

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

SENSITIVE

In the Matter of)

MURs 5817, 5827, 5829, 5836,
5847, 5852, 5858, and 5863)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

DEBATE CASES (From The '06 CYCLE))

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated
matters) and are deemed inappropriate for review.

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated
matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to
dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852,
5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the
complainants challenged whether the debate staging organizations and entities used and/or
properly construed pre-established objective criteria in order to determine whether a
particular candidate could participate in their debate.² In MURs 5827 and 5829, the

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² 11 C.F.R. § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

1 complainants claimed that the staging organization set up the seating for the debate in order
2 to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).³

3 In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party
4 candidates who appeared to receive marginal electoral support and evidenced little to no
5 campaign organization. The staging organizations and entities in these cases claimed they
6 applied pre-established objective criteria in assessing whether to include or exclude
7 candidates from their debates.

8 In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to
9 one candidate's supporters over another. The respondents in these matters asserted that the
10 seating design was unintentional and in any case did not violate the Commission's
11 regulations. Additionally, a claim that a \$200 corporate contribution was received by the
12 staging organization was refuted.

13 In reviewing the allegations and responses in these matters, and in furtherance of the
14 Commission's priorities and resources, relative to other matters pending on the Enforcement
15 docket, the Office of General Counsel believes that the Commission should exercise its
16 prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821
17 (1985).

18 RECOMMENDATION

19 The Office of General Counsel recommends that the Commission dismiss
20 MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two
21 weeks from the date of the Commission vote, and approve the appropriate letters. Closing


³ 11 C.F.R. § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."

these cases as of this date will allow CELA and General Law and Advice the necessary time
to prepare the closing letters and the case files for the public record.

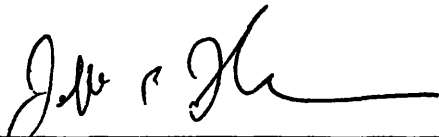
Thomasenia P. Duncan
Acting General Counsel

3/22/07
Date

BY:



Gregory R. Baker
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Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

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5 **MUR 5817**

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7 **Complainant:** Werner Lange

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9 **Respondents:** Lakeland Community College and
10 Jim Collins, as Executive in Residence
11
12

13 **Allegations:** Complainant alleges that he was improperly excluded from a debate
14 involving 14th Congressional District of Ohio candidates, which was sponsored by the
15 respondent, Lakeland Community College. The complainant claims that when the debate
16 was scheduled in August of 2004, he was informed that it would be limited to "major
17 party candidates only." The complainant asserts that Lakeland Community College and
18 its Executive in Residence, Jim Collins, violated 11 C.F.R. § 110.13(c) by using the fact
19 that Rev. Lange was not nominated by a political party, as the sole factor for his
20 exclusion from the debate.
21

22 **Response:** The respondents noted that The News Herald newspaper actually interviewed
23 and selected the participants for the debate at issue. The respondent, Lakeland
24 Community College, merely provided its studio, technicians, and recording devices.
25 Mr. Collins was previously an editor with The News Herald and was the newspaper's
26 editor emeritus when the debate was scheduled. Mr. Collins claims that he invited the
27 two major party candidates to a "joint appearance," and not to a debate. Although the
28 candidate forum was not considered a debate, Mr. Collins used debate criteria in his
29 selection process. Specifically, Mr. Collins used "pre-established objective criteria,"
30 which took into account "whether the candidate had in the editors' opinion, viability as a
31 candidate, not whether they were nominees of a political party." Thus, Mr. Collins
32 indicated that the reason Rev. Lange was not invited to the "joint appearance," was that
33 in his opinion, and the opinion of the newspaper's editors, Rev. Lange was not a viable
34 candidate and had no conceivable chance of garnering more than five percent of the vote
35 in the election. It should be noted that the Director of Marketing & Communications at
36 Lakeland Community College erroneously informed Rev. Lange that interviews "have
37 historically been for major party candidates only." The respondents assert that the
38 statement was incorrect, since the school has never made decisions concerning which
39 candidates should be interviewed.
40

41 **General Counsel's Note:** The complainant received 3% of the vote in the general
42 election and is registered with, and reporting to, the Commission.
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44 **Date complaint filed:** September 19, 2006

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46 **Response filed:** October 11, 2006



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