



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

In the Matter of )

Unknown Respondents )

MUR 5275

STATEMENT OF REASONS

COMMISSIONER SCOTT E. THOMAS  
COMMISSIONER DANNY LEE MCDONALD

We voted to take no action and close the file because it seemed to be a better alternative than finding 'no reason to believe' a violation occurred—the approach favored by some of our colleagues when this matter was discussed on February 24, 2004. There seemed to be no chance of finding 'reason to believe' violations occurred. See 2 U.S.C. 437g(a)(2). The best compromise available was to avoid a substantive determination and simply close the file.

We usually favor making substantive findings, even if no further action is contemplated.<sup>1</sup> Here, though, there is little impact from a failure to find 'reason to believe.' There is no identifiable respondent who would get the 'benefit' of a letter explaining why there appeared to have been a violation. Even under the Office of General Counsel's recommendations, OGC staff would not be conducting an investigation to get to the bottom of who sent the mailing, and it is unlikely such an investigation would be successful.

We would have found the mailing in question to be 'express advocacy' of Mr. Fink's defeat (by urging no further financial support) and a solicitation of contributions to Rep. Levin and Sen. Levin. Thus, we would have found 'reason to believe' violations of 2 U.S.C. 441d and 438(a)(4) had taken place. By going with a compromise that avoided any substantive finding, we avoided the possibility of a 'no reason to believe' determination that would have been of harmful precedential value.

4/5/04

Date

4/5/04

Date

Scott E. Thomas

Danny Lee McDonald

<sup>1</sup> See Thomas Statement of Reasons in MUR 4994 (Ashcroft Victory Committee, et al.), [www.fec.gov/members/thomas](http://www.fec.gov/members/thomas).