BEFORE THE NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

IN THE MATTER OF SPADEA FOR GOVERNOR

ORDER TO SHOW CAUSE

RESPONSE OF BILL SPADEA AND SPADEA FOR GOVERNOR

Something is rotten in Trenton. The establishment power brokers are clearly panicked about the idea of our client—pro-Trump conservative outsider Bill Spadea—cleaning up Trenton. The idea of outsider Bill Spadea restoring power to the people is apparently so threatening that this Board has taken the extraordinary and extralegal action of throwing due process to the side and attempting prior restraint on the livelihood and free speech of newly announced candidate for Governor, Bill Spadea. The attempt here to treat the policy and news discussions of Mr. Spadea's radio program as an in-kind contribution to his campaign unambiguously violates the First and Fourteenth Amendments of the US Constitution and cannot and would not survive judicial scrutiny. What is rotten is the concept that Mr. Spadea should have to—on short notice in a newly created process, and without any complaint or evidence of a campaign finance violation in this Commission's jurisdiction— "show cause" and defend himself in advance of exercising his right to free speech.

Procedural History

On June 18, 2024, the Commission apparently, on its own volition, took it upon itself to jump into the gubernatorial electoral process and attempt prior restraint on newly announced candidate Spadea's ability to continue hosting the radio program that he has hosted for nine years

and is the primary source of his livelihood. The mechanism for this attempted prior restraint is an "Order to Show Cause" why Mr. Spadea's job as a radio talk-show host is not an in-kind contribution to his campaign.

Mr. Spadea and his campaign (the "Respondents") were informed of this Order on Thursday, June 20th, and demanded to file a written response to this Order within two business days, by 5:00 PM on Monday, June 24th. Mr. Spadea was also demanded to appear and show cause at a hearing two days later, at 10:30 AM on June 26th – on short notice and conflicting with Mr. Spadea's radio program. Upon information and belief, this Commission has not previously conducted a sua sponte show cause hearing to attempt prior restraint of a candidate's speech, and certainly not on this short notice. In further politicization of the issue, the Commission invited all other gubernatorial candidates (none of whom are parties to any potential Commission enforcement action) to submit briefing and participate in the scheduled hearing.

Further, a day after notifying Mr. Spadea of the rushed briefing and hearing schedule, the Commission moved the hearing to 9:00 AM on Friday, June 28th. Upon being informed of this new hearing date and time, Mr. Spadea's lead counsel Spies promptly informed Commission staff that the new Friday hearing date and time doesn't work due to a conflicting commitment in another state. Also, 9:00 AM is once again during the midst of Mr. Spadea's radio program. Spies provided multiple alternate hearing dates and on Friday evening (June 21st) was informed that notwithstanding his inability to attend the hearing on June 28th, the Commission would nonetheless proceed. This puts Spadea's lead counsel in the disadvantaged position of having to participate in this rushed proceeding via video.

No Emergent Basis

There is no reason for this hastily and improperly scheduled Order to Show Cause and hearing. The Commission's statutory authority and mission is to limit political contributions and require the reporting of contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office. Importantly, that authority and mission does not include prospectively restricting speech that might potentially become a campaign contribution. The procedure that should have been followed here is if Mr. Spadea at some point in the future engaged in campaign advocacy on his radio program, then at that point an investigation and/or enforcement action could be initiated. If it was then determined that the value of that radio broadcast was in fact an in-kind contribution to his campaign, then the campaign would be obligated to refund the value of such broadcast to the station and/or pay a civil penalty as determined by the Commission. Unlike this "Show Cause" attempt at prior restraint, those remedies all are consistent with the Commission's authority and past practice.

Illegitimate Purpose

The stated purpose for this rushed "Show Cause" procedure (and its commensurate lack of due process) is to create a "level playing field" for all candidates. *See* David Wildstein, *ELEC Will Decide if Spadea Radio Show Counts Against Spending Cap,* N.J. Globe (June 18, 2023), https://newjerseyglobe.com/governor/elec-will-decide-if-spadea-radio-show-counts-against-spending-cap. (quoting ELEC Chairman Thomas Prol). Of course, a fundamental concept of First Amendment jurisprudence is that political speech may only be infringed upon to prevent corruption or the appearance of corruption. In contrast, the U.S. Supreme Court explained in *Buckley v. Valeo* that the idea of leveling the political playing field "is wholly foreign to the

First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 49 (1976) The U.S. Supreme Court has "consistently rejected attempts to suppress campaign speech based on other legislative objectives. No matter how desirable it may seem, it is not an acceptable governmental objective to "level the playing field," or to " level electoral opportunities," or to "equaliz[e] the financial resources of candidates."*McCutcheon v. Fed. Election Commn.*, 572 U.S. 185, 207 (2014) *citing Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 748 (2011); *see also* Michael C. Dorf, *Who Could Oppose a Level Playing Field – The Supreme Court, That's Who*, Verdict (July 5, 2011), https://verdict.justia.com/2011/07/05/who-could-oppose-a-level-playing-field-the-supreme-court-that%E2%80%99s-who. Consequently, both the process and the purpose of this proceeding are constitutionally infirm.

I. Legal Argument

The Commission here has ordered a rushed show cause hearing to evaluate prospective conduct that will comply with the letter and spirit of the law and the Commission's precedent. The unambiguous Commission precedent is that "when an article or item appears in a bona fide news outlet and when that news outlet is not controlled by a candidate or other entity required to report under the Campaign Reporting Act, expenditures relating to the articles or item cannot be characterized as 'in-kind' contributions." Advisory Opinion No. 06-1993.

The issue before the Commission is not a matter of first impression, nor is it new or novel. Beyond the Commission's own precedent, this issue has been addressed by federal courts and the Federal Election Commission ("FEC") on numerous occasions in favor of candidates and media entities, similar to Mr. Spadea and Townsquare. This precedent is binding on the Commission because despite the Commission's Orwellian assertion that this show cause order

"does not concern or create any restriction, limitation, control and/or impairment on, of, or concerning any form of speech, expression, or message content," it necessarily creates a prior restraint on the Respondents' fundamental First Amendment rights.

The Commission is required to "consider this [issue] against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend. I. Undoubtedly, the issue before the Commission directly implicates core First Amendment doctrine: the First Amendment's protections regarding political speech and association as well as the First Amendment's protections of the press.

The conduct at issue here falls outside of the jurisdiction of New Jersey Campaign Finance law because the radio show is a bona fide news program. It is not broadcast on behalf of any candidate or candidate's committee; instead, it is broadcast in furtherance of Townsquare's institutional function to provide the people of New Jersey with news coverage. Moreover, the radio show has not and will not include express advocacy related to Mr. Spadea or his opponents and does not reference Mr. Spadea's status as a candidate for public office. Any other finding by the Commission would be inconsistent with New Jersey law and would violate the First Amendment because "[i]t has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn" *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973). Even if the Commission had some level of doubt, "[w]here the First Amendment is implicated, the tie goes to the speaker." *FEC v. Wisc. Right to Life*, Inc., 551 U.S. 449, 474 (2007).

The Respondents would be remiss not to mention the dangerous rhetoric from the Commission as it relates to this matter. The Commission has failed to articulate a cognizable legal theory in its show cause order to justify imposing a prior restraint on Mr. Spadea's speech that is entirely unrelated to his candidacy and campaign. Instead, the Commission has stated that its goal is to create a "level playing field" and to determine if Mr. Spadea's airtime constitutes some sort of "indirect financial benefit to his campaign." Put differently, the Commission seeks to use the force of the government to threaten Mr. Spadea's livelihood and restrict Mr. Spadea's speech, which is unrelated to his candidacy and campaign. These stated goals are irreconcilable with the First Amendment and appear to be premised on nothing more than the Commission's misunderstanding of the basic elements of campaign finance law, First Amendment jurisprudence, and its own precedent. The Respondent is confident this matter will be dismissed by the Commission because a contrary determination would be unfathomable and would be struck down, on an emergent basis, by the courts for violating Mr. Spadea's First Amendment Rights.

II. Not an In-Kind Contribution under New Jersey or Federal Law

As a matter of law, this issue has been settled. A radio station does not make an in-kind contribution to a candidate by allowing the candidate to be on its radio station. Advisory Opinion No. 06-1993 (finding that allowing candidates to write op-eds in a newspaper is not an in-kind contribution from the newspaper to the candidates' campaigns); FEC MUR 7688 (Media Power Group, Inc.) (finding that allowing a candidate to host a radio show was not an in-kind contribution from the radio station to the candidate's campaign).

Mr. Spadea's radio show does not constitute an in-kind contribution from the radio station because (1) the Radio Show is not a "contribution" or "expenditure" on behalf of Spadea

for Governor; (2) the Radio Show is explicitly exempt from the definition of an "expenditure" on behalf of a candidate; and (3) any bastardization of the law or novel reading to the contrary would undoubtedly violate the First Amendment.

A. The Radio Show is Not a "Contribution" or "Expenditure" on Behalf of Spadea for Governor

As a threshold matter, the radio show does not constitute a "contribution" or "expenditure" on behalf of Spadea for Governor. And, because it is not a "contribution" or "expenditure," it cannot be an in-kind contribution. "[T]o find otherwise would deprive bona fide news organizations of status which is guaranteed to them in the United States Constitution" Advisory Opinion No. 06-1993.

The U.S. Supreme Court has made clear that outside express advocacy or its functional equivalent, the government does not have a compelling state interest to regulate First Amendment-protected activities. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. at 476. ("This Court has never recognized a compelling interest in regulating ads… that are neither express advocacy nor its functional equivalent.").

To withstand judicial scrutiny, the New Jersey election laws must be "construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office" or its functional equivalent. *Buckley v. Valeo*, 424 U.S. at 44; *FEC v. Wis. Right to Life, Inc.*, 551 U.S. at 476. Express advocacy is defined as "[c]ommunications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976). And, a communication "is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other

than as an appeal to vote for or against a specific candidate." *FEC v. Wis. Right to Life, Inc*., 551 U.S. at 476.

To withstand judicial scrutiny and to prevent infringement of the Respondents' First Amendment rights, the Commission must interpret New Jersey statutes and regulations under this framework. *See,* e.g., *Buckley v. Valeo, 424 U.S. at 44*; *Ariz. Free Enter. Club's Freedom Club PAC, 564 U.S. at 734.* ("Laws that burden political speech are" accordingly "subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.").This point has not been lost on the Commission. "Mindful of [U.S. Supreme Court] precedent, the Commission promulgated a rule specifically intended to comport with the express advocacy standard articulated by the U.S. Supreme Court in Buckley." Advisory Opinion No. 10-2001. Commission regulations set forth standards for determining whether a communication shall be defined as a "political communication contribution" and, therefore, subject to New Jersey campaign finance law.

> The term "political communication" means any written or electronic statement, pamphlet, advertisement or other printed or broadcast matter or statement, communication, or advertisement delivered or accessed by electronic means, including, but not limited to, the Internet, **containing an explicit appeal for the election or defeat of a candidate** which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed.

N.J. Admin. Code 19:25-10.10 (emphasis added).[1]

Thus, the mere presence of a candidate does not transform a communication into a "political communication contribution." It must include an explicit appeal for the election or defeat of a candidate. The U.S. Supreme Court and the Commission have "long recognized that

[1] Subsection (b) of the "political communication contribution" rule provides an alternative possibility for communications that do not include express advocacy. However, this subsection in inapplicable here because it only applies communications made during "the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted."

[there is a] distinction between campaign advocacy and issue advocacy." *Buckley v. Valeo*, 424 U.S. 1, 42, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976); Advisory Opinion No. 12-1983; Advisory Opinion No. 15-1984; *see also Franks for Gov., Inc., Petr.*, ELE 2792-01, 2001 WL 670844, at *6 (N.J. Adm. June 8, 2001) (finding issue advertisements did not meet the definition of a "political communication"); *People for Whitman Comm.*, 93 N.J.A.R.2d (ELE) 12 (N.J. Adm. Oct. 27, 1993).

The Radio Show has not included and will not include express advocacy for or against any candidate for Governor, or even references to Mr. Spadea as a candidate. Of course (because it doesn't exist) there is nothing in the record before the Commission suggesting that the radio show includes any explicit appeal for the election or defeat of any candidate in the Governor's race. Therefore, the Radio Show cannot be defined as a "political communication contribution."

Although the Radio Show's failure to meet the definition of a "political communication contribution" is dispositive in this inquiry and should result in an immediate dismissal, the Respondents note that no mangled interpretation of the other statutes and regulations could plausibly lead to a determination by the Commission that the Radio Show is an in-kind contribution to Spadea for Governor.

The Radio Show is not a "contribution" or "expenditure" because it is not "made to or on behalf of any candidate committee," it does not contain "an explicit appeal for the election or defeat of a candidate," and it is not made in "furtherance of the nomination, election, or defeat of any candidate." N.J. Admin. Code 19:25-1.7; N.J. Admin. Code 19:25-10.10; N.J. Stat. Ann. § 19:44A-8.

Clear U.S. Supreme Court precedent requires that any definition of contribution or expenditure must be read narrowly to determine if the Radio Show is broadcast in "furtherance of the nomination, election, or defeat of any candidate" N.J. Stat. Ann. § 19:44A-8. Mr. Spadea has hosted the Radio Show for almost a decade. "The thrust of the [Radio Show] is to promote a bona fide intuitional interest" of the radio station, and it is broadcast "independent of any political affiliation with" Mr. Spadea's candidacy. Advisory Opinion No. 15-1984 (finding an ad with the Governor was not an expenditure by the organization that produced it). The Radio Show is broadcast in furtherance of Townsquare's financial interests and their mission to provide news to the people of New Jersey. There is no political motivation behind Mr. Spadea's participation in the Radio show "but rather [the purpose is] to further the organizational aims of the entity by utilizing appearance and participation" of Mr. Spadea, a successful and well-known radio host. The Radio show does not and will not "contain unambiguous references" to Mr. Spadea's candidacy or his opponents, and the timing of the Radio Show "is not made in relation to a gubernatorial election." Advisory Opinion No. 12-1983 (finding an ad featuring the Governor was not expenditure because it was being produced in furtherance of organization functions). Townsquare controls the content, timing, and substance of the show to further its interests. These interests have not changed and are irrespective of any candidate or political candidate.

Even if the Commission determined the Radio Show created some amorphous "collateral benefits" to Spadea for Governor, this would be insufficient to make a determination that the show was an expenditure. "There is no way to escape the fact that incumbent officeholders or other public figures obtain collateral benefits to a potential candidacy when they engage in activities directly related to their public responsibilities." Advisory Opinion No. 15-1984. The

Commission has made clear that "[t]hose collateral benefits, however, do not justify the conclusion that the activities are in further of a candidacy" *Id*.

Additionally, the radio show also does not meet the definition of "Coordinated expenditures." First, to be a "coordinated expenditure," the communication would need to meet the definition of an "expenditure." The radio show is not an expenditure on behalf of the campaign and is explicitly exempt from the definition of an expenditure. Second, to meet the "coordinated expenditure" definition, [t]he expenditure for the communication [must be made] on or after the date upon which the gubernatorial candidate or committee described at (a)2 above applied to receive matching funds pursuant to N.J.A.C. 19:25–15.17." N.J. Admin. Code 19:25-15.29(a)(3). Spadea for Governor has not applied to receive matching funds; therefore, this regulation is inapplicable to the Commission's inquiry.

B. <u>The Radio Show is Exempt from the Definition of "Expenditure"</u>

"The Commission has historically acknowledged that it would be an impermissible Intrusion upon First Amendment guarantees of freedom of the press if the Commission were to be asked to make judgments concerning the content of communications appearing in the print or broadcast media." Advisory Opinion No. 06-1993. As a result, the Commission has encompassed the protections of free speech in the press by explicitly exempting from the definition of an "expenditure" on behalf of a candidate or committee:

> Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by a candidate committee…

N.J. Admin. Code 19:25-1.7

Once again, this is not a matter of first impression before the commission, and the operative statutes or regulations have not been substantially amended since the Commission

established a clear precedent on this issue. In Advisory Opinion No. 06-1993, the Commission was asked to determine whether a newspaper made in-kind contributions to candidates by allowing the candidates to write columns and editorials in their newspaper. The Commission concluded that the First Amendment and N.J.A.C 19:25-1.7 precludes this activity from being defined as in-kind contribution and the imposition of the New Jersey Campaign finance laws. The Commission wisely noted that a contrary decision "would [not] be sustained as constitutional in the courts."

In making this determination, the Commission relied on the analogous "media exemption" in federal campaign finance law, and federal court precedent creating a two-part test to determine if the exemption applied. *See* 11 CFR § 100.73; 11 CFR § 100.132. Federal courts have made clear that "the two questions on which the [media] exemption turns [are] whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." *Reader's Dig. Ass'n, Inc. v. Fed. Election Comm'n,* 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *Fed. Election Comm'n v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) ("If the press entity is not owned or controlled by a political party or candidate and it is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.").

i. Townsquare is Not Owned or Controlled by a Political Committee or Candidate

To determine if a press entity is owned by a political committee or candidate, the courts and the FEC look at the ownership and structure of the press entity. Put simply, the test solely looks at the ownership structure of the media entity. If the press entity is not owned by a candidate, political party, or political committee, it meets the first factor in the media exemption analysis.

The burden of proof to demonstrate a lack of political party or candidate ownership or control is low. In *Fed. Election Comm'n v. Phillips Pub*, the court found that a statement from the media company's attorney stating it was not a political committee, paired with an affidavit from the owner, was sufficient to determine the entity was not owned or controlled by a political committee or candidate. *Id*.

Merely having a candidate as a host or employee of a radio station does not meet the threshold for "owned or control." The FEC has "never found that a host/candidate 'owned or controlled' the entity for purposes of the press exemption on the basis that the host/candidate had a role in determining program content" FEC MUR 6242 (J.D. Hayworth 2010); *see, e.g.,* FEC MUR 5555 (Ross); FEC MUR 4689 (Dornan).

The FEC applied this reasoning to an analogous inquiry regarding a candidate hosting a radio show. First, the FEC determined that the press entity was not owned or controlled by a political party, political committee, or candidate because none of the shareholders were political parties, political committees, or candidates. FEC MUR 7688 (Media Power Group, Inc.). Next, the FEC assessed whether the candidate hosting a radio show was sufficient to determine whether the candidate had "control" of the press entity. As it has on numerous occasions, FEC determined the "'host/candidate' does not own or control the media entity for purposes of the press exemption on the basis that the host/candidate had a role in determining program content." *Id.*

As it relates to the Respondents, Mr. Spadea and Spadea for Governor do not have ownership interest in Townsquare. There is no information to indicate that Townsquare is owned by a political party, political committee, or political candidate. Moreover, Mr. Spadea's role in hosting a news program does not give him a sufficient level of control or ownership for the

Commission to determine the press exemption does not apply. Mr. Spadea is an employee of Townsquare, and his conduct is regulated and controlled by his employer. Townsquare has the authority to control the timing of the show, the content of the show, and the behavior of Mr. Spadea. Therefore, the Commission must conclude that Radio Show meets this factor of the media exemption test.

ii. The Radio Show is Broadcast as a Regular and Ordinary Activity of Townsquare and is in Furtherance of its Institutional Function as a Press Entity

To determine whether the press entity was acting as a press entity in making the distribution at issue, the publication must be comparable in form to that ordinarily issued by the entity. *See Reader's Dig. Ass'n, Inc. v. Fed. Election Comm'n,* 509 F. Supp. at 1215 ("if [the entity] was acting in its magazine publishing function… then it would seem that the exemption is applicable."); *FEC v. Phillips Pub., Inc.,* 517 F. Supp. at 1313. (finding that "it is clear that the respondent was acting in its capacity as the publisher of a newsletter …[b]ecause the purpose… was to publicize [the publication] and obtain new subscribers, both of which are normal, legitimate press functions"). The U.S. Supreme Court found that a press entity failed to meet this test by publishing a "special edition" of its newsletter because it could not "be considered comparable to any single issue of the newsletter." *Fed. Election Commn. v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 250 (1986).

> [The special edition] was not published through the facilities of the regular newsletter, but by a staff which prepared no previous or subsequent newsletters. It was not distributed to the newsletter's regular audience, but to a group 20 times the size of that audience, most of whom were members of the public who had never received the newsletter. No characteristic of the Edition associated it in any way with the normal MCFL publication.

Id.

Based on this precedent, the FEC uses a "consideration of form" analysis and will "examin[e] whether the activity in question is comparable in form to the press entity's regular activities and has approved of activities and content produced in the same manner, using the same people, and subject to the same review and distribution as the press entity's general activities." FEC MUR 7688 (Media Power Group, Inc.). fn. 45 *citing* Advisory Op. 2011-11 (Colbert*)* at 8.

As applied to the Respondents, there is no dispute that Mr. Spadea has been on the radio for almost a decade. Likewise, the show has been broadcast irrespective of any candidate or candidate's committee. There are no allegations or facts presented before the Commission that the form of the show has changed, that the audience has changed, the staff has changed, or that any manner of the show has changed since Mr. Spadea announced to run for Governor. Additionally, there are no allegations or facts before the Commission that any of the content of the show includes express advocacy or references to Mr. Spadea's campaign or opponents. In short, the facts before the Commission show that the media exemption applies to the Radio Show and this inquiry must be dismissed.

C. <u>The Radio Show is not an "indirect benefit" to Spadea to Governor</u>

The Commission's News Release states that a hearing has been scheduled to determine if a candidate's time on the radio "constitutes an indirect financial benefit to his campaign." Nowhere in New Jersey law or the Commission's regulations is an "indirect financial benefit" defined or prohibited. This is likely because any standard based on "indirect financial benefits" would be unconstitutionally vague, beyond the scope of the Commission's enforcement, and would be untenable to enforce. The Commission has also stated that its goal is to "level the

field." As previously noted, leveling the playing field is entirely outside the authority of the Commission and is wholly foreign to the First Amendment. *Ariz. Free Enter. Club's Freedom Club PAC*, 564 U.S. at 749. ("We have repeatedly rejected the argument that the government has a compelling state interest in "leveling the playing field" that can justify undue burdens on political speech.")**;** Advisory Opinion No. 15-1984 (finding indirect "collateral benefits" "do not justify the conclusion that the activities are in further of a candidacy"). "The argument that a candidate's speech may be restricted in order to 'level electoral opportunities' has ominous implications because it would permit Congress to arrogate the voters' authority to evaluate the strengths of candidates competing for office." *Davis v. Fed. Election Commn*., 554 U.S. 724, 742 (2008).

There is no cognizable legal theory under the law to justify imposing prior restraint on Mr. Spadea's speech, which all evidence indicates is entirely unrelated to his candidacy and campaign. Unfortunately, this has not stopped the Commission from attempting to prohibit Mr. Spadea from being on the radio. Because the law does not and cannot prohibit Spadea from hosting his long-standing radio programming, it appears the Commission has decided to manufacture a new standard (as well as a rushed new show cause procedure) to at a minimum chill Spadea's speech rights. Putting aside the glaring constitutional issues with this approach, if allowed to succeed it would create implications far beyond Mr. Spadea and the Radio Show.

Mr. Spadea, like the other candidates running for Governor, has a job to provide a living for himself and his family. The fact that Mr. Spadea's job, which he has held for almost a decade, involves a certain level of publicity is not an indication of an in-kind contribution. Many of the candidates running for governor are in professions that necessarily create "indirect benefit" under the Commission's theory.

For example, Jon Bramnick is a current candidate for Governor and is a lawyer. His law firm purchases billboards with his image on them which undoubtedly increase his name identification with the public. Under an "indirect benefits" analysis, his law firm has made impermissible in-kind contributions to Mr. Bramnick's campaign. Mr. Bramnick also holds himself out as an amateur comedian. Under an "indirect benefits" analysis, he would be prohibited from performing in comedy clubs because the staging of the shows, as well as any advertising for the shows, would be an indirect benefit and therefore an impermissible in-kind contribution from the comedy club.

Ed Durr is also a candidate for governor and is a truck driver. Mr. Durr travels the state in a truck owned by his employer, which gives him the opportunity to talk to voters all over the state. As a result, he arguably receives in-direct benefits from his corporate employer paying for him to travel the state.

Steve Sweeney is a union boss at the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. This role provides him a platform to speak to potential campaign donors, captive union members, and access to industry conferences, all of which are invaluable resources for a political campaign and would need to be prohibited under an "indirect benefit" analysis.

Multiple candidates in the race currently hold positions in government. Under an "indirect benefit" analysis, by making public appearances and media appearances in their official role, they would be receiving indirect benefits, which would also be impermissible in-kind contributions from the government to their campaigns.

An "indirect benefits" analysis is so vague and overbroad that it would encompass almost any candidate that is employed. These scenarios above for other candidates under such an

"indirect benefits" analysis demonstrate the folly of such a broad definition of contribution or expenditure, and explain why Courts, as well as this very Commission, have made clear that the only Constitutionally defensible outcome here is for this Commission to confirm that the radio program is not an in-kind contribution to Spadea for Governor.

Demand for Relief

(1) The Commission should withdraw and dismiss with prejudice the Order to Show Cause.

(2) This Commission should confirm that the broadcast value of Mr. Spadea's longstanding radio program is not currently an in-kind contribution to his campaign for Governor.

(3) The Commission should reimburse Mr. Spadea and his campaign's legal fees necessary to respond to this rushed and contrived proceeding, consistent with 42 U.S.C. § 1988 and N.J. Stat. Ann. § 10:6-2.

Date Submitted: June 24, 2024

Respectfully Submitted,

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