



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

THIS IS THE END OF MUR # 2289

DATE FILMED 7/29/07 CAMERA NO. 2

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PUBLIC RECORD Index - MUR 2289

1. Complaint, filed 23 Oct 86, by Charles R. Porteous.
2. Notarized Statement, dtd 6 Nov 86, by Charles R. Porteous.
3. Memo, 14 Nov 86, Marjorie W. Emmons/Joshua McFadden to The Commission, Subject: MUR 2289 - Complaint.
4. Ltr, 19 Nov 86, Lois G. Lerner (Assoc. Gen. Coun., FEC) to Charles R. Porteous.
5. Ltr, 19 Nov 86, L.G. Lerner to Jimmy Swaggert.
6. Ltr, 16 Dec 86, Clinton N. Shinn to FEC.
7. Ltr, 17 Dec 86, Clinton W. Shinn to FEC.
8. First General Counsel's Report, 15 May 87.
9. Certification of Commission Action, 2 June 87.
10. Ltr, 10 June 87, L.M. Noble to Clinton W. Shinn.
11. Ltr, 10 June 87, L.M. Noble to Charles R. Porteous.
12. Memo, 11 June 87, L.M. Noble to The Commission.
13. Memo, dtd 11 June 87, Office of General Counsel to Office of Commission Secretary, Subject: MUR 2289 - Memo to the Commission - Stmt of Reasons.
14. Memo, 29 June 87, M.W. Emmons to the Commissioners, Staff Director, General Counsel, w/atch (Statement of Reasons).

-END-

NOTE: In preparing its file for the public record, O.G.C. routinely removes those documents in which it perceives little or no public interest, and those documents, or portions thereof, which are exempt from disclosure under the Freedom of Information Act.

8704053470



The Freedom Writer

Box 589 • Great Barrington, MA 01230 • 413-274-3786

THE FEC
GCC#1828
PI: 51

OCT 22

21 October 1986

1986 OCT 23 P 4: 02

General Counsel
Federal Election Commission
1325 K Street NW
Washington, DC 20463

Dear Sir:

I have personal knowledge that Jimmy Swaggart Ministries, a not-for-profit corporation, and Jimmy Swaggart, president of said corporation, of Baton Rouge, LA 70821-2550, have violated statutes and regulations over which the Federal Election Commission has jurisdiction.

Corporations may not make expenditures for partisan communications to the general public in connection with any election to any political office - 114.3 (1), Code of Federal Regulations (CFR).

"In AO 1984-23, the Commission permitted an organization to endorse a candidate and to communicate the endorsement to its restricted class (emphasis mine)."

On pages 55 and 56 (copies enclosed) of the October 1986, Vol. 18, No. 10, issue of The Evangelist, The Voice of the Jimmy Swaggart Ministries, Jimmy Swaggart said, "we are supporting Pat Robertson for the office of President of the United States." And, "We are going to support him prayerfully and put forth every effort we can muster in his behalf." He concluded, "I have sought the Lord earnestly and I believe that which we are doing is in the mind and will of God, and I do not believe we could do any less."

According 100.3 (2 U.S.C.431 (2) and 100.4 (2 U.S.C. 431 (3), (CFR), the Rev. Marion (Pat) Robertson is a candidate for the Presidency of the United States of America, as he has reportedly raised \$5 million dollars toward the campaign.

The Evangelist is the official voice of Jimmy Swaggart Ministries, and it is mailed to the general public, not to its restricted class. A careful reading of the article in context, along with other articles on the same pages, makes it clear that Mr. Swaggart is speaking on behalf of his corporation and not simply as an individual.

Jimmy Swaggart Ministries' endorsement, and communication of that endorsement to the general public, of Pat Robertson for president is a clear violation of the Federal Election Commission regulations.

Thank you for taking prompt action on this matter.

Edward J. Porteous
Notary Public

Sincerely,
Charles R. Porteous
Charles R. Porteous
Executive Director

Enc.

870405471

of the Cross
the Word
from Me to You

The Evangelist



THE VOICE OF THE JIMMY SWAGGART MINISTRIES

OCT. 1986 • VOLUME 18 NUMBER 10



**What Does The
Cross Of Christ
Truly Represent?**

See page 4

Celebrating 30 Years of Spirit-Filled Ministry

The Evangelist

THE VOICE OF THE JIMMY SWAGGART MINISTRIES

OCT. 1986 • VOLUME 18 NUMBER 10



PHOTO: DAVE EDWARDS

COVER: The shed blood of Jesus Christ at Calvary is the true and only antidote for man's fallen state.

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PHOTO: DAVE EDWARDS

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Official Voice, Jimmy Swaggart Ministries
P.O. Box 2590, Baton Rouge,
Louisiana 70821-2590
Jimmy Swaggart, President

Jimmy Swaggart Ministries
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Donnie Swaggart, Vice-President
Francis Swaggart, Secretary
Debbie Swaggart
William D. Treeby
Rev. F.C. Chamberlain
Rev. J.E. Allen

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Rev. Jack West
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R.M. Riggs, Arthur Townsend, William Treeby, David Wilker-
son, Jim Woolsey

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Printed in the USA.

WE BELIEVE . . .

The Bible is the inspired and only infallible and authoritative written
Word of God.
There is one God, eternally existent in three persons: God the Father,
God the Son, and God the Holy Ghost.
In the deity of our Lord Jesus Christ, in His virgin birth, in His
sinless life, in His miracles, in His agonies and atoning death, in His
bodily resurrection, in His ascension to the right hand of the Father, in
His personal future return to this earth in power and glory to rule a
thousand years.
In the Blessed Hope -- the rapture of the Church at Christ's coming,
the only means of being cleansed from sin is through repentance and
faith in the precious blood of Christ.
Regeneration by the Holy Spirit is absolutely essential for personal
salvation.
The redemptive work of Christ on the cross provides healing of the
human body as answer to believing prayer.
The baptism in the Holy Spirit, according to Acts 2:4, is given to
believers who ask for it.
In the sanctifying power of the Holy Spirit by whose indwelling the
Christian is enabled to live a holy life.
In the resurrection of both the saved and the lost, the one to everlast-
ing life and the other to everlasting damnation.

FROM ME TO YOU

SATURDAY AT HOME

Frances and I, because of our heavy schedules, don't get to spend much time at home. When we do, it is so very enjoyable.

We had one such day last Saturday (as I write this). I spent most of the day in prayer and study, and Frances prepared a home-cooked meal as only she can. About 4 o'clock, she put it on the table: pork chops, butter beans, sliced tomatoes, Vidalia onions, fresh corn, squash, and hot cornbread! I so seldom get to eat my wife's cooking that I "feasted" until, to be honest, I was somewhat ashamed of myself. Linda Westbrook (Frances' sister and my secretary) came by and we asked her to join us, which she did. I was glad she wasn't hungry, though, as she only ate two or three platefuls!

COSTA RICA

A short time ago we made a trip to Costa Rica to dedicate the brand-new San Jose Evangelistic Center, and I was elated at what we saw. Missionaries Doug Petersen and Ken Dahlager have done an outstanding job in the great city of San Jose and the country of Costa Rica as a whole.

Our Ministry provided the funds for the greater part of the construction costs of the Evangelistic Center, and even though it is a new church, already it is one of the largest in the country of Costa Rica. For the dedication, it was full to capacity (it seats over 2,000). We were told that there were ten Costa Rican Senators present, plus other dignitaries. I know the place was filled with beautiful, gracious, and warm people who love the Lord with all their hearts.

They had a children's choir made up from the schools that we have built there. (The JSCCI has now built six schools in Costa Rica, caring for 1,850 children each and every day.)

You must understand, these children are brought out of the worst slums imaginable. Some of them have to be fed the noon meal on Monday morning at 9 o'clock because they have had little, if anything, to eat all weekend.

How these children did sing! One little boy, especially, caught my attention. He had a beautiful voice and sang a solo part. At first he was a little timid, but all of a sudden the anointing hit him and he opened his mouth and really sang. I couldn't help but weep for joy.



Just a short time ago these beautiful little children had absolutely no opportunity at all, doomed to live and die without God and without hope. And now, to look at them . . .

What more could we ask?

Incidentally, as the funds become available, we plan to build two or three more schools in Costa Rica. They are so urgently and desperately needed. We would ask you to pray about it and if you could help us just a little bit, it would be such a blessing. Each school costs about \$50,000 and will change the lives of multiple thousands of children.

CAMP MEETING '86 GREAT SUCCESS

We registered nearly 9,000 people at our recent camp meeting. Family Worship Center seats about 7,500, and the building was almost packed every service. Plus, the children and teenagers were in another building, and they numbered about 1,000. It was a great time, and one that will not easily be forgotten.

Now it is time to put the dates for CAMP MEETING '87 on your calendar: July 1-5, 1987. Glen Miller will again host the early morning (8 o'clock) prayer service; Don Brankel will be our guest for the 10 o'clock morning service; Charles Greenaway will again bless our hearts in the 2 o'clock service; and I will, of course, preach the 7:30 p.m. service. You need to start your planning now and mark CAMP MEETING '87 on your "vacation calendar."

Our weather was perfect — with an average daytime temperature of 85 degrees and low humidity. The spiritual barometer read "exceptional," with old-fashioned Holy Ghost-filled services touching the hearts and lives of thousands. All in all, it was a highlight of the year.

PAT ROBERTSON FOR PRESIDENT

As you quite possibly have already heard by now, we are supporting Pat Robertson for the office of the President of the United States.

Pat is a man of integrity, honesty, and character. We also feel that his intelligence is such that, should the Lord help him to be elected to this high office, he would do a better job than anyone we are familiar with. We are going to support him

Continued on page 56

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From Me To You

Continued from page 55

prayerfully and put forth every effort we can muster in his behalf.

Pat and I have some differences of opinion concerning various interpretations of particular doctrines. However, this is not the place to discuss that, and these issues (whatever they may be) should not be brought into this discussion because they do not apply to the situation. Respecting the great fundamentals of the faith, we agree *totally*.

This is the first opportunity (to my knowledge) that the nation has ever had to put a well-informed, experienced, Spirit-filled man in the White House. I feel, under God, that we could not do less than make every effort to make this come to pass.

The news media has constantly barraged me with questions such as, "Are you people going to try to make this a Christian nation?"

My answer has always been, "Should Pat Robertson be elected President, he will bend over backwards to be President of all the people. There is no one in the world that knows and understands discrimination like a true Christian. Discrimination is abhorrent to him, and Pat Robertson, I believe, will be a champion in this respect.

As far as experience is concerned, the platform that he has occupied qualifies him, I feel, as no other platform does — even in a greater way than someone who has served in the political arena previously.

I have sought the Lord earnestly and I believe that which we are doing is in the mind and will of God, and I do not believe we could do any less.

PENTECOSTALS AND CHARISMATICS

I have never failed to let it be known that I love the great Pentecostal message. In fact, I have angered most of the denominational world for several years now by asking them, "Have you received the Holy Ghost since you believed?" Even so, we have seen tens of thousands of denominational friends baptized in the Holy Spirit, as well as many preachers of various denominational churches. We give God all the praise and glory for this.

About three years ago, God spoke to my heart that He had a message for me to proclaim to the Pentecostals and Charismatics. Among that which He told me was this:

"If you think the opposition has been strong from the Catholic ranks and from the denominational ranks, you haven't seen anything yet. The opposition from the Pentecostal and Charismatic ranks will be greater than any you have ever experienced."

I am ordained with the Assemblies of God. I say little about it because I do not believe God is impressed with labels. He loves all people everywhere; He never sets one denomination, fellowship, or movement above another. Yet, most preachers belong to something (and they should). I have been ordained

with the Assemblies of God for a long, long time.

I love our Movement. I know thousands of its preachers and missionaries. I am acquainted with its leadership.

The Assemblies of God, I believe, has some of the greatest pastors and evangelists in the world today. Its missions program is second to none. And yet I have felt that our Movement is in desperate need of revival. I have made some strong statements; I will no doubt have to make more. And only God knows the emotional price that has to be paid to do this.

Time and time again I have made telecasts or written articles over which I would agonize for weeks, or months. Only God knows the sleepless nights, the tears, and the burdens. The criticism has been great. I can understand that; I take no offense.

"WE DON'T LIKE YOUR METHODS," THEY SAY.

The "advice" that I have received has always been in the same vein.

When we tried to deal with the Catholics according to the directions God gave us, the complaint was, "What you're saying is right, but *we don't like your methods.*" (This came from both the Catholic and Pentecostal communities.)

When I dealt with the denominational world, they complained. "*We don't like your methods.*"

Now, sad to say, the complaints from my own are basically the same: "*We don't like your methods.*"

I have mulled over that complaint for a long time. When God tells you to say something to the people and make very sure they understand what you are saying, how do you say it without saying it?

"Don't be so plain. Don't say it so hard. Don't say it publicly," they all say.

Most people wish you wouldn't say anything. But if you do say something, say it so it will not offend anyone and don't say it publicly. Of course, there is little purpose in saying something if you say it under these strictures.

Most people, when they hear something that sounds somewhat derogatory, will ascribe it to someone else and not to themselves. So to make all understand what is being said, it has to be said in plain language and in no uncertain terms.

I believe the Assemblies of God desperately needs revival. I fear that if we do not see revival and Jesus tarries, twenty years from now the Movement that we hold so dear will no longer be. Quite possibly, that could also be said for the Church of God (Cleveland, Tennessee), Foursquare, Pentecostal Holiness, etc.

I have one responsibility and it is an awesome one: to say, "Thus saith the Lord." And only God knows how much I agonize over this.

"Am I speaking out of my own mind or is God really speaking to me? Have I said it right or have I 'gotten in the flesh'? Do I allow my own biases and prejudices to get in the way of the message that must be delivered?"

I do the best I can, although most of the time I feel I do it poorly and wish I had done it differently. I solicit your prayers.

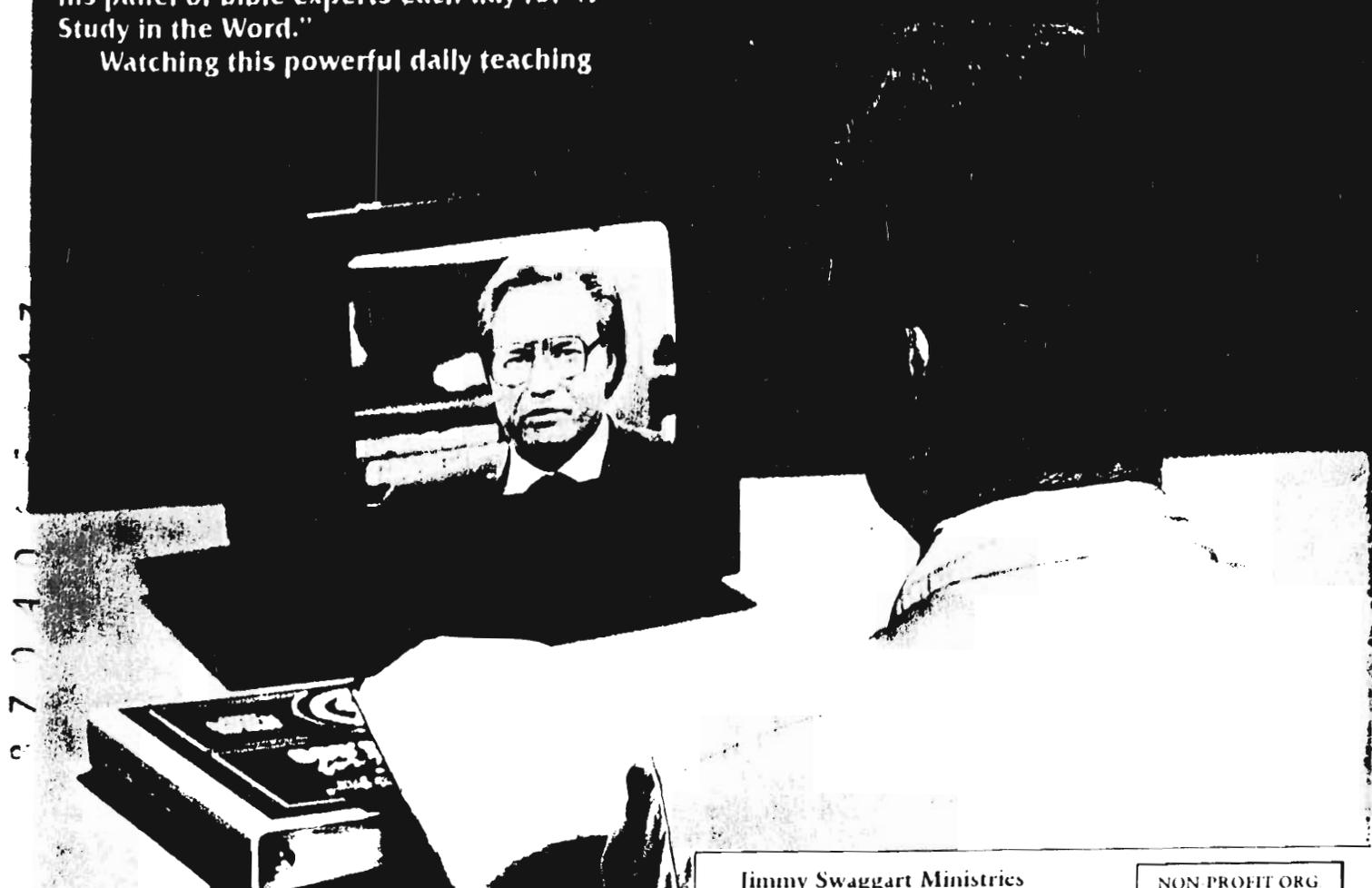
Join Jimmy Swaggart each day for a dynamic time of Bible study on "A Study in the Word."

Check your local television listings and make your plans to join Brother Swaggart and his panel of Bible experts each day for "A Study in the Word."

Watching this powerful daily teaching

program is like enrolling in a Bible college class. In fact, no other program in religious broadcasting history has commanded as faithful an audience as "A Study in the Word."

Each day, you can benefit from the wisdom of God acquired through countless years of ministry as Brother Swaggart and the panel examine the Scriptures to teach about their role in your life today.



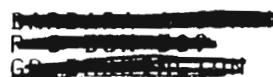
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NEW AFFILIATES: Madison, WI, WMSN CH 47, 10:00 a.m.; Taylors, SC, WGGS CH 16, 6:00 p.m. **FOREIGN:** San Jose, Costa Rica, Costa Rica CH 7, 2:00 p.m.; Montevideo, Uruguay, Uruguay CH 4, 5:30 p.m.

Jimmy Swaggart Ministries
P.O. Box 2550
Baton Rouge, LA 70821-2550

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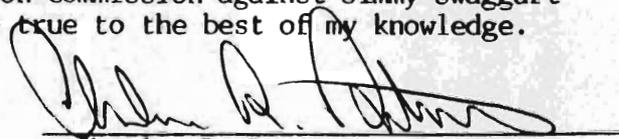


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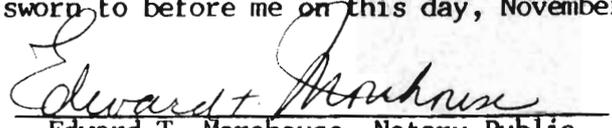
I swear that the contents of my complaint to the
Federal Election Commission against Jimmy Swaggart
Ministries are true to the best of my knowledge.


Charles R. Porteous

16 NOV 10 AII: 20

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Signed and sworn to before me on this day, November 6,
1986:


Edward T. Morehouse, Notary Public

87040656477

CFC

SENSITIVE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO:	THE COMMISSION
FROM:	MARJORIE W. EMMONS/ JOSHUA MCFADDEN <i>fil</i>
DATE:	NOVEMBER 14, 1986
SUBJECT:	MUR 2289 - COMPLAINT

87040653478

The attached has been circulated for your information.

Attachment

87040553479

Attachment ~~is~~ —
to 11/14 MEMO
~~have been~~ removed from this
position in Public Record File.
See Index Item(s) /



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 19, 1986

Charles R. Porteous, Executive Director
The Freedom Writer
Box 589
Great Barrington, MA 01230

Dear Mr. Porteous:

This letter will acknowledge receipt of your complaint which we received on November 10, 1986, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Jimmy Swaggert Ministries. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as the original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter MUR 2289. Please refer to this number in all future correspondence. If you have any questions, please contact Retha Dixon at (202) 376-3110.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure

8704053480



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 19, 1986

Jimmy Swaggert, President
Jimmy Swaggert Ministries
PO Box 2550
Baton Rouge, LA 70821-2550

Re: MUR 2289

Dear Mr. Swaggert:

The Federal Election Commission received a complaint which alleges that Jimmy Swaggert Ministries may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2289. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Jimmy Swaggert Ministries in this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Anne Weissenborn, the attorney assigned to this matter, at (202) 376-5600. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

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CC# 2294
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December 16, 1986

*A PROFESSIONAL CORPORATION
OF COUNSEL
DAVID A. MARCELLO

OUR FILE NUMBER
34,610

Federal Express

Charles N. Steele, Esq.
General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2289

Dear Mr. Steele:

We are the attorneys for Jimmy Swaggart Ministries ("JSM") in the captioned matter. Enclosed for filing is the Designation of Counsel form.

We specifically request that the matter remain private and confidential in accordance with the relevant statutes and regulations.

This letter is written in response to the letter complaint of Charles R. Porteous, dated October 21, 1986, and filed with the FEC on November 10, 1986, as transmitted to JSM with your letter dated November 19, 1986, which was received by JSM on December 2, 1986.

RESPONSE

1. Marion "Pat" Robertson was not a candidate for federal office, as that term is defined in the relevant statute, 2 U.S.C. § 431(2), and the regulations, 11 C.F.R. § 100.3, at the time that the material appearing at pages 55-56 of Vol. 18, No. 10, of the magazine The Evangelist (October, 1986) was written and subsequently published. Both the statute and the regulation defines candidate as "an individual who seeks nomination for

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DEC 18 10:00
GENERAL COUNSEL

December 16, 1986

election, or election, to federal office." At the time that the material appearing in the magazine was written and published, Marion Robertson was engaged in gathering sufficient information concerning support and feasibility to permit him to subsequently make a decision about seeking nomination to a federal office. In other words, Mr. Robertson was, at that time, "testing the waters." The FEC regulations specifically contemplate that the point in time at which an individual becomes a candidate can be determined. For example, in 11 C.F.R. § 101.1, a person who becomes a candidate is required to designate in writing a principal campaign committee within 15 days following the date that he achieves candidacy status. Therefore, despite the allegation in the Porteous complaint, Marion Robertson was not a candidate at the time the October issue of The Evangelist magazine was published.

In support of his allegation that Mr. Robertson was a candidate at that time, the complainant alleges that Mr. Robertson had raised a sum of money toward his campaign. The mere fact that funds may have been contributed in anticipation of a candidacy does not conclusively convert an individual to a candidate under the applicable FEC regulations. In fact, 11 C.F.R. § 101.3 contemplates that funds may be received at a time prior to an individual becoming a candidate, and provides a refund mechanism for return of such funds after the person becomes a candidate if the pre-candidacy funds were improperly contributed. Therefore, assuming arguendo the truth of the allegation that Mr. Robertson had received funds contributed in anticipation of a subsequent candidacy, receipt of such funds does not automatically classify Mr. Robertson as a candidate under the FEC regulations.

Because Mr. Robertson was not a candidate at the time the questioned magazine material was published (that is, he was not seeking nomination or election), no violation of the relevant statutes and regulations occurred and the complaint should be rejected.

2. Alternatively, even were Marion Robertson a candidate as that term is defined in the statutes and regulations, the material appearing at pages 55 and 56 of the magazine The Evangelist, falls within the "free press, free speech" exception of the regulations and statutes.

The statutory exception contained in 2 U.S.C. § 431(8)(b)(i) is stated as follows:

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December 16, 1986

"(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;"

The relevant regulation, 11 C.F.R. § 100.7(b)(2), states the free press exception as follows:

"(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate"

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The Evangelist is a periodical publication in magazine format that has been published and circulated for 15 years. The magazine has all of the necessary indicia of a periodical publication (see e.g., Federal Election Commission v. Mass. Citizens for Life, 769 F.2d 13, 21 (1st Cir. 1985)); the magazine has been published regularly for 15 years, it contains a masthead identifying the editors, publishers, and contributors, it contains a number of regular and special articles and columns, it is identified by volume and issue number, it can be obtained through subscriptions, and in all other respects it meets the criteria of a periodical publication in magazine format. As such, the material written at pages 55 and 56 of Vol. 18, No. 10, of the magazine in October, 1986, constitute commentary or editorial material distributed through the facilities of the magazine or periodical publication, thus falling within the statutory exception.

Mr. Porteous does not allege, nor could he allege, that The Evangelist is published by facilities "owned or controlled by any political party, political committee, or candidate", since that is simply not the case in the present instance.

Assuming, alternatively, that Marion Robertson was a candidate within the definition of the statute and regulations at the time the material was written and published in the October, 1986 issue of the The Evangelist, the material falls within the "free press-free speech" exception stated in the statute and the

December 16, 1986

regulations, and, as such, does not constitute a violation of the statutes and regulations under the jurisdiction of the Federal Election Commission. For this additional reason, the complaint should be dismissed.

3. Assuming, in the further alternative, that either (1) or (2) hereof are insufficient as a basis for dismissal of the complaint, the complaint should be dismissed because the material complained of does not constitute a prohibited communication by a corporate entity, under the cited regulation, 11 C.F.R. § 114.3(a)(1). The prohibition in this portion of the statute and regulations of corporate communication is intended to prevent undue economic influence of elections by corporate (and therefore non-voting) entities through efforts by the corporation to directly influence the outcome of an election, and also to protect shareholders of the corporation from having the corporate entity take a political position in connection with a federal campaign that might be contrary to the wishes of the individual shareholders. See, generally, the discussion in Buckley v. Valeo, 423 U.S. 387, 96 S. Ct. 612 (1976). The written material complained of in this instance does not constitute corporate communication in any form. The material was part of a personally written commentary column appearing monthly in the magazine The Evangelist. The commentary column is written by Jimmy Swaggart, an individual, as a personal communication from the writer to the reader dealing with a broad range of topics of importance to the writer. As an illustration, in the very column cited in the complaint, a number of topics are touched upon, including a very personal discussion at the beginning of the column concerning the writer's family, followed by discussion of other recent events in his professional life. The comments concerning Marion Robertson constitute expressions of personal opinion by the writer, Jimmy Swaggart, an individual, and not communications by a corporation. Additionally, the written material does not solicit contributions or support for Marion Robertson, but merely express the opinion of the writer on the matter.

Since the communication does not fall within the prohibition of corporate communication contained within the regulations, the complaint should be dismissed.

4. Finally, complainant's reliance upon AO 1984-23 is misplaced. The cited Advisory Opinion is inapposite to the present circumstance. In AO 1984-23, an incorporated trade association intended to actively endorse and solicit support for a declared and identified presidential candidate, to publish the information concerning the endorsement in the corporation's bi-weekly newsletter and monthly magazine, and to issue press releases concerning the endorsement of a declared candidate. In that instance,

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December 16, 1986

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the FEC advised that there would be no violation of the regulations if the communications by the corporation of the endorsement of a declared candidate were made to the restricted class of members of the trade association. In the present instance, the communication is not made by the corporation, the corporation is not endorsing a declared candidate, the communication does not solicit support or funding for a declared candidate, and, although The Evangelist is a magazine available to the general public by subscription, it is not carried in newsstands, but rather is disseminated to people who express an interest in receiving the magazine either by subscriptions or by contributions to JSM as a non-profit corporation. The people receiving The Evangelist comprise a group more restricted than those receiving the publications in AO 1984-23. The recipients of The Evangelist are persons who either subscribe to the magazine or are placed on the subscription list by virtue of contributions to JSM. In AO 1984-23, in addition to the dues-paying membership of the association, a significant quantity of the publications went to non-member news media recipients, advertisers, schools, construction users, and government officials. Quite simply, AO 1984-23 is inapposite. But were AO 1984-23 applicable, it argues more strongly for finding no violation in the present matter than for the opposite contention.

Careful review of this matter will clearly indicate that no violation of statutes and regulations over which the Federal Election Commission has jurisdiction has occurred. We will be available to discuss the matter further with members of your staff or the Commissioners at their request and convenience. If additional information is needed in connection with this response or your consideration of the matter, please do not hesitate to advise us. Representatives of JSM can be available for oral argument or discussion of this matter should you deem a meeting or hearing necessary.

Sincerely,

William D. Treeby
 William D. Treeby

Clinton W. Shinn
 Clinton W. Shinn
 Of STONE, PIGMAN, WALTHER,
 WITTMANN & HUTCHINSON
 Attorneys for Jimmy Swaggart
 Ministries

December 16, 1986

VERIFICATION

The undersigned duly authorized representative of Jimmy Swaggart Ministries has read the above and foregoing Response and, to the best of his information, knowledge, and belief, the statements contained therein are true.

William D. Seebay

Sworn to and subscribed
before me this 16th day
of December, 1986.

Kay W. Egan
Notary Public

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CC# 2302
RECEIVED AT THE FEC
HAND DELIVERED
86 DEC 18 AU: 43

STONE, PIGMAN, WALTHER, WITTMANN & HUTCHINSON

COUNSELLORS AT LAW

846 CARONDELET STREET

NEW ORLEANS, LOUISIANA 70130-3588

(504) 581-3200

TELECOPIER (504) 581-3381

TELEX W.U. 584128 RCA 288048

December 17, 1986

SAUL STONE
PAUL O. H. PIGMAN*
EWELL R. WALTHER, JR.*
PHILLIP A. WITTMANN
CAR. PBELL C. HUTCHINSON*
DAVID L. STONE*
WILLIAM D. TREESBY*
HIRSCHEL T. ABBOTT, JR.*
MICHAEL R. FONYHAM*
ANTHONY M. DILEO*
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CLINTON W. SHINN*
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MARJORIE NIEBET NEUFELD
JOSEPH L. CAVERLY

*A PROFESSIONAL CORPORATION
OF COUNSEL
DAVID A. MARCELLO

OUR FILE NUMBER
34,610

Federal Express

Ms. Anne Weissenborn
Federal Election Commission
999 "E" Street, N.W.
Washington, D.C. 20463

RE: MUR 2289

Dear Ms. Weissenborn:

The Response in the captioned matter forwarded to you by federal express for receipt today, December 17, 1986 did not contain the executed Designation Of Counsel form. Enclosed herewith for filing is the Designation Of Counsel.

Please advise if any additional information is needed.

Sincerely,

Clinton W. Shinn

Clinton W. Shinn

CWS/lae
Enclosure

DEC 18 P 3: 41
GENERAL COUNSEL

8704053489

STATEMENT OF DESIGNATION OF COUNSEL

NO: 2289

NAME OF COUNSEL: Clinton W. Shinn
William D. Treeby

ADDRESS: Stone, Pigman, et al.
546 Carondelet Street
New Orleans, Louisiana 70130

TELEPHONE: (504) 581-3200

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

December 16, 1986
Date

Jimmy Swaggart Ministries
By: William D. Treeby
Signature *Assistant Secretary and Director*

RESPONDENT'S NAME: Jimmy Swaggart Ministries

ADDRESS: P. O. Box 2550
Baton Rouge, Louisiana 70821-2550

HOME PHONE: Not Applicable

BUSINESS PHONE: (504) 768-8300

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SENSITIVE

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RECEIVED
COMMUNICATIONS SECTION

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR #2289
DATE COMPLAINT RECEIVED BY
OGC 11/10/86
DATE OF NOTIFICATION TO
RESPONDENTS 11/19/86
STAFF MEMBER: Anne Weissenborn

COMPLAINANT: Charles R. Porteous
RESPONDENTS: Jimmy Swaggart Ministries
Jimmy Swaggart, President
RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 431(9)(B)(i)
11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1)

**INTERNAL REPORTS
CHECKED:** None

**FEDERAL AGENCIES
CHECKED:** None

I. GENERATION OF MATTER

On November 10, 1986, the Commission received a complaint from Charles R. Porteous alleging that Jimmy Swaggart Ministries, a not-for-profit corporation, had endorsed the Rev. Marion "Pat" Robertson for president and had communicated that endorsement to the general public "in violation of Federal Election Commission regulations." The complainant asserted that Pat Robertson is a candidate because "he has reportedly raised \$5 million dollars toward the campaign." He cited pages 55 and 56 of the October, 1986, issue of The Evangelist which were attached to the complaint and which contained, in a column entitled "From Me to You," the statement, "[W]e are supporting Pat Robertson for President of the United States." This column was apparently written by Jimmy Swaggart.

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The Evangelist is published as the "official voice of Jimmy Swaggart Ministries." According to the complainant, it is mailed to the general public. Mr. Porteous asserted that "a careful reading of the article in context, along with other articles on the same pages, makes it clear that Mr. Swaggart is speaking on behalf of his corporation and not simply as an individual."

Notification of the complaint was sent to Jimmy Swaggart as president of Jimmy Swaggart Ministries on November 19, 1986. A response from counsel for the respondent was received on December 18, 1986. (Attachment 1).

II. FACTUAL AND LEGAL ANALYSIS

A. Statutory and Regulatory Bases

2 U.S.C. § 431(2) defines "candidate" as meaning "an individual who seeks nomination for election, or election, to Federal office." An individual is deemed to be seeking office if he or she has received contributions or used expenditures aggregating in excess of \$5,000, "contributions" and "expenditures" being defined as gifts received or payments made for purposes of influencing an election to Federal office. (See 2 U.S.C. §§ 431(8) and 431(9)). The Commission's regulations at 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1) exempt from the definitions of "contribution" and "expenditure" funds which have been received or expended "solely for the purpose of determining whether an individual should become a candidate," i.e., for so-called "testing-the-waters" purposes; however, these regulatory provisions also require that "[o]nly funds permissible

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under the Act may be used for such activities." In other words, funds may be made available to individuals "testing the waters," and expenditures may be made on their behalf, without triggering candidacy, but no corporate or other prohibited monies may be involved. Once an individual becomes a candidate, all funds received and expended prior to candidacy must be reported to the Commission.

2 U.S.C. § 431(a)(B)(i) excludes from the definition of "expenditure"

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

B. Candidacy versus Testing-the-Waters

In their response, counsel for respondents state that at the time the October, 1986, issue of The Evangelist was written and published Pat Robertson was not a "candidate," but, rather, was "testing-the-waters." Counsel state that the Commission's regulations "specifically contemplate that the point in time at which an individual becomes a candidate can be determined," and cite the requirement at 11 C.F.R. § 101.1 that an individual designate a committee within 15 days of becoming a candidate. Counsel also cite 11 C.F.R. § 101.3 as permitting the receipt of funds prior to candidacy but in anticipation of such candidacy, and argue that therefore such receipt "does not automatically

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classify Mr. Robertson as a candidate. . . .^{1/} Counsel, however, do not acknowledge the \$5,000 thresholds at 2 U.S.C. § 431(2) as establishing a specific point in time at which candidacy begins. If Mr. Robertson in fact had raised or expended more than \$5,000 for purposes other than to "test-the-waters" by the time the October issue of The Evangelist was published, he would be deemed to have become a candidate for purposes of the Federal Election Campaign Act.

In support of his argument that Mr. Robertson had become a candidate by the time the October issue of The Evangelist was published, the complainant cited \$5 million as an amount reportedly raised by Mr. Robertson toward a campaign. He did not provide information in support of that figure nor specify any uses to which such receipts had been applied.

Counsel for respondents do, however, argue that Mr. Robertson was "testing the waters" at that time. Such activities are, as noted above, subject to the strictures on sources of funds received and expended set forth at 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Therefore, any involvement of

^{1/} Counsel refer to refund provisions at 11 C.F.R. § 101.3; however, those provisions were deleted as part of the 1985 amendment of this regulation.

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corporate funds in support of Mr. Robertson's testing-the-waters activities would generally be in violation of these regulatory provisions. 2/

C. Press Exemption

Although it has been argued that Mr. Robertson was testing the waters as of the publication of the October issue of The Evangelist, and even if it were established that Mr. Robertson was a candidate at the time the column at issue was published, no contribution by Jimmy Swaggart Ministries would result if the column were entitled to the "press exemption" at 2 U.S.C. § 431(9)(B)(i).^{3/}

As stated above, this exemption applies to news stories, commentaries or editorials distributed through the facilities of a periodical publication, unless evidence is found of control by a candidate, political party or political committee. In the context of regulations governing sponsorship of candidate

2/

^{3/}The court in Reader's Digest Association v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981) concluded that a determination of the applicability of the press exemption must be made before the Commission may undertake an investigation into whether or not a particular activity by a press entity has violated the Act. See also FEC v. Phillips Publishing Co., 517 F. Supp. 1308 (D.D.C. 1981) which likewise viewed resolution of the press exemption issue as preliminary to consideration of violations of the Act by a press entity.

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debates, the Commission has interpreted "periodical publication" to mean "a publication in bound pamphlet form appearing at regular intervals . . . and containing articles of news, information, opinion, or entertainment, whether of general or specialized interest which ordinarily derive their revenues from subscriptions and advertising." Explanation and Justification for 11 C.F.R. § 114.4(e)(2), 44 Fed. Reg. 76,735 (1979).

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The response from counsel at page 3 states that "The Evangelist is a periodical publication in magazine form that has been published and circulated for 15 years." Counsel argue that the publication "has all the indicia of a periodical publication . . . , the magazine has been published regularly for 15 years, it contains a masthead identifying the editors, publishers, and contributors, it contains a number of regular and special articles and columns, it is identified by volume and issue number, it can be obtained through subscriptions, and in all other respects it meets the criteria of a periodical publication in magazine format."^{4/} (Counsel do not cite advertising as a source of revenues.) On these bases counsel conclude that the portion of Jimmy Swaggart's column at issue "constitute(s) commentary or editorial material distributed through the

^{4/} Later, at page 5, counsel state, "Although The Evangelist is a magazine available to the general public by subscription, it is not carried on newstands, but rather is disseminated to people who express an interest in receiving the magazine either by subscriptions or by contribution to JSM as a non-profit corporation."

facilities of the magazine or periodical publication, thus falling within the statutory exception."

In FEC v. Massachusetts Citizens for Life, 107 S.Ct. 616, 624 (1986), the Supreme Court found the MCFL publication there at issue not to be entitled to the press exemption at 2 U.S.C. § 431(8)(B). The Court emphasized that that publication had not been "published through the facilities of the regular newsletter," that it had not been "distributed to the newsletter's regular audience, but to a group twenty times the size of that audience," that "the MCFL masthead did not appear on the flyer," and that "it contained no volume or issue number identifying it as one in a continuing series of issues."

This Office has analyzed the portions of the October, 1986 issue of The Evangelist in hand, and counsels' response to the complaint, in light of MCFL, and finds certain evidence that the Jimmy Swaggart column in question is entitled to the press exemption. The portions of the October issue attached to the complaint, namely the front cover, pages 3, 55, and 56, and the apparent back cover or mailing cover, indicate that The Evangelist is a periodical published at regular intervals. The October issue was designated Volume 18, Number 10. According to the table of contents on page 3, this issue covered a variety of topics both political and non-political, as did the Jimmy Swaggart column itself. Again according to the table of contents, the column, "From Me to You," is a "department" of the publication and thus apparently a standard feature of each issue, not special to

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the October, 1986, issue. The Evangelist assertedly is financed at least in part by subscriptions and is available to members of the general public if they subscribe or make contributions to Jimmy Swaggart Ministries.

On the other hand, certain information not presently available to the Commission is needed in order to make a final determination as to whether the press exemption applies. In particular, it is not known whether the October, 1986 issue in question was distributed to a wider audience than that normally reached by other issues of The Evangelist. Nor is it known whether the Jimmy Swaggart column containing the endorsement of a Robertson candidacy has been reproduced and distributed to nonsubscribers or noncontributors. (See U.S. v. C.I.O., 335 U.S. 106 (1948)). 5/

The issue of control by a candidate also cannot be resolved with the information currently in hand. Not known is the nature of the relationship of Pat Robertson to Jimmy Swaggart

5/ The complaint in this matter cites Advisory Opinion 1984-23, apparently in support of the argument that Jimmy Swaggart Ministries had communicated the endorsement of Pat Robertson beyond its restricted class. In Advisory Opinion 1984-23 the Commission permitted a non-profit incorporated trade association to distribute a publication containing an endorsement of a candidate to a de minimis number of recipients outside the restricted class. The publication was not one distributed to the general public.

In their response counsel for the respondent argue that the complainant's reliance upon Advisory Opinion 1984-23 is misplaced, inter alia, because the "[t]he people receiving The Evangelist comprise a group more restricted than those receiving the publication in AO 1984-23" [which included recipients which were not members of the incorporated trade association involved in the advisory opinion].

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Ministries and to The Evangelist, nor is known the extent, if any, of Mr. Robertson's involvement in, or prior knowledge of, the endorsement in the October issue.

Given the need for additional information in order to determine whether the press exemption applies to the publication here at issue, and because it is not clear whether, in the absence of the press exemption, costs related to the endorsement by The Evangelist would be considered contributions or coordinated expenditures, this Office recommends that the Commission find reason to believe that Jimmy Swaggart Ministries and Jimmy Swaggart, as president of Jimmy Swaggart Ministries, have violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1) and send the attached questions.^{6/}

RECOMMENDATIONS

1. Find reason to believe that Jimmy Swaggart Ministries and Jimmy Swaggart, as president of Jimmy Swaggart Ministries, have violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).
2. Send attached letter and questions.

Date

5/14/07

Lawrence M. Noble
Acting General Counsel

Attachments

- Response from counsel for respondents
- Letter, Interrogatories and Request for Production of Documents

^{6/} Counsel also has raised the defense that the Swaggart column in question was written by Mr. Swaggart as a personal, not a corporate statement. The issue of corporate versus personal responsibility will be addressed if it is determined that the press exemption does not apply.

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Attachment(s) Response from Counsel
to First General Counsel's Report
have been removed from this
position in Public Record File.

See Index Item(s) 6

Draft letters, Interrogatories
✓ Request for Production of
Documents deleted pursuant to
5 U.S.C. § 552 (b)(5).

Deletions made to pp. 4 and 5
of 1st G.C. Report. These
referred to open enforcement
matters. See 5 U.S.C. § 552 (b)(3).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Jimmy Swaggart Ministries) MUR 2289
Jimmy Swaggart, President)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of June 2, 1987, do hereby certify that the Commission decided by a vote of 5-1 to reject the recommendations contained in the General Counsel's Report dated May 14, 1987, and instead take the following actions in MUR 2289:

1. Find no reason to believe that Jimmy Swaggart Ministries and Jimmy Swaggart, as president of Jimmy Swaggart Ministries, have violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).
2. Close the file.
3. Direct the Office of General Counsel to send appropriate letters.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas dissented.

Attest:

6/2/87
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1987

Clinton W. Shinn, Esquire
William D. Treeby, Esquire
Stone, Pigman, Walter, Wittman
and Hutchinson
546 Carondelet Street
New Orleans, Louisiana 70130-3588

RE: MUR 2289
Jimmy Swaggart Ministries
Jimmy Swaggart, President

Dear Mr. Shinn and Mr. Treeby:

On November 19, 1986, the Federal Election Commission notified your clients of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended, and of the Commission's regulations.

On June 2, 1987, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe that Jimmy Swaggart Ministries and Jimmy Swaggart, as president of Jimmy Swaggart Ministries, violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Accordingly the Commission closed the file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
Lawrence M. Noble *by GTR*
Acting General Counsel

Enclosure
General Counsel's Report

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plm



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles R. Porteous, Executive Director
The Freedom Writer
Box 589
Great Barrington, Massachusetts 01230

RE: MUR 2289

Dear Mr. Porteous:

On June 2, 1987, the Federal Election Commission reviewed the allegations in your complaint received on November 10, 1986, and found that, on the basis of the information provided in your complaint and information provided by the respondents, there is no reason to believe that Jimmy Swaggart Ministries and Jimmy Swaggart, as president of Jimmy Swaggart Ministries, violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Accordingly on June 2, 1987, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act"), allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Lawrence M. Noble
Lawrence M. Noble
Acting General Counsel *ty BFR*

Enclosure
General Counsel's Report

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Plan



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 11, 1987

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COMM
FEB 27 1987

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble *JMN*
Acting General Counsel *2067*
SUBJECT: Draft Statement of Reasons in MUR 2289

On November 10, 1986, the Commission received a complaint from Charles R. Porteous alleging that Jimmy Swaggert Ministries, a not-for-profit corporation, had endorsed the Rev. Marion "Pat" Robertson for president and had communicated that endorsement to the general public "in violation of Federal Election Commission regulations."

On May 18, 1987, this Office circulated to the Commission a report recommending that the Commission find reason to believe that Jimmy Swaggert Ministries and Jimmy Swaggert, as president of Jimmy Swaggert Ministries, had violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).

The Commission disagreed with this Office's recommendation and on June 2, 1987, found no reason to believe that the respondents violated the sections cited and closed the file.

A draft Statement of Reasons reflecting the basis for the Commission's decision is attached.

Attachment
Draft Statement of Reasons

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Attachment ~~(of)~~ DRAFT Statement of Reasons
to Memorandum

~~have been~~ removed from this
position in Public Record File.

See Index Item(s) 14



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Cof*
DATE: June 11, 1987
SUBJECT: MUR 2289 - Memorandum to the Commission
Statement of Reasons

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []
24 Hour No Objection []
Sensitive []
Non-Sensitive []
Information [X]
Sensitive [X]
Non-Sensitive []

DISTRIBUTION

Compliance []
Audit Matters []
Litigation []
Closed MUR Letters []
Status Sheets []
Advisory Opinions []

Other []

Other (see distribution below) [X]

Please have the attached circulated to the Commission and directed specifically to the Office of the member who made the motions adopted by the Commission.

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OBC



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 29, 1987

MEMORANDUM

TO: COMMISSIONERS
STAFF DIRECTOR
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS
COMMISSION SECRETARY

MWE

SUBJECT: STATEMENT OF REASONS - MUR 2289

Attached is a copy of the Statement of Reasons
for MUR 2289.

This was received in the FEC Secretariat at
noon today.

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FEDERAL ELECTION COMMISSION

In the Matter of)
Jimmy Swaggert Ministries) MUR 2289
Jimmy Swaggert, President)

STATEMENT OF REASONS

On June 2, 1987, the Federal Election Commission rejected the Office of General Counsel's recommendation in MUR 2289 to find reason to believe that Jimmy Swaggert Ministries and Jimmy Swaggert, as president of Jimmy Swaggert Ministries, violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).

In MUR 2289, the Commission reviewed the allegation that the respondents' endorsement of Pat Robertson's candidacy in a Swaggert periodical, The Evangelist, violated the Federal Election Campaign Act's prohibition against corporate expenditures in federal elections. See 2 U.S.C. §441b, 11 C.F.R. 114. The Federal Election Campaign Act, however, exempts from the definition of "expenditure" any "news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate." 2 U.S.C. §431(9)(B)(i).

In resolving the preliminary issue of the applicability of the press exemption, see Reader's Digest Association v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), the Commission noted that The Evangelist

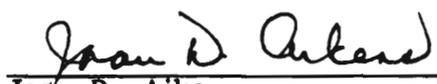
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is a regularly published periodical, containing several regular and special articles, identified by an issue and volume number, and carrying a masthead that identifies its editors, publishers and contributors. See FEC v. Massachusetts Citizens for Life, Inc., 107 S.Ct. 616, 624 (1986). On the basis of this information, the Commission determined that the article at issue constituted commentary or editorial material in a periodical publication falling within the statutory press exemption. The Commission also noted there was no evidence indicating that The Evangelist is published by facilities "owned or controlled by any political party, political committee, or candidate," or that the respondents distributed this article beyond the audience normally reached by The Evangelist.

Therefore, the Commission determined there was an insufficient factual or legal basis on which to find reason to believe that the respondents violated the Commission's Regulations by making a corporate expenditure on behalf of an individual engaged in "testing-the-waters" activity. Accordingly, a majority of the Commission voted to find no reason to believe Jimmy Swaggert Ministries and Jimmy Swaggert, as president of Jimmy Swaggert Ministries, violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1) and voted to close the file.


Thomas J. Josefiak
Vice Chairman

6/24/87
Date


Joan D. Aikens
Commissioner

6/24/87
Date

3704053509

Lee Ann Elliott
Lee Ann Elliott
Commissioner

6/24/87
Date

Danny Lee McDonald
Danny Lee McDonald
Commissioner

6/24/87
Date

John Warren McGarry
John Warren McGarry
Commissioner

6/24/87
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2289
DATE FILMED 7/29/87 CAMERA NO. 2
CAMERAMAN A.S.

87040656511



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

9-21-87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MIR 2209

87040654203



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 6, 1987

Marion Edwyn Harrison, Esq.
1000 Potomac Street, N.W.
Third Floor
Washington, D.C. 20007

RE: MURs 2289 and 2262

Dear Mr. Harrison:

We are in receipt of your letter dated June 29, 1987, concerning the placement on the public record of the First General Counsel's Report in MUR 2289. You raise objections to such placement with regard to certain language referencing MUR 2262 and to the Report as a whole.

Because MUR 2262 is an ongoing investigation, please be assured that, pursuant to 2 U.S.C. § 437g(a)(12)(A), the reference to that matter in the First General Counsel's Report in MUR 2289 will be deleted before the report is placed on the public record.

As regards the General Counsel's Report as a whole, we note that you are not an attorney of record in MUR 2289 and thus cannot construe your request as being made on behalf of the respondents in that matter. We would, however, note that 11 C.F.R. § 4.2(b) requires the placement on the public record of all Commission records "unless they are specifically exempt under this part." Once the file in a particular matter has been closed, 11 C.F.R. § 4.4(a)(3) and 11 C.F.R. § 5.4(4) require that General Counsel's reports be placed on the public record within "30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file." No distinction is made as to whether the recommendations contained in such report are approved or disapproved by the Commission.

87040554204

ou have any further questions, please contact Lois
Associate General Counsel, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
Acting General Counsel


BY: Lois G. Lerner
Associate General Counsel

iam D. Treeby, Esquire
e, Figman, Walther, Wittman and Hutchinson
Carondelet Street
Orleans, Louisiana 70130-3588

MUR 2289



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1987

Charles R. Porteous
Executive Director
The Freedom Writer
Box 589
Great Barrington, Massachusetts 01230

RE: MUR 2289

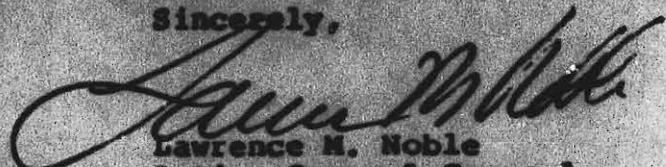
Dear Mr. Porteous:

By letter dated June 10, 1987, the Office of General Counsel informed you of determinations made with respect to the complaint filed by you against Jimmy Swaggert Ministries and Jimmy Swaggert, President. Enclosed with that letter was the First General Counsel's Report.

Enclosed herein please find a Statement of Reasons adopted by the Commission explaining its decision to find no reason to believe that the respondents in this matter had violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1) and to close the file.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,


Lawrence M. Noble
Acting General Counsel

Enclosure
Statement of Reasons

87040654206



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 16, 1987

Clinton W. Shinn, Esquire
William D. Treeby, Esquire
Stone, Pigman, Walter, Wittmann
and Hutchinson
546 Carondelet Street
New Orleans, Louisiana 70130-3588

RE: MUR 2289
Jimmy Swaggart Ministries
Jimmy Swaggart, President

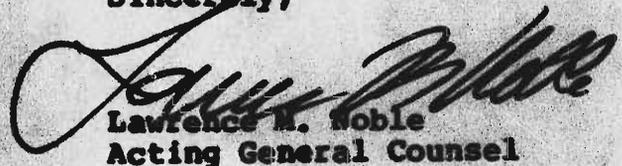
Dear Mr. Shinn and Mr. Treeby:

By letter dated June 10, 1987, the Office of General Counsel informed you of determinations made with respect to the complaint filed against your clients, Jimmy Swaggart Ministries and Jimmy Swaggart, President of Jimmy Swaggart Ministries. Enclosed with that letter was the First General Counsel's Report.

Enclosed herein please find a Statement of Reasons adopted by the Commission explaining its decision to find no reason to believe that your clients had violated 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1) and to close the file.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,


Lawrence M. Noble
Acting General Counsel

Enclosure
Statement of Reasons

87040654207

Shinn

87 JUL 1 P 1: 44

LAW OFFICES

MARION EDWYN HARRISON

1000 POTOMAC STREET, N.W.

THIRD FLOOR

WASHINGTON, D.C. 20007

(202) 965-6300

CABLE MEHLAW

TELEX 89492

FAXSIMILE (202) 337-4632

JOHN S. BAKER, JR.
MARION EDWYN HARRISON
DANIEL M. REDMOND

FALKENSTRASSE 14
8008 ZURICH, SWITZERLAND
TELEX (845) 815878 PVP CH

June 29, 1987

07 JUL 1 P 3: 05

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Lawrence M. Noble, Esquire
Acting General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2289

Dear Mr. Noble:

We are Counsel for Respondent in MUR 2262.

Counsel for Respondent in MUR 2289 shares with us your letter in MUR 2289 dated June 10, 1987. Your letter contains the usual language concerning the public record in a case in which the file is closed.

Counsel for Respondent in MUR 2289 advises that Ms. Anne Weissenborn, to whom MUR 2289 is assigned, proposes to include in the public file the First General Counsel's Report dated May 14, 1987.

Counsel for Respondent in MUR 2289 has objected to inclusion of that Report, the recommendation of which the Commissioners of the Federal Election Commission did not accept.

As Counsel for Respondent in MUR 2262 we also object in view of the language of the last sentence of the full (middle) paragraph on page 4, which cites and characterizes MUR 2262.

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Lawrence M. Noble, Esquire
Page 2

Inasmuch as both Respondents in MUR 2262 and MUR 2289 object to public disclosure, and there is no written consent of either Respondent, the prohibition set forth in 2 USC §437(g)(a)(11)(A), formerly 2 USC §437(g)(a)(12)(A), is applicable:

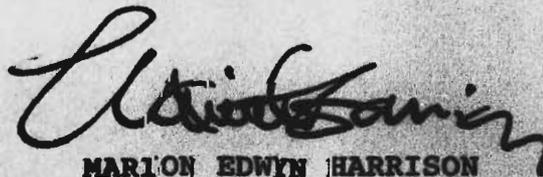
"any notification or investigation ... shall not be made public ... without the written consent of the person receiving such notification or the person with respect to whom such investigation is made."

§437(g)(a)(11)(B), formerly §437(g)(a)(12)(B), provides a penalty for violations.

The statute does not require the interposition of an objection but rather requires a written consent. However, in an abundance of caution, we write this letter to render indisputably clear the fact that there is no written consent and there is objection.

We also note that when a file is closed the Federal Election Commission is required to "... make public such action and the basis therefor ..." 11 CFR §111.20(a). The First General Counsel's Report dated May 14, 1987 is not the basis for closing the file inasmuch as the Commissioners acted contrary to the Acting General Counsel's recommendation.

Sincerely,



MARION EDWYN HARRISON

/dr

cc: William D. Treeby, Esquire
Counsel for Respondent in MUR 2289
Anne Weissenborn, Esquire

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