



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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APR 27 2009

RE: MUR 6072
Northland Regional Chamber
of Commerce

Dear Mr. Byrd:

On September 22, 2008, the Federal Election Commission notified your client, Northland Regional Chamber of Commerce ("Northland") of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 21, 2009, voted to exercise its prosecutorial discretion and dismiss this matter as to Northland. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

For future reference, the safe harbor at 11 C.F.R. § 110.13 and 114.4(f) that exempts the staging of federal candidate debates from the Act's ban on corporate contributions or expenditures in connection with federal elections only covers nonprofit corporations organized under 26 U.S.C. §§ 501(c)(3) or (c)(4) and qualified media entities.

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).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Northland Regional Chamber of Commerce MUR: 6072

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by David R. Browning, the Libertarian nominee for Missouri's 6th Congressional District. See 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint's allegations as to Northland Regional Chamber of Commerce ("Northland") and closed the file as to this respondent.

II. DISCUSSION

A. Factual Summary

Northland, a non-profit corporation, scheduled a candidate debate on October 21, 2008, in which the participants invited to attend were the individuals who had won the Democratic and Republican nominations in Missouri's August 5, 2008, primary election for the U.S. House of Representatives in the State's 6th Congressional District. Prior to the scheduled debate, complainant, who had won the Libertarian Party's primary election for Missouri's 6th Congressional District and who was qualified to appear on the general election ballot, alleged in a complaint filed with the Commission that Northland had improperly denied him the opportunity to participate in the debates by failing to use pre-established, objective criteria, and by promoting certain candidates over others, in violation of the Commission's debate staging regulation at 11 C.F.R. § 110.13.

Northland's response denies complainant's allegation, and states that it decided to choose the two candidates who received the largest number of votes in the August 5, 2008, primary to participate in its October 21, 2008, debate. Northland Response at 1. The Missouri Secretary of State's August 2008 Primary Results attached to the response show that the Republican and Democratic candidates

1 who participated in Northland's debate received 36,131 and 36,712 votes, respectively, another
2 Democratic candidate received 6,714 votes, and the complainant received 225 votes. According to
3 Northland, its selection process did not involve any consideration of the candidate's viewpoints or their
4 respective political parties. Northland Response at 1-2.

5 Attached to its response is an affidavit by Northland's Chairman, Ellen Todd, who avers that a
6 subcommittee of Northland established the criterion—the two candidates who received the largest vote
7 totals in the August primary—in the spring of 2008 and informed media outlets of the criterion in May
8 of 2008. She further avers that neither of the two debate participants were promoted or advanced over
9 the other. Although complainant stated that his allegations against Northland were supported by
10 "written statements," these written statements, September 2008 e-mails filed as an attachment to
11 Northland's response, merely state that Northland invited the two candidates with the most votes in the
12 primary.

13 **B. Analysis**

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15 The Act prohibits "any corporation whatever" from making contributions or expenditures in
16 connection with federal elections. 2 U.S.C. § 441b(a). However, 2 U.S.C. § 431(9)(B)(ii) exempts
17 from the definition of "expenditure" "nonpartisan activity designed to encourage individuals to vote or
18 register to vote," which has been construed to exclude "funds provided to defray costs incurred in
19 staging candidate debates in accordance with the provisions of 11 C.F.R. §§ 110.13 and 114.4(f)" from
20 the definition of "contribution" and "expenditure," respectively. See 11 C.F.R. §§ 100.92 and 100.154.
21 Section 110.13(a)(1), in turn, permits "[n]onprofit organizations described in 26 U.S.C. §§ 501(c)(3) or
22 (c)(4) and which do not endorse, support, or oppose, political candidates or political parties" to "stage

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1 candidate debates in accordance with this section and 11 C.F.R. § 114.4(f).¹ The regulation leaves the
2 structure of the debate to the discretion of the staging organization, provided that the debate includes at
3 least two candidates, the organization does not arrange the debates in a manner that promotes or
4 advances one candidate over another, and the criteria for candidate selection are objective and pre-
5 established, under 11 C.F.R. §§ 110.13(b) and (c).²

6 In past "debate" MURs, the Commission has considered a number of different criteria to have
7 been acceptably "objective," including percentage of votes by a candidate received in a previous
8 election; the level of campaign activity by the candidate; his or her fundraising ability and/or standing
9 in the polls; and eligibility for ballot access. See MURs 4956, 4962, and 4963 (Gore 2000, *et al.*);
10 MUR 5395 (Dow Jones, *et al.*); and MUR 5650 (University of Arizona). *Cf. Arkansas Educational*
11 *Television v. Forbes*, 523 U.S. 666, 683 (1998) (in a case involving a First Amendment challenge to
12 state-owned television network's decision on a candidate's exclusion from a televised debate, the
13 Supreme Court observed that "objectivity" is based on a "reasonable, viewpoint neutral exercise of
14 journalistic discretion"). Based on Northland's Response to the complaint, it appears that Northland
15 used pre-established, objective criterion and did not arrange the debates in a manner that promoted or
16 advanced one candidate over another, as required by sections 110.13(b) and (c).

17 Northland, however, a corporate entity, is a tax-exempt business league organized under section
18 501(c)(6), rather than under sections 501(c)(3) or (4), as required by the Commission's debate staging
19 regulation. Accordingly, Northland does not qualify for the safe harbor created by section

¹ Section 114.4(f) allows qualified candidate debate staging organizations to use their own funds to stage debates, and to accept funds from corporations for that purpose.

² In its *Explanation and Justification for Corporate and Labor Activity* at 60 Fed. Reg. 64260 (December 14, 1995), the Commission stated that section 110.13 does not require that candidate selection criteria be reduced to writing or be made available to all candidates. *Id.* at 64262.

110.13(a)(1).

2 In an analogous situation, the Commission dismissed the matter in an exercise of its
3 prosecutorial discretion. In that matter, MUR 5650 (University of Arizona), a Libertarian candidate
4 filed a complaint with the Commission because he was excluded from a debate sponsored by the
5 University. The University was incorporated, but tax-exempt under 26 U.S.C. § 115 as an "integral
6 part of a government agency," rather than under 26 U.S.C. §§ 501(c)(3) or (c)(4). According to the
7 University, the context of the debate was as follows: "in March 2004, [the Associated Students of the
8 University of Arizona ("ASUA"), a department of the University], decided that its programs for the
9 2004 Spring and Fall semesters would be united under one theme, coined 'Civic Engagement,'" and
10 that "ASUA's goals included generating as much student interest in its Civic Engagement program as
11 possible." University Response at 3. It asserted that voter registration, education, and voting were the
12 central objectives of the program, and that "[t]he Education component of the Civic Engagement series
13 involved speeches by various political speakers and one debate on campus, which is the debate at issue
14 in this matter." *Id.* The First General Counsel's Report for MUR 5650 stated that, as the University
15 had met all the other criteria for staging debates that would exempt it from section 441b(a) liability,
16 there did not appear to be a good policy reason under the circumstances presented for denying it the
17 benefit of the debate staging regulation based only on its tax status, and therefore recommended that
18 the Commission exercise its prosecutorial discretion and dismiss the matter. MUR 5650 First General
19 Counsel's Report at 7-8.

20 In extending the debate staging exemption to nonprofit organizations organized under
21 26 U.S.C. § 501(c)(3) (generally charitable, religious, or educational organizations), the Commission
22 noted that such organizations are prohibited by statute from participating in or intervening in any
23 political campaign on behalf of any candidate for public office. *Explanation and Justification,*

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Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. 76734 (December 27, 1979).

As for extending the exemption to section 501(c)(4) organizations, the Commission noted that, although such organizations are permitted to participate in a political campaign to a limited degree, those that choose to do so would not qualify as ones that do not endorse, support, or oppose political candidates or political parties; thus, they would not be able to stage debates. *Id.* Section 501(c)(6) organizations (business leagues) include chambers of commerce, like Northland, as well as economic development corporations, real estate boards, trade boards, professional football leagues, and other types of business leagues. Chambers of commerce are characterized by a common business interest, which the organization typically promotes. Section 501(c)(6) organizations may engage in limited political activities that inform, educate, and promote their given interest. They may not, however, engage in direct expenditures advocating a vote for a political candidate or cause.

Northland, according to its Response and the accompanying affidavit, states that its primary mission "is to enhance the business community, economic growth and quality of life in the Northland," consisting mainly of Missouri's Platte and Clay counties. Northland Response at 1. The Commission has found no indication that Northland supports, opposes, or endorses candidates or political parties. See 11 C.F.R. § 110.13(a)(1). Indeed, Northland's Response, and the attached affidavit of Ms. Todd, specifically deny that Northland does so. Thus, like the University of Arizona in MUR 5650, it appears that Northland has met all the substantive criteria for staging debates that would exempt it from section 441b(a) liability, except for the nature of its tax status. Moreover, part of the relief requested by the complainant—"the immediate intervention of the Commission to declare the debate in violation of the rules of the Commission," and to include the complainant "in the aforesaid debates"—is no longer available. Therefore, the Commission determined that there is no good policy reason for proceeding in this particular case, and has decided to exercise its prosecutorial discretion, dismiss the complaint as to

- 1 Northland Regional Chamber of Commerce, and close the file as to this respondent. *See Heckler v.*
- 2 *Chaney*, 470 U.S. 821 (1985).

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