



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Office Ron Harris

FROM: *mwc* Marjorie W. Emmons/Veneshe Ferebee-Vines *VAV*
Commission Secretary

DATE: April 15, 1999

SUBJECT: Statement of Reasons For MUR 4791

Attached is a copy of the Statement of Reasons for
MUR 4791 signed by Vice Chairman Darryl R. Wold,
Commissioner Lee Ann Elliott, Commissioner Danny L. McDonald,
Commissioner David M. Mason, and Commissioner Karl J. Sandstrom.
This was received in the Commission Secretary's Office on April 15, 1999
at 12:59 p.m.
This supersedes the prior Statement of Reasons in this matter dated
April 13, 1999.

cc: V. Convery

Attachments



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Ryan for Congress) MUR 4791
and Larry Everhart, as treasurer)

STATEMENT OF REASONS

On March 23, 1999, the Commission approved the recommendation from its Office of General Counsel (OGC) to find reason to believe (RTB) that the Respondents, Ryan for Congress and Larry E. Everhart, as treasurer (collectively "Ryan"), violated 2 U.S.C. § 441d(a) by not including a disclaimer on football schedules that expressly advocated Ryan's election to the United States Congress.¹ The OGC sought to conduct informal discovery for purposes of recommending a civil penalty. The Commission, by a vote of 5-1, instead decided to send an admonishment letter to Ryan, take no further action, and close the file.²

Ryan asserted that the Complaint was without merit because the schedules were sufficiently small to fall within the regulatory exception, 11 C.F.R. § 110.11(a)(6)(i).³ He noted that these "pocket-size handout[s] [were] smaller than a bumper sticker," for which no disclaimer is required (*see* note three, *supra*). *Response* at 1. Ryan reasoned that it is "only . . . logical that if a 'bumper sticker . . . and other small items' [sic] do not need a disclaimer, then items smaller than a bumper sticker—such as the [football schedule] at issue here—also do not need a disclaimer." *Id.* (quoting 11 C.F.R. § 110.11(a)(6)(i)).

¹ "(a) Whenever a person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contributions through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee"

2 U.S.C. § 441d.

² Vice Chairman Wold and Commissioners Elliott, Mason, McDonald, and Sandstrom voted for this decision. Chairman Thomas dissented; while agreeing there was RTB that Ryan had violated § 441d(a), he supported the OGC's request to conduct informal discovery.

³ "(6) *Exceptions.* The requirements of paragraph (a)(1) of this section [the regulatory implementation of 2 U.S.C. § 441d(a)] do not apply to:

(i) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; . . ."

11 C.F.R. § 110.11, "Communications, advertising" (2 U.S.C. § 441d).

We disagree with Ryan that the "small item" exception is available to him. The regulation states that disclaimers are not required on "[b]umper stickers, pins, buttons, pens, and similar items *upon which the disclaimer cannot be conveniently printed.*" 11 C.F.R. § 110.11(a)(6)(i) (emphasis added) (see note 3, *supra*). Contrary to Ryan's assertion, then, practicality (or "convenience," in the regulatory vernacular) is the critical factor in determining the exception's applicability; size is not dispositive. See also *id.* at § 110.11(a)(6)(ii) (emphasis added) (disclaimers are also not required on "[s]kywriting, watertowers [sic], wearing apparel or other means of displaying an advertisement of such a nature *that the inclusion of a disclaimer would be impracticable.*").⁴

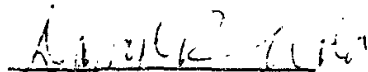
It was neither inconvenient nor impracticable for Ryan to comply with § 441d(a) in preparing the football schedule. He had, after all, placed at the bottom of the schedule in small, but legible, typeface "All times indicated are Central time zones" and "HOME GAMES ARE IN BOLD." See attachment 1, p.2, to *First General Counsel's Report*, 3/11/99. As a result, he cannot now argue that it would have been difficult or impossible for him to place a disclaimer on the schedule in similar typeface, in a similar location. Because the "small item" exception does not apply to Ryan's schedules, it does not vitiate his violation of § 441d(a).

Ryan's belief as to its applicability is not entirely unreasonable, however, and as such, militates against a civil penalty. Further, while we will not say here, as Ryan urges, that the schedules, as written, satisfied the purpose of § 441d(a)--"provid[ing] clear and conspicuous notice regarding the source of items that solicit funds or expressly advocate," *Response* at 1, he is probably correct in asserting that the schedules most likely did not mislead the public. He notes that they "identified 'Paul Ryan for U.S. Congress' in four separate locations, providing the campaign's telephone number, E-mail address and web site." *Id.* "While the words 'paid for by' are not specifically printed, [Ryan]'s sponsorship of these [schedules]," *id.*, seems apparent. That the public most probably was not confused about who paid for the football schedules is an additional mitigating factor.

Finally, it appears, based upon Ryan's campaign reports, that he did not spend a great deal of money producing the schedules. *First General Counsel's Report*, 3/11/99, at 3, n.1. The civil penalty the Commission could obtain, based, at least in part, on the (minimal) cost of the schedules, appears, then, to be small. The modest penalty the Commission would likely obtain, when considered along with Ryan's mitigating factors, does not warrant expending more agency resources on this matter. For these reasons, the

⁴ To the extent there was confusion as to the meaning of this exemption, the Commission's forthcoming "Candidate Guide" clarifies it. The Guide states that disclaimers are not required on solicitation or express advocacy pieces if they "cannot be conveniently printed" or if "display is not practicable." Federal Election Commission *Candidate Guide* (1999), Chapter 11, "Conducting the Campaign," Part 2, "Disclaimer Notices." In parentheses, the Guide then gives *examples* of when disclaimers would be inconvenient or not practicable. *Id.*

Commission decided to exercise its prosecutorial discretion by admonishing Ryan for his § 441d(a) violation and then closing the file. *Heckler v. Chaney*, 470 U.S. 821 (1985).



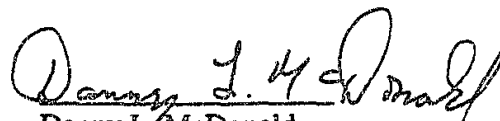
Darryl R. Wold
Vice Chairman



Lee Ann Elliott
Commissioner



David M. Mason
Commissioner



Danny L. McDonald
Commissioner



Karl J. Sandstrom
Commissioner

April 15, 1999