



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**Via U.S. Mail and Electronic Mail**

**Email:** [KSKeane@perkinscoie.com](mailto:KSKeane@perkinscoie.com);  
[ABranch@perkinscoie.com](mailto:ABranch@perkinscoie.com);  
[SReulbach@perkinscoie.com](mailto:SReulbach@perkinscoie.com)

**JUL 21 2020**

Kate Sawyer Keane  
Aria C. Branch  
Shanna M. Reulbach  
Perkins Coie LLP  
700 13th Street, NW  
Suite 600  
Washington, DC 20005-3960

RE: MUR 7515

Dear Ms. Keane, Ms. Branch, and Ms. Reulbach:

On October 22, 2018, the Federal Election Commission notified your client, Beto for Texas and Gwendolyn Pulido in her official capacity as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 30, 2020, the Commission found, on the basis of the information in the complaint, and information provided by you on behalf of your client, that there is no reason to believe that the Committee violated 52 U.S.C. § 30118(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

MUR 7515 (Beto for Texas)  
Letter Enclosing Factual and Legal Analysis  
Page 2

If you have any questions, please contact Adrienne C. Baranowicz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran". The signature is fluid and cursive, with the first name "Lynn" and last name "Tran" clearly distinguishable.

Lynn Y. Tran  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** CNN Broadcasting, Inc. MUR 7515  
Beto for Texas and Gwendolyn L. Pulido in her  
official capacity as treasurer

**I. INTRODUCTION**

The Complaint and the Supplemental Complaint (which are referred to collectively as the “Complaint”) filed by Neal Dikeman on behalf of Neal Dikeman for Senate, the principal campaign committee of the Libertarian candidate for the 2018 Senate race in Texas, allege that CNN Broadcasting, Inc. (“CNN”) made, and Beto for Texas and Gwendolyn Pulido in her official capacity as treasurer (the “Committee”) received, a prohibited in-kind corporate contribution when CNN aired a “town hall” interview with Beto O’Rourke, the 2018 Democratic candidate for Senate. CNN and the Committee respond that the press exemption contained in the Federal Election Campaign Act of 1971, as amended (the “Act”), covers the broadcast of the O’Rourke town hall and therefore CNN’s airing of the town hall did not result in a contribution to the Committee.

The Commission concludes that the press exemption covers the O’Rourke town hall and finds no reason to believe that CNN and the Committee violated 52 U.S.C. § 30118(a).

**II. FACTUAL BACKGROUND**

On October 18, 2018, CNN broadcast a one-hour-long town hall interview with O’Rourke in McAllen, Texas, that was moderated by CNN Chief Political Correspondent Dana Bash and featured audience members posing questions to O’Rourke.<sup>1</sup> CNN held the O’Rourke

---

<sup>1</sup> See Addendum to Compl. at 1 (Oct. 31, 2018).

1 town hall after negotiations between CNN, the O'Rourke campaign, and the campaign of Senator  
2 Ted Cruz, the Republican candidate, failed to produce an agreement between the two candidates  
3 to participate in a CNN-sponsored debate.<sup>2</sup> Although accounts differ as to the timing, CNN, the  
4 Committee, and the Cruz campaign all agree that after the candidates did not accept invitations to  
5 a debate, CNN offered to host separate town halls for O'Rourke and Cruz, and that CNN  
6 ultimately did not sponsor a debate between the Texas Senate candidates.<sup>3</sup> Instead, CNN aired  
7 the O'Rourke town hall and promoted the event alongside two CNN-sponsored debates: one  
8 between the candidates for the Florida gubernatorial race and the other between the candidates  
9 for the Florida U.S. Senate race.<sup>4</sup>

10 After CNN announced its decision to abandon its plans for a debate between Cruz and  
11 O'Rourke and proceed instead with a town hall interview of O'Rourke, Dikeman contacted CNN  
12 and the Committee and asked to be included in a debate.<sup>5</sup> Shortly thereafter, Dikeman filed his  
13 first complaint, which he would supplement with an addendum after CNN aired its town hall  
14 interview with O'Rourke.

15 Dikeman alleges that 11 C.F.R. § 100.73(b) requires all news stories to be part of a  
16 "general pattern of campaign-related news accounts that give reasonably equal coverage to all

---

<sup>2</sup> See Compl. at 5-6 (Oct. 16, 2018) (citing Anna Tinsley, *Ted Cruz declines, so challenger Beto O'Rourke gets an hour on national TV by himself*, FORT WORTH STAR TELEGRAM, (Oct. 9, 2018), <https://www.star-telegram.com/news/politics-government/article219732670.html>).

<sup>3</sup> See Addendum to Compl. at 11, Appx. 1, Appx. 2, Committee's Resp. at 2, fn. 11 (Jan. 30, 2019) (citing Brianna Provenzano, *Ted Cruz Declines to Participate in Televised Town Hall After Beto O'Rourke Turns Down Debate*, MIC.COM (Oct. 10, 2018), <https://mic.com/articles/191825/ted-cruz-declines-to-participate-in-televised-town-hall-after-beto-orourke-turns-down-debate#.4SLCjn0FR>); CNN's Resp. at 2 (Dec. 11, 2018).

<sup>4</sup> Compl. at 3, 6.

<sup>5</sup> *Id.* at 7; see also Addendum to Compl. at Appx. 3.

1 opposing candidates.”<sup>6</sup> As such, Dikeman argues that CNN’s coverage of the Texas senatorial  
2 race was inherently unequal because it only featured one of three Texas senatorial candidates.<sup>7</sup>  
3 As a result, the Complaint concludes that this inequity resulted in a prohibited contribution from  
4 CNN to the Committee. Dikeman also contends that the O’Rourke interview was a prohibited  
5 corporate contribution to the Committee in the form of broadcast time because it falls “outside of  
6 [CNN’s] general pattern of reporting campaign related news.”<sup>8</sup>

7 In a Supplement to the Complaint, Dikeman asserts nearly identical legal arguments but  
8 provides additional factual information concerning CNN’s role in hosting and organizing the  
9 O’Rourke interview and controlling the audience ticket access.<sup>9</sup> Dikeman also acknowledges  
10 that CNN did not air the initially contemplated debate.<sup>10</sup>

11 In its Response, CNN contends that the O’Rourke town hall qualified for the press  
12 exemption, stressing that “a media organization’s interview of a candidate, in any format, is  
13 wholly exempt from regulation under the Act and Commission regulations, and the First  
14 Amendment.”<sup>11</sup> CNN asserts that it has “interviewed thousands of candidates for public office in  
15 a wide variety of formats” and refers to a list of its town hall debates and interviews, which

---

<sup>6</sup> Compl. at 2.

<sup>7</sup> *Id.*

<sup>8</sup> See Addendum to Compl. at 9.

<sup>9</sup> Addendum to Compl. at 10.

<sup>10</sup> See Addendum to Compl. at 6. Dikeman also attaches a letter from Cruz’s campaign to CNN declining the town hall interview, discussing earlier plans for a debate, and expressing an interest in CNN returning to a debate “featuring the only two candidates registering in the polls” as well as a letter from CNN to Dikeman in which CNN referred to its “relevant objective criteria,” stressed that Dikeman was not registering in any recognized polls, and explained why CNN’s planned O’Rourke town hall interview fell within the press exemption. See Addendum to Compl. at Appx. 2, Appx. 3.

<sup>11</sup> CNN’s Resp. at 1.

1 includes several individuals who were not presidential candidates.<sup>12</sup> CNN acknowledges that it  
2 had considered hosting a debate between Cruz and O'Rourke, but ultimately did not do so.<sup>13</sup>  
3 CNN also notes that it had not considered including Dikeman in any contemplated debate  
4 because he was not "registering in the polls recognized as reliable by CNN's news  
5 department."<sup>14</sup>

6 Similarly, the Committee's Response asserts that the press exemption covers the  
7 O'Rourke town hall and that the town hall provided "the type of in-depth media coverage of a  
8 candidate's policies and positions that constitutes core political speech protected by the First  
9 Amendment."<sup>15</sup> The Committee contends that after Cruz withdrew from the debate, CNN  
10 "proceeded with the event as planned" by instead interviewing O'Rourke using the same town  
11 hall format as the proposed debate to ask a series of questions "that resulted in a substantive and  
12 in-depth discussion of O'Rourke's policy positions on immigration, healthcare, drug-related  
13 issues, and other topics."<sup>16</sup>

### 14 **III. LEGAL ANALYSIS**

15 The Act prohibits any corporation from making contributions or expenditures in  
16 connection with a federal election.<sup>17</sup> The Act also bars political committees from knowingly  
17 accepting corporate contributions.<sup>18</sup> "Contribution" includes "any gift, subscription, loan,

---

<sup>12</sup> *Id.* at 1-2, fn. 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Committee's Resp. at 3-5.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> 52 U.S.C. § 30118(a).

<sup>18</sup> *Id.* §§ 30116(f); 30118(a).

1 advance, or deposit of money or anything of value”<sup>19</sup> and “expenditure” includes “any purchase,  
 2 payment, distribution, loan, advance, deposit, or gift of money or anything of value.”<sup>20</sup>  
 3 The Act exempts from the definition of “contribution” and “expenditure” “[a]ny cost incurred in  
 4 covering or carrying a news story, commentary, or editorial by any broadcasting station . . .  
 5 unless the facility is owned or controlled by any political party, political committee, or  
 6 candidate.”<sup>21</sup> This exemption is called the “press exemption” or “media exemption.”<sup>22</sup> A  
 7 communication subject to this exemption is also exempt from the Act’s disclosure, disclaimer,  
 8 and reporting requirements.”<sup>23</sup>

9 To assess whether the press exemption applies to a communication, the Commission uses  
 10 a two-part test.<sup>24</sup> First, it asks whether the entity engaging in the activity is a “press entity” as  
 11 described by the Act and regulations.<sup>25</sup> Second, if the entity is a press entity, the exemption will  
 12 apply so long as it: (1) is not owned or controlled by a political party, political committee, or  
 13 candidate; and (2) is acting within its “legitimate press function” in conducting the activity.<sup>26</sup>  
 14 When determining whether the entity was functioning within the scope of a legitimate press  
 15 entity at the time of the alleged violation, the Commission considers two factors: (1) whether the

---

<sup>19</sup> *Id.* § 30101(8)(A)(i).

<sup>20</sup> *Id.* § 30101(9)(A)(i).

<sup>21</sup> 11 C.F.R. §§ 100.73, 100.132; see also 52 U.S.C. § 30101(9)(B)(i).

<sup>22</sup> Advisory Opinion 2008-14 (Melothe) at 3 (“AO 2008-14”).

<sup>23</sup> *Id.* at 7.

<sup>24</sup> Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

<sup>25</sup> *Id.* at 4. The Commission has explained that to determine when the term “press entity” applies, it “has focused on whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials.” AO 2010-08 at 7.

<sup>26</sup> See *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

1 entity's materials are available to the general public; and (2) whether they are comparable in  
2 form to those ordinarily issued by the entity.<sup>27</sup>

3         Additionally, the Commission's debate rules recognize that broadcasters may stage  
4 candidate debates in accordance with 11 C.F.R. §§ 110.13 and 114.4(f).<sup>28</sup> Although the term  
5 "debate" is not defined in the regulations, the Commission has explained that a "face-to-face  
6 appearance or confrontation by the candidates is an inherent element of a debate."<sup>29</sup> The debate  
7 regulations leave the structure of the debate to the discretion of the staging organization,  
8 provided that the debate includes at least two candidates, and the organization does not structure  
9 the debates to promote or advance one candidate over another.<sup>30</sup>

10         Commission regulations require debate staging organizations to use "pre-established  
11 objective criteria to determine which candidates may participate in the debate."<sup>31</sup> As the  
12 Commission noted in promulgating section 110.13(c), to establish that the criteria were set in  
13 advance of selecting the debate participants, "staging organizations must be able to show that  
14 their objective criteria were used to pick the participants, and that the criteria were not designed  
15 to result in the selection of certain pre-chosen participants."<sup>32</sup>

16         When addressing "town hall" styled interviews, the Commission has found that the

---

<sup>27</sup> See *id.* at 1215; Factual & Legal Analysis at 4, MUR 7231(CNN, *et al.*) ("F&LA"), Advisory Op. 2016-01 (Ethiq).

<sup>28</sup> 11 C.F.R. § 110.13(a); Explanation and Justification, Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. 76,734 (Dec. 27, 1979) ("1979 E&J").

<sup>29</sup> *Id.* at 64,262.

<sup>30</sup> 11 C.F.R. § 110.13(b).

<sup>31</sup> 11 C.F.R. § 110.13(c).

<sup>32</sup> 1995 E&J, 60 Fed. Reg. at 64,262.



1 programs are not debates but are programs covered by the press exemption.<sup>33</sup> The Commission  
2 has previously concluded that separately taped interviews aired back-to-back did not constitute a  
3 debate.<sup>34</sup> In situations where a debate was planned but candidates dropped out and a press entity  
4 proceeded with some other type of single candidate programming, the Commission has analyzed  
5 the programming that took the debate's place under the press exemption.<sup>35</sup>

6 The available information supports the conclusion that CNN did not stage a debate and  
7 therefore the debate regulations did not apply to CNN's airing of the O'Rourke town hall.  
8 Instead, the record indicates that the press exemption covers CNN's town hall with O'Rourke.  
9 CNN has been recognized by the Commission as a press entity that produces news stories on a  
10 regular basis.<sup>36</sup> Complainant does not dispute CNN's status as a press entity<sup>37</sup> and does not  
11 allege that CNN is owned or controlled by a political party, political committee, or federal  
12 candidate.<sup>38</sup>

13 Furthermore, it appears that CNN was acting in its legitimate press function when it aired  
14 the O'Rourke town hall. The town hall was available to the general public and was similar in  
15 form to other news programs produced by CNN. CNN explains that it produced a number of

---

<sup>33</sup> Advisory Op 1996-16 (Bloomberg) at 3 (analyzing a town hall event and concluding that because the means of presentation were controlled by the press entity that the event would be covered by the press exemption).

<sup>34</sup> Advisory Op. 1996-41 (Belo) (holding that a press entity was entitled to the media exemption, and that the debate regulations did not apply, when it separately interviewed candidates and aired their responses back-to-back).

<sup>35</sup> See F&LA at 7, MUR 6131 (Public Television 19, Inc.) (finding that a program that ensued after a cancelled debate, even though it was allegedly described as a debate by the moderator and the press, was activity covered by the press exemption).

<sup>36</sup> F&LA at 4, MUR 7231.

<sup>37</sup> See 11 C.F.R. § 100.73.

<sup>38</sup> See Addendum to Compl. at 4. ("Please note that the complainant . . . does not challenge the legitimacy of CNN as a press entity. . .").

1 town hall styled interviews featuring Republican, Democratic, and independent presidential  
2 candidates, as well as thousands of interviews of candidates for public office in a variety of  
3 different settings and circumstances, and states that the O'Rourke town hall was comparable in  
4 form to other news programs produced by CNN.<sup>39</sup>

5 The Complaint's allegations that the town hall resulted in a prohibited corporate  
6 contribution from CNN to the Committee is premised on its mistaken application of the press  
7 exemption. The Complaint contends that the fact that O'Rourke was the only Texas senatorial  
8 candidate to receive a town hall violates the Act because it constitutes a lack of equal coverage.<sup>40</sup>  
9 However, only press entities who are owned or controlled by a political party, political  
10 committee, or candidate are required "to give reasonably equal coverage to all opposing  
11 candidates" in order to claim the press exemption.<sup>41</sup> Similarly, Complainant's contention that  
12 CNN should have only provided O'Rourke with half the coverage time initially allotted for the  
13 debate with Cruz to comply with the Act and Commission regulations is unavailing. CNN was  
14 entitled to make its own determinations of what content was newsworthy when it elected to  
15 abandon the planned debate and fill the available hour with a town-hall styled program.<sup>42</sup>

16 Furthermore, the Commission has long recognized that an entity otherwise eligible for  
17 the exemption "would not lose its eligibility merely because of a lack of objectivity in a news  
18 story, commentary, or editorial, even if the news story, commentary, or editorial expressly

---

<sup>39</sup> See CNN's Resp. at 1-2, fn. 1.

<sup>40</sup> Addendum to Compl. at 2.

<sup>41</sup> See F&LA at 5-7, MUR 7206 (Bonneville Int'l Corp.); see also 11 C.F.R. §§ 100.73 and 100.132; *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974) ("The choice of material to go into a newspaper and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public official – whether fair or unfair – constitute the exercise of editorial control and judgment.").

<sup>42</sup> See F&LA at 7, MUR 6131.

1 advocates the election or defeat of a clearly identified candidate for federal office.”<sup>43</sup> As a result,  
2 the press exemption applies to CNN’s airing of the O’Rourke town hall.<sup>44</sup> Accordingly, the  
3 Commission finds no reason to believe that CNN violated 52 U.S.C. § 30118(a) by making a  
4 prohibited corporate contribution in connection with the town hall and finds no reason to believe  
5 that the Committee violated 52 U.S.C. §30118(a) by accepting a prohibited corporate  
6 contribution in connection with the town hall.

---

<sup>43</sup> F&LA at 5, MUR 7206; *see also* Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.); F&LA at 8-9, MUR 6111 (WOSU Public Media) (public radio call-in show that featured some political candidates when excluding others constituted legitimate press activity).

<sup>44</sup> Although CNN suggests that it used objective pre-established criteria to exclude the Libertarian candidate, we do not need to reach this issue since CNN did not end up sponsoring a debate. *See supra* at 8-9; *cf.* F&LA at 4, MUR 6131 (finding no reason to believe that a debate staging organization violated the Act when the incumbent declined the invitation, only one remaining candidate satisfied its criteria, and it canceled the planned debate in favor of a single candidate interview subject to the press exemption).