



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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2007 MAR 13 A 8: 26

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
John McConnel Wolfe, Jr.)
John McConnel Wolfe, Jr. for Congress) MUR 5597
and Alfred F. Teague, in his official)
capacity as treasurer)

**STATEMENT OF REASONS OF CHAIRMAN ROBERT D. LENHARD,
VICE CHAIRMAN DAVID M. MASON AND COMMISSIONERS
MICHAEL E. TONER, HANS A. von SPAKOVSKY, STEVEN T.
WALTHER AND ELLEN L. WEINTRAUB**

Beginning in 2002, John M. Wolfe, Jr., a 2004 Congressional candidate in Tennessee's Third District, has hosted a weekly radio show on Chattanooga, Tennessee station WGOW 102.3 FM during which he discusses local, state, and national issues. Wolfe pays \$700 a week for one hour of radio time on Saturday mornings. During his candidacy, his campaign reported the cost of some of these shows as expenditures.

In this matter, the complainant alleged that Wolfe used certain of his shows to expressly advocate his own election and the defeat of his general election opponent, and to solicit funds for his campaign without complying with FECA's reporting and disclaimer requirements. Specifically, the complainant cited three purported examples of Wolfe's alleged political advocacy during his radio broadcasts, two of which complainant alleged occurred on August 16, 2003, and the other on August 3, 2004. The complainant also cited one purported example of a deficient disclaimer in a broadcast on April 10, 2004, when Wolfe allegedly said "I'm John Wolfe and I approved this message" but failed to say who paid for the show. Finally, the complainant alleged that Wolfe's campaign committee filed its 2004 Pre-Primary Report two days late.

On November 28, 2006, the Commission voted unanimously to exercise prosecutorial discretion and dismiss this matter under *Heckler v. Chaney*, 470 U.S. 821 (1985), as none of the allegations warranted investigation. First, Wolfe did not air a show on August 3, 2004, as that was not a Saturday. To the degree the complaint could be read to have simply identified the wrong date in August of 2004, Wolfe's campaign did report that it made expenditures for shows in that month. Second, another date on which the complainant alleges a violation occurred, August 16, 2003, was nearly a year before the August 5, 2004 primary and Wolfe was not yet a declared candidate. As a consequence,

it is unlikely that he would tell listeners to remember to vote on the specific date of the primary more than a year in advance. Even if true, it would allege a reporting violation of \$700 or less. Third, the complainant failed to provide audiotapes or transcripts of the shows at issue to support his allegations of the partial disclaimer violation or solicitation (despite having done so in a previous complaint against Wolfe¹), and the Commission was not able to locate any publicly available transcripts or audiotapes of the shows. As a result of the limited evidence and the prospect of only minor reporting violations, the Commission dismissed the allegations in the complaint.

Even if the Commission had viewed the complaint as alleging more than violations on the specific dates mentioned in the complaint, there was insufficient evidence of a reporting violation to justify the time and expense of a fact intensive inquiry.

Notably, Wolfe's campaign did report significant levels of expenditures for his radio show during the 2004 election cycle. His campaign reported at least \$7,500 in expenditures for radio shows. As one would expect, most of Wolfe's reported expenditures occurred in the pre-election period between August and November of 2004.

Investigating whether Wolfe's campaign should have reported expenditures for additional shows would be legally and factually complex, and is not justified by the small amounts at issue and the record before us. The Commission would have to track down and review many shows to determine which, if any, of the disbursements for the shows were not reported. Even if all of the shows between the date that Wolfe filed a petition for candidacy and election day contained content that triggered a reporting obligation – in other words, even if we assume the most adverse view of the facts for Wolfe – the campaign would still not have a substantial reporting violation.

As a result of a shortage of credible allegations of a violation in the complaint, the time necessary to conduct an investigation and the limited likelihood that a material violation of the campaign's reporting obligations occurred, the Commission decided to exercise its prosecutorial discretion and dismiss this matter.

¹ The same complainant had previously alleged that Wolfe's 2002 campaign failed to report any of the costs associated with his radio show as "expenditures." The Commission investigated the matter and in 2003, reached a settlement with Wolfe in which he admitted violating the law and paid a \$7,200 penalty. *See* MUR 5297. In that complaint, unlike the current one, the complainant provided audiotapes or transcripts of the shows to support his allegations. *Id.*

Robert D. Lenhard
Robert D. Lenhard, Chairman

3/9/07
Date

David M. Mason
David M. Mason, Vice Chairman

3/13/07
Date

Michael E. Toner
Michael E. Toner, Commissioner

3/12/07
Date

Hans A. von Spakovsky
Hans A. von Spakovsky, Commissioner

3-9-07
Date

Steven T. Walther
Steven T. Walther, Commissioner

3/9/07
Date

Ellen L. Weintraub
Ellen L. Weintraub, Commissioner

3/9/07
Date