



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Fox News Network, LLC)	MUR 6952
)	
)	

STATEMENT OF REASONS OF COMMISSIONER ANN M. RAVEL

The purpose of the Federal Election Commission is to safeguard the integrity of our elections. Voters — and candidates that run for office — are entitled to participate in a fair and transparent process.

As such, the Commission’s long-standing candidate debate rules provide significant latitude to a broadcaster when staging debates, provided the broadcaster “does not structure the debates to promote or advance one candidate over another.”¹ Our regulations have consistently required that staging organizations “use pre-established” and “objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the [debate] process.”² This is a simple, bright-line rule.³ Despite the undisputed factual record presented here, we were unable to garner the necessary four votes to find reason to believe a violation occurred in this matter. Ultimately, this does a disservice to candidates and the public.

In their effort to nullify the Commission’s debate regulations, three of my colleagues ignore the undisputed facts at hand.⁴ The Respondent’s own Executive Vice President conceded that it changed the debate eligibility criteria 10 days before the event as part of, in his words, a

¹ See 11 C.F.R. § 110.13(b)-(c).

² Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64,260, 64,262 (Dec. 14, 1995); 11 C.F.R. § 110.13(b)-(c).

³ Cf. Statement of Reasons of Commissioners Scott E. Thomas & Danny L. McDonald in MUR 5224 (*Boston Globe & WBZ-TV*), dated Sept. 16, 2002.

⁴ Statement of Reasons of Chairman Matthew S. Petersen, Commissioners Caroline C. Hunter & Lee E. Goodman in MUR 6952 (Fox News Network, LLC).

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“concerted effort to include and accommodate” a core group of 16 individuals it deemed to be in the candidate field.⁵

In my view, such an admission provided reason to believe that the Respondent failed to apply pre-established and objective candidate selection criteria, as the Commission’s regulations require.⁶ Vice Chairman Walther and I voted to find reason to believe Respondent violated the Federal Election Campaign Act of 1971, as amended. I agreed with the recommendations made by the agency’s nonpartisan Office of General Counsel, because the Complaint and available documentation clearly demonstrate that the record met this standard.⁷

The Complaint in this matter, filed by Mark Everson, a Republican candidate for President, alleged that Fox News Network, LLC (“Fox News”) restructured the first Republican presidential debate in a manner that improperly promoted and advanced certain candidates in violation of 11 C.F.R. § 110.13.⁸ Specifically, the Complaint alleged that Fox News’ “last minute” change — from relying upon an objective numerical criteria of recent national polls to instead require a candidate’s name be “consistently” offered in recent national poll — transformed the debate eligibility rules and provided no guidance for candidates or the public on the application of the new standards.

Commission regulations are clear. Simply stated, “[t]he choice of which objective criteria to use is largely left to the discretion of the staging organization.”⁹ Still, “[s]taging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants.”¹⁰

⁵ See Mike Allen, *Fox Lowers Threshold for Early Debate*, POLITICO (July 28, 2015), <http://www.politico.com/story/2015/07/fox-republican-debate-lowers-threshold-120748> (quoting Fox News Executive Michael Clemente) (attached to Response as Attachment B).

⁶ 11 C.F.R. § 110.13(c).

⁷ I voted to find reason to believe that Fox News Network, LLC, violated 52 U.S.C. § 30118(a) (prohibited corporate contribution). Certification in MUR 6952 (Fox News Networks, LLC), dated May 24, 2016.

⁸ Compl. at 1-3.

⁹ Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. at 64,262.

¹⁰ *Id.* By aggrandizing the boundaries of the press exemption, our three colleagues mistakenly portray the Commission’s candidate debate rules as a “safe harbor for press entities.” Statement of Reasons of Chairman Matthew S. Petersen, Commissioners Caroline C. Hunter & Lee E. Goodman in MUR 6952 (Fox News Network, LLC) at 13. This framing is in direct contradiction to the clear language of the regulation and the Explanation and Justification announcing the revised candidate debate rules. See 11 C.F.R. § 110.13(c) (“For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.”); Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. at 64,262 (“Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use preestablished objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process.”). Thus, the candidate debate rules set the boundaries of the press exemption. My colleagues also rely upon a recent matter under review, MUR 6703 (WCVB-TV, Channel 5), to support their proposition. This support is misplaced. In MUR 6703 (WCVB-TV, Channel 5), the Commission found no reason to believe WCVB-TV violated the Act or Commission regulations. Factual and Legal Analysis at 5-

As the agency's nonpartisan Office of General Counsel concluded, "the record reflects that Respondent used candidate-selection criteria designed to result in the inclusion of certain pre-chosen candidates, criteria that in context were neither objective nor pre-established."¹¹ I agree. This conduct fails to comply with section 110.13.¹²

By promoting pre-chosen candidates, the changing debate rules disfavored not only the complainant, but the public as well.

Despite my colleagues' protestations, this regulation remains on the books. It protects the integrity and fairness of the debate process.

6/30/16
Date



Ann M. Ravel
Commissioner

8, MUR 6703 (WCVB-TV, Channel 5). Importantly, while WCVB-TV utilized a variety of debate eligibility factors, this included polling information and once the criteria was announced it was never altered. *Id.* at 2-3. These differ starkly from the facts of the present matter, which involved "last minute" changes to the objective standard prepared by Fox News.

¹¹ First Gen. Counsel Rep. at 8, MUR 6952 (Fox News Network, LLC).

¹² Resp. at 5.