

BEFORE THE FEDERAL ELECTION COMMISSION

In re Hampden-Sydney College, et al.

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MUR 5254

STATEMENT OF REASONS

On August 27, 2002, the Commission voted unanimously to find no reason to believe the Respondents in MUR 5254 violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") as a result of the activities described in the complaint.¹

Complainant, John S. Spence, alleged that he was improperly excluded from participation in a debate held at Hampden-Sydney College ("Hampden-Sydney") on October 26, 2000. The complainant was an independent candidate for Virginia's Fifth Congressional District. The participants in the debate were Virgil Goode (the incumbent) and John Boyd (the Democratic Party's nominee). The complainant named as respondents the debate's sponsor, Hampden-Sydney, and candidates Goode and Boyd.

Respondent Hampden-Sydney appears to have complied with the Commission's debate regulations in sponsoring and staging the October 26, 2000 debate.² Therefore, as a matter of law, there is no reason to believe the Respondents violated the Act.

Analysis and Conclusions

FECA prohibits corporations from making contributions in connection with federal elections. 2 U.S.C. §441b(a). The Commission has defined the term "contribution" as: "A gift, subscription, loan . . . advance or deposit of money or anything of value made . . . for the purpose

¹ The General Counsel had recommended that this matter be dismissed as less significant relative to other matters pending before the Commission. Commissioner Sandstrom left the FEC in December 2002 when Commissioner Weintraub was appointed to the Commission.

² On May 9, 2002, the Federal Election Commission published a Notice of Availability of Petition for Rulemaking on Candidate Debates, and the comment period ended on June 10, 2002. 67 Fed. Reg. 31164 (May 9, 2002). The Commission has not decided whether to issue a Notice of Proposed Rulemaking on this matter. In the meantime, however, the Commission's debate regulations remain in effect.

of influencing any election for Federal office.” 11 C.F.R. § 100.7(a)(1).³ However, section 100.7(b)(21) of the Commission’s regulations specifically exempts funds expended for the purpose of staging debates from the definition of contribution if the debates meet the requirements of 11 C.F.R. § 100.13.

The regulations allow certain non-profit organizations which do not endorse, support or oppose political candidates or political parties to stage candidate debates in accordance with sections 110.13 and 114.4(f). 11 C.F.R. § 110.13(a). One such type of non-profit organization is described in 26 U.S.C. § 501(c)(3) as:

Corporations . . . organized and operated exclusively for . . . educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in . . . any political campaign on behalf of . . . any candidate for public office.

As long as such a non-profit organization complies with the requirements set forth in section 110.13, the costs incurred by the sponsoring entity are exempt from the definition of contribution and there is no violation of the FECA.

Hampden-Sydney College is a (c)(3) organization. Thus, the issue in MUR 5254 was whether the October 26, 2000 debate sponsored by Hampden-Sydney was conducted in accordance with the Commission’s debate regulations.⁴ Paragraph (b)(1) of 110.13 requires debates to “include at least two candidates,” and paragraph (b)(2) states that the staging organization may not “structure the debates to promote or advance one candidate over another.” 11 C.F.R. § 110.13(b)(1) and (2). The record shows that the debate at issue here included two major candidates, incumbent Congressman Virgil Goode (I) and challenger John Boyd (D), in compliance with paragraph (b)(1) of 110.13. Hampden-Sydney Response at 2. Furthermore, there is no indication in the record that the structure of the debate promoted or advanced one candidate over another. *Id.*

The Complaint alleges that Mr. Spence was “not allowed to participate in the 5th District Debate, Thursday, October 26, 2000.” Complaint at 3. However, the Commission's debate regulations permit staging organizations to select candidates based on “pre-established, objective criteria.” 11 C.F.R. § 110.13(c). Hampden-Sydney complied with this requirement given that it relied upon objectively measurable information, including campaign fundraising totals disclosed in FEC reports, press coverage, and the lack of a campaign organization to conclude that Mr. Spence should not be invited to the debate.

The record indicates that Mr. Spence was an independent candidate lacking both financial backing and a campaign organization. Hampden-Sydney Response at 1. According to FEC

³ All regulation citations are to those regulations in effect in 2002.

⁴ Respondent Goode stated that "no one affiliated with the Goode campaign made any decisions about who participated or made any arrangements for the debates" (Goode Response at 1) and, likewise, there is no indication in the record that Respondent Boyd had any input in arranging the debate.

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reports reviewed by Hampden-Sydney, Mr. Spence did not receive a single contribution from any person. *Id.* Moreover, Mr. Spence was not regarded as a serious candidate by the press covering the election. *Id.*⁵ Since the decision to exclude Mr. Spence apparently was based upon these objective and pre-established criteria, Hampden-Sydney College complied with subsection 110.13(c) of the Commission's regulations.

For the foregoing reasons, the Commission concludes that as a matter of law there is no reason to believe the respondents violated the FECA as alleged in the compliant.

June 11, 2003

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Bradley A. Smith, Commissioner

Scott E. Thomas, Commissioner

Michael E. Toner, Commissioner

⁵ On election night, Mr. Spence garnered less than 2% of the total votes cast district-wide and, in contrast to the 3,936 votes Mr. Spence received, the two candidates invited to participate in the debate received 208,699 votes combined. Fed. Elections 2000: Election Results for the U.S. President, the U.S. Senate and the U.S. House of Representatives, 181. The results of the election validate Hampden-Sydney's use of criteria.