

April 30, 2005

Roger Begin, Chair  
RI Board of Elections  
50 Branch Avenue  
Providence, RI 02904

BY FAX AND MAIL

Dear Mr. Begin:

I am writing in response to the Board of Elections' ruling earlier this week barring Cranston Mayor Stephen Laffey from continuing to host a radio talk show on WPRO, on the grounds that the "receipt of airtime" from WPRO constituted an illegal "in-kind political contribution" from a corporation.

We believe that the Board, in making this decision, failed to adequately consider both the unprecedented nature of the scope of its interpretation of campaign finance law and the significant ramifications of this ruling for First Amendment rights. We strongly urge prompt reexamination of the ruling, one made even more appropriate by your apparent recognition (as described in news articles) as to its complexities when applied to very similar fact scenarios.

First, the apparently broad reading that the Board is giving to the term "candidate" is quite problematic. There is nothing shocking in suggesting that many actions that politicians take are done with at least one eye looking toward the next election. *All* public officials are potential candidates. They often raise money throughout the course of a term. The Board's ruling makes it difficult for *any* public official to appear on a regular basis in any broadcast, print or other medium. In fact, there is nothing in the Board's one-page ruling that suggests how Mayor Laffey's situation differs from that of other public officials, like Governor Carcieri and Providence Mayor David Cicilline, both of whom also host radio shows. It clearly does not.

Leaving radio aside for the moment, I note that you have gamely tried to make distinctions between various other scenarios that have been offered. We submit, however, that those distinctions fail to hold up to close scrutiny. For example, according to the *Providence Journal*, the Board distinguished Mayor Laffey's situation from a Jamestown resident running for town council who writes a free pet column for a local weekly. The distinctions offered for approving this latter arrangement – that everyone has uninhibited access to the newspaper, and that the *Jamestown Journal* could, if it so chose, stop printing her column at any time – make no sense. The first explanation is patently incorrect, and the second is just as true of WPRO and its relationship with Mayor Laffey.

You have also been quoted as attempting to make a distinction between Mayor Laffey's hosting of a program on a commercial radio station and the many politicians who host programs on public access cable. (You expressed uncertainty, however, as to how the ruling would apply to appearances on commercial cable channels, like Cox.) Again, your explanation for this distinction is that "cable TV has to permit public access to anybody." While this may be largely true in theory, it is another matter entirely from a practical standpoint.<sup>1</sup> Access is available only on a first-come, first served basis, so an incumbent politician with an on-going show is guaranteed access in a way that a newcomer is not. Further, Cox Communications has detailed guidelines on when and how a show can be produced – including requirements for training, minimum staffing and so forth – that can provide significant start-up problems for an individual seeking to begin a public cable show.

Perhaps the response to this is that there are statutes governing equal availability to public access TV, and thus a cable station's airing of programs by public officials in accordance with those statutes should not be considered a corporate contribution. But that reasoning falls apart when one recognizes that radio stations are also subject to certain statutory requirements, and particularly the so-called "equal time" doctrine, the FCC rule requiring radio and television stations to give equal air time to political candidates.

In fact, the Board's ruling seems to fly directly in the face of the federal "equal time" doctrine. The doctrine makes no sense if the Board's interpretation of campaign finance law is correct. After all, if Mayor Laffey is a "candidate" and WPRO's free air time is an illegal contribution, then "equal time" should never come into play. That is, if giving free air time to a politician is an illegal campaign contribution, then whatever candidate prompts a station's "equal time" obligation was him/herself the recipient of an illegal contribution by the station. Surely a radio or TV station cannot absolve itself of this campaign law violation by giving other candidates "equal" illegal contributions!<sup>2</sup>

Of course, that is precisely the answer to the current situation. When Mayor Laffey appropriately qualifies as a candidate for office that triggers FCC standards regarding "equal time," WPRO and the Mayor will be subject to certain constraints. However, whatever legitimate issues there may be down the road in terms of FCC provisions governing "equal time," they do not apply now.

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<sup>1</sup> Ironically, state law actually provides *unequal* cable and public television access for certain candidates – statewide candidates for office who accept public financing. Specifically, these candidates are "entitled to an *additional* benefit of free time on community antenna television to be allocated pursuant to rules determined by the administrator for the division of public utilities. . . . [and] entitled to an *additional* benefit of free time on any public broadcasting station operating under the jurisdiction of the Rhode Island public telecommunications." R.I.G.L. §17-25-30. (emphasis added)

<sup>2</sup> On the other hand, if Mayor Laffey *is* a "candidate" today, and "equal time" provisions do apply, then who are the challengers who are entitled to equal time?

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By barring a public official – solely because he is a public official – from hosting a radio show, the Board has gone far beyond the bounds of campaign finance law and directly restrained both a public official and a media entity from the exercise of free speech rights. The lack of any consistent, comprehensive rationale for its ruling can only further chill the exercise of political free speech by others.

You have called the Board’s ruling “cutting edge,” and we believe that is accurate., but enjoining a public official from appearing as the host of a radio show cuts far too deep. It is, as far as we can tell, unprecedented, and one that the First Amendment cannot allow.

We therefore urge that the Board reconsider its decision.

Sincerely,

Steven Brown  
Executive Director