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March 29, 2019

VIA E-MAIL (CELA@fec.gov)

Jeff Jordan  
Assistant General Counsel Complaints  
Examination and Legal Administration  
Attn: Christal Dennis, Paralegal  
1050 First Street, NE  
Washington, DC 20463

Re: MUR 7576

Dear Mr. Jordan:

On behalf of ABC, Inc. ("ABC"), the undersigned counsel hereby responds to the Complaint filed with the Federal Election Commission ("FEC" or "Commission") on March 6, 2019 by David Xaviel ("Complainant") alleging violations of campaign finance law by ABC and its late-night television talk show *Jimmy Kimmel Live!*. The Complaint was sent by the FEC to ABC in a Notification Letter dated March 8, 2019.

The Complaint is frivolous, and ABC respectfully requests its expeditious dismissal.<sup>1</sup>

Complainant asserts that statements by host Jimmy Kimmel and some of his guests on *Jimmy Kimmel Live!* have been "biased" in favor of "the politics of the Democratic Party" and that by broadcasting them, ABC and *Jimmy Kimmel Live!* have "in effect violated campaign finance law." While Complainant may not agree with comments made in the show by Mr. Kimmel or some of his guests concerning politics or current events, the distribution of those comments (which he does not document) by ABC by broadcast over the ABC Television Network or by other means, including the internet, clearly does not constitute a campaign contribution or expenditure in violation of the Federal Campaign Finance Act. To the contrary,

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<sup>1</sup> ABC understands that a separate Notification Letter regarding the Complaint was sent to Jackhole Productions. Jackhole Production a/k/a Jackhole Industries is a production company owned by Jimmy Kimmel and other parties. The late-night television program *Jimmy Kimmel Live!*, which is the subject of the Complaint, is produced by 12:05 AM Productions, LLC, a wholly owned subsidiary of ABC Studios, for broadcast on the ABC Television Network. ABC Studios and the ABC Television Network are both owned by ABC, Inc. None of the entities is owned or controlled by a political party, political committee or candidate.

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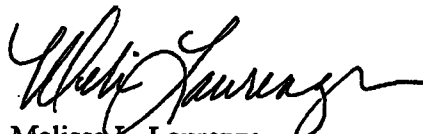
the inclusion of such commentary within a network television talk show falls squarely within the Act's well-established "media exception" which exempts from its definitions of contribution and expenditure "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 52 U.S.C. § 30101(9)(B)(i); 11 CFR 100.73; and 11 CFR 100.132.

Congress included the media exception in the Act to make clear that the Act was not intended "to limit or burden in any way the First Amendment freedoms of the press....[The exemption] assures 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).

ABC's *Jimmy Kimmel Live!* is part of a decades-long tradition of late-night television talk shows that include sometimes pointed commentary on politics and current affairs and appearances by guests of various political persuasions, including candidates and elected officials. Complainant may find some of the commentary to be distasteful or lacking in objectivity or balance, but its broadcast nevertheless falls squarely within the media exception and does not constitute a violation. *See also* Advisory Opinion 2005-16 (stating that "an entity otherwise eligible for the press exception 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."). To assert otherwise is contrary not only to the Act and to Commission regulations, but also to the vital protections accorded speech and press under the First Amendment.

As the Complaint fails to allege any actual violations of the Federal Election Campaign Act by ABC, *Jimmy Kimmel Live!* or any of the show's producers, it should be immediately dismissed and the file closed. ABC expressly reserves all available defenses under the Act, Commission regulations, and the First Amendment.

Respectfully submitted,



Melissa L. Laurenza  
Partner

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