



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 26 2019

David Xaviel

San Jose, CA 95128

RE: MUR 7576

Dear Mr. Xaviel:

The Federal Election Commission reviewed the allegations in your complaint received on March 6, 2018. On July 19, 2019, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations as to Jackhole Productions, CBS Corporation, The Walt Disney Company, and Spartina Productions, Inc., and close its file in this matter. Accordingly, the Commission closed its file in this matter on July 19, 2019. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan".

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7576

Respondents: Jackhole Productions;
CBS Corporation;
The Walt Disney Company; and
Spartina Productions Inc.²

Complaint Receipt Date: March 6, 2019

Latest Response Date: April 29, 2019¹

EPS Rating:

Alleged Statutory

52 U.S.C. § 30101(9)(B)(i)

Regulatory Violations:

11 C.F.R. §§ 100.73, 100.132

The Complaint alleges that ABC and Jimmy Kimmel Live, a television show ABC broadcasts, made an unreported in-kind contribution to “the Democrats” because the show is a commercial for the Democratic Party.³ The Complaint similarly alleges that CBS and the Late Show with Stephen Colbert violated campaign finance laws when they allowed “deliberate and calculated propaganda” on the show.⁴ Respondents assert that their activities are covered by the media exemption because they are not owned by a political party, political committee, or candidate, and they were acting as press entities in undertaking the activities here.⁵

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These

¹ The Walt Disney Company’s response was received on April 1, 2019 and CBS Corporation’s Response was received on April 29, 2019. Spartina Productions, Inc. and Jackhole Productions did not respond to the complaint.

² CBS Corporation and Spartina Productions Inc. co-produce the Late Show with Stephen Colbert. The Walt Disney Company owns ABC, Inc., which produces Jimmy Kimmel Live. Jackhole Productions is a production company owned by Jimmy Kimmel and others, but Respondents assert that it does not produce Jimmy Kimmel Live. See ABC, Resp. at 1 (Apr. 1, 2019).

³ Compl. at 1 (Mar. 6, 2019).

⁴ *Id.*

⁵ CBS Resp. at 2 (Apr. 29, 2019); ABC Resp. at 1.

criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating and the fact that the media exemption appears to cover Respondents' activities, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel

6.26.19
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Jeff S. Jordan
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