

The Washington Post

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October 14, 1999

General Counsel's Office
Federal Election Commission
Washington, D.C. 20463

Re: MUR 4929

Dear Madam or Sir:

This letter constitutes the response of The Washington Post ("The Post") -- a daily newspaper of general circulation in the District of Columbia and surrounding metropolitan area -- to the allegations contained in a complaint filed with the Federal Election Commission ("FEC") on September 27, 1999 ("the Complaint").

Complainant Rhawn Jones, Ph.D., claims that The Post's news coverage of the 2000 Presidential Campaign constitutes "free advertising" for certain actual or potential candidates and, thus, violates the Act's prohibitions on campaign contributions by corporations.

The Complaint fails to state a claim for violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). All of the activity complained of is protected by the First Amendment to the United States Constitution and is specifically excluded from the Act's prohibition against corporate campaign expenditures by 2 U.S.C. § 431 (9)(B)(i). Thus, the FEC lacks jurisdiction to undertake any further action against The Post in this matter.

The Act, at 2 U.S.C. § 431 (9)(B)(i), exempts the following activities from the prohibition against corporate campaign expenditures:

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

Furthermore, the legislative history of the exemption makes clear that Congress intended thereby to protect the free exercise of political speech and of association guaranteed by the First Amendment:

[I]t is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus, the exclusion assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns. H.R.Rep.No. 93-1239 at 4 (1974).

The activity complained of -- news coverage and commentary on the 2000 Presidential Campaign -- falls squarely within the news exemption. Indeed, the Post's reporting on actual and potential presidential candidates and the distribution of that information through the newspaper is a core component of its legitimate press function. Moreover, The Post is neither owned nor controlled by any political party, political committee, or candidate.¹ Thus, matters raised in the Complaint are clearly exempt from the FEC's jurisdiction pursuant to § 431 (9)(B)(i). Further investigation or action against The Post in this matter would impinge upon The Post's First Amendment rights and would be contrary to law. See Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308, 1313 (D.D.C. 1981) ("If the press entity is not owned or controlled by a political party or candidate and it is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint."); Reader's Digest Assoc., Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981) ("[T]he statute, in creating an exemption for the press in its news and opinion dissemination function, commands the FEC not even to investigate such circumstances.").

Respectfully submitted,



Megan E. Rupp

¹ The newspaper is a division of The Washington Post Company, a publicly traded corporation. The Company's Class B Common Stock is traded on the New York Stock Exchange under the symbol "WPO." The Company's Class A Common Stock, the majority of which is held by Chairman of the Executive Committee Katharine Graham and members of her family, is not publicly traded.

STATEMENT OF DESIGNATION OF COUNSEL

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MUR 4929

NAME OF COUNSEL: Megan E. Rupp, Assistant Counsel

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TELEPHONE: (202) 334-7988

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

10/14/99
Date

Boisfeuillet Jones, Jr.
Signature

RESPONDENT'S NAME: Boisfeuillet Jones, Jr.

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