

MUR # 7515

## ADDENDUM TO 10/15/2018 COMPLAINT LETTER

*Supplement*

This Addendum modifies and supplements the complaint letter notarized and mailed to the FEC Office of General Counsel on 10/15/2018 involving the following parties.

The rationale for this Addendum is that the initial letter described a material violation the complainant believed was about to occur. The violation has now occurred and additional information is provided.

2018 OCT 24 PM 1:14

OFFICE OF  
GENERAL COUNSEL

## 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:

The initial complaint letter submitted described a material campaign finance violation that we believed was about to occur. This violation has now occurred as anticipated and there are now additional facts and evidence regarding this complaint which were not available at the time

the initial complaint was sent. The initial complaint was described as follows:

“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 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. 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 so far outside of their general pattern of reporting campaign related news that 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. See 52 U.S.C. § 30118(a). “

The complaint is amended to include that CNN did promote, plan, sponsor and nationally broadcast a one-hour town hall featuring a single Senate candidate, Congressman Beto O’Rourke, at the McAllen

Performing Arts Center on October 18, 2018. We have no reason to amend our original estimate of the scale and scope of the matter.

#### ADDITIONAL FACTS

The initial complaint letter included the following facts:

#### “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 exemption criteria was 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 2 candidate format to a 1 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 within the debate exemption, despite an offer from Dikeman to do so,
- 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 the format itself was so unique as to be covered by other news sources,
- vii) that CNN and Beto for Texas had prior notification of the risk of this violation, and
- viii) that the monetary and commercial value of the event is unprecedented in size and scope.”

The original complaint is amended to include the following additional facts:

- i) that CNN’s national promotion of the town hall continued up until the event itself,

- ii) the event as described above occurred upon October 18, as planned and promoted,
- iii) CNN provided a written response from their SVP - Legal to Neal Dikeman for Senate referenced herein as Appendix 3,
- iv) that regarding the CNN Letter to Neal Dikeman for Senate:
  - a. Per this letter, CNN did not challenge nor refute our complaint basis that a one-hour long promoted, sponsored, hosted and national broadcast featuring a single Senate candidate is not a legitimate press function but rather a prohibited corporate campaign contribution because it significantly deviates in scope from what would be considered normal press coverage covered under the press exemption. Please note that the complainant takes as given and does not challenge the legitimacy of CNN as a press entity qualified to sponsor staged candidate debates.
  - b. Asserted that Dikeman was not included as a result of the application of relevant objective criteria, which is not the basis for the Complaint, but opens a possible additional complaint avenue and calls into question why such criteria would be relevant if CNN did not believe their event was a staged multi-candidate debate (see below).
  - c. In addition, CNN references as evidence of its use of objective criteria that a "poll recently conducted by CNN and published this week" and notes voters were given a choice of "other" and that choice "failed to register". The referenced poll, attached, does not actually include Dikeman's name as a question, even though he is one of only 3 on the ballot. In contrast to their assertion, using "other" in CNN's own poll, and further explicitly excluding the name and party of one of only 3 candidates on the ballot, then asserting use of an incomplete and biased poll in consideration of Dikeman's inclusion, serves as prima facie evidence that CNN itself was actually conducting and publishing incomplete or biased polling prior to the debate, did NOT use pre-existing objective criteria regarding Dikeman's campaign to determine inclusion, that CNN's senior leadership and legal department knew these facts

ahead of the debate, (Appendix 4). Further, while Dikeman has received coverage from all other major networks including Fox, NBC, ABC, CBS, CNN is the sole major network to have notably had no contact with, ignored all contacts from, the Dikeman campaign and provided zero coverage at any time in the race. This calls into question whether CNN's referenced biased poll design and use above is not isolated but part of a pattern of biased behavior, and stands as further evidence CNN did not use preexisting objective criteria.

- d. Asserted this event was not a debate but instead a "townhall interview", in conflict with the response above, and in conflict with the Cruz Campaign Letter referenced herein Appendix 1.
- e. Cites MUR 6131 from 2009 to support CNN's position calling that case "identical circumstances" however at a minimum misstates facts of that case in the letter as well as leaves out material and relevant differences between the two complaints including:
  - i. that "the incumbent candidate dropped out of the debate", which is clearly at odds with the referenced MUR 6131 which states the opposing candidate never agreed to any debates at all, and unlike the October 18, 2018 event,
  - ii. The broadcaster in question convincingly demonstrates in MUR 6131 that the broadcast was in line with normal press coverage, which is the basis for our complaint and which CNN has not refuted nor responded to with any evidence,
  - iii. The broadcaster in question in MUR 6131 had numerous discussions with the Libertarian complainant ahead of time with regards to the broadcast format and scope, in contrast CNN never reached out nor responded to the Dikeman campaign at any time on any subject with the exception of the letter from their legal team Appendix 3,

- iv. MUR 6131 describes an event which was dramatically different from the CNN event in scope, reach, degree of national significance, format, number of participants beyond the candidate included, length of time, and length of time the candidate was the focal point of the event.
- v. CNN's argument that the Libertarian candidate in the referenced complaint was denied on the basis of objective criteria also is at odds with CNN's above referenced assertion their event on October 18, 2018 was not intended as a staged multi-candidate debate, as that criteria only applies to a staged multi-candidate debate. Of note, neither our party affiliation nor our exclusion from participation in the event is the original basis of our complaint in this case, though this opens an potential avenue for additional complaint.
- v) that supporting evidence emerged that the originally scoped CNN event was indeed a staged multi-candidate debate (Letter from Cruz Campaign, Appendix 1),
- vi) that supporting evidence emerged that indicates that Beto for Texas and CNN apparently discussed together and took an action to decline the opportunity to turn this event back into a staged multi-candidate debate with either Senator Cruz or Mr. Dikeman after receiving notice of our concern, and after doing so, CNN opted to proceed. (Letter from CNN to Cruz Campaign, Appendix 2)
- vii) that at least one remedy remained fully open to the Respondents up until the moment the event began, given that a Senate candidate on the ballot in the same race as Congressman O'Rourke, Neal Dikeman, was available on premises at the McAllen Performing Arts Center on October 18th at the time of the CNN town hall and the O'Rourke campaign was notified in advance that he would be present and available to participate in the town hall,
- viii) that our letter sent to the Beto for Texas campaign received no response,

- i. that both Respondents were aware of the complaint letter filed by Neal Dikeman for Senate including suggested remedies prior to the town hall as indicated by the fact that a formal letter was sent to Neal Dikeman for Senate by CNN's legal team prior to the date of the event (Appendix 3), read receipts were received on the certified letter, event venue staff at the door were aware of Mr. Dikeman's planned attendance, and senior Beto for Texas staff Joe Moody, Political Director, verbally confirmed their awareness to Mr. Dikeman.

#### EVIDENCE:

The initial complaint letter included 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 as follows:

- a. 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.
- b. CNN is not doing a show of this type (single-candidate moderated one-hour town hall for a Senate candidate) for any other Senate candidate this cycle.
- c. 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, including moderating the discussion, is far beyond normal for CNN or others.
- d. Senator Cruz declining to participate in the CNN-sponsored debate did not change the length of time CNN allotted to the planned program.
- e. 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.

- f. 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.
- g. Press reports from media outlets beyond CNN recognize national scope of CNN's planned coverage (examples below)

The Monitor (McAllen, TX)

[https://www.themonitor.com/news/local/article\\_647d0f9c-cc34-11e8-afaa-933ebdb5d298.html](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](http://cnn.it/2Plxc3v)

 A graphic titled "ELECTION 2018" with the CNN logo. It lists three events:
 


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

10:58 AM - 9 Oct 2018

The initial complaint letter is amended to include additional 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 as follows:

- a. The details of the event format that actually occurred provide further evidence that this was well beyond the scope of what is normally considered press coverage.
  - a. CNN was host and organizer of the event.
  - b. CNN excluded non-CNN media from the inside of the forum which is not typical were this part of a normal pattern of news coverage of campaign events, and is directly to CNN's benefit. This included at least 4 local TV journalists present at the event.
  - c. At the McAllen Performing Arts Center on October 18, 2018, media organizations besides CNN were restricted from coming within a certain distance of the venue before, during and immediately after the town hall, and were given access to limited and delayed CNN coverage for use in their reports.
  - d. CNN controlled ticket access both ahead of time and at the event, and controlled ticket access differentially on a political basis, including permitting access to a senior representative of Mr. Cruz's campaign, Ron Nerhing as per multiple media reports, and directly denied Mr. Dikeman, or one of his senior representatives, or anyone associated with his campaign, access to the event.
  - e. Statements from local media indicate they were told the event was "not open to the public", and they broadcast as such.
  - f. Statements from audience members indicate the event venue was not full, though individuals present were denied entry on the basis of both lack of tickets, and separately that the event venue was full.
  - g. Individuals from Mr. Dikeman's campaign as well as others were denied tickets ahead of time, or received no response from CNN on ticket requests, and then the lack of tickets was used at the venue as a reason for denial of entry.

- h. Congressman O'Rourke and his senior staff were informed by phone and in person, that Mr. Dikeman would be and was present by both event venue and senior campaign staff on the day of, and made specific plans to exclude him and his senior staff from attendance.
  - i. Additional, testimonial, videographic, and electronic evidence supporting these facts is available upon request.
- b. Additionally, per a 10/15/2018 letter from CNN to the Cruz campaign (Appendix 2), CNN did offer Cruz the opportunity to participate in a town hall on October 18 but unless CNN had a back-up venue booked on the off-chance that the Cruz campaign accepted the CNN offer, it can be assumed that had the Cruz campaign accepted, the venue would have been McAllen Performing Arts Center and the attendee list which manifested on October 18. It is unclear the degree to which Beto for Texas had influence over the town hall attendee list.
- c. Both attendee statements and media coverage indicate that CNN continued up until and during the event to call out that Senator Cruz had declined and was not present, providing additional indication of CNN's original intent as a staged multi-candidate debate
- d. That there can be no question that in the promotional materials that CNN continued to run nationally up until the time of the event CNN:
  - a. makes no pretense of reasonably equal treatment of all attendees on the ballot (example event promotion below), and
  - b. in fact obfuscate the fact that the event was a CNN hosted, controlled, and moderated event, not a Beto for Texas or non-CNN event being covered by CNN.



**THE TEXAS SENATE TOWN HALL**  
REP. BETO O'ROURKE

**CNN LIVE THURSDAY 7P ET**

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**THURSDAY 7P ET**

**LIVE ON CNN**  
**THE TEXAS SENATE TOWN HALL**  
It's the Senate race everybody is talking about: Can Democrat Rep. Beto O'Rourke beat Senator Ted Cruz and turn Texas blue? Dana Bash moderates.

REQUEST FOR INVESTIGATION:

With the submission of this Addendum, we report a material violation which has now occurred versus one about to occur. The resolution options suggested in our initial complaint letter no longer exist.

The rationale behind our request for investigation remains in place and with greater urgency.

Respectfully submitted,

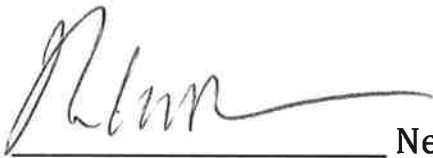
A handwritten signature in black ink, appearing to read 'Neal Dikeman', is written over a horizontal line. The signature is fluid and cursive.

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 Addendum are, upon information and belief, true.



Neal M. Dikeman

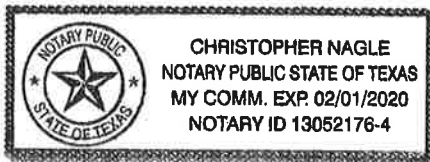
Sworn to and subscribed before me this 22 day of October, 2018.

*Harris County, Texas*

Notary Public



*10/22/2018*



APPENDIX 1:

<https://twitter.com/PatrickSvitek/status/1052219066885189632>



October 14, 2018

Mark Preston  
CNN, Executive Director of Political Programming

Dear Mark,

We request for the town hall that your network has arranged with Beto O'Rourke be formatted as a debate with U.S. Sen. Ted Cruz. As you are aware, CNN originally offered to host a debate between the two candidates. Once our campaigns began negotiating the number of debates and hosts, we proposed that CNN host the town hall-format debate. O'Rourke's campaign declined. Your network subsequently offered two separate town halls with each candidate.

Beto O'Rourke may desire a national platform by himself to raise his profile and energize his base outside of Texas, but as for the Cruz campaign, if we are going to spend an hour on national cable news discussing and debating the issues important to Texas voters, we believe it should be on a stage with our opponent.

We eagerly await your response and are ready to be in McAllen the evening of October 18th for a town hall debate.

Sincerely,

Jeff Roe  
Ted Cruz for Senate

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APPENDIX 2:

<https://twitter.com/PatrickSvitek/status/1052219066885189632>



CNN Worldwide

October 15, 2018

Mr. Jeff Roe  
Ted Cruz for Senate  
815 A Brazos  
Austin, TX 78701  
VIA Email: [jroe@axiomstrategies.com](mailto:jroe@axiomstrategies.com); [Catherine@tedcruz.org](mailto:Catherine@tedcruz.org)

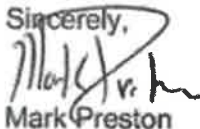
Mr. Roe –

Thank you for you contacting CNN Sunday night to express interest in converting Thursday's town hall with Rep. Beto O'Rourke into a town hall debate with Sen. Ted Cruz's participation.

As you know, CNN extended Sen. Cruz an invitation last month to hold his own town hall on the same evening. This invitation was extended to both candidates after each declined, at separate times, CNN's invitation to participate in a town hall debate. Rep. O'Rourke did accept the invitation to participate in Thursday's town hall, which the senator declined.

Mr. Roe, if Rep. O'Rourke's campaign agrees to Sen. Cruz's request for a format change, CNN will honor this joint decision and convert the event into a debate that will feature the only two candidates registering in the polls. If you are unable to reach an agreement with Rep. O'Rourke's campaign, CNN will, again, offer Sen. Cruz a town hall on Thursday.

Mr. Roe, I look forward to hearing from you.

Sincerely,  
  
Mark Preston

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APPENDIX 3:





ONE CNN CENTER, Atlanta, GA 30303-2782

DAVID G. VIGILANTE  
 Senior Vice President, Legal  
 (404) 422-4762  
 FAX: (404) 478-1177  
 david.vigilante@cnn.com

October 17, 2018

Sent via Regular Mail, & Electronic Mail

Mr. Neal Dikeman  
 P.O. Box 19088  
 Houston, TX 77224

Re: CNN Debate/Townhall

Dear Mr. Dikeman:

This letter is in response to your October 15, 2018 letter.

First, as you may be aware, the relevant objective criteria has long established that there are only two viable candidates for Texas' 2018 US Senate race -- Senator Ted Cruz, Republican, and Congressman Ben O'Rourke, Democrat. They are the only two candidates who registered in any of the polls that meet CNN's polling standards. No other persons registered in any poll conducted that is recognized by CNN. Indeed, in a poll recently conducted by CNN and published this week when respondents were given the option to choose a candidate "other" than Cruz and O'Rourke, that choice failed to register.

Second, your allegation that CNN is making unlawful and in-kind campaign contributions to the Ben O'Rourke campaign by conducting a town hall interview with him is simply wrong. CNN's activities here fall squarely within the "press exemption" to campaign finance laws. To claim the "press exemption", the FEC applies a two-part test: (1) whether the entity engaging in the activity is a "press entity" within the FEC's regulations, and (2) whether the entity is owned or controlled by a political party, committee, or candidate. Here, there is no doubt that CNN qualifies as a press entity as a worldwide 24-hour news and information television and internet outlet, and CNN is not owned or controlled by a political party, committee, or candidate. When an entity like CNN qualifies under the FEC's two-part test, it is exempt from the FEC Act's restrictions on contributions and expenditures when performing a legitimate press function, and any complaint to the contrary is without merit.

Indeed, in 2009, the FEC denied a complaint made by the Libertarian candidate for the US House of Representatives in Missouri under almost identical circumstances as you complain of here. There, a Missouri public television station planned a debate between the incumbent Republican Representative and his Democratic challenger. The Libertarian candidate previously requested to participate, but was denied based on objective criteria. When the incumbent candidate dropped out of the debate, the television station held an interview with the other candidate originally invited to the debate. The Libertarian candidate complained, but the FEC unanimously found in favor of the television station under the press exemption. See FEC MUR 6131 Public Television 19, Inc. (June 18, 2009).

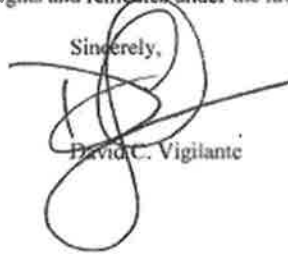
3534 147 11

A Time Warner Company

Neal Dikeman  
October 17, 2018

CNN respectfully requests that you withdraw any FEC complaint you may have filed. This letter is sent without waiving any of CNN's rights and remedies under the law.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Vigilante". The signature is stylized with several loops and a long horizontal stroke extending to the right.

David C. Vigilante

## APPENDIX 4:

Source: [http://cdn.cnn.com/cnn/2018/images/10/16/rel1\\_tx.pdf](http://cdn.cnn.com/cnn/2018/images/10/16/rel1_tx.pdf)

1 Braxton Way Suite 125 Glen Mills, PA 19342  
 484-840-4300 [www.ssrs.com](http://www.ssrs.com)



The study was conducted for CNN via telephone by SSRS, an independent research company. Interviews were conducted from October 9, 2018 to October 13, 2018 among a sample of 1,004 respondents who live in Texas. The landline total respondents were 386 and there were 618 cell phone respondents. The margin of sampling error for total respondents is +/-3.8 at the 95% confidence level, for results among the 862 registered voters it is +/-4.1, and for results among the 716 likely voters it is +/-4.5. The design effect is 1.54. More information about SSRS can be obtained by visiting [www.ssrs.com](http://www.ssrs.com).

## EMBARGOED FOR RELEASE: Tuesday, October 16 at noon

(Respondents who are registered to vote, N=862)

**Q1. If the election for U.S. Senate were held today and the candidates were Beto O'Rourke, the Democrat, and Ted Cruz, the Republican, who would you be more likely to vote for -**

**Q1a. As of today, do you lean more toward?**

### Q1/Q1a COMBO TABLE REGISTERED VOTERS

	Beto O'Rourke, the Democrat	Ted Cruz, the Republican	None of the above/Neither (vol.)	Other (vol.)	No opinion
<b>Registered Voters</b>					
October 9-13, 2018	45%	50%	2%	*	3%
<b>Likely Voters</b>					
October 9-13, 2018	45%	52%	1%	0%	2%