

OFFICE OF
GENERAL COUNSEL

BEFORE THE UNITED STATES FEDERAL ELECTION COMMISSION

MUR# 7515

2018 OCT 16 PM 1:58

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THE PARTIES:

Complainant Neal Dikeman for Senate is the principal campaign committee supporting US Senate candidate Neal Dikeman's 2018 run for US Senator (Texas). The mailing address for Neal Dikeman for Senate is PO Box 19088, Houston, TX 77224. The complainant will be referred to as "Neal Dikeman for Senate" throughout this letter.

Respondent CNN is an American news-based pay television channel owned by Turner Broadcasting System, Inc. Turner Headquarters are located at One CNN Center, Atlanta, GA 30303. This respondent will be referred to as "CNN" throughout this letter.

Respondent Beto for Texas is the principal campaign committee supporting US Senate candidate Beto O'Rourke's 2018 run for US Senator (Texas). The mailing address for Beto for Texas is PO Box 3628, El Paso, TX 79923. This respondent will be referred to as "Beto for Texas" throughout this letter.

COMPLAINT:

It is our understanding that CNN has been organizing a series of high-profile staged candidate debates which CNN categorizes on their Facebook page as featuring "three of the most closely watched races of the 2018 midterm elections" and has been promoting this upcoming programming to a national audience. This series in planning originally appears to have included a debate between US Senator Ted Cruz and US Congressman Beto O'Rourke, both candidates for the US Senate, Texas. The debate was proposed to occur on October 18, 2018 in McAllen, TX and be moderated by CNN's Dana Bash, and be town hall style. Recent press including CNN's own indicates that Senator Cruz has declined to participate in the planned debate. Given that 11 C.F.R. § 110.13 (b)

requires that a staged candidate debate includes at minimum two candidates, and separately requires use of pre-existing qualifications for inclusion, this planned event on October 18, 2018 in McAllen, TX no longer qualifies a staged candidate debate. CNN continues to plan, sponsor and moderate an event but has modified the format of the event such that it will be a town hall which features only Congressman O'Rourke.

Given that if a program does not fall within the conditions for a multi-candidate debate, 11 C.F.R. § 100.73 (b) generally requires news stories, commentary or editorial by the media to be part of a general pattern of campaign related news accounts that give reasonably equal coverage to all opposing candidates, if the event on October 18, 2018 in McAllen, TX is not a debate, the program must be compliant with 11 C.F.R. § 100.73 (b) to not be considered a prohibited contribution. It appears that this is not the case, including for reasons included in the FACTS and EVIDENCE below. The basis of this complaint includes that CNN's sponsorship, moderation and broadcasting of a one-hour prime-time town hall for a single US Senate candidate is outside of their general pattern of reporting campaign related news and as such this constitutes a political contribution. Given that CNN is a channel owned by Turner Broadcasting System, Inc., a corporation, such a contribution would be prohibited.

The 10/12/2018 screenshot below clearly illustrates CNN's intent.

https://www.cnn.com/2018/10/09/politics/cnn-midterm-debates-town-hall/index.html



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CONGRESS

SUPREME COURT

2018

KEY RACES

THE FORECAST

Washington (CNN) — CNN will host a debate and a town hall for several highly contested races ahead of the 2018 midterm elections, the network announced Tuesday.



The Florida debate and a town hall originating from the US-Mexico border will air live in prime time across all CNN platforms and be translated into Spanish for CNN en Español viewers.



On Thursday, October 18, CNN Chief Political Correspondent Dana Bash will moderate a live, one-hour town hall with Democratic Rep. Beto O'Rourke, who is running for US Senate, at 7 p.m.



ET/6 p.m. CT at the McAllen Performing Arts Center near the US-Mexico border. GOP Sen. Ted Cruz's campaign initially accepted CNN's invitation to participate but later declined, a network official said.



Further, CNN did not reduce the length of time associated with the planned broadcast, nor make any attempt to contact any other candidates on ballot, nor take other actions to our knowledge adequate to have allowed the debate to remain in compliance as a multi-candidate or bring it into line with its general pattern of news coverage, and in fact appears to have taken steps to do the opposite.

To our understanding, the fair market value of this prohibited contribution would be the largest single FEC campaign finance violation complaint ever, larger than any single FEC campaign finance penalty assessed, the largest prohibited corporate contribution ever found and in addition, this single prohibited contribution is both large enough and high profile enough that it could well affect the outcome of the race. As such we believe it merits special consideration from the FEC and even greater care and diligence in investigation than normal.

Further, while other complaints of violations with similar legal theories have been made by other parties in other circumstances, this situation appears to constitute a unique set of facts and scale, where such

combination of facts and scale has to our knowledge never been before the FEC.

FACTS:

Certain of those facts which both individually and taken together make the situation described in this complaint unique, included in no particular order:

- i) that a debate which might have met the criteria for a staged multi-candidate debate was by CNN planned and one party subsequently declined,
- ii) that CNN chose to continue with the event but knowingly changed, and even actively marketed the change, the multi-candidate format to a single candidate format benefiting only one candidate,
- iii) that another party on the ballot, Neal Dikeman was available, but CNN and Beto for Texas made no effort to contact or include Dikeman to attempt to remain qualified as a staged candidate debate, despite an offer from Dikeman to participate,
- iv) that no inclusion criteria were prior published or communicated to Dikeman,
- v) that CNN did not reduce the time of event or change the format to be in line with other typical CNN coverage,
- vi) that CNN in fact by continuing with the single coverage, effectively doubled the coverage time for one candidate
- vii) that CNN has never written any articles mentioning Nominee Dikeman's campaign
- viii) that the format itself was so unique as to be covered by other news sources,
- ix) that CNN and Beto for Texas had prior notification of the risk of this violation, and
- x) that the monetary and commercial value of the event is unprecedented in size and scope.

EVIDENCE:

Selected evidence of the degree to which a CNN-sponsored, moderated and broadcast one-hour prime time town hall featuring a single Senate

candidate is a step-out from CNN's general pattern of reporting campaign related news includes as follows:

- 1) CNN's own reporting that CNN's original programming intent for October 18 in McAllen was as a multi-candidate debates on important and highly contested races, not a single-candidate town hall, and was part of a series of multi-candidate debates.
- 2) CNN is not doing a show of this type (single-candidate hosted and moderated one-hour town hall for a Senate candidate) for any other Senate candidate this cycle.
- 3) Comparing this program to what is normally understood to be general media coverage of a Senate candidate indicates that a full hour of continual prime time coverage, particularly including hosting, moderating, and promoting the event, is far beyond normal for CNN or others.
- 4) Senator Cruz declining to participate in the CNN-sponsored debate did not result in CNN changing the length of time CNN allotted to the planned program.
- 5) CNN's decision to provide the full hour to Congressman O'Rourke following Senator Cruz's decline effectively doubled the coverage amount allotted to Congressman O'Rourke, which appears on its own to be a clear step-out from normal practice for CNN, as well as for other debates by other hosts.
- 6) On CNN's own currently publically available promotional material, their treatment of the town hall featuring Congressman O'Rourke appears unique. Note that in this case a single-candidate town hall has been sandwiched between two multi-candidate debates and given equal visual treatment in CNN's own promotional material.
- 7) Press reports from media outlets beyond CNN recognize national scope and uniqueness of CNN's planned coverage (examples below)

The Monitor (McAllen, TX)

https://www.themonitor.com/news/local/article_647d0f9c-cc34-11e8-afaa-933ebdb5d298.html

Cruz Declines Town Hall, gives O'Rourke a National Forum

Fort Worth Star Telegram (Fort Worth, TX)

<https://www.star-telegram.com/news/politics-government/article219732670.html>

Ted Cruz Declines, so Challenger Beto O'Rourke Gets An Hour on National TV All By Himself



Follow

Leading up to midterm elections, CNN will host:

- Florida Senate Debate moderated by [@WolfBlitzer](#), 10/16 at 10p ET
- Texas Senate Town Hall moderated by [@DanaBashCNN](#), 10/18 at 10p ET
- Florida Governor Debate moderated by [@JakeTapper](#), 10/21 at 8p ET cnn.it/2Plxc3v

 A graphic titled 'CNN ELECTION 2018' with a dark background and a spotlight effect. It lists three events:

Day	Date	Time	Event
TUESDAY	OCT. 16 TH	10 ^P ET	THE FLORIDA SENATE DEBATE GOV. RICK SCOTT - SEN. BILL NELSON
THURSDAY	OCT. 18 TH	10 ^P ET	TEXAS SENATE TOWN HALL REP. BETO O'ROURKE
SUNDAY	OCT. 21 ST	8 ^P ET	FLORIDA GOVERNOR DEBATE MAYOR ANDREW GILLUM - REP. RON DESANTIS

10:58 AM - 9 Oct 2018

Published 9, Oct, 18, noted on 12, Oct 18.

Outside of the FEC complaint process, US Senate – Texas Libertarian candidate Neal Dikeman has reached out to both respondents to register our request for inclusion in the debate, and concern that if the program were to go ahead as currently planned it may constitute a prohibited political contribution.

REQUEST FOR INVESTIGATION:

With the submission of this letter, we report a violation which we believe is about to occur, as opposed to a violation which has occurred, both of which we understand the FEC has jurisdiction over, but if the FEC determines that this complaint is more appropriately made following the violation, or certain of the facts or change or come to our knowledge between now and the event which we believe constitutes the violation, we reserve the right to either refile the complaint after the event, if and when the event occurs and if there is still cause to believe it would constitute a violation, or withdraw the complaint. We therefore request expedited consideration of this complaint as this is a matter which could be resolved through timely intervention, thereby preventing a violation. We suggest that multiple resolution options exist, including:

- 1) Cancellation of the planned town hall.
- 2) Rescheduling a staged candidate debate at a different time and location and ensuring the debate includes at least two candidates for US Senate, Texas. (or)
- 3) Proceed with the program as a staged multi-candidate debate at the planned time and location and with that debate including either or both Neal Dikeman and Senator Cruz.

Should the program proceed as a CNN-sponsored, moderated and broadcast single-candidate town hall and is found, as per this complaint to result in a prohibited political contribution, it would result in the O'Rourke campaign receiving a prohibited campaign contribution, which our understanding is required to be repaid. We submit that given the unprecedented scope, scale, corporation involved, potential impact on the race, the only reasonable remedy should include at a minimum that Beto for Texas should be required in that event to pay the fair market value of the service received from CNN with both respondents

remaining accountable for any additional civil penalties applicable. While it is difficult to pinpoint the fair market value of an in-kind hour of national prime-time news coverage by CNN given that such a service isn't generally procurable as well as the value of national advertising promoting the broadcasting, we estimate the fair market value of this at a minimum to well exceed \$10 mln.

Normally TV advertising fair market value would be priced based a number of factors, but could include an estimated number of viewers multiplied a CPM viewer/unit of time multiplied by the length of time of the advertisement, plus the cost of production, where the CPM would be based on factors including the quality of the time slot, demand for the advertising in the slot, and the network, as well as the length of time.

However, in this case this, the advertising and service offered is unique, unprecedented, would be in high demand, as such the fair market value of the in-kind contribution would be well in excess of even a typical advertising rate calculation. A few considerations that should be included when determining the fair market value.

1. Uniquely a solid hour block of advertising time is not generally made available for sale by CNN or any comparable network under at any price.
2. This timeslot is in prime evening time and is scheduled 3 weeks before a major election by the premier political news channel in the nation.
3. CNN is producing, marketing, moderating as well as hosting the event, and the event is clearly marketed as news, not advertising. Each of those items provides direct and incremental value as a service to the recipient above and beyond the advertising value and must be included in the calculation.
4. However, in addition, the fact that CNN, the premier global political news organization is producing, marketing, moderating, and hosting the event gives the advertiser a dramatic, and material credibility increase never afforded a normal advertiser, and beyond even that premium normally afforded to general run of the mill news coverage, which by itself would normally be worth several times the value/viewer of paid advertising.

5. The event is so valuable that CNN is advertising the event, and commenting on the unique format in its advertisements, something it does not normally do with single events, and further is advertising the event in non-Texas markets.
6. The event is so unique and valuable that numerous other news media found the existence of single candidate hour long format itself newsworthy. In fact, the additional news coverage by other networks and media sources of the event, which occurs at least in part because of the uniqueness of the format, and the credibility provided by CNN, could even be considered part of the fair market value.

We believe if CNN and the Beto for Texas campaign were to be found to have made and received a prohibited contribution, and subsequently argue that a lower value less than \$10 mln in FMV was warranted for the in-kind contribution, that the true reasonable test for FMV is CNN proposing to the FEC, and then publicly and commercially offering to provide, and offer a contract to any takers, of a similar time, length, and news service to any commercial customer for that lower number, which we believe CNN is unlikely to do, as we believe it would value this service at well in excess of \$10 mln. Regardless while we believe the FMV is materially higher than \$10 mln, we would be willing to stipulate that was an acceptable approximation of FMV for the purposes of this complaint.

In addition, we believe the promotion of the event itself, by CNN, is a prohibited campaign contribution by the same logic, which has already occurred, and should be subject to investigation. The degree to which that investigation is related to the complaint above should include consideration of whether the event itself proceeds, and the level of promotion by CNN of the event, and impact of that promotion on other media.

With regards to the above complaint and facts herein, this is limited to the best of our knowledge of the rules and the facts herein at the time of this submission.


Respectfully submitted,

Neal Dikeman

on behalf of Neal Dikeman for Senate
P.O. Box 19088
Houston, TX 77224

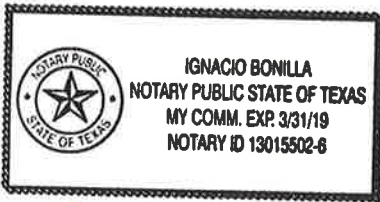
VERIFICATION

On behalf of complainant Neal Dikeman for Senate, Neal M. Dikeman hereby verifies that the statements made in the attached Complaint are believed to be true, within the limits of knowledge and information available at the time of writing.


Neal M. Dikeman

Sworn to and subscribed before me this 15th day of October, 2018.

Texas, Harris



 10/15/2018
Notary Public