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December 19, 2019

Mr. Jeff S. Jordan  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Christal Dennis, Paralegal  
1050 First Street, NE  
Washington, D.C. 20463

**Re: Matter Under Review 7661 (iHeartMedia, Inc.)**

Dear Mr. Jordan:

This office represents iHeartMedia, Inc. ("iHeart") in the above-captioned matter. On November 18, 2019, the Federal Election Commission ("FEC" or "Commission") notified our client of a complaint alleging that iHeart and other entities violated the Federal Election Campaign Act of 1971, as amended (the "FECA").

The complaint's central allegation regarding iHeart is that our client made a prohibited corporate contribution to Matt Jones, a once-prospective Senate candidate from Kentucky, by continuing to syndicate his radio program after he filed an exploratory committee with the FEC. However, the complaint expressly acknowledges that the FECA exempts from the definition of contribution the activities of "press organizations that employ[] candidates to host shows owned or controlled by the radio stations."<sup>1</sup>

As explained below, the complaint includes inaccurate facts about who owns the radio show. iHeart owns the program and employs Matt Jones directly. This case is a textbook example of conduct that the press exemption has long exempted from regulation.

For these and the other reasons discussed below, the Commission should find no reason to believe that iHeart violated the FECA and dismiss this matter.

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<sup>1</sup> Compl. ¶46.



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## FACTUAL BACKGROUND

### **A. iHeart and Kentucky Sports Radio**

iHeart “is a leading global media and entertainment company specializing in radio, digital, mobile, social, live events and on-demand entertainment.”<sup>2</sup> iHeart “delivers music, news, talk, sports and other content to diverse audiences across multiple platforms, including: broadcast stations; online, via iHeartRadio and on its stations’ hundreds of websites; HD digital radio channels; satellite; smartphones; iPads and other tablets; in-vehicle entertainment and navigation systems; and via live events.”<sup>3</sup> With “over a quarter of a billion monthly listeners in the U.S. iHeartMedia has the largest reach of any radio and television outlet in America.”<sup>4</sup> iHeart is not owned or controlled by a candidate or political party.<sup>5</sup>

iHeart’s on-air relationship with Matt Jones began in 2010, when iHeart (and in particular, under its prior name, Clear Channel Communications) offered Jones a radio show on Louisville station WKJK.<sup>6</sup> The program, called “Kentucky Sports Radio” (“KSR”), has since become an award-winning show carried by 38 stations across the Commonwealth of Kentucky.<sup>7</sup> Importantly, the KSR program is owned by iHeart, meaning that Jones is an iHeart employee, as are the other principal characters on and producers of the show.<sup>8</sup>

While a key component of the KSR program is sports – and, in particular, University of Kentucky athletics – “politics are in KSR’s DNA” too.<sup>9</sup> In fact, “[i]nterviews with big names in

<sup>2</sup> iHeart, at <https://www.iheartmedia.com/>.

<sup>3</sup> iHeart, at <https://www.iheartmedia.com/iheartmedia/index>.

<sup>4</sup> See iHeart, *supra* n.2.

<sup>5</sup> See, e.g., Anne Steele, *iHeart Media Returns to Public Markets*, Wall Street Journal (July 18, 2019), at <https://www.wsj.com/articles/iheartmedia-returns-to-public-markets-11563447601>.

<sup>6</sup> Hayes Gardner, *Game Changer: How Matt Jones and Kentucky Sports Radio Grew to Dominate the Conversation* (Sept. 21, 2017), available at <https://smileypete.com/business/kentucky-sports-radio/>.

<sup>7</sup> See, e.g., Drew Franklin, *KSR Named ‘Best Radio Call-In Show’ in Louisville* (July 2, 2018), at <https://kentuckysportsradio.com/main/ksr-louisville-best-of/>; Tyler Thompson, *KSR Jumps in the National Sports Radio Rankings*, (Jan. 30, 2018), at <https://kentuckysportsradio.com/main/ksr-jumps-in-the-national-sports-radio-rankings/>.

<sup>8</sup> See, e.g., Kevin Draper, *The Radio Host Who Wouldn’t Stick to Sports*, DeadSpin (Nov. 4, 2014), at <https://deadspin.com/the-radio-host-who-wouldnt-stick-to-sports-1654698141>.

<sup>9</sup> *Id.*; see also Thomas Novelly, *Gov. Matt Bevin’s ‘Disturbing’ West End Comments Spark Outrage*, Louisville Courier Journal (July 10, 2018), at <https://www.courier-journal.com/story/news/politics/2018/07/10/kentucky-governor-matt-bevin-comments-west-louisville-chess-club-spark-outrage/772315002/> (explaining that “Kentucky Sports Radio Host Matt Jones . . .



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state and national politics [have become] a common feature of the two-hour show,"<sup>10</sup> with Senate Majority Leader Mitch McConnell, Democratic Secretary of State Alison Lundergan Grimes, and Florida Senator Marco Rubio (among others) appearing on KSR.<sup>11</sup> Some days, the program focuses on broader policy questions like global warming, same-sex marriage, and the minimum wage.<sup>12</sup> But KSR is also viewed as "a must-stop for candidates looking to reach a different audience," with the program even hosting and/or broadcasting Kentucky gubernatorial debates.<sup>13</sup> Notably, the show's "foray into politics has actually helped grow its audience" and resulted in a "big following . . . across the Bluegrass State."<sup>14</sup>

Another essential feature of the show is its on-location broadcasts. KSR regularly broadcasts from radio affiliates, big events (e.g., the NBA draft), and "spots around the state with cool things going on (Ky Speedway, Fancy Farm, Frankfort and Shelbyville)."<sup>15</sup> During the summer months, the program even goes on-location over a multi-month period, using new locales to generate content during the slower periods for UK sports.<sup>16</sup> And KSR has visited

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often dives into politics in his programming"); Matt Jones, *Matt's Journal: Why I Don't 'Stick to Sports'*, (Feb. 13, 2017), at <http://kentuckysportsradio.com/main/matts-journal-why-i-dont-stick-to-sports/> (explaining that "[f]rom Day One of KSR, other topics besides sports have been a major part of the site").

<sup>10</sup> Ashley Lopez, *How a Sports Radio Show Became a Must Stop for Kentucky Politics* (Oct. 11, 2015), at <https://wfpl.org/how-a-sports-radio-show-became-a-must-stop-for-kentucky-politics/>.

<sup>11</sup> Eli Yokley, *Sports Radio Host Considers Trading One Talk Show for Another*, Roll Call. (Oct. 26, 2015), at <http://www.rollcall.com/news/policy/sports-radio-host-considers-trading-one-talk-show-another>

<sup>12</sup> Adam Willis, *This Liberal Sports Radio Host Thinks He Can Take Down Mitch McConnell*, Politico (Mar. 25, 2018), at <https://www.politico.com/magazine/story/2018/03/25/adam-jones-kentucky-mitch-mcconnell-sports-radio-217656>.

<sup>13</sup> Ashley Lopez, *How a Sports Radio Show Became a Must Stop for Kentucky Politics*.

<sup>14</sup> *Id.*

<sup>15</sup> Matt Jones, *UK Fans of the Day Want the KSR Tour Schedule* (May 26, 2015), at <http://kentuckysportsradio.com/basketball-2/uk-fans-of-the-day-want-the-ksr-tour-schedule/>; see also Drew Franklin, *Introducing The KSR Summer Tour: Leg 1* (May 30, 2018), at <https://kentuckysportsradio.com/main/ksr-summer-tour-schedule/>; Drew Franklin, *Introducing the KSR Summer Tour 2017* (June 8, 2017), at <https://kentuckysportsradio.com/main/introducing-the-ksr-summer-tour-2017/>; Tyler Thompson, *KSR Kicks Off the Summer Tour in...Danville!*, (June 27, 2016), at <https://kentuckysportsradio.com/main/ksr-kicks-off-the-summer-tour-in-danville/>; Tyler Thompson, *The KSR Summer Tour Heads to Whitesburg (Tuesday Show Thread)* (June 24, 2014), at <https://kentuckysportsradio.com/main/the-ksr-summer-tour-heads-to-whitesburg-tuesday-show-thread/>.

<sup>16</sup> Matt Jones, *Matt's Journal: Why I Don't 'Stick to Sports'*; Drew Franklin, *Schedule for Second Leg of the KSR Summer Tour Now Complete* (July 6, 2017) at <https://kentuckysportsradio.com/main/schedule-for-second-leg-of-the-ksr-summer-tour-now-complete/>; Alix Casper-Peak, *KSR Summer Tour Stops in Pike County*, WYMT.com (Aug. 12, 2016), at <https://www.wymt.com/content/news/KSR-Summer-Tour-stops-in-Pike-County-390032642.html>.



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national political events as well, having “gone on tour to broadcast from the White House and the Republican and Democratic National Conventions.”<sup>17</sup>

### **B. Matt Jones’ Decision to Explore a Senate Run**

On August 29, 2019, the *Louisville Courier Journal* reported that Matt Jones was “forming an exploratory committee for a potential U.S. Senate bid against Mitch McConnell in 2020.”<sup>18</sup> The article explained that Matt:

[E]xpects to come to a final decision on such a run after the election for statewide offices this November. . . . He said he will file the paperwork for the committee in the coming days. Forming the committee will allow him to raise money to conduct polling and research on a potential run but not engage in any overt campaign activities to ask for votes.<sup>19</sup>

Later that day, Jones reported to his radio audience that he had “made a decision to create an exploratory committee to look into running for the Senate race against Senator McConnell.”<sup>20</sup> After briefly explaining his decision and the technical repercussions of it, Jones noted that his announcement was a way to

[P]ut this to the side, for a while . . . get [to] the start of football season. And people in the state can focus on the governor’s race. So that’s what I’m, that’s why I’m making this decision to do the exploratory committee. I will make a final decision, either way, right after the governor’s race.<sup>21</sup>

Jones also informed his listeners about the ground rules iHeart had given him upon learning of his exploratory efforts:

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<sup>17</sup> Adam Willis, *This Liberal Sports Radio Host Thinks He Can Take Down Mitch McConnell*.

<sup>18</sup> Joe Sonka, *Kentucky Sports Radio Host Matt Jones to Form an Exploratory Committee on Senate Bid*, *Louisville Courier Journal* (Aug. 29, 2019), at <https://www.courier-journal.com/story/news/politics/2019/08/29/democrat-matt-jones-forming-exploratory-committee-for-mitch-mcconnell-senate-2020/2149026001/>.

<sup>19</sup> *Id.*

<sup>20</sup> KSR, *Episode of 08-29-2019, Hour 1* at 2:35-2:45, available at <https://www.iheart.com/podcast/484-ksr-kentucky-sports-radio-28233652/episode/2019-08-29-ksr-hour-1-48569545/>.

<sup>21</sup> *Id.* at 2:25-2:30, 5:52-6:12.





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The radio station [has] asked one thing: I not use the show to promote the exploratory committee. And I think that's totally reasonable and I agree. Over the next seven or eight weeks I'm going to be on the road so I'm going to be in some of these places and I'll talk about being in those places, but I won't talk about the committee and all that because I think that's a fair request by iHeart.<sup>22</sup>

Twelve days later, Jones filed a Statement of Organization for the "Matt Jones for Kentucky Exploratory Committee."<sup>23</sup> As part of the filing process, the committee submitted a Form 99 report to the FEC explaining the limited purposes for which the committee was organized:

Today, Matt Jones filed FEC Form 2 to designate Matt Jones for Kentucky Exploratory Committee as a principal campaign committee for testing-the-waters purposes only. Mr. Jones is not a candidate for federal office and is only engaging in testing-the-waters activities at this time.<sup>24</sup>

Matt Jones also filed his Statement of Candidacy on September 10, designating the "Matt Jones for Kentucky Exploratory Committee" as the name of the committee.<sup>25</sup>

After the FEC complaint was filed initiating this matter, Matt Jones publicly reiterated that he was not a candidate and was merely exploring a run for office: "I have said repeatedly in public and in filings with the FEC that I am not yet a candidate and I haven't used the show to raise money or talk about my Exploratory Committee in any way."<sup>26</sup> Ultimately, after several

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<sup>22</sup> *Id.* at 6:20-6:41.

<sup>23</sup> Matt Jones for Kentucky Exploratory Comm., *FEC Form 1* (Sept. 10, 2019), at <https://docquery.fec.gov/pdf/484/201909109163213484/201909109163213484.pdf> (emphasis added).

<sup>24</sup> Matt Jones for Kentucky Exploratory Comm., *FEC Form 99* (Sept. 10, 2019), at <https://docquery.fec.gov/pdf/506/201909109163214506/201909109163214506.pdf> (internal quotation marks omitted).

<sup>25</sup> Matt Jones, *FEC Form 2* at <https://docquery.fec.gov/pdf/526/201909109163213526/201909109163213526.pdf> (emphasis added).

<sup>26</sup> Matt Jones, *Statement on KSR* (Nov. 6, 2019), at <https://kentuckysportsradio.com/main/statement-on-ksr/>. See also Shira Tarlo, *Is Mitch McConnell Afraid This Kentucky Sports Radio Host Will Run Against Him?*, Salon.com (Nov. 8, 2019), at <https://www.salon.com/2019/11/08/is-mitch-mcconnell-afraid-this-kentucky-sports-radio-host-will-run-against-him/> (quoting Matt Jones' statement that "I haven't even decided if I'm going to run or not . . . I created an exploratory committee because I wanted to be completely transparent — and now they're using that transparency against me, even though I'm not a candidate at this point").



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months of exploring a potential run, Matt Jones decided against mounting a campaign.<sup>27</sup> Instead, iHeart and Jones reached an agreement to keep the KSR program on the air for another five years.<sup>28</sup>

### THE COMPLAINT

The complaint argues that, by syndicating and subsidizing the KSR program, iHeart made a prohibited corporate contribution to Matt Jones' Senate campaign.<sup>29</sup> But this legal conclusion rests on errant assumptions and supposed "facts" concerning the KSR program. Before proceeding to the legal analysis in the following sections, it is important to correct several basic factual errors.

*First*, the complaint states – without citing any authority other than "information and belief" – that the KSR program is owned and controlled via a "manager-controlled limited liability company named 'Kentucky Sports Radio LLC'" (with Matt Jones, in turn, listed as one of the two managers).<sup>30</sup> That is incorrect. As explained above, iHeart owns KSR, Matt Jones is an employee of iHeart, and iHeart pays Matt Jones directly for his on-air talent.<sup>31</sup> iHeart does not pay anything to Kentucky Sports Radio LLC, which appears to be an entity connected to Matt Jones' website.

*Second*, the complaint erroneously asserts that the KSR program has only focused on the University of Kentucky's athletic programs. The program has a long history of discussing political topics.<sup>32</sup> The complaint further argues that the KSR program is no longer "comparable in form" to the prior version of the show, since it is filled with "frequent discussions" of Matt Jones' candidacy "to promote [Jones] to the relevant Kentucky electorate."<sup>33</sup> As support for its contention, the complaint principally relies upon a handful of on-air comments made (1) *several months before* Matt Jones allegedly became a candidate, (2) that focus on a *hypothetical* run or

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<sup>27</sup> Sarah Ladd, *Matt Jones Coming Back on Kentucky Sports Radio, Re-Signs with iHeart Media*, Louisville Courier Journal (Nov. 25, 2019), at <https://www.courier-journal.com/story/news/local/2019/11/25/matt-jones-coming-back-kentucky-sports-radio-resigns-iheart/4303484002/>.

<sup>28</sup> *See id.*

<sup>29</sup> *See, e.g.*, Compl. ¶¶ 43, 44, 48.

<sup>30</sup> *Id.* ¶17.

<sup>31</sup> *See supra* at 2.

<sup>32</sup> Compare Compl. ¶18 with *supra* at 2-3.

<sup>33</sup> Compl. ¶¶19, 40.



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a policy issue (e.g., term limits), and (3) that last mere seconds out of hundreds of hours of programming.<sup>34</sup>

Similarly, the one quoted statement made after the alleged candidacy commenced does not expressly advocate for Mitch McConnell's defeat:

Here's one of the things. Every place I go in this state, one of the questions I ask is when is the last time Mitch McConnell has been here? And they say never, or they say it's been ten years."<sup>35</sup>

At bottom, therefore, nothing the complaint cites supports its contention that the program is "largely a campaign commercial" for Matt Jones.<sup>36</sup>

*Third*, the complaint contends that "it is readily apparent from the radio shows themselves that no steps have been taken by . . . [iHeart] to prevent Mr. Jones from engaging in election related activity on his show."<sup>37</sup> But as Matt Jones' own words reflect,<sup>38</sup> iHeart explicitly told Jones that he was not to use the KSR program as a means to promote his exploratory efforts, much less an actual candidacy.

*Fourth*, the complaint treats as fact that Matt Jones was a declared candidate for Senate because he filed a Statement of Candidacy (i.e., FEC Form 2) and established a committee (i.e., by filing FEC Form 1). While the filing of such forms *can* be evidence of an individual's intent to be a "candidate," here the documents were filed with explicit notations that they were not to be taken as evidence of a formal declaration of candidacy. For example, the papers confirm that the carefully-named "exploratory committee" was "for testing-the-waters purposes only," and that "Mr. Jones is not a candidate for federal office . . . at this time."<sup>39</sup> This intent is confirmed by contemporaneous statements made by Matt Jones on-air and to the local media, as well as comments Jones later made to directly refute the complaint's allegations.<sup>40</sup>

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<sup>34</sup> See *id.* ¶19 n.10 (citing statements made on April 16, May 7, and July 9, 2019). If anything, these remarks demonstrate that – months before he took steps toward forming an exploratory committee – Matt Jones had a history of criticizing Mitch McConnell on his show.

<sup>35</sup> See *id.*

<sup>36</sup> *Id.* ¶48.

<sup>37</sup> Compl. ¶47

<sup>38</sup> See *supra* at 4-5.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*



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### THE LAW

The FECA prohibits corporations from making a “contribution” to a federal candidate.<sup>41</sup> The term “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,”<sup>42</sup> and also “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election to [federal office].”<sup>43</sup>

The FECA also regulates “expenditures.” The term expenditure includes “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”<sup>44</sup> Expenditures that are made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.”<sup>45</sup>

There are important exceptions to these definitions, including for all costs incurred by press organizations in covering or carrying news and editorials. Specifically:

Any cost incurred in covering or carrying a news story, commentary, or editorial by any . . . newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate.<sup>46</sup>

This provision, referred to as the FECA’s press exemption, was meant to ensure that the FECA did not “limit or burden in any way the first amendment freedoms of the press and of association.”<sup>47</sup>

Following the decisions in *Reader’s Digest Ass’n, Inc. v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981), and *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981), the Commission has

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<sup>41</sup> See 52 U.S.C. § 30118(a).

<sup>42</sup> *Id.* § 30101(8)(A).

<sup>43</sup> 11 C.F.R. § 114.1(a)(1).

<sup>44</sup> 52 U.S.C. § 30101(9)(A)(i).

<sup>45</sup> *Id.* § 30116(a)(7)(B)(i).

<sup>46</sup> 11 C.F.R. § 100.73; see also 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.132.

<sup>47</sup> H.R. Rep. No. 93-1239, at 4 (1974) (discussing the statutory provision upon which the regulatory exemption is based).





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used “a two-step analysis to determine whether the media exemption applies.”<sup>48</sup> The Commission first considers whether the entity in question is a media entity.<sup>49</sup> Second, in a two-factor analysis, the Commission considers “(1) whether the press entity is owned or controlled by a political party, political committee, or candidate, and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its ‘legitimate press function.’”).<sup>50</sup> This “two-stage process was mandated because the media exemption represents a fundamental limitation on the jurisdiction of this agency, and [because] an investigation of publishers can trespass on the First Amendment.”<sup>51</sup>

### ANALYSIS

There is no dispute that iHeart is “a publicly traded media and entertainment company.”<sup>52</sup> In connection with another matter, the FEC’s Office of General Counsel explained that when iHeart “was known as Clear Channel Communications, Inc. it was named a respondent in three matters and, in each instance, the Commission concluded that Clear Channel was a press entity covered by the press exemption.”<sup>53</sup> Here, the complaint likewise agrees that iHeart “is a mass media corporation that, among other activities, provides syndication of radio programming.”<sup>54</sup>

The complaint also does not dispute – nor could it – that iHeart was not and is not under the control of a candidate, political committee, or political party.<sup>55</sup> While the complaint focuses on Jones’ alleged control over Kentucky Sports Radio LLC, that entity is irrelevant to the legal

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<sup>48</sup> MUR 7230, Factual & Legal Analysis at 2 (NPR) (June 21, 2017). *See also* MUR 7231, Factual & Legal Analysis at 3 (CNN) (Aug. 10, 2017); MUR 7218, Factual & Legal Analysis at 3-4 (N.Y. Times) (Aug. 10, 2017).

<sup>49</sup> *See* Statement of Reasons of Comm’rs Darryl R. Wold, Danny L. McDonald, David M. Mason, Karl J. Sandstrom, and Scott E. Thomas, Matters Under Review 4929, 5006, 5090, and 5117 (*In re* ABC, CBS, NBC, *New York Times*, *Los Angeles Times*, and *Washington Post et al.*) (Dec. 20, 2000) (“*Commission Statement on Investigatory Boundaries for Media Cases*”).

<sup>50</sup> *Id.* at 2-3.

<sup>51</sup> *Id.*

<sup>52</sup> First General Counsel’s Report at 2, MUR 6936 (Geoff Charles) (Nov. 19, 2015); *see also supra* at 2.

<sup>53</sup> First General Counsel’s Report at 7, MUR 6936.

<sup>54</sup> Compl. ¶ 7.

<sup>55</sup> *See also* Factual & Legal Analysis at 6, MUR 6089 (Meakem Communications Co. LLC) (explaining that no evidence shows that iHeart’s predecessor “was owned or controlled by any political party, political committee, or candidate”) (internal quotation marks omitted).



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analysis here. iHeart produced the KSR program and is, therefore, the only entity whose ownership or control is at issue.<sup>56</sup>

iHeart also was acting as a media entity in disseminating the KSR program during the fall of 2019, as it had done for nearly a decade. The “considerations in determining whether an entity is acting in its legitimate press function include whether the entity’s materials are available to the general public and whether they are comparable in form to those ordinarily issued by the entity.”<sup>57</sup> For example, on-air material produced by the same staff, and disseminated on the same stations and at the same time as prior non-electoral content, is indicative of an entity acting in its legitimate press function.<sup>58</sup> Here, as explained above,<sup>59</sup> the same staff were involved in producing the KSR program both before and after Jones purportedly declared his candidacy, and the show continued to be aired on the same stations and in the same format and time slots as well.

Contrary to the complaint’s suggestion,<sup>60</sup> a “lack of objectivity” by on-air talent – much less the presence of express advocacy or the solicitation of contributions – is irrelevant to whether a media entity is acting as a media entity in broadcasting a program.<sup>61</sup> Indeed, the Commission has held that a radio host “who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent[s] where there was ‘no indication that the formats, distribution, or other aspects of production’ were any different.”<sup>62</sup> It simply makes no difference that the show’s host is a federal candidate, nor that he or she recently filed a

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<sup>56</sup> See *supra* at 2.

<sup>57</sup> Factual & Legal Analysis, MUR 6242 at 5 (J.D. Hayworth) (June 10, 2010); see also First General Counsel’s Report at 8-9, MUR 6936 (Nov. 19, 2015) (explaining that relevant factors include whether the challenged content is “disseminated . . . in ‘precisely the same way that [the media entity] disseminates content by its other on-air personalities” and during the usual time slot for such program); but see Statement of Reasons of Chairman Michael E. Toner and Commissioners David M. Mason and Hans A. von Spakovsky at 4, MUR 5555 (Dave Ross) (Mar. 17, 2006) (finding that “[f]or the press exemption to apply, respondents need not demonstrate that there were no differences at all from what a press entity usually does”).

<sup>58</sup> FEC Adv. 2011-11 (Colbert) (June 30, 2011).

<sup>59</sup> See *supra* at 2.

<sup>60</sup> See, e.g., Compl. ¶46.

<sup>61</sup> See Factual & Legal Analysis at 8, MUR 6089; FEC Adv. Op. 2011-11 at n.6. As the FEC’s Office of General Counsel later explained, the press exemption means that the Commission is specifically “precluded from ‘inquiring further into the contents of [the host’s] speech.’” First General Counsel Report at 6, MUR 5555 (Dave Ross) (Jan. 10, 2006).

<sup>62</sup> Factual & Legal Analysis, MUR 6242 at 6.



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Statement of Candidacy with the FEC.<sup>63</sup> In fact, the Commission unanimously dismissed a complaint against Seattle talk show host Dave Ross, who had stayed on the air during portions of both the exploratory and declared phases of his campaign.<sup>64</sup>

The fact that the KSR program continued to air while Matt Jones travelled the state while conducting research for a book does not affect this analysis. To begin, the as-yet-unwritten book reportedly “will be part travelogue and part history of the commonwealth,” with Jones visiting counties to talk with coal miners who have lost their jobs, Kentuckians struggling with opioid addiction, and citizens affected by gun crime in schools.<sup>65</sup> That is not electoral advocacy. Moreover, the KSR program has aired live from the road for years, long before Matt Jones began exploring a Senate run. In fact, Jones’ on-location broadcasts are an important component of the show’s success. These elements are hallmarks of activity that remains protected by the press exemption.<sup>66</sup> To the extent that Jones may have engaged in other activities on these road trips, they were neither paid for by iHeart nor conducted during the time windows when Jones was obligated to host the KSR show.

iHeart is a media company not owned or controlled by a candidate or political party. The KSR program with Matt Jones constitutes a legitimate press function. Accordingly, there is no contribution or expenditure under the FECA.

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<sup>63</sup> See, e.g., Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, David M. Mason, and Karl J. Sandstrom, MUR 4689 (Dornan) (Feb. 14, 2000). Note also that this statement directly repudiates the analysis in the First General Counsel’s Report, relied upon by the complaint (at ¶31), that “the media activity of a candidate host is held to a different standard than the media activity of a third-party host or commentator discussing or interviewing a candidate.”

<sup>64</sup> See Vote Certification of Feb. 10, 2006, MUR 5555 (Dave Ross); First General Counsel’s Report at 2-3, MUR 5555 (Dave Ross) (Jan. 10, 2006).

<sup>65</sup> Ben Strauss, *Kentucky Sports Radio Host Plans Book-Length Rebuke of Mitch McConnell*, Washington Post (Aug. 15, 2019), at <https://www.washingtonpost.com/sports/2019/08/15/kentucky-sports-radio-host-plans-book-length-rebuke-mitch-mcconnell/>.

<sup>66</sup> See, e.g., First General Counsel’s Report at 9 (The John and Ken Show) (Jan. 10, 2006) (concluding that on-location broadcasts that were electoral in nature were still exempt from regulation under the press exemption where such broadcasts were similar in form to non-electoral site visits).



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**CONCLUSION**

For the foregoing reasons, the allegations in the complaint do not describe a violation of law as to iHeart, and the Commission should find no reason to believe that iHeart violated the FECA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Witold Baran".

Jan Witold Baran  
Andrew G. Woodson