



**FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 7724/7752
Johnny Teague for Congress, *et al.*)
)

STATEMENT OF REASONS OF COMMISSIONER JAMES E. “TREY” TRAINOR, III

The Office of General Counsel recommended, and the Commission unanimously agreed, to not pursue this matter.¹ However, this matter was approached by the Commission like blindfolded men coming across a statue of an elephant,² so I write to explain my experience of the statue.

The facts of this matter put it squarely at the intersection of the First Amendment’s guarantees of Free Speech and Free Exercise. Specifically, the Commission was asked to apply the Federal Election Campaign Act of 1971, as amended (“the Act”), to a television advertisement run by the Church at the Cross (the “Church”), a nonprofit religious corporation organized under the laws of the state of Texas, featuring its senior pastor, Dr. Johnny Mark Teague, who was a federal candidate at the time the advertisement was aired. In the advertisement, Teague says:


Have you ever asked a friend, ‘Do I have anything in my teeth?’ Did you want them to tell you the truth, or tell you what made you feel good? A lot of people go to Church to make them feel good. God’s [W]ord does that but he also brings you the truth. What we need to clean up our lives and experience [H]is blessing. I’m Dr. Johnny Teague and I invite you to join us at the Church at the Cross where we study every Sunday God’s truth at [the Church’s address].

¹ See MURs 7724 & 7752 (Johnny Teague for Congress Campaign Committee, et al.) Certification dated May 31, 2023.

² The primary point of divergence was whether to find no reason to believe that the Church at the Cross (“the Church”) made, and Dr. Johnny Mark Teague and Johnny Teague for Congress Campaign Committee and James Poullard in his official capacity as treasurer (“the Teague campaign”) knowingly accepted, an in-kind corporate contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the television ad at issue, or to dismiss the allegation, and whether to find no reason to believe that Teague campaign failed to report receipt of an in-kind contribution in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) in connection with the television ad at issue, or dismiss the allegation. On the remaining allegations, my colleagues and I agreed with the recommendations of the Office of General Counsel to not pursue this matter.

The ad included “a text banner... at the bottom of the screen containing the Church’s logo, address, phone number, and schedule of worship times, and Dr. Teague is also identified on screen by name and the position of “Pastor.”³ While this advertisement may technically meet the Commission’s three-part test for coordinated communications, clearly this was not an electoral advertisement, nor in my view was it a commercial advertisement. So where does that leave us, we asked ourselves in trying to resolve this matter.

I generally agreed with the analysis of Commissioner Dickerson regarding the constitutional stakes of this matter,⁴ and the “patent [indefensibility]”⁵ of pursuing enforcement on these facts, but in my view the protection afforded to religious expression supports a finding of no RTB.⁶ And I could not support the recommendation of the Office of General Counsel to “caution” the respondents for their activity.⁷



James E. “Trey” Trainor, III
Commissioner

7/20/2023

Date

³ MURs 7724&7752 (Johnny Teague for Congress, et al.), First General Counsel’s Report (“FGCR”) at 9-10.

⁴ See generally MURs 7724 & 7752 (Johnny Teague, et. al.), Statement of Reasons of Commissioner Allen J. Dickerson (“Dickerson SOR”).

⁵ *Id.* at 7.

⁶ I disagree that the Commission’s safe harbor for commercial speech under 11 C.F.R. § 109.21(i) covers the advertisement at issue here, because the advertisement is religious expression not commercial speech, but I agree with Commissioner Dickerson that Vice Chairman Cooksey’s interpretation of 11 C.F.R. § 109.21(i) is nevertheless permissible. And since it cannot be the case that commercial speech is entitled to more protection than religious expression, I joined with Vice Chairman Cooksey in voting to find no reason to believe that the Church and the Teague campaign violated the law with respect to the television advertisement.

⁷ As I have previously explained, it is my view that the “caution letter” is not contemplated by the Act, Commission regulations, or the Commission’s Policy Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 51, 12545 (Mar. 16, 2007). But in this case, the use of a caution letter as the expression of “official disapproval of Respondents’ sincere religious expression,” Dickerson SOR at 2, is especially egregious.