "Citizens for Special Interest Government", by Edward Achorn in the *Providence Journal*, December 14, 2004, states that Guy Dufault produced the radio and TV ads at a cost of \$1,000. (Exhibit XIX) The editorial states:

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...Someone produced those TV and radio ads, and the script of the phone messages; it was Guy Dufault, the gambling and labor lobbyist. (He was not only the secretary-treasurer of Citizens for Representative Government in 1996 -- when it squashed a voter-initiative movement -- but his company, Cornerstone Communications Group Inc., also collected \$18,800 that year from the group for "public relations and advertising.") Strangely, the new report did not cite the cost of public relations and advertising production, as either an expense or an in-kind contribution. (Mr.Dufault says his bill was \$1,000.)

The coalition held its strategy meetings at the local offices of the Rhode Island Federation of Teachers and Health Professionals (RIFTHP), the National Association of Social Workers, and Ocean State Action. Marcia Reback, president of RIFTHP, played a leading role.

Why, then, were Mr. West and Mr. Sasse the ones who were invited to denounce the convention on Mr. Dufault's TV show? "I think they recognized that it might work against them if Marcia Reback was their spokesman," said Mr. West.

16. As of January 1, 2005, there is no listing of a Corporation "Citizens for Representative Government" at the Secretary of State's Corporation Division. (Exhibit XX)
17. Eight years ago, on October 30, 1996, Citizens for Representative Government filed with the Board of Elections a "Notice of Organization of a Corporation for Supporting or Defeating a Ballot Question," signed by Guy Dufault, Secretary/Treasurer. (Exhibit XXI)
18. On November 22, 1996, in a letter from Henry A. Johnson to Senator Marc Cote, (Exhibit XXII) it is stated:

In reference to your inquiry on CITIZENS FOR REPRESENTATIVE GOVERNMENT, I have enclosed a copy of their notice of organization.

As of the above date they have not filed any finance reports with this office, which are required by RIGL 17-25-10(b), and are now in non-compliance with that law in which the reporting requirements were explained on the date of organization, October 30, 1996.

19. A letter dated November 25, 1996 from Senator Marc Cote to Secretary of State James Langevin (Exhibit XXIII) states:

Pursuant to our recent meeting, enclosed is the Notice of Organization filed with the Board of Elections by an alleged corporate entity that undertook a public campaign with reference to question #8.

Since your office has indicated that no such corporation is on file with your office, I would appreciate your review of this issue to determine the legal implications of this occurrence.

20. On May 29, 1996 the Board of Elections issued Advisory Opinion No. 96-01 (Exhibit XXIV) in response to a request on August 17, 1995 from the Providence Chamber of Commerce for reconsideration of Advisory Opinion No. 95-01, which the Board had issued on July 5, 1995. In A.O. No. 96-01, the Board set forth its position as issued in A.O. No. 95-01 regarding the filing requirements under *R.I. Gen. Laws* §§ 17-25-1 *et seq.*, and stated as follows:

...In this opinion, the Rhode Island Board of Elections advised you that if the Greater Providence Chamber of Commerce sought financial support from its members to advocate a position on a ballot question, and in light of the fact that you would be soliciting contributions from multiple members of the Chamber, the Chamber would be subject to the reporting requirements of the Rhode Island Campaign Contribution and Expenditures Reporting Act (R.I.G.L. § 17-25).

The Board conducted a public hearing on April 11, 1996 and received testimony from the Chamber, former gubernatorial candidate Don Gill, and the American Civil Liberties Union (ACLU), all critical of A.O. No. 95-1. The ACLU specifically raised constitutional and statutory objections to A.O. No. 95-1. However, the Board determined that it need not reach the constitutional questions or many of those statutory arguments advanced by those objecting, and states at p. 3 in this Opinion:

...Rather, it is the Board's conclusion, that all of the evidence presented at the April 11, 1996 hearing leaves the Board with more than clear and convincing evidence that the Greater Providence Chamber of Commerce is not an organization of individuals brought together for the purpose of advocating any particular ballot question. Rather, it is a 130 year old organization of businesses collectively advocating issues which serve the best interests of those businesses that are members. The Board further finds that the Chamber is a non-profit organization which was not formed for the purpose of advocating one particular point of view on a ballot question, but rather, is a pre-existing entity that simply wishes to solicit its members to advocate positions on a given ballot question, and which the majority of its members have authorized its executive board to do. As such, the provisions of R.I.G.L. §17-25-10(b) which read in part "it shall be lawful, however, for any person not otherwise prohibited by law and not acting in concert with any other person or group to expend personally from that person's own funds a sum which is not to be repaid to him or her for any purpose not prohibited by law to support or defeat a candidate or to advocate the approval or rejection of any question", do not apply to the Chamber since it is not more than one than one person as defined by R.I.G.L. §17-25-10(b), but rather, a single person as defined by the statute.

The testimony before the Board of Elections in its April 11, 1996 hearing was uncontradicted as to the fact that the Greater Providence Chamber of Commerce has for over 100 years acted as a single entity to advocate for business and the collective interests of the Chamber as a whole. Therefore, it is the decision of the Board based upon its finding of fact that the Greater Providence Chamber of Commerce as defined by R.I.G.L. §17-25-10(b) is a single person and, therefore, is not subject to the Rhode Island Campaign Contribution and Expenditures Reporting Act.

This decision of the Rhode Island Board of Elections shall constitute a new advisory opinion arising out of the Board's reconsideration of Advisory Opinion No. 95-01, and as such, shall be referred to as Advisory Opinion No. 96-01.

21. Subsequent to the issuance of A.O. No. 96-01 a series of correspondence with the RItc Track Foundation included a letter on August 9, 1996 (Exhibit XXV) from Robert Craven, Board of Elections legal counsel to Francis X. McMahon, Esquire, re: Bond Referendum to Fund the Freight Rail Improvement Project. It stated:

I am in receipt of your July 17, 1996 correspondence to Chairman Roger Begin. You requested an advisory opinion as to whether a group of corporations that wishes to create a non-profit corporation which would advocate the passage of a bond referendum seeking the authorization of Seventy Two Million Dollars in bonds to fund the Freight Rail Improvement Project, as well as funding for infrastructure improvements within the Quonset Point/Davisville Industrial Park would be in violation of §17-25-5(c) of the Rhode Island Campaign Contribution and Expenditures Reporting Act.

Please be advised that establishment of such a non-profit corporation advocating the passage of the aforementioned bond referendum would indeed fall under Advisory Opinion 96-01 which was issued to the Greater Providence Chamber of Commerce on May 29, 1996. Accordingly, the non-profit corporation may raise and expend funds to urge passage of the above-referenced referendum without violating §17-25-5 (c).

22. A letter dated October 8, 1996 (Exhibit XXVI) from Robert Senville, Esquire, for Operation Clean Government, regarding the obligation of a non-profit entity, RItc Track Foundation, to comply with the reporting and filing requirements under *R.I. Gen. Laws* §§ 17-25-1 *et seq.*, stated:

Some of our members have heard advertising on referendum question #4 regarding the issuance of \$72,000,000 in Rhode Island General Obligation Bonds, \$50,000,000 of which is to be used for the construction

of a third track or a portion thereof, on the Northeast Corridor for freight and passenger service and freight rail improvements at the Quonset Point/Davisville Park. The advertising purports to be from an entity calling itself RIte Track Foundation, Inc. ("RIte Track"). However, while RIte Track is clearly advocating the approval of question #4, no such entity has registered with the Board of Elections as a political action committee. Moreover, I have been advised that the Board of Elections records also demonstrate that there is no reporting whatsoever of the contributions and expenditures of RIte Track. OCG believes that this entity's failure to form a political action committee and/or to report its contributions and expenditures regarding referendum question #4 violates several provisions of the Rhode Island Contributions and Expenditures Reporting Law.

Please allow this letter to serve as OCG's formal request that the Board of Elections investigate whether or not RIte Track has complied with the law, and if necessary and proper, that the Board of Elections enjoin any unlawful activities.

23. In a letter and fax to RIte Track, dated October 11, 1996 (Exhibit XXVII), Roger Begin states:

Next week, the RI Board of Elections will be meeting to consider questions about the obligations of groups organizing for the purpose of advocating a position for ballot questions in next month's election.

At the present time, the only guidance that such groups have is Opinion 96-1 issued by the Board in July. The issues raised at this time, however, compel the Board to offer additional guidance on these matters.

With only a few weeks remaining until the election, it will be impossible for the Board to develop formal rules and procedures. I will recommend to the Board that we adopt interim procedures that will require groups organized for purposes of advocating a position on ballot questions report campaign contributions and expenditures in the same manner that Political Action Committees do.

Your cooperation in providing such reports to the Board of Elections at your earliest convenience will add a level of public disclosure and serve the public interest.

24. Minutes of the Board meeting October 16, 1996 (Exhibit XXVIII) state:

Attorney Robert Senville asks to address the board. He represents Operation Clean Government, a non-profit organization, that seeks full disclosure of campaign fund expenditures and contributions by the group known as Ri[sic] Track, an organization backing ballot referenda on the

November 5, 1996 ballot. He does not wish to revisit the question of whether the Chamber of Commerce needs to file as a PAC. He understands that the Chamber of Commerce was established many years ago and has other goals than just to see that ballot questions pass. He feels that the organization of such a group as Ri[sic] Track is for only one purpose; that is, to be successful in having this question passed. He fears that corruption is possible when an organization like Ri[sic] Track attempts to pass ballot questions of this kind...

...Chairman Begin states that the ambiguity of this issue is apparent and should be brought to the attention of the General Assembly for clarification at a later date. Because the election is very close, he suggests that the Board adopt an interim policy to address the issue. He asks that all organizations formed to support a ballot question be made to conform to the filing rules and deadlines of those adhered to by PACS.

A motion is made by Vice Chair Farnum and seconded by Commissioner Bailey to make RI[sic] Track adhere to PAC regulations and to revisit this issue by seeking a clarification on the matter from the legislature after the November 5, 1996 election.

All members say "Aye."

25. Following the Board meeting on October 16, 2004 the Board of Elections issued an interim policy addressing the results of the meeting (Exhibit XXIX) regarding the applicability of *R.I. Gen. Laws* § 17-25-10(b) to groups, organizations and corporations who raise funds and expend funds to advocate a particular position on a ballot question:

1. That the Board of Elections adopt an interim policy during this election cycle that any organization advocating a ballot question shall be subject to the reporting requirements of the Campaign Finance and Reporting Act;
2. That any organization advocating a ballot question not be required to form a political action committee pursuant to the Campaign Finance and Reporting Act;
3. That at the conclusion of this election cycle, the Board of Elections shall seek clarification from the Rhode Island General Assembly as to the applicability of the Campaign Finance and Reporting Act relating to an entity that advocates passage or defeat of a ballot referenda.

26. On September 6, 2000, Robert Arruda, Chairman of Operation Clean Government (OCG), sent a letter (Exhibit XXX) to Chairman Begin requesting clarification from

the Board of Elections regarding the status of the above-described interim policy. Arruda stated:

Since this was an interim policy for the 1996 election cycle, it is no longer in effect. We are not aware of any legislation introduced since 1996 to clarify the problems you see with R.I.G.L. § 17-25-10(b). We are also not aware of any updates to the Manual of Rhode Island Campaign Contributions and Expenditures Reporting Act since 1992. Therefore, we are requesting that the Board of Elections clarify this matter.

27. On September 26, 2000 the Board responded in writing (Exhibit XXXI) but did not clarify the diametric opposition between this interim policy and the unanimous vote by the Board which required organizations formed to support a ballot question to adhere to filing rules and deadlines such as those adhered to by PACS, as reflected in the Board's Minutes of October 16, 1996. Instead, the Board in its letter of September 26th stated that there had been no legislation adopted by the General Assembly to address the issues raised in this interim policy and therefore, this interim policy remains in effect as follows:

1. That any organization advocating the defeat or passage of a ballot question shall be subject to the reporting requirements of the Rhode Island Campaign Contributions and Expenditures Reporting Act.
2. That any organization advocating the defeat or passage of a ballot question not be required to form a political action committee pursuant to the Rhode Island Campaign Contributions and Expenditures Reporting Act.

In this correspondence dated September 26, 1996 the Board never explained why its statement of this interim policy does not accurately reflect the unanimous vote taken by the Board, as reflected in the Minutes of October 16, 1996.

28. *R.I. Gen. Laws* § 17-25-3, "Definitions", states as follows, in pertinent part:

As used in this chapter, unless a different meaning clearly appears from the context:

(1) "Business entity" means any corporation, whether for profit or not for profit, domestic corporation or foreign corporation, as defined in § 7-1.1-2, financial institution, cooperative, association, receivership, trust, holding company, firm, joint stock company, public utility, sole proprietorship, partnership, limited partnership, or any other entity recognized by the laws of the United States and/or the state of Rhode Island for the purpose of doing business. The term "business entity" shall not include a political action committee organized pursuant to this chapter or a political party committee or an authorized campaign committee of a candidate or office holder.

(3) "Contributions" and "expenditures" include all transfers of money, paid personal services, or other thing of value to or by any candidate, committee of a political party, or political action committee. A loan shall be considered a contribution of money until it is repaid.

(6) "Other thing of value" means any item of tangible real or personal property of a fair market value in excess of one hundred dollars (\$100).

(7) "Paid personal services" means personal services of every kind and nature, the cost or consideration for which is paid or provided by someone other than the committee or candidate for whom the services are rendered, but shall not include personal services provided without compensation by persons volunteering their time.

(8) "Person" means an individual, partnership, committee, association, corporation, and any other organization.

(9) "Political action committee" means any group of two (2) or more persons that accepts any contributions to be used for advocating the election or defeat of any candidate or candidates or to be used for advocating the approval or rejection of any question or questions submitted to the voters. Only political action committees that have accepted contributions from fifteen (15) or more persons in amounts of ten dollars (\$10.00) or more within an election cycle shall be permitted to make contributions, and those committees must make contributions to at least five (5) candidates for state or local office within an election cycle.

29. *R.I. Gen. Laws* § 17-25-10, "Lawful methods of contributing to support of candidates – Reporting – Disposition of anonymous contributions", states as follows:

(a) No contribution shall be made or received, and no expenditures shall be directly made or incurred, to support or defeat a candidate or to advocate the approval or rejection of any question in any election except through:

(1) The duly appointed campaign treasurer, or deputy campaign treasurers, of the candidates;

(2) The duly appointed campaign treasurer or deputy campaign treasurers of a political party committee;

(3) The duly appointed campaign treasurer or deputy campaign treasurer of a political action committee.

(b) It shall be lawful for any person, not otherwise prohibited by law and not acting in concert with any other person or group, to expend personally from

that person's own funds a sum which is not to be repaid to him or her for any purpose not prohibited by law to support or defeat a candidate or to advocate the approval or rejection of any question; provided, that any person making the expenditure shall be required to report all of his or her expenditures and expenses, if the total of the money so expended exceeds one hundred dollars (\$100) within a calendar year, to the board of elections within seven (7) days of making the expenditure and to the campaign treasurer of the candidate or political party committee on whose behalf the expenditure or contribution was made, or to his or her deputy, within seven (7) days of making the expenditure, who shall cause the expenditures and expenses to be included in his or her reports to the board of elections. Whether a person is "acting in concert with any other person or group" for the purposes of this subsection shall be determined by application of the standards set forth in § 17-25-23.

(c) Any anonymous contribution received by a campaign treasurer or deputy campaign treasurer shall not be used or expended, but shall be returned to the donor, if the donor's identity can be ascertained; if not, the contribution shall escheat to the state.

30. *R.I. Gen. Laws* § 17-25-10.1, "Political contributions – Limitations", states as follows, in pertinent part:

(a) No person, other than the candidate to his or her own campaign, nor any political action committee shall make a contribution or contributions to any candidate, as defined by § 17-25-3, or political action committee or political party committee which in the aggregate exceed one thousand dollars (\$1,000) within a calendar year, nor shall any person make contributions to more than one state or local candidate, to more than one political action committee, or to more than one political party committee, or to a combination of state and local candidates and political action committees and political party committees which in the aggregate exceed ten thousand dollars (\$10,000) within a calendar year, nor shall any political action committee make such contributions which in the aggregate exceed twenty-five thousand dollars (\$25,000) within a calendar year, nor shall any candidate or any political action committee or any political party committee accept a contribution or contributions which in the aggregate exceed one thousand dollars (\$1,000) within a calendar year from any one person or political action committee.

(h) It shall be unlawful for any corporation, whether profit or non-profit, domestic corporation or foreign corporation, as defined in § 7-1.1-2, or other business entity to make any campaign contribution or expenditure, as defined in § 17-25-3, to or for any candidate, political action committee, or political party committee, or for any candidate, political action committee, or political party committee to accept any campaign contribution or expenditure from a corporation or other business entity. Any contribution made in the personal name of any employee of a corporation or other business entity, for which the

employee received or will receive reimbursement from the corporation or other business entity, shall be considered as a contribution by the corporation or other business entity, in violation of this section.

(2) Any voluntary payroll deduction and/or contribution made by employees of a corporation or other business entity shall not be deemed a contribution of a corporation or other business entity, notwithstanding that the contributions were sent to the recipient by the corporation or other business entity.

(i) All contributions of funds shall be by check or money order identifying the source of the funds; provided, that candidates may accept contributions in cash which do not exceed twenty-five dollars (\$25.00) in the aggregate from an individual within a calendar year. The cash contribution must be delivered directly by the donor to the candidate, his or her campaign treasurer, or deputy treasurer. The treasurer or deputy treasurer shall maintain a record of the name and address of all persons making these cash contributions.

(j) Except as provided in subsection (h) of this section, no entity other than an individual, a political action committee which is duly registered and qualified pursuant to the terms of this chapter, political party committee authorized by this title, or an authorized committee of an elected official or candidate established pursuant to this chapter shall make any contribution to or any expenditure on behalf of or in opposition to any candidate, ballot question, political action committee, or political party.

31. *R.I. Gen. Laws* § 17-25-11.1, "Preservation of candidate or committee records", states as follows:

(a) For every report filed after the effective date of this chapter, the campaign treasurer of each candidate seeking nomination for election or election to public office shall maintain and preserve all records and supporting documentation for a period of four (4) years from the filing date.

(b) For every report filed after the effective date of this chapter, the treasurer of each political party committee and political action committee shall be required to maintain and preserve all records in support of the committee reports filed pursuant to § 17-25-11 for a period of four (4) years from the filing date.

32. *R.I. Gen. Laws* § 17-25-12, "Prohibited contributions", states as follows:

No contributions shall be made, and no expenditure shall be made or incurred, whether anonymously, in a fictitious name, or by one person or group in the name of another, to support or defeat a candidate in a primary, general, or special election or to advocate the approval or rejection of any question. No

treasurer or candidate shall solicit or knowingly accept any contribution contrary to the provisions of this section.

33. *R.I. Gen. Laws* § 17-25-13, "Penalties", states as follows:

(a) Any person who willfully and knowingly violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) per violation.

(b) The state board may fine any person or entity who violates the provisions of this chapter in an amount not more than one hundred dollars (\$100) per violation.

(c) Fines, fees and penalties imposed by the state board for violations of this chapter shall be paid for by the candidate, officeholder or entity against whose campaign the fines, fees or penalties have been levied. Fines, fees and penalties levied by the state board pursuant to this chapter shall not be paid for from contributions or funds available in a campaign account.

34. *R.I. Gen. Laws* § 17-25-15, "Political action committee – Notice of formation", states as follows:

(a) No political action committee shall accept any contributions or make any expenditures prior to filing notice of its organization with the board of elections. The notice shall contain:

(1) The name or names of any candidates whose election or defeat the committee intends to advocate and/or the question or questions whose approval or rejection the committee intends to advocate;

(2) The names and addresses of all officers of the committee;

(3) The mailing address or addresses of the committee;

(4) The goals and purposes of the political action committee; and

(5) A statement indicating whether the membership and/or contributor base of the political action committee is derived primarily from the employees of one corporation or business entity or from one business or professional group or association or labor union and, if so, the identity of that employer or group or association or union.

(b) No committee shall advocate the election or defeat of any candidate or question other than that set forth in its notice of organization or amendment to the notice. A political action committee may amend its notice of organization

at any time. The board of elections shall prescribe forms in compliance with this section.

(c) In addition to all other reporting requirements, each political action committee shall include in each report required to be filed by this chapter:

(1) The source and amount of all funds received by the committee in excess of one hundred dollars (\$100) in the aggregate from a single source in a calendar year; provided, that funds received through a regular payroll check-off plan in which the aggregate contribution from each individual does not exceed one hundred dollars (\$100) per calendar year shall report the name and address of each entity transferring the funds to the committee, the aggregate amount received from the payroll check-off, and the total number of contributors; and provided also, that funds received by the political action committee of a labor organization from the members of the labor organization in amounts not exceeding twenty-five dollars (\$25.00) per calendar year from a single source shall be reported by the aggregate amount received and the total number of members of the labor organization contributing;

(2) The name and address of each person to whom expenditures were made, and the amount and purpose of each expenditure; and

(3) The name and address of each elected official and candidate for elected office to whom a contribution was made, and the amount of the contribution.

(d) The board of elections may reject the use by a political action committee of a name which is misleading and/or does not accurately identify the membership or contributor base of the committee.

(e) If a political action committee derives more than fifty percent (50%) of its funds from the employees, officers, directors, investors, and/or stockholders of a corporation or other business entity, the name of the political action committee must incorporate the name of that corporation or business entity. If a political action committee derives more than fifty percent (50%) of its funds from persons affiliated with one industry, profession, trade organization, or association or labor union, the name of the political action committee must identify that industry, profession, trade organization or association, or labor union.

(f) Notwithstanding any provision to the contrary, a political action committee organized exclusively for the purpose of promoting or opposing a ballot question may expend in excess of twenty-five thousand dollars (\$25,000) to promote or oppose that referendum, and shall not be subject to the requirement of making contributions to at least five (5) candidates; and the political action committee shall terminate all activity within thirty (30) days following that election.

35. *R.I. Gen. Laws* § 17-25-16, “Enjoining of illegal acts – Forfeiture of contributions”, states as follows:

(a) Whenever the board of elections has reason to believe that a candidate, political party committee, or political action committee, or the campaign treasurer or deputy campaign treasurer of the candidate or committee, has accepted a contribution or made an expenditure in violation of the provisions of this chapter, or willfully and knowingly has made a false statement in any of the reports required under this chapter or failed to file any report, or has otherwise violated this chapter, the board may, in addition to all other actions authorized by law, request the attorney general to bring an action in the name of the state of Rhode Island in the superior court against the person and/or committee to enjoin them from continuing the violation, or doing any acts in furtherance of the violation, and for any other relief that the court deems appropriate. In addition, the court may order the forfeiture of any or all contributions accepted in violation of and/or not reported as required by this chapter. All contributions so forfeited shall become the property of the state.

(b) The court shall also impose a civil penalty not exceeding three (3) times the amount of:

(1) Contributions made or accepted in violation of this chapter;

(2) Expenditures made in violation of this chapter; and/or

(3) Contributions or expenditures not reported as required by this chapter.

(c) All funds collected pursuant to this section shall be deposited in the fund established for the public financing of the electoral system pursuant to this chapter.

36. *R.I. Gen. Laws* § 17-25-5, “Duties and powers of the board of elections”, states as follows:

(a) The board of elections has authority to perform the duties that are necessary to implement the provisions of this chapter. Without limiting the generality of the foregoing, the board is authorized and empowered to:

(7) Conduct confidential investigations and/or closed hearings in accordance with this title relative to alleged violations of this chapter either on its own initiative or upon receipt of a verified written complaint, which complaint shall, under pain and penalty of perjury, be based upon actual knowledge and not merely on information and belief. Upon completion of its investigation and/or hearings, if the board has reason to believe that a violation of this chapter has occurred or that a complainant has willfully sworn or affirmed falsely, the chairperson of the board of elections is authorized to and shall

issue to the person found to be in violation of this chapter a summons pursuant to § 12-7-11 to appear before the division of the district court where the person resides and shall be prosecuted by the attorney general. Any action taken by the board as a result of a written verified complaint shall, whenever possible, be completed no later than five (5) business days after its receipt and if no violation is found to exist, all records and papers shall be kept confidential unless further legal proceedings are instituted.

37. *R.I. Gen. Laws* § 17-25-27, “Post-audit of accounts – Publication”, states as follows:

The board may conduct a post-audit of all accounts and transactions for any election cycle and may conduct any other special audits and post-audits that it may deem necessary. The board shall publish a summary of the reports filed by candidates for general office pursuant to the public financing provision of this chapter on or before April 1 of the year following any year in which elections are held for statewide elective office.

38. No filing has been made by the ACLU for printing, mailing preparation and postage and no expenditure has been listed on the Citizens for Representative Government filing for the green tri-fold brochure that had the return address and the postal indicia of the ACLU, even after a letter from Richard Thornton of the Campaign Finance Division of the Board of Elections advising the ACLU of Rhode Island to “provide the necessary disclosures to be compliant with the Rhode Island Campaign Contributions and Expenditures Reporting Act” (*See, par 2,5,7,13, Exhibits II, VI, VIII, XVII*)

39. The NEA PAC listed a donation of \$7,500 to Citizens for Representative Government on October 15, and Citizens for Representative Government listed receiving the \$7,500 contribution from the NEA PAC on October 28. *R.I. Gen. Laws* § 17-25-15 (5)(b) states: “No committee shall advocate the election or defeat of any candidate or question other than that set forth in its notice of organization or amendment of organization.” There are no amendments filed by the NEA PAC for advocating against Question No. 2 this year. (*See, par 8,11, Exhibits IX, XI-XV*)

40. As of October 25, the NEA PAC has reported contributions of \$24,800 to candidates and political party committees. The \$7,500 to “Citizens for Representative Government” is reported as “accounts payable.” Since “Citizens for Representative Government” was formed only to advocate defeat of Question No. 2, this donation should be listed as a campaign expenditure advocating against a ballot question. This payment puts them over the \$25,000 limit for campaign expenditures. Only a PAC organized for a particular question can exceed the \$25,000 limit of expenditures. *R.I. Gen. Laws* § 17-25-10.1(a) (*See, par 11, Exhibits XI - XV*)

41. Common Cause filed a Schedule of Independent Expenditures (CF-8) opposing Question No. 2, on November 8, 2004. This Schedule lists expenditures on October 25, 2004 for printing, mailing service and postmaster for 2,200 flyers. Phil West signed for Common Cause under the statement on the form that reads, “The person named below certifies that such person in making the expenditure(s) was not ‘acting in concert with any other

person or group' as defined in Section 17-25-23 of the Rhode Island General Laws". The evidence is clear that he was acting in concert with "Citizens for Representative Government." (See, par 12, Exhibit XVI)

42. The CF-8 form filed by Common Cause on November 8, 2004 does not list the expense of their recorded phone calls opposing Question No. 2. (See, par 9,12, Exhibit XVI)
43. "Citizens for Representative Government" is not a corporation and is not a PAC. They filed a Notice of Organization on November 4, 2004 (two days after the election), creating an unauthorized category by drawing in a box, checking it off, and handwriting the words "non PAC coalition". This filing does not comply with the requirements of the Rhode Island Campaign Contributions and Expenditures Reporting Act. (See, par 6, 7,8,16, Exhibits VII, VIII, IX, XX)
44. "Citizens for Representative Government" also filed on November 4, 2004, a list of expenditures, reporting that payments were made on October 28, 2004 for phone calls, radio and TV ads that had already been running. It is unlikely that this organization was not required to pay up front for these political ads. Also on Nov 1, 2004 this organization reported paying for signs, when the signs would have to have been fabricated before that date. (See, par 7, Exhibit VIII)
45. Edward Achorn's editorial on December 14, 2004 in the *Providence Journal* states that Guy Dufault produced the radio and TV ads at a cost of \$1,000. This amount has not been reported by "Citizens for Representative Government". (See, par 15, Exhibit XLX)
46. Guy Dufault was Secretary/Treasurer of "Citizens for Representative Government" in 1996. It was clear then that this was not a corporation, even though he filed as a corporation. Contribution and Expenditures were not filed until December 2, 1996. Then this group resurfaced in October 2004, with different group members. It still was not registered as a corporation. Guy Dufault was still a major part of their activities as pointed out in Edward Achorn's editorial and the article in the Pawtucket Times. This coalition came together only to advocate against Question No. 2. Guy Dufault was active with the activities of this coalition in 1996 and 2004. (See par 10,14,15,17,18,19 Exhibits X, XVIII, XIX, XXI, XXII, XXIII)
47. Ed O'Brien, as Chairman/Treasurer of Citizens for Representative Government, is responsible for altering the CF-1 form filed with the Board of Elections. He entered a new category "non PAC coalition." The CF-1 form is for corporations advocating for or against a ballot question. Citizens for Representative Government is not a corporation. Also, Mr. O'Brien did not file the expenditure of \$1,000 by Guy Dufault for radio and TV ads. (See par 6,7,8,10,14,15,16 Exhibits VII, VIII, IX, X, XVIII, XIX, XX)
48. The Board of Elections, with Roger Begin as Chair, has not clarified the diametric opposition between the 1996 interim policy adopted October 16, 1996 and the minutes of the Boards meeting October 16, 1996.

OCG is requesting that the Board investigate this matter pursuant to *R.I. Gen. Laws* § 17-25-5, and further, that the Board conduct a post-audit of any and all accounts and transactions

maintained by Citizens for Representative Government and/or any and all of its agents, officers, and members, pursuant to *R.I. Gen. Laws* § 17-25-27.

Respectfully Yours,
Operation Clean Government

Robert P. Arruda, in my capacity as Chairman