



September 12, 2014

Shae Hopkins  
Executive Director and CEO  
KET - Kentucky Educational Television  
600 Cooper Drive  
Lexington, Kentucky 40502  
email: shopkins@ket.org

*Via first class and electronic mail*

RE: Open Letter Concerning KET's 2014 Candidate Invitation Criteria

Dear Ms. Hopkins,

On behalf of the AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY, I write regarding KET's decision to dramatically change, after this year's primary elections, the criteria it had already adopted to determine which of the 2014 general election candidates would be invited to appear on KET's election-related programs. For the reasons that follow, we believe that the substance, timing, and effect of those changes raise legitimate questions about KET's motivation for adopting them that could implicate First Amendment concerns. *See Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998). Thus, in order to ensure that KET retains its well-deserved reputation for journalistic integrity and commitment to fair election coverage, the ACLU OF KENTUCKY respectfully requests that KET reinstate the candidate invitation criteria it adopted on April 21st for general election candidates.

Specifically, it is our understanding that KET adopted its "*Candidate Invitation Criteria: 2014 Primary and General Elections*" on April 21st. That document set forth the minimum criteria candidates must satisfy in order to be invited onto various KET programs. In adopting those criteria, KET reasonably required that a primary or general election candidate must be a Kentucky resident, a "legally qualified candidate," and that the candidate satisfy *at least one of four* additional requirements: 1) the candidate has made public position statements on political issues; 2) the candidate, or his/her campaign, maintains an active website

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that addresses issues related to the race; 3) the candidate has accepted at least \$10,000 in contributions for the race; or 4) the candidate has received five percent (5%) or more of support in a professionally conducted public opinion survey by an independent pollster.

Then, approximately one month later and after the primaries, KET officials formally invited Sen. McConnell and Secretary Grimes to jointly appear on the station given KET's status as a "statewide broadcaster" and its "long tradition of fair and trusted candidate forums." However, *on the same day* that KET issued those invitations, KET officials also internally discussed revisions to the month-old candidate invitation criteria that would impose new, more onerous conditions on participation. Specifically, KET Senior Director of Production Operations, Mike Brower, distributed proposed revisions to the candidate invitation criteria via email specifically noting that the new criteria would "eliminate the write in and other candidate from the forum." To KET's credit, it did not immediately adopt the new criteria, but rather undertook a review period over the next few weeks that resulted in some revisions to the proposed changes.

However, KET did ultimately amend its candidate invitation criteria on July 22nd, and the changes it approved were substantial. Notably, candidates must now satisfy *all* of KET's listed requirements as a precondition to receiving an invitation, and the requirements themselves have materially changed. For example, KET now imposes a *substantially heightened minimum fundraising requirement* of \$50,000 for U.S. House candidates and \$100,000 for U.S. Senate candidates (as opposed to the previous requirement of \$10,000). And KET also requires that candidates receive at least 10% support in public polling rather than the 5% it previously mandated. These new requirements, as anticipated by KET officials, had the effect of excluding third party and write-in candidates who might otherwise have qualified under the April 21st criteria. And although the newly-adopted requirements may not be inherently suspect, the timing of their adoption and their anticipated impact upon candidates' ability to participate do raise questions about the motivation behind their implementation.

Moreover, there is some evidence to suggest that KET's apparent interest in some candidates, but not others, may have contributed to the manner in which the requirements were selected. Specifically, Mike Brower, in another email provided to the Libertarian Party of Kentucky in response to that organization's Open Records Act request, stated on June 11th that the rationale for having different criteria for minimum campaign contributions between the Senate and House races was "that there are legitimate candidates for the congressional races that *we would like to include who might not make that \$100,000 threshold.*" (Emphasis added). As noted above, there may be valid journalistic reasons why KET would choose to make such a distinction, but the cited language could also be construed as a results-orientated



approach to adopting the criteria that would permit favored candidates to participate while excluding other, non-favored candidates.

Given the legitimate questions raised by KET's decision to adopt, then change, the candidate invitation criteria in such a way as to exclude one or more valid candidates from participating in its on-air forums (whether it did so for that express purpose or otherwise), the ACLU OF KENTUCKY calls on KET to reinstitute the candidate invitation criteria it initially adopted on April 21st in order to avoid even the appearance of impropriety in its editorial and journalistic decisions.

Thank you for your attention to this matter and I look forward to your response.

Sincerely,



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William E. Sharp  
Legal Director  
ACLU OF KENTUCKY  
315 Guthrie Street, Suite 300  
Louisville, Kentucky 40202

cc: Media