

P.S.
M.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 21, 1971

70-61, SEC v. Medical Committee

Dear Thurgood,

I agree with the conclusion reached in your opinion in this case, but have one important reservation about the opinion: I could not join the language at the top of page 5 indicating a view on the merits. My reasons are two-fold. First, I think the Court of Appeals was probably wrong, both on the issue of appealability of the SEC's "no action recommendation" and on the includability of the proxy material. Second, even if I agreed on the merits, I think it is inappropriate to express our views in a case that we are disposing of as moot.

Sincerely yours,

P.S.
✓

Mr. Justice Marshall

Copies to the Conference

Dear Thurgood,

I have a couple of other minor suggestions that I have taken the liberty of asking my law clerk, Bill Jeffress, to relay to your law clerk.

P.S.