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November 20, 2012

Jeff S. Jordan, Esq.
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Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6383
Ohio News Organization, The Akron Beacon Journal, The Toledo Blade
Company, The (Canton) Repository, The (Cleveland) Plain Dealer, The
Columbus Dispatch, The Cincinnati Enquirer, The Dayton Daily News,
The (Youngstown) Vindicator

Dear Mr. Jordan:

We are writing in reference to your letter of November 5, 2012, wherein you provided a copy of a supplemental complaint submitted by Attorney Mark Brown and provided the Ohio New Organization and its members (collectively, the "OHNO") the opportunity to provide additional information in response to the allegations.

A number of comments are deserving. First, the supplemental information provided by Attorney Brown relates to the 2012 general election. However, as Attorney Brown has conceded, his client, Mr. Dan La Botz, was not a candidate for the election. Thus, Attorney Brown references independent candidate Scott Rupert. It is our understanding that Mr. Rupert is not represented by Attorney Brown, and has not filed any form of complaint. We submit that Mr. La Botz lacks any standing to challenge or focus on any issues with respect to the manner in which the 2012 campaign was conducted, be it directly or indirectly.

Second, we note that perhaps the reason Mr. La Botz chose not to run as a candidate in 2012 was because of the results of the 2010 election and, as previously observed by the general counsel's office, his failure to proceed in a manner suggestive of a true candidacy. Specifically, in the 2010 senatorial race, Mr. La Botz, as a then candidate, netted a .7 percentage of the vote. This poor showing was hardly surprising. Even though Mr. La Botz had filed a statement of candidacy, at the time he filed his original complaint he had not even filed a statement of organization establishing a campaign committee. Mr. La Botz did not formally set up a

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campaign committee until October 9, 2010; and only filed one financial disclosure report, a 2010 October quarterly, prior to the 2010 general election. In short, Mr. La Botz was never a viable candidate, let alone a frontrunner candidate, for the office of United States Senator.¹

Next, and irrespective of Attorney Brown's lack of personal standing or that of his client, criticism is leveled as to the manner by which the participants for the 2012 debates were selected. As was the case in the 2010 election, the criteria for selecting participants for the 2012 debate was based upon objective indicators of electoral support, including independent polling results. Remarkably, Attorney Brown suggests something nefarious as to the timing of the District Court's decision of September 5, 2012 and the distribution of OHNO's "2012 Candidate Selection Criteria for Senatorial Debate(s)." We describe this as remarkable since it was Attorney Brown who first advised OHNO of the District Court's decision, purportedly seeking to have this issue addressed to "avoid these kinds of problems" in the future. A copy of Attorney Brown's September 6 email is attached (Exhibit B). Of course, OHNO was applying objective criteria to determine viable candidates who would be invited to participate in a 2012 debate—the same criteria that the Commission had previously accepted as part of the dismissal of the original complaint. However, after the District Court decision was issued, and specifically after receiving written communication from Attorney Brown, a written statement was promulgated and distributed by OHNO with the hope of eliminating future complaints or issues.² A copy of the written statement is enclosed and marked as Exhibit A. (It was also marked as Exhibit C to Attorney Brown's supplement.)

Of course, Attorney Brown's letter proves the adage that no good deed goes unpunished. This process also reveals Attorney Brown's desire to make this an academic exercise and unnecessarily advocate extreme positions for, as even the District Court observed in footnote one of the opinion, a candidate who could not qualify "under any objective set of criteria." In this regard, Attorney Brown's September 19 email is telling (a copy is enclosed as Exhibit C). Once OHNO provided a copy of the written statement to Attorney Brown, he responded by suggesting that a candidate should qualify to participate in the debate if they were able to simply secure 1,000 signatures for a state-wide office.³ Obviously, such a threshold does not reflect the

¹ In contrast, Mr. Rupert filed not only a statement of candidacy, but also completed and submitted a statement of organization and submitted the quarterly financial reports. However, Mr. Rupert collected campaign contributions of only \$4,577.

² Attorney Brown overstated in his letter the import of the District Court's decision—a decision that did not question the Commission's standard, but rather, only the sufficiency of the evidence. It is telling that the District Court even observed that this was perhaps an appropriate case for dismissal as a result of the Commission's exercise of prosecutorial discretion. [Order n.16.] In short, the District Court also observed the original complaint for what it truly was.

³ As reflected by the undersigned's September 19 letter (copy enclosed as Exhibit D), OHNO even stood willing to modify its debate requirements to address a separate concern raised by Attorney Brown, provided that the end result was the identification of a viable candidate.

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viability of a statewide candidate, especially in a state with nearly 8 million registered voters. However, it speaks loudly that Attorney Brown, and his client, have proceeded in bad faith throughout these proceedings by advancing a claim and standard for a candidate of no real viability and apparently as part of academic exercise for a law school professor that fails to further the intent and purpose of the Federal Election Campaign Act.

As always, we remain available to answer any further questions you may have. We have endeavored to address the supplemental information provided, and, of course, can provide additional information and evidence relating to the original complaint should the Commission believe it appropriate and necessary.

Very truly yours,

Marion H. Little, Jr.

Enclosures

MHL:tlr:157-109:399032

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2012 CANDIDATE SELECTION CRITERIA
FOR SENATORIAL DEBATE(S)

A. INTRODUCTION

The Ohio Newspaper Organization ("OHNO") is comprised of eight news organizations from the State of Ohio. As it has in the past, the OHNO intends to sponsor one or more debates to educate and afford the members of the public an opportunity to sharpen their views of the candidates for the office of United States Senator for the State of Ohio.

Such voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission requiring that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria. The purpose of the criteria is to identify those candidates who have achieved a level of support such that they are realistically considered to be among the principal rivals for the Senate.

In connection with the 2012 general election, the OHNO will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of the OHNO's debates. The criteria are (1) constitutional eligibility; (2) ballot access and (3) electoral support. All three criteria must be satisfied in order for a candidate to participate in a debate.

B. 2012 NONPARTISAN SELECTION CRITERIA

The OHNO nonpartisan criteria for candidates to participate in the 2012 Senatorial debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The OHNO's first criterion requires satisfaction of the eligibility requirements of the United States Constitution. The requirements are satisfied if the candidate for Senate:

- a. is inhabitant of Ohio (U.S. Const. Art. I, § 3)
- b. is at least thirty years of age (U.S. Const. Art. I, § 3)
- c. has been a United States citizen for at least nine years prior to the election (U.S. Const. Art. I, § 3)

2. EVIDENCE OF BALLOT ACCESS

The OHNO's second criterion requires that the candidate qualify to have his/her name appear on the Ohio ballot. As applicable, candidates must comply with the following timeline prescribed by the Ohio General Assembly (as outlined below) and otherwise maintain his or her ballot qualification:

EXHIBIT

A

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- a. **Major Party Candidate:** By 4:00 p.m. on the 90th day before the primary election [R.C. § 3513.05], the candidate must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Declaration of Candidacy" and its accompanying "Petition For Candidate" (Ohio Secretary of State Form No. 2-C) with 1,000 signatures. [R.C. § 3513.05]
- b. **Minor Party Candidates:** By 4:00 p.m. on the 90th day before the primary election [R.C. § 3513.05], must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Declaration of Candidacy" and its accompanying "Petition For Candidate" (Ohio Secretary of State Form No. 2-C) with 500 signatures. [R.C. § 3513.05]
- c. **Independent Candidates:** By 4:00 p.m. on the day before the primary election [R.C. § 3513.257], must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Nominating Petition And Statement Of Candidacy" (Ohio Secretary of State Form No. 3-D) with 5,000 signatures. [R.C. 3513.257]

3. EVIDENCE OF ELECTORAL SUPPORT

The OHNO's third criterion requires the candidate to demonstrate electoral support by satisfying each of the following objective requirements.

- a. A candidate must have reached a minimum threshold in Ohio state polls, as measured by one of the three alternative polls: The candidate received an average of at least 10% in all polls released between March 1, 2012 and September 24, 2012 by (i) the OHNO; (ii) Rasmussen; or (iii) Quinnipiac.
- b. The candidate (i) has filed an applicable fundraising report(s) establishing candidate has raised at least \$500,000 to support his/her campaign since the formation of his/her campaign committee; (ii) is the nominee of a major party; or (iii) received in excess of 10% of the general election vote in the immediately preceding election for the office of United States Senator.

C. APPLICATION OF CRITERIA

The OHNO's determination with respect to participation in the ONO's debate(s) will be made after the publication of the OHNO public polling, but sufficiently in advance of the debate to allow for orderly planning.

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