

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Political Programming Complaint of) File Nos. 10192020a and 10192020b
Jim Condit, Jr.)
against)
Citicasters Licenses, Inc., licensee of) FRN: 0018273367
Station WKRC(AM), Cincinnati, Ohio, and) Facility ID No. 29737
Station WLW(AM), Cincinnati, Ohio) Facility ID No. 29733

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2022

Released: April 8, 2022

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it a Complaint submitted by Jim Condit, Jr.¹ against Citicasters Licenses, Inc. (Citicasters), licensee of Stations WKRC(AM) and WLW(AM), Cincinnati, Ohio.² In the Complaint, Mr. Condit alleges that despite being a legally qualified candidate for the U.S. House of Representatives in Ohio's 2nd Congressional District, Citicasters censored ads that it had already commenced broadcasting on his behalf over Stations WKRC(AM) and WLW(AM), in violation of section 315(a) of the Communications Act of 1934, as amended (Act),³ and denied him reasonable access as a federal candidate by refusing to resume broadcasting his ads, in violation of section 312(a)(7) of the Act.⁴ For the reasons set forth below, we deny Mr. Condit's Complaint.⁵

¹ See Final Complaint 3rd Corrected Version, submitted via email by Jim Condit, Jr. on Oct. 18, 2020, to Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, et. al (Complaint). On October 26, 2020, Citicasters submitted its response, and on October 27, 2020, Mr. Condit submitted a reply pleading. See Response of Citicasters Licenses, Inc., submitted via email on Oct. 26, 2020, to Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, et al. (Response); email from Jim Condit, Jr., to Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, et al., dated Oct. 27, 2020 (Reply).

² Citicasters is a wholly owned subsidiary of iHeartMedia, Inc., to which Mr. Condit refers throughout his Complaint. See Response at 1.

³ 47 U.S.C. § 315(a).

⁴ 47 U.S.C. § 312(a)(7). Mr. Condit also filed informal objections against the license renewal applications of Stations WKRC(AM) and WLW(AM). See Complaint at 6. Those informal objections are outside the scope of the instant matter and will be resolved in separate actions at a later date. Mr. Condit also raises concerns about the scope of iHeart Media, Inc.'s foreign ownership, alleging that the company is in violation of section 310(b)(4) of the Act. See Complaint at 6. These issues are also outside the scope of the instant matter.

⁵ Although Mr. Condit asks the Bureau to issue an order directing Citicasters to broadcast his ads over the two stations, see Complaint at 35, that request is moot given that the election has passed.

II. BACKGROUND

2. Section 315(a) of the Act prohibits licensees from censoring the messages of legally qualified candidates who use their stations.⁶ Section 312(a)(7) requires commercial broadcast stations to sell legally qualified candidates for federal office reasonable amounts of broadcast time on behalf of their candidacy.⁷ The Supreme Court has stated, “Section 312(a)(7) creates a limited right to ‘reasonable’ access that pertains only to legally qualified federal candidates and may be invoked by them only for the purpose of advancing their candidacies once a campaign has commenced.”⁸ Therefore, protections from censorship and the entitlement to reasonable access embodied in sections 315(a) and 312(a)(7) of the Act are available only to persons who have achieved the status of “legally qualified candidate.”

3. The term “legally qualified candidate” is defined in section 73.1940 of the Commission’s rules.⁹ Generally, an individual seeking election (other than for President or Vice President) must publicly announce his or her intention to run for office,¹⁰ must be qualified to hold the office for which he or she is a candidate,¹¹ and must have qualified for a place on the ballot or have publicly committed himself or herself to seeking election by the write-in method.¹² If seeking election by the write-in method, the individual, in addition to being eligible under applicable law to be a write-in candidate, must make a “substantial showing” that he or she is a bona fide candidate for the office being sought.¹³ Section 73.1940(f) of the Commission’s rules speaks directly to the term “substantial showing:”

The term “substantial showing” of a bona fide candidacy . . . means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be

⁶ 47 U.S.C. § 315(a). Section 315(a) states, in part:

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

⁷ 47 U.S.C. § 312(a)(7). Section 312(a)(7) states:

The Commission may revoke any station license or construction permit —

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

⁸ *CBS, Inc. v. FCC*, 453 U.S. 367, 396 (1981).

⁹ 47 CFR § 73.1940.

¹⁰ 47 CFR § 73.1940(a)(1).

¹¹ 47 CFR § 73.1940(a)(2).

¹² 47 CFR §§ 73.1940(a)(3), 73.1940(b)(1), and 73.1940(b)(2).

¹³ 47 CFR § 73.1940(b)(2).

activities not listed herein which would contribute to such a showing.¹⁴

4. According to Mr. Condit's complaint, in July 2020, he publicly announced his intention to run for Congress in Ohio's 2nd Congressional District.¹⁵ Thereafter, on August 14, 2020, Mr. Condit submitted Form No. 13-C, Declaration of Intent to be a Write-in Candidate, to the Hamilton County (Ohio) Board of Elections, along with the required payment of \$85.¹⁶ As a result, the Board of Elections identified Mr. Condit on its website as a write-in candidate for Congress in Ohio's 2nd Congressional District in the November 3, 2020 election.¹⁷ On or about September 1, 2020, Mr. Condit approached the sales staff at Stations WKRC(AM) and WLW(AM) as a purported candidate for federal office and requested to buy time on behalf of his candidacy.¹⁸ The sales staff asked Mr. Condit to provide information in support of his qualifications, which he provided the next day.¹⁹ The sales staff thereafter accepted his request for the purchase of time.²⁰ The two radio stations uploaded records of the request to their respective online political files²¹ and subsequently commenced broadcasting Mr. Condit's ads.²²

5. After broadcasting Mr. Condit's ads on Stations WKRC(AM) and WLW(AM) for approximately three weeks, Citicasters suspended its broadcast of them and asked Mr. Condit to provide additional evidence in support of his claim that he had made a "substantial showing" of his bona fide candidacy, as required for write-in candidates pursuant to section 73.1940(f).²³ Mr. Condit provided an initial response on September 21, 2020 (in which he claimed that his "main campaign activity" consisted of his radio ads) and a more detailed answer the next day (in which he elaborated on his purported campaign activities).²⁴ After considering his Supplemental Showing, Citicasters determined that Mr. Condit had not made a "substantial showing" of his bona fide candidacy and concluded that he was not a legally qualified candidate for federal office who would otherwise be entitled to reasonable access under section 312(a)(7) of the Act. Citicasters notified Mr. Condit of its decision to no longer run Mr. Condit's

¹⁴ 47 CFR § 73.1940(f). As mentioned above, the rule leaves open the possibility that other activities not listed might contribute to a substantial showing.

¹⁵ Complaint at Exhibit XXI, p. 2.

¹⁶ See Email from Sherry Poland, Director, Board of Elections, Hamilton County Ohio, to Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, dated Sept. 25, 2020 (providing a copy of Mr. Condit's Form 13-C). See also Complaint at 16-17, 25, Exhibit II at 2, Exhibit XVI c, and Exhibit XXI.

¹⁷ See <https://votehamiltoncountyohio.gov/wp-content/uploads/2020/09/Nov-2020-Candidates-and-Issues-2.pdf> (last visited Oct. 30, 2020).

¹⁸ Complaint at Exhibit XXI, p. 4; Response at 4.

¹⁹ Complaint at Exhibit XXI, p. 4.

²⁰ Response at 4. See also Complaint at 8-9. Mr. Condit purchased multiple 60-second ads on each station.

²¹ See 47 U.S.C. § 315(e). See also <https://publicfiles.fcc.gov/am-profile/wkrc/political-files/2020/federal/us-house/a702a9a6-a136-eeb6-efe0-602bc6aeea0e/> (last visited Oct. 30, 2020); and <https://publicfiles.fcc.gov/am-profile/wlw/political-files/2020/federal/us-house/08849b54-5178-6584-b122-a3d20356c40c/> (last visited Oct. 30, 2020).

²² Response at 4.

²³ 47 CFR § 73.1940(f).

²⁴ See Response at 4; Exhibit A at 1; and Exhibit B. Mr. Condit's two responses will be referred to herein collectively as his "Supplemental Showing."

ads on September 24, 2020.²⁵ Approximately three weeks later, on October 18, 2020, Mr. Condit submitted his Complaint.²⁶

6. *The Complaint.* Mr. Condit's Complaint contends that Citicasters' decision to suspend broadcast of his ads on Stations WKRC(AM) and WLM(AM) constitutes prohibited censorship of a legally qualified candidate contrary to section 315(a) of the Act, as well as a violation of the reasonable access requirements of section 312(a)(7) of the Act. Mr. Condit maintains that he was irreparably harmed by Citicasters' actions.²⁷ Mr. Condit argues that despite initially acknowledging his status as a legally qualified candidate, accepting his request for the purchase of broadcast time,²⁸ and airing his ads for some three weeks over Stations WKRC(AM) and WLW(AM), Citicasters abruptly stopped broadcasting his messages solely because of their content.²⁹ Moreover, he claims that Citicasters fabricated questions and required him to produce additional information about his candidacy as a pretense to avoid airing material it found to be objectionable.³⁰ Mr. Condit asserts that the information he provided to Citicasters in his Supplemental Showing amply demonstrated that he had made a substantial showing of his candidacy and that he was at all relevant times a legally qualified write-in candidate. In his Supplemental Showing, Mr. Condit claims to have made campaign speeches and attended events;³¹ distributed campaign literature;³²

²⁵ See Response at Exhibit C (Letter from Ari Meltzer, Esq., counsel for Citicasters, to Jim Condit Jr., dated Sept. 24, 2020, at 1 ("Having reviewed this additional information, [Citicasters] continues to believe that you have failed to make a substantial showing that you are a bona fide candidate entitled to reasonable access under the standards adopted by the FCC. As such, [Citicasters] is exercising its discretion not to broadcast the material that you have provided.")).

²⁶ During the approximately three-week intervening period, Mr. Condit directed multiple emails and telephone calls to Bureau staff stating his intention to submit a formal complaint against Citicasters and providing seriatim updates on his progress in drafting one. Mr. Condit initially submitted a "Final Complaint," which was superseded by a "Final Corrected Complaint," which was superseded by a "Final Complaint 2nd Corrected Version," which was ultimately superseded by his "Final Complaint 3rd Corrected Version" (the subject Complaint). Given that the record in this matter was not completed until late October following receipt of Citicasters' Response and Mr. Condit's Reply, upon receipt of the Final Complaint 3rd Corrected Version, Bureau staff informally advised the parties that it was unlikely a decision would be rendered in this matter before the election on November 3, 2020.

²⁷ Complaint at 21. Mr. Condit also alleges that Citicasters breached its contract to broadcast his ads. See Complaint at 2, 5, 10-11, 19, and 33. We express no opinion about this assertion, as such claim involves a private contractual matter on which we defer to courts to decide under state and local law.

²⁸ Mr. Condit states that he paid Citicasters in excess of \$11,000 for the broadcast of his ads. See Complaint at Exhibit VIII.

²⁹ Complaint at 15. See also Reply at 8-9.

³⁰ Complaint at 3, 10, 12-20. .

³¹ Mr. Condit identifies six locations where he claims to have made speeches and engaged in campaign-related activities: Frisch's Restaurant, The Farm Wedding Hall, St. Peter in Chains Cathedral, Hamilton County Courthouse, the Netherland Hilton, and his campaign headquarters. Complaint at Exhibit XVI b.

³² Mr. Condit states that he distributed brochures (using the same brochure in 2020 that he used in 2018) and business cards referencing his website address at in-person events, but not door-to-door. Complaint at Exhibit XVI b ("We will not pass out door to door literature as in this day and age a person who does not have a face recognizable by the public can creep people out, and many people are so afraid of Covid 19 that they don't want people coming to their door. WE DO pass out literature at physical events. . . .").

intended to issue press releases;³³ maintained a campaign headquarters;³⁴ utilized yard signs and bumper stickers;³⁵ and maintained a campaign committee³⁶ and a website.³⁷

7. *Citicasters' Response.* Citicasters states that its sales staff initially accepted Mr. Condit's request to purchase time on its two radio stations in the good faith belief that he was a legally qualified candidate entitled to reasonable access.³⁸ It asserts that its staff understood that Mr. Condit had "previously qualified to appear on the ballot and represented . . . that he was a legally qualified candidate," on the basis of a sample bumper sticker, yard sign, and brochure.³⁹

8. Citicasters contends, however, that after broadcasting his ads for approximately three weeks, the two radio stations became concerned that Mr. Condit was not – and never had been – a legally qualified candidate. According to Citicasters, it appeared from his ads on Stations WKRC(AM) and WLW(AM), his website, and his appearance on an Internet interview that Mr. Condit had no genuine intention of seeking public office.⁴⁰ Rather, Citicasters came to suspect that Mr. Condit had set out to exploit section 312(a)(7) of the Act by manufacturing a sham political campaign through which he could gain access to the airwaves for the purpose of spreading his beliefs to a vast audience.⁴¹ In order to resolve the questions that it had about his qualifications, Citicasters asked Mr. Condit to provide additional information showing that he had in fact engaged to a substantial degree in activities commonly associated with political campaigning.

³³ Mr. Condit states that although he did not issue press releases during past campaigns because he deemed them to be unproductive, he planned to start issuing them in this campaign because doing so is among the listed activities in section 73.1940(f) of the Commission's rules. See Complaint at Exhibit XVI b.

³⁴ Complaint at Exhibit XVI b ("Our new headquarters is located at 5052 Sandstone Circle, Harrison, Ohio 45030. We have had two small gatherings there so far, but it needs furniture beyond a table and a few chairs, and will be fully functional by about October 10th, 2020 or so.").

³⁵ Complaint at Exhibit XVI b ("We have utilized a few yard signs and bumper stickers, not mentioned as far as I know in the FCC criteria for write-in candidates, of which iHeart has some of ours. However, like brochures, without tens of thousands of dollars to put into yard signs and bumper stickers, this is not a good use of campaign money compared to put[ting] radio ads on the radio on well-listened to issue oriented talk stations like WLW and WKRC. Yard signs usually do not stay up long for various reasons, especially with controversial candidates.").

³⁶ Complaint at Exhibit XVI b ("I have always since 2002 been the only member of my campaign committee and the treasurer of the committee. . . . HOWEVER, I have two individuals ready right now to become part of my campaign committee if that is what is best to do.").

³⁷ Complaint at Exhibit XVI b ("We have built a website to help organize and link people from neighborhood to neighborhood, from precinct to precinct, and from county to county. The website is: NetworkAmerica.org – and it is set up to teach all American citizens across the board how to participate in the Precinct System in the party of their choice, or just to organize like-minded people into activist groups.").

³⁸ Response at 19.

³⁹ Response at 4, 19.

⁴⁰ Response at 16-18.

⁴¹ According to Citicasters, "Complainant also reveals his motives on his website, where he has an entire page dedicated to reasonable access law, which he describes it as a 'little known strategy' where 'almost anyone can run for Congress for as little as \$100' and use that to 'get real information to normal Americans over big TV & radio stations.'" Response at 17. Citicasters goes on to state that Mr. Condit sought "to use his sham campaign not 'on behalf of his candidacy' as required by the plain language of [section 312(a)(7) of the Act], but as a vehicle to disseminate his views well beyond the Congressional district he purportedly [was seeking] to represent." Response at 18.

9. Citicasters states that it reasonably applied the write-in requirements embodied in section 73.1940(f) to the information that Mr. Condit provided and concluded that Mr. Condit had not made a substantial showing of his bona fide candidacy.⁴² Specifically, Citicasters asserts that none of the locations that Mr. Condit identified as places where he had made speeches or engaged in campaign-related events were located in Ohio's 2nd Congressional District;⁴³ it appeared that most of the activities in which Mr. Condit claims to have participated in support of his candidacy were not related to his campaign at all;⁴⁴ Mr. Condit did not provide any details regarding how his "meetings" or "conference calls" related to his candidacy;⁴⁵ he failed to demonstrate that he had distributed campaign literature to a substantial degree;⁴⁶ he had not issued any press releases;⁴⁷ Mr. Condit had either failed to maintain a campaign committee or failed to do so in accordance with Federal Election Commission requirements;⁴⁸ and his campaign headquarters was located outside of Ohio's 2nd Congressional District.⁴⁹

10. Citicasters maintains that although its sales staff initially accepted Mr. Condit's representations that he was a legally qualified candidate, it was not estopped from revisiting that determination and asking for additional information from him.⁵⁰ Citicasters further asserts in this regard that an individual claiming to be a legally qualified write-in candidate bears the burden of demonstrating his or her bona fides, and, in this instance, Mr. Condit failed to do so.⁵¹

11. *Mr. Condit's Reply.* Mr. Condit accuses Citicasters of having acted in bad faith⁵² by suspending the broadcast of his ads, and he takes issue with the licensee's unilateral determination that he was not a legally qualified candidate.⁵³ Mr. Condit contends, among other things, that he "helped organize more 'in-person' events than his two opponents . . .";⁵⁴ his radio ads were the functional equivalent of in-person speeches that allowed him to reach far more people than he might otherwise have spoken to face-to-face;⁵⁵ he worked "5 to 15 hours a day on his campaign, put dozens and dozens of hours

⁴² Response at 18.

⁴³ Response at 11.

⁴⁴ Response at 12.

⁴⁵ Response at 13.

⁴⁶ Response at 14. According to Citicasters, Mr. Condit admitted in his Complaint that he used the same brochure in 2020 that he used in 2018, he did not engage in any door-to-door distribution, his brochures were not ready at the time of his showing, he failed to indicate where his literature was distributed, and he utilized only "a few" yard signs and bumper stickers without elaborating on the quantity. Response at 14.

⁴⁷ Response at 14.

⁴⁸ Response at 14-15.

⁴⁹ Response at 15.

⁵⁰ Response at 18-20.

⁵¹ Response at 7-12, 15, 19-20.

⁵² Reply at 14-15 ("They HATE the laws that allow normal, marginally funded candidates to speak over their heads directly to the public.").

⁵³ Reply at 11 (characterizing radio and television owners and managers as "the JUDGE, JURY, and EXECUTIONER of federal write-in candidates").

⁵⁴ Reply at 16. On the other hand, Mr. Condit accuses Citicasters of hypocrisy for suggesting that he should have been expected to attend in-person events in furtherance of his candidacy while Stations WKRC(AM) and WLW(AM) urged listeners to stay at home because of the pandemic. Reply at 21.

⁵⁵ Reply at 16, 20.

into producing his radio ads and radio shows. . . . pack[ed] information into his voluminous website”;⁵⁶ and he attended many events in Ohio’s 2nd Congressional District in the course of his daily life.⁵⁷ Mr. Condit acknowledges that he did not participate in Internet-based meetings;⁵⁸ did not send out direct mailings because they were too expensive;⁵⁹ and did not engage in door-to-door campaigning to solicit votes or hand out literature.⁶⁰

III. DISCUSSION

12. For the reasons discussed below, we find that Mr. Condit was not a legally qualified write-in candidate because he did not make a substantial showing that he was a bona fide candidate, and, thus, he was not entitled to reasonable access and censorship protections pursuant to sections 315(a) and 312(a)(7) of the Act. It is well-established that the individual claiming to be a “legally qualified candidate” by the write-in method bears the burden of demonstrating that he or she has made a “substantial showing” of a bona fide candidacy.⁶¹ Further, a broadcaster’s determination as to whether a potential write-in candidate has satisfied the “substantial showing” requirement is entitled to deference, provided the determination is reasonable and made in good faith.⁶²

13. As discussed above, an individual running for office must satisfy three requirements in order to achieve the status of “legally qualified candidate” for Commission purposes: they must publicly announce their intention to run for office;⁶³ must be qualified to hold the office if elected;⁶⁴ and, if running as a write-in candidate, must make a “substantial showing” of their bona fide candidacy.⁶⁵ We conclude

⁵⁶ Reply at 17.

⁵⁷ Reply at 19.

⁵⁸ Reply at 21.

⁵⁹ Reply at 21.

⁶⁰ Reply at 22. *See also supra* note 32.

⁶¹ *See, e.g., Complaint of Michael Stephen Levinson*, 87 FCC 2d 433, 435 (Broadcast Bur. 1980) (“The burden is on [the potential candidates] to establish to the stations from which [they] seek broadcast time under Section 312 that [they] have ‘engaged to a substantial degree in activities commonly associated with political campaigning.’”).

⁶² *See Complaint by Michael Levinson Against Station WXXI-TV, Rochester, New York*, 1 FCC Rcd 1305 (Mass Media Bur. 1986) (“This agency will review the licensee’s decision only to determine if it was unreasonable or made in bad faith.”); *Complaint of Douglas S. Kraegar Against Radio Station WTLB Utica, New York*, 87 FCC 2d 751, 753 (Broadcast Bur. 1980) (“A licensee has the discretion to make a good faith judgment as to the bona fide qualifications of a write-in candidate.”). *Cf. CBS, Inc. v. FCC*, 453 U.S. 367, 387 (1981) (“If broadcasters take the appropriate factors into account and act reasonably and in good faith, their decisions will be entitled to deference even if the Commission’s analysis would have differed in the first instance.”).

⁶³ 47 CFR § 73.1940(a)(1).

⁶⁴ 47 CFR § 73.1940(a)(2).

⁶⁵ 47 CFR §§ 73.1940(a)(3), 73.1940(b)(2), and 73.1940(f). In his Complaint, Mr. Condit claims that the substantial showing requirement in section 73.1940(f) “thwart[s] the letter, spirit, and intent of Reasonable Access law” and should be “immediately nullif[ied] and withdraw[n].” *See Complaint* at 26. Consideration of such an amendment to the Commission’s rules is outside of the scope of a complaint proceeding. We note, however, that the Commission has long looked to whether a write-in candidate has made a “substantial showing” that he is a bona fide candidate who is actively seeking election and thus is considered a “legally qualified candidate” within the meaning of Sections 315 and 312. *See The Law of Political Broadcasting and Cablecasting*, Public Notice, 69 FCC 2d 2209, 2231 para. 4 (1978). In January 2022, the Commission again endorsed the substantial showing requirement by adopting a Report and Order that amends the language of section 73.1940(f). *See Revisions to Political Programming and Recordkeeping Rules*, Report and Order, MB Docket No. 21-293, FCC 22-5, 2022 WL 256743 (rel. Jan. 25, 2022).

that Mr. Condit failed to satisfy section 73.1940(a)(3) by failing to demonstrate that he made a substantial showing of his bona fide candidacy under section 73.1940(b)(2) and (f) of the Commission's rules. In so concluding, we also find that Citicasters' same determination regarding Mr. Condit's failure to make a substantial showing was reasonable and entitled to deference.

14. *Mr. Condit's Supplemental Showing was Insufficient.* Our conclusion that Mr. Condit failed to make a substantial showing of his candidacy turns on the Supplemental Showing that he provided to Citicasters in late September 2020. In that showing, Mr. Condit made several representations in support of his qualifications, each of which we evaluate below.

15. Although Mr. Condit claims that he engaged in campaign-related activities, none of those activities took place in the 2nd Congressional District in which he was seeking votes. Similarly, although he contends that he spent time in the 2nd Congressional District according to the record, these activities were not campaign-related. Thus the activities do not suffice to support a substantial showing of bona fide candidacy. Specifically, Mr. Condit identified six locations where he claims to have made campaign speeches and engaged in campaign-related activities.⁶⁶ However, Citicasters demonstrates that none of the locations where the activities took place was located within Ohio's 2nd Congressional District.⁶⁷ Mr. Condit counters that "most of my family and childhood friends live in the 2nd District of Ohio, I shop often in that district, I go to Church in that district, and have met and passed out business cards with my website on such cards, promoting my candidacy to a few hundred people over the last several months in the 2nd district as I moved around in the course of daily life."⁶⁸ We do not find that the activities in which Mr. Condit claims to have engaged within the 2nd Congressional District – handing out business cards at undisclosed locations on unspecified dates as Mr. Condit went about his daily life – constitute efforts that would reasonably support a substantial showing of bona fide candidacy. Similarly, engaging in routine day-to-day activities in the 2nd Congressional District, like shopping and attending religious services, are not "campaign-related" activities that would support a finding of a substantial showing, and having family and friends who reside in a particular area are not "activities" at all.

16. Although Mr. Condit argues that "[t]here is nothing that says Jim Condit Jr. had to organize in person events in the second district,"⁶⁹ a substantial showing should demonstrate a campaign presence in a substantial part of the relevant district. In *Levinson I*, a case which involved a write-in candidate for President who was seeking to establish his bona fide candidacy in New York State, the Bureau established that a write-in candidate's activity in support of a substantial showing of bona fide candidacy must be conducted on his or her behalf across substantial portions of the geographical area in which he or she is seeking votes.⁷⁰ The Bureau stated:

[I]t appears that the vast majority of [your] campaign activities took place only in the Buffalo metropolitan area. The record indicates that you engaged in extremely few campaign activities outside that area. . . . We certainly do not want to be in the posture of second-guessing any candidate's campaign strategy. However, to demonstrate that you are a bona fide candidate for national office in your state, it must be shown that you have engaged in campaign activities throughout a substantial part of the state. To that end, we

⁶⁶ Complaint at Exhibit XVI b.

⁶⁷ Response at 12.

⁶⁸ Reply at 19.

⁶⁹ Reply at 20.

⁷⁰ *Complaint of Michael Stephen Levinson Against Television Station Licensees*, 87 FCC 2d 433 (Broadcast Bur. 1980) (*Levinson I*).

would not require that you personally appear or expend a certain amount of money in different areas of the state; rather, it must, at a minimum, be shown that you have established a campaign presence -- even if only through mailings and volunteers -- in a substantial area of the state. Since you have not made such a showing, we can neither find that you have campaigned to a substantial degree in the state of New York nor that you are a bona fide candidate for President in that state.⁷¹

Applying that same principle to an election to the U.S. House of Representatives, it was incumbent upon Mr. Condit to demonstrate that he established a campaign presence in a substantial area of Ohio's 2nd Congressional District. The six venues he identifies where he purportedly engaged in campaign activities were not located in the 2nd Congressional District. Mr. Condit asserts that many attendees of his "public appearances" are residents of the 2nd Ohio Congressional District.⁷² However, Mr. Condit offers only this vague assertion, without any documentation or any specifics about which appearances he is referring to, the number of attendees at each, or how he identified individuals as residents of the 2nd Ohio Congressional District. It is unclear that even with such documentation and details how such assertions would be sufficient to satisfy the requirements of *Levinson I*. Therefore, we do not find that the activities contributed to a substantial showing of his bona fide candidacy.

17. We do not find any other probative evidence of campaign activity in the 2nd Congressional District. Mr. Condit states in his Supplemental Showing that he engaged in meetings and conference calls in support of his substantial showing of candidacy.⁷³ However, he provides no details about such activities or other information or evidence to substantiate the occurrence or nature of these events. In *Levinson II*, a case in which the complainant submitted letters in support of his substantial showing from several individuals who held "candidate parties" at their homes, the Bureau determined that in the absence of information about the nature of the parties or how they related to his campaign, it could not conclude that such parties were a type of activity commonly associated with political campaigning.⁷⁴ Similarly here, statements that Mr. Condit engaged in meetings and conference calls without further details or other information or evidence to substantiate the occurrence or nature of the events do not provide a basis for construing them as anything other than the kind of vague undertakings that the Commission staff has previously rejected as supporting a substantial showing of bona fide candidacy.⁷⁵

18. Mr. Condit also maintains in his Supplemental Showing that he distributed campaign literature and bumper stickers to potential voters and posted a "few" yard signs,⁷⁶ but he concedes the literature was only in the form of dated brochures and he does not provide any information about when and where or how extensively any of the materials were distributed. In the absence of such information, such limited, ill-defined efforts do not contribute to a substantial showing of his bona fide candidacy. Further, Mr. Condit admits that he did not issue press releases prior to submitting his Supplemental

⁷¹ *Id.* at 435-36.

⁷² *See Reply* at 1-2.

⁷³ *See Complaint* at 17; Exhibit XXI, pp. 3, 6; Exhibit XVI b.

⁷⁴ *See Complaint by Michael Levinson against Station WXXI-TV, Rochester, New York*, 1 FCC Rcd 1305, 1306 (Mass Media Bur., 1986) (*Levinson II*).

⁷⁵ *See id.* at 1306 (Staff rejected as evidence towards a substantial showing five letters from individuals stating they held "candidate parties" on behalf of Levinson as the letters lacked descriptions of the nature of the parties, or how they related to his campaign).

⁷⁶ *Complaint* at 17, Exhibit XVI b.

Showing, but planned to do so.⁷⁷ We do not find that an *intention* to engage in campaign-related activities constitutes reliable evidence that one *has* made a substantial showing of his or her candidacy.⁷⁸

19. We reject Mr. Condit's contention that reaching vast numbers of potential voters in Ohio's 2nd Congressional District through his ads that were broadcast over Stations WKRC(AM) and WLW(AM) during the COVID-19 pandemic support his substantial showing.⁷⁹ Mr. Condit argues that his ads provided him with a significant campaign presence in the 2nd Congressional District and, consequently, cemented his status as a legally qualified write-in candidate.⁸⁰ Admittedly, the coverage areas of Stations WKRC(AM) and WLW(AM) on which his ads ran encompass Ohio's 2nd Congressional District.⁸¹ However, Stations WKRC(AM) and WLW(AM) aired those advertisements based on their mistaken belief that Mr. Condit was a legally qualified candidate and thus qualified for reasonable access under section 312(a)(7) of the Act. After further inquiry, Stations WKRC(AM) and WLW(AM) determined that Mr. Condit was not a legally qualified candidate and thereafter ceased airing the ads. We decline to accept Mr. Condit's argument that an individual may qualify as a legally qualified candidate based on advertisements that would not have been aired but for a station's mistaken belief that the candidate qualified for reasonable access under section 312(a)(7). The Commission has never determined that advertisements are a qualifying activity to make a substantial showing pursuant to 73.1940(f). Further, to hold otherwise would allow Mr. Condit to rely on the broadcast of his ads in order to bootstrap his substantial showing.

20. We acknowledge that the COVID-19 pandemic compelled candidates to alter the ways in which they conducted their campaigns during the most recent campaign cycle. In this regard, we note that Mr. Condit maintained a website⁸² and was a guest on one Internet streaming interview.⁸³ While the maintenance of a campaign website and the appearance as a guest on an Internet streaming interview may be indicators of activities commonly associated with political campaigning that contribute to some extent toward a substantial showing, we find based on the facts presented here that neither of the specific activities Condit engaged in individually or together definitively establishes a substantial showing.⁸⁴

⁷⁷ Complaint at 17, Exhibit XVI b.

⁷⁸ Complaint at Exhibit XVI b.

⁷⁹ Complaint at 4, 18-19, Exhibit XXI, pp. 4, 8; Reply at 2, 6, 16, and 21.

⁸⁰ Complaint at 4, 19; Reply at 16. Mr. Condit further contends that "[i]f a Federal Candidate cannot attain 'substantial showing' without the exposure that only Radio and TV exposure can afford, then a federal candidate cannot qualify to buy airtime in the first place [sic] to attain 'substantial showing' status." Reply at 6. Under section 73.1940(f), there must be "evidence that the person claiming to be a candidate *has engaged* to a substantial degree in activities commonly associated with political campaign" (emphasis added). Thus, the rule provides that an individual's engagement in credible activities must take place before the individual asserts his or her rights as a legally qualified candidate to a broadcast station. As to Mr. Condit's position that only TV and radio air time can provide the level of exposure required, Mr. Condit ignores the list of qualifying activities that are identified in section 73.1940(f).

⁸¹ See <https://publicfiles.fcc.gov/am-profile/wkrc/contour-maps/> and <https://publicfiles.fcc.gov/am-profile/wlw/contour-maps/> (last visited Nov. 13, 2020).

⁸² Complaint at 4, 17-18, Exhibit XVI b, Exhibit XXI; Reply at 2, 17, 33.

⁸³ Complaint at Exhibit XXI, p. 177. Mr. Condit describes Exhibit XXI as "a complete and up-to-date" recitation of his 2020 campaign activity schedule. Complaint at 10.

⁸⁴ Although not applicable in this case since the rule was not adopted until January 2022 after the conduct at issue here, we note that the Commission amended section 73.1940(f) to specify that activities commonly associated with political campaigning also include "creating a campaign website, and using social media for the purpose of
(continued....)

Furthermore, Mr. Condit presents no evidence that he engaged to a substantial degree in any other alternative efforts to replace traditional in-person activities where social distancing would have been a concern. Thus, Mr. Condit does not indicate, for instance, that he organized any virtual town hall events in the 2nd Congressional District; sent out any direct mailings to voters in the 2nd Congressional District; contacted potential voters in the 2nd Congressional District via telephone, text messages or emails; made use of various social networks and social marketing platforms to reach individuals in the 2nd Congressional District; conducted car parades or car rallies in the 2nd Congressional District; or partnered with restaurants, businesses or organizations in the 2nd Congressional District to get his name and message out to the public in furtherance of his campaign.

21. Beyond the maintenance of a website and the appearance in one Internet interview, the only other evidence we find that contributes toward Mr. Condit's substantial showing is the fact that in 2020 he established a campaign headquarters located at 5052 Sandstone Circle, Harrison, Ohio 45030.⁸⁵ The establishment of a campaign headquarters is among the activities listed in section 73.1940(f) of the Commission's rules as being commonly associated with political campaigning. On that basis, we recognize Mr. Condit's establishment of a campaign headquarters as contributing toward his substantial showing. We reject Citicasters' assertion that because the address of Mr. Condit's campaign headquarters in Harrison is not within Ohio's 2nd Congressional District,⁸⁶ it is not relevant to his substantial showing. While we expect a bona fide candidate to focus their efforts in the area where votes are being solicited, section 73.1940(f) specifically provides that a campaign headquarters "in some instances might be the residence of the candidate or his or her campaign manager,"⁸⁷ a geographical distinction not afforded to other campaign activities identified in the rule. Since the U.S. Constitution requires members of the House of Representatives to reside in the state – and *not* necessarily the district – in which they are elected,⁸⁸ and section 73.1940(f) provides that a campaign headquarters may be in the residence of the candidate, we do not find that the location of this address outside of the 2nd Congressional District is disqualifying. We also reject Citicasters' contention that Mr. Condit's effort to establish a campaign headquarters fails to contribute toward his substantial showing because "it consists of "nothing more than 'a table and a few chairs.'"⁸⁹ The Commission does not dictate how a campaign headquarters should be furnished. Nevertheless, we do not find this factor alone establishes a substantial showing.

22. Based on the totality of the evidence in the record, we conclude that Mr. Condit failed to make a substantial showing of his bona fide candidacy, and therefore was not a legally qualified write-in candidate under the Commission's rules. In reaching this conclusion, we recognize that section 73.1940(f) contemplates significant flexibility in the kinds of activities that might support a substantial showing of one's bona fide candidacy. Indeed, it specifically states, "[n]ot all of the listed activities are

promoting or furthering a campaign for public office." See *Revisions to Political Programming and Record-Keeping Rules*, Report and Order, FCC 22-5, at 16 (Jan. 25, 2022). At the same time the Commission specified that such activities would be an indicator of activities commonly associated with political campaigning but would not alone be sufficient to support a status of "legally qualified candidate." See *id.* at 8.

⁸⁵ Complaint at Exhibit XVI b. Mr. Condit had previously maintained a campaign headquarters in a room in his home in Cincinnati.

⁸⁶ Response at 15. The community of Harrison, Ohio straddles two Congressional districts. Mr. Condit's headquarters at 5052 Sandstone Circle in Harrison is located in Ohio's 1st Congressional District. See https://ziplook.house.gov/htbin/findrep_house?ADDRLK90171111090171111 (last visited Feb. 24, 2020).

⁸⁷ 47 CFR § 73.1940(f).

⁸⁸ U.S. Const. art. 1, § 2.

⁸⁹ Response at 15.

necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which could contribute to such a showing.⁹⁰ In the instant case, however, with the exception of having maintained a website, appeared in one Internet interview, and established a campaign headquarters, we find that Mr. Condit did not engage to a *significant* extent in any of the campaign activities that are specifically identified in section 73.1940(f), nor did he engage to a *significant* extent in any other campaign activities – pandemic-safe or otherwise – commonly associated with political campaigning for a congressional district.

23. *Citicasters' Determination was Reasonable and Made in Good Faith.* As indicated above,⁹¹ licensees have the discretion to make reasonable, good faith judgments as to the bona fide qualifications of write-in candidates.⁹² We find that Citicasters' determination that Mr. Condit failed to make a substantial showing was reasonable and made in good faith. Although the sales staff at Stations WKRC(AM) and WLW(AM) initially accepted Mr. Condit's representations that he was a legally qualified candidate, Citicasters was not estopped from revisiting that determination.⁹³ Indeed, if the sales staff had any reservations at the outset about Mr. Condit's bona fides, it would have been entirely reasonable for them to refrain from accepting his request and to decline broadcasting his ads until he established that he was a legally qualified write-in candidate.⁹⁴ We acknowledge that Citicasters did not request Mr. Condit to make a more comprehensive showing of his bona fides until three weeks after it began running his ads. However, as discussed above, the broadcast of his ads did not somehow validate his deficient initial showing, ratify an erroneous initial determination by the sales staff, or otherwise make him legally qualified.

24. We reject Mr. Condit's contention that Citicasters' decision to suspend the broadcast of his ads after airing them for three weeks was made in bad faith.⁹⁵ Upon questioning the initial judgment of its sales staff about Mr. Condit's qualifications, Citicasters reached out to Mr. Condit and solicited additional information from him about his political activities. In so doing, Citicasters provided Mr. Condit with a full and fair opportunity to demonstrate his bona fides. Contrary to Mr. Condit's repeated allegations, we find no evidence in the record that Citicasters' actions were predicated on concerns about the content of his ads.⁹⁶ Furthermore, despite his allegations, Mr. Condit provides no evidence that the individuals at the stations or the individuals who own and/or control iHeart Media, Inc., Citicasters' parent company, attempted to stifle Mr. Condit because they found his ads to be objectionable.⁹⁷ There also is no evidence in the record of any complaints from listeners about the substance of Mr. Condit's on-air messages.

⁹⁰ 47 CFR § 73.1940(f).

⁹¹ See *supra* at para. 12.

⁹² See *Complaint of Douglas S. Kraegar*, 87 FCC 2d 751, 753 (Broadcast Bur. 1980) (affording a station the discretion to make a good faith judgment as to the bona-fide qualifications of a write-in candidate is essential to protect the station from civil lawsuits for libel where the broadcast in question would not be a "use" by a legally qualified candidate).

⁹³ See Response at 18-19, citing *In Re Complaint of Douglas S. Kraegar Against Radio Station WTLB Utica, New York*, 87 FCC 2d 751 (Broadcast Bur. 1980).

⁹⁴ See, e.g., *In Re Complaint of Anthony R. Martin-Trigona*, Memorandum Opinion & Order, 67 FCC 2d 743 (1978); *In re Complaint by Anthony L. Bruno*, 26 FCC 2d 656 (Broadcast Bur. 1970).

⁹⁵ Complaint at 14-15, 33-34; Reply at 3, 8-10, 14-16, 23, 27-28.

⁹⁶ *Id.*

⁹⁷ *Id.*

25. On balance, therefore, we believe that Citicasters suspended its broadcast of Mr. Condit's ads and requested additional information from him not on the basis of the content of his messages, but in a reasonable and good faith attempt to ensure that it bestowed the statutory benefits to which bona fide candidates are entitled on an individual who actually qualified for them.

26. We conclude that Mr. Condit was not a legally qualified candidate to whom the no censorship provision in section 315(a) of the Act or the reasonable access provision in section 312(a)(7) of the Act applied. Because we find that Mr. Condit was not a "legally qualified candidate" for Commission purposes, we conclude that Citicasters did not violate sections 312(a)(7) and 315(a) of the Act.

IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED**, pursuant to delegated authority,⁹⁸ that the Final Complaint 3rd Corrected Version, submitted by Jim Condit, Jr., on October 18, 2020, against Citicasters Licenses, Inc., licensee of Stations WKRC(AM) and WLW(AM), Cincinnati, Ohio, **IS DENIED**.

28. **IT IS FURTHER ORDERED** that should no petition for reconsideration or application for review be timely filed this complaint proceeding **IS TERMINATED**.

29. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order shall be sent by email to Jim Condit, Jr., at realnewsrealaction@gmail.com; and to Ari Meltzer, Esq., Wiley Rein, LLP, counsel to Citicasters Licenses, Inc., at ameltzer@wiley.law.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

⁹⁸ See 47 CFR §§ 0.61(e), (k); 0.283; and 0.284.