



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**SENSITIVE**

**MEMORANDUM**

**TO:** Commissioners  
Staff Director  
General Counsel

**FROM:** Office of the Commission Secretary 

**DATE:** December 7, 2005

**SUBJECT:** Statement for the Record MUR 5468R by  
Vice Chairman Michael E. Toner  
Commissioner David M. Mason  
Commissioner Ellen L. Weintraub

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of General Counsel will include this statement in the public record file in this case.

cc: Vincent Convery  
Thomasenia Duncan

Attachment



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
George A. Moretz ) MUR 5468R  
George Moretz for Congress and )  
Roger Bowman, in his official )  
Capacity as Treasurer )

**Statement for the Record**  
Vice Chairman Michael E. Toner  
Commissioner David M. Mason  
Commissioner Ellen L. Weintraub

On October 6, 2005, the Commission decided by a vote of 4 - 1<sup>1</sup> to find No Reason to Believe (No RTB) that George A. Moretz and the George Moretz for Congress Committee and Roger Bowman, in his official capacity as treasurer, violated the Act in connection with the complaint filed in this matter.

George Moretz was an unsuccessful candidate in the July 2004 Republican primary race in the Tenth District of North Carolina. The complaint alleged that the Moretz Committee made an excessive "political contribution" to George W. Bush in the form of a television advertisements allegedly criticizing John Kerry. North Carolina did not have a Republican presidential primary. The Office of General Counsel determined that the complaint did not allege and there was no evidence suggesting coordination with the Bush campaign. General Counsel's Report at 4.

We voted to approve the General Counsel's recommendations because the recommendation to find No RTB was appropriate. However, we disagree with the following language in the General Counsel's Report: "the only remaining question is whether any part of the Moretz advertisement expressly advocates the election of George Bush or the defeat of John Kerry, in which case [that portion] would be an independent expenditure required to be allocated pursuant to 11 CFR 106.1." GC Report at 8. We find this sentence baffling for a number of reasons.

<sup>1</sup> Chairman Thomas dissented.

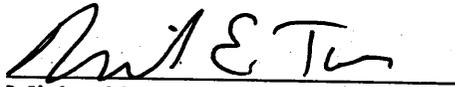
The regulation at 11 C.F.R. § 106.1 describes reporting requirements for separate segregated funds, nonconnected committees, and party committees that make expenditures on behalf of more than one clearly identified candidate. The only reference in this regulation to reporting by candidate committees (at 11 C.F.R. § 106.1(b)) pertains to in-kind contributions, which by definition are not independent expenditures. This regulation does not provide any reporting requirements for authorized committees that make independent expenditures, and we find no other support in the regulations for such a requirement.

Furthermore, we find significant policy reasons to reject such a filing requirement. Authorized committees do not have "soft money" accounts. Every penny raised and spent by a Federal candidate's authorized committee is subject to the limitations, prohibitions, and reporting requirements of the Act. All of the expenditures at issue are already disclosed in the course of the authorized committee's reports. Thus, any independent expenditure report would be redundant. We do not see what interest would be served by making the authorized committee disclose the same expenditure twice.

It is not uncommon for a candidate to use references to other candidates, particularly at the top of the ticket, in order to influence his own election. A down-ticket candidate may believe that his best chance for electoral success lies in tying his fate to the coattails of a popular President. Advertisements with this goal may incidentally contain what the Commission would consider express advocacy in favor of the President, but could well be created entirely for the purpose of influencing the down-ticket candidate's own election. In this case, there was not even a Republican primary for President in the state where the ad was run. This would undercut any argument that the Moretz Committee was making an expenditure for purposes of influencing the Presidential election.

If there were coordination present, the regulation and statute clearly contemplate how an authorized committee can split the costs, and if permissible, make an in-kind contribution to the other candidate up to a specific amount. But for communications made that are truly independent, there is no justification for requiring such a duplicative reporting regime. Nor would it be productive for the Commission to investigate the motives of expenditures otherwise lawful under 2 U.S.C. § 439a in order to enforce a duplicative reporting requirement.

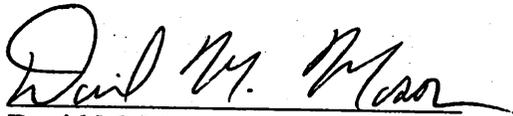
The Commission has never sent the Form 3X/Schedule E for independent expenditures to authorized committees. The FEC's Information Division has never been informed that authorized committees need to so report. We write to make clear that we do not plan to add or enforce any such requirement today.



Michael E. Toner

Vice Chairman

12/7/05  
Date



David M. Mason

Commissioner

12/7/05  
Date



Ellen L. Weintraub

Commissioner

12/7/05  
Date