



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 5420
Conz-Diaz Champion Racing )

Statement for the Record

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

In this matter, the complainant alleged that Conz-Diaz Champion Racing ("CDC"), a corporation, made a prohibited in-kind contribution when it attempted to field a racecar bearing the logo "Bush-Cheney '04" in NASCAR's 2004 Busch Grand National series. On January 11, 2005, the Commission voted 5-1 to find reason to believe CDC violated 2 U.S.C. § 441b(a), but to send an admonishment letter, take no further action, and close the file. Because CDC is essentially defunct and the impact of the expenditure limited, the Commission decided not to investigate the matter.

The Commission initiated the reason to believe finding because the Office of General Counsel had recommended taking no action and closing the file without any reason to believe recommendations. After the Commission vote, OGC submitted a Factual and Legal Analysis to support the reason to believe finding, explaining that by placing the "Bush-Cheney '04" logo on the car, CDC made a prohibited corporate independent expenditure.

The First General Counsel's Report argued there was enough information to support a coordination finding with the Michigan GOP, yet ultimately recommended that the Commission "exercise its prosecutorial discretion" and close the file. GC Report at 2 and 7-10 The Commission's finding was based on an independent expenditure analysis, not a coordinated expenditure analysis. A majority of the Commission did not think the facts supported a finding based on coordination.

1 Commissioner Smith dissented

2 Commissioner Weintraub would have supported an investigation

3 "There is no suggestion of any coordinated activity involving the 'Bush-Cheney '04' campaign " GC Report at 6 n 7

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We write this separate statement to clarify that the Factual and Legal Analysis, and not the coordination analysis in the First General Counsel's Report, reflects the Commission's decision.

  
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Scott E. Thomas

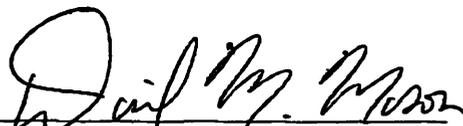
Chairman

3/10/05  
Date

  
\_\_\_\_\_  
Michael E. Toner

Vice Chairman

3/10/05  
Date

  
\_\_\_\_\_  
David M. Mason

Commissioner

3/11/05  
Date

  
\_\_\_\_\_  
Danny L. McDonald *KMC*

Commissioner

3/11/05  
Date

  
\_\_\_\_\_  
Ellen L. Weintraub

Commissioner

3/10/05  
Date

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