




FEDERAL ELECTION COMMISSION
Washington, DC 20463

von Spakovsky

SENSITIVE

MEMORANDUM

TO: Commissioners
Acting Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: March 17, 2006

SUBJECT: Statement of Reasons of MUR 5569
Chairman Michael E. Toner and
Commissioners David M. Mason and
Hans A. von Spakovsky

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of General Counsel will include this statement in the public record file in this case.

cc: Thomasenia Duncan

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
John Kobylt)	
Ken Chiampou)	
KFI AM-640)	MUR 5569
Cynthia Matthews)	
Committee to Elect Cynthia Matthews)	
Kinde Durkee, in his official capacity as treasurer)	

STATEMENT OF REASONS OF CHAIRMAN MICHAEL E. TONER AND COMMISSIONERS DAVID M. MASON AND HANS A. von SPAKOVSKY

The National Republican Congressional Committee filed the complaint in this matter alleging that Respondents violated the Federal Election Campaign Act (“FECA”), 2 U.S.C. § 431 *et seq.* The Commission voted unanimously to adopt the Office of General Counsel (“OGC”) recommendation to (1) find no reason to believe Respondents violated FECA and (2) close the file.¹

While we agree with the recommendation, we write separately to clarify why the press exemption applies because the standard is easier to meet than the OGC analysis² might suggest and does not require any content analysis of the radio shows. *Cf. In re Dave Ross et al.*, MUR 5555, Statement of Reasons (“SOR”) of Chairman Toner and Comm’rs Mason and von Spakovsky at 1 (March 17, 2006).

I. BACKGROUND

John Kobylt and Ken Chiampou host the John and Ken Show, a radio talk show on KFI AM-640 in Burbank, California,³ that covers current events, politics, public policy, and other social and cultural topics.⁴ The station is owned by Capstar Radio Operating Company, which is

¹ First General Counsel’s Report (“GCR”) at 11 (Jan. 10, 2006). Voting affirmatively were Chairman Toner, Vice Chairman Lenhard, and Commissioners Mason, von Spakovsky, Walther, and Weintraub.

² *Id.* at 5-10.

³ *Id.* at 1, 3.

⁴ *Id.* at 7 (quoting KFI Resp. at 3).

owned by Clear Channel Communications Corporation, Inc.⁵ No political party, political committee, or candidate owns or controls the station.⁶ KFI's signal reaches the district that Congressman David Dreier represents in the United States House of Representatives. Dreier was a candidate in 2004, and his opponent was Respondent Cynthia Matthews.⁷

In the months before the 2004 election, Kobylt and Chiampou expressly advocated the defeat of Dreier and Congressman Joe Baca during the show. Kobylt and Chiampou characterized this effort as "political human sacrifices." They also expressly advocated the election of Respondent Matthews.⁸ This extended to the station's and the show's websites.⁹ The complaint alleges that during an interview, Kobylt and Chiampou invited Matthews to give her website to get volunteers, money, and other support. In response, she provided her website and other contact information. On one occasion, Kobylt and Chiampou did a remote broadcast – called a "'Fire Dreier' Rally" and a "Political Human Sacrifice Rally" – from outside Dreier's congressional-district office, where they interviewed Matthews.¹⁰ The complaint alleges that on another occasion, they did a remote broadcast – another "political human sacrifice" – from Baca's "backyard."¹¹

The complaint has multiple allegations of illegal contributions and expenditures and asserts, without citation, that the express advocacy alleged in the complaint does not fall within the press exemption.¹²

II. DISCUSSION

All of the allegations in this matter involve (1) a "cost incurred in covering or carrying a news story, commentary, or editorial" (2) carried or covered by a radio station, and (3) the facilities are not "owned or controlled by any political party, political committee, or candidate" 11 C.F.R. § 100.73.

Under 2 U.S.C. § 431(9)(B), all of the allegations (1) involve a "news story, commentary, or editorial" (2) distributed through a radio station's facilities, and (3) the facilities are not "owned or controlled by any political party, political committee, or candidate" Once those facts were established, this should have ended the investigation of this matter.

⁵ *Id.* at 3.

⁶ *Id.* at 6.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5 (citing Compl. Exh. 2).

¹² Compl. at 4 (Oct. 14, 2004).

Some facts that may be tempting to consider do not affect whether the press exemption applies. See *Ross*, SOR of Chairman Toner and Comm'rs Mason and von Spakovsky at 3. For reasons stated in *Ross*, *id.* at 3-6, in applying the press exemption, the political content of the show¹³ is immaterial. The OGC analysis also noted that Kobylt and Chiampou have "staged and broadcast public rallies on several occasions" before the remote broadcast outside Dreier's office.¹⁴ Under different facts, the Commission might need to distinguish a remote broadcast from a political rally. While the history of remote broadcasts here makes this issue an easy call, the fact that a broadcaster had never done such a remote broadcast would not necessarily remove such a broadcast from the press exemption. Otherwise it may be difficult for a press entity that has never done such a remote broadcast to start doing them without running outside the protection of the press exemption.

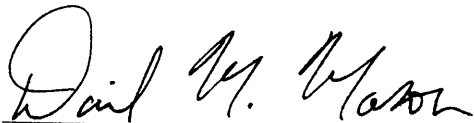
III. CONCLUSION

For the foregoing reasons, the Commission was correct in finding no reason to believe and closing the file in this matter.

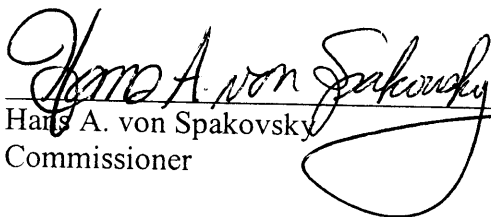
March 17, 2006



Michael E. Toner
Chairman



David M. Mason
Commissioner



Hans A. von Spakovsky
Commissioner

¹³ GCR at 7.

¹⁴ *Id.* at 9.