

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300 • www.rcfp.org

Bruce D. Brown, Executive Director
bbrown@rcfp.org • (202) 795-9301

STEERING COMMITTEE CHAIRMAN

STEPHEN J. ADLER

STEERING COMMITTEE MEMBERS

WOLF BLITZER

CNN

DAVID BOARDMAN

Temple University

THEODORE J. BOUTROUS, JR.

Gibson, Dunn & Crutcher LLP

MASSIMO CALABRESI

Time Magazine

LYNETTE CLEMETSON

University of Michigan

MANNY GARCIA

Austin American-Statesman

EMILIO GARCIA-RUIZ

San Francisco Chronicle

JOSH GERSTEIN

POLITICO

ALEX GIBNEY

Jigsaw Productions

SUSAN GOLDBERG

National Geographic

GAIL GOVE

NBCUniversal

JAMES GRIMALDI

The Wall Street Journal

LAURA HANDMAN

Davis Wright Tremaine

DIEGO IBARGÜEN

Hearst

JEREMY JOJOLA

9NEWS Colorado

KAREN KAISER

Associated Press

KIMBRIELL KELLY

The Los Angeles Times

DAVID LAUTER

The Los Angeles Times

MARGARET LOW

WBUR

COLLEEN MCCAIN NELSON

The McClatchy Company

MAGGIE MULVIHILL

Boston University

JAMES NEFF

The Philadelphia Inquirer

NORMAN PEARLSTINE

New York, New York

THOMAS C. RUBIN

Stanford Law School

BRUCE W. SANFORD

BakerHostetter, ret.

CHARLIE SAVAGE

The New York Times

JENNIFER SONDAG

Bloomberg News

NABIHA SYED

The Markup

ADAM SYMSON

The E.W. Scripps Company

PIERRE THOMAS

ABC News

MATT THOMPSON

The New York Times

VICKIE WALTON-JAMES

NPR

JUDY WOODRUFF

PBS/The NewsHour

SUSAN ZIRINSKY

CBS News

HONORARY LEADERSHIP COUNCIL

J. SCOTT APPLEWHITE, Associated Press

CHIP BOK, Creators Syndicate

DAHLIA LITHWICK, Slate

TONY MAURO, American Lawyer Media, ret

JANE MAYER, The New Yorker

ANDREA MITCHELL, NBC News

CAROL ROSENBERG, The New York Times

PAUL STEIGER, ProPublica

SAUNDRA TORRY, Freelance

Affiliations appear only for purposes of identification.

July 25, 2022

Melanie A. Brewer

The Mike Kelly for Congress campaign

melanie.a.brewer@gmail.com

[U.S. postal address not provided]

Re: Your July 22, 2022 “Request to Remove” Email

VIA EMAIL

Dear Ms. Brewer:

It is my understanding that on July 22, 2022 you sent an email to The Erie Reader, an independent newspaper in Erie, Pennsylvania, regarding a July 14, 2022 op-ed headlined “*Erie at Large: A Congressman and a State Senator Walk Into a Bar*” (hereinafter, the “Op-Ed”). I represent The Erie Reader in connection with this matter, and I am writing in response to your demand that it remove the Op-Ed for “misinformation and falsities” and “publicly apologize to the readers and to Congressman Mike Kelly.”

For the reasons outlined below, The Erie Reader has no intention of complying with your baseless demand.

As an initial matter—and presumably because there is no ground for you to assert a valid claim of defamation arising from The Erie Reader’s publication of the Op-Ed—your July 22 email vaguely references purported “misinformation and falsities” but fails to identify any specific fact stated in the Op-Ed that you allege is false and should be corrected. If there is a specific factual statement in the Op-Ed that the campaign asserts is false and that it seeks a correction of, please identify it immediately.

As is evident from the piece itself, the Op-Ed to which the campaign objects is an opinion. It is clearly labeled as such—with an “Opinion” tag in green font at the top of the post—and the identity of the author and his political affiliation is stated in the author note at the bottom of the post. Opinions, including statements of political opinion, based on widely known or disclosed facts, or that have no “provably false factual connotations[,]” are protected under the First Amendment. In addition, courts generally find statements that are clearly theoretical or speculative, such as openly “wondering” about another person’s motives, to be protected opinion. *See, e.g., Madison v. Frazier*, 539 F.3d 646, 655 (7th Cir. 2008). Not only is the Op-Ed based on widely-known facts that have been extensively reported on by other news outlets,¹ it is also expressly

¹ *See, e.g.,* Hugo Lowell, *January 6 hearings: if Republicans did nothing wrong, why were pardons sought?*, The Guardian (June 26, 2022)

based on information in legal filings and from official government proceedings, which allows The Erie Reader to invoke the fair report privilege. The fair report privilege protects fair and accurate reporting of information disclosed in an official public document, court proceeding, or public meeting, even if that information is false and defamatory. *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 439 A.2d 652 (1981) (citing *Restatement Second, Torts § 611*); *DeMary v. Latrobe Printing and Pub. Co.*, 2000 PA Super 339, 762 A.2d 758 (2000). The Op-Ed clearly and accurately attributes factual information stated therein to the Select Committee to Investigate the January 6 Attack on the United States Capitol and amicus filings, including the Brief Amicus Curiae of U.S. Rep. Mike Johnson at x (list of amicus curiae), *Texas v. Pennsylvania*, No. 20-155 (U.S. Dec. 10, 2020).

In addition, the U.S. Supreme Court has held that public officials, like Rep. Kelly, and other public figures, must meet an appropriately stringent standard under the First Amendment to state a cognizable claim for defamation. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964) (public officials); *Curtis Publ'g v. Butts*, 388 U.S. 130 (1967) (public figures). To ensure breathing room for vigorous public debate and criticism of elected officials and other prominent figures, the First Amendment requires them to prove that the publisher or broadcaster acted with “actual malice” in publishing materially false, defamatory statements of fact. “Actual malice” in the libel context does not mean ill will; it means that the publisher either knew the challenged statements were false, or acted with reckless disregard for their truth or falsity. As discussed above, the material in the Op-Ed is based on widely-reported factual information found in official proceedings and court documents. While Rep. Kelly may not care for the criticism in the Op-Ed—which relates to a matter of utmost public interest and concern to Pennsylvanians—the First Amendment clearly protects it.

The First Amendment and the Pennsylvania Constitution provide robust protection for individuals and entities to gather, report, publish, and comment on accurate information that is a matter of public concern or significance. *Snyder v. Phelps*, 131 S.Ct. 1207, 1215 (U.S., 2011) (“Speech on matters of public concern is at the heart of the First Amendment’s protection”) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–759 (1985); *Connick v. Myers*, 103 S.Ct. 1684, 1689 (U.S., 1983) (recognizing that speech becomes a matter of public concern when it relates to any matter

<https://www.theguardian.com/us-news/2022/jun/26/capitol-attack-hearings-republicans-sought-pardons>; Ruth Serven Smith and Paul Gattis, *Mo Brooks recommended pardons for himself and other lawmakers, Jan. 6 hearing reveals*, AL.com (June 23, 2022) <https://www.al.com/news/2022/06/mo-brooks-among-lawmakers-who-asked-for-a-pardon-hearing-reveals.html>; Tim Carpenter, *Congressman asked Trump for presidential pardon of four Kansas federal lawmakers*, Kansas Reflector (June 24, 2022) <https://kansasreflector.com/briefs/congressman-asked-trump-for-presidential-pardon-of-four-kansas-federal-lawmakers/>

of “political, social, or other concern to the community.”). The Op-Ed falls squarely within the scope of those important constitutional protections.

Given the public interest in, and importance to the public, of the topics discussed in the Op-Ed, as well as the accurate factual basis for the piece, The Erie Reader rejects your July 22, 2022 demand that it remove the Op-Ed and “publicly apologize to the readers and to Congressman Mike Kelly.”

Sincerely,

/s/Paula Knudsen Burke

Paula Knudsen Burke
Local Legal Initiative Attorney
Reporters Committee for Freedom of the Press
PO Box 1328, Lancaster, PA 17608
pknudsen@rcfp.org
(717) 370-6884