

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
Wisconsin Right to Life) MUR 5522
)

**STATEMENT OF REASONS
OF
VICE CHAIRMAN MICHAEL E. TONER**

I. Introduction

On February 8, 2005, the Commission voted 4 to 2¹ to accept the Office of General Counsel's ("OGC") recommendation to find reason to believe, but take no further action other than sending an admonishment letter, that Wisconsin Right to Life ("WRTL") violated 2 U.S.C. § 441b(a) by endorsing President George W. Bush on its website and violated 11 C.F.R. § 114.4(c)(6) by having a photograph of President Bush on its homepage that linked to endorsed candidates.

I dissented from the reason-to-believe finding because the record did not indicate that any corporate general treasury funds were spent in connection with a federal election in violation of 2 U.S.C § 441b(a). Even if some corporate monies were spent, the amounts involved were de minimus under Commission regulations and did not constitute a violation.

¹ Chairman Scott E. Thomas and Commissioners Ellen L. Weintraub, Danny L. McDonald, and David M. Mason voted in favor of the motion. Vice-Chairman Michael E. Toner voted against the motion. Commissioner Bradley A. Smith objected for the record.

II. Background

The Campaign Legal Center filed a complaint against WRTL, a nonprofit, 501(c)(4) corporation, alleging violations of the Federal Election Campaign Act of 1971, as amended (“FECA” or “Act”). Wisconsin Right to Life-PAC (“WRL-PAC”) is a non-connected political committee that is located at the same address as WRTL; the corporation and WRL-PAC appear to share some staff as well. WRTL apparently uses its website to include information about, and issue news releases for, WRL-PAC.

On July 28, 2004, WRL-PAC issued a press release notifying readers that a list of candidates it was endorsing was available for viewing at www.wlrl.org. The website’s homepage included a box containing “WRL-PAC ENDORSED CANDIDATES” and a headshot of President Bush. The box hyperlinked to a document entitled “Endorsed Pro-Life Candidates – For the Tuesday, September 14, 2004 Primary Election.” The document listed federal and state candidates running for election in the Wisconsin primaries and included Bush for President, three U.S. Senate candidates, and eight U.S. House candidates. After the primary election, the list changed to reflect primary election winners. The endorsement list contained a disclaimer in small print: “Authorized and Paid for by the Wisconsin Right to Life PAC. 10625 W. North Ave., Suite LL, Milwaukee, WI 53227 – (416)778-5780 – Not authorized by any candidate or candidate’s committee.”

According to WRTL, WRL-PAC paid for the endorsement pages. WRL-PAC’s disclosure reports do not provide information regarding which entity paid for the costs, if any, associated with posting the photograph on the homepage or creating the hyperlink to the endorsements.

III. Analysis and Conclusions

Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election for Federal office. 2 U.S.C. § 441b(a). The Act defines a contribution or expenditure by a corporation to cover any services or anything of value made to a candidate in connection with a Federal election. 2 U.S.C. § 441b(b)(2). However, under Commission regulations, a corporation may endorse a federal candidate and may communicate the endorsement to its restricted class in a publication provided that no more than a de minimus number of copies are circulated beyond the restricted class. 11 C.F.R. § 114.4(c)(6). A corporation may also publicly announce the endorsement through a press release and press conference as long as the disbursements for them are de minimus. 11 C.F.R. § 114.4(c)(6)(i). The disbursements will be considered de minimus if the press release and notice of the press conference are distributed only to the news media that the corporation customarily contacts when issuing non-political press releases or holding press conferences for other purposes. *Id.*

Here, it is unclear whether WRTL incurred any expenses to post the endorsements of federal candidates on its website and create the hyperlinks associated with the endorsement page. If no corporate general treasury funds were spent, no corporate

expenditure in connection with a federal election could have arisen under 2 U.S.C § 441b(a). Even if some monies were spent, the amounts involved here were very small and de minimus under Commission regulations. The fact that WRL-PAC did not report any costs of modifying and maintaining WRTL's website in connection with posting the endorsement on the website suggests that the costs did not exceed the \$200 reporting threshold. *See* 11 C.F.R. § 104.3(b)(3). In light of the foregoing, I did not believe it was appropriate to find reason to believe that WRTL violated 2 U.S.C § 441b(a). Accordingly, I dissented from the Commission's finding in this matter.

February 18, 2005

Michael E. Toner, Vice Chairman