



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5491
Jerry Falwell Ministries, Inc.)
The Liberty Alliance, Inc.)

STATEMENT OF REASONS

Chairman Scott E. Thomas
Vice Chairman Michael E. Toner
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Bradley A. Smith
Commissioner Ellen L. Weintraub

This matter involves allegations that Liberty Alliance, Inc. and Jerry Falwell Ministries, Inc. violated the Act by posting on their website and circulating on the Internet a communication written by Dr. Jerry Falwell that expressly advocated the election of a federal candidate and contained a solicitation for contributions to a multicandidate committee with which they are not affiliated. The communication at issue, the *Falwell Confidential*, dated July 1, 2004, appeared on the homepage of Falwell.com and was also sent by email to persons who had subscribed to receive the weekly communication. The communication would be a prohibited corporate expenditure unless it qualified for an exemption from the definition of expenditure.

In response to the complaint, counsel for Liberty Alliance and Jerry Falwell Ministries asserted that Liberty Alliance and not Jerry Falwell Ministries was responsible for the website and communication. Furthermore, counsel asserted that the communication was not a prohibited

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corporate expenditure because the communication qualified for the press exemption and because Liberty Alliance met the requirements for “qualified nonprofit corporation” (“QNC”) status.

The available information indicates that Liberty Alliance was most likely the party that paid the costs associated with the website and communication. Because Liberty Alliance had received a small percentage of corporate contributions (less than one percent of its total revenues), there was a very good chance that it qualified for QNC status in the Fourth Circuit, where it has its principal place of business. *See North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999). The Commission made no determination as to which Circuit’s standard would be applied if suit were brought in the District of Columbia Circuit, where Liberty Alliance is incorporated. Nor did we decide whether Liberty Alliance would be able to qualify for QNC status under D.C. Circuit law. The Commission also did not reach the issue of whether the press exemption applies. We recognize, however, that Respondents presented at least colorable claims under both the QNC and the press exemption that could consume substantial Commission resources to resolve.

The Commission also weighed the strong likelihood that the costs associated with this Internet communication were minimal. Further complicating this case is the fact that the Commission currently is considering in the rulemaking context the extent to which an Internet communication such as the one at issue here ought to be regulated. The regulatory process will provide an opportunity to set out a rule of general applicability based on a fuller record than any one enforcement matter can provide. It is not a good use of Commission resources to pursue through enforcement a point that may soon be overtaken by regulatory developments, particularly where the expenditure, if there was one, was likely to have been very small.

For these reasons, the Commission concluded it was not worth expending additional resources. Accordingly, as an exercise of prosecutorial discretion, the Commission determined by a 6-0 vote that MUR 5491 should be dismissed and closed the file in this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

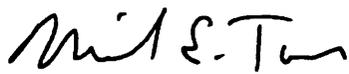


Scott E. Thomas

Chairman

8/2/05

Date



Michael E. Toner

Vice Chairman

8/2/05

Date

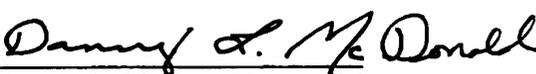


David M. Mason

Commissioner

8/1/05

Date



Danny L. McDonald

Commissioner

08-02-05

Date



Bradley A. Smith

Commissioner

8/1/05

Date



Ellen L. Weintraub

Commissioner

8/2/05

Date

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