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that this FTC action violates the Fifth Amendment due process guarantee of a fair and impartial

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their other First Amendment claims, as resting upon factual claims about the noncommercial nature of their activities, factual claims that, with respect to a motion to dismiss, must be resolved in favor of Complaint Counsel. See Order, p. 8.

Respondents' prior restraint claim is not so limited. Rather, it rests upon the

constitutional insufficionary of the administrative are seen interested. Dear on Jane 2 Time

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	Amendment claims are being denied a "prompt judicial determination," a safeguard that the
	Supreme Court has applied to government efforts to suppress even nornography. See Motion to
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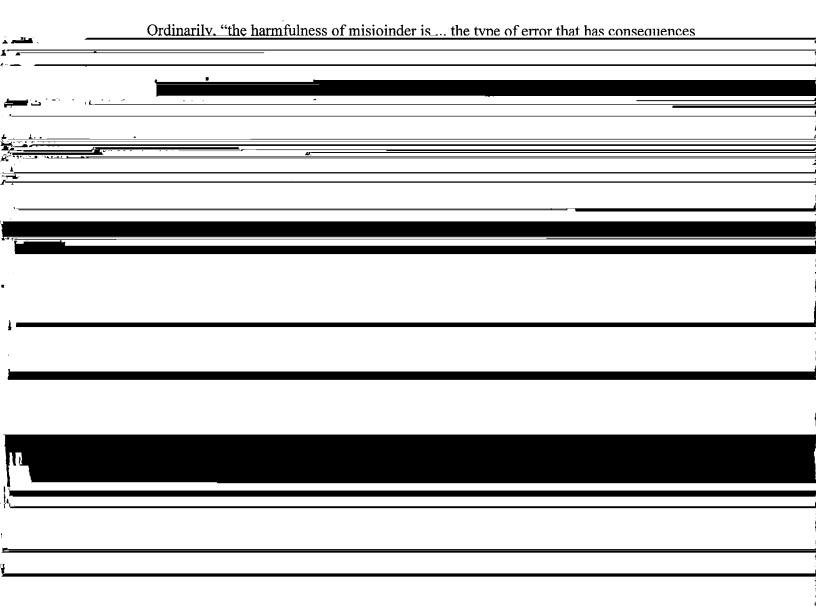
At a minimum, Respondents deserve, and we believe that the law requires that Respondents receive, a ruling on this question from the ALJ, a ruling which we believe the law requires should be favorable to our motion to dismiss.

II. RESPONDENT'S DUE PROCESS AND FIRST AMENDMENT RIGHTS

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neither Respondent is a part. By this action of "misjoinder," the FTC has "implicate[d] the independent value of individual responsibility and our deep abhorrence of the notion of 'guilt by association." *See* <u>United States</u> v. <u>Lane</u>, 474 U.S. 438, 475 (1986) (Stevens, J., concurring and dissenting). Indeed, as Justice Stevens pointed out in <u>Lane</u>, "[t]he rule against misjoinder [is] an ultimate safeguard of our cherished principle that one is tried for one's own deeds, and not for another's." *Id*.



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NAACP v. Clairborne, 458 U.S. at 919-920.

While the Order ostensibly rests upon an analysis of Respondents' Motion to Dismiss in

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representation is true, non-misleading, and supported by reliable scientific evidence." See

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	In sum, the fairness and impartiality of the administrative process in this case has been
<u>.</u>	tainted by the FTC press release the filing of which is not only month and a line to the FTC p. 1.
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Practice, but violative of Respondents' right not to be denied their liberty and their property

without due process of law.

III. RESPONDENTS' RIGHTS ARE BEING DENIED BY THE ETC'S

(3) "a form of the order which the Commission has reason to believe should issue"; and (4)

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ŧ 2 Supreme Court observed in 1881, "it is essential to the successful working of this system [of separated powers], that the persons entrusted with power in any one of the[] [three] branches shall not be permitted to encroach upon the powers confided to the others, but each shall by the

As James Madison wrote in Federalist No. 47, the central purpose of separating

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IV. CONCLUSION

For the reasons stated herein, and in the Motion to Dismiss, Respondents' Motion for

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	February 6, 2009.

Respectfully submitted:

Swankin & Turner Attorneys for Respondents

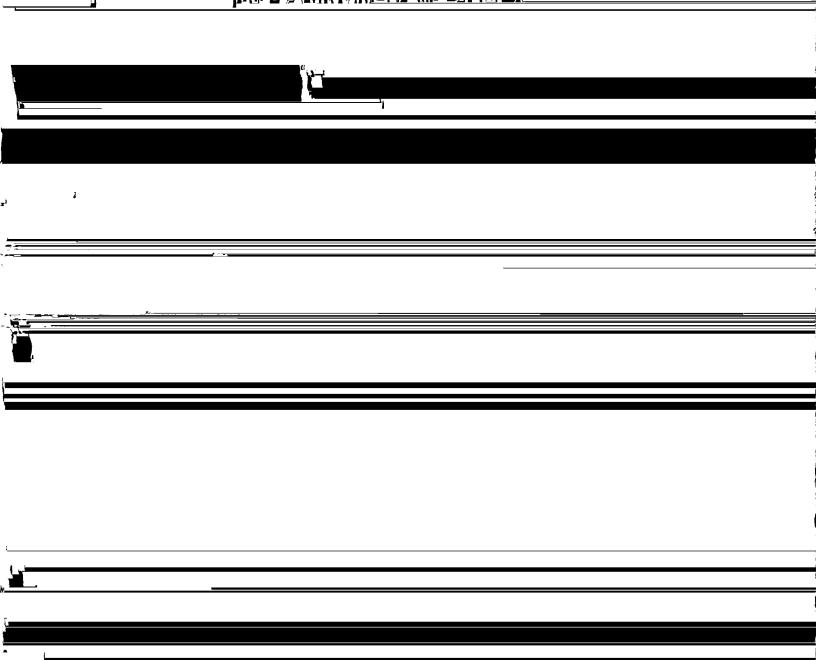
James S. Turner

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3	Hon. D. Michael Chappell			
	Administrative Law Judge			
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_	600 Pennsylvania Avenue, NW, Room H-106 Washington, DC 20580			
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