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Letters to the Editor

Why We're Suing the Christian Coalition

I was disappointed by former Attorney General William Barr's inability to grasp the facts and law regarding the Federal Election Commission's recently filed case against the Christian Coalition ("The FEC's War Against the First Amendment," Rule of Law, Aug. 14).

The Supreme Court itself has established the legal framework the FEC is applying. In a 1976 case, *Buckley v. Valeo*, the court reasoned that activities to influence elections undertaken in coordination with a candidate may be subjected constitutionally to the law's restrictions on contributions. In a 1986 case, *Massachusetts Citizens for Life v. FEC*, the court clarified that even independent activities by incorporated entities like the Christian Coalition to influence federal elections may be prohibited if they contain "express advocacy." (Mr. Barr would be well-served to note that the court, as part of its ruling, found the voter guide issued by MCFL to be "express advocacy.") Contrary to Mr. Barr's understanding, the court has not ruled that coordinated expenditures must rise to the level of "express advocacy" to fall under the contribution restrictions.

The FEC, after an investigation, uncovered evidence that some (not all) election-related activities of the Christian Coalition over the past few election cycles were either coordinated with particular candidates' campaigns or "express advocacy" even if not coordinated. (If Mr. Barr reads the record in the case, he will discover that the FEC is not relying on a presumption of coordination like that at issue in the recent Colorado Republican Party case.) After trying to settle the matter first, the FEC voted unanimously to initiate the litigation. The FEC is charged by law to enforce the statutory restrictions as interpreted by the courts. We cannot shrink from that duty.

The FEC has pursued groups on both sides of the political spectrum. The FEC sued the American Federation of State, County and Municipal Employees (AFSCME), the National Organization for Women, and the Survival Education Fund on similar legal grounds. It is simply inaccurate to suggest that the FEC is engaging in selective enforcement.

It is true that several courts have not ruled in the FEC's favor when it has claimed the activity was "express advocacy." However, some have agreed with the FEC, such as the Ninth Circuit Court of Appeals in a 1987 case and, more importantly, the Supreme Court in the MCFL case.

The Christian Coalition could avoid most of its legal problems by separating out the part of its operations that involves contributions or independent expenditures and reporting such activity as a political committee. Most other "issue" organizations like the Christian Coalition do so. That way, the lobbying and educational work can continue, but the electorate can see who is behind the support that candidates running for high office receive through the organization's efforts. A political committee wing of the Christian Coalition would not be subject to the prohibition of corporate and union contributions and express advocacy communications. It could receive and make contributions subject to the limits other PACs follow, and it could undertake independent expenditures with no limit whatsoever.

There is a way within established parameters for the supporters of the Christian Coalition to remain as active as ever. The FEC's case against the incorporated entity, meanwhile, follows the statute and the Supreme Court's First Amendment jurisprudence. Mr. Barr should study up a bit.

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