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FEDERAL ELECTION
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OFFICE OF GENERAL
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August 22, 2012

Ms. Frankie Hampton
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Via email: fhampton@fec.gov
First Class Mail

RE: MUR 6604

Dear Ms. Hampton:

Enclosed is the Response by Lisa Wilson-Foley, William Kolo and the Lisa Wilson-Foley Congress Committee to the above referenced MUR.

If the Commission requires any additional information, please contact me.

Thank you for your assistance with this matter.

Sincerely,

Benjamin S. Proto, Jr.

Enc.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	:	
	:	
	:	MUR 6604
Lisa Wilson-Foley,	:	
Lisa Wilson-Foley for Congress :	:	
Committee, and William Kolo :	:	AUGUST 22, 2012

**RESPONSE OF LISA WILSON-FOLEY, WILLIAM M. KOLO, AND
LISA WILSON-FOLEY FOR CONGRESS COMMITTEE**

On July 2, 2012, the Federal Election Commission (FEC) received a Complaint (Complaint) from Kenneth Krayeske (Krayeske or Complainant) which purports to allege that certain alleged actions by Lisa Wilson-Foley (LWF) and the Lisa Wilson-Foley for Congress Committee (Committee), and William M. Kolo (Kolo) as Treasurer of the Committee, and also John Rowland (Rowland) and CBS Radio Stations, Inc. (CBS) "... appear to have violated federal law for its (Committee) acceptance of valuable air-time as a contribution that benefitted the campaign and for failing to report this contribution of air-time by CBS Radio, Inc. and its agent John Rowland since it appears to have benefitted her (LWF) campaign."

The Complaint purports to allege: (1) that there may have been a violation of §§11 CFR 102.8 – 102.10 and (2) in-kind contributions of air time by CBS and Rowland would be a violation of 11 CFR 114.2.

The Lisa Wilson-Foley for Congress committee was formed on April 5, 2011, and the FEC Form 1 was received by the Federal Election Commission (FEC) on April 7, 2011.

The statements made in the Complaint are based on third party newspaper accounts,

The Complaint makes no allegation of wrong doing by any Respondent, as is required by Regulation. In fact, the only statement made by the Complainant is that a newspaper columnist reported that Rowland interviewed Andrew Roraback (a candidate who was seeking the Republican nomination for Congress in the 5th Congressional District) on his radio show and the newspaper

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Columnist offered his opinion in his column that Rowland "berated" Roraback. The Complaint goes on to quote the columnist's opinion that "Rowland in ensuing weeks took to flogging Roraback for his stance on the death penalty ..."

As the Complainant states in the introduction to his Complaint, Rowland hosts a radio political talk show. The purpose of a talk show is to discuss issues of the day, and at the time, the issue of the death penalty was being discussed in the Connecticut General Assembly, and Andrew Roraback was, and currently is, a sitting State Senator. It was an issue that was being discussed, not only in the General Assembly, but on various radio and television talk shows, as well as in newspaper articles and opinion columns, such as Colln McEnroe's column. The issue of Senator Roraback's position on the death penalty was one of interest, not only to the legislative debate, but also to the political debate. These are the very topics that John Rowland's radio show (and other political talk shows) deals with on a daily basis.

The Complainant seems to be alleging that, since Rowland disagreed with Roraback on the issue of the Death Penalty, and discussed this with Roraback on his radio show, that somehow, this discussion was tantamount to a contribution to the Wilson-Foley Committee, and should have been disclosed by the Committee as such. The Complainant attempts to use the words of a newspaper columnist to prove his point. Under this logic, the air time used by Rowland to discuss this issue with Roraback would also have been a contribution to the other two Republican candidates in the 5th Congressional District Primary, Mark Greenberg and Justin Bernier, as they both held different opinions on the issue of the death penalty than did Roraback, as well as to the Democratic candidates in the 5th Congressional District, Chris Donovan, Elizabeth Esty and Dan Roberti, as any political damage inflicted on Roraback would be helpful to the Democratic nominee if Roraback was the ultimate Republican nominee (which he became upon winning the August 14, 2012 Republican Primary).

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As there is no contribution to either Greenberg or Bernier, or to Donovan, Esty and Roberti, there is also no contribution to Wilsen-Foley or her Committee. This Complaint is nothing more than a political foe of John Rowland and Lisa Wilson-Foley attempting to disrupt the campaign of one candidate, while attempting to bolster the campaign of a candidate or candidates he agrees with. There is no allegation in this Complaint which rises to the level required by the Regulations.

Based on the complete lack of any allegations which meet the requirements that the Complaint contain "clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction", the Complaint should be dismissed for its failure to set forth any prima facie evidence or facts which purport to show a violation of any federal election law. All purported allegations raised in the Complaint come from third party sources; there are no allegations made by the Complaint of his own personal knowledge.

1. THE COMPLAINT FAILS TO ALLEGE ANY VIOLATION OF THE FEDERAL ELECTION LAWS AND AS SUCH, MUST BE DISMISSED.

The Complaint sounds in thirteen (13) paragraphs, none of which sets forth any violation of any provision of the Federal Election law.

Paragraphs 4, 5, 12 are based on "media reports" and, again, are not based on first-hand knowledge by the Complainant. Further, the Complainant alleges that based on those media reports, Rowland "seems" to have used his position as a talk show host to perform paid services for the campaign (Paragraph 4). Again, no first-hand knowledge of the Complainant, he is relying solely on media reports and opinion columnists' statements.

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Paragraphs 6 & 7 discuss a private business relationship between Rowland and CBS (Paragraph 6) and CBS' business model (Paragraph 7) which the Complainant clearly has no personal knowledge or understanding of.

Paragraph 8 purports to state a legal standard and as such is not allegation but a finding of law.

Paragraph 9 alleges that the Committee and Rowland "coordinated an attack" on Roraback, but does not mention the other Republican candidates, Greenberg and Bernier, both of whom hold different philosophical positions on the Death Penalty than Roraback.

Paragraph 10 & 11 alleges that the live air time used by Rowland to discuss Roraback's position on the death penalty is a commodity and should be paid for by the Committee or listed be listed as a contribution by the Committee. Again, there is no allegation that either Greenberg or Bernier, or the Democratic candidates should have paid for the air time or have listed the air time as a contribution; proving that the Complaint is simply a political tool to go after a political opponent.

The Complaint fails to comply with the requirements of 11 CFR 111.4(d)(3) which requires the Complaint to "... contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction".

This Complaint is wholly lacking in any such recitation of facts. The Complaint, by its own words, purports to state "possible violations" of federal election law; it is based on information not known directly to the Complainant, but rather is gleaned from media sources and hearsay.

The Complaint is simply insufficient in its drafting to constitute a complaint upon which the Commission can act.

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The lack of any allegation in the Complaint should subject the Complaint to immediate dismissal by the Commission.

- 2. EVEN IF THE FEC WERE TO DETERMINE THAT THE COMPLAINT MEETS THE STANDARDS SET FORTH IN 11 CFR 111.4, IT SHOULD STILL BE DISMISSED AS THE STATEMENTS MADE BY ROWLAND IN THE COURSE OF HIS RADIO TALK SHOW ARE AN EXCEPTION TO THE ELECTIONEERING COMMUNICATION STANDARD UNDER THE "PRESS EXEMPTION" PROVISION OF 2 USC 434.**

The gist of the Complaint, other than to use the FEC for political purposes, is that a radio talk show host (John Rowland), who hosts a political talk show on WTIC-AM radio five days a week, provided an improper corporate contribution to the Lisa Wilson-Foley for Congress Committee (but not to any other 5th Congressional District candidate or their committee) because the radio host interviewed Andrew Roraback, a candidate for the Republican nomination for the 5th Congressional District. The Complaint attempts to connect Rowland's interview with Roraback on the issue of the death penalty as a contribution to the Lisa Wilson-Foley for Congress Committee (again not to any other candidate seeking the 5th District Republican nomination), and thereby alleges that because Rowland interviewed Roraback, that CBS made an illegal corporate contribution to the Wilson-Foley Committee. The Complainant relies wholly upon an opinion column written by Colin McEnroe in *The Hartford Courant* as the basis for his complaint.

As the Commission is well aware, the Federal Election Campaign Act of 1971, as amended, provides for an exception to the contribution and expenditure requirement for electioneering communication, namely the Press Exemption.

2 USC 434(f)(3)(B)(i) states that an electioneering communication does not include a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate. (Emphasis added).

In the instant matter, the Complaint alleges that the radio station, WTIC-AM, is owned by CBS which is not a political party, political committee or candidate, therefore, Rowland's interview and subsequent comments about Roraback, regardless of how a newspaper columnist chooses to describe them, is not an electioneering communication, and as such is not a contribution to any Committee, including the Lisa Wilson-Foley for Congress Committee, nor is the Committee required to report the air time used during the interview as an in-kind contribution nor does it have to list CBS as a paid vendor.

The Commission, in AO 2005-19 *In Re Emil Franzl & Inside Track Productions*, went into a detailed analysis of the press exemption. In *Franzl*, the question was whether a radio show, which was produced by a private entity known as Paradigm Shift Productions, and which purchased air time on a privately owned radio station, and which would resell the air time to help offset the costs of the show, and would air the show within the 30 day window of a primary or 60 days of an election, fell under the press exemption.

The Commission determined that the radio show would fall under the press exemption and as such would not be considered a contribution to any federal committee nor would any federal committee have to report the air time as a contribution or expenditure.

In determining whether an entity falls under the press exemption, the Commission has employed a two-step analysis. The first step is to determine whether the entity is a press entity. Clearly in this case, WTIC-AM radio and CBS are press entities. They are in the business of providing news and news related services, including various news and talk shows. It is undisputed that these entities are press entities.

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The second step is to determine (1) whether the entity is owned or controlled by a political party, a political committee or a candidate; and (2) whether the entity is acting as a press entity in conducting the activity at issue, i.e. whether the entity is acting in its "legitimate press function". Two considerations in applying this analysis include whether the entity's materials are available to the general public and are comparable in form to those ordinarily issued by the entity. See Advisory Opinion 2005-16.

CBS Radio is a division of CBS Corporation, and publicly traded company, and as such clearly not owned or controlled or a political party, committee or candidate. CBS & WTIC-AM, are press organizations. They broadcast news and commentary on a myriad of topics, including politics. The materials broadcast by CBS and WTIC-AM are available to the general public and the material presented by Rowland, albeit disliked by the Complainant, are comparable to other material presented by CBS and WTIC-AM on a daily, if not hourly, basis.

The second step of the analysis is met thereby solidifying the application of the press exemption to this matter.

The Complainant attempts to bootstrap Rowland's interview and commentary about Roraback into a contribution to Wilson-Foley because the commentary was not favorable to Roraback. Again, this argument would have to be applied to all candidates seeking the Republican nomination in the 5th Congressional District, and probably to all candidates regardless of affiliation.

However, simply because the interview and subsequent commentary by Rowland about Roraback may not have been favorable, or for that matter, in the eyes of the Complainant, objective, does not eliminate or call into question the application of the press exemption.

In AO 205-19, the Commission stated: "The Commission notes that an entity otherwise eligible for the press exemption **would not lose its eligibility merely because of a lack of objectivity** in a news story, commentary or editorial even if the news story, commentary or editorial expressly advocates the election or defeat of a clearly identified candidate for federal office." (Emphasis added).

Even if Rowland's commentary could be deemed non-objective, or even if he called for the defeat of Roraback because of Roraback's position on the death penalty, or for any other reason, Rowland's commentary would not result in the loss of the press exemption.

The Commission noted in AO 2005-19 "According to the House Report on the 1974 amendments to the Act, the press exemption made plain Congress's intent that the Act would not limit or burden in any way the first amendment freedoms of the press and would assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974)".

To determine that Rowland's comments made during a political talk show, the purpose of which is to comment on issues of the day affecting and impacting the people of the state of Connecticut, are not protected by the press exemption, would completely undermine, not only the provisions of the act designed to ensure a free and open discussion, but would violate the First Amendment protections of Freedom of the Press and Freedom of Speech.

The Commission has, on many occasions, found that situations similar to and/or nearly identical to the issues raised in this Complaint were protected by the Press Exemption of the Act and therefore the air time used to make the commentary is not a contribution to any federal committee nor does any federal committee have to report such air time as an expenditure.

CONCLUSION

The Complaint fails to allege any act by any entity, including Lisa Wilson-Foley as a Candidate for Federal Office or the Lisa Wilson-Foley for Congress Committee, or William Kolo, which violates any provision of the Federal Election laws, in addition, the commentary made by John Rowland falls under the provision of the Press Exemption of 2 USC 434(f)(3)(B)(i) and is therefore not a contribution to the Lisa Wilson-Foley for Congress Committee, or any other Committee, nor should the value of the air time used by Rowland be reported as an expenditure by the Committee. Therefore, all of the allegations in the Complaint of Kenneth Krayske should be **DISMISSED**.

Respectfully submitted

The Respondents


Benjamin S. Proto, Jr.

Benjamin S. Proto, Jr.

Counsel for:

Lisa Wilson-Foley

William M. Kolo

Lisa Wilson-Foley for Congress Committee