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cc: Sunstein  
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MEMORANDUM FOR THE ATTORNEY GENERAL

As you know, Public Law 96-397 requires you to "transmit a report to each House of the Congress" whenever the Department establishes "a policy to refrain from the enforcement of any provision of law enacted by the Congress, the enforcement of which is the responsibility of the Department of Justice, because of the position of the Department of Justice that such provision of law is not constitutional." Congressman Jack Edwards has requested the Department to bring a prosecution to enforce that part of 18 U.S.C. § 1461 which prohibits the mailing of pro-abortion materials. The Criminal Division has concluded that the relevant portion of § 1461 is unconstitutional and has recommended that the Department notify Congress of its conclusion.

We agree with the Criminal Division, and have attached a proposed report to both Houses of Congress for your signature.

John M. Harmon  
Assistant Attorney General  
Office of Legal Counsel