



November 3, 2018

VIA EMAIL TO CELA@FEC.GOV

Office of Complaints Examinations
and Legal Administration
Attn: Kathryn Ross, Paralegal
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

RE: MUR 7514

Dear Ms. Ross:

I represent Mike Kelly for Congress (the "Campaign" or my "Client") in the above referenced matter. I am writing in response to your letter, dated October 22, 2018. On behalf of my Client, I respectfully request that the Office of Complaints Examinations and Legal Administration recommend that no action against the Campaign be taken in this matter.

This matter was raised in response to a complaint filed by Ebert Beeman for Congress (the "Beeman Campaign"), a candidate committee organized to raise and spend money on behalf of Ebert Beeman ("Beeman"), the Libertarian candidate for Congress in PA-16. On October 8, 2018, Mercyhurst University ("Mercyhurst") hosted a candidate debate (the "Debate") in partnership with WJET/Nexstar Media ("Nexstar") and the Manufacturer and Business Association of Erie ("MBAE"), and together with Mercyhurst and Nexstar, the "Debate Sponsors". Representative Kelly and Ron DiNicola ("DiNicola"), the Democratic candidate for Congress in PA-16, were invited to participate in the Debate. Pursuant to the objective and pre-

established Nexstar debate criteria¹, Beeman was not invited to participate in the Debate. In its complaint, the Beeman Campaign alleges that by excluding Beeman from the Debate, the Debate Sponsors made an illegal in-kind contribution to the Campaign and DiNicola.

¹ “Nexstar Broadcasting Inc. is committed to hosting fair and open debates among qualified candidates as part of the Company’s mission to inform the public and assist voters in making important electoral decisions. To determine who is a qualified candidate, the Company has adopted the following objective and non-discriminatory criteria to govern which candidates are eligible to participate in Company-sponsored debates. In order to be eligible to participate, a candidate must comply with all sections of this policy.

1. A candidate must be legally qualified and (x) listed on the ballot for the office the candidate is seeking or (y) be a write-in candidate who meets all of the legal qualifications required by the federal, state or municipal government for the office being sought and has filed the appropriate papers for write-in status.

2. A candidate must have publicly announced his or her candidacy in a public forum. For the purposes of this section, “public forum” includes an announcement of candidacy on the Internet.

3. A candidate must be actively campaigning for election in the jurisdiction he or she is seeking to represent for the office he or she is seeking. To meet the definition of an active campaign, a candidate must have all of the following:

a. A campaign headquarters with a paid and/or volunteer staff that is open to the public during business hours. For the purposes of this subsection, a campaign headquarters may not be a private residence, but may be a business address used primarily for non-campaign purposes; and

b. A campaign phone line; and

c. A publicized, dedicated candidate-specific website or web page; and

d. Planned in-district appearances or invitations to appear and/or speak at public gatherings; and

e. Monetary contributions and a campaign treasurer; and

f. Campaign literature; and

g. Press coverage identifying the candidate as a candidate in the current election by at least eight unique news reports in media (e.g. newspapers, TV, cable news, radio, or online news websites that are recognized by local and/or national media).

4. If a candidate meets at least five but not all of the requirements in Section 3 above (and meets the requirements in Section 5 below) and can show either:

a. He or she has received a minimum of 5 percent for a primary election, or 10 percent for a general election, support in an established, professionally conducted nonpartisan poll without taking the survey’s margin of error into account or

b. The percentage of votes cast for the candidate in a previous election within the four years immediately preceding the current election exceeds a minimum of 20 percent of votes for the same office or a comparable office, the candidate is eligible to participate in the debate.

5. In addition to the requirements of Sections 1-4 inclusive, a candidate for a state or federal office must have reported, on official forms filed with the appropriate election authority, accepting at least \$50,000 in monetary, as opposed to in-kind, campaign contributions, at least 25 percent of which must be raised from in-state constituents. For local offices, a candidate must have reported, on official forms filed with the appropriate election authority, having accepted at least \$15,000 in campaign contributions.

6. Nexstar Broadcasting Inc. and its affiliates, employees, agents and servants shall not guarantee to any candidate or candidate’s campaign, verbally or in writing, that the candidate will be included in a debate until the requirements of this policy, and each of them, have been satisfied to the satisfaction of Nexstar Broadcasting Inc. and its

11 CFR § 110.13 governs the selection criteria for candidate debates. The statute states, in relevant part, that “[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.”² In 2017, the Federal Election Commission (the “Commission”) issued a commission disposition, declining to initiate rulemaking to change debate sponsor criteria.³ The Commission concluded that it had no “statutory basis for regulating the number of candidates who participate in debates, and the merits or drawbacks for such increased participation are policy questions outside the Commission’s jurisdiction.”⁴

The Federal Election Campaign Act prohibits corporations from making contributions, including “any gift, subscription, loan, advance, or deposit of money or anything of value...for the purpose of influencing any election for Federal office.”⁵ A thing of value may include “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services”⁶ In-kind contributions are considered things of value.⁷

The Beeman Campaign’s claim that Beeman’s exclusion from the Debate necessarily results in an illegal corporate in-kind contribution to my Client and DiNicola’s campaign committee is entirely without merit. This is not a situation where a corporation has provided a better rate for a political committee, thus resulting in an illegal inkind contribution. In fact, the Commission has noted that a committee’s “purchase of goods or services at a discount does not result in a contribution if the discounted or complimentary goods were available to others on equal terms or as part of a pre-existing business relationship.” Advisory Opinion 1994-10 (Franklin National Bank). Here, there was no discount and no preferential treatment; the bar to qualifying for the Debate was the same for all candidates.

The Debate Sponsors organized and hosted the Debate on October 8, 2018. Nexstar extended invitations to congressional candidates in PA-16 pursuant to a pre-determined and objective criteria. Beeman did not qualify based on the Nexstar criteria. By properly extending invitations to my Client and DiNicola, the Debate Sponsors did not provide their campaigns with a good or service without charge or at a lesser charge, they simply provided a hosted platform for significant candidates to engage in a debate. The Beemer Campaign’s attempt to equate a debate

² 11 CFR § 110.13(c)

³ 82 Fed. Reg. 15468 (March 29, 2017)

⁴ *Id.*, Commission disposition of debate rulemaking (2017)

⁵ 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a); see also 2 U.S.C. 441b(a); 2 U.S.C. 441b(b)(2); 11 CFR 114.2(b)(1)

⁶ 11 CFR 100.52(d)(1)

⁷ *Id.*

stage with an illegal corporate contribution is meritless, and its broader policy goal of leveling the playing field through debate invitations is misplaced. Certainly there is a time and place for a policy discussion regarding minor party electoral access, but as the Commission itself has stated, such policy matters are “outside the Commission’s jurisdiction.”⁸

Because the Debate Sponsors properly extended invitations to candidates that qualified based on a pre-defined, objective debate criteria, and because the Debate Sponsors did not offer any discounts or improper preferential treatment to my Client, the Office of Complaints Examinations and Legal Administration should recommend that no action against the Campaign be taken in this matter. Please do not hesitate to contact me with any further questions.

Sincerely

A handwritten signature in black ink, reading "Elizabeth C. Roggio". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Elizabeth C. Roggio, Esq.
Counsel for Mike Kelly for Congress



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Statement of Designation of Counsel

Provide one form for each Respondent/Witness
Note: You May E-Mail Form to: CELA@fec.gov

CASE: MUR 7514

Name of Counsel: LIZ ROGGIO

Firm: KLEINBARD LLC

Address: 1717 ARCH ST, 5th FL
PHILADELPHIA, PA 19103

Telephone: (267) 443-4107 Fax: ()

EMAIL:
LROGGIO@
KLEINBARD.
COM

The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/30/18
Date

Ann Coleman
Signature

Treasurer
Title

RESPONDENT: Mike Kelly for Congress
(Committee Name/Company Name/Individual Named In Notification Letter)

MAILING ADDRESS: PO Box 476
Lyndora PA 16045

Telephone:(H): 724-712-1243 (W): 724-72-1243

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person receiving the notification or the person with respect to whom the investigation is made.