

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

SENSITIVE

In the Matter of )

MURs 5817, 5827, 5829, 5836,  
5847, 5852, 5858, and 5863 )

DEBATE CASES (From The '06 CYCLE) )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants challenged whether the debate staging organizations and entities used and/or properly construed pre-established objective criteria in order to determine whether a particular candidate could participate in their debate.<sup>2</sup> In MURs 5827 and 5829, the

<sup>2</sup> 11 CFR § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

complainants claimed that the staging organization set up the seating for the debate in order to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).<sup>3</sup>

In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party candidates who appeared to receive marginal electoral support and evidenced little to no campaign organization. The staging organizations and entities in these cases claimed they applied pre-established objective criteria in assessing whether to include or exclude candidates from their debates.

In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to one candidate's supporters over another. The respondents in these matters asserted that the seating design was unintentional and in any case did not violate the Commission's regulations. Additionally, a claim that a \$200 corporate contribution was received by the staging organization was refuted.

In reviewing the allegations and responses in these matters, and in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

### **RECOMMENDATION**

The Office of General Counsel recommends that the Commission dismiss MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing

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<sup>3</sup> 11 C.F.R. § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that. (1) Such debates include at least two candidates, and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."


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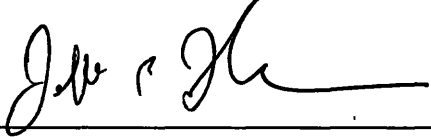
these cases as of this date will allow CELA and General Law and Advice the necessary time  
to prepare the closing letters and the case files for the public record.

Thomasenia P. Duncan  
Acting General Counsel

3/22/07  
Date

BY:

  
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Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

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5 **MUR 5863**

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7 **Complainant:** James Hurysz

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9 **Respondent:** Reston Citizens Association  
10 Comcast Cable Communications Holdings, Inc  
11 John Lovaas  
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13 **Allegations:** Complainant alleges that he was improperly excluded from a Congressional  
14 candidate debate, which was held on October 9, 2006, at the Comcast Cable studios in  
15 Reston, Virginia. The debate was broadcast through the Reston Impact, a community  
16 broadcast provided by Comcast Cable channel 28. The producer of the show that  
17 sponsored the debate was John Lovaas. The complainant alleges that his exclusion from  
18 the debate was based on respondent, John Lovaas's, relationship with one of the  
19 respondent's opponents, James Moran, and other political affiliations.  
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21 **Response:** Comcast responded by noting that it did not stage the debate at issue, but  
22 merely permitted the show to be produced pursuant to its franchise agreement with  
23 Fairfax County, Virginia. Mr. Lovaas responded that it was the practice of his program  
24 to first have the candidates appear "one-on-one" on his show to explain their platform  
25 and policies. The complainant refused to be interviewed prior to the debate, while the  
26 other candidates agreed to the one-on-one interviews. In 2004, the complainant  
27 participated in a one-on-one interview for the program and, therefore, was allowed to  
28 participate in the debate.  
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30 **Date complaint filed:** October 25, 2006

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32 **Responses filed:** November 17, 2006; November 24, 2006; and November 30, 2006

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