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BY EMAIL (cela@fec.gov)

Jeff S. Jordan, Esq.
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
Attention: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7576

Dear Mr. Jordan:

April 29, 2019

On behalf of CBS Corporation ("CBS"), the undersigned counsel hereby responds to your letter dated March 8, 2019 regarding a complaint (the "Complaint") filed by Mr. David Xaviel (the "Complainant"). CBS was granted an extension of time, through April 29, 2019, to respond to the Complaint by letter dated March 26, 2019 from Christal Dennis, Paralegal, to John Bagwell.

The Complaint alleges that CBS violated unspecified "campaign finance laws" (presumably, the Federal Election Campaign Act (the "Act")) by making "unreported contributions to political activity." The Complaint is notably devoid of detail. It fails to specify which campaign laws were purportedly violated, broadly addresses the Complaint to the Late Show with Stephen Colbert (as to which no specific episode or statement is identified) and the 2018 Tony Awards program, and indeed does not indicate any campaign to which the contributions were supposedly made.

The distribution of those programs by CBS does not constitute either an "unreported contribution" or an impermissible expenditure by CBS as that activity falls well within the Act's long-established "Media Exemption." As a result, the Complaint is without merit and CBS hereby requests it be promptly dismissed.

The Act and the Media Exemption to the Act created by the Federal Elections Commission (the "Commission") exclude 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, from the definitions of campaign "expenditures" and "contributions".¹

This Media Exemption was included in the Act in order to

make it plain that it [was] not the intent of Congress ... to limit or burden in any way the first amendment freedoms of the press [The media exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.²

The Media Exemption is applicable when a two part test is met. Specifically, the exemption applies to media entities (i) that are not owned by a political party, political committee or candidate (ii) when acting as a press entity in undertaking the particular activity. The determination of whether an entity was acting as a press entity includes an analysis of whether the complained of materials are available to the general public and whether they are comparable in form to those ordinarily issued by the press entity.³

In the instant matter, the Media Exemption's criteria are met, confirming that the complained of activity falls within the exemption and is thus outside the Commission's jurisdiction. With regard to the first prong, CBS is a media and entertainment corporation that is not owned by a political party, political committee or candidate.⁴ With regard to the second prong, CBS was acting a press entity in the broadcast and dissemination of the subject programs, which were broadcast to the general public and comparable in form and format to other programs regularly made available for broadcast by CBS.

Once the Media Exemption applies, as in the instant matter, the Commission is barred from investigating the substance of a complaint, including the motivation behind the complained of activity.⁵ Thus, while the Complainant may disagree with the CBS content, the content itself is irrelevant to the Commission's analysis, which may go no further.

¹ 52 U.S.C. § 30101(9)(B)(i), as to the Act's definition of expenditure and *see* 11 CFR 100.72 and 11 CFR 100.132 regarding the Commission's exemptions from contribution and expenditure.

² H.R. Rep. No. 93-1239, at 4 (1974).

³ *See Reader's Digest Ass'n v. FEC*, 509 F. Supp 1210, 1215 (S.D.N.Y. 1981) ("Readers Digest"); *and see* AO 2011-11 (Colbert).

⁴ *See* CBS Corporation 10-K, filed with the U.S. Securities and Exchange Commission on February 20, 2018, at I-2.

⁵ *See* Reader's Digest, at 1214-15.

Indeed, the Commission has repeatedly affirmed that a lack of objectivity in a media entity's news stories, commentaries, or editorials is irrelevant in determining whether a piece of content subject to the Media Exemption violates the Act, even if the story, commentary or editorial expressly advocates the election or defeat of a clearly identified candidate⁶ (which is not alleged in the Complaint).

As a result, the CBS content and activity cited within the Complaint falls squarely within the Act's Media Exemption and therefore is inherently not a violation of the Act.

For the reasons stated above, CBS hereby respectfully requests that the Commission dismiss the Complaint, as it relates to CBS, as without merit.

Sincerely,



John W. Bagwell

⁶ See AO 2007-20 (XM Radio); AO 2005-19 (Inside Track).

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