

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM
NEOPLER FIELD
TEL 202.662.5350
FAX 202.778.5350
BBURCHFIELD@COV.COM
2000 MAY 17 A 10-41

May 17, 2000

BY HAND

The Honorable
Darryl R. Wold
Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 5006

Dear Mr. Chairman:

On behalf of our clients, Friends of Giuliani Exploratory Committee and John H. Gross, as treasurer, we submit this response to the Complaint filed on April 25, 2000, by Robert Vinson Brannum. The Complaint asserts allegations exclusively against the CNBC television program Hardball and not against our clients; thus, our clients are not obligated to respond. To the extent, however, that the Complaint sets forth allegations against our clients, we urge the Commission promptly to dismiss the case.

First, this Complaint does not even colorably state a claim within the Commission's jurisdiction. It is, frankly, outrageous that the staff requested a response, imposing unnecessary costs on all respondents. See Additional Statement of Reasons, MUR 4766 at 1 (Commissioner Mason) ("Most importantly, the Office of General Counsel should not compound such matters, as it did in this case, by designating as

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 17 3 05 PM '00

1433 204-10-12

COVINGTON & BURLING

The Honorable
Darryl R. Wold
May 17, 2000
Page 2

respondents persons who are not so named in complaints and could not under any reasonable interpretation be held in violation of the Federal Election Campaign Act on the basis of allegations in the complaint."); Additional Statement of Reasons, MUR 4689 at 1 (Commissioner Mason) ("The media exemption, 2 U.S.C. § 431(9)(B)(i), so clearly applies that pursuing this matter would not have been substantially justified.").

Second, the Complaint should be dismissed with no further action taken by the Commission because the costs associated with the production of Hardball are exempt under the media exemption of the Federal Election Campaign Act of 1971 ("Act"), as amended. Hardball is a television program offering bona fide news commentary and accounts through the facilities of licensed broadcast stations. The Act and the Commission's regulations specifically exempt the costs of such programs from the definitions of both "expenditure" and "contribution." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2), 100.8(b)(2). The media exemption applies in this case, and the Complaint must be dismissed.

Third, the Complaint should be dismissed because it does not set forth an intelligible allegation against our clients for which Commission resources should be expended. In his letter, Mr. Brannum asserts that "Hardball and its host Chris Matthews has [sic] become inappropriate corporate electronic voter guides." Complaint, ¶ 1 (emphasis in original). The Complaint further asserts that Hardball should register as a political action committee, apparently because the

COVINGTON & BURLING

The Honorable
Darryl R. Wold
May 17, 2000
Page 3

political commentary program is "aggressive" and does not meet the complainant's personal standards of fairness. Id. ¶ 2. Ultimately, Mr. Brannum's allegation -- in complete abrogation of the First Amendment -- is that "there cannot be any public policy determination that broadcast news organizations may engage in excessive political coverage." Id. ¶ 5 (emphasis added). This contention is incomprehensible, and in any event does not make out a cognizable allegation against our clients.

We look forward to prompt dismissal of this spurious allegation.

Respectfully submitted,



Bobby R. Burchfield
Richard W. Smith

**STATEMENT OF DESIGNATION OF
COUNSEL**

MUR: 5006

NAME OF COUNSEL: Bobby R. Burchfield

FIRM: Covington & Burling

ADDRESS: 1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2401

TELEPHONE: (202) 662-5350

FAX: (202) 778-5350

The above-named individual is hereby designated as counsel for the Friends of Giuliani Exploratory Committee and for me, as treasurer, and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

May 9, 2000
Date

[Signature]
Signature

RESPONDENT'S NAME: Friends of Giuliani Exploratory
Committee; John H. Gross,
treasurer

ADDRESS: 59 Maiden Lane, 15th Floor
New York, NY 10007

TELEPHONE: HOME:

BUSINESS: (212) 809-0000