



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 445-8

DATE FILMED 6-9-97 CAMERA NO. 4

CAMERAMAN JMN

97043820474

# Marcus for Congress

51 West Washington St.  
Fairfield, Iowa 52556  
(515) 472-9963 Fax (515) 472-5404

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

SEP 11 2 30 PM '96

September 9, 1996

Federal Elections Commission  
999 E Street N. W.  
Washington, DC 20463

MUR 4458

RE: Complaint against KMA-AM Radio  
209 N Elm, Shenandoah, Iowa 51601

Gentlemen:

In accordance with 2 U.S.C. Section 437g, this will constitute a complaint against KMA-AM (the "Radio") for violation of 11 C.F. R. § 110.13 (c), requiring organizations that sponsor debates to utilize "pre-established objective criteria," for the selection of candidates, and the prohibition against using "nomination by a particular party as the sole objective criterion to determine whether to include a candidate in a debate."

1. The person bringing this complaint is Jay B. Marcus ("Marcus"), a candidate for U.S. Representative in Iowa's third Congressional district.

2. The nature of the complaint is that on August 6, 1996, Marcus requested inclusion in a Congressional debate being sponsored by the Radio (Exhibit A). Marcus transmitted to the Radio materials about himself, his ideas, media coverage received, and the like. The Radio then made a decision to include only the major party candidates because its news department and management concluded that "for the time we have available, it would be best to include only the major candidates." The letter to Marcus from the Radio setting forth the reason for its decision is attached as Exhibit B.

3. Upon receipt by Marcus of the letter from the Radio, he called Susan Cochran, who had sent the letter, to explain the criteria under the code of federal regulations for selection of candidates in a debate. Don Henderson returned the call, and in a conversation with Mr. Henderson, at approximately 10:30 A.M. on August 26, Marcus informed Henderson of the requirement that there be "pre-established objective criteria" for the selection of candidates. Henderson informed Marcus that he had made his decision after contacting his attorneys and a broadcast group, and as a result, he believed he was acting in accordance with the law. I do not have any reason to

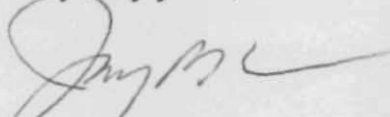
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Federal Elections Commission  
September 9, 1996  
Page 2

believe Mr. Henderson or the Radio intentionally intended to violate the law when it made its initial decision. However, there is still time prior to the debate for the situation to be rectified, so I am sending a copy of this letter to Mr. Henderson by telecopy.


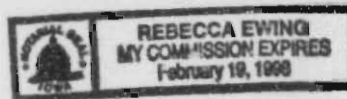
I hereby request expedited treatment in handling this matter, so there can be a resolution prior to September 23, when the debate is scheduled. I am also requesting that I be permitted to participate in the complaint process, as a candidate who is directly affected by the outcome. I would agree to any confidentiality agreement so that I would be obliged to keep further proceedings confidential.

Very truly yours,



Jay B. Marcus

Subscribed to and sworn before me  
this 10 th day of September, 1996.

  
Notary Public in and for the State of Iowa

97043820476  
JBM:ch  
Encl.

c: Don Henderson  
KMA Broadcasting, LP  
Via fax: (712) 246-5275

Regional Radio



712-246-5270

KMA-AM / KKBZ-FM  
209 N. Elm  
Shenandoah, IA 51601

EXHIBIT B



**99.3**  
**The Bee**

712-246-3364

August 22, 1996

Jay Marcus  
51 West Washington St.  
Fairfield, Iowa 52556

Dear Jay,

We appreciate your interest in the debate that KMA is hosting September 23rd in Shenandoah, but the KMA news department and our management felt for the time we have available it would be best to include only the major candidates. Mr. Mahaffey and Mr. Boswell have already agreed to the debate.

We would certainly be open to interviewing you at some time about your position's just as we have done with Boswell and Mahaffey and including your thoughts in a news story. We appreciate your interest.

Sincerely,

*Susan*

Susan D. Cochran, associate news director

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LAW OFFICES  
MARCUS & THOMPSON, P.C.

JAY B. MARCUS  
MARK A. THOMPSON  
  
OF COUNSEL  
LEONARD A. GOLDMAN\*

SUITE 201  
51 WEST WASHINGTON  
FAIRFIELD, IOWA 52556

TELEPHONE  
(515) 472-5945

FAX  
(515) 472-5404

EXHIBIT H

August 6, 1996

Susan Cochran  
KMA-AM  
209 North Elm  
PO Box 960  
Shenandoah, Iowa 51601

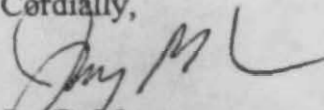
Dear Susan:

I am enclosing a media kit about my candidacy for Congress, which includes several press releases and articles, as well as a flyer about a book that I have written which derived, in part, from my race for attorney general of Iowa in 1994.

I know from an article in the Fairfield paper that you were planning a debate among the Congressional candidates in the third district. I am hoping you will consider including me. Both the Boswell and Mahaffey campaign committees have indicated that it would be fair and appropriate for me to be included in the debate in the interest of voter education. A summary of the Natural Law Party platform is also enclosed, so that hopefully you will see that my party's solutions for better government and a better society have a reasonable basis to them. A copy of the Afterword to my new book is also enclosed. It describes how the Natural Law Party philosophy differs from that of the Republicans and Democrats.

I have already been asked to participate in debates being sponsored by the *Oskaloosa Herald* and KCOG-AM, and I look forward to hearing from you after you have an opportunity to consider this request.

Cordially,

  
Jay B. Marcus

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Enc.  
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FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 17, 1996

Jay B. Marcus  
Marcus for Congress  
51 West Washington Street  
Fairfield, IA 52556

RE: MUR 4458

Dear Mr. Marcus:

This letter acknowledges receipt on September 11, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4458. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in dark ink, appearing to read "Colleen T. Sealander", is written over the typed name.

Colleen T. Sealander, Attorney  
Central Enforcement Docket

Enclosure  
Procedures

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 17, 1996

Don Hansen, General Manager  
KMA-AM/KKBZ-FM  
209 N. Elm  
Shenandoah, IA 51601

RE: MUR 4458

Dear Mr. Hansen:

The Federal Election Commission received a complaint which indicates that KMA-AM Radio may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4458. Please refer to this number in all future correspondence.

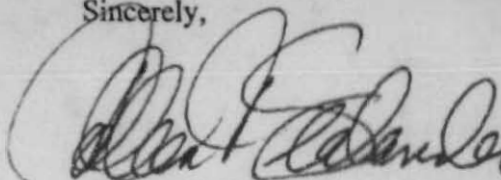
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against KMA-AM Radio in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in dark ink, appearing to read "Colleen T. Sealander", written over a horizontal line.

Colleen T. Sealander, Attorney  
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

97043820481



Regional Radio



KMA-AM / KKBZ-FM  
209 N. Elm  
Shenandoah, IA 51601



99.3  
The Bee

712-246-5270

712-246-3364

Federal Elections Commission  
999 "E" Street N.W.  
Washington, D.C. 20463

MUR 4458

Re: Complaint Filed by Marcus for Congress

To Whom It May Concern:

This letter is in response to the Complaint filed by Jay Marcus on September 10, 1996 regarding a debate that this station is sponsoring on September 23, 1996. Mr. Marcus represents the Natural Law Party and is running for the Third District United States Congress.

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Earlier this year, this station agreed to sponsor a debate for this position. In planning the debate, the station made the decision to include only the two major party candidates because the debate is limited to one hour. In making this determination, the station decided to exclude Mr. Marcus because he has not actively campaigned in our district. In fact, it is believed that he has not even visited Shenandoah. Furthermore, in previous elections, representatives from the Natural Law Party have only carried a very small percentage of the voting electorate. Consequently, the station made a good faith journalist judgment to invite only the Democrat and Republican nominees to the debate. This decision is in keeping with the guidelines set forth by the Federal Communications Commission.

As you will note from the documents submitted by Mr. Marcus, the station offered to conduct a news interview with Mr. Marcus allowing him the opportunity to share his platform and position on issues prior to the election. Such an offer of free air time is not required by the FCC, but something which the station believed was important to provide the voting public with pertinent information.

The station stands behind its decision and believes that the criteria it used to set up the current debate satisfies the pre-established objective criteria set forth by the Federal Election Commission.

If you require any additional information, please do not hesitate to contact the undersigned.

Sincerely,

Don Hansen  
Station Manager

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BEFORE THE FEDERAL ELECTION COMMISSION

MAY 3 2 45 PM '97

In the Matter of

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ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT

**SENSITIVE**

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 28 cases which do

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not warrant further action relative to other pending matters.<sup>1</sup> Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

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<sup>1</sup> These cases are: MUR 4419 (*Weinzapfel for Congress*); MUR 4423 (*Davis for Congress*); MUR 4424 (*Nevadans for "Spike" Wilson*); MUR 4429 (*Delahunt for Congress*); MUR 4430 (*Jean Leising for Congress*); MUR 4431 (*Engel for Congress*); MUR 4433 (*Delahunt for Congress*); MUR 4437 (*DiNicola for Congress Committee*); MUR 4440 (*Sue Kelly for Congress*); MUR 4450 (*National Treasury Employees*); MUR 4452 (*Mid-Suffolk N.O.W.*); MUR 4455 (*City of Milwaukee*); MUR 4456 (*Jackson Mint Ltd.*); MUR 4457 (*U.S. Department of Health and Human Services*); MUR 4458 (*KMA-AM Radio*); MUR 4461 (*Americans For Freedom Of Choice PAC*); MUR 4462 (*Ellen O. Tauscher*); MUR 4464 (*Norwood for Congress*); MUR 4465 (*Lincoln for Congress*); MUR 4469 (*Moseley-Braun for Senate*); MUR 4475 (*Manpower Temporary Services, Inc.*); MUR 4479 (*Owens for Congress Committee*); MUR 4482 (*Mike McCormack for Congress*); MUR 4487 (*Citizens for A Strong America*); MUR 4488 (*Ortiz for Congress*); MUR 4489 (*Gill for Congress*); MUR Pre-MUR 338 (*Richard Chrysler Inc.*); and Pre-MUR 339 (*Mammel & Associates, Inc.*).

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective May 19, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

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### III. RECOMMENDATIONS.

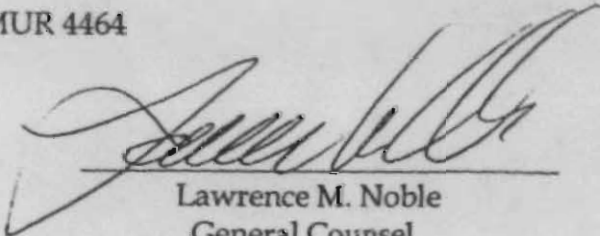
A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 338
2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

- |             |              |              |
|-------------|--------------|--------------|
| 1. MUR 4419 | 10. MUR 4450 | 19. MUR 4465 |
| 2. MUR 4423 | 11. MUR 4452 | 20. MUR 4469 |
| 3. MUR 4424 | 12. MUR 4455 | 21. MUR 4475 |
| 4. MUR 4429 | 13. MUR 4456 | 22. MUR 4479 |
| 5. MUR 4430 | 14. MUR 4457 | 23. MUR 4482 |
| 6. MUR 4431 | 15. MUR 4458 | 24. MUR 4487 |
| 7. MUR 4433 | 16. MUR 4461 | 25. MUR 4488 |
| 8. MUR 4437 | 17. MUR 4462 | 26. MUR 4489 |
| 9. MUR 4440 | 18. MUR 4464 |              |

5/6/97  
Date

  
Lawrence M. Noble  
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of  
Enforcement Priority.

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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that the Commission decided by a vote of 5-0 on May 12, 1997, to take the following actions with respect to the General Counsel's May 6, 1997 report on enforcement priority:

A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 338
2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

- |             |              |              |
|-------------|--------------|--------------|
| 1. MUR 4419 | 10. MUR 4450 | 19. MUR 4465 |
| 2. MUR 4423 | 11. MUR 4452 | 20. MUR 4469 |
| 3. MUR 4424 | 12. MUR 4455 | 21. MUR 4475 |
| 4. MUR 4429 | 13. MUR 4456 | 22. MUR 4479 |
| 5. MUR 4430 | 14. MUR 4457 | 23. MUR 4482 |
| 6. MUR 4431 | 15. MUR 4458 | 24. MUR 4487 |
| 7. MUR 4433 | 16. MUR 4461 | 25. MUR 4488 |
| 8. MUR 4437 | 17. MUR 4462 | 26. MUR 4489 |
| 9. MUR 4440 | 18. MUR 4464 |              |

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

5-13-97  
Date

Marjorie W. Emmons  
Marjorie W. Emmons  
Secretary of the Commission

Received in the Secretariat: Tues., May 06, 1997 2:45 p.m.  
Circulated to the Commission: Wed., May 07, 1997 11:00 a.m.  
Deadline for vote: Mon., May 12, 1997 4:00 p.m.

bjr

97043820487



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 19, 1997

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jay B. Marcus  
Marcus for Congress  
51 West Washington Street  
Fairfield, IA 52556

RE: MUR 4458

Dear Mr. Marcus:

On September 11, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Attachment  
Narrative

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**MUR 4458**  
**KMA-AM RADIO**

Jay B. Marcus, a third party candidate, alleges that KMA-AM Radio violated 11 C.F.R. § 110.13 (c) by using nomination by a particular party as the sole objective criterion to determine whether to include a candidate in a debate. This regulation provides that organizations sponsoring debates must use pre-established objective criteria for the selection of candidates for participation in debates, and prohibits nomination by a particular political party as the sole criteria for selection. Mr. Marcus states that he requested inclusion as a candidate in KMA-AM Radio's congressional debate, sending the station materials about himself and his ideals and media coverage. According to the complainant, KMA radio notified him that only major party candidates would be included in the debate. Mr. Marcus says that he alerted KMA-AM Radio to the selection criteria for candidates in a debate and was informed by Don Hansen of KMA-AM Radio that the decision had been made after contacting the station's attorneys and a broadcast group. While Mr. Marcus does not believe that the alleged violation was knowing and willful, he wished its resolution before the debate, scheduled for September 23, 1996.

Respondent Don Hansen, Station Manager of KMA-AM Radio, on behalf of himself and the station, cited three reasons supporting the decision to exclude Mr. Marcus from the debate. The first was that the debate was limited to one hour. Secondly, respondents had information to indicate that Mr. Marcus had not actively campaigned in the listeners' district. The third factor cited was that Mr. Marcus' party, the Natural Law Party, had garnered very small percentages of the vote in prior elections. Mr. Hansen believes that KMA-AM's decision conforms to FCC guidelines. In its letter denying Mr. Marcus the opportunity to participate in the debate, KMA-AM offered to conduct a news interview with Mr. Marcus as an alternative in order to provide him with a forum for expression of his views to the listening public. There is no indication whether the complainant accepted or declined this offer.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 19, 1997

Don Hansen, General Manager  
KMA-AM/KKBZ-FM  
209 N. Elm  
Shenandoah, IA 51601

RE: MUR 4458

Dear Mr. Hansen:

On September 17, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against KMA-AM Radio. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, 1 (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Attachment  
Narrative

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**MUR 4458**  
**KMA-AM RADIO**

Jay B. Marcus, a third party candidate, alleges that KMA-AM Radio violated 11 C.F.R. § 110.13 (c) by using nomination by a particular party as the sole objective criterion to determine whether to include a candidate in a debate. This regulation provides that organizations sponsoring debates must use pre-established objective criteria for the selection of candidates for participation in debates, and prohibits nomination by a particular political party as the sole criteria for selection. Mr. Marcus states that he requested inclusion as a candidate in KMA-AM Radio's congressional debate, sending the station materials about himself and his ideals and media coverage. According to the complainant, KMA radio notified him that only major party candidates would be included in the debate. Mr. Marcus says that he alerted KMA-AM Radio to the selection criteria for candidates in a debate and was informed by Don Hansen of KMA-AM Radio that the decision had been made after contacting the station's attorneys and a broadcast group. While Mr. Marcus does not believe that the alleged violation was knowing and willful, he wished its resolution before the debate, scheduled for September 23, 1996.

Respondent Don Hansen, Station Manager of KMA-AM Radio, on behalf of himself and the station, cited three reasons supporting the decision to exclude Mr. Marcus from the debate. The first was that the debate was limited to one hour. Secondly, respondents had information to indicate that Mr. Marcus had not actively campaigned in the listeners' district. The third factor cited was that Mr. Marcus' party, the Natural Law Party, had garnered very small percentages of the vote in prior elections. Mr. Hansen believes that KMA-AM's decision conforms to FCC guidelines. In its letter denying Mr. Marcus the opportunity to participate in the debate, KMA-AM offered to conduct a news interview with Mr. Marcus as an alternative in order to provide him with a forum for expression of his views to the listening public. There is no indication whether the complainant accepted or declined this offer.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4458

DATE FILMED 6-9-97 CAMERA NO. 4

CAMERAMAN JMN

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