

NOW COME the Plaintiffs, Rich Whitney, Green Party candidate for Governor, LeAlan Jones, Green Party candidate for U.S. Senator from Illinois, and the Illinois Green Party, an established political party in Illinois, through counsel, and complain of the Defendants, Windows to the World Communications, Inc. a/k/a WTTW-11 Chicago, Corporation for Public Broadcasting, the Public Broadcasting Service, and Daniel J. Smith, for their wrongful and unlawful denial of Plaintiffs' access to the public airwaves and publicly-funded broadcast media.

PARTIES

1. The Plaintiff, Illinois Green Party ("Green Party"), is an established political party in Illinois comprised of Illinois citizens who, *inter alia*, sponsor candidates for public office.
2. Plaintiff, Rich Whitney, is the Green Party candidate for Governor of Illinois at the November 2, 2010 general election. Mr. Whitney is a legally qualified candidate who's name will be printed upon the ballot throughout the State of Illinois, subject to the provisions of the Illinois Election Code, 10 ILCS §5/10-2 *et seq.*
3. Mr. Whitney received over 361,000 votes as Green Party candidate for Illinois Governor in 2006. That achievement established the Illinois Green Party as an "established political party" under the Illinois Election Code.
4. Plaintiff, LeAlan Jones, is the Green Party candidate for United States Senator from Illinois to be voted upon at the November 2, 2010 general election. Mr. Jones is a legally qualified candidate who's name will be printed upon the ballot throughout the State of Illinois, subject to the provisions of the Illinois Election Code, 10 ILCS §5/10-2 *et seq.*
5. Defendant, Window to the World Communications, Inc. a/k/a WTTW-11 Chicago ("WTTW"), is a corporation organized under the laws of the State of Illinois. WTTW broadcasts and does business in Cook County, Illinois, and permits for-profit, commercial entities to advertise their businesses on WTTW's television airwaves, in exchange for compensation received by WTTW.
6. Defendant, Corporation for Public Broadcasting ("CPB"), was established by the Public Broadcasting Act of 1967, 47 U.S.C. § 396 *et seq.*

7. That Act established CPB as a non-profit corporation managed by a nine-member board appointed by the President and approved by the Senate to provide government support to public stations and producers nationwide.
8. In 1969, the CPB formed the Public Broadcasting System (“PBS”), a private non-profit corporation comprising noncommercial licensees who operate member stations around the country. WTTW is one such licensee.
9. While the CPB is nominally “not an agency or establishment of the United States Government” (47 U.S.C. §396 (b)), this is not dispositive of whether WTTW/PBS/CPB are acting “under color of law” for purposes of this lawsuit.
10. Defendant, Daniel J. Schmidt, is upon knowledge and belief, President and CEO of WTTW, and involved in programming decisions at WTTW; he is listed on WTTW's filings with the Illinois Secretary of State as its Registered Agent.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to the Federal Question statute, 28 U.S.C. §1331, Art. III, §2, U.S. Constitution. Declaratory relief is proper pursuant to 28 U.S.C. § 2201.
12. This Court has supplemental jurisdiction over any state claims pursuant to 28 U.S.C. §1367.
13. Venue is appropriate because all of the events complained of took place in the Northern District of Illinois.

FACTS

14. In recent years, WTTW has broadcast debates in Chicago and the geographically surrounding area, between and among candidates for political office in its broadcast, including Illinois Governor, United States Senator, and other elected offices.
15. In October 2010, WTTW promoted, broadcast, and otherwise publicly disseminated candidate debates, incorrectly referred to as “candidate forums,” between the Gubernatorial and Senatorial candidates, whereby candidates are present at the same time and location, and engage in a unique discussion format that allows different views to be expressed and rebutted contemporaneously.

16. Despite the fact that the Green Party is legally afforded the status of “established political party” pursuant to the Illinois Election Code, WTTW intentionally and willfully excluded Plaintiffs, Whitney and Jones, from the political debates it promoted, broadcast and otherwise publicly disseminated on October 27, 2010 and October 28, 2010. Defendants also excluded Green Party candidates from other debates as well.
17. Counsel for the Green Party sent letters to, *inter alia*, WTTW production staff and CEO Daniel J. Schmidt requesting the inclusion and participation of Green Party candidates in the debates in advance of the actual debates.
18. The letters pointed out that WTTW’s refusal to afford full participation to Green Party candidates was un-democratic, counter to its self-described mission to operate in the public interest, violated its obligations as a 501(c)(3) tax-exempt entity under the Internal Revenue Code and violated the equal access requirements of the Communications Act of 1934.
19. Despite the Plaintiffs’ best efforts to notify WTTW of their discriminatory and biased plan to exclude Green Party candidates, and allow WTTW an opportunity to resolve this matter, WTTW refused to reconsider its position, and this lawsuit ensued.
20. On information and belief, Defendants have in previous years been perceived by the public and voters in Illinois to be a generally non-partisan and objective source of information because of their public funding, as compared to commercially funded broadcasters, which rely exclusively upon sale of advertising time.
21. In light of the U.S. Supreme Court's recent decision in Citizens United v. FEC, 130 S.Ct. 876 (2010), voters in Illinois are looking to and relying upon Defendants more so than commercially funded broadcasters for information about candidates during this election cycle.
22. Based upon the rapidly escalating corporate financing of elections, it is therefore even more important than ever before, that publicly funded broadcasters such as Defendants strictly adhere to their mission of serving the public, and avoid all partisan political activity that may favor or oppose legally qualified candidates for public office that will appear on the ballot in Illinois.

COUNT I- INTERNAL REVENUE CODE (Applies to WTTW/PBS/CPB)

23. Plaintiff repeats, re-alleges and incorporates by reference, the allegations in aforementioned paragraphs (including the “Facts” section) with the same force and effect as if herein set forth.
24. The Internal Revenue Code, 26 U.S.C. §1 *et seq.*, regulates the taxation of income of corporations and individuals.
25. In Subtitle A, Subchapter F, the Code established requirements for organizations such as Defendants to acquire tax-exempt status. 26 U.S.C. §501 *et. seq.*
26. 26 U.S.C. §501(c)(3), establishes and describes the requirements for one category of tax-exempt organization, and reads *in toto*:

(3) Corporations, and any community chest, fund, or foundation, **organized and operated exclusively for** religious, charitable, scientific, testing for public safety, **literary, or educational purposes**, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, **no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.** [*Emphasis added.*]

27. IRS guidance has further established that a debate or forum that shows a preference for or against a certain candidate of party constitutes a prohibited activity under Subchapter F; IRS guidance provides no “safe harbor” for reliance upon commercially-funded polling data to exclude legally qualified candidates from candidate debates or forums.
28. Thus, tax-exempt organizations are prohibited from any activities that may be beneficial or detrimental to any candidate or party.
29. If the tax-exempt organization chooses to host a political debate or forum, it must provide an equal opportunity to other candidates seeking the same office and it may not indicate any support or opposition to any candidate.

30. Defendants' willful and intentional refusal to include Plaintiffs unquestionably influences the public discourse, impermissibly manufactures apparent approval for candidates, and improperly intervenes in the associated political campaigns.
31. Defendants' refusal to include Plaintiffs inures to the benefit of, and is on behalf of, the included candidates, and impermissibly influences the legislative process which should be the purview of the People – citizens of the state of Illinois.
32. Defendants' refusal to include Plaintiffs constitutes promotion of the so-called "two-party system," and opposition to more than two established political parties, which has no legal justification or status; on the contrary, the Illinois Election Code and Illinois Constitution allow for the simultaneous existence and operation of more than two political parties in Illinois.
33. Defendants' refusal to include Plaintiffs confers an unjustified imprimatur of legitimacy and endorsement of the Democratic and Republican parties and their candidates, and wrongly and improperly conveys to the public an aura of illegitimacy on the Green Party, its candidates and platform.
34. By refusing Plaintiffs' access to their debates and political forums, the Defendants have violated restrictions that Defendants agreed to in exchange for the privilege of being exempt from paying federal taxes, as provided in 26 U.S.C. §501(c)(3).
35. Plaintiffs have been damaged thereby, including but not limited to loss of opportunity to equally address the voters of Illinois, apparent opposition by civic leaders and publicly funded broadcasters in the Chicago land area, the false and unfounded perception advanced by the Defendants that Plaintiffs are somehow not legally qualified for office, and otherwise publicly opposed by Defendants in the eyes of Illinois voters and the public at large.

WHEREFORE, Plaintiffs seek judgment against Defendants, and seek a TRO, Permanent Injunction and Declaratory Relief; judgment against Defendants for actual, general, special, compensatory damages in the amount of \$400,000, and further demand judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$100,000, plus the costs of this

action, including attorneys' fees, and such other relief deemed to be just and equitable to remedy the censorship, breach of public trust, and harm that has been done by the Defendants.

COUNT II-COMMUNICATIONS ACT OF 1934
(Applies to CPB/PBS/WTTW)

36. Plaintiffs repeat, re-allege and incorporate by reference, the allegations in aforementioned paragraphs (including the “Facts” section) with the same force and effect as if herein set forth.
37. The Communications Act of 1934 47 U.S.C. §151 *et seq.* regulates and provides licensing requirements for broadcast radio and television stations.
38. The Act creates the Federal Communications Commission, and obligates the Commission to operate in the “public convenience, interest, or necessity...”; the Commission is required to grant and renew licenses “if the Commission finds that public interest, convenience, and necessity would be served thereby.” 47 U.S.C. § 307(a) & (c)(1).
39. Section 315 of the Act (47 U.S.C. §315) sets for the the requirements for licensees regarding candidates for public office, as follows:

§ 315. Candidates for public office

(a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities

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. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

- (1) *bona fide* newscast,
- (2) *bona fide* news interview,
- (3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation

of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the *obligation imposed upon them* under this chapter *to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.* [Emphasis added.]

40. Sections 312(a)(2), (3), (4) and/or (7), (47 U.S.C. §312) provide for administrative sanctions, including revocation of license, for licensees that willfully or repeatedly failure to operate substantially in accord with the terms set forth in their license.
41. Defendants' refusal to include Plaintiffs confers an unjustified imprimatur of legitimacy and endorsement of the Democratic and Republican parties and their candidates, and wrongly and improperly conveys to the public an aura of illegitimacy on the Green Party, its candidates and platform.
42. By promoting, broadcasting, and otherwise disseminating the debates between the certain but not all Gubernatorial and Senatorial candidates, to the exclusion of Plaintiffs, Defendants have denied reasonable and equal access in violation of their FCC license.
43. Defendants' refusal to include Plaintiffs constitutes promotion of the so-called "two-party system," and opposition to more than two established political parties, which has no legal justification or status; on the contrary, the Illinois Election Code and Illinois Constitution allow for the simultaneous existence and operation of more than two political parties in Illinois.
44. Plaintiffs were proximately harmed thereby, including but not limited to loss of opportunity to equally address the voters of Illinois, apparent opposition by civic leaders and publicly funded broadcasters in the Chicago land area, the false and unfounded perception advanced by the Defendants that Plaintiffs are somehow not legally qualified for office, and otherwise publicly opposed by Defendants in the eyes of Illinois voters and the public at large.
45. The conduct of the Defendants was the proximate cause and substantial factor in causing Plaintiffs' harm.

WHEREFORE, Plaintiffs seek judgment against Defendants, and seek a TRO, Permanent Injunction and Declaratory Relief; judgment against Defendants for actual, general, special,

compensatory damages in the amount of \$400,000, and further demand judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$100,000, plus the costs of this action, including attorneys' fees, and such other relief deemed to be just and equitable to remedy the censorship, breach of public trust, and harm that has been done by the Defendants.

COUNT III- 47 U.S.C. §396 - Corporation for Public Broadcasting Act
(Applies to CPB/PBS/WTTW)

46. Plaintiffs repeat, re-allege and incorporate by reference, the allegations in aforementioned paragraphs (including the “Facts” section) with the same force and effect as if herein set forth.
47. Congress, in enacting the Corporation for Public Act, found that “it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States” 47 U.S.C. §396 (a)(7).
48. The Plaintiffs – Rich Whitney, LeAlan Jones and the Green Party, as well as 361,000 citizens of the State of Illinois who voted for Mr. Whitney in 2006 – have been denied public telecommunications services, in violation of 47 U.S.C. §396 (a)(7) and the national policy promulgated thereby.
49. Additionally, pursuant to the announced national policy, the Act requires that the CPB, and its subsidiaries such as PBS and WTTW, operate in the public interest.
50. More specifically, in subsection (f), “Nonprofit and nonpolitical nature of the Corporation,” the Act requires that “The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.” 47 U.S.C. §396 (f)(3).
51. Defendants’ refusal to include Plaintiffs in their debates and political forum constitutes an overt, express and substantial promotion, contribution, and support for the Democratic and Republican parties and their candidates and ideas, individually and together.
52. Defendants’ refusal to include Plaintiffs constitutes promotion of the so-called “two-party system,” and opposition to more than two established political parties, which has no legal

justification or status; on the contrary, the Illinois Election Code and Illinois Constitution allow for the simultaneous existence and operation of more than two political parties in Illinois.

53. Defendants' refusal to include Plaintiffs confers an unjustified imprimatur of legitimacy and endorsement of the Democratic and Republican parties and their candidates, and wrongly and improperly conveys to the public an aura of illegitimacy on the Green Party, its candidates and platform.

54. Plaintiffs have been damaged thereby, including but not limited to loss of opportunity to equally address the voters of Illinois, apparent opposition by civic leaders and publicly funded broadcasters in the Chicago land area, the false and unfounded perception advanced by the Defendants that Plaintiffs are somehow not legally qualified for office, and otherwise publicly opposed by Defendants in the eyes of Illinois voters and the public at large.

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**COUNT IV- DEPRIVATION OF RIGHTS UNDER THE FIRST
AND FIFTH AMENDMENTS TO THE U.S. CONSTITUTION**

55. Plaintiffs repeat, re-allege and incorporate by reference, the allegations in aforementioned paragraphs (including the "Facts" section) with the same force and effect as if herein set forth.

56. This Count lies against Daniel J. Schmidt, as officer of WTTW, a member of the Public Broadcasting System and recipient of funds from the Corporation for Public Broadcasting.

57. All of the above-described wrongful acts served to deny Plaintiffs their rights guaranteed under the U.S. Constitution and State of Illinois Constitution.

58. WTTW is a member and holds equity in the Public Broadcasting System.

59. Historically, the Corporation for Public Broadcasting has received 15% to 20% of its annual operating revenue from Federal sources and 25% to 29% from State and local taxes. *See Public Broadcasting Revenue, Fiscal 2005, attached hereto.*
60. More specifically, revenue sources for public television and radio in the United States is sourced thusly: Subscribers, Business, CPB Appropriation, State Governments, All Other, State Colleges and Universities, Foundations, Local Governments, Federal Grants and Contracts, Private Colleges and Universities, Other Colleges and Universities. *See Public Broadcast Revenue by Major Source, 1996-2006, attached hereto.*
61. Of the above categories, non-tax based, private sources (Business, Foundations, Private Colleges and Universities) account for 24.6% of funding. *Id* at page 4.
62. Therefore, over 75% is paid for by the public, or as PBS itself acknowledges, “Viewers like You”, either through taxes or subscription or other means, like promotional auctions held on PBS affiliates.
63. Thus, Defendant Schmidt’s position is funded by the public, in that it is dependent on public funds, state and federal, for its continued viability.
64. Defendant Schmidt’s position involves administering the national policy announced in the Corporation for Public Broadcasting Act.
65. Defendant Schmidt therefore, is a government actor for purposes of this lawsuit.
66. Thus, when Defendant Schmidt barred the Green Party, its candidates and ideas, and excluded the Plaintiffs from WTTW’s debate and political forum, Defendant Schmidt acted under color of law.
67. When Defendant Schmidt violated the Internal Revenue Code, the Communications Act of 1934, and the Corporation for Public Broadcasting Act, as described *supra*, by excluding Plaintiffs from WTTW’s debate and political forum, he purposefully deprived the Plaintiffs of Due Process and Equal Protection under the Fifth Amendment.
68. The Fifth Amendment, while not containing an express Equal Protection clause, has been found to incorporate Equal Protection principles. See [Bolling v. Sharpe 347 U.S. 497](#) (1954).

69. The First Amendment guarantees a citizen's right to freedom of speech.
70. When Defendant Schmidt barred the Green Party, its candidates and ideas, and excluded the Plaintiffs from WTTW's debate and political forum, Defendant Schmidt purposefully retaliated against Plaintiffs for their protected speech.
71. Plaintiffs were proximately harmed thereby, including but not limited to loss of opportunity to equally address the voters of Illinois, apparent opposition by civic leaders and publicly funded broadcasters in the Chicago land area, the false and unfounded perception advanced by the Defendants that Plaintiffs are somehow not legally qualified for office, and otherwise publicly opposed by Defendants in the eyes of Illinois voters and the public at large.
72. The conduct of the defendants was the proximate cause and substantial factor in causing Plaintiffs' harm.

WHEREFORE, Plaintiffs seek judgment against Defendants, and seek a TRO, Permanent Injunction and Declaratory Relief; judgment against Defendants for actual, general, special, compensatory damages in the amount of \$400,000, and further demand judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$100,000, plus the costs of this action, including attorneys' fees, and such other relief deemed to be just and equitable to remedy the censorship, breach of public trust, and harm that has been done by the Defendants.

Respectfully Submitted,

s/ _____
Christopher D. Kruger, Counsel for Plaintiffs

Plaintiffs hereby make a jury demand.

Plaintiff, Rich Whitney, by his signature below, swears that he has read the foregoing Complaint and has understood it to the best of his ability. He states that he is a licensed attorney in Illinois. He agrees, under penalty of law that based on his understanding of the Complaint, the contents are truthful, accurate, and are based on his best recollection of the facts described.

Plaintiffs' Signature: s\ Rich Whitney

Plaintiff, LeAlan Jones, by his signature below, swears that he has read the foregoing Complaint and has understood it to the best of his ability. He states that he is not a lawyer. He agrees, under penalty of law that based on his understanding of the Complaint, the contents are truthful, accurate and are based on his best recollection of the facts described.

Plaintiff's Signature: s\ LeAlan Jones

Plaintiff, Illinois Green Party, by its signature below, swears that it is authorized by the Illinois Green Party to execute this verification, and that Phil Huckelberry is its authorized agent, that he has read the foregoing Complaint and has understood it to the best of his ability. He states that he is not a lawyer. He agrees, under penalty of law that based on his understanding of the Complaint, the contents are truthful, accurate, and are based on his best recollection of the facts described.

Plaintiff's Signature: s\ Phil Huckelberry, as Chair of Illinois Green Party

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