An unprecedented perversion of law

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The following statement was delivered by attorney Edwin Vieira, Jr., at an April 29, 1987 press conference in Washington, D.C. called by the Commission to Investigate Human Rights Violations in the United States.

Permit me to preface my remarks with an explanation of my participation in the Commission to Investigate Human Rights Violations in the United States that I believe may be applicable to many members of the Commission other than myself.

I have never voted for Mr. Lyndon LaRouche or any person associated with him. I have never contributed money or services to any political campaign of Mr. LaRouche or any of his associates. I have never supported, and do not now necessarily support, the candidacy of Mr. LaRouche or any person allied with Mr. LaRouche for any political office. Moreover, although I agree with many of the political, legal, and moral positions Mr. LaRouche has advocated over the years, I also disagree—and even disagree quite strongly—with other of his positions. For these and other reasons, then, my appearance here today does not betoken any partisan political or ideological alignment with Mr. LaRouche, his associates, or any particular organization or group affiliated with him, either directly or in the public mind. Rather, I have chosen to join the Commission to Investigate Human Rights Violations in the United States, and to attend this press briefing, because of my concern that actions taken ostensibly in the name of the United States government against certain organizations and individuals connected with Mr. LaRouche directly threaten not only the constitutional and other civil rights of those organizations and individuals, but also the rights of every American to engage in political advocacy, free speech and free association, and other fundamental liberties without which our republican form of government and uniquely open society cannot exist.

I and other members of the Commission to Investigate Human Rights Violations in the United States were quick to urge the Commission to petition President Reagan in this matter because of what we perceive as the obvious, blatant, and even openly cynical affront to the First and Fifth Amendments to the Constitution of the United States in the recent seizures of properties by the government, under color of the bankruptcy laws, from the political-advocacy organizations Caucus Distributors, Campaigner Publications, and Fusion Energy Foundation. Indeed, as a direct—and, we believe, as the *intended*—result of these seizures, the latter organizations have been and are even now being forcibly prevented from collecting and publishing political news, analysis, and opinion of immediate and immense public interest.

Even the government's own spokesmen concede that what has transpired here is literally unprecedented under the bankruptcy laws. In addition, the government is aware that its actions have substantially impaired—if those actions were not intended to suppress—the ability of Caucus, Campaigner, and Fusion Energy to engage in political debate and advocacy, to disseminate political analyses and opinions, and otherwise to engage in what Americans know and revere as "freedom of speech," "freedom of association," and "freedom of the press" under our Constitution. Furthermore, the government is also aware that its actions have substantially impaired—again, if those actions were not actually intended to destroy—the ability of organizations and individuals other than Caucus, Campaigner, and Fusion Energy not only to engage in political debate, advocacy, and publication, but also to participate in the political process of seeking election to public office—and here, I refer specifically to Mr. Lyndon LaRouche, an individual who (it should be noted) has been formally charged with *no* wrongdoing, either criminal or civil, connected with the present controversy; but who nevertheless has been effectively singled out, at least as a practical matter, as the ultimate target of the government's operations.

Notwithstanding its awareness of all these matters, the government has deliberately and without justification or excuse followed a course of action in these proceedings that directly and unavoidably conflicts with elementary First and Fifth Amendment rights. Indeed, the conflict is so direct and unavoidable, and so patently at odds with well-established principles of constitutional jurisprudence, as to evidence to the Commission a *knowing* intent on the part of the government to *suppress* those fundamental rights.

By way of background, every student of constitutional law knows that no government—national, state, or local—may impair the exercise of a person's First Amendment rights, for even minimal periods of time, unless it *first* establishes that its actions are necessary to achieve a "compelling" public interest, and are the actions "least restrictive" of those rights. Moreover, where the government proposes to take action arguably infringing First Amendment rights, it must provide the persons affected by its actions with timely and adequate notice of, and opportunity to be heard on, the matter—*before* even the slightest loss of First Amendment rights takes place. What has occurred in this case, however, is a travesty of these well-established rules.

First, to date there has been *no* notice and hearing whatsoever. Instead, the government has unilaterally obtained an order—an order not simply infringing, but in fact completely vitiating the First Amendment rights of several organizations and numerous individuals—based on what the Commission believes is legally incompetent "evidence," and in the total and unexcused absence of any meaningful opportunity for the victims of this suppression to present a defense, or otherwise to challenge the government's arguments. Furthermore, the Commission understands that no transcript of the *ex parte* proceeding before Bankruptcy Judge Bostetter exists in the court files, although the judge purported to make "findings of fact" in his order as the basis for licensing the seizure of the properties involved in this case.

Second, prior to obtaining its *ex parte* order, the government was or should have been well aware that no "compelling" reason existed to seize the properties now subject to the order. At least as early as 6 October 1986, the government was in possession of extensive documentation detailing the financial and other business arrangements of Caucus, Campaigner, and Fusion Energy. The Commission believes that this documentation strongly tends to prove, if it does not conclusively establish, that the overwhelming majority of the property seized under color of the *ex parte* order is *not* the property of Caucus, Campaigner, or Fusion Energy, or of any other organization or individual involved in the criminal litigation now proceeding in Boston that underlies the involuntary bankruptcy petition—and that therefore this property simply *cannot* be the subject of the present proceeding.

In addition, the government's rationalization for the seizures—namely, that Caucus, Campaigner, and Fusion Energy would "conceal," "substantially impair," improperly "transfer," "dissipate," "liquidate," or otherwise misuse the subject properties—is patently implausible. These organizations are well known for their political advocacy and publications, and other extensive involvement in public political debate. They have defended, and are even now most vigorously defending, several legal actions both civil and criminal, to protect their First Amendment and other constitutional and civil rights to engage in such advocacy, publication, and involvement. To pretend, as does the government, that the organizations are likely literally to destroy themselves, and voluntarily to surrender the rights they are struggling to preserve, lacks any semblance of credibility.

Third, as a result of the *ex parte* order—and, the Commission believes, as a logically and practically necessary result of the order; and, perhaps, even as a knowingly intended result of the order—the political advocacy and publications of Caucus, Campaigner, and Fusion Energy have been, not only impaired, but effectively terminated by outright suppression and censorship. This, the Commission need hardly emphasize, is not a result "least restrictive" of the organizations' constitutional freedoms, but instead a consummation completely destructive of those freedoms.

Fourth and last, as perusal of the terms of the *ex parte* order makes clear, the ultimate—and, indeed, the explicitly admitted—target of the seizures is an individual *not* before the bankruptcy court, *not* a party to the pending criminal prosecution in Boston, *not* previously convicted of any illegal activity, and *not* under indictment by the national government or any state or local government: namely, Mr. Lyndon LaRouche. The *ex parte* order bristles with allegations—irrelevant, in the Commission's view, to the government's claims against Caucus, Campaigner, and Fusion Energy—that these supposed "debtors" cooperate and have "management . . . intertwined" with so-called "related LaRouche organizations"; and that Mr. LaRouche supposedly "sets budget for all of the organizations and directs how and where each organization will spend its funds." Apparently, the government has prevailed on Bankruptcy Judge Bostetter to conclude that mere alleged association with Mr. LaRouche—*association that the government has never even claimed, let alone proven, violates any provision or principle of criminal or civil law*—is *prima facie* evidence justifying the seizure of the properties involved here. That is, Judge Bostetter has apparently ruled that Caucus, Campaigner, and Fusion Energy are somehow culpable—or as he explicitly says, "untrustworthy"—precisely because they are actively associated in political advocacy with Mr. LaRouche.

This course of events is unprecedented under the bankruptcy law. More urgently, it is unprecedented also under the Constitution. Indeed, it is a course of events with which the Constitution cannot coexist and that, if allowed here and encouraged elsewhere, will effectively signal the end of constitutional government in this country, and its replacement with a form of political terrorism, under color of law, which threatens every man and woman who dares to speak out on important political issues, to seek political office, or otherwise to participate in the political process in opposition to incumbent office-holders.

The Constitution commands the President to "take Care that the Laws be faithfully executed" (Art. II, ¶3), and to swear that he will "preserve, protect and defend" the Constitution (Art. II, ¶1, cl. 7). The facts of this case insistently urge that this country's "Laws"—and, particularly, its supreme law, the Constitution—are not being "faithfully executed," but instead are being recklessly or even consciously perverted by the President's subordinates in the Department of Justice for malicious political purposes. For that reason, I and the others here today now call upon and petition the President to meet with representatives of the Commission to Investigate Human Rights Violations in the United States, as part of a thorough review of these proceedings directed toward exposing and ending violations of the Constitution, and appropriately disciplining or punishing the persons responsible therefor.