

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division

CLERK'S OFFICE, U.S. DISTRICT COURT  
AT LYNCHBURG, VA

FILED

OCT 18 1994

MORGANE SCOTT, JR.  
By *Debra S. Luper*  
Deputy Clerk

FEDERAL ELECTION COMMISSION,  
999 E Street, N.W.,  
Washington, D.C. 20463  
(202) 219-3690,

Plaintiff,

v.

CHRISTIAN ACTION NETWORK, INC.,  
P.O. Box 606  
Forest, VA 24551  
(804) 385-5156,

and

MARTIN MAWYER,  
3717 Old Forest Road  
Lynchburg, Virginia 24501,

Defendants.

Civil Action No. 94-0082-L

COMPLAINT FOR DECLARATORY,  
INJUNCTIVE AND OTHER  
APPROPRIATE RELIEF

COMPLAINT FOR DECLARATORY, INJUNCTIVE  
AND OTHER APPROPRIATE RELIEF

Jurisdiction.

1. This action seeks declaratory, injunctive and other appropriate relief pursuant to the express authority granted the Federal Election Commission (the "Commission" or "FEC") by the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), codified at 2 U.S.C. §§ 431 et seq. This Court has original jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an Act of Congress. See 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6)(A).

Venue.

2. Venue is properly found in the Western District of Virginia in accord with 2 U.S.C. § 437g(a)(6)(A) as both defendants can be found, reside or transact business in this district.

Parties.

3. Plaintiff Federal Election Commission is the independent agency of the United States government empowered with exclusive jurisdiction over the administration, interpretation and civil enforcement of the Act. See generally 2 U.S.C. §§ 437c(b)(1), 437d(a) and 437g. The FEC is authorized to institute investigations of possible violations of the Act, 2 U.S.C. §§ 437g(a)(1) and (2), and has exclusive jurisdiction to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act. 2 U.S.C. §§ 437c(b)(1) and 437d(e).

4. Defendant Christian Action Network, Inc. ("Christian Action Network" or "CAN") is a corporation organized under the laws of the state of Virginia in 1990. During the time in question, defendant CAN did not have any policy regarding the acceptance or nonacceptance of contributions from business corporations and labor unions. Defendant CAN also had not established, or administered, or solicited contributions to, a separate segregated fund to be used for political purposes.

5. During 1992, defendant Martin Mawyer was President of the Christian Action Network. As President, Mawyer was chief executive officer of CAN, and had authority over the general

management and direction of the business and operations of CAN subject only to the ultimate authority of CAN's board of directors.

Administrative Proceedings.

6. Acting upon the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, on October 20, 1992 the Commission, by the affirmative votes of at least four of its members, determined to open a "Matter Under Review" ("MUR") and found reason to believe that defendants Christian Action Network and Martin Mawyer violated provisions of the Act, and initiated an investigation into those violations. The Commission's proceeding was designated by the Commission as MUR 3661 for administrative purposes. Defendants were notified of the Commission's actions by letters dated December 16, 1992. See 2 U.S.C. § 437g(a)(2).

7. On October 27, 1992, the Commission received an administrative complaint filed against defendant CAN by the Democratic National Committee. This complaint was designated by the Commission as MUR 3668 for administrative purposes. Defendant CAN was notified of the administrative complaint by letter dated October 27, 1992.

8. The Commission, by the affirmative vote of at least four of its members, determined on February 1, 1993 to merge MUR 3668 into MUR 3661.

9. The Commission's General Counsel notified defendants by letter dated December 8, 1993 that the General Counsel was prepared to recommend that the Commission find probable cause to

believe that violations of the Act by defendants had occurred, and provided defendants with a brief stating the position of the General Counsel on the factual and legal issues of the case.

See 2 U.S.C. 437g(a)(3).

10. On April 19, 1994, the Commission, by the affirmative vote of at least four of its members, ratified its October 20, 1992 findings regarding reason to believe in this case.

On April 19, 1994, the Commission, by the affirmative votes of at least four of its members, also found probable cause to believe that defendants violated provisions of the Act and thereafter endeavored for a period of not less than thirty (30) days to correct such violations by the informal methods of conference, conciliation and persuasion, and to enter into conciliation agreements with defendants. Defendants were notified of the Commission's actions by letter dated April 22, 1994. See 2 U.S.C. § 437g(a)(4)(A)(i).

11. The Commission's General Counsel notified defendants by letter dated August 18, 1994 that the General Counsel was prepared to recommend that the Commission find probable cause to believe that additional violations of the Act by defendants had occurred, and provided defendants with a supplemental brief stating the position of the General Counsel on the factual and legal issues regarding those additional violations.

12. On September 9, 1994, the Commission, by the affirmative votes of at least four of its members, found probable cause to believe that defendants had committed additional violations of the Act and thereafter endeavored to correct such violations by

the informal methods of conference, conciliation and persuasion, and to enter into conciliation agreements with defendants. Defendants were notified of the Commission's actions by letter dated September 9, 1994. See 2 U.S.C. § 437g(a)(4)(A)(i).

13. By letter dated September 14, 1994, defendants waived their right to a full 30 days of conciliation negotiations regarding the additional violations which were the subject of the Commission's September 9, 1994 probable cause to believe finding.

14. Unable through informal methods to secure an acceptable conciliation agreement, the Commission, on September 27, 1994, determined, by the affirmative vote of at least four of its members, to authorize the initiation of this civil suit for relief in federal district court against defendants. See 2 U.S.C. § 437g(a)(6). Defendants were notified of the Commission's September 27, 1994 action by letter dated October 3, 1994.

15. The plaintiff Commission has satisfied all jurisdictional requirements that are prerequisites to filing this suit.

#### Summary of the Allegations.

16. This suit involves political advertisements in connection with the 1992 presidential election, which were financed with corporate treasury funds and were inadequately disclosed in violation of federal law.

17. The Federal Election Campaign Act prohibits the use of general corporate treasury funds for political contributions and expenditures in connection with federal elections, 2 U.S.C.

§ 441b(a), including the use of such funds to finance public communications that expressly advocate the election or defeat of candidates for federal office. The Act also requires that such communications contain a statement indicating whether or not the communication was authorized by a candidate, a candidate's committee or its agents. 2 U.S.C. § 441d. In addition, if such a communication is not so authorized, its sponsor must file a financial report for public disclosure at the Commission. 2 U.S.C. § 434(c).

18. In this case, defendant Christian Action Network violated the prohibition against corporate expenditures in section 441b by using general corporate treasury funds, rather than funds contributed to a separate segregated fund established by the corporation, to finance communications that expressly advocated the defeat of candidate Bill Clinton in the November 3, 1992 presidential election. Defendant Martin Mawyer also violated section 441b by consenting to those corporate expenditures.

19. Defendant Christian Action Network also violated 2 U.S.C. § 441d because two of the election communications it financed failed to state whether they were authorized by any candidate for federal office or any committee of such candidate or its agents. In addition, defendant Christian Action Network violated 2 U.S.C. § 434(c) by failing to file the disclosure statements regarding its independent expenditures required by that provision.

Statement of Claims.

COUNT 1

20. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 19, inclusive.

21. The Act prohibits corporations from using general treasury funds to finance expenditures in connection with federal elections. 2 U.S.C. § 441b(a). Specifically, 2 U.S.C. § 441b(a) makes it "unlawful . . . for any corporation whatsoever . . . to make a contribution or expenditure in connection with any election" for Federal office. See also 11 C.F.R. § 114.3(a)(1).

22. A corporate payment for an independent communication is a "contribution or expenditure" prohibited by 2 U.S.C. § 441b(a) if the communication contains a message expressly advocating the election or defeat of a clearly identified candidate for Federal office. Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238, 249 (1986).

23. Section 431(18) of Title 2, United States Code, defines the term "clearly identified" to mean that (A) the name of the candidate appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference.

24. Sections 431(2) and (3) of Title 2, United States Code, define the term "candidate" to include an individual who seeks election to the office of President of the United States.

25. William Jefferson ("Bill") Clinton was a candidate for President of the United States in the November 3, 1992 general election.

26. During the concentrated period of campaign activity preceding the November 3, 1992 presidential election, defendant Christian Action Network spent at least \$63,041.52, exclusive of staff salaries and corporate overhead, for the television and newspaper advertisements discussed below.

Television Advertisement

27. The television advertisement, which was approximately thirty seconds in length, was entitled "Clinton's Vision For A Better America!" It aired more than two hundred fifty (250) times on broadcast television stations and cable television channels in at least twenty-four (24) cities from late September until November 2, 1992, the day before the presidential election. Copies of the television advertisement also were sent by defendants to at least some contributors to the Christian Action Network. A videotape copy of television advertisement is attached hereto as FEC Exhibit 1.

28. The television advertisement opens with a full-color photograph of presidential candidate Bill Clinton superimposed upon a color image of a rippling American flag. As the announcer begins "Bill Clinton's vision of a better America includes . . .," the image of Clinton changes into a black and white photographic negative, draining Mr. Clinton's face of all color. The commercial then abruptly cuts to a series of images of participants in a gay rights march. As the scenes from the march are shown, the announcer lists purported campaign proposals by presidential candidate Clinton and his vice-presidential running-mate, Al Gore, to expand homosexual rights, including at

least one proposal which could only be implemented by Clinton and Gore if they were elected. While the scenes from the march continue, the announcer asks the rhetorical question: "Is this your vision for a better America?" The television advertisement then concludes with the same full-color image of a rippling American flag that opened the commercial, but without the superimposed image of Clinton. The television advertisement states that it was paid for by the Christian Action Network, but does not state whether or not it was authorized by any candidate or committee.

29. The television advertisement financed by defendant Christian Action Network "expressly advocated" the defeat of presidential candidate Bill Clinton in the November 3, 1992 general election.

#### Newspaper Advertisements

30. After the television advertisement had been airing for approximately two weeks, including appearances in Richmond, Virginia, defendants placed a full page newspaper advertisement which appeared in the Richmond Times-Dispatch on October 15, 1992. FEC Exhibit 2. This was the same day that a presidential debate among the 1992 presidential candidates, including Bill Clinton, was scheduled to be held in Richmond, Virginia.

31. The October 15th newspaper advertisement, which is entitled "An Open Letter To: Gov. Bill Clinton, Democratic Presidential Candidate [and] Mr. Ron Brown, Democratic Party Chairman," specifically refers to the presidential campaign and

that evening's presidential debate. The newspaper advertisement, which identifies itself as a "Paid Political Advertisement," opens by stating:

The Christian Action Network is now airing television ads in Richmond, VA informing the voting public of Gov. Bill Clinton's support of the "gay rights" political agenda.

The voting public has a right to know that Gov. Bill Clinton's agenda includes (1) job quotas for homosexuals, (2) special civil rights laws for homosexuals and (3) allowing homosexuals in the U.S. Armed Forces.

FEC Exhibit 2. After reciting what are described as Clinton campaign proposals, including several actions that Clinton purportedly would take if elected President, the October 15th newspaper advertisement "call[s] upon Gov. Clinton to clearly state his position on gay rights" and tells Clinton, to whom the advertisement is addressed, that "[w]hen the Clinton/Gore campaign committee publicly and unequivocally retract their commitments to the 'gay rights' community, the Christian Action Network will halt its television campaign" against them.

FEC Exhibit 2. The advertisement states that it was "paid for by the Christian Action Network, Brad Butler, Treasurer," but does not indicate whether or not it was authorized by any candidate or committee.

32. Defendants placed a nearly identical full page newspaper advertisement, which appeared in the Washington Times on October 26, 1992. FEC Exhibit 3. This advertisement was a follow-up to the prior newspaper advertisement, and is entitled

"Since You Did Not Respond to Our Ad in Richmond; An Open Letter To: Gov. Bill Clinton, Democratic Presidential Candidate [and] Mr. Ron Brown, Democratic Party Chairman."

33. The October 26, 1992 advertisement in the Washington Times is identical to the October 15th newspaper advertisement in the Richmond Times-Dispatch in all material respects, except that it contains a statement that it was not authorized by any candidate, and the advertisement is not denominated a "Paid Political Advertisement."

34. Both newspaper advertisements relate to the ongoing presidential campaign by, among other things, clearly identifying Bill Clinton as a Presidential candidate, referencing the Clinton/Gore campaign, and claiming that the "voting public has a right to know" about "Bill Clinton's agenda." In view of this plain election nexus, the specific reference to the television commercial thereby incorporating that commercial as part of the message, and the publication of the two newspaper advertisements in the closing weeks of the presidential election campaign, these advertisements constitute a clear message to "[t]he voting public" to reject candidates Bill Clinton and Al Gore.

35. Taken as a whole, the television advertisement and the two newspaper advertisements financed by defendant Christian Action Network "expressly advocated" the defeat of presidential candidate Bill Clinton in the November 3, 1992 general election.

36. Candidate Bill Clinton was "clearly identified" in the television advertisement and October 15, 1992 Richmond Times-Dispatch newspaper advertisement within the meaning of the

Act and Commission regulations.

37. Defendant Christian Action Network expended over \$63,000 in corporate treasury funds on advertisements expressly advocating the defeat of a federal candidate, Bill Clinton, in violation of 2 U.S.C. § 441b(a).

COUNT 2

38. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 37, inclusive.

39. Pursuant to 2 U.S.C. § 441b, it is unlawful for any corporate officer to consent to any contribution or expenditure prohibited by 2 U.S.C. § 441b(a).

40. On information and belief, defendant Martin Mawyer participated in, and directed, the activities of the Christian Action Network in connection with the communications discussed above.

41. As president of the Christian Action Network, defendant Martin Mawyer consented to the expenditures of corporate treasury funds by CAN for the communications discussed above.

42. The expenditures of corporate treasury funds by the Christian Action Network for those communications were prohibited by 2 U.S.C. § 441b.

43. By consenting to corporate expenditures prohibited by 2 U.S.C. § 441b, defendant Martin Mawyer himself violated 2 U.S.C. § 441b(a).

COUNT 3

44. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1-19, and 23-25, inclusive.

45. 2 U.S.C. § 441d requires that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication shall clearly state the name of the person who paid for the communication and whether or not the communication was authorized by any candidate or any political committee of a candidate or its agents.

46. Section 431(11) of Title 2, United States Code, defines the term "person" to include, inter alia, an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

47. Section 431(9) of Title 2, United States Code, defines the term "expenditure" to include (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, for the purpose of influencing any election for Federal office, and (ii) a written contract, promise, or agreement to make such an expenditure.

48. During the time in question, defendant Christian Action Network was a "person" within the meaning of the Act and Commission regulations.

49. The payments by defendant Christian Action Network for the television advertisement and October 15, 1992 newspaper advertisement in the Richmond Times-Dispatch constituted "expenditures" within the meaning of the Act and Commission regulations.

50. The television advertisement and October 15, 1992 newspaper advertisement financed by defendant CAN "expressly

advocated" the defeat of Bill Clinton in the 1992 general election within the meaning of the Act.

51. Bill Clinton was "clearly identified" in the television advertisement and October 15, 1992 newspaper advertisement within the meaning of the Act and Commission regulations.

52. The television advertisement and the October 15, 1992 newspaper advertisement financed by defendant CAN did not state whether or not they were authorized by a candidate for federal office or any committee of such candidate or its agents.

53. Since the television advertisement and the October 15, 1992 newspaper advertisement financed by defendant Christian Action Network failed to state whether or not those communications were authorized by any candidate for federal office or any committee of such candidate or its agents, defendant Christian Action Network violated 2 U.S.C. § 441d.

#### COUNT 4

54. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1-19, 23-25, and 46-48, inclusive.

55. 2 U.S.C. § 434(c) requires persons (other than political committees) who make independent expenditures in excess of \$250 during a calendar year to file statements containing certain information regarding those independent expenditures for disclosure to the public at the Commission. Section 434(c) also requires persons who make independent expenditures aggregating \$1,000 or more after the twentieth day, but more than 24 hours, before any election to report those expenditures ("24 hour

notifications") within twenty-four (24) hours after such independent expenditure is made.

56. Section 431(17) of Title 2, United States Code, defines the term "independent expenditure" to mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

57. The payments by defendant Christian Action Network for the television advertisement and October 15 and 26, 1992 newspaper advertisements constituted "expenditures" within the meaning of the Act and Commission regulations.

58. The communications financed by defendants were independent within the meaning of 2 U.S.C. § 431(17).

59. The television advertisement and October 15 and 26, 1992 newspaper advertisements financed by defendant CAN "expressly advocated" the defeat of Bill Clinton in the 1992 general election within the meaning of the Act.

60. Bill Clinton was "clearly identified" in the television advertisement and October 15 and 26, 1992 newspaper advertisements within the meaning of the Act and Commission regulations.

61. Defendant Christian Action Network spent more than \$250 on independent expenditures in connection with the television and newspaper advertisements during the 1992 calendar year.

62. Defendant Christian Action Network spent more than \$1,000 on independent expenditures in connection with the television and newspaper advertisements between October 15, 1992 and the general election on November 3, 1992.

63. Defendant Christian Action Network did not file any statements or 24 hour notifications regarding its independent expenditures pursuant to 2 U.S.C. § 434(c).

64. Defendant Christian Action Network violated 2 U.S.C. § 434(c) by failing to file the reports and special 24 hour notifications regarding its independent expenditures required by that provision.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff Federal Election Commission prays that this court:

1. Declare that:
  - a. Defendant Christian Action Network violated 2 U.S.C. § 441b(a) by making corporate expenditures in connection with a Federal election;
  - b. Defendant Martin Mawyer violated 2 U.S.C. § 441b(a) by consenting to the prohibited corporate expenditures by the Christian Action Network;
  - c. Defendant Christian Action Network violated 2 U.S.C. § 441d(a)(3) by failing to include in the advertisements a statement of whether or not the communications were authorized by any candidate for federal office or any committee of such candidate or its agents;

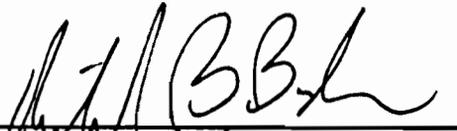
- d. Defendant Christian Action Network violated 2 U.S.C. § 434(c) by failing to file the reports and special 24 hour notifications regarding its independent expenditures that are required by that provision;
2. Assess civil penalties against:
  - a. Defendants Christian Action Network and Martin Mawyer, for which both defendants shall be jointly and severally liable, of the greater of five thousand dollars (\$5,000) or an amount equal to 100 percent of the dollar amount involved, for each time the television advertisements were aired and the newspaper advertisements were published, as provided in 2 U.S.C. § 437g(a)(6)(C);
  - b. Defendant Christian Action Network of the greater of five thousand dollars (\$5,000) or an amount equal to 100 percent of the amount involved, for each of the foregoing violations of 2 U.S.C. §§ 441d and 434(c) by defendant Christian Action Network, as provided in 2 U.S.C. § 437g(a)(6)(C);
3. Order defendant Christian Action Network to file the statements and 24 hour notifications for its 1992 independent expenditure activities that were required by 2 U.S.C. § 434(c);
4. Permanently enjoin defendants Christian Action Network and Martin Mawyer:
  - a. From expending corporate treasury funds to

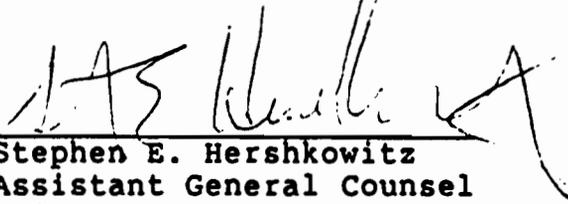
expressly advocate the election or defeat of a clearly identified federal candidate;

- b. From failing to disclose in television or newspaper advertisements that expressly advocate the election or defeat of any clearly identified federal candidate whether or not the advertisements were authorized by any candidate or candidate committee or its agents; and
  - c. From failing to file statements and/or 24 hour notifications for independent expenditures in excess of \$250 per year, or in excess of \$1,000 after the twentieth day but more than twenty-four (24) hours before any election;
- 5. Award the plaintiff Federal Election Commission its costs in this action; and
  - 6. Grant the plaintiff Federal Election Commission such other relief as may be appropriate.

Respectfully submitted,

  
Lawrence M. Noble  
General Counsel

  
Richard B. Bader  
Associate General Counsel

  
Stephen E. Hershkowitz  
Assistant General Counsel  
(Virginia Bar No. 14648)

*Robert W. Bonham III*

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October 14 , 1994

FOR THE PLAINTIFF  
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