



Sister Denise A. Roche
Chair, Board of Commissioners
Niagara Frontier Transportation Authority
181 Ellicott Street
Buffalo, NY 14203

April 5, 2019

Dear Sister Denise:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to follow up on my April 1 letter regarding the exclusion of Chick-fil-A from the Buffalo airport. According to a WIVB report the NFTA denies responsibility for excluding Chick-fil-A from the Buffalo airport: “But NFTA officials point out the decision for selecting or rejecting a would-be concessionaire is in the hands of Delaware North Companies, which was not even mentioned in the letter.”¹

Public reports indicate otherwise:

March 28: Delaware North announces that Chick-fil-A will be part of the revamped concession area at the Buffalo airport.

Airport officials unveiled plans Thursday, noting that “underperforming” concessions Villa Pizza, Checkers, Whichwich, BUF Bar and Matties will be leaving the airport’s two concession areas. Delaware North will replace them in stages with Chick-fil-A, its new Elmwood Food + Drink concept, and an Annie’s that has performed well at Austin Bergstrom International Airport in Texas. “This will be gang-busters at the airport,” said Lee Weitz, the Niagara Frontier Transportation Authority’s assistant aviation director. “We are very excited.”²

Not only were airport officials excited, but, “The NFTA approved tentative plans on Thursday during a board meeting.”³

¹ Al Vaughters, “Civil rights official cautions NFTA about Chick-fil-A and airport,” WIVB.com, April 2, 2019, <https://www.wivb.com/news/local-news/civil-rights-official-cautions-nfta-about-chick-fil-a-and-airport/1895942419>.

² Robert J. McCarthy, “Delaware North plans Chick-fil-A, new look for Buffalo airport eateries,” The Buffalo News, March 28, 2019, <https://buffalonews.com/2019/03/28/delaware-north-plans-chick-fil-a-and-new-look-for-buffalo-airport/>.

³ “Chick-Fil-A no longer in the plans for Buffalo airport,” WGRZ, March 29, 2019, <https://www.wgrz.com/article/money/business/chick-fil-a-no-longer-in-the-plans-for-buffalo-airport/71-89ced7ba-02b2-4bfc-bf35-581ba5bb5151>.



March 28, (evening): Assemblyman Sean Ryan publishes a lengthy Facebook post in which he criticizes the NFTA for bringing Chick-fil-A to the Buffalo airport. On Twitter, he writes, “I’m disappointed in the @NFTA decision to bring a Chick-fil-A to the @BUFAirport.”⁴

March 28 or 29⁵: NFTA issues a statement:

First and foremost, the NFTA is an organization that prides itself on its strong commitment to diversity and inclusion and stand firmly against any form of discrimination. We have the (utmost) respect for Assemblyman Ryan and consider him a great partner and friend to us. We will reach out to him and discuss his concerns.⁶

March 29: Assemblyman Ryan releases a statement:

Earlier today I spoke with the vendor of the Buffalo Airport food court project, and they informed me they will not be opening a Chick-fil-A as a part of their airport project. A publicly financed facility like the Buffalo Niagara International Airport is not the appropriate venue for a Chick-fil-A restaurant. I applaud the decision that has been made to remove Chick-fil-A from the plans for this project. We hope in the future the NFTA will make every effort to contract with businesses that adhere to anti-discriminatory policies, and we’re confident another vendor who better represents the values of the Western New York community will replace Chick-fil-A as a part of this project in the very near future.⁷

March 29: NFTA releases a statement: “We are working with Delaware North to move forward on identifying and offering best in class food selections for the thousands of customers who come in and out of our airport”.⁸

If the NFTA had *nothing* to do with the decision to remove Chick-fil-A from the plans for the Buffalo Airport, there may not be First Amendment implications. However, it is plain pressure caused Chick-fil-A’s sudden removal from the airport plans. Excitement about Chick-fil-A’s addition somehow transformed into Chick-fil-A’s ejection in barely twenty-four hours. Perhaps that pressure came solely from the Assemblyman’s social media statements. However, this series of events and public statements is concerning. In fact, one local news story begins with the statement, “Following backlash, Delaware North *and* the NFTA have decided to pull

⁴ *Id.*

⁵ The date the statement was issued is not specified in the article, but the article itself was written on March 29.

⁶ “Chick-Fil-A no longer in the plans for Buffalo airport,” WGRZ, March 29, 2019, <https://www.wgrz.com/article/money/business/chick-fil-a-no-longer-in-the-plans-for-buffalo-airport/71-89ced7ba-02b2-4bfc-bf35-581ba5bb5151>.

⁷ *Id.*

⁸ Jeff Slawson, “Chick-fil-A pulled from new Buffalo Airport food plans,” WKBW, March 29, 2019, <https://www.wkbw.com/news/local-news/backlash-over-new-buffalo-airport-chick-fil-a>.



their plan to include a Chick-fil-A in the Buffalo Niagara International Airport.”⁹ (Emphasis added.) I’ve found no correction by NFTA of that statement.

It is irrelevant whether private actor Delaware North was the entity that informed Chick-fil-A that it would no longer be welcome at the airport. For example, if the NFTA told Delaware North that it no longer wanted Chick-fil-A in the airport for the reasons stated in the Assemblyman’s post, and then Delaware North excluded Chick-fil-A, Chick-fil-A’s First Amendment rights were violated by state actors. Likewise, if Delaware North yielded to the Assemblyman’s protests, Chick-fil-A’s First Amendment rights were violated by state actors. And if NFTA urged Delaware North to get rid of Chick-fil-A to accede to state actors’ objections to Chick-fil-A’s contributions, Chick-fil-A’s First Amendment rights were violated.¹⁰ An act does not cease to be unconstitutionally discriminatory simply because a state actor acts through a private actor.

The U.S. Commission on Civil Rights conducted an extensive hearing and review of matters such as those above a few years ago.¹¹ Accordingly, should you have any questions regarding these standards I am happy to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

⁹ *Id.*

¹⁰ *Ratner v. Netburn*, 930 F.2d 204 (2nd Cir. 1991); *Okwedy v. Molinari*, 333 F.3d 339 (2nd Cir. 2003).

¹¹ U.S. Commission on Civil Rights, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, 2016, <https://www.usccr.gov/pubs/docs/Peaceful-Coexistence-09-07-16.PDF>.