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November 6, 2000

Jeff S. Jordan, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

Re: Patrick West v. The New York Times Company
(Docket No. MUR 5117)

Dear Mr. Jordan:

I write in response to your October 25, 2000 letters to Solomon B. Watson IV, Senior Vice President, Secretary and General Counsel of The New York Times Company, and Catherine E.C. Henn, Vice President for Corporate and Legal Affairs of The Boston Globe. The letters enclosed a complaint against The New York Times Company ("The Times"), which publishes The New York Times and The Boston Globe,¹ filed with the Federal Election Commission on October 17, 2000 by Patrick West. Mr. West complains that The Times violated 2 U.S.C. § 441(b) by making "illegal in-kind corporate contributions of public relations service" by publishing the news.

No action should be taken against The New York Times Company in this matter. The Federal Election Commission's own enabling legislation, at 2 U.S.C. § 431(9)(B)(I), excludes the following from the definition of a campaign "expenditure":

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

¹ We note that there is only a passing and seemingly approving mention of The Globe in Mr. West's complaint.

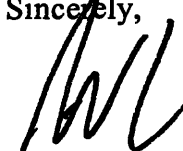
This provision is consistent with the Commission's regulations at 11 C.F.R. § 100.7(b)(2). The purpose of Congress in enacting this provision was clearly stated in its legislative history. Congress sought to "make it plain that it [was] not the intent of Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press" but rather to assure "the unfettered right of newspapers, TV networks, and other media to cover and comment on political campaigns." H. Rep. No. 1239, 93d Cong., 2nd Sess. (1974), at 4.

The statutory language is absolute and categorical, and it is rooted in the Constitution. Mr. West proposes to engraft a limitation onto the statutory language, an exception for news reports published with "knowledge of, or reckless disregard of, their falsity."

Put aside that the reporting and commentary at issue was not so published. The key point is that there is no statutory support whatever for Mr. West's proposed limitation. Such a limitation would, in any event, run afoul of the First Amendment in allowing -- indeed, requiring -- the government to make judgments about punishing speech at the core of our democratic processes. It would turn the Commission into a censor. It must be rejected.

I have enclosed a statement of designation of counsel and look forward to hearing from you should the FEC pursue this matter.

Sincerely,



Adam Liptak

/ja
Enclosure

cc: Catherine E.C. Henn, Esq.
George Freeman, Esq.
Solomon B. Watson IV, Esq.

24-04-404-0582

STATEMENT OF DESIGNATION OF COUNSEL

MUR 5117

NAME OF COUNSEL: Adam Liptak

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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.

11/2/00
Date


Signature

RESPONDENT'S NAME: The New York Times Company

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