



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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NATURAL LAW PARTY

OF THE UNITED STATES OF AMERICA

MUR 4451

September 5, 1996

Federal Elections Commission
Office of the General Counsel
999 "E" Street, N.W.
Washington, DC 20463

Re: FECA Complaint

To Whom It May Concern:

The Natural Law Party ("NLP") and Dr. John Hagelin and Dr. Mike Tompkins, the NLP's candidates for president and vice-president respectively ("Collectively, "Complainants"), hereby submit this complaint against the Commission on Presidential Debates, 601 Thirteenth St., NW Suite 310S, Washington, DC 20005 ("CPD"), Fox Broadcasting Company, 10201 West Pico Boulevard, Los Angeles, California 90035 ("Fox"), Capital Cities/ABC, Inc., 77 West 66th St., New York, NY 10023 ("ABC"), and Public Broadcasting Service, 1320 Braddock Pl...Alexandria, VA 22314-1649, ("PBS") (collectively, "Respondents"). This complaint relates to activities which have been proposed by Respondents in connection with the upcoming general election. In each case the proposed debate violates the Federal Elections and Campaign Act ("FECA") and/or title 11 of the Code of Federal Regulations.

This complaint will address the basis for the complaint against each of the above-identified entities.

CPD

The CPD, while styling itself a nonpartisan organization, is actually a *bipartisan* organization composed of Republicans and Democrats. This is a fundamental issue which should be considered and, if necessary, investigated by the FEC. The CPD has announced its criteria for selecting candidates to participate in debates for which it will be the staging organization. (The criteria are attached hereto as Exhibit "A.") Notably, these criteria predate the most recent amendment of § 110.13 and plainly do not comply with that section as amended. 11 CFR § 110.13(c) states:

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Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in the debate.

While these are not particularly complex or burdensome restrictions, CPD's selection criteria seem determined to flout them in several respects. As set forth above, § 110.13(c) states that "staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." Despite this clear injunction, the CPD's criteria state:

A Democratic or Republican nominee has been elected to the presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation to the respective nominees of the two major parties to participate in the Commission's 1996 debates.

Furthermore, the criteria go on to indicate that the remaining criteria apply *only* to "nonmajor party candidates," reemphasizing the double standard applied by the CPD. Additionally, the CPD's criteria indicate that although the Republican and Democratic candidates will be invited to every debate, "nonmajor party candidates" may be invited only to a lesser number of debates. Similarly, the CPD gave the Dole and Clinton campaigns notice of the dates and places of the proposed debates even before President Clinton officially received the Democratic nomination. It is beyond dispute that the CPD is basing its decision to include the Democratic and Republican nominees in its debates solely upon "nomination by a particular political party." This is a direct and blatant violation of § 110.13(c). Any attempt to apply its criteria to Clinton and Dole would be nonsensical, as several of the criteria require comparison to the "major party" candidates. Further, such criteria would not be pre-established as applied to Clinton and Dole.

The criteria which the CPD indicates it will apply to determine which "nonmajor candidates" it will deign to permit to participate in its debates are, by the CPD's own admission, largely subjective (See, e.g. Exhibit "A," p. 1). Each of the criteria is discussed below:

A. Evidence of National Organization

The CPD's first criterion is "evidence of national organization." In the CPD's own description of this criterion, the CPD states:

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"This criterion also encompasses more *subjective* indicators of a national campaign with a more than theoretical prospect of electoral success."

Within this first criterion, the CPD identifies four factors. Complainants have no quarrel with the first two factors. The third of those factors, however, is "[o]rganization in a majority of congressional districts in those states [in which the candidate is on the ballot]. This factor is too indefinite and also is irrelevant. For example, what kind of organization in a congressional district is required of a candidate? To obtain ballot access the candidate obviously had some supportive state organization, but why should any district level organization be required unless the CPD seeks to discriminate against independent or third party candidates, who may appeal to unorganized groups of voters. The election of President is solely dependent on his or her selection by eligible voters and has nothing to do with the degree of organization at the congressional district level. As a result, this requirement should be eliminated. This factor provides a significant obstacle to debate inclusion by those independent and third party candidates who have not had decades to establish an entrenched political structure within congressional districts.

The fourth factor referenced by the CPD under its second criterion is "eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders." The factor concerning the candidates' ability to fund a national campaign is too indefinite and subjective. The amount the Commission would consider "necessary" to fund a national campaign is subjective. Moreover, the amount necessary is a changing number; the amount needed on the eve of the election will logically be less than the amount needed earlier in the year. Additionally, there is more than one way to run a campaign. Many might argue that the exorbitant amounts spent by the Republican and Democratic presidential campaigns is reflective of those parties' fiscal policies while in office. Others may well be able to get by with much less. Thus, this factor is not objective in several respects. The plain dictionary definition of the term "objective" is that which pertains to actual facts, not feelings, thoughts, or opinions, and which is not biased. The eligibility for matching funds, however is both relevant and objective.

The endorsement by federal and state officeholders is also not an objective criteria and is too indefinite and partisan. For example, is the factor intended to consider the endorsements of only *elected* officeholders or also *appointed* officeholders? How do we evaluate the particular opinion of a given officeholder and compare it to other opinions? Is, for example, one federal Congressman's endorsement worth that of two state senators, and how does a state senator compare to a state prison warden? It requires subjective judgments to evaluate any officer holder's opinion, and even if the wording of two opinions happened to be identical, how would we determine which opinion should be given the most weight, and how much weight?

Moreover, and not coincidentally, virtually all elected federal and state officeholders today are Republicans and Democrats, so it would be surprising, first, if they would endorse a third party or independent candidate. That may also be true for appointed officeholders in high positions, since they were appointed by Republicans or Democrats. Thus, this factor appears to be merely an attempt to disguise partisan bias as an objective criteria.

In addition, even if a third party candidate could obtain such endorsements, those endorsements are themselves merely the subjective evaluations of the state or federal officeholders in question. The Commission, to the extent that it "considers" this factor, would be basing its evaluation on the subjective opinions of others. This use of "secondhand" subjective evaluations should be prohibited.

B. Signs of National Newsworthiness and Competitiveness

The second criterion set forth by the CPD is "signs of national newsworthiness and competitiveness." Three of the four factors which the CPD states will be considered in determining this criterion are the *opinions* of various pundits, such as Washington Bureau chiefs of "major" newspapers, news magazines, and broadcast networks, political scientists from "major universities and research centers," and professional campaign managers and pollsters "not then employed by the candidates under consideration" (since the criteria are not to be applied to the Democratic and Republican candidates, who are invited to the debates automatically, this apparently refers to Dole and Clinton's campaign managers). Additionally, this criterion includes the public views of prominent political commentators.

Obviously, opinions are not objective; they are, by definition, subjective, individualized evaluations. Moreover, the persons whose opinions are to be considered are not identified. They are merely described in vague general categories, leaving the CPD free to shop around for and consider the opinions of only partisan commentators. Even a good faith determination of which commentators' opinions are to be used and an evaluation of the opinion itself are subjective judgments. In addition, the nature of the opinions to be sought are not set forth. Is a candidate newsworthy because the opinion holder believes he or she has been in the news to a sufficient degree, or because the candidate has reasonably, fresh ideas, or because he or she has ideas the bureau chiefs believe are good, liberal, moderate, or conservative? And what makes the candidate competitive? As between two candidates, for example, is one more competitive because he or she is on the ballot in more states as compared with another candidate who has more money? Judgments like these are, of course, subjective. Nor do the criteria indicate the time frame from which opinions to be considered will be selected. No reasonable person can maintain that the "opinion" of an unidentified person, which may not have:

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even been expressed yet, could constitute an objective criterion. This would be true even if one could assume that political commentators, campaign managers, and editors are attuned to the political realities; this is not always the case (e.g., "DEWEY WINS!").

The third of the four factors under this criterion is "column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates." This is inappropriate because of the indefiniteness as to *which* newspapers and telecasts would be included. Moreover, reporting in newspapers and network telecasts as a criteria for inclusion in debates has an inherent "catch-22" nature. Nonmajor parties do not get media coverage to an extent comparable to the major parties because they are not currently in power. Because they cannot get media exposure, as with the debates, they are much less likely to come into power, hence the catch-22. Debates provide a forum that is uniquely appropriate to voter education, and participation in the debates for third party or independent candidates may typically have to precede significant newspaper and network coverage.

Moreover, any candidate selection criterion which seeks to compare third party or independent candidates to the major party candidates is inappropriate. Long years of the domination of American politics by the major parties through, among other things, exclusionary ballot access laws, exclusionary debate policies, federal funding of major party presidential campaigns, and PAC money available to those in the major parties, make such comparisons inappropriate and contrary to the goal of increased voter education. Such criteria will have the obvious and no doubt intended effect of freezing the *status quo*.

C. *Indicators of National Public Enthusiasm or Concern*

The third criterion identified by the CPD is "indicators of national public enthusiasm or concern." The factors identified as bearing on this criterion are the findings of "significant" public opinion polls and reported attendance at meetings and rallies across the country in comparison with the two major party candidates. These factors leave a great deal of room for subjectivity. The term "significant public opinion poll" is not defined and leaves too much room for subjective decision making. A political poll is by nature essentially nothing more than a collection of a number of subjective opinions. Moreover, the methodology and questions to be used in such polls are not identified. The CPD's criteria have no guarantees that the data from such polls will be of any validity in determining the level of public enthusiasm for any given candidate.

The data from such polls can frequently be interpreted many different ways and the questions posed in such a way as to minimize the impact of third parties. For example, in a 1994 poll conducted by the Gannett Company's newspaper *The Des*

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Moines Register, voters were asked to state their preference on a party basis, but the poll was designed so that if they attempted to indicate a preference for a third party candidate (such as my client, the NLP), they had to be listed as "undecided." Obviously, the significance of such a poll is subject to impeachment, yet there is no guarantee that the CPD will not deem polls with similar defects to be "significant" and "consider" them when selecting candidates for its debates.

Similarly, recent polls have shown that 85% of Americans do not believe that the Republicans or the Democrats have the answers to our nation's problems and that a record 63% support a third party alternative. A recently broadcast MTV poll showed that 70% of young people registering to vote refuse to register as either Republicans or Democrats and opt instead to register as independents. It is likely, given the CPD's bipartisan composition, that when the CPD is determining which polls are "significant," the above-referenced polls, and polls like them, will be arbitrarily deemed "insignificant," while polls which support the concept that only Republicans and Democrats deserve an opportunity to present their ideas to the public will be considered "significant." There certainly are no safeguards in the CPD's criteria which would prevent this from happening. The mere claim that such criteria are subjective does not make them so. Simply delegating part of the candidate selection process to pollsters who have no direct affiliation with the CPD does not ensure objectivity; the pollsters may themselves be biased unless safeguards, patently absent from the CPD's criteria, are utilized to ensure fairness.

The final factor of the third criterion is "reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates." Again, no criterion that directly compares the third party or independent candidates with the major party candidates should be appropriate. Such comparisons are simply an extension of the CPD's decision, in violation of §110.13(c), to give the "major party" candidates special status and include them in the debates based solely on the nomination of their parties. In addition, this criteria is indefinite as to what kind of meetings and rallies would be considered appropriate by the Commission, whether a given meeting or rally has been reported, and whose reporting of those meetings and rallies is acceptable. For example, do meetings covered by the press count for more than meetings that aren't covered by the press, but are reported by the candidate? Do meetings reported by "major" newspapers count for more than reports in reported small local newspapers? Because third parties often rely on grassroots support and operate on smaller budgets than the spendthrift Republicans and Democrats, their meetings and

rallies are likely to be more low key and less likely to be reported in the "major" newspapers. How many people constitute a "meeting"? How does a "meeting" differ from a "rally"? Has the CPD assigned someone to review all articles in every newspaper in America for articles on the meetings and rallies of third parties? All these questions underscore the fact that this criterion is inherently subjective in substance and in application, and thus unacceptable under §110.13(c)

D. Taken as a Whole, the CPD's Criteria Are Subjective

The criteria identified by CPD are not in any way weighted. Nor is there any other indication as to exactly how the criteria will be applied to a given candidate. Even if the individual criteria and factors were objective (and most of them are not), the process of evaluating and weighing the criteria is a subjective one. The CPD's criteria merely indicate that the identified factors will be "considered." In all, the criteria provide no concrete guidance for the selection of candidates for participation in the debates. No doubt by design, the identified criteria and factors could be "considered" and used to support virtually any decision made by the staging organization. Importantly, there is no way to hold the CPD accountable to these criteria; it would be impossible for a reviewer to find that the criteria were not complied with, as they are inherently vague and subjective.¹ In short, the CPD's credo appears to be that a candidate worth including in the debates is like pornography: they can't define it, but they know it when they see it. This is not acceptable under either the FECA or fundamental fairness.

The subjective factors which comprise much of the CPD's criteria must be stricken. Any new criteria, of course, would not be "pre-established" as required by § 110.13(c). Thus, the remaining objective criteria must be applied to the field of potential candidates to determine who is to be included in the CPD's debates. Specifically, the following criteria/factors would remain: (1) "Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States; (2) Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority; and (3) Eligibility for matching funds from the Federal Election Commission. . . ." Notably, with the exception of Dole and Clinton, to whom

¹ Interestingly, the CPD is perfectly capable of drafting objective criteria when it wants to. Attached hereto as Exhibit "B" is a list of criteria used by the CPD to determine the suitability of debate halls. As can be seen from the Exhibit, the criteria are detailed and objective in the extreme. It is both ironic and telling that the CPD is capable of objectivity when it comes to selecting auditoria but not when it comes to selecting the candidates who will debate therein.

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the criteria are not to be applied anyway, only one candidate for the office of president meets these three objective criteria: Dr. John Hagelin of the Natural Law Party.²

FOX

In its request for declaratory rulings submitted to the Federal Communications Commission on April 25, 1996, Fox requested permission to provide "major presidential candidates" with television air time under the exemption contained in § 315(a) of the Communications Act for "on-the-spot" news coverage. (Fox's Request for Ruling and the comments of PBS and ABC are attached hereto as Exhibit "C.") As part of its proposal, Fox indicated that the candidates to be included in its "news coverage" would be those candidates selected by the CPD for participation in the CPD's own debates. The Fox proposal consists of ten pre-recorded 60-second position statements by each candidate made in response to a question about a different issue of demonstrable concern to voters in the general election. The other format proposed by Fox is the dedication of one hour of its prime time network schedule on Monday, November 4, 1996 (the night before the election), to provide news event coverage of back-to-back statements by each candidate. The hour is to be divided evenly among the candidates, and Fox will not exercise any control over the content of the candidates' statements. In connection with both formats, Fox will put its production facilities at the candidates' disposal free of charge.

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Obviously, unless Fox can point to some exemption, such a provision of free broadcast time and production facilities to a candidate constitutes a corporate contribution under the FECA. The exemption Fox is most likely to claim is contained in section 100.7(b)(2), which exempts from the definition of "contribution" the cost of covering or carrying (but not producing) a "news story, commentary, or editorial." Of course, scripted, pre-recorded videotapes produced by the candidates themselves without any editorial input by the broadcaster, is much more akin to an advertisement than a "news story, commentary, or editorial." While the FCC has concluded that pre-recorded candidate-produced spots such as this somehow may constitute "on the spot" reporting of a "bona fide news event," under § 315(a) of the Federal Communications Act, that determination does not compel the conclusion that such pre-recorded solicitations of votes constitute a "news story, commentary or editorial" under the FECA and the FEC's regulations.

² Harry Browne of the Libertarian Party has declined to apply for federal matching funds, and thus the Complainants do not know if he could qualify.

The Fox proposal's true nature as a contribution is made clear when one considers that Fox is turning over control of its facilities to the candidates for purposes of recording their appeals to the voters. Fox has indicated it will "provide production facilities" to the candidates "free of charge" (i.e. make a contribution) and that it "will not exercise any control over the content of the Candidates' statements." Thus, the costs being absorbed by Fox here are qualitatively different from the typical cost of "covering or carrying" a story, in that (1) there is no "news story, commentary, or editorial," merely undisguised partisan pitches by the candidates for votes, and (2) Fox is not "covering" the alleged story, it is merely broadcasting, without any editing, a pre-recorded public relations piece produced by the candidates at Fox's expense. This should not be deemed to be "covering or carrying" a "news story, commentary, or editorial" but rather recognized for the corporate contribution it is.

Even if the candidates' pre-recorded set pieces constitute a "news story, commentary, or editorial," however, Fox will still be making a corporate contribution due to the fact that for the duration of the candidate's statements at least, Fox will be abdicating control of its broadcast facilities to the candidates, in terms of both production and content. Under 11 CFR §§ 100.7(b)(2) and 100.8(b)(2), the cost of covering a news story (e.g production costs) is a contribution or expenditure if the broadcast facility (not necessarily the broadcaster itself) is controlled by a political party or a political candidate unless, *inter alia*, the coverage is "part of a general pattern of campaign-related news accounts which give reasonably equal coverage to *all* opposing candidates in the listening area. . . ." Notably, these regulations do not distinguish between so-called "major" and "minor" candidates, but expressly refer to *all* opposing candidates.

If Fox's proposed format constitutes a "debate" for purposes of the FECA, it is subject to the requirements of 11 CFR 110.13 and 11 CFR 114.4(f)(2), relating to the criteria for candidate selection. Because Fox is relying on the CPD to determine the candidates who will be featured in these "news" events, its selection criteria suffer the same problems as CPD's detailed above, and for these same reasons should be prohibited. Of course, if Fox were suddenly to attempt to invoke new criteria, those criteria would not be "pre-established," as required by §110.13.

PBS

PBS' proposal to the FCC for "expanded coverage of Candidate positions" consists of a "series of programs consisting of appearances of the 'major party' presidential candidates" to be broadcast one candidate per day over successive days, during prime time hours several weeks prior to the general election. Each segment is to be approximately two and one-half hours in length. Each candidate is to be unrestricted

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as to content within certain minimal guidelines. Such a gift of free air time to certain subjectively chosen candidates clearly constitutes a "contribution" under the FECA.

As with Fox's proposal, the PBS proposal, if not a contribution, likely constitutes a "debate" for purposes of §110.13(c). PBS, in its proposal to the FCC specifically indicated that the proposed programs would be in addition to PBS' "traditional news and news interview broadcasts." PBS has proposed selecting the candidates on the basis of certain unspecified "objective criteria -- for example, candidates certified by the Commission on Presidential Debates or candidates chosen through some other impartial selection system using criteria such as national polling results."

To the extent PBS has not settled on any particular method of selecting candidates for inclusion in its programs, its criteria are not "pre-established" as required by §110.13(c). To the extent PBS intends to rely on the CPD's criteria, it is subject to the same deficiencies as the CPD, discussed above. The only other criteria even discussed by PBS is "national polling results." PBS does not indicate exactly what it would purport to measure through the use of the such polls. Additionally, as set forth above, polls are inherently subjective and easily manipulated. PBS has articulated no objective criteria or means of ensuring objectivity in selecting candidates for inclusion in its debate series. Unless PBS can demonstrate that objective criteria have been pre-established, its proposed programs will be in violation of §110.13(b).

ABC

The ABC Television Network has proposed to the FCC a one hour prime time special in which the candidates will "discuss with each other, and the American people, the issues they believe to be the most important in the election." For its selection criteria, ABC indicates that it will use "objective criteria in making the selection, including whether or not the candidate is actively and substantially engaged in conducting a nationwide campaign, the number of states in which the candidate has qualified for a place on the ballot, and whether polling results indicate that the candidate's campaign is 'significant.'" ABC has conceded in its comments to the FCC on Fox's request for a Declaratory Ruling that its proposed format constitutes a debate. ABC's criteria appear to be mutable, and not pre-established, to the extent they merely "include" those listed above, suggesting there may be other, as of yet undisclosed criteria.

The first ABC criterion, the extent to which a candidate is running a "nationwide" campaign, depending on how that term is interpreted, can be subjective. It is not at all clear what is meant by the phrase "nationwide campaign." The second criterion, "the number of states in which the candidate has qualified for a place on the ballot," could easily be made objective by specifying what the requisite number of states is. As the

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criterion now stands, ABC can always say a candidate was not included because the number of states was too small (unless the candidate was on the ballot in all states). ABC should be required to specify a number of states in which a candidate must have ballot access (e.g. 30 states) as its criterion. The third criterion, whether polling results indicate a "significant" campaign, is subject to the same objections applicable to CPD, Fox, and PBS regarding the use of polls set forth above. Unless there are pre-established safeguards to ensure the polling results are valid and relevant, the use of such polls is too subjective to satisfy the requirements of 11 CFR §110.13(c). Nor is the term "significant" in any way self explanatory or objective.

Conclusion

In 1994, the FEC's office of General Counsel recommended that §110.13(c) be revised to specifically state that the definition of "objective criteria" "shall not include (*inter alia*): (I) Subjective evaluations of whether an individual is a significant, major or important candidate; (ii) Polls or other assessments of a candidate's chances of winning...." While these definitional clarifications were not adopted at that time, the logic and reasoning which prompted the General Counsel's recommendation now apply to the proposed debates and compel the conclusion that most of the criteria which have been proffered by the CPD, Fox, PBS, and ABC, and particularly the reliance on polls and the determination of the "significance" of a candidate, are not objective. Such subjective criteria must be stricken and the Respondents required to rely solely on their pre-established *objective* criteria, if any.

The FEC guidelines state that after a complaint is assigned a MUR (Matter Under Review) number, the complainant is notified but will generally not hear from the FEC again until the case is resolved since the FEC is required by law to keep all investigations confidential. In this regard, the complainants and counsel will agree to abide by any appropriate confidentiality agreement to assure confidentiality of the FEC's investigation in accordance with Advisory Opinion 1995-1. These complainants will, however, be severely affected by any adverse FEC decision. The complainants, therefore, desire an opportunity to respond to arguments of the Respondents or factual allegations made by them. The absence of procedural rules providing the complainants with such an opportunity denies the complainant its rights of due process.

In addition, the complainant seeks expedited treatment so that a decision is made on this matter sufficiently in advance of the initial presidential debates to permit Dr. John Hagelin an opportunity to take appropriate legal action.

In view of the importance of these requests, I would appreciate hearing from the FEC as soon as possible as to its decision with respect to participation in the complaint process and expedited treatment.

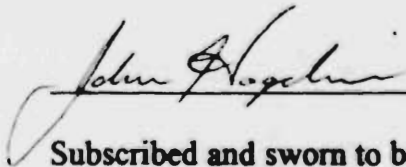
Nothing herein is intended to waive any right the complainants may have to seek relief in a federal court for violations by the Respondents of the provisions of CFR § 110.13(c).

Dated this 5th day of September, 1996.

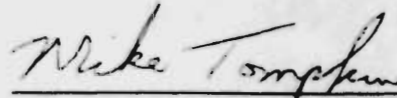
The undersigned hereby swear (or affirm) under penalty of perjury that the foregoing complaint is true and correct based upon personal knowledge and information and belief.

JOHN HAGELIN


MIKE TOMPKINS



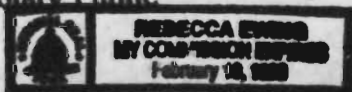
Subscribed and sworn to before me
this 5th day of September, 1996.



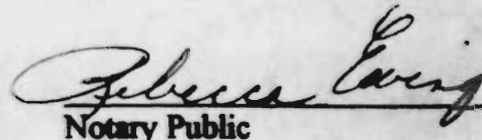
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this 5th day of September, 1996.



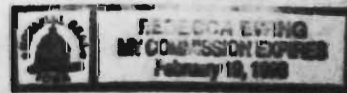
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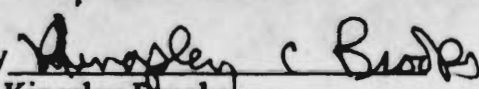


THE NATURAL LAW PARTY

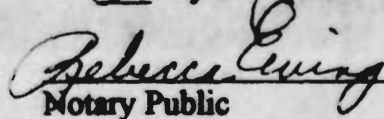


Notary Public



By 
Kingsley Brooks
National Chairman

Subscribed and sworn to before me
this 5th day of September, 1996.



Notary Public



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EXHIBIT A

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COMMISSION ON PRESIDENTIAL DEBATES' CANDIDATE SELECTION CRITERIA FOR 1996 GENERAL ELECTION DEBATE PARTICIPATION

A. INTRODUCTION

The mission of the Commission on Presidential Debates ("the Commission") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The Commission sponsored a series of such debates in 1988 and again in 1992, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 1996 general election.

The goal of the Commission's debates is to afford the members of the voting public an opportunity to sharpen their views of those candidates from among whom the next President or Vice President will be selected. In light of the large number of declared candidates in any given presidential election, the Commission has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation to the respective nominees of the two major parties to participate in the Commission's 1996 debates.

In order to further the educational purposes of its debates, the Commission has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency. The realistic chance of being elected need not be overwhelming, but it must be more than theoretical.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a Commission-sponsored debate. Rather, the Commission will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

Judgments regarding a candidate's election prospects will be made by the Commission on a case-by-case basis. However, the same multiple criteria will be applied to each nonmajor party candidate. Initial determinations with respect to candidate selection will be made after the major party conventions and approximately contemporaneously with the commencement of the general election campaign. The number of debates to which a qualifying nonmajor party candidate will be invited will be determined on a flexible basis as the general election campaign proceeds.

B. 1996 NONPARTISAN SELECTION CRITERIA

The Commission's nonpartisan criteria for selecting nonmajor party candidates to participate in its 1996

general election presidential debates include:

1. EVIDENCE OF NATIONAL ORGANIZATION

The Commission's first criterion considers evidence of national organization. This criterion encompasses objective considerations pertaining to the eligibility requirements of Article II, Section 1 of the Constitution and the operation of the electoral college. This criterion also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success. The factors to be considered include:

- a. Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.
- c. Organization in a majority of congressional districts in those states.
- d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

2. SIGNS OF NATIONAL NEWSWORTHINESS AND COMPETITIVENESS

The Commission's second criterion endeavors to assess the national newsworthiness and competitiveness of a candidate's campaign. The factors to be considered focus both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time the Commission makes its invitation decisions. The factors to be considered include:

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

3. INDICATORS OF NATIONAL PUBLIC ENTHUSIASM OR CONCERN

The Commission's third criterion considers objective evidence of national public enthusiasm or concern. The factors considered in connection with this criterion are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The factors to be considered include:

- a. The findings of significant public opinion polls conducted by national polling and news organizations.
- b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Adopted: September 19, 1995

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EXHIBIT B

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1996 SITE SELECTION GUIDELINES

This memorandum outlines the broad guidelines which the Commission on Presidential Debates (CPD) will use to select sites for the 1996 debates. They cover the following categories:

- Debate Hall
- Press Room
- Hotels
- Transportation
- City Services
- Finances

Prospective debate hosts should provide the information requested for each of these categories in writing by October 1, 1995. Please send three copies of the proposal to CPD executive director Janet Brown. Proposals will be reviewed by CPD staff, who will contact prospective host officials if further information is needed. Site visits will be made to those venues whose proposals appear to meet the CPD's needs; the visits will be scheduled during the fourth quarter of 1995. The CPD's board of directors hopes to make a final determination of debate sites during the first two months of 1996.

A formal contract will be signed between the CPD and each site chosen to host a debate. It will encompass the categories listed above, and set forth in detail the responsibilities assigned to the CPD and those assigned to the debate host.

The CPD staff is available to answer any questions regarding the guidelines and to give assistance which a prospective host might need in responding to them. The CPD recognizes that each debate requires a substantial effort on the part of the debate host, and is totally committed to the cooperative teamwork that a successful debate will entail.

DEBATE HALL

The CPD will require one hall of at least 17,000 square feet where the debate will be held. It must have the following features, which should be described in the proposal:

- A. Minimum ceiling height of 35 feet.
- B. Overall floor depth of at least 140 feet.
- C. A stage with minimum measurements of:
 - 65 feet in length and 30 feet in depth
 - 30 feet in height of backdrop
 - 4 feet in height above the floor of the hall
- D. A maximum distance of 90 feet from the candidates' position on stage to the floor location where the central TV platform will be constructed.
- E. Air conditioning to be maintained at 70 degrees Fahrenheit. The system should be capable of handling an increased load of 45,000 watts plus "people" load of approximately 512,500 BTU.
- F. Lighting: 250 footcandles on stage and 200 footcandles on the floor of the hall, all at 3,200 degrees Kelvin.
- G. Electric power: 2,000 KVA, to be 3-phase, 4-wire, 60-hertz power.
- H. Excellent accoustical qualities.
- I. Comfortable, fully-padded seats with unobstructed views of the stage.
- J. Fully carpeted floors.
- K. The hall must be in a facility that offers:

1. Office space for the CPD staff which supplies:
 - a. Approximately 3,000 square feet of workspace
 - b. A conference room large enough for 30 people
 - c. Approximately 200 cubic feet of secure storage space
2. Easy access and parking for passenger vehicles.
3. A large parking area close to the debate hall for television remote trucks, trailers and satellite trucks. Media will be cabling from this lot area into the debate hall. Adequate power for thirty office and production trailers should be available from sources in close proximity to the lot.
4. Access for the physically impaired.

- L. The debate hall facility should be within a 10-15 minute drive of the primary hotels which will be used. If there is more than one facility which a host would like to propose for the debate hall, please send information on each. Where available, copies of blueprints and detailed engineering specifications are helpful to receive with the proposal. They should indicate all entrances and exits, both above and below ground level. Please also include a description of the insurance policies covering the use of the proposed debate hall(s).

PRESS ROOM

The CPD will need a second hall, either in the same facility as the debate hall or in extremely close proximity, of at least 17,500 square feet. This will be used as a working press room for the roughly 2,000 journalists who will cover the debate. It must be able to accommodate:

- A. Air conditioning to be maintained at 70 degrees Fahrenheit. The system should be capable of handling an additional 15,000 watts and a "people" load of 512,500 BTU.
- B. Approximately 100 television monitors.
- C. Power and lighting to support the telephones, copiers, word processors, facsimile machines, and other business equipment which will be required.
- D. A number of work tables and chairs adequate to seat all journalists.
- E. Space for food to be catered. If possible, access to kitchen facilities is helpful. The press hall should be wired for cable television. Please provide all the above information on all proposed press hall locations; again, blueprints are helpful where available.

For both the debate and press halls, the CPD will require skilled operation, maintenance and security personnel who will be available 24 hours a day during the week immediately preceding the debate. CPD staff will need limited access to these areas during the weeks leading up to the debate, and unlimited and exclusive access to these areas during the seven days immediately prior to the debate and the one day after the debate.

The debate host should contact local utility and telephone companies to make sure that extra capacity and backup systems can be provided during debate production.

HOTELS

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The CPD will need a commitment of at least 2,500 hotel rooms. It is preferred that the total number of rooms be provided in a minimum of three hotels, with a maximum of seven hotels. Of the 2,500 rooms, 200 rooms should be one- or two-bedroom suites.

The CPD requires a facilities guide for each hotel property. The guide should indicate what kinds of transportation are available from the hotel to the debate hall and to major air and rail terminals.

TRANSPORTATION

The CPD requires that host sites have adequate air and ground transportation networks. Please provide a description of the following:

- A. Methods of transportation from airport(s) to hotels.
- B. Methods of transportation from hotels to debate hall.
- C. Special shuttle services.
- D. Airline information, including carriers serving the site and the frequency of their flights to major U.S. cities.

CITY SERVICES

The CPD will need the host's guarantee of complete city services, including whatever police, fire, bomb disposal and rescue personnel are necessary to ensure the safety of the debate. The coordination of this function is the responsibility of the United States Secret Service, whose agents will work with city officials to establish procedures for securing all aspects of the event. The CPD requests information on the size of the police force in host sites, the location of the trauma center nearest the debate hall, and the availability of mobile medical units to be at the hall. A list of any events which have been held at the host site under U.S. Secret Service direction would be helpful.

FINANCES

The cost of each debate is \$500,000. Each debate host will agree to raise these funds, which are paid directly to the CPD and are tax-deductible. The CPD staff will be available to assist host officials in fundraising efforts.

The funds can be raised in any amounts which the debate host chooses. Donors will receive featured written recognition in all CPD materials, invitations to debate events, and credit in every aspect of the promotional work surrounding the debate production.

Each proposal should include a representation that host site officials have discussed the matter of financing with community leaders and are satisfied that the funds can be raised.

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EXHIBIT C

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APR 25 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Request for Declaratory Ruling of)
FOX BROADCASTING COMPANY)
Regarding Sections 315(a)(2) and (4))
of the Communications Act)

To: The Commission

REQUEST FOR DECLARATORY RULING

Fox Broadcasting Company ("Fox"), pursuant to Section 1.2 of the Commission's Rules, hereby requests a declaratory ruling that the news event coverage described herein and proposed to be broadcast over the Fox Network during the 1996 presidential general election campaign is exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act, as amended. ^{1/} As will be shown below, Fox's proposals fall within the ambit of the *bona fide* news interview and "on-the-spot" news coverage exemptions codified at Sections 315(a)(2) and (4). Furthermore, Fox's proposals will contribute to the public interest in an open and vigorous exchange of ideas prior to the November 5,

^{1/} This proposal was first made by Rupert Murdoch in a speech given on February 26, 1996. This request seeks to implement the proposal, following numerous discussions with interested parties subsequent to Mr. Murdoch's remarks.

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1996 general election, while fully comporting with "Congress's objectives both to treat all candidates equally and to ensure maximum coverage" of political news.

King Broadcasting Co. v FCC, 860 F.2d 465, 466 (D.C. Cir. 1988). ^{2/}

I. **FOX PROPOSES TO PROVIDE NEWS EVENT COVERAGE OF SHORT- AND LONG-FORM CANDIDATE PRESENTATIONS REGARDING ISSUES OF CONCERN TO VOTERS.**

Fox seeks a ruling with respect to the following two proposals to provide news event coverage of appearances by the major presidential candidates, as determined by the Commission on Presidential Debates (collectively, the "Candidates"): ^{3/}

A. **Short-Form News Event Coverage.**

Between September 15 and November 2, 1996, Fox proposes to provide news event coverage of ten 60-second position statements by each Candidate, for a total of ten minutes per Candidate. Each statement will be a response to a question

^{2/} Fox makes this proposal unilaterally and without any expectation that the other networks will participate. The proposal advanced herein is in addition to the existing extensive opportunities for candidate appearances on Fox news programs on its owned and operated stations across the country, e.g., "The Fox Morning News" and "The 10 O'Clock News" on WTTG in Washington. In fact, prime-time newscasts on numerous Fox affiliates represent an opportunity, unique in the industry, for prime-time appearances by both national and local candidates for public office.

^{3/} Fox does not seek to involve the Commission on Presidential Debates in making determinations apart from those it makes for its own debates. Rather, because of the timing of Fox's proposed news event coverage, the determinations made by the Commission on Presidential Debates will be sufficient to assure participation by all major candidates.

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about a different issue of demonstrable concern to voters in the general election. The ten questions will be formulated by an independent consultant or polling organization and will be submitted to the Candidates in writing by September 1, 1996. Fox will not exercise any control over the content of the Candidates' statements.

The following additional structural safeguards will be implemented in order to assure fairness and comparable exposure to the Candidates:

1. The position statements of each candidate responsive to each issue will be broadcast in prime-time programs of comparable audience size.
2. The order of the Candidates' statements will be determined initially by coin toss or by drawing straws, and will reversed (or followed in sequence if there are more than two participating candidates) in each broadcast for the duration of the series.
3. The ten events will be regularly scheduled during the designated 30-day period preceding the general election, and will receive advance promotion.

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Fox submits that these safeguards, in addition to the mechanism for selecting the candidates, selecting the topics to be addressed and formulating the questions to the Candidates, will satisfy "Congress' intent that the programs be of genuine news value and not be used to advance the candidacy of a particular individual." Henry Geller, 95 F.C.C.2d 1236, 1243, aff'd sub nom. League of Women Voters Educ. Fund v. FCC, 731 F.2d 995 (D.C. Cir. 1983).

Fox believes that, in view of both the proposed format of the series and the complicated and unpredictable schedules of the Candidates in the month preceding the general election, it will be impracticable to present live coverage of

each of the Candidates' ten position statements. Accordingly, Fox will make production facilities available, free of charge and at mutually convenient times and locations, for the Candidates to record their statements live on videotape. ^{4/}

B. News Event Coverage of Election-Eve Candidate Presentations.

In addition to the short-form news event coverage discussed above, Fox proposes to make available one hour of its prime-time network schedule on Monday evening, November 4, 1996, to provide news event coverage of longer, back-to-back statements by each Candidate. These statements will consist of the final campaign message in response to the question, "Why should the American voter vote for you?" The hour will be divided equally among the Candidates. Fox will not exercise any control over the content of the Candidates' statements, and the order of the presentations will again be determined by coin toss (or by drawing straws). For the reasons discussed above, Fox also will provide production facilities free of charge at mutually agreeable times and locations for the recording of the Candidates' statements.

^{4/} This process will require that the Candidate appear live and provide his responses, without any opportunity to edit or otherwise modify or enhance the responses in the post-production process.

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II. FOX'S PROPOSALS QUALIFY FOR EXEMPTION FROM THE EQUAL OPPORTUNITIES REQUIREMENT OF SECTION 315(a).

Like the other exemptions from the equal opportunities requirement of Section 315(a), the "bona fide news interview" and "on-the-spot" news coverage exemptions are intended to strike a balance between, on the one hand, the guaranteed equal treatment of political candidates, and, on the other,

the right of the public to be informed through broadcasts of political events . . . [and] the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Hearings on Political Broadcasts--Equal Time Before the Subcommittee on

Communications and Power of the House Committee on Interstate Foreign

Commerce, 86th Cong., 1st Sess. 2 (1959) (comments of Chairman Harris). As

explained below, Fox respectfully submits that its proposals satisfy the

Commission's criteria for exemption from the equal opportunities requirement of Section 315(a) with respect to either of these provisions.

Both Fox's short-form and election-eve presentations "reasonably may be viewed as news 'events' subject to broadcast coverage" in the exercise of Fox's good faith news judgment. King Broadcasting Company, supra, at 4999 (back-to-back candidate presentations alternating with candidate interviews collectively exempt under Section 315(a)(4)). The Commission has concluded that there is "no significant distinction between coverage of this sort of political 'event' [i.e., alternating candidate presentations] and the candidate debates we previously have deemed to be news 'events.'" Id. Accordingly, the spoken presentations by the Candidates on issues of concern to voters proposed to be broadcast by Fox, "by any

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reasonable standard, are news 'events' within the contemplation" of the "on-the-spot" exemption. Id. at 5000. See also Henry Geller, supra, at 1246-47 (delayed broadcasts qualify for Section 314(a)(4) exemption).

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Guided by prior Commission decisions, Fox has designed structural safeguards that will ensure that there is no candidate favoritism. See Aspen Institute Program, 55 F.C.C.2d 697 (1975), aff'd sub nom. Chisholm v. FCC, 538 F.2d 349 (D.C. Cir.), cert. denied, 429 U.S. 890 (1976) (exempt presentations must be broadcast in non-discriminatory manner). Each candidate will receive an identical amount of time to respond to each of a series of ten identical questions; thereafter, on November 4, each candidate will be given an identical amount of time for an extended statement in response to a final question. Cf. King Broadcasting Company, supra, at 4999 ("the mere fact that the presentations allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news event exemption"). In addition, Fox has removed itself completely from the process of selecting participating candidates. The Fox news event coverage will treat equally all those candidates deemed eligible by the Commission on Presidential Debates.

Fox submits that its proposals also satisfy, in form and substance, the three principal factors the Commission has considered in finding limited duration election-specific interview series qualified for exemption under the "bona fide news interview" provision of Section 315(a)(2). See, e.g., U.S. News and World Report,

L.P., 2 FCC Rcd 7101 (1987); The Pacifica Foundation, DA 94-639 (MMB 1994).

First, decisions regarding the format, content, scheduling and production will be made by Fox "in the exercise of its *bona fide* news judgment and not for the political advantage of the candidate for public office." U.S. News and World Report, *supra*, at 7102, quoting H. Rep. No. 1069, 86th Cong., 1st Sess. 4 (1959). Second, the presentations will be regularly scheduled during the 30-day period preceding the general election, "with the intention to continue the series to coincide with the advent of future Presidential elections." *Id.* (limited duration, "election-specific" series satisfy "regularly scheduled" criterion). See also Media and Society Seminars, 56 R.R.2d 1150, 1153 (MMB 1984) ("[o]nly where the scheduling of a program is used as a vehicle to advance the political aspirations of a participant would the Commission question its proximity to an election"). Third, the programs will originate with and be under the control of the Fox network. See U.S. News and World Report, L.P., *supra*, at 7102.

Indeed, although in "a typical interview format, there can be no guarantee that competing candidates will be given precisely equal treatment" (King Broadcasting Company, *supra*, at 5000), Fox's proposed format will do exactly that. Furthermore, the duration of the short-form candidate responses does not affect their entitlement to the exemption. See Silver King Broadcasting Co., 64 R.R.2d 1440 (MMB 1988) (segments of three to four and one-half minutes' duration qualify as exempt news interview programs); National Broadcasting Co., Inc., 60 R.R.2d 1068 (MMB 1986).

III. CONCLUSION

Fox submits that its proposals will unquestionably serve the public interest by providing enhanced coverage of the 1996 presidential election in a manner fully consistent with Congress' objectives both to treat all candidates equally and to ensure maximum coverage of political news and information.

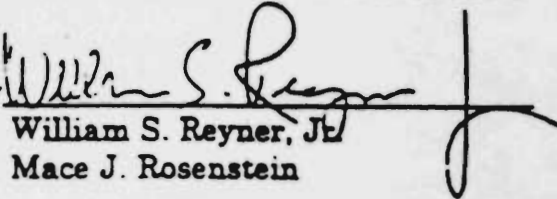
- Fox's proposals will permit the wide dissemination by a free, over-the-air television network of political news and information.
- The format and content of the programs will be determined by Fox in exercise of its good faith journalistic judgment, and the selection methodology, formulation of questions and other structural safeguards designed by Fox will guarantee against even the possibility of "favoritism or bias." King Broadcasting Co. v. FCC, 860 F.2d at 467.
- Fox's proposals "will further Congress' intent to permit broadcasters to make a full and more effective contribution to an informed electorate" (King Broadcasting Company, supra, at 5000) without risking the chilling effect on public discourse protected by the First Amendment that could result from a rigid application of Section 315(a).
- Fox's proposals will mitigate the potential unfairness resulting from the high cost of broadcast advertising time in general, and of prime-time television time in particular.

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Accordingly, for all the reasons stated herein, Fox respectfully requests that the Commission rule that its planned political coverage, as described above, is exempt from the equal opportunities provision of Section 315(a) of the Act.

Respectfully submitted,

FOX BROADCASTING COMPANY

By 
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Its Attorneys

April 25, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re)
Request for Declaratory)
Ruling of)
FOX BROADCASTING COMPANY)
Regarding Section 315(a)2) &)
(4) of the Communications Act)
To: The Commission)

RESPONSE OF PUBLIC BROADCASTING SERVICE
TO REQUEST FOR COMMENTS

By Public Notice issued May 13, 1996, the Commission requested comments with respect to the request by Fox Broadcasting Company ("Fox") for a declaratory ruling that certain proposed candidate appearances on the Fox Network would be exempt from the equal opportunities provision of Section 315(a) of the Communications Act (the "Act"). The Commission also sought comment on more general questions relating to Section 315.

These responsive comments are filed by Public Broadcasting Service ("PBS"), a non-profit corporation. PBS members constitute the vast majority of the nation's non-commercial television station licensees, which broadcast programming distributed by PBS. During 1995, PBS distributed almost 1600

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hours of news, public affairs, educational and entertainment programming to 344 non-commercial stations throughout the United States.

Fox's declaratory ruling request relies largely on standards most recently articulated by the Commission in King Broadcasting Company, 6 FCC Rcd 4998, 69 RR 2d 1017 (1991) with respect to the exemption from equal opportunities requirements provided by Section 315(a)(4) of the Act for "on-the-spot coverage of bona fide news events."¹ Among the programs declared exempt in the King ruling were two one-hour programs, each consisting of back-to-back thirty minute statements by the two major presidential candidates presenting their essential campaign messages. The Commission held that these uninterrupted candidate presentations could reasonably be deemed news events by a broadcast station as a matter of bona fide news judgment. Because the programs were not presented to advance the cause of any candidate and because they included "structural safeguards" that offered "virtually no opportunity for broadcaster favoritism," the Commission deemed them to be within the Section 315(a)(4) exemption.

¹The Commission's decision in King was in turn based upon a series of prior decisions applying the same governing principles in cases involving station decisions to present on-the-spot coverage of candidate debates and press conferences. See, for example, Aspen Institute, 55 FCC 2d 697 (1975), affirmed, Chisholm v. F.C.C., 538 F.2d 349 (D.C. Cir. 1976); Kennedy for President Committee, 77 FCC 2d 965 (1980), affirmed, Kennedy for President Committee v. F.C.C., 636 F.2d 417 (D.C. Cir. 1980); Henry Geller, 95 FCC 2d 1236 (1983), affirmed, League of Women Voters v. F.C.C., 731 F.2d 995 (D.C. Cir. 1984).

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Fox's plan to provide news event coverage of candidates presenting their positions appears to be consistent with the guiding principles set out in King. But the Commission should take this occasion to make it clear that any candidate appearances that a broadcaster chooses to present in the exercise of its bona fide news judgment should be deemed to be within the Section 312(a)(4) exemption so long as (1) the broadcaster retains the right to determine the length, dates and times of broadcast, and the format of the candidate presentations and (2) the broadcaster has in place structural safeguards to prevent discriminatory or partisan treatment of the candidates presented.

Such a holding would accommodate PBS's own current plan to expand its political programming through its "Democracy Project." The "Democracy Project" offers innovative political programming that PBS believes will contribute to a better informed and more active electorate in the forthcoming election. The "Democracy Project," which is funded in part by a grant from the Corporation for Public Broadcasting, seeks to tie together traditional programming with new formats and initiatives to stimulate voter interest and involvement. To eliminate any possible question as to whether certain of the programs PBS plans would come within the Section 315(a)(4) exemption, we hereby request a Commission ruling that the candidate presentations described below would so qualify.

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The Need for Additional Coverage
of Substantive Candidate Positions

A large proportion of candidate appearances on television presently occur in short, commercially prepared, paid advertising spots broadcast by commercial stations. Most such spots are only 30 seconds in length. Critics of current campaign practices have argued that such spots are too short for a reasoned presentation of substantive candidate positions, and that matters of substance are frequently obscured through the use of production techniques ordinarily associated with the selling of commercial products and services. Undiluted presentation of substantive candidate positions by the candidates themselves are infrequent exceptions in what are otherwise battles between political media consultants.

Debates, news interviews and coverage of candidates in regular news programming on both commercial and non-commercial stations provide a measure of balance, but PBS believes that the public interest would be advanced by additional substantive presentations by the candidates themselves in program forms thus far not generally offered under the news and news interview exemptions. In particular, we believe that there is a need for television programs that will permit major presidential candidates to present their positions directly and simply, and that will thereby provide a useful addition to the interchanges between candidates and journalists already being presented in exempt news and news interview programs.

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candidates,³ would cause most broadcasters to avoid non-exempt appearances by any presidential candidates.

PBS's Plan To Present Expanded
Coverage of Candidate Positions

PBS shares the view that the public interest would be served by providing additional broadcast time for the presentation of the views of the presidential candidates. While PBS will continue to present news coverage of candidates and bona fide news interviews of candidates in its regularly scheduled programming, it plans also to present candidate views in a new series of programs that would augment its traditional news and news interview broadcasts. Provided that PBS's plans are deemed to fall within the exemption provided for on-the-spot coverage of bona fide news events, PBS proposes to proceed as follows:

(1) Conditioned on acceptance of its offer by the presidential candidates of at least the two major parties, PBS would offer its member stations a series of programs consisting of appearances of the major party presidential candidates. Such programs would be broadcast on successive days, with one candidate appearing each day. Each broadcast would be offered during prime evening time, for a period presently planned to be

³In the 1992 elections, the top three candidates, Bill Clinton, George Bush and Ross Perot, received a total of 99.37% of all votes cast. The next two highest vote getters received 0.28% and 0.10%, respectively, of votes cast, with no other candidate's total exceeding 0.07%. All of the information presented above is as reported by the Federal Election Commission (in [cite]).

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several weeks prior to the November general election. All such broadcasts would be of equal length, and would be at the same time each day. Each segment is currently conceived of as being at least two and one-half minutes long.

(2) The candidates whose statements PBS would distribute would be selected on the basis of objective criteria -- for example, candidates certified by the Commission on Presidential Debates or candidates chosen through some other impartial selection system using criteria such as national polling results.

(3) The statements of the individual candidates would be rotated, with one candidate statement being presented each night. The initial order of rotation would be determined by lot. The order of subsequent rotations would either also be determined by lot, or would be the most recent order in reverse, or would be determined in some other objective manner designed to provide the participating candidates equal treatment over the total duration of the series.

(4) PBS would establish the following conditions, which each candidate who accepted its offer would be required to meet:

(a) Only the candidate would be permitted to appear in the presentation. The candidate would be required to appear on screen for the entire length of the presentation.

(b) A candidate's visual appearance would be limited to a prescribed format, such as a depiction of the candidate's head and shoulders only. No other visual materials or sound effects would be permitted.

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(c) Within the limitations above, each candidate would be afforded an opportunity to present his or her position without restriction as to content.*

(5) Stations electing to carry the programs would be required to broadcast all of the programmes in the series in the order offered.

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The proposal outlined above falls within the standards for on-the-spot coverage of bona fide news events outlined in King. As in King, PBS member stations would decide to broadcast the candidate presentations on the basis of bona fide news judgments by each station that the short, unadulterated candidate statements outlined above constitute news events. As in King, the decisions of PBS member stations to broadcast the candidate presentations would not be designed to advance the cause of any candidate but to foster a more informed electorate with regard to the issues of the day. PBS's plan is thus consistent with the Commission's reasoning in King and its antecedent cases.

Although PBS does not propose to restrict the content of candidate statements (except to delete libelous material and personal attacks on certain non-candidates), the format of the presentations would otherwise be closely controlled by PBS so as to maintain the purpose of the broadcasts, which would be to

*This opportunity would be subject only to PBS's right to delete libelous materials or personal attacks creating response rights in third parties. Since the candidate broadcasts would not qualify as "uses," PBS and its member stations would not be immune from libel actions based on a broadcast's content, nor would certain personal attacks be exempt under Section 73.1920(b) of the Commission's Rules.

provide news coverage of each candidate's position. All extraneous visual and oral materials, such as music, candidate-produced videos, unflattering visuals of opponents and similar elements commonly found in candidate advertising, would be excluded. Because PBS and not the candidates would thus maintain control of each broadcast, the broadcasts would not, by definition, be "uses" subject to equal opportunities requirements. Candidate "uses" are characterized by a complete absence of licensee format/content controls of the kind to be imposed here, a requirement of the "no censorship" provisions of Section 315(a) with respect to "uses."

There is only one factual difference between the candidate appearances PBS proposes and the candidate statements approved in King, and that difference provides no basis for different treatment under the Section 315(a)(4) exemption. The factual difference is that the King candidate appearances were "back-to-back" on the same night, while the presentations PBS proposes would be broadcast on successive nights. The significance of the "back-to-back" presentations approved in King, however, was simply as one element of the "structural safeguards" found by the Commission to be essential to "preclude a broadcaster from airing [candidate] speeches for the purpose of aiding a candidate in a partisan, discriminatory fashion." King, supra, 6 FCC Rcd at 5000. It is clear that equally effective structural safeguards

¹Gray Broadcasting Systems, Inc., 14 FCC 2d 766 (1968);
 (James L. Buckley, 67 FCC 2d 5 (1977).

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will be imposed here. Those safeguards will either be the same as those in King or functionally equivalent.

As in King, each major candidate will appear for the same amount of time and will be required to use the same format. Each appearance will be at the same hour of the day. The initial order of rotation among candidates will be determined by lot, with the subsequent order of rotation either being reversed, or similarly determined by lot, or determined in some other objective manner designed to achieve equal treatment of participating candidates. Given these assurances of nonpartisan and non-discriminatory treatment, the fact that the PBS candidate appearances will be on successive evenings rather than in a single program does not render PBS's structural safeguards any less effective than those approved in King.

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Conclusion

For the reasons set forth above, PBS requests a ruling by the Commission that PBS's plans set forth in these comments for offering candidate appearances to PBS member stations and the broadcast of such appearances by the member stations would constitute exempt on-the-spot coverage of bona fide news events and would accordingly be exempt from equal opportunities requirements.

Respectfully submitted,
PUBLIC BROADCASTING SERVICE

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General Counsel and Secretary

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(June 3, 1996

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Before the
Federal Communications Commission
Washington, D.C.

DUPLICATE

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JUN - 3 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Request for Declaratory Ruling of)
FOX BROADCASTING COMPANY)
Regarding Sections 315(a)(2) and (4))
of the Communications Act)

To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

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Capital Cities/ABC, a wholly owned subsidiary of the Walt Disney Company, files these comments in response to the Commission's request for comment on issues relating to broadcaster proposals to provide time to presidential candidates.¹ Specifically, the Commission requests comment on two matters - first, whether the Fox proposals described in the Fox Broadcasting Company Request for Declaratory Ruling should be deemed exempt from the "equal opportunities" provisions of Section 315 of the Communications Act pursuant to the exemptions for bona fide news programming, and, second, more generally, whether programming that broadcasters in good faith deem to be bona fide news should be exempt from the equal opportunities rules "regardless of format". Our comments respond to these questions in sections I and II below. In section III, we outline the ABC Television Network free time proposal and request that the Commission affirm that this program is exempt from the equal opportunities rules.

¹ FCC Public Notice - May 13, 1996

I. The Fox proposal should be deemed exempt pursuant to the King Broadcasting precedent.

The Fox proposal has two program elements. One element is a one-hour prime-time program which would consist of back-to-back statements by the major presidential candidates. In our judgment, the Fox one-hour proposal clearly satisfies the King Broadcasting test for exemption -- newsworthiness and the presence of structural safeguards against broadcaster favoritism.²

The Fox one-hour proposal, like the one-hour program in King, consists of statements by the major presidential candidates. The format for the Fox hour appears identical to the King format and would contain the same structural safeguards against broadcaster favoritism - the candidates will appear back-to-back in the same program and will receive equal time. In both cases, the order of presentation is determined by coin toss. Moreover, the Fox method of selecting candidates for inclusion in the program raises no concern of broadcaster bias.

In King, in discussing whether or not future program proposals would be entitled to the news exemptions, the Commission cautioned that "exclusion of a major third-party presidential candidate who, based on objective criteria such as polling results showed the significance of his or her campaign, would call into question the bona fides of the broadcaster's selection of candidates."³ The

² In re Request of King Broadcasting Company FCC 91-246
Released August 22, 1991.

³ Id at paragraph 16

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concern expressed in King should be deemed satisfied if objective criteria are used to select the candidates even if the broadcaster itself makes the selection. Thus, if Fox had proposed to make the selection itself based on objective criteria, there would be no bias issue. That being so, the additional step that Fox has taken -- delegating candidate selection to an objective, third-party, non-partisan group -- can raise no concern. Thus, Fox's one-hour proposal clearly satisfies both prongs of the King test for exemption.

The second element of the Fox proposal - a series of ten 60-second position statements by each of the major presidential candidates - also satisfies the King test for exemption.

The 60-second statements are different from King in two respects only -- the length of the statements and the fact that they would be broadcast on a sequential basis over a period of six weeks. Neither of these factors should affect eligibility for the news exemption. According to Fox, each of the 60-second statements will be devoted to "a response to a question about a different issue of demonstrable concern to voters in the general election". (Fox Request at 2-3) The statements will be broadcast between September 15 and November 2, 1996, during the height of the presidential campaign. Under these circumstances, there is no reason for the Commission to doubt Fox's judgment that the statements would be newsworthy. The fact that the statements are only 60 seconds in length makes them no less newsworthy than the

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longer statements the Commission considered in King.⁴

The Fox 60-second statement proposal also meets the second prong of the exemption test because it includes ample safeguards against broadcaster favoritism. As in the case of the Fox one-hour program, each candidate will receive equal time and the order of presentation will be determined by a coin toss. While the statements will be broadcast on different dates, Fox says they will all be broadcast in prime-time programs of comparable audience size. Candidate selection would be based on objective criteria as described above with respect to the one-hour proposal. With those safeguards in place, the fact that the statements are presented in a series over a period of weeks as opposed to appearing back-to-back in one program should be irrelevant.

II. Programming that broadcasters in good faith deem to be bona fide news should be exempt regardless of format provided there are adequate safeguards against broadcaster favoritism.

In interpreting the exemptions to the equal opportunities rules, the Commission should be guided by the twin objectives Congress sought to achieve in enacting the 1959 exemptions -- to give the broadcast media greater freedom to provide the public with full coverage of political news events while at the same time

⁴ The Commission staff has ruled, in the case of a news interview program, that the fact that a program is only 3 to 4½ minutes in length is not an impediment to its status as an exempt program. Neither legislative history nor Commission precedent prescribes a minimum length of program to qualify for exemption. In re Request by Silver King Broadcasting Company 64 RR 2d 1440 (1988).

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protecting against licensee favoritism or bias.⁵ While three of the statutory exemptions pertain to programs with particular formats -- newscasts, regularly scheduled news interviews and documentary programs -- the fourth exemption, for "on-the-spot coverage of bona fide news events", set out at Section 315(a)(4), is not so limited. We believe that the two-pronged test that the Commission articulated in King for interpreting the on-the-spot exemption -- newsworthiness and safeguards against broadcaster favoritism -- should apply regardless of the format of the program.

The public interest is best served by giving broadcasters the freedom to employ a variety of formats to cover and present the views of candidates for public office. The Commission has previously examined three different formats -- debates, back-to-back news interviews and back-to-back candidate statements -- and found that eligibility for exemption could be maintained under Section 315(a)(4). The Fox proposal discussed in Section I above contains yet another format variation -- a series of candidate statements. Other networks, including ABC, have recently announced their own different "free time" proposals. Given the creativity and competitiveness of broadcasters, the fact that new formats are constantly being devised is not surprising. Indeed, such creativity should be encouraged, to allow broadcasters maximum flexibility in deciding how best to cover and present political news. Since Congress did not preclude the use of any particular

⁵ King Broadcast Company v. FCC, 860 F 2nd 465 (DC Circuit 1988) at 467

format in establishing the 315(a)(4) exemption,⁶ the Commission is free to endorse any format that meets the bona fide news test so long as it contains adequate safeguards against broadcaster favoritism.

III. The ABC Television Network free time proposal should be deemed exempt.

ABC has announced that it will offer the major presidential candidates the opportunity to appear on a one-hour prime time special during the final week of the campaign. As conceived by ABC, the event will be live and unstructured with the candidates appearing without interruptions or questions from any third party. They would discuss with each other, and the American people, the issues they believe to be most important in the election.

ABC has deferred making the selection of candidates to be included in the program until a later point in the campaign when it can better be determined who the major candidates are. ABC intends to employ objective criteria in making the selection, including whether or not the candidate is actively and substantially engaged in conducting a nationwide campaign, the number of states in which the candidate has qualified for a place on the ballot, and whether polling results indicate that the candidate's campaign is significant. Once the candidate selection is made, ABC will contact the candidates to discuss and jointly agree upon a score

⁶ Id at 470

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detailed format for the program.

Although the candidate selection has not yet been made and the format for the program has not been finalized, we believe that the ABC plan, if implemented in good faith, should qualify as exempt under Section 315(a)(4) and we would ask the Commission to so affirm at this time.

Even before King, the proposed program would have qualified for the on-the-spot news exemption as a debate. Broadcaster-sponsored debates have been covered by the Section 315 (a)(4) exemption since 1983.⁷ A format such as has been proposed, which allows for direct and spontaneous interaction and dialogue between or among the candidates, has traditionally been recognized as entitled to the narrower pre-King debate exemption.⁸

After King, the case for exemption is even clearer. The proposed program clearly meets the King test of bona fide newsworthiness combined with structural safeguards against broadcaster favoritism. First, in ABC's judgment, presenting the

⁷ Henry Geller 95 FCC 2d 1236 (1983), aff'd sub. nom. League of Women Voters v. FCC 731 F2d 995 (1983).

⁸ See In re Complaints of the American Independent Party 38 RR 2d 923 (1976), in which the Commission rejected the complainant's argument that the Ford-Carter debates were "panel discussions" (not covered by the exemption) and not "debates". The Commission cited the dictionary definition of "debate" as "contention by words or arguments" and found that for exemption purposes the essence of a "debate" was "face-to-face confrontations between candidates" and not any particular program format. See also In re Request for Declaratory Ruling of WERE - 108 Radio Co. LP 63 RR 2d 1749 (1987), in which the Commission staff opined that "Intrinsic to debates... is the presence of the press and/or other candidates to question and challenge the candidate and to provide a degree of spontaneity to the event" (Emphasis supplied).

network and the Commission of the burden of processing a further request for exemption.

Respectfully submitted,

By: SA

Sam Antar
Vice President, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023

Counsel for Capital Cities/ABC, Inc.

May 30, 1996

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 13, 1996

Mr. John Hagelin
Mr. Mike Tompkins
Mr. Kingsley Brooks
Natural Law Party of the United States
51 W. Washington Avenue
Fairfield, IA 52556

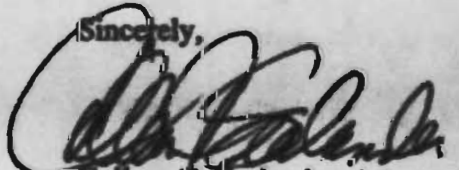
RE: MUR 4451

Dear Messrs. Hagelin, Tompkins and Brooks:

This letter acknowledges receipt on September 6, 1996, of the complaint you filed alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4451. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 1996

Mr. Frank Fahrenkopf
Commission on Presidential Debates
601 Thirteenth St., NW
Suite 310S
Washington, DC 20005

RE: MUR 4451

Dear Mr. Fahrenkopf:

The Federal Election Commission received a complaint which indicates that the Commission on Presidential Debates may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Commission on Presidential Debates in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 1996

Mary Anne Harrison, Registered Agent
Fox Broadcasting Company
10201 West Pico Boulevard
Los Angeles, CA 90035

RE: MUR 4451

Dear Ms. Harrison:

The Federal Election Commission received a complaint which indicates that the Fox Broadcasting Company may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

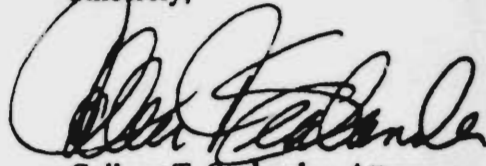
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Fox Broadcasting Company in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

- 1. Complaint
- 2. Procedures
- 3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 13, 1998

Kenneth E. Newman, Registered Agent
114 5th Avenue
New York, NY 10011

RE: MUR 4451

Dear Mr. Newman:

The Federal Election Commission received a complaint which indicates that Capital Cities/ABC, Inc., may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

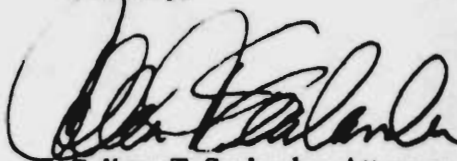
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against Capital Cities/ABC, Inc., in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(h)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

98043069839

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 1996

Paula A. Jameson, Registered Agent
Public Broadcasting Service
1320 Braddock Road
Alexandria, VA 22314

RE: MUR 4451

Dear Ms. Jameson:

The Federal Election Commission received a complaint which indicates that Public Broadcasting Service may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

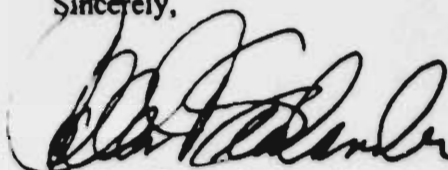
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against Public Broadcasting Service in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

98043364842

ROSS, DIXON & MASBACK, L.L.P.

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LESLIE S. AMAR
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LIBA A. BURNS
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ALYS I. COHEN
R. BARRY COOPER
PASCAL W. S. FROSTO
JOHN W. DUCHELLE
JEFFREY H. DYBERT
ELIZABETH S. FITCH
JOHN R. GRIFFITHS
GARRICK P. GROBLER
ERIC M. JAFFE
THOMAS J. JUDGE

PARNAMA T. KHERA
OR LEV
THOMAS T. LOCKE
MICHELE L. LYNCH
WENDY S. MACY
CYNTHIA R. MATHER
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LISA M. MURPHY
RICHARD J. PRATT
MICHAEL S. ROTHBERG
ERIC J. SALOWARA
ROLAND S. SCHROEDER
RICHARD C. SEAVEY
JEREMY S. SIMON

WRITER'S DIRECT DIAL

* NOT ADMITTED TO DC

(202) 662-2031
(202) 662-2063

MUR 4451

September 26, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

Ms. Colleen Sealander
Attorney, Control Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Natural Law Party Complaint
Respondent: Commission on Presidential Debates
MUR Docket Number: Unknown

Dear Ms. Sealander:

We represent the Commission on Presidential Debates ("CPD"). Although CPD has not received the Natural Law Party ("NLP") Complaint from the Federal Election Commission ("FEC"), we understand that the FEC has mailed a copy to CPD and that CPD's response is presently due on October 1, 1996. We respectfully request that CPD be given a thirty day extension of time, to and including October 31, 1996, within which to file its response to the NLP Complaint. In support of this request we note the following:

1. CPD has not yet received a copy of the NLP Complaint from the FEC.
2. The CPD has a very small staff that is fully occupied in preparations for the currently scheduled Presidential and Vice Presidential debates. Debates between President Clinton and Senator Dole are scheduled for October 6 and 16, 1996, in

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ROSS, DIXON & MASBACK, L.L.P.

Ms. Colleen Sealander
September 26, 1996
Page 2

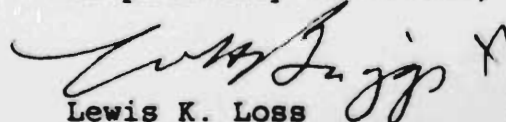
Hartford, Connecticut and San Diego, California, respectively; debates between Vice President Gore and Congressman Kemp are scheduled for October 9, 1996 in St. Petersburg, Florida.

3. The NLP and Ross Perot have filed separate lawsuits against CPD in the United States District Court for the District of Columbia. Both of these lawsuits challenge the CPD's decision criteria for selecting candidates to participate in the debates that it sponsors. Both lawsuits seek emergency relief from the Court; motions for a preliminary injunction are pending in both cases. We are fully occupied in responding to these emergency motions. The Court has scheduled a hearing on the motions for October 1, 1996.

4. We understand that Mr. Perot has also filed a complaint with the FEC that is very similar to the complaint filed by the NLP. Although we have not yet received a copy of the Perot Complaint from the FEC, we expect that CPD will ask the FEC to consolidate the NLP and Perot Complaints. Thus, the requested extension will permit CPD to file a consolidated response to both complaints, if appropriate.

Thank you for your consideration of this request. CPD looks forward to participating in the FEC's proceedings and to demonstrating that its selection criteria fully meet the requirements of 11 C.F.R. § 110.13.

Respectfully submitted,



Lewis K. Loss
William H. Briggs, Jr.

On behalf of the Commission on
Presidential Debates

LKL/WHB/jmh

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ROSS, DIXON & MASBACK, L.L.P.

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JEREMY S. SIMON

WRITER'S DIRECT DIAL

NOT ADMITTED IN D.C.

(202) 662-2031
(202) 662-2063

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September 26, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

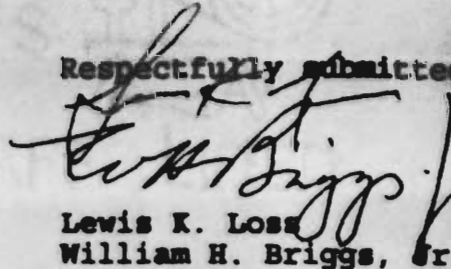
Ms. Colleen Sealander
Attorney, Control Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **Natural Law Party Complaint**
Respondent: Commission on Presidential Debates
MUR Docket Number: Unknown

Dear Ms. Sealander:

Enclosed is a statement of designation of counsel from the
Commission on Presidential Debates ("CPD").

Respectfully submitted,



Lewis K. Loss
William H. Briggs, Sr.

On behalf of the Commission on
Presidential Debates

LKL/WHB/jmh
Enclosure

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COUNSEL

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09/26/96 08:47
FEC General Counsel

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TEL:202-219-

Sep 25 96 17:40 No.009

0002

STATEMENT OF DESIGNATION OF COUNSEL

NOX _____

NAME OF COUNSEL: LEWIS K. LOSS, ESQ

ADDRESS: ROSS, DIXON MASSAUK
601 PENN AVE, NW. NORTH BUILDING
WASH., D.C. 20004

TELEPHONE: 202 662 2031

SEP 30 12 46 PM '96

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OFFICE OF GENERAL
COUNSEL

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

Sept. 26, 1996
Date

Janet H. Brown
Signature

RESPONDENT'S NAME: JANET H. BROWN

ADDRESS: Executive Director
Commission on Presidential Debates
601 15TH ST, NW SUITE 310 SOUTH
WASHINGTON, D.C. 20005

HOME PHONE: _____

BUSINESS PHONE: 202 472-1020

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 26, 1996

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble 
General Counsel

SUBJECT: MUR 4451 – Extension Request from the Commission on
Presidential Debates

Counsel for the Commission on Presidential Debates ("CPD") has requested a 30-day extension of time to respond to the complaint filed by John Hagelin, the Natural Law Party's presidential candidate, and others challenging the CPD's debate selection criteria. In his letter, counsel explains that the additional time is required because of counsel's duties in defending the CPD in concurrent litigation over the same issues and because counsel has not received yet a copy of the complaint.¹ Attachment. Counsel also notes that the CPD's small staff is fully occupied in preparing for the pending debates, and states that the CPD expects to file a consolidated response to the Hagelin and Perot complaints.² A 30-day extension of time would give counsel until October 31, 1996 to file the CPD's response.³ As you may be aware, Messrs. Hagelin and Perot have filed suit in federal court in an attempt to force the Commission to expedite action on the administrative complaints.

Pursuant to this Office's authority to grant extensions of 30 days or less for good cause and in accordance with our usual practice, we intend to grant the extension request absent an

¹ The notification letter dated September 13, 1996 and the CPD's copy of the complaint were addressed and mailed to a corporate officer who, it appears, has been traveling overseas for the past few weeks. This Office has provided a second copy of the notification package to counsel.

² A second complaint against the CPD filed by the treasurer of Perot '96, MUR 4473, has been received just recently by the Commission. Notification letters in that complaint are scheduled to be sent today, September 26, 1996. Responses to that complaint will not be due until October 15, 1996.

³ The debates are currently scheduled to take place on October 6th, 9th and 16th, 1996.

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objection from the Commission. In addition to the reasons proffered by CPD counsel, we note that this is the first complaint involving the Commission's new debate regulations and thus raises novel legal issues. Moreover, the Hagelin complaint raises additional first impression issues involving the provision of "free TV" to the major party presidential candidates by ABC, PBS and Fox Broadcasting, and we anticipate that there will be extension requests from these respondents as well. Finally, we point out that the statutory procedures for Commission enforcement matters make it impossible for the Commission to complete an enforcement action against the CPD prior to the last debate. For all of these reasons, this Office believes that the extension is warranted and, absent objection, intends to grant CPD counsel's request.

Staff assigned: Colleen T. Sealander

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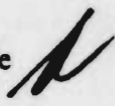
FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

September 26, 1996

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble 
General Counsel

SUBJECT: Request to Suspend the Rules in the Event of an Objection

In the event there is an objection to the attached document, the Office of the General Counsel requests that the Commission suspend its rules and place the matter on the agenda for the Executive Session scheduled for October 1, 1996.

Attachment

Staff Assigned: Colleen T. Sealander


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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA DAVIS 
COMMISSION SECRETARY

DATE: SEPTEMBER 27, 1996

SUBJECT: MUR 4451 - Extension Request from the Commission on
Presidential Debates. Memorandum to the
Commission dated September 26, 1996.

The above-captioned document was circulated to the Commission
on Thursday, September 26, 1996 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens _____

Commissioner Elliott _____

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Thomas XXX

This matter will be placed on the meeting agenda for

Tuesday, October 1, 1996

Please notify us who will represent your Division before the Commission on this
matter.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 26, 1996

Mr. Lew Loss
Mr. William H. Briggs, Jr.
Ross, Dixon & Masback
601 Pennsylvania Ave., NW
South Building
Washington, DC 20004-2688

Dear Messrs. Loss and Briggs:

Enclosed please find a copy of the notification package we previously sent to Mr. Fahrenkopf at the Commission on Presidential Debates offices. We have enclosed all the original materials with the exception of a blank designation of counsel form.

If you have any questions, please do not hesitate to call.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

98043661851



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM

TO: THE FILE ON MUR 4451

FROM: MARJORIE W. EMMONS
SECRETARY OF THE COMMISSION *MWE*

DATE: OCTOBER 2, 1996

SUBJECT: GENERAL COUNSEL'S MEMORANDUM DATED
SEPTEMBER 26, 1996

On September 26, 1996 the General Counsel's memorandum on the subject, "Extension Request from the Commission on Presidential Debates," was circulated to the Commission on a 24 hour no-objection.

An objection placed the matter on the executive session agenda of October 1, 1996. Following discussion at that meeting, there was no change in the pre-meeting record. Therefore, there were four "no objections" and one objection, that being from Commissioner Thomas, on the staff report.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 1996

Lewis K. Loss, Esq.
Ross, Dixon & Masback
601 Pennsylvania Avenue, N.W.
North Building
Washington, D.C. 20004-2688

RE: MUR 4451
Commission on Presidential Debates

Dear Mr. Loss:

This is in response to your letter dated September 26, 1996 which we received on September 30, 1996 requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 31, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script that reads "Erik Morrison".

Erik Morrison, Paralegal
Central Enforcement Docket

930430061650

HOGAN & HARTSON
LLP.

WILLIAM S. REYNER, JR.
PARTNER
DIRECT DIAL (202) 637-6510

September 30, 1996

COLUMBIA SQUARE
566 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-6000
FAX (202) 637-6010

DELIVERY BY HAND

Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 30 5 18 PM '96

Re: MUR 4451 -- Natural Law Party Complaint

Dear Ms. Sealander:

Pursuant to your letter of September 13, 1996, this letter is submitted on behalf of Fox Broadcasting Company ("FBC") in response to the September 5, 1996 letter complaint of the Natural Law Party ("NLP") alleging, *inter alia*, that FBC may have violated the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). As will be shown below, the NLP complaint does not raise a violation of the Act by FBC. Accordingly, the Federal Election Commission ("FEC") should take no action with regard to the portion of the complaint concerning FBC.

Background: The FBC Broadcast Proposal Approved by the Federal Communications Commission

The subject of the NLP complaint is FBC's ongoing coverage of presentations by the major presidential candidates in connection with the 1996 general election. FBC's pre-election coverage features two complementary formats: (1) a series of 60-second position statements by each participating candidate, broadcast in prime time over the six-week period preceding the November 5, 1996 general election, responding to ten identical questions pertaining to issues of demonstrable concern to voters and submitted to each candidate by FBC; and (2) a one-hour program, to be broadcast during prime time on November 4, 1996, during which each participating candidate will be afforded an equal amount of time to respond to the question, "Why should the American voter vote for you?"

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FBC maintains complete control over these programs and has instituted structural and other safeguards to ensure fair treatment of the candidates. For example, FBC retained a nonpartisan team of consultants to identify substantive voter concerns and to formulate questions for the candidates. It determined the order of appearance in both the short- and long-form presentations by coin toss. 1/ Although FBC does not edit the content of the candidates' statements, it likewise does not allow the candidates themselves to have "any opportunity to edit or otherwise modify or enhance the responses in the post-production process." 2/ The selection of candidates to be included in both elements of FBC's coverage was determined by reference to the decision of the Commission on Presidential Debates ("the CPD") for participation in the 1996 presidential candidate debates. FBC requires that the candidates record their statements in front of a neutral background. Thus, FBC most assuredly is not, as the NLP suggests, "turning over control of its facilities to the candidates." Complaint at 9.

In a Declaratory Ruling issued on August 21, 1996, the Federal Communications Commission ("FCC") determined that FBC's pre-election broadcasts collectively constitute *bona fide* news event coverage that is statutorily exempt from the "equal opportunities" requirement of Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. § 315 (the Communications Act"). Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc., FCC 96-355 (released Aug. 21, 1996), at ¶¶ 27-30. 3/ The effect of

1/ FBC's proposal provided for drawing straws to determine the order of appearance in the event more than two candidates participated in the broadcasts.

2/ FBC Request for Declaratory Ruling, at 4 n.4. Although FBC offered to make production facilities available for the candidates to record their statements live on videotape, neither of the participating candidates accepted FBC's offer of production facilities. However, the candidate presentations were recorded under the supervision of an FBC representative.

3/ Section 315 requires that when a broadcast licensee permits a legally qualified candidate to use its station, it must allow "equal opportunities" to all ~~other~~ legally qualified candidates. However, Congress provided exemptions in Section 315(a) for appearances by a legally qualified candidate on any: (1) *bona fide* newscast, (2) *bona fide* news interview, (3) *bona fide* news documentary, or (4) on-the-spot coverage of *bona fide* news events. The Congressional intent for these exemptions was to strike a balance between the guaranteed equal treatment of political candidates and "the right of the public to be informed through broadcasts of political events." Hearings on Political Broadcasts--Equal Time Before the

the FCC's ruling was to enable FBC to undertake coverage of the major presidential candidates without subjecting its limited weekly broadcast schedule to demands for equivalent amounts of time, in comparable day-parts, from all legally qualified candidates. The FCC considered and expressly rejected the argument that the *bona fide* news event exemption discriminates against minor-party candidates, noting Congress' intent, "through the news exemptions, . . . to do no more than ensure that broadcasters are not inhibited from covering newsworthy events." *Id.*, at ¶ 28.

Rather than seeking review of the FCC's decision approving FBC's reliance on the selection of participating candidates by the CPD, NLP now brings its arguments for inclusion to the FEC. The complainant alleges, first, that FBC's pre-election coverage is a corporate contribution and corporate expenditure under FEC rules; and second, that FBC did not use sufficiently objective criteria for selecting the candidates to be included in its coverage.

FBC's Political Programming is Neither a Corporate Contribution Nor a Corporate Expenditure Under FEC Rules

The FEC's rules expressly exempt from treatment as a corporate political contribution or expenditure "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, . . . unless the facility is owned or controlled by any political party, political committee, or candidate." 11 CFR § 100.7(b)(2) (1996) and 11 CFR § 100.8(b)(2) (1996). Contrary to NLP's contention, FBC's pre-election coverage clearly qualifies as exempt news coverage under applicable FEC precedent and policy.

The two threshold questions relevant to the media exemption are "whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." Readers Digest Association, Inc. v. Federal Election Commission, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); See also Matthew Schneider, AO 1996-16, 1996 WL 341171, at *2 (May 23, 1996) (applying Readers Digest test); Donation of Television Air Time to Political Parties, AO 1982-44, FED. ELECTION CAMP. FIN. GUIDE (CCH) ¶ 5691 (1982) (same). Once the party claiming the exemption establishes these

Subcommittee on Communications and Power of the House Committee on Interstate Foreign Commerce, 86th Cong., 1st Sess. 2 (1959) (comments of Chairman Harris).

threshold issues, the FEC then determines whether the programming at issue qualifies as a news story, editorial, or commentary. *Id.*

FBC is not owned or controlled by the Democratic Party, the Republican Party, or either of their presidential candidates. Furthermore, contrary to NLP's assertion, the terms "owned" and "controlled" in the context of the media exemption do not encompass the mere use of broadcasting facilities. The terms apply narrowly to the situation in which a candidate runs news stories about herself over a broadcast station which she has power to guide or manage, or, in particular, the power to exclude opposing candidates. *Cf., Treatment of News Stories by Candidate's Media Outlet*, Informational Letter, FED. ELECTION CAMP. FIN. GUIDE (CCH) ¶ 6907 (Aug. 5, 1976).

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Even taking NLP's definition of "owned or controlled" as correct -- which it is not -- the facts do not support its argument that "for the duration of the candidate's statements at least, Fox will be abdicating control of its broadcast facilities to the candidates" Complaint at 9. As discussed above, FBC maintains complete control over the format of its broadcasts. FBC established the structural safeguards that shaped the newsworthy questions posed to the Candidates, the degree to which the Candidates may edit or otherwise enhance their responses in the post-production process, and the staging of pre-recorded responses. *See, e.g.,* Mifflin, L., "President Nearly Loses Fox TV Spot," N.Y. TIMES, September 17, 1996, at A19 (reporting FBC refusal to broadcast President Clinton's answers to questions if they include view of Presidential seals, insignia or other trappings of office).

FBC satisfies the second threshold issue in *Readers Digest* because it is acting as a press entity in making the broadcast complained of. 509 F. Supp. at 1215. In a 1982 FEC advisory opinion allowing a broadcast "superstation" to provide two hours of free time to the DNC and the RNC so that each party could present its platform and solicit contributions, the FEC concluded that "the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the media exemption." *Donation of Television Air Time to Political Parties*, AO 1982-44. Similarly, FBC's coverage of statements by the major candidates clarifying their positions on important issues is a legitimate press function. Compared to the coverage of political parties, the coverage of candidates provides an even more compelling press function because, ultimately, voters must know the views of the individual candidates they might vote for. *See* AO 1982-44, n.3 (citing to unpublished MUR in which Commission held that donation of free newspaper space

to opposing Senatorial candidates, for the purpose of discussing major issues in a campaign, was not a corporate contribution under the media exemption).

Finally, FBC's broadcasts qualify as a "news story, commentary, or editorial" under the media exemption. The FEC has stated that the term "commentary" "assures the unfettered right of . . . television networks . . . to cover and comment on political campaigns." *Id.* (quoting H.R. REP. NO. 1239, 93d CONG., 2d Sess. 4 (1974)). In the opinion of the FEC, "commentary cannot be limited to the broadcaster" and is "intended to allow the third persons access to the media to discuss issues." *Id.* The Commission further has stated:

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"Political parties are necessary participants in political campaigns. The Commission is of the opinion that providing two hours of free time to both major political parties to discuss issues, to attempt to show the differences between the two parties and to encourage support of political parties is a vital part of covering and *commenting* upon political campaigns." (emphasis added).
Id.

The FBC broadcasts provide a structured opportunity for major candidates to inform the electorate of their different views on specific issues of demonstrable concern to voters. Thus, FBC provides the electorate with the views of those people who are truly the "necessary participants in political campaigns." *Id.*

Additionally, as the FCC observed when approving FBC's broadcasts, "it is clear that these are *bona fide* news events." *Fox Broadcasting Company, supra* at ¶ 27. FBC is covering "a news event in much the same way as a newspaper would arrange, report, and comment on its own staff interview with a political candidate or cover a press conference." AO 1996-16 (approving Bloomberg Business News' electronic town meetings with presidential candidates). FBC has selected the questions to ask, has made arrangements for a recorded response, and is reporting the responses to the public. Both as a form of news story and as commentary, the Fox proposal satisfies the final requirement for Sections 100.7(b)(2) and 100.8(b)(2). Accordingly, FBC has made neither a corporate contribution nor a corporate expenditure.

FBC Did Not Violate the Requirements of 11 CFR § 110.13(c)

NLP's second claim is that FBC did not use sufficiently objective criteria for selecting the candidates to be included in its pre-election coverage, as required by 11 CFR § 110.13(c) in connection with candidate "debates." As described above, FBC deferred its selection of candidates to the decision of the CPD. The FCC determined that FBC's good faith reliance on the CPD decision qualified as a reasonably objective test. See Fox Broadcasting Company, supra at ¶ 28 (deferring candidate selection to the CPD "adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates"). Further, for the additional reasons set forth below, FBC did not violate Section 110.13(c).

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Section 110.13(c) applies only to candidate debates. While the FCC characterized the alternating pre-recorded candidate spots as a form of "mini-debate" for purposes of Section 315(a)(4) of the Communications Act, that finding does not control whether the programs constitute a "debate" under FECA. As discussed above, the FEC previously has described similar programming under the media exemption as either a "news story" or as "commentary." See AO 1996-16 (electronic town meetings with candidates); AO 1982-44 (pre-recorded programs by political parties). There is no compelling reason for the FEC now to re-characterize -- solely on the basis of an FCC characterization -- the nature of these programs as "debates" for purposes of regulations under FEC jurisdiction. Under FECA, the Fox programs are "news story" or "commentary," not "debate."

Assuming, arguendo, that the FBC proposal presents a form of "candidate debate" under FECA, FBC still is in compliance with Section 110.13(c). This regulation requires that "staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate." 11 CFR § 110.13(c). FBC did use recognized objective criteria to identify the major presidential candidates: "[t]he candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors." Fox Broadcasting Company, supra at ¶ 28. For several election cycles, the CPD has been the organization entrusted to determine the list of major presidential candidates. In good faith, FBC believed that reliance on the conclusion of the CPD was an acceptable objective test. 4/

4/ Further, the FCC ruling that approved the subject broadcasts requires FBC to include only those candidates selected by the CPD. Fox Broadcasting Company, supra at ¶ 28, 30.

If the selection process of the CPD is flawed, the FEC should fix it. It would be unsound policy, however, to impute blame to broadcasters, such as FBC, for any alleged flaws of the CPD. If the CPD criteria for selecting candidates are unacceptable, then the FEC will best accomplish the goals of Section 110.13(c) by focusing on improvements to the CPD selection methodology. There is no reason to punish Fox for relying in good faith on the CPD's decision as an objective standard. Any other result would chill the interest of broadcasters to provide coverage to any candidate. This result would contradict a long-standing congressional policy preference for encouraging the free flow of information about political campaigns. ^{5/}

Conclusion

NLP's complaint against FBC fails to set forth a possible violation of the Act. The FBC proposal is within the exemptions from corporate contributions and expenditures found in Sections 100.7(b)(2) and 100.8(b)(2). There is also a sound factual and policy basis to find that FBC made its candidate selection decisions in good faith on the basis of objective criteria, as required by Section

^{5/} Cf. 47 U.S.C. § 315(a). The exemptions to the "equal opportunities" rule, discussed *infra* note 3 and accompanying text, are premised on a Congressional preference "to make available to broadcasters the opportunity 'to cover the political news to the fullest degree.'" *Aspen Institute*, 55 FCC 2d 697, 707 (1975) (quoting 105 CONG. REC. 14444 (1959) (remarks of Sen. Magnuson)). The exemptions from corporate contributions and corporate expenditures embodied in 11 CFR §§ 100.7(b)(2) and 100.8(b)(2) are likewise intended to assure "the unfettered right of the . . . TV networks . . . to cover and comment on political campaigns." H.R. REP. NO. 1239, 93D CONG., 2d Sess. 4 (1974).

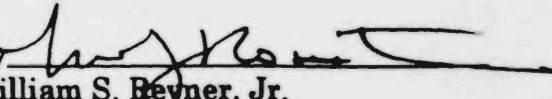
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Colleen T. Sealander, Esq.
September 30, 1996
Page 8

110.13(c). For the foregoing reasons, the FEC should take no action on the portion of MUR 4451 concerning Fox.

Respectfully Submitted,

FOX BROADCASTING COMPANY

By 
William S. Beyner, Jr.
Mace J. Rosenstein

Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004-1109

Its Attorneys

cc: Dr. John Hagelin
Arthur B. Goodkind, Esq.
Sam Antar, Esq.
Lewis K. Loos, Esq.

98040069061

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4451

William S. Reyner, Jr.
Mace J. Rosenstein

NAME OF COUNSEL: _____

FIRM: Hogan & Hartson L.L.P.

ADDRESS: 555 Thirteenth Street, N.W.

Washington, D.C. 20004-1109

TELEPHONE: (202) 637-6510

FAX: (202) 637-5910

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date _____

Signature _____

RESPONDENT'S NAME: Fox Broadcasting Company

c/o Peggy Binzel

ADDRESS: 5151 Wisconsin Avenue, N.W.

Washington, D.C. 20016

TELEPHONE: HOME () _____

BUSINESS (202) 895-3269

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LAW OFFICES

KOTEEN & NAFTALIN, L.L.P.

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October 1, 1996

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Hand delivered

Re: MUR 4451, Complaint of The Natural Law Party

Gentlemen/Ladies:

On behalf of Public Broadcasting Service ("PBS"), this letter responds to the above-referenced complaint of the Natural Law Party ("NLP") insofar as the complaint addresses certain news event programs PBS plans to offer to its member stations in connection with the 1996 presidential election.

The PBS news event programs at issue will consist of a series of appearances of the major party presidential candidates. The programs will be broadcast on successive days, with one candidate appearing each day. Each broadcast will be offered during prime evening time over a period of several weeks prior to the November general elections. All such programs will be of equal length and will be presented at the same time each day. Each program will be two and one-half minutes in length (not two and one-half hours in length, as erroneously stated in NLP's complaint).

The candidates who are to appear in the PBS program series are to be selected on the basis of objective criteria. PBS will include those candidates certified by the independent Commission on Presidential Debates ("CPD") as entitled to participate in the presidential debates to be held prior to this year's general elections.

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Office of General Counsel
Federal Election Commission
October 1, 1996
Page 2

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PBS has established various conditions to insure equality of treatment as among the candidates who will appear in these programs. In the exercise of its bona fide news judgment, PBS has also retained control over critical aspects of the format of each program. Only candidates will be permitted to appear in each program; a candidate so appearing will be required to appear on screen for the entire length of the presentation; each candidate's appearance will be limited to a format prescribed by PBS; and no other visual materials or sound effects will be permitted. These restrictions will preclude candidate use of the PBS presentations to present campaign commercials, and are designed to insure that each program will conform to PBS's purpose in presenting the programs, which is to provide on-the-spot news coverage of position statements by each of the major candidates. Stations that elect to carry the PBS programs will be required to broadcast all of the programs in the series in the order offered.

In the enclosed Declaratory Ruling released August 21, 1996, the Federal Communications Commission ("FCC") held that the PBS programs described above will constitute on-the-spot coverage of bona fide news events and will therefore be exempt from the equal opportunities provisions of Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. §315. The FCC found no reason to question the good faith news judgment of PBS with respect to its decision to provide news event coverage of the candidate appearances, which the FCC held to be news events "by any reasonable standard." The FCC also found that PBS's plans included structural safeguards to prevent favoritism with respect to any candidate. Declaratory Ruling, paragraphs 31-32.

NLP nonetheless asks the FEC to hold that PBS's series of news programs would constitute illegal campaign contributions. For the reasons set forth below, NLP's request should be summarily rejected.

Office of General Counsel
Federal Election Commission
October 1, 1996
Page 3

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The ruling NLP seeks would obviously prevent broadcast of any of the PBS programs that have been explicitly approved in the FCC's Declaratory Ruling. Such a holding would be inconsistent with the intent of Congress when it enacted the news-related exemptions to the equal opportunities provisions of the Communications Act. That intent, as restated in Chisholm v. FCC, 538 F.2d 349, 356 (D.C. Cir. 1976), was to "enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."

The same Congressional intent has also been expressed clearly in the FEC's own enabling legislation at 2 U.S.C. §431(9)(B)(I), which excludes from the definition of a campaign "expenditure":

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate"¹

The purpose of Congress in enacting this provision was clearly stated in its legislative history. Congress sought to "make it plain that it [was] not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press," but rather to assure "the unfettered right of newspapers, TV networks, and other media to cover and comment on political campaigns." H. Rep. No. 1239, 93rd Cong., 2nd Sess. (1974), at 4.

The series of news event programs PBS has described above falls squarely within the Section 431(9)(B)(I) news exclusion and

¹This provision is also reflected in the FEC's regulations at 11 C.F.R. §100.7(b)(2).

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Federal Election Commission
October 1, 1996
Page 4

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NLP is incorrect in characterizing the programs as "gift[s] of free air time to certain subjectively chosen candidates" (NLP complaint, at 10). As the FCC has found, PBS's decision to broadcast the programs reflects an exercise of PBS's bona fide news judgment. The formats and times of presentation of the programs will be controlled by PBS, not by the candidates who will appear. The purpose of the programs is to inform the electorate and not to favor or disfavor any candidate, and the participants in the programs will be selected on the basis of objective standards. In short, the programs will constitute news event coverage and will in no sense be "gifts" of air time that candidates may use as they wish.

It would be unreasonable and contrary to the intent of Congress for the FEC to reach a determination different from that reached by the FCC as to the news event nature of the programs PBS plans to present. The FCC is the expert agency that has been charged by Congress with the task of interpreting and applying the news related exemptions to Section 315. The FCC has been discharging this responsibility since the news-related exemptions were adopted more than 35 years ago, and in the process has developed an extensive body of law establishing the kinds of programs that qualify as on the spot coverage of bona fide news events. The evolution and present state of the law in this regard is summarized in the FCC's Declaratory Ruling enclosed with this letter. Radio and television broadcasters, networks, and other electronic media have come to rely heavily on these FCC interpretations in providing news event coverage of election campaigns. Under these circumstances, there is no reasonable basis for the FEC to block broadcast of the same news event programs that the FCC has sought to encourage in discharging its statutory mandate.

NLP is also incorrect in characterizing PBS's programs as "debates" and in contending that they fail to meet the criteria established in the FEC's debate rule, 11 C.F.R. §110.13.

Office of General Counsel
Federal Election Commission
October 1, 1996
Page 5

As is clear from the description provided above, the news event presentations PBS plans to broadcast are not "debates" as that term is normally used. Even if the FEC's debate rule were deemed to apply, however, the PBS programs meet all requirements of the rule.² The staging organization, PBS, is both a broadcaster and a nonprofit organization exempt from federal taxation under 26 U.S.C. §501(c)(3), and thus qualifies under both §110.13(a)(1) and §110.13(a)(2). The PBS program series is consistent with §110.13(b) in that it will include at least two candidates and will not be structured so as to promote or advance one candidate over another. Finally, the candidates to be included will be selected in accordance with pre-established objective criteria as required by §110.13(c), in this case by reliance upon an independent determination of the CPD.³

² We note that the FEC's debate rule was adopted in 1979, at a time when the FCC still recognized a distinction between debates staged by broadcasters and debates staged by other independent entities. In 1983, the FCC eliminated this distinction, holding that broadcast debates otherwise meeting FCC standards constituted on-the-spot coverage of bona fide news events even if they were staged by broadcast stations and broadcast by the stations from their own studios. Henry Geller, 95 FCC 2d 1236 (1983), aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983). It therefore appears that 11 C.F.R. §110.13 should no longer be applied to broadcast debates, and that the standards in 2 U.S.C. §431(9)(B)(1) should be solely dispositive.

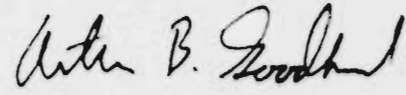
³ Should the CPD determine at any time that any additional candidate or candidates must be included in this year's presidential debates, PBS will similarly include any such candidate or candidates in its series of news event presentations. It does not appear, however, that NLP would qualify for inclusion under any set of objective criteria that relies significantly on poll results. According to FEC

(continued...)

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October 1, 1996
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Accordingly, for the reasons set forth above, PBS respectfully requests that the FEC issue a prompt determination that there is no reason to believe that NLP's complaint sets forth a possible violation of the Federal Election Campaign Act of 1971, as amended.

Very truly yours,



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³(...continued)

statistics, NLP's presidential candidate received less than four one-hundredths of one percent of the popular vote in the 1992 elections. We are unaware of any poll results indicating that NLP's standing in current polls is significantly higher.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Requests of)
)
Fox Broadcasting Company,)
Public Broadcasting Service,)
and Capital Cities/ABC, Inc.)
)
For Declaratory Rulings)

DECLARATORY RULING

Adopted: August 19, 1996

Released: August 21, 1996

By the Commission:

1. The Commission has before it three separate requests for declaratory ruling filed by the Fox Broadcasting Company (Fox), the Public Broadcasting Service (PBS) and Capital Cities/ABC, Inc. (ABC). Each seeks a Commission ruling that its respective proposal to provide free air time in the context of news coverage to the major presidential candidates prior to the November 5, 1996 general election is exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act of 1934, as amended. 47 U.S.C. Section 315(a). For the reasons discussed below, we believe that the proposals are consistent with the statutory exemptions and related Commission and judicial case law and that, accordingly, each should be deemed exempt from the equal opportunities requirement as "on-the-spot coverage of bona fide news event" programming under Section 315(a)(4).

I. FACTUAL BACKGROUND

2. **Fox Proposal.** Fox proposes the following two-pronged format for presentations by the "major" presidential candidates in order to "contribute to the public interest in an open and vigorous exchange of ideas prior to the November 5, 1996, general election":

- (1) A taped one-hour prime time program to be aired election eve, with each candidate accorded an equal amount of time to make a statement in response to the question, "Why should the American voter vote for you?" The statements would be broadcast back-to-back, the candidates would have no interaction with reporters or with each other, and the order of appearance would be determined by coin flip if two candidates participate or by a drawing of straws if there are more than two; and

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(2) During the last six weeks of the campaign, each candidate would respond, in taped one-minute "position statements," to ten questions to be furnished to them by September 1, 1996. Each candidate would be asked the same questions, and the questions would be formulated by an independent consulting or polling organization. The statements, though not contemplated as back-to-back, would be "broadcast in prime-time programs of comparable audience size." The initial order of the statements would be determined by a coin toss or by drawing straws and would alternate in sequence for the duration of the broadcasts. The statements would be publicized and regularly scheduled.

3. Under the Fox proposal, selection of major presidential candidates for participation in both elements of its proposed programming will be determined by reference to selections made by the Commission on Presidential Debates for participation in the presidential debates.¹ Further, Fox states that it will not exercise any control over the content of the candidates' statements with respect to either of these proposals. Finally, Fox states that it will make production facilities available, "free of charge and at mutually convenient times and locations," for the candidates to record both their one-minute position statements and their election eve statements. The statements are to be recorded "live on videotape," which Fox explains means that "the candidates appear live and provide . . . responses, without any opportunity to edit or otherwise modify or enhance the responses in the post-production process."

4. In support of its request, Fox claims that "the spoken presentations by the candidates on issues of concern to voters," consistent with the Commission's 1991 King decision,² may reasonably be viewed as news events subject to broadcast coverage in the exercise of its good faith news judgment. Fox states that it has designed structural safeguards to prevent against possible candidate favoritism, a concern of Congress when it enacted the news exemptions. Fox maintains, for example, that, by deferring to a third party for the selection of candidates, it has removed itself from even the possibility of broadcaster favoritism. Fox thus contends that both formats are *bona fide* news events consistent with the Commission's interpretations of Section 315(a)(4) of the Act and, alternatively, that both formats also satisfy the criteria enunciated by the Commission for *bona fide* news interviews under Section 315(a)(2) of the Act.³

5. **PBS Proposal.** PBS proposes to present a series of programs as part of its "PBS Democracy Project," to "contribute to a better informed and active electorate in the forthcoming

¹ The Commission on Presidential Debates is an organization established to plan and sponsor debates among the leading candidates for the Presidency and Vice Presidency. The debate Commission selects candidates based upon a variety of factors including the newsworthiness of their candidacy. It would not be involved in Fox's production in any manner.

² King Broadcasting Company, 6 FCC Rcd 4998 (1991), on remand from King Broadcasting Company v. FCC, 860 F.2d 465 (D.C. Cir. 1988), vacating WEBE-108 Radio Company, 2 FCC Rcd 5963 (M.M. Bur. 1987), ~~order denied~~, FCC 88-162, released May 13, 1988 (King).

³ In light of our finding herein that both parts of the Fox proposal satisfy the requirements for the *bona fide* news event exemption, analysis of the alternative news interview exemption request is unnecessary.

presidential election" and "to stimulate voter interest and involvement." Candidate selection would be based on objective criteria such as national polling results or could be predicated on selections made by the Commission on Presidential Debates. Conditioned on the acceptance by the presidential candidates of at least the two "major parties," individual candidate statements lasting at least 2½ minutes would be broadcast on successive days during prime time, for several weeks before the November 5, 1996 election. Each candidate would be afforded an opportunity to present his or her views without restriction as to content.⁴ The statements would be aired each day at the same time and would be rotated with one candidate statement per night.

6. The following conditions would be imposed by PBS on each candidate: (1) only the candidate would be permitted to appear and would have to be on screen for the entire length of the broadcast; and (2) the candidate's visual appearance would be limited to a prescribed format, such as a depiction of only the candidate's head and shoulders, with no props or sound effects permitted. PBS asserts that any station agreeing to carry the programming would be obligated to carry all of the programs in the series. PBS contends that its proposal will provide for a more extensive and substantive discussion than that afforded by 30-second candidate advertising, which, in its view, is obscured by the use of production techniques typically associated with the selling of products and services. PBS argues that both the newsworthiness of its proposed programming and its good faith news judgment in deciding to carry it are consistent with Commission precedent, most notably the King decision. PBS thus requests that the Commission rule that its proposed programming is exempt *bona fide* news event programming under Section 315(a)(4) of the Act.

7. ABC Proposal. ABC proposes to offer the "major" presidential candidates the opportunity to appear on a one-hour prime-time special during the final week of the campaign. ABC states that this would be a "live unrestricted event," with the candidates appearing without interruptions or questions from any third party. ABC explains that the candidates would discuss with each other, and the American people, the issues they believe to be most important in the election. ABC contends that spontaneous interaction and dialogue between or among the candidates is indistinguishable from debates, which have been held by the Commission to be exempt news events for over twenty years. ABC also contends that the Commission's decision in King is even more clearly supportive of its format, particularly in light of the structural safeguards identified in its request.

8. ABC asserts that it will defer selection of the candidates to be included in the program until a point later in the campaign when it can determine who the major candidates are. ABC commits to prevent favoritism by looking to objective criteria such as polling results, the number of states in which the candidate is on the ballot, and whether the candidate has engaged in a nationwide campaign, to make the selection. ABC believes that a free form discussion involving the major presidential candidates in the week before the election is a highly newsworthy event and that its use of the proposed safeguards against favoritism indicate its good

⁴ Because these appearances would, if the request is granted, not be "uses" under Section 315, which cannot be censored, PBS reserves the right to edit any potentially libelous remarks or personal attacks.

faith news judgment. ABC thus asks that the Commission rule that its proposed programming would be exempt news event programming under Section 315(a)(4) of the Act.

II. COMMENTS AND *EN BANC* TESTIMONY

9. On May 13, 1996, the Commission issued a Public Notice asking interested parties to comment on the issues raised by the Fox request and, more generally, on the Commission's interpretations of the news exemptions to the equal opportunities requirement.⁵ The Commission also announced that it would conduct an *en banc* hearing on June 25, 1996, to provide further public exploration of the issues generated by the various network proposals and requests.⁶

10. In our request for comments, we asked whether approval of the Fox proposal would be consistent with statutory language, legislative history, and judicial and Commission case law regarding the news exemptions. In addition, we sought comments on whether the Commission's current interpretation of Section 315 of the Act limits ways in which broadcasters may voluntarily provide time for candidates to speak directly to voters, and whether programming that broadcasters in good faith deem to be *bona fide* news should be exempt regardless of format.

11. We received a total of 25 comments in response to our request and 12 panelists participated in the *en banc* hearing. In addition, United States Senators Bill Bradley (D-NJ) and John McCain (R-AZ) appeared at the hearing and made statements. The majority of commenters and *en banc* participants generally recognize the benefits to the public of free, unfiltered broadcast presentation of the major presidential candidates and specifically support finding both parts of the Fox proposal exempt as "on-the-spot coverage of *bona fide* news event"

⁵ The list of commenting parties is attached as Appendix A hereto. PBS and ABC first described their programming proposals to the Commission as part of their comments for this proceeding. In addition, at the time of the Public Notice, the CBS, NBC and CNN networks had also announced plans for news coverage of the presidential campaign. Those networks have not sought a Commission ruling concerning their respective programming.

⁶ A list of participants in the *en banc* hearing is attached as Appendix B. The *en banc* hearing was scheduled in response to the April 16, 1996 request of The Free TV for Straight Talk Coalition (Coalition), who asked the Commission to convene an *en banc* hearing "to promote a maximum contribution by the electronic media, especially broadcast television, to the coming general election campaign for President, with special focus on recent proposals to provide free network television time to the major presidential candidates." The Coalition argued that a hearing should address the Commission's statutory responsibility to interpret Section 315 of the Act so as to increase the amount and level of substantive political discussion. The Coalition stated that it had urged the television networks to offer the major candidates "a few minutes a night during prime time in the culminating weeks of the 1996 presidential campaign," and argued that if the networks accepted its proposal, such coverage would be exempt as *bona fide* news event programming under Section 315(a)(4). The Coalition did not, however, file with us a specific request for a ruling on whether its proposal is exempt under Section 315(a). Nonetheless, our decision here addressing the requests by Fox, PBS and ABC serves to provide general guidance to others who wish to offer various types of exempt programming formats.

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programming.⁷ These commenters contend that uninterrupted presentations by the major presidential candidates reasonably can be considered news events under the statute and Commission precedent. Consistent with the views of a number of commenters, the National Association of Broadcasters (NAB) stated that the election eve back-to-back portion of Fox's proposed format fully satisfies the criteria established in the Commission's 1991 King decision. In addition, NAB asserts that the same rationale should apply to the sixty-second statements, even if they are not back-to-back, so long as they air in comparable time periods.

12. Senator Bradley commented on the importance of having the candidates themselves communicate directly with the voters, in contrast with the negative campaigning increasingly associated with paid political advertising. He also stated that broadcasters are granted a privilege to use a limited public resource and that use of the airwaves should not be available only to the highest bidder. Senator McCain endorsed the Coalition's call for the networks to give the major Presidential candidates several minutes of time per night in the closing weeks of the campaign. He stated that simulcasting the candidates' appearances on the major networks would provide the greatest impact on the electorate.⁸

13. To the extent that commenters supportive of the Fox proposals voice any concerns about the impact of granting the requested rulings, they generally relate to the treatment of third-party candidates and the likelihood that these candidates may be excluded from coverage. In addition, three commenters (The LaRouche Committee, Daniel Walker and the World Workers Party) oppose the Fox proposal entirely because they believe it would exclude coverage of minor candidates.⁹ However, Frank Fahrenkopf, Jr. and Charles Manatt state that political communication is enhanced -- and the public interest served -- by focusing the public's attention on the major candidates through political broadcasts. PBS states that there are often numerous candidates on the ballot in Presidential elections, yet there is usually a demonstrable lack of interest on the part of the public in most minor party candidacies. PBS points out that the top three vote recipients in the 1992 Presidential election received 99.37% of all votes cast.¹⁰ During his *en banc* testimony on behalf of Fox, Rupert Murdoch stated that, although the views of all candidates are respected, it is simply not possible to offer time to candidates who have failed

⁷ Fox's proposal is supported by the comments of ABC, CSAE, Common Cause, Frank Fahrenkopf, Jr. and Charles Manatt, Henry Geller, the Robert Wood Johnson Foundation-Healthy Nations Program, Media Access Project, Michael Meyerson, the National Association of Broadcasters, NBC, NTIA, Norman Ornstein, People for the American Way, Public Broadcasting Service, Paul Taylor, Woodstock Theological Center, and WTTW.

⁸ The broadcast industry describes the kind of simulcasting proposed by the Coalition and supported by Senator McCain as "roadblocking." It would involve a voluntary decision by the networks to provide broadcast time to cover a news event at exactly the same time.

⁹ The Natural Law Party, while not opposing the Fox proposal, asks the Commission to make clear that, if time is provided to candidates of the two major parties, it also be provided to other candidates meeting a prescribed standard.

¹⁰ According to information compiled by the Federal Election Commission, 23 candidates for the presidency received votes in the 1992 general election.

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during the campaign to obtain significant public support.

14. Concern over the possibility of broadcaster favoritism was also voiced by a number of commenters who support Fox's request, and they stress the importance of the Commission's emphasis on safeguards against abuse. For example, Professor Michael Meyerson expressed concern that broadcaster favoritism may more readily occur in local races where multiple candidacies and parochial concerns abound. Consequently, he urges the Commission to be careful in its consideration of the Fox request to assess the potential impact of our ruling at the local level. Most of the commenters, including Common Cause and NTIA, pointed out that the Fox proposal contains adequate safeguards against possible broadcaster favoritism, such as removing itself from the selection of the participating candidates and the questions to be presented, as well as ensuring that the one-minute statements air in periods of comparable audience share.

15. CBS and ABC recommend that the Commission rule that programming which broadcasters in good faith deem to be *bona fide* news coverage is exempt regardless of format, provided there are adequate safeguards against broadcaster favoritism. They argue that the public is best served by giving broadcasters the freedom to employ a variety of formats to cover and present views of candidates for public office. These commenters thus suggest that the Commission eliminate from its news exemption analysis the determination of whether the program at issue falls under one of the enumerated formats of Section 315(a). Henry Geller states that the Commission should continue granting exemptions as broadly as possible consistent with its wide discretion under the statute. However, eliminating format considerations from Section 315(a), Geller argues, must occur through congressional action, something he asserts the Commission should urge Congress to do. WTTW states that it would be helpful for the Commission to give specific guidance as to the permissible variations of exemption formats. During his *en banc* testimony, Timothy B. Dyk, on behalf of the NAB, voiced a similar concern about the need for broadcasters to request Commission rulings on a case-by-case basis.

16. While supporting Fox's request, MAP strongly opposes further expanding the news exemptions as suggested by ABC and CBS, arguing that the Commission has already interpreted the news exemptions too broadly. Instead, MAP suggests that the Commission consider changing the definition of "legally qualified candidate" contained in its rules.¹¹ By more narrowly defining a legally qualified candidate in the Commission's rules, MAP argues, the Commission could at least at the national level reduce the number of candidates entitled to equal opportunities without having to assess the merits of particular news programming. Under MAP's proposal, the standards for the redefinition would include: support in independent opinion polls; signatures on nominating petitions; amount of campaign contributions; and votes in prior elections. The

¹¹ Only "legally qualified" candidates are afforded equal opportunities rights under Section 315 of the Communications Act. Section 73.1940 of the Commission's rule defines a legally qualified candidate by reference to whether a candidate has qualified for a place on the ballot in accordance with the law of the election jurisdiction or has made a substantial showing of candidacy. A substantial showing involves the traditional indicia of an actual candidacy such as the establishment of campaign headquarters, speech making, fund raising, etc. In the Presidential context, a candidate who has so qualified in at least 10 states is deemed a candidate in all states. 47 C.F.R. Section 73.1940.

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Natural Law Party requests that the Commission make clear that all candidates achieving national party status, as evidenced by qualifying for the ballot in states with a total of at least 270 electoral votes and qualifying for matching funds from the Federal Election Commission, should be entitled to participate in Fox's programming.

III. DISCUSSION

A. Legal Background

17. We begin our analysis with a review of the statute, the legislative history, and the relevant precedent. Section 315 of the Act provides that if a broadcaster or origination cablecaster¹² permits a legally qualified candidate for public office to "use" a broadcast station or cable television system,¹³ it must afford equal opportunities to all legally qualified opponents for the same office. In 1959, the Commission ruled that the appearance of the incumbent Mayor of Chicago on a local newscast during his reelection campaign triggered equal opportunities rights for his opponents. In re Telegram to CBS, Inc. (Lar Daly), 18 Rad. Reg. 238, recon. denied, 26 FCC 715 (1959). Congress, fearing that the ruling would inhibit news coverage of the political arena, within months enacted four news exemptions to the equal opportunities requirement:

- 1) *bona fide* newscast;
- 2) *bona fide* news interview;
- 3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); and
- 4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1)-(4).

18. Rather than specifically enumerating the characteristics of the programming formats intended to be covered by the exemptions, Congress left it to the Commission to interpret the full scope of the exemptions. See S. Rep. No. 1539, 86th Cong., 2d Sess. 2 (1960). The legislative history evidences Congress's recognition that the exemptions defied clear format characterizations and that the Commission was to have broad discretion to interpret them:

It is difficult to define with precision what is a newscast, news interview, news

¹² For purposes of applying the equal opportunities requirement, Section 315(c) defines "broadcasting station" as including cable television systems. In implementing this provision, the Commission has applied Section 315 only to a cable system's origination cablecasting, defined as programming over which it exercises exclusive control. 47 C.F.R. Section 76.5(p).

¹³ In general, a use is any "positive" identified or identifiable appearance of a legally qualified candidate. This excludes disparaging depictions by opponents or third-party adversaries. See Report and Order, 7 FCC Rcd 678, 684 (1991).

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documentary, or on the spot coverage of news events. . . . That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission. . . . In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, news interview, news documentary, [or] on the spot coverage of a news event . . . is *bona fide* or a "use" of the facilities requiring equal opportunities.

S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959). Furthermore, as the U.S. Court of Appeals for the D.C. Circuit observed in Chisholm v. FCC, 538 F.2d 349, 358 (D.C. Cir. 1976), Congress came to the realization that the notion of absolute equality for all competing candidates, first envisioned when Section 315 was enacted in 1934, would have to give way to two other noteworthy objectives:

First, the right of the public to be informed through broadcasts of political events; and

Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Chisholm v. FCC, *supra*, at 358, quoting Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959) (Comments of Chairman Harris). With respect to Congress's intent to facilitate greater news coverage of the political process, the court in Chisholm v. FCC also observed that "the basic purpose" of the news exemptions is "[t]o enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."¹⁴ Thus, the Commission was faced with the formidable task of implementing Congress's intention to strike a balance between fairness to the candidates and greater broadcast coverage of elections.

19. Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions. In recognition of Congress' primary goal in enacting the exemptions -- to facilitate a better informed electorate through greater news coverage of the political process -- the Commission has accorded greater deference to a licensee's good faith news judgment. The following discussion outlines the interpretive evolution reflected in the rulings most pertinent to the issues raised by the instant requests.

¹⁴ Chisholm v. FCC, *supra*, at 356, quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland).

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B. On-The-Spot Coverage of a *Bona Fide* News Event

20. The Commission narrowly construed the news event exemption until its 1975 decision in Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom., Chisholm v. FCC, supra, cert. denied, 429 U.S. 890 (1976) (Aspen), when the Commission reversed earlier rulings that had denied requests to treat debates and press conferences as exempt *bona fide* news events. In Aspen, The Commission reevaluated its reading of the statute and legislative history, concluding that:

[t]here is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activities of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster in such cases had made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. . . . In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which are patently not bona fide news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event.

Aspen at 705. Thus, the Commission determined that it could be flexible in evaluating whether a format was reasonably within the news event exemption and that, in the absence of bad faith, it should defer to a broadcaster's good faith news judgment in deciding to broadcast an event.

21. In Aspen, the Commission also adopted a two-part test for analyzing whether a program should be considered *bona fide* news event programming. First, it determined whether the format of the program reasonably fit within the news event exemption category and, second, it assessed whether the decision to carry a particular event was the result of good faith news judgment and not based on partisan purposes.¹⁵ After deciding that debates and press conferences could reasonably fit the news event exemption under the first prong of the test, the Commission decided that, under the second prong, it could, when certain safeguards were present, defer to a broadcaster's good faith news judgment in deciding to broadcast an "event." With respect to candidate debates, the Commission ruled that, to be considered an exempt news event, a debate

¹⁵ In Kennedy for President Committee (Kennedy), 77 FCC 2d 965, 968-69, aff'd sub nom. Kennedy for President Committee v. FCC, 636 F.2d 417 (D.C. Cir. 1980), the Commission further clarified Aspen and emphasized that in making the analysis of whether a program is exempt, the Commission will first "determine whether a particular scenario falls within one of the classes of appearance exempt under Section 315(a)(1)-(4)." Id. at 969. Second, the Commission will explore "whether a particular broadcast which is claimed exempt was presented using a broadcaster's good faith news judgment." Id. The second aspect of this analysis places considerable reliance on the exercise of a broadcaster's discretion to determine "newsworthiness" once it is determined an exempt news event is involved. Thus, "absent evidence of the broadcaster's intent to advance a particular candidacy, newsworthiness of an event is left to the reasonable news judgment of the professionals." Kennedy for President Committee v. FCC, 636 F.2d at 427.

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must be sponsored by a non-broadcaster third party, such as the League of Women Voters, must be aired in its entirety, and must be aired live. Press conferences also were required to be aired live and in their entirety to qualify for the exemption.

22. In Henry Geller, 95 FCC 2d 1236, aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983) (Geller), the Commission held that its decision in Aspen had, in some respects, been unnecessarily restrictive. Applying the two-prong test, it therefore allowed broadcasters to sponsor and air debates from their own studios and to tape and air a "reasonably recent event." The Commission reasoned that, although there was a chance that according broadcasters additional freedom and flexibility in their news programming might result in an occasional abuse, Congress clearly had accepted that risk in order to foster a more informed electorate.¹⁶ The Commission explained that the common denominator of all exempt programming was *bona fide* news value and that the identity of a debate sponsor should not affect the *bona fides* of the programming. Similarly, Geller eliminated the so-called "one-day rule," which had required that the broadcast be nearly contemporaneous with the event covered. The Commission reasoned that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event in order to maximize audience potential did not destroy its "on-the-spot" nature and furthered, to an even greater degree, Congress's goal of increasing the presentation of political campaign news. Accordingly, the Commission determined that the "rule-of-thumb" on the timing of an exempt news event program should be that the program encompasses news reports of any "reasonably recent event," so long as intended in good faith by the broadcaster to inform the public and not intended to favor or disfavor any candidate.¹⁷

23. In its 1991 decision in King, the Commission further expanded the Section 315(a)(4) exemption by granting a request for a broadcaster-initiated news event involving appearances alone, with no journalistic or other interaction with the candidates.¹⁸ The Commission reasoned that "candidate presentations, in which the major nominees for the highest office in the land set forth in speeches 'their essential campaign messages to the American people' reasonably may be viewed as news 'events' subject to broadcast coverage within the meaning" of Section 315(a)(4).¹⁹ It thus concluded that "the mere fact that the presentations

¹⁶ See Geller at 1244.

¹⁷ Id.

¹⁸ The first program in the series proposed by the licensee consisted of a one-hour taped program in which the two major party nominees for President would be allocated 30 minutes each to set forth their respective campaign messages without the involvement of journalists or any interaction between the candidates. The order of appearance would be reversed in a similar one-hour broadcast at the end of the series. The licensee indicated that there would be one, possibly two, broadcasts in between the opening and closing programs, which would consist of separate 45-minute interviews with each of the two candidates, combined into 90-minute programs. The series would be made available to broadcast stations and cable systems for airing no later than one week after taping.

¹⁹ Id. at 4999.

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allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news exemption."²⁰

24. The Commission emphasized as critical to its decision the need for structural safeguards to avoid the possibility of abuse, such as the back-to-back appearances by opposing candidates, which the licensee in King included as part of its proposed format.²¹ The Commission also reasoned, as it had in Geller, that, on balance, Congress's goal of fostering greater news coverage of the political process outweighed any increased possibility of abuse.²² Finally, the Commission stressed in King that the exclusion of third-party candidates whose "significance" can be established by objective criteria such as polling results, would raise questions about the *bona fides* of the programming.²³

C. Legal Analysis of Pending Proposals

25. As explained above, since the Aspen decision more than twenty years ago, the Commission's interpretations of the news event exemption have accorded broadcasters significant discretion in the formulation of innovative news programming formats and in the overall exercise of their good faith news judgment. These decisions have served to promote the central objective underlying the Section 315 exemptions. They are fully consistent with congressional intent to permit increased broadcaster discretion, and to encourage greater coverage of political news, in a context in which "the Commission has been granted greater than normal discretion." Chisholm v. FCC, 538 F.2d at 364. According to a number of commenters, allowing broadcasters to sponsor and air debates from their own studios and to present those debates live or on a reasonably tape-delayed basis in Geller has increased the number of such events and the public has clearly benefited. Likewise, the decision in King to allow for more innovation has increased the amount of broadcaster-initiated news event programming, again increasing the amount of election-related information available to the public.

26. Although the Commission has appropriately relied on broadcaster discretion, we nevertheless retain an obligation to ensure that there exist reasonable safeguards against broadcaster favoritism. As discussed below, we conclude that, consistent with the principles established in our prior decisions, the proposals under consideration are within the statutory exemption for on-the-spot coverage of a *bona fide* news event. Hence, the programs are not subject to the equal opportunities requirement in Section 315 of the Act.

²⁰ Id.

²¹ King, 6 FCC Rcd at 5000.

²² Id.

²³ Id.

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27. Fox Proposal. We agree with the majority of commenters and *en banc* panelists that the back-to-back election eve appearances fall squarely within the Commission's King decision and are exempt as on-the-spot coverage of a *bona fide* news event. First, it is clear that these are *bona fide* news events. As we observed in King, appearances by major presidential candidates, "by any reasonable standard, are news 'events,'" provided that sufficient structural safeguards against broadcaster favoritism are in place. Furthermore, Geller established that the "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date as long as the broadcast is of a "reasonably recent event." Thus, Fox's proposed election-eve broadcast of back-to-back appearances satisfies the first prong of our analysis.

28. With respect to the second prong of our analysis -- whether the broadcaster is exercising good faith judgment that the event is newsworthy -- it is also clear that Fox has met the test enunciated in King. There is no evidence of intent to advance a particular candidacy. The election eve statements are identical to the back-to-back programming approved in King with the added safeguard that each candidate's statement would respond to the same question. The candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors. While we do not require a broadcaster to defer selection of candidates to independent third parties in order to demonstrate good faith, doing so adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates. The World Workers Party argues that exclusion from the news prevents third-party candidates from gaining sufficient public support to warrant their being deemed newsworthy. However, through the news exemptions, Congress intended to do no more than ensure that broadcasters are not inhibited from covering newsworthy events.

29. The one-minute position statements are also exempt as on-the-spot coverage of *bona fide* news events. Again, as in the election eve broadcast, statements by the major presidential candidates are, consistent with the Commission's reasoning in King, reasonably viewed as news events, provided safeguards against favoritism are built into the format. Also consistent with Geller, the tape delay does not present an impediment to the "on-the-spot" element of the exemption. Furthermore, we agree with the comments of Henry Geller that in light of Fox's plan to present a series of candidate statements in response to identical questions about important campaign issues, these statements can reasonably be treated as exempt "mini-debates" in that the public will be exposed to the differing views of each candidate on identical important campaign questions. As with reliance on independent third parties for candidate selection, we do not require that a broadcaster pose questions to candidates, but doing so helps demonstrate that a broadcaster is exercising good faith news judgment.

30. Further, although Fox's format for the one-minute statements does not envision back-to-back presentation, it does incorporate other safeguards. King did not require presentations to be back-to-back to meet the good faith test; rather, the Commission explicitly contemplated the need to clarify in future rulings, on a case-by-case basis, any other safeguards

that would suffice.²⁴ Fox's pledge to air the statements during comparable time periods will serve the same essential purpose as back-to-back statements by ensuring that the candidates have roughly equal access to viewers. Further, the questions to be answered during the statements are to be formulated by independent nonpartisan organizations. This element of Fox's format lends an additional assurance that Fox's proposed programming is not designed to favor any candidate in the same way as the decision to defer to the Commission on Presidential Debates for its candidate selections. Finally, we do not believe that the short length of each statement affects the *bona fides* of the programming. The legislative history is silent on the issue of whether Congress envisioned a minimum length for a news program, and we see no reason to impose one.²⁵ These programs are also distinguishable from political advertising. The candidates must appear throughout the broadcast and are not permitted to edit or utilize other post-taping production techniques. The presence of these structural safeguards satisfies us that Fox does not intend to favor one candidate over another.

31. PBS Proposal. We similarly find that PBS's proposal qualifies for a news event exemption. The Commission has stated that statements by the major candidates for President are "by any reasonable standard 'news events'" provided adequate safeguards against favoritism are implemented. As stated above, a licensee is not required to ask questions of candidates or to arrange for third parties to do so. Though PBS's programming will not be aired live, Geller makes clear that the rebroadcast of any "reasonably recent event" suffices for the purpose of being "on-the-spot." Consequently, we find that PBS's proposal involves a *bona fide* news event satisfying the first prong of our analysis.

32. Nor is there any basis to question the good faith news judgment of PBS with respect to its decision to broadcast the event. PBS's format includes reasonable safeguards. First, PBS states that it will select the candidates for inclusion in its programming based upon objective criteria such as national polling data, or as in Fox's proposal, by reference to those candidates selected by the Commission on Presidential Debates. Further, the statements will be equal in length and aired at the same time each day. While airing the spots at the same time of day is not a requirement, it is a significant safeguard against the potential for broadcaster favoritism. Thus, we find that PBS has satisfied the second prong of our analysis -- that the decision to broadcast the event is the result of good faith news judgment, not an intention to favor one candidate over

²⁴ In King, 6 FCC Rcd at 5000, n.4, we stated:

We emphasize here that the balanced nature of the program format, which includes structural safeguards for objective news coverage of political candidates, is critical to our assessment of the *bona fides* of a news event under Section 315(a)(4) in this case. We will carefully scrutinize any future requests for exemption pursuant to these standards. To the extent there is need for further clarification of the kind of objective structural criteria we might consider in allowing an exemption under Section 315(a)(4) in any future cases, we shall address such matters on a case-by-case basis.

²⁵ In Silver King Broadcasting Company, 3 FCC Rcd 2819 (MMB 1988), the Mass Media Bureau ruled that a program of 3-4½ minute duration was exempt as *bona fide* news interview programming.

another.

33. ABC Proposal. Last, we find ABC's proposed one-hour prime-time "live unrestricted event" to be exempt under King. As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a *bona fide* news event. Furthermore, ABC has indicated that its programming would be aired live, which is not required in light of Geller, but adds to the event's newsworthiness. In fact, as ABC points out, its proposal is somewhat similar to a debate format which we exempted twenty years ago in Aspen and subsequently permitted broadcasters to sponsor in Geller. Consequently, ABC's proposal satisfies the first prong of our analysis.

34. With respect to the second prong, there is no indication that ABC's news judgments will not be *bona fide*. ABC asserts that it will employ objective criteria in selecting the candidates, considering polling results, the number of states in which a candidate has achieved ballot status, and the extent to which a candidate has engaged in a nationwide campaign. As we pointed out above, a licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection is reasonable. We find that the criteria that ABC has committed to use for candidate selection meets this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another.

IV. OTHER MATTERS

35. As discussed above, and in accordance with congressional intent, we have flexibly construed the statutory exemption for on-the-spot coverage of *bona fide* news events. However, we are unwilling to abandon completely our review of programming formats as proposed by ABC and CBS. Had Congress intended that the Commission take such an approach, it would have been unnecessary to enumerate the four exemption formats of Section 315(a). Moreover, we do not believe that review of program formats to determine exempt status impedes broadcasters in providing election-related information to the public. Our interpretations of the exemptions have allowed broadcasters substantial discretion and flexibility to formulate formats they believe will provide for a more informed electorate.

36. We also decline in this proceeding to adopt MAP's suggestion that the Commission redefine the term "legally qualified candidate." This term is used in determining those candidates entitled to equal opportunities under Section 315 and to reasonable access pursuant to Section 312(a)(7).²⁸ In this proceeding, we are asked to determine whether a licensee can reasonably consider certain appearances by candidates it deems newsworthy as news events exempt from equal opportunities requirements. To do so, we need not reach the question of whether the candidates are "legally qualified." Moreover, to the extent that MAP believes that reducing the number of legally qualified candidates will alleviate the necessity for expanding the news

²⁸ Section 312(a)(7) provides that broadcast stations must provide or make available for sale reasonable amounts of time to candidates for federal elective office. 47 U.S.C. Section 312(a)(7).

exemptions, we note that the definition of "legally qualified candidate" is codified in our rules (see 47 C.F.R. § 73.1940) and, as such, any change thereto must be considered in the context of a rule making proceeding.

37. A number of commenters voiced concern that a favorable ruling on the Fox request would risk a greater potential for broadcaster favoritism at the local level. While the Commission has speculated that the potential for favoritism may be less in "prominent" elections, particularly presidential campaigns,²⁷ we have not limited our news exemption rulings only to the presidential level. However, the proposals and the record before us involve coverage only of the presidential election and thus do not directly implicate other elections. As discussed above, in King the Commission stated that it would review future requests, on a case-by-case basis, to determine whether particular formats in particular contexts are consistent with the statute. Accordingly, should requests for exemptions regarding elections below the presidency be made, each will be considered consistent with the principles set out in today's decision, taking account of differences in context, as appropriate.

V. CONCLUSION

38. We believe that our decision today implements Congress's intent in enacting the news exemptions by allowing broadcasters to inform the public about election-related news while ensuring that candidates are treated fairly. Accordingly, IT IS ORDERED that the programming proposals presented to the Commission by Fox, PBS and ABC ARE DECLARED EXEMPT under Section 315(a)(4) of the Communications Act from the equal opportunities requirements.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²⁷ In Aspen, for example, the Commission stated that "realistically the likelihood of broadcaster abuse is remote in the coverage of more prominent political users . . ." 55 FCC 2d at 707. The Commission in King similarly reasoned that [w]here both of the major opposing candidates for President are interviewed pursuant to an unbiased format, the potential for favoritism in coverage is even more remote." Id. at 5000, quoting the Commission in Aspen.

APPENDIX A

LIST OF COMMENTERS

Benjamin Barber, Director of the Walt Whitman Center for the Culture and Politics of
Democracy, Rutgers University
The Benton Foundation
Capital Cities/ABC, Inc. ("ABC")
CBS Inc.
Committee for the Study of the American Electorate ("CASE")
Common Cause
Jan Crawford Communications
Frank J. Fahrenkopf, Jr. and Charles T. Manatt
Henry Geller
The Robert Wood Johnson Foundation - Healthy Nations Program
Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche
Exploratory Committee ("The LaRouche Committee")
Media Access Project ("MAP")
Michael Meyerson, Professor of Law, University of Baltimore School of Law
National Association of Broadcasters ("NAB")
National Broadcasting Company ("NBC")
US Department of Commerce/NTIA (as delivered by Larry Irving, the Assistant Secretary for
Communications and Information) ("NTIA")
Natural Law Party
Norman Ornstein, American Enterprise Institute
People for the American Way
Public Broadcasting Service ("PBS")
Paul Taylor, The Free TV for Straight Talk Coalition
Daniel Walker
Woodstock Theological Center, Georgetown University
Workers World Party Presidential Campaign Committee
Window To The World Communications, Inc. ("WTTW")

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APPENDIX B

PARTICIPANTS IN JUNE 25, 1995 *EN BANC* HEARING

United States Senators Bill Bradley and John McCain appeared and made statements.

The following witnesses appeared and participated on the panel:

- Rupert Murdoch, Chairman and CEO, Fox Broadcasting Company
- Paul Taylor, Executive Director, The Free TV for Straight Talk Coalition
- Timothy B. Dyk, Jones Day Reavis & Pogue (on behalf of Natl. Assn. of Broadcasters)
- Frank J. Fahrenkopf, Jr., Former Chairman, Republican National Committee
- Charles T. Manatt, Former Chairman, Democratic National Committee
- Dr. John Hagelin, Presidential Candidate, Natural Law Party
- Norman J. Ornstein, Resident Scholar, American Enterprise Institute
- Andrew J. Schwartzman, Executive Director, Media Access Project
- John K. Andrews, Jr., Managing Director, TCI News
- Michael I. Meyerson, Professor, Univ. of Baltimore Law School
- William J. McCarter, President, WTTW(TV), Chicago, Illinois
- Kathleen Hall Jamieson, Dean, Annenberg School, University of Pennsylvania

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4451

NAME OF COUNSEL: Arthur B. Goodkind

FIRM: Koteen & Naftalin, L.L.P.

ADDRESS: 1150 Connecticut Avenue, N.W.

Suite 1000

Washington, DC 20036

TELEPHONE: (202) 467-5700

FAX: (202) 467-5915

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date

Signature

RESPONDENT'S NAME: Public Broadcasting Service

ADDRESS: 1320 Braddock Place

Alexandria, Virginia 22314-1698

TELEPHONE: HOME() _____

BUSINESS(703) 739-5063

Gregory Ferenbach
Deputy General Counsel for Legal Affairs

98043864886



John W. Zucker
Senior General Attorney
Law-Journalism

October 1, 1996

BY FAX: 202-219-3923

Lawrence M. Noble, Esq.
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MUR 4451

Dear Mr. Noble:

On behalf of ABC, Inc., ("ABC")¹, this letter is submitted in response to the complaint dated September 5, 1996 filed with the Federal Election Commission ("FEC") by the Natural Law Party and its candidates John Hagelin and Mike Tompkins ("Complainants"), and the letter dated September 13, 1996 (received by ABC on September 17) from FEC attorney Colleen Sealander inviting our reply.

Complainants assert that candidate appearances proposed by several organizations, including ABC, would constitute corporate campaign contributions under the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431, and the regulations of the Federal Elections Commission, 11 C.F.R. § 110.13. With regard to ABC, Complainants contend that the press exemptions established by FECA and FEC regulations would not apply to the special one-hour primetime special that has been proposed by the ABC Television Network in which two or more of the presidential candidates would be offered an opportunity to discuss campaign issues directly between or among themselves.

As discussed below, the ABC program and the criteria to be employed by ABC in choosing candidates for participation in the program have been specifically held by the Federal Communications Commission to constitute nonpartisan news coverage of a bona fide news event and therefore to be exempt from the equal opportunities obligations under Section 315(a) of the Communications Act, 47 U.S.C. § 315(a). See Requests for Declaratory Rulings of Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc., FCC 96-355 (August 21, 1996) ("Declaratory Rulings")(a copy of which is appended

¹ On September 19, 1996, the corporate name of Capital Cities/ABC, Inc. was officially changed to ABC, Inc.

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hereto). Contrary to Complainants' assertions, we submit that the program -- whether viewed as the presentation of commentary, the coverage of a news event, or the staging of a candidate debate -- should be found similarly exempt from treatment as a corporate contribution under the press exemptions of FECA and the FEC regulations, and the complaint against ABC should be denied.

I. The Proposed ABC Program

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The ABC proposal is outlined in the Comments of Capital Cities/ABC, Inc. ("Comments") filed June 3, 1996 with the Federal Communications Commission in the Declaratory Rulings proceeding, supra. (A copy of those Comments is appended to the Complaint.) Under that proposal, the ABC Television Network intends to invite two or more presidential candidates to participate in a live, hour-long primetime broadcast during the last week of the campaign, to be produced by ABC News. Although an ABC News correspondent would serve as host, and would introduce and close the program, the candidates would otherwise be left to discuss campaign issues directly between or among themselves, with minimal interruption from the host. ABC has not yet determined which candidates it will invite to participate in the program, and no invitations have yet been issued. However, as stated in its Comments, ABC intends to employ objective criteria in making the selection, including the degree to which the candidate is actively and substantially engaged in conducting a nationwide campaign, the number of states in which the candidate has qualified for a place on the ballot, and the candidates's standing in current opinion polls. See Comments at 6.

II. The FECA Press Exemption

Section 431(9)(B)(i) of FECA, 2 U.S.C. § 431(9)(B)(i), exempts from the Act's definition of corporate contributions "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."² This provision was intended "to make it plain that it is not the intent of Congress in [FECA] to limit or burden in any way the first amendment freedoms of the press or of association. [This exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, p. 4 (1974).

² See also 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2)(exempting from campaign "contributions" and "expenditures," respectively, "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication...unless the facility is owned or controlled by any political party, political committee, or candidate...").

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In accordance with its sweeping language and intent, the press exemption has been applied broadly by the FEC and the courts. Courts and the Commission have recognized repeatedly that so long as the press entity is not owned or controlled by a political party or candidate, the sole issue under the exemption is "whether the press entity was acting as a press entity in making the distribution complained of," Reader's Digest Association, Inc. v. FEC, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), or, in other words, whether the challenged programming "fall[s] broadly within the press entity's legitimate press function." *Id.* at 1214. See also FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 250-51 (1986).

In 1982, the FEC held that the exemption applied to a proposal by the Turner Broadcasting System, Inc. to donate two hours apiece of cablecast time to the Democratic and Republican National Committees for their respective advocacy on political issues. Donation of Television Air Time to Political Parties, AO 1982-41 (August 27, 1982)("Turner"). The Commission concluded that the programs would constitute "commentary and, therefore, [be] within the news story, editorial, or commentary exemption." *Id.* The "commentary" exemption, observed the Commission, could not be limited to commentary by the broadcaster itself, but "was intended to allow third persons access to the media to discuss issues." *Id.* The grant of free time to representatives of the Democratic and Republican parties "to discuss issues [and] to show the differences between the two parties" not only constituted a legitimate press activity, the Commission noted, but was "a vital part of covering and commenting upon political campaigns." *Id.*

In amending its regulations recently to expressly include cable television, the Commission referred approvingly to the Turner Advisory Opinion and its holding that "the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the press exemption." Candidates and News Stories, 61 Fed. Reg. 18049 (April 24, 1996)(quoting Turner, *supra*).

The Turner decision is directly applicable here. Like Turner Broadcasting, ABC, Inc. is not owned by any political party or candidate, but is a respected media organization, wholly owned by the Walt Disney Company. Through the facilities of the ABC Television Network, ABC News produces and distributes news and public affairs programming to owned and affiliated television stations across the country. Such programming includes regularly scheduled network newscasts, news magazines, and news interview programs. It also includes documentaries, "town meetings," and other news and public affairs specials and live coverage of news events such as the political conventions, election night, the presidential debates, and breaking news.

The decision by ABC to bring major presidential candidates together for a conversation about campaign issues in a special primetime program -- like the decision to broadcast convention speeches, or to invite candidates for interviews on a regularly scheduled

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ABC News program -- is a legitimate and protected press function, no less so than the decision by Turner Broadcasting to grant two hours of free time for the discussion of issues by the Democratic and Republican parties. Whether the broadcast of the proposed ABC program is considered the presentation of "commentary," like the Turner programming, or coverage of a news event, as the FCC has construed it (see below), it falls well within "the unfettered right of the newspapers, TV networks, and other media to cover and comment upon political campaigns." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974), and the exemption for press activities provided by Section 431(9)(B)(i).

III. The Press Exemption for the Staging of Debates

Complainants assert that the ABC program should be deemed to run afoul of Section 110.13 of the FEC's rules, 11 C.F.R. § 110.13, which deals specifically with the staging of candidate debates by broadcasters and other press entities. We submit that the proposed program, which would bring the candidates together to discuss issues directly between or among themselves, with minimal interruption from the host, should be considered the presentation of commentary under the Turner precedent, or, alternatively, the coverage of a news event, and therefore exempt under sections 100.7 and 100.8 of the FEC's rules, as well as the statute. However, the program also fully complies with the criteria set forth for debates in Section 110.13(b) and (c), and therefore qualifies for exemption under the debate provision as well.³

Section 110.13 provides, in relevant part, that a broadcaster or other press entity not owned by a political candidate or party may "stage" a candidate debate without such debate being considered a political contribution, so long as:

- (1) The debate includes at least two candidates;
- (2) The staging organization "does not structure the debates to promote or advance one candidate over another," and
- (3) The staging organization uses "pre-established objective criteria to determine which candidates may participate."

³ We will not address here the Complainants' attacks on the manner in which the Commission on Presidential Debates (CPD) has selected candidates for inclusion in the presidential and vice-presidential debates it is staging this month. Clearly, however, the broadcast of these CPD-staged debates by ABC and other non-staging media entities falls within the press exemption for the coverage and carrying of news stories provided by Section 431(9)(B)(i) of FECA and 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

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In adopting these provisions, the FEC declined to impose on staging media organizations any specific criteria for selecting debate participants. Corporate and Labor Organization Activity, 60 Fed. Reg. 64260, 64262 (December 14, 1995). Instead, the Commission emphasized that the "[t]he choice of which objective criteria to use is largely left to the discretion of the staging organization," so long as "the criteria were not designed to result in the selection of certain pre-chosen participants." Id. The purpose of requiring pre-established criteria, the Commission said, was "to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process," as well as to enable staging organizations "to show how they decided which candidates to invite." Id.

The criteria which ABC has established and announced for selection of the participants in its proposed hour-long discussion amply satisfy the requirements of these provisions. The number of states in which a candidate is legally qualified, the degree to which the candidate is undertaking a nationwide campaign, and the candidate's standing in reputable polling data are reasonable indicia of the significance and newsworthiness of the candidate. They also provide reasonable assurance against partisanship and favoritism on the part of the debate organizer.

Complainants argue that the criteria are too vague to satisfy the FEC requirements and suggest that broadcasters should be required to adopt fixed thresholds for candidate selection -- for example, qualification on a certain number of state ballots (a factor favored by Complainants) or a certain percentage standing in opinion polls (a factor attacked by Complainants as unreliable). The setting of any fixed thresholds, however, would itself be unavoidably arbitrary. If set too high, the thresholds could be unreasonably exclusionary; if too low, they could require the participation of so large a number of debate participants that the debate's value in illuminating issues for the public would be diminished. It is precisely for these reasons, and in deference to the constitutionally and statutorily protected journalistic discretion of press entities, that the FEC declined to impose fixed standards or to require that broadcasters adopt such standards. Indeed, the Commission has expressly noted that criteria "may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate." Corporate and Labor Organization Activity, 60 Fed. Reg. at 64262.

Where, as in this case, the broadcaster has made clear that it will select those candidates who have established themselves as the leading candidates based on state ballot positions, nationwide campaign activity, and poll results, without any evidence that the determination has been infected by bias, favoritism, or "quid pro quo," the FEC's rules should be deemed satisfied. Any other approach would intrude too deeply on journalistic freedoms guaranteed by the First Amendment and FECA.⁴

⁴ Since ABC has not yet issued invitations to any candidates, and the program has not yet been presented, it is, of course, premature and entirely without basis for Complainants to

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In the present case, moreover, the FEC can and should look for guidance to the FCC -- both in terms of its general policies on broadcaster debates, and with regard to the ABC proposal specifically in question here.

The FEC recently made clear that one of its purposes in its policies regarding the press and debate exemptions is to "avoid[] conflict with the FCC's application of the equal opportunity requirements under the Communications Act of 1934." Candidate Debates and News Stories, 61 Fed. Reg. 18049, 18050 (April 24, 1996). Amending its rules to extend the press exemptions to cable television, the Commission stressed that "the proposed amendments regarding candidate debates...are not inconsistent with the FCC's policies...and appear to complement and further the FCC's regulatory scheme and goals." Id. The Commission also discussed approvingly the series of decisions and policy statements in which the FCC has decided since 1975 "that broadcasts of debates between political candidates would be exempt from the equal opportunities requirement...where, inter alia, the broadcaster exercised a reasonable, good faith judgment that it was newsworthy, and not for the purpose of giving political advantage to any candidate." Id. (citations omitted).

On June 30, 1996, ABC filed a request for declaratory judgment with the FCC seeking a determination that the very programming proposal at issue here was exempt from equal opportunity requirements. Comments of Capital Cities/ABC, supra. On August 21, 1996, the FCC issued a declaratory ruling holding that the proposed ABC program, as well as proposals for candidates' broadcast appearances from the Fox Broadcasting Company ("Fox") and the Public Broadcasting Service ("PBS"), constituted news coverage of a bona fide news event and was therefore exempt. Declaratory Rulings, FCC 96-355 (August 21, 1996). (A copy of the FCC's ruling is attached hereto.)

In so ruling, the FCC drew upon a line of FCC precedent holding that **debates between major presidential candidates -- whether organized by third parties, broadcasters, or the candidates themselves -- constitute bona fide news events and the broadcast of those debates does not oblige a broadcaster to include in the debates, or to provide "equal time" to, other legally qualified candidates.** Declaratory Rulings at ¶ 33.⁵ The Commission noted that these

suggest that the manner in which the criteria are applied or in which the program is conducted reflect an unfair or partisan approach or anything other a bona fide journalistic judgment.

⁵ See also, e.g., Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom. Chisholm v. FCC, 538 F.2d 349 (D.C. Cir.), cert. denied, 429 U.S. 890 (1976)(broadcast of debates organized by third parties ruled exempt); Henry Geller, 95 FCC 2d 1236, aff'd sub nom. League of Women Voters v. FCC, (D.C. Cir. 1983)(broadcast of debates organized by broadcaster ruled exempt); WCVB-TV, 2 FCC Rcd 4778 (1987)(broadcast of debates organized by candidates themselves ruled exempt).

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decisions, and other rulings granting broadcasters great flexibility in presenting leading candidates in other formats.⁶ had "encourag[ed] greater coverage of political news....allow[ed] for more innovation, [and] increas[ed] the amount of election-related information available to the public." Id. at ¶ 25. With regard to the ABC proposal, the Commission concluded:

"As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a bona fide news event."

Id.⁷ The FCC also specifically upheld as "objective," "reasonable" and "bona fide" the criteria established by ABC to be used in selecting candidates for participation in its program:

"[T]here is no indication that ABC's news judgments will not be bona fide....[A] licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection [are] reasonable. We find that the criteria that ABC has committed to use for candidate selection meet[] this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another."

Id. at ¶ 34.⁸

The FCC's declaratory ruling and reasoning regarding the ABC proposal should carry great weight in the FEC's consideration of the instant complaint. The FCC has determined that the criteria established by ABC for selecting candidates are reasonable and objective. It has also found no evidence that ABC intends to apply its criteria in a partisan or unfair manner, and Complainants have presented no such evidence here. For the same reasons that the FCC concluded that the program represented a bona fide journalistic activity exempt from equal opportunities requirements, so this Commission should deem the program exempt from campaign contribution rules as a legitimate press function, and deny the instant Complaint.

⁶ See, e.g., King Broadcasting Company, 6 FCC Rcd 4998 (1991) (grant of time to candidates for of back-to-back statements ruled exempt).

⁷ The Commission also observed that the live airing of the proposed program, while "not required in light of Geller....adds to the event's newsworthiness." Id.

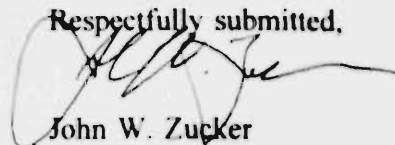
⁸ See also, e.g., id. at ¶ 32 (upholding PBS' use of "objective criteria such as national polling data" to select candidates for inclusion in its programming proposal).

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Please contact the undersigned if there are any additional questions or requests for information regarding this matter.

Respectfully submitted,



John W. Zucker

Enclosure

cc: Colleen Sealander

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Federal Communications Commission

FCC 96-355

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Requests of)
)
Fox Broadcasting Company,)
Public Broadcasting Service,)
and Capital Cities/ABC, Inc.)
)
For Declaratory Rulings)

DECLARATORY RULING

Adopted: August 19, 1996

Released: August 21, 1996

By the Commission:

1. The Commission has before it three separate requests for declaratory ruling filed by the Fox Broadcasting Company (Fox), the Public Broadcasting Service (PBS) and Capital Cities/ABC, Inc. (ABC). Each seeks a Commission ruling that its respective proposal to provide free air time in the context of news coverage to the major presidential candidates prior to the November 5, 1996 general election is exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act of 1934, as amended. 47 U.S.C. Section 315(a). For the reasons discussed below, we believe that the proposals are consistent with the statutory exemptions and related Commission and judicial case law and that, accordingly, each should be deemed exempt from the equal opportunities requirement as "on-the-spot coverage of bona fide news event" programming under Section 315(a)(4).

I. FACTUAL BACKGROUND

2. Fox Proposal. Fox proposes the following two-pronged format for presentations by the "major" presidential candidates in order to "contribute to the public interest in an open and vigorous exchange of ideas prior to the November 5, 1996, general election":

- (1) A taped one-hour prime time program to be aired election eve, with each candidate accorded an equal amount of time to make a statement in response to the question, "Why should the American voter vote for you?" The statements would be broadcast back-to-back, the candidates would have no interaction with reporters or with each other, and the order of appearance would be determined by coin flip if two candidates participate or by a drawing of straws if there are more than two; and

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(2) During the last six weeks of the campaign, each candidate would respond, in taped one-minute "position statements," to ten questions to be furnished to them by September 1, 1996. Each candidate would be asked the same questions, and the questions would be formulated by an independent consulting or polling organization. The statements, though not contemplated as back-to-back, would be "broadcast in prime-time programs of comparable audience size." The initial order of the statements would be determined by a coin toss or by drawing straws and would alternate in sequence for the duration of the broadcasts. The statements would be publicized and regularly scheduled.

3. Under the Fox proposal, selection of major presidential candidates for participation in both elements of its proposed programming will be determined by reference to selections made by the Commission on Presidential Debates for participation in the presidential debates.¹ Further, Fox states that it will not exercise any control over the content of the candidates' statements with respect to either of these proposals. Finally, Fox states that it will make production facilities available, "free of charge and at mutually convenient times and locations," for the candidates to record both their one-minute position statements and their election eve statements. The statements are to be recorded "live on videotape," which Fox explains means that "the candidates appear live and provide . . . responses, without any opportunity to edit or otherwise modify or enhance the responses in the post-production process."

4. In support of its request, Fox claims that "the spoken presentations by the candidates on issues of concern to voters," consistent with the Commission's 1991 King decision,² may reasonably be viewed as news events subject to broadcast coverage in the exercise of its good faith news judgment. Fox states that it has designed structural safeguards to prevent against possible candidate favoritism, a concern of Congress when it enacted the news exemptions. Fox maintains, for example, that, by deferring to a third party for the selection of candidates, it has removed itself from even the possibility of broadcaster favoritism. Fox thus contends that both formats are *bona fide* news events consistent with the Commission's interpretations of Section 315(a)(4) of the Act and, alternatively, that both formats also satisfy the criteria enunciated by the Commission for *bona fide* news interviews under Section 315(a)(2) of the Act.³

5. PBS Proposal. PBS proposes to present a series of programs as part of its "PBS Democracy Project," to "contribute to a better informed and active electorate in the forthcoming

¹ The Commission on Presidential Debates is an organization established to plan and sponsor debates among the leading candidates for the Presidency and Vice Presidency. The debate Commission selects candidates based upon a variety of factors including the newsworthiness of their candidacy. It would not be involved in Fox's production in any manner.

² King Broadcasting Company, 6 FCC Rcd 4998 (1991), on remand from King Broadcasting Company v. FCC, 860 F.2d 465 (D.C. Cir. 1988), vacating WEBE-108 Radio Company, 2 FCC Rcd 5963 (M.M. Bur. 1987), review denied, FCC 88-162, released May 13, 1988 (King).

³ In light of our finding herein that both parts of the Fox proposal satisfy the requirements for the *bona fide* news event exemption, analysis of the alternative news interview exemption request is unnecessary.

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presidential election" and "to stimulate voter interest and involvement." Candidate selection would be based on objective criteria such as national polling results or could be predicated on selections made by the Commission on Presidential Debates. Conditioned on the acceptance by the presidential candidates of at least the two "major parties," individual candidate statements lasting at least 2½ minutes would be broadcast on successive days during prime time, for several weeks before the November 5, 1996 election. Each candidate would be afforded an opportunity to present his or her views without restriction as to content.⁴ The statements would be aired each day at the same time and would be rotated with one candidate statement per night.

6. The following conditions would be imposed by PBS on each candidate: (1) only the candidate would be permitted to appear and would have to be on screen for the entire length of the broadcast; and (2) the candidate's visual appearance would be limited to a prescribed format, such as a depiction of only the candidate's head and shoulders, with no props or sound effects permitted. PBS asserts that any station agreeing to carry the programming would be obligated to carry all of the programs in the series. PBS contends that its proposal will provide for a more extensive and substantive discussion than that afforded by 30-second candidate advertising, which, in its view, is obscured by the use of production techniques typically associated with the selling of products and services. PBS argues that both the newsworthiness of its proposed programming and its good faith news judgment in deciding to carry it are consistent with Commission precedent, most notably the King decision. PBS thus requests that the Commission rule that its proposed programming is exempt *bona fide* news event programming under Section 315(a)(4) of the Act.

7. ABC Proposal. ABC proposes to offer the "major" presidential candidates the opportunity to appear on a one-hour prime-time special during the final week of the campaign. ABC states that this would be a "live unrestricted event," with the candidates appearing without interruptions or questions from any third party. ABC explains that the candidates would discuss with each other, and the American people, the issues they believe to be most important in the election. ABC contends that spontaneous interaction and dialogue between or among the candidates is indistinguishable from debates, which have been held by the Commission to be exempt news events for over twenty years. ABC also contends that the Commission's decision in King is even more clearly supportive of its format, particularly in light of the structural safeguards identified in its request.

8. ABC asserts that it will defer selection of the candidates to be included in the program until a point later in the campaign when it can determine who the major candidates are. ABC commits to prevent favoritism by looking to objective criteria such as polling results, the number of states in which the candidate is on the ballot, and whether the candidate has engaged in a nationwide campaign, to make the selection. ABC believes that a free form discussion involving the major presidential candidates in the week before the election is a highly newsworthy event and that its use of the proposed safeguards against favoritism indicate its good

⁴ Because these appearances would, if the request is granted, not be "uses" under Section 315, which cannot be censored, PBS reserves the right to edit any potentially libelous remarks or personal attacks.

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faith news judgment. ABC thus asks that the Commission rule that its proposed programming would be exempt news event programming under Section 315(a)(4) of the Act.

II. COMMENTS AND *EN BANC* TESTIMONY

9. On May 13, 1996, the Commission issued a Public Notice asking interested parties to comment on the issues raised by the Fox request and, more generally, on the Commission's interpretations of the news exemptions to the equal opportunities requirement.⁵ The Commission also announced that it would conduct an *en banc* hearing on June 25, 1996, to provide further public exploration of the issues generated by the various network proposals and requests.⁶

10. In our request for comments, we asked whether approval of the Fox proposal would be consistent with statutory language, legislative history, and judicial and Commission case law regarding the news exemptions. In addition, we sought comments on whether the Commission's current interpretation of Section 315 of the Act limits ways in which broadcasters may voluntarily provide time for candidates to speak directly to voters, and whether programming that broadcasters in good faith deem to be *bona fide* news should be exempt regardless of format.

11. We received a total of 25 comments in response to our request and 12 panelists participated in the *en banc* hearing. In addition, United States Senators Bill Bradley (D-NJ) and John McCain (R-AZ) appeared at the hearing and made statements. The majority of commenters and *en banc* participants generally recognize the benefits to the public of free, unfiltered broadcast presentation of the major presidential candidates and specifically support finding both parts of the Fox proposal exempt as "on-the-spot coverage of *bona fide* news event"

⁵ The list of commenting parties is attached as Appendix A hereto. PBS and ABC first described their programming proposals to the Commission as part of their comments for this proceeding. In addition, at the time of the Public Notice, the CBS, NBC and CNN networks had also announced plans for news coverage of the presidential campaign. Those networks have not sought a Commission ruling concerning their respective programming.

⁶ A list of participants in the *en banc* hearing is attached as Appendix B. The *en banc* hearing was scheduled in response to the April 16, 1996 request of The Free TV for Straight Talk Coalition (Coalition), who asked the Commission to convene an *en banc* hearing "to promote a maximum contribution by the electronic media, especially broadcast television, to the coming general election campaign for President, with special focus on recent proposals to provide free network television time to the major presidential candidates." The Coalition argued that a hearing should address the Commission's statutory responsibility to interpret Section 315 of the Act so as to increase the amount and level of substantive political discussion. The Coalition stated that it had urged the television networks to offer the major candidates "a few minutes a night during prime time in the culminating weeks of the 1996 presidential campaign," and argued that if the networks accepted its proposal, such coverage would be exempt as *bona fide* news event programming under Section 315(a)(4). The Coalition did not, however, file with us a specific request for a ruling on whether its proposal is exempt under Section 315(a). Nonetheless, our decision here addressing the requests by Fox, PBS and ABC serves to provide general guidance to others who wish to offer various types of exempt programming formats.

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programming.⁷ These commenters contend that uninterrupted presentations by the major presidential candidates reasonably can be considered news events under the statute and Commission precedent. Consistent with the views of a number of commenters, the National Association of Broadcasters (NAB) stated that the election eve back-to-back portion of Fox's proposed format fully satisfies the criteria established in the Commission's 1991 King decision. In addition, NAB asserts that the same rationale should apply to the sixty-second statements, even if they are not back-to-back, so long as they air in comparable time periods.

12. Senator Bradley commented on the importance of having the candidates themselves communicate directly with the voters, in contrast with the negative campaigning increasingly associated with paid political advertising. He also stated that broadcasters are granted a privilege to use a limited public resource and that use of the airwaves should not be available only to the highest bidder. Senator McCain endorsed the Coalition's call for the networks to give the major Presidential candidates several minutes of time per night in the closing weeks of the campaign. He stated that simulcasting the candidates' appearances on the major networks would provide the greatest impact on the electorate.⁸

13. To the extent that commenters supportive of the Fox proposals voice any concerns about the impact of granting the requested rulings, they generally relate to the treatment of third-party candidates and the likelihood that these candidates may be excluded from coverage. In addition, three commenters (The LaRouche Committee, Daniel Walker and the World Workers Party) oppose the Fox proposal entirely because they believe it would exclude coverage of minor candidates.⁹ However, Frank Fahrenkopf, Jr. and Charles Manatt state that political communication is enhanced -- and the public interest served -- by focusing the public's attention on the major candidates through political broadcasts. PBS states that there are often numerous candidates on the ballot in Presidential elections, yet there is usually a demonstrable lack of interest on the part of the public in most minor party candidacies. PBS points out that the top three vote recipients in the 1992 Presidential election received 99.37% of all votes cast.¹⁰ During his *en banc* testimony on behalf of Fox, Rupert Murdoch stated that, although the views of all candidates are respected, it is simply not possible to offer time to candidates who have failed

⁷ Fox's proposal is supported by the comments of ABC, CSAE, Common Cause, Frank Fahrenkopf, Jr. and Charles Manatt, Henry Geller, the Robert Wood Johnson Foundation-Healthy Nations Program, Media Access Project, Michael Meyerson, the National Association of Broadcasters, NBC, NTIA, Norman Ornstein, People for the American Way, Public Broadcasting Service, Paul Taylor, Woodstock Theological Center, and WTTW.

⁸ The broadcast industry describes the kind of simulcasting proposed by the Coalition and supported by Senator McCain as "roadblocking." It would involve a voluntary decision by the networks to provide broadcast time to cover a news event at exactly the same time.

⁹ The Natural Law Party, while not opposing the Fox proposal, asks the Commission to make clear that, if time is provided to candidates of the two major parties, it also be provided to other candidates meeting a prescribed standard.

¹⁰ According to information compiled by the Federal Election Commission, 23 candidates for the presidency received votes in the 1992 general election.

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during the campaign to obtain significant public support.

14. Concern over the possibility of broadcaster favoritism was also voiced by a number of commenters who support Fox's request, and they stress the importance of the Commission's emphasis on safeguards against abuse. For example, Professor Michael Meyerson expressed concern that broadcaster favoritism may more readily occur in local races where multiple candidacies and parochial concerns abound. Consequently, he urges the Commission to be careful in its consideration of the Fox request to assess the potential impact of our ruling at the local level. Most of the commenters, including Common Cause and NTIA, pointed out that the Fox proposal contains adequate safeguards against possible broadcaster favoritism, such as removing itself from the selection of the participating candidates and the questions to be presented, as well as ensuring that the one-minute statements air in periods of comparable audience share.

15. CBS and ABC recommend that the Commission rule that programming which broadcasters in good faith deem to be *bona fide* news coverage is exempt regardless of format, provided there are adequate safeguards against broadcaster favoritism. They argue that the public is best served by giving broadcasters the freedom to employ a variety of formats to cover and present views of candidates for public office. These commenters thus suggest that the Commission eliminate from its news exemption analysis the determination of whether the program at issue falls under one of the enumerated formats of Section 315(a). Henry Geller states that the Commission should continue granting exemptions as broadly as possible consistent with its wide discretion under the statute. However, eliminating format considerations from Section 315(a), Geller argues, must occur through congressional action, something he asserts the Commission should urge Congress to do. WTTW states that it would be helpful for the Commission to give specific guidance as to the permissible variations of exemption formats. During his *en banc* testimony, Timothy B. Dyk, on behalf of the NAB, voiced a similar concern about the need for broadcasters to request Commission rulings on a case-by-case basis.

16. While supporting Fox's request, MAP strongly opposes further expanding the news exemptions as suggested by ABC and CBS, arguing that the Commission has already interpreted the news exemptions too broadly. Instead, MAP suggests that the Commission consider changing the definition of "legally qualified candidate" contained in its rules.¹¹ By more narrowly defining a legally qualified candidate in the Commission's rules, MAP argues, the Commission could at least at the national level reduce the number of candidates entitled to equal opportunities without having to assess the merits of particular news programming. Under MAP's proposal, the standards for the redefinition would include: support in independent opinion polls; signatures on nominating petitions; amount of campaign contributions; and votes in prior elections. The

¹¹ Only "legally qualified" candidates are afforded equal opportunities rights under Section 315 of the Communications Act. Section 73.1940 of the Commission's rule defines a legally qualified candidate by reference to whether a candidate has qualified for a place on the ballot in accordance with the law of the election jurisdiction or has made a substantial showing of candidacy. A substantial showing involves the traditional indicia of an actual candidacy such as the establishment of campaign headquarters, speech making, fund raising, etc. In the Presidential context, a candidate who has so qualified in at least 10 states is deemed a candidate in all states. 47 C.F.R. Section 73.1940.

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Natural Law Party requests that the Commission make clear that all candidates achieving national party status, as evidenced by qualifying for the ballot in states with a total of at least 270 electoral votes and qualifying for matching funds from the Federal Election Commission, should be entitled to participate in Fox's programming.

III. DISCUSSION

A. Legal Background

17. We begin our analysis with a review of the statute, the legislative history, and the relevant precedent. Section 315 of the Act provides that if a broadcaster or origination cablecaster¹² permits a legally qualified candidate for public office to "use" a broadcast station or cable television system,¹³ it must afford equal opportunities to all legally qualified opponents for the same office. In 1959, the Commission ruled that the appearance of the incumbent Mayor of Chicago on a local newscast during his reelection campaign triggered equal opportunities rights for his opponents. In re Telegram to CBS, Inc. (Lar Daly), 18 Rad. Reg. 238, recon. denied, 26 FCC 715 (1959). Congress, fearing that the ruling would inhibit news coverage of the political arena, within months enacted four news exemptions to the equal opportunities requirement:

- 1) *bona fide* newscast;
- 2) *bona fide* news interview;
- 3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); and
- 4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1)-(4).

18. Rather than specifically enumerating the characteristics of the programming formats intended to be covered by the exemptions, Congress left it to the Commission to interpret the full scope of the exemptions. See S. Rep. No. 1539, 86th Cong., 2d Sess. 2 (1960). The legislative history evidences Congress's recognition that the exemptions defied clear format characterizations and that the Commission was to have broad discretion to interpret them:

It is difficult to define with precision what is a newscast, news interview, news

¹² For purposes of applying the equal opportunities requirement, Section 315(c) defines "broadcasting station" as including cable television systems. In implementing this provision, the Commission has applied Section 315 only to a cable system's origination cablecasting, defined as programming over which it exercises exclusive control. 47 C.F.R. Section 76.5(p)

¹³ In general, a use is any "positive" identified or identifiable appearance of a legally qualified candidate. This excludes disparaging depictions by opponents or third-party adversaries. See Report and Order, 7 FCC Rod 678, 684 (1991).

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documentary, or on the spot coverage of news events. . . . That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission.

. . . In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, news interview, news documentary, [or] on the spot coverage of a news event . . . is *bona fide* or a "use" of the facilities requiring equal opportunities.

S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959). Furthermore, as the U.S. Court of Appeals for the D.C. Circuit observed in Chisholm v. FCC, 538 F.2d 349, 358 (D.C. Cir. 1976), Congress came to the realization that the notion of absolute equality for all competing candidates, first envisioned when Section 315 was enacted in 1934, would have to give way to two other noteworthy objectives:

- First, the right of the public to be informed through broadcasts of political events; and
- Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Chisholm v. FCC, *supra*, at 358, quoting Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959) (Comments of Chairman Harris). With respect to Congress's intent to facilitate greater news coverage of the political process, the court in Chisholm v. FCC also observed that "the basic purpose" of the news exemptions is "[t]o enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."¹⁴ Thus, the Commission was faced with the formidable task of implementing Congress's intention to strike a balance between fairness to the candidates and greater broadcast coverage of elections.

19. Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions. In recognition of Congress' primary goal in enacting the exemptions -- to facilitate a better informed electorate through greater news coverage of the political process -- the Commission has accorded greater deference to a licensee's good faith news judgment. The following discussion outlines the interpretive evolution reflected in the rulings most pertinent to the issues raised by the instant requests.

¹⁴ Chisholm v. FCC, *supra*, at 356, quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland).

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B. On-The-Spot Coverage of a *Bona Fide* News Event

20. The Commission narrowly construed the news event exemption until its 1975 decision in Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom. Chisholm v. FCC, supra, cert. denied, 429 U.S. 890 (1976) (Aspen), when the Commission reversed earlier rulings that had denied requests to treat debates and press conferences as exempt *bona fide* news events. In Aspen, The Commission reevaluated its reading of the statute and legislative history, concluding that:

[t]here is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activities of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster in such cases had made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. . . . In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which are patently not *bona fide* news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event.

Aspen at 705. Thus, the Commission determined that it could be flexible in evaluating whether a format was reasonably within the news event exemption and that, in the absence of bad faith, it should defer to a broadcaster's good faith news judgment in deciding to broadcast an event.

21. In Aspen, the Commission also adopted a two-part test for analyzing whether a program should be considered *bona fide* news event programming. First, it determined whether the format of the program reasonably fit within the news event exemption category and, second, it assessed whether the decision to carry a particular event was the result of good faith news judgment and not based on partisan purposes.¹⁵ After deciding that debates and press conferences could reasonably fit the news event exemption under the first prong of the test, the Commission decided that, under the second prong, it could, when certain safeguards were present, defer to a broadcaster's good faith news judgment in deciding to broadcast an "event." With respect to candidate debates, the Commission ruled that, to be considered an exempt news event, a debate

¹⁵ In Kennedy for President Committee (Kennedy), 77 FCC 2d 965, 968-69, aff'd sub nom. Kennedy for President Committee v. FCC, 636 F.2d 417 (D.C. Cir. 1980), the Commission further clarified Aspen and emphasized that in making the analysis of whether a program is exempt, the Commission will first "determine whether a particular scenario falls within one of the classes of appearance exempt under Section 315(a)(1)-(4)." Id. at 969. Second, the Commission will explore "whether a particular broadcast which is claimed exempt was presented using a broadcaster's good faith news judgment." Id. The second aspect of this analysis places considerable reliance on the exercise of a broadcaster's discretion to determine "newsworthiness" once it is determined an exempt news event is involved. Thus, "absent evidence of the broadcaster's intent to advance a particular candidacy, newsworthiness of an event is left to the reasonable news judgment of the professionals." Kennedy for President Committee v. FCC, 636 F.2d at 427.

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must be sponsored by a non-broadcaster third party, such as the League of Women Voters, must be aired in its entirety, and must be aired live. Press conferences also were required to be aired live and in their entirety to qualify for the exemption.

22. In Henry Geller, 95 FCC 2d 1236, aff'd sub nom. League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983) (Geller), the Commission held that its decision in Aspen had, in some respects, been unnecessarily restrictive. Applying the two-prong test, it therefore allowed broadcasters to sponsor and air debates from their own studios and to tape and air a "reasonably recent event." The Commission reasoned that, although there was a chance that according broadcasters additional freedom and flexibility in their news programming might result in an occasional abuse, Congress clearly had accepted that risk in order to foster a more informed electorate.¹⁶ The Commission explained that the common denominator of all exempt programming was *bona fide* news value and that the identity of a debate sponsor should not affect the *bona fides* of the programming. Similarly, Geller eliminated the so-called "one-day rule," which had required that the broadcast be nearly contemporaneous with the event covered. The Commission reasoned that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event in order to maximize audience potential did not destroy its "on-the-spot" nature and furthered, to an even greater degree, Congress's goal of increasing the presentation of political campaign news. Accordingly, the Commission determined that the "rule-of-thumb" on the timing of an exempt news event program should be that the program encompasses news reports of any "reasonably recent event," so long as intended in good faith by the broadcaster to inform the public and not intended to favor or disfavor any candidate.¹⁷

23. In its 1991 decision in King, the Commission further expanded the Section 315(a)(4) exemption by granting a request for a broadcaster-initiated news event involving appearances alone, with no journalistic or other interaction with the candidates.¹⁸ The Commission reasoned that "candidate presentations, in which the major nominees for the highest office in the land set forth in speeches 'their essential campaign messages to the American people' reasonably may be viewed as news 'events' subject to broadcast coverage within the meaning" of Section 315(a)(4).¹⁹ It thus concluded that "the mere fact that the presentations

¹⁶ See Geller at 1244.

¹⁷ Id.

¹⁸ The first program in the series proposed by the licensee consisted of a one-hour taped program in which the two major party nominees for President would be allocated 30 minutes each to set forth their respective campaign messages without the involvement of journalists or any interaction between the candidates. The order of appearance would be reversed in a similar one-hour broadcast at the end of the series. The licensee indicated that there would be one, possibly two, broadcasts in between the opening and closing programs, which would consist of separate 45-minute interviews with each of the two candidates, combined into 90-minute programs. The series would be made available to broadcast stations and cable systems for airing no later than one week after taping.

¹⁹ Id. at 4999.

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allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news exemption."²⁰

24. The Commission emphasized as critical to its decision the need for structural safeguards to avoid the possibility of abuse, such as the back-to-back appearances by opposing candidates, which the licensee in King included as part of its proposed format.²¹ The Commission also reasoned, as it had in Geller, that, on balance, Congress's goal of fostering greater news coverage of the political process outweighed any increased possibility of abuse.²² Finally, the Commission stressed in King that the exclusion of third-party candidates whose "significance" can be established by objective criteria such as polling results, would raise questions about the *bona fides* of the programming.²³

C. Legal Analysis of Pending Proposals

25. As explained above, since the Aspen decision more than twenty years ago, the Commission's interpretations of the news event exemption have accorded broadcasters significant discretion in the formulation of innovative news programming formats and in the overall exercise of their good faith news judgment. These decisions have served to promote the central objective underlying the Section 315 exemptions. They are fully consistent with congressional intent to permit increased broadcaster discretion, and to encourage greater coverage of political news, in a context in which "the Commission has been granted greater than normal discretion." Chisholm v. FCC, 538 F.2d at 364. According to a number of commenters, allowing broadcasters to sponsor and air debates from their own studios and to present those debates live or on a reasonably tape-delayed basis in Geller has increased the number of such events and the public has clearly benefited. Likewise, the decision in King to allow for more innovation has increased the amount of broadcaster-initiated news event programming, again increasing the amount of election-related information available to the public.

26. Although the Commission has appropriately relied on broadcaster discretion, we nevertheless retain an obligation to ensure that there exist reasonable safeguards against broadcaster favoritism. As discussed below, we conclude that, consistent with the principles established in our prior decisions, the proposals under consideration are within the statutory exemption for on-the-spot coverage of a *bona fide* news event. Hence, the programs are not subject to the equal opportunities requirement in Section 315 of the Act.

²⁰ Id.

²¹ King, 6 FCC Rcd at 5000.

²² Id.

²³ Id.

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27. Fox Proposal. We agree with the majority of commenters and *en banc* panelists that the back-to-back election eve appearances fall squarely within the Commission's King decision and are exempt as on-the-spot coverage of a *bona fide* news event. First, it is clear that these are *bona fide* news events. As we observed in King, appearances by major presidential candidates, "by any reasonable standard, are news 'events,'" provided that sufficient structural safeguards against broadcaster favoritism are in place. Furthermore, Geller established that the "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date as long as the broadcast is of a "reasonably recent event." Thus, Fox's proposed election-eve broadcast of back-to-back appearances satisfies the first prong of our analysis.

28. With respect to the second prong of our analysis -- whether the broadcaster is exercising good faith judgment that the event is newsworthy -- it is also clear that Fox has met the test enunciated in King. There is no evidence of intent to advance a particular candidacy. The election eve statements are identical to the back-to-back programming approved in King with the added safeguard that each candidate's statement would respond to the same question. The candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors. While we do not require a broadcaster to defer selection of candidates to independent third parties in order to demonstrate good faith, doing so adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates. The World Workers Party argues that exclusion from the news prevents third-party candidates from gaining sufficient public support to warrant their being deemed newsworthy. However, through the news exemptions, Congress intended to do no more than ensure that broadcasters are not inhibited from covering newsworthy events.

29. The one-minute position statements are also exempt as on-the-spot coverage of *bona fide* news events. Again, as in the election eve broadcast, statements by the major presidential candidates are, consistent with the Commission's reasoning in King, reasonably viewed as news events, provided safeguards against favoritism are built into the format. Also consistent with Geller, the tape delay does not present an impediment to the "on-the-spot" element of the exemption. Furthermore, we agree with the comments of Henry Geller that in light of Fox's plan to present a series of candidate statements in response to identical questions about important campaign issues, these statements can reasonably be treated as exempt "mini-debates" in that the public will be exposed to the differing views of each candidate on identical important campaign questions. As with reliance on independent third parties for candidate selection, we do not require that a broadcaster pose questions to candidates, but doing so helps demonstrate that a broadcaster is exercising good faith news judgment.

30. Further, although Fox's format for the one-minute statements does not envision back-to-back presentation, it does incorporate other safeguards. King did not require presentations to be back-to-back to meet the good faith test; rather, the Commission explicitly contemplated the need to clarify in future rulings, on a case-by-case basis, any other safeguards

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that would suffice.²⁴ Fox's pledge to air the statements during comparable time periods will serve the same essential purpose as back-to-back statements by ensuring that the candidates have roughly equal access to viewers. Further, the questions to be answered during the statements are to be formulated by independent nonpartisan organizations. This element of Fox's format lends an additional assurance that Fox's proposed programming is not designed to favor any candidate in the same way as the decision to defer to the Commission on Presidential Debates for its candidate selections. Finally, we do not believe that the short length of each statement affects the *bona fides* of the programming. The legislative history is silent on the issue of whether Congress envisioned a minimum length for a news program, and we see no reason to impose one.²⁵ These programs are also distinguishable from political advertising. The candidates must appear throughout the broadcast and are not permitted to edit or utilize other post-taping production techniques. The presence of these structural safeguards satisfies us that Fox does not intend to favor one candidate over another.

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31. PBS Proposal. We similarly find that PBS's proposal qualifies for a news event exemption. The Commission has stated that statements by the major candidates for President are "by any reasonable standard 'news events'" provided adequate safeguards against favoritism are implemented. As stated above, a licensee is not required to ask questions of candidates or to arrange for third parties to do so. Though PBS's programming will not be aired live, Geller makes clear that the rebroadcast of any "reasonably recent event" suffices for the purpose of being "on-the-spot." Consequently, we find that PBS's proposal involves a *bona fide* news event satisfying the first prong of our analysis.

32. Nor is there any basis to question the good faith news judgment of PBS with respect to its decision to broadcast the event. PBS's format includes reasonable safeguards. First, PBS states that it will select the candidates for inclusion in its programming based upon objective criteria such as national polling data, or as in Fox's proposal, by reference to those candidates selected by the Commission on Presidential Debates. Further, the statements will be equal in length and aired at the same time each day. While airing the spots at the same time of day is not a requirement, it is a significant safeguard against the potential for broadcaster favoritism. Thus, we find that PBS has satisfied the second prong of our analysis -- that the decision to broadcast the event is the result of good faith news judgment, not an intention to favor one candidate over

²⁴ In King, 6 FCC Rcd at 5000, n.4, we stated:

We emphasize here that the balanced nature of the program format, which includes structural safeguards for objective news coverage of political candidates, is critical to our assessment of the *bona fides* of a news event under Section 315(a)(4) in this case. We will carefully scrutinize any future requests for exemption pursuant to these standards. To the extent there is need for further clarification of the kind of objective structural criteria we might consider in allowing an exemption under Section 315(a)(4) in any future cases, we shall address such matters on a case-by-case basis.

²⁵ In Silver King Broadcasting Company, 3 FCC Rcd 2819 (MMB 1988), the Mass Media Bureau ruled that a program of 3-4½ minute duration was exempt as *bona fide* news interview programming.

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another.

33. ABC Proposal. Last, we find ABC's proposed one-hour prime-time "live unrestricted event" to be exempt under King. As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a *bona fide* news event. Furthermore, ABC has indicated that its programming would be aired live, which is not required in light of Geller, but adds to the event's newsworthiness. In fact, as ABC points out, its proposal is somewhat similar to a debate format which we exempted twenty years ago in Aspen and subsequently permitted broadcasters to sponsor in Geller. Consequently, ABC's proposal satisfies the first prong of our analysis.

34. With respect to the second prong, there is no indication that ABC's news judgments will not be *bona fide*. ABC asserts that it will employ objective criteria in selecting the candidates, considering polling results, the number of states in which a candidate has achieved ballot status, and the extent to which a candidate has engaged in a nationwide campaign. As we pointed out above, a licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection is reasonable. We find that the criteria that ABC has committed to use for candidate selection meets this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another.

IV. OTHER MATTERS

35. As discussed above, and in accordance with congressional intent, we have flexibly construed the statutory exemption for on-the-spot coverage of *bona fide* news events. However, we are unwilling to abandon completely our review of programming formats as proposed by ABC and CBS. Had Congress intended that the Commission take such an approach, it would have been unnecessary to enumerate the four exemption formats of Section 315(a). Moreover, we do not believe that review of program formats to determine exempt status impedes broadcasters in providing election-related information to the public. Our interpretations of the exemptions have allowed broadcasters substantial discretion and flexibility to formulate formats they believe will provide for a more informed electorate.

36. We also decline in this proceeding to adopt MAP's suggestion that the Commission redefine the term "legally qualified candidate." This term is used in determining those candidates entitled to equal opportunities under Section 315 and to reasonable access pursuant to Section 312(a)(7).²⁶ In this proceeding, we are asked to determine whether a licensee can reasonably consider certain appearances by candidates it deems newsworthy as news events exempt from equal opportunities requirements. To do so, we need not reach the question of whether the candidates are "legally qualified." Moreover, to the extent that MAP believes that reducing the number of legally qualified candidates will alleviate the necessity for expanding the news

²⁶ Section 312(a)(7) provides that broadcast stations must provide or make available for sale reasonable amounts of time to candidates for federal elective office. 47 U.S.C. Section 312(a)(7).

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exemptions, we note that the definition of "legally qualified candidate" is codified in our rules (see 47 C.F.R. § 73.1940) and, as such, any change thereto must be considered in the context of a rule making proceeding.

37. A number of commenters voiced concern that a favorable ruling on the Fox request would risk a greater potential for broadcaster favoritism at the local level. While the Commission has speculated that the potential for favoritism may be less in "prominent" elections, particularly presidential campaigns,²⁷ we have not limited our news exemption rulings only to the presidential level. However, the proposals and the record before us involve coverage only of the presidential election and thus do not directly implicate other elections. As discussed above, in King the Commission stated that it would review future requests, on a case-by-case basis, to determine whether particular formats in particular contexts are consistent with the statute. Accordingly, should requests for exemptions regarding elections below the presidency be made, each will be considered consistent with the principles set out in today's decision, taking account of differences in context, as appropriate.

V. CONCLUSION

38. We believe that our decision today implements Congress's intent in enacting the news exemptions by allowing broadcasters to inform the public about election-related news while ensuring that candidates are treated fairly. Accordingly, IT IS ORDERED that the programming proposals presented to the Commission by Fox, PBS and ABC ARE DECLARED EXEMPT under Section 315(a)(4) of the Communications Act from the equal opportunities requirements.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²⁷ In Aspen, for example, the Commission stated that "realistically the likelihood of broadcaster abuse is remote in the coverage of more prominent political users . . ." 55 FCC 2d at 707. The Commission in King similarly reasoned that [w]here both of the major opposing candidates for President are interviewed pursuant to an unbiased format, the potential for favoritism in coverage is even more remote." Id. at 5000, quoting the Commission in Aspen.

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APPENDIX A

LIST OF COMMENTERS

Benjamin Barber, Director of the Walt Whitman Center for the Culture and Politics of
Democracy, Rutgers University
The Benton Foundation
Capital Cities/ABC, Inc. ("ABC")
CBS Inc.
Committee for the Study of the American Electorate ("CASE")
Common Cause
Jan Crawford Communications
Frank J. Fahrenkopf, Jr. and Charles T. Manatt
Henry Geller
The Robert Wood Johnson Foundation - Healthy Nations Program
Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche
Exploratory Committee ("The LaRouche Committee")
Media Access Project ("MAP")
Michael Meyerson, Professor of Law, University of Baltimore School of Law
National Association of Broadcasters ("NAB")
National Broadcasting Company ("NBC")
US Department of Commerce/NTIA (as delivered by Larry Irving, the Assistant Secretary for
Communications and Information) ("NTIA")
Natural Law Party
Norman Ornstein, American Enterprise Institute
People for the American Way
Public Broadcasting Service ("PBS")
Paul Taylor, The Free TV for Straight Talk Coalition
Daniel Walker
Woodstock Theological Center, Georgetown University
Workers World Party Presidential Campaign Committee
Window To The World Communications, Inc. ("WTTW")

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APPENDIX B

PARTICIPANTS IN JUNE 25, 1995 EN BANC HEARING

United States Senators Bill Bradley and John McCain appeared and made statements.

The following witnesses appeared and participated on the panel:

- Rupert Murdoch, Chairman and CEO, Fox Broadcasting Company
- Paul Taylor, Executive Director, The Free TV for Straight Talk Coalition
- Timothy B. Dyk, Jones Day Reavis & Pogue (on behalf of Natl. Assn. of Broadcasters)
- Frank J. Fahrenkopf, Jr., Former Chairman, Republican National Committee
- Charles T. Manatt, Former Chairman, Democratic National Committee
- Dr. John Hagelin, Presidential Candidate, Natural Law Party
- Norman J. Ornstein, Resident Scholar, American Enterprise Institute
- Andrew J. Schwartzman, Executive Director, Media Access Project
- John K. Andrews, Jr., Managing Director, TCI News
- Michael I. Meyerson, Professor, Univ. of Baltimore Law School
- William J. McCarter, President, WTTW(TV), Chicago, Illinois
- Kathleen Hall Jamieson, Dean, Annenberg School, University of Pennsylvania

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during the campaign to obtain significant public support.

14. Concern over the possibility of broadcaster favoritism was also voiced by a number of commenters who support Fox's request, and they stress the importance of the Commission's emphasis on safeguards against abuse. For example, Professor Michael Meyerson expressed concern that broadcaster favoritism may more readily occur in local races where multiple candidacies and parochial concerns abound. Consequently, he urges the Commission to be careful in its consideration of the Fox request to assess the potential impact of our ruling at the local level. Most of the commenters, including Common Cause and NTIA, pointed out that the Fox proposal contains adequate safeguards against possible broadcaster favoritism, such as removing itself from the selection of the participating candidates and the questions to be presented, as well as ensuring that the one-minute statements air in periods of comparable audience share.

15. CBS and ABC recommend that the Commission rule that programming which broadcasters in good faith deem to be *bona fide* news coverage is exempt regardless of format, provided there are adequate safeguards against broadcaster favoritism. They argue that the public is best served by giving broadcasters the freedom to employ a variety of formats to cover and present views of candidates for public office. These commenters thus suggest that the Commission eliminate from its news exemption analysis the determination of whether the program at issue falls under one of the enumerated formats of Section 315(a). Henry Geller states that the Commission should continue granting exemptions as broadly as possible consistent with its wide discretion under the statute. However, eliminating format considerations from Section 315(a), Geller argues, must occur through congressional action, something he asserts the Commission should urge Congress to do. WTTW states that it would be helpful for the Commission to give specific guidance as to the permissible variations of exemption formats. During his *en banc* testimony, Timothy B. Dyk, on behalf of the NAB, voiced a similar concern about the need for broadcasters to request Commission rulings on a case-by-case basis.

16. While supporting Fox's request, MAP strongly opposes further expanding the news exemptions as suggested by ABC and CBS, arguing that the Commission has already interpreted the news exemptions too broadly. Instead, MAP suggests that the Commission consider changing the definition of "legally qualified candidate" contained in its rules.¹¹ By more narrowly defining a legally qualified candidate in the Commission's rules, MAP argues, the Commission could at least at the national level reduce the number of candidates entitled to equal opportunities without having to assess the merits of particular news programming. Under MAP's proposal, the standards for the redefinition would include: support in independent opinion polls; signatures on nominating petitions; amount of campaign contributions; and votes in prior elections. The

¹¹ Only "legally qualified" candidates are afforded equal opportunities rights under Section 315 of the Communications Act. Section 73.1940 of the Commission's rule defines a legally qualified candidate by reference to whether a candidate has qualified for a place on the ballot in accordance with the law of the election jurisdiction or has made a substantial showing of candidacy. A substantial showing involves the traditional indicia of an actual candidacy such as the establishment of campaign headquarters, speech making, fund raising, etc. In the Presidential context, a candidate who has so qualified in at least 10 states is deemed a candidate in all states. 47 C.F.R. Section 73.1940.

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Natural Law Party requests that the Commission make clear that all candidates achieving national party status, as evidenced by qualifying for the ballot in states with a total of at least 270 electoral votes and qualifying for matching funds from the Federal Election Commission, should be entitled to participate in Fox's programming.

III. DISCUSSION

A. Legal Background

17. We begin our analysis with a review of the statute, the legislative history, and the relevant precedent. Section 315 of the Act provides that if a broadcaster or origination cablecaster¹² permits a legally qualified candidate for public office to "use" a broadcast station or cable television system,¹³ it must afford equal opportunities to all legally qualified opponents for the same office. In 1959, the Commission ruled that the appearance of the incumbent Mayor of Chicago on a local newscast during his reelection campaign triggered equal opportunities rights for his opponents. In re Telegram to CBS, Inc. (Lar Daly), 18 Rad. Reg. 238, recon. denied, 26 FCC 715 (1959). Congress, fearing that the ruling would inhibit news coverage of the political arena, within months enacted four news exemptions to the equal opportunities requirement:

- 1) *bona fide* newscast;
- 2) *bona fide* news interview;
- 3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); and
- 4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1)-(4).

18. Rather than specifically enumerating the characteristics of the programming formats intended to be covered by the exemptions, Congress left it to the Commission to interpret the full scope of the exemptions. See S. Rep. No. 1539, 86th Cong., 2d Sess. 2 (1960). The legislative history evidences Congress's recognition that the exemptions defied clear format characterizations and that the Commission was to have broad discretion to interpret them:

It is difficult to define with precision what is a newscast, news interview, news

¹² For purposes of applying the equal opportunities requirement, Section 315(c) defines "broadcasting station" as including cable television systems. In implementing this provision, the Commission has applied Section 315 only to a cable system's origination cablecasting, defined as programming over which it exercises exclusive control. 47 C.F.R. Section 76.5(p)

¹³ In general, a use is any "positive" identified or identifiable appearance of a legally qualified candidate. This excludes disparaging depictions by opponents or third-party adversaries. See Report and Order, 7 FCC Red 678, 684 (1991).

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documentary, or on the spot coverage of news events. . . . That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission.

. . . . In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, news interview, news documentary, [or] on the spot coverage of a news event . . . is *bona fide* or a "use" of the facilities requiring equal opportunities.

S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959). Furthermore, as the U.S. Court of Appeals for the D.C. Circuit observed in Chisholm v. FCC, 538 F.2d 349, 358 (D.C. Cir. 1976), Congress came to the realization that the notion of absolute equality for all competing candidates, first envisioned when Section 315 was enacted in 1934, would have to give way to two other noteworthy objectives:

- First, the right of the public to be informed through broadcasts of political events; and
- Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Chisholm v. FCC, *supra*, at 358, quoting Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959) (Comments of Chairman Harris). With respect to Congress's intent to facilitate greater news coverage of the political process, the court in Chisholm v. FCC also observed that "the basic purpose" of the news exemptions is "[t]o enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."¹⁴ Thus, the Commission was faced with the formidable task of implementing Congress's intention to strike a balance between fairness to the candidates and greater broadcast coverage of elections.

19. Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions. In recognition of Congress' primary goal in enacting the exemptions -- to facilitate a better informed electorate through greater news coverage of the political process -- the Commission has accorded greater deference to a licensee's good faith news judgment. The following discussion outlines the interpretive evolution reflected in the rulings most pertinent to the issues raised by the instant requests.

¹⁴ Chisholm v. FCC, *supra*, at 356, quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland).

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B. On-The-Spot Coverage of a *Bona Fide* News Event

20. The Commission narrowly construed the news event exemption until its 1975 decision in Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom. Chisholm v. FCC, supra, cert denied, 429 U.S. 890 (1976) (Aspen), when the Commission reversed earlier rulings that had denied requests to treat debates and press conferences as exempt *bona fide* news events. In Aspen, The Commission reevaluated its reading of the statute and legislative history, concluding that:

[t]here is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activities of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster in such cases had made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. . . . In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which are patently not bona fide news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event.

Aspen at 705. Thus, the Commission determined that it could be flexible in evaluating whether a format was reasonably within the news event exemption and that, in the absence of bad faith, it should defer to a broadcaster's good faith news judgment in deciding to broadcast an event.

21. In Aspen, the Commission also adopted a two-part test for analyzing whether a program should be considered *bona fide* news event programming. First, it determined whether the format of the program reasonably fit within the news event exemption category and, second, it assessed whether the decision to carry a particular event was the result of good faith news judgment and not based on partisan purposes.¹⁵ After deciding that debates and press conferences could reasonably fit the news event exemption under the first prong of the test, the Commission decided that, under the second prong, it could, when certain safeguards were present, defer to a broadcaster's good faith news judgment in deciding to broadcast an "event." With respect to candidate debates, the Commission ruled that, to be considered an exempt news event, a debate

¹⁵ In Kennedy for President Committee (Kennedy), 77 FCC 2d 965, 968-69, aff'd sub nom. Kennedy for President Committee v. FCC, 636 F.2d 417 (D.C. Cir. 1980), the Commission further clarified Aspen and emphasized that in making the analysis of whether a program is exempt, the Commission will first "determine whether a particular scenario falls within one of the classes of appearance exempt under Section 31.5(a)(1)-(4)." Id. at 969. Second, the Commission will explore "whether a particular broadcast which is claimed exempt was presented using a broadcaster's good faith news judgment." Id. The second aspect of this analysis places considerable reliance on the exercise of a broadcaster's discretion to determine "newsworthiness" once it is determined an exempt news event is involved. Thus, "absent evidence of the broadcaster's intent to advance a particular candidacy, newsworthiness of an event is left to the reasonable news judgment of the professionals." Kennedy for President Committee v. FCC, 636 F.2d at 427.

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must be sponsored by a non-broadcaster third party, such as the League of Women Voters, must be aired in its entirety, and must be aired live. Press conferences also were required to be aired live and in their entirety to qualify for the exemption.

22. In Henry Geller, 95 FCC 2d 1236, aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983) (Geller), the Commission held that its decision in Aspen had, in some respects, been unnecessarily restrictive. Applying the two-prong test, it therefore allowed broadcasters to sponsor and air debates from their own studios and to tape and air a "reasonably recent event." The Commission reasoned that, although there was a chance that according broadcasters additional freedom and flexibility in their news programming might result in an occasional abuse, Congress clearly had accepted that risk in order to foster a more informed electorate.¹⁶ The Commission explained that the common denominator of all exempt programming was *bona fide* news value and that the identity of a debate sponsor should not affect the *bona fides* of the programming. Similarly, Geller eliminated the so-called "one-day rule," which had required that the broadcast be nearly contemporaneous with the event covered. The Commission reasoned that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event in order to maximize audience potential did not destroy its "on-the-spot" nature and furthered, to an even greater degree, Congress's goal of increasing the presentation of political campaign news. Accordingly, the Commission determined that the "rule-of-thumb" on the timing of an exempt news event program should be that the program encompasses news reports of any "reasonably recent event," so long as intended in good faith by the broadcaster to inform the public and not intended to favor or disfavor any candidate.¹⁷

23. In its 1991 decision in King, the Commission further expanded the Section 315(a)(4) exemption by granting a request for a broadcaster-initiated news event involving appearances alone, with no journalistic or other interaction with the candidates.¹⁸ The Commission reasoned that "candidate presentations, in which the major nominees for the highest office in the land set forth in speeches 'their essential campaign messages to the American people' reasonably may be viewed as news 'events' subject to broadcast coverage within the meaning" of Section 315(a)(4).¹⁹ It thus concluded that "the mere fact that the presentations

¹⁶ See Geller at 1244

¹⁷ Id.

¹⁸ The first program in the series proposed by the licensee consisted of a one-hour taped program in which the two major party nominees for President would be allocated 30 minutes each to set forth their respective campaign messages without the involvement of journalists or any interaction between the candidates. The order of appearance would be reversed in a similar one-hour broadcast at the end of the series. The licensee indicated that there would be one, possibly two, broadcasts in between the opening and closing programs, which would consist of separate 45-minute interviews with each of the two candidates, combined into 90-minute programs. The series would be made available to broadcast stations and cable systems for airing no later than one week after taping.

¹⁹ Id. at 4999.

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allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news exemption."²⁰

24. The Commission emphasized as critical to its decision the need for structural safeguards to avoid the possibility of abuse, such as the back-to-back appearances by opposing candidates, which the licensee in King included as part of its proposed format.²¹ The Commission also reasoned, as it had in Geller, that, on balance, Congress's goal of fostering greater news coverage of the political process outweighed any increased possibility of abuse.²² Finally, the Commission stressed in King that the exclusion of third-party candidates whose "significance" can be established by objective criteria such as polling results, would raise questions about the *bona fides* of the programming.²³

C. Legal Analysis of Pending Proposals

25. As explained above, since the Aspen decision more than twenty years ago, the Commission's interpretations of the news event exemption have accorded broadcasters significant discretion in the formulation of innovative news programming formats and in the overall exercise of their good faith news judgment. These decisions have served to promote the central objective underlying the Section 315 exemptions. They are fully consistent with congressional intent to permit increased broadcaster discretion, and to encourage greater coverage of political news, in a context in which "the Commission has been granted greater than normal discretion." Chisholm v. FCC, 538 F.2d at 364. According to a number of commenters, allowing broadcasters to sponsor and air debates from their own studios and to present those debates live or on a reasonably tape-delayed basis in Geller has increased the number of such events and the public has clearly benefited. Likewise, the decision in King to allow for more innovation has increased the amount of broadcaster-initiated news event programming, again increasing the amount of election-related information available to the public.

26. Although the Commission has appropriately relied on broadcaster discretion, we nevertheless retain an obligation to ensure that there exist reasonable safeguards against broadcaster favoritism. As discussed below, we conclude that, consistent with the principles established in our prior decisions, the proposals under consideration are within the statutory exemption for on-the-spot coverage of a *bona fide* news event. Hence, the programs are not subject to the equal opportunities requirement in Section 315 of the Act.

²⁰ Id.

²¹ King, 6 FCC Rcd at 5000.

²² Id.

²³ Id.

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27. Fox Proposal. We agree with the majority of commenters and *en banc* panelists that the back-to-back election eve appearances fall squarely within the Commission's King decision and are exempt as on-the-spot coverage of a *bona fide* news event. First, it is clear that these are *bona fide* news events. As we observed in King, appearances by major presidential candidates, "by any reasonable standard, are news 'events,'" provided that sufficient structural safeguards against broadcaster favoritism are in place. Furthermore, Geller established that the "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date as long as the broadcast is of a "reasonably recent event." Thus, Fox's proposed election-eve broadcast of back-to-back appearances satisfies the first prong of our analysis.

28. With respect to the second prong of our analysis -- whether the broadcaster is exercising good faith judgment that the event is newsworthy -- it is also clear that Fox has met the test enunciated in King. There is no evidence of intent to advance a particular candidacy. The election eve statements are identical to the back-to-back programming approved in King with the added safeguard that each candidate's statement would respond to the same question. The candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors. While we do not require a broadcaster to defer selection of candidates to independent third parties in order to demonstrate good faith, doing so adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates. The World Workers Party argues that exclusion from the news prevents third-party candidates from gaining sufficient public support to warrant their being deemed newsworthy. However, through the news exemptions, Congress intended to do no more than ensure that broadcasters are not inhibited from covering newsworthy events.

29. The one-minute position statements are also exempt as on-the-spot coverage of *bona fide* news events. Again, as in the election eve broadcast, statements by the major presidential candidates are, consistent with the Commission's reasoning in King, reasonably viewed as news events, provided safeguards against favoritism are built into the format. Also consistent with Geller, the tape delay does not present an impediment to the "on-the-spot" element of the exemption. Furthermore, we agree with the comments of Henry Geller that in light of Fox's plan to present a series of candidate statements in response to identical questions about important campaign issues, these statements can reasonably be treated as exempt "mini-debates" in that the public will be exposed to the differing views of each candidate on identical important campaign questions. As with reliance on independent third parties for candidate selection, we do not require that a broadcaster pose questions to candidates, but doing so helps demonstrate that a broadcaster is exercising good faith news judgment.

30. Further, although Fox's format for the one-minute statements does not envision back-to-back presentation, it does incorporate other safeguards. King did not require presentations to be back-to-back to meet the good faith test; rather, the Commission explicitly contemplated the need to clarify in future rulings, on a case-by-case basis, any other safeguards

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that would suffice.²⁴ Fox's pledge to air the statements during comparable time periods will serve the same essential purpose as back-to-back statements by ensuring that the candidates have roughly equal access to viewers. Further, the questions to be answered during the statements are to be formulated by independent nonpartisan organizations. This element of Fox's format lends an additional assurance that Fox's proposed programming is not designed to favor any candidate in the same way as the decision to defer to the Commission on Presidential Debates for its candidate selections. Finally, we do not believe that the short length of each statement affects the *bona fides* of the programming. The legislative history is silent on the issue of whether Congress envisioned a minimum length for a news program, and we see no reason to impose one.²⁵ These programs are also distinguishable from political advertising. The candidates must appear throughout the broadcast and are not permitted to edit or utilize other post-taping production techniques. The presence of these structural safeguards satisfies us that Fox does not intend to favor one candidate over another.

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31. PBS Proposal. We similarly find that PBS's proposal qualifies for a news event exemption. The Commission has stated that statements by the major candidates for President are "by any reasonable standard 'news events'" provided adequate safeguards against favoritism are implemented. As stated above, a licensee is not required to ask questions of candidates or to arrange for third parties to do so. Though PBS's programming will not be aired live, Geller makes clear that the rebroadcast of any "reasonably recent event" suffices for the purpose of being "on-the-spot." Consequently, we find that PBS's proposal involves a *bona fide* news event satisfying the first prong of our analysis.

32. Nor is there any basis to question the good faith news judgment of PBS with respect to its decision to broadcast the event. PBS's format includes reasonable safeguards. First, PBS states that it will select the candidates for inclusion in its programming based upon objective criteria such as national polling data, or as in Fox's proposal, by reference to those candidates selected by the Commission on Presidential Debates. Further, the statements will be equal in length and aired at the same time each day. While airing the spots at the same time of day is not a requirement, it is a significant safeguard against the potential for broadcaster favoritism. Thus, we find that PBS has satisfied the second prong of our analysis -- that the decision to broadcast the event is the result of good faith news judgment, not an intention to favor one candidate over

²⁴ In King, 6 FCC Rcd at 5000, n.4, we stated:

We emphasize here that the balanced nature of the program format, which includes structural safeguards for objective news coverage of political candidates, is critical to our assessment of the *bona fides* of a news event under Section 315(a)(4) in this case. We will carefully scrutinize any future requests for exemption pursuant to these standards. To the extent there is need for further clarification of the kind of objective structural criteria we might consider in allowing an exemption under Section 315(a)(4) in any future cases, we shall address such matters on a case-by-case basis.

²⁵ In Silver King Broadcasting Company, 3 FCC Rcd 2819 (MMB 1988), the Mass Media Bureau ruled that a program of 3-4½ minute duration was exempt as *bona fide* news interview programming.

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another.

33. ABC Proposal. Last, we find ABC's proposed one-hour prime-time "live unrestricted event" to be exempt under King. As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a *bona fide* news event. Furthermore, ABC has indicated that its programming would be aired live, which is not required in light of Geller, but adds to the event's newsworthiness. In fact, as ABC points out, its proposal is somewhat similar to a debate format which we exempted twenty years ago in Aspen and subsequently permitted broadcasters to sponsor in Geller. Consequently, ABC's proposal satisfies the first prong of our analysis.

34. With respect to the second prong, there is no indication that ABC's news judgments will not be *bona fide*. ABC asserts that it will employ objective criteria in selecting the candidates, considering polling results, the number of states in which a candidate has achieved ballot status, and the extent to which a candidate has engaged in a nationwide campaign. As we pointed out above, a licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection is reasonable. We find that the criteria that ABC has committed to use for candidate selection meets this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another.

IV. OTHER MATTERS

35. As discussed above, and in accordance with congressional intent, we have flexibly construed the statutory exemption for on-the-spot coverage of *bona fide* news events. However, we are unwilling to abandon completely our review of programming formats as proposed by ABC and CBS. Had Congress intended that the Commission take such an approach, it would have been unnecessary to enumerate the four exemption formats of Section 315(a). Moreover, we do not believe that review of program formats to determine exempt status impedes broadcasters in providing election-related information to the public. Our interpretations of the exemptions have allowed broadcasters substantial discretion and flexibility to formulate formats they believe will provide for a more informed electorate.

36. We also decline in this proceeding to adopt MAP's suggestion that the Commission redefine the term "legally qualified candidate." This term is used in determining those candidates entitled to equal opportunities under Section 315 and to reasonable access pursuant to Section 312(a)(7).²⁶ In this proceeding, we are asked to determine whether a licensee can reasonably consider certain appearances by candidates it deems newsworthy as news events exempt from equal opportunities requirements. To do so, we need not reach the question of whether the candidates are "legally qualified." Moreover, to the extent that MAP believes that reducing the number of legally qualified candidates will alleviate the necessity for expanding the news

²⁶ Section 312(a)(7) provides that broadcast stations must provide or make available for sale reasonable amounts of time to candidates for federal elective office. 47 U.S.C. Section 312(a)(7).

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Federal Communications Commission

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exemptions, we note that the definition of "legally qualified candidate" is codified in our rules (see 47 C.F.R. § 73.1940) and, as such, any change thereto must be considered in the context of a rule making proceeding.

37. A number of commenters voiced concern that a favorable ruling on the Fox request would risk a greater potential for broadcaster favoritism at the local level. While the Commission has speculated that the potential for favoritism may be less in "prominent" elections, particularly presidential campaigns,²⁷ we have not limited our news exemption rulings only to the presidential level. However, the proposals and the record before us involve coverage only of the presidential election and thus do not directly implicate other elections. As discussed above, in King the Commission stated that it would review future requests, on a case-by-case basis, to determine whether particular formats in particular contexts are consistent with the statute. Accordingly, should requests for exemptions regarding elections below the presidency be made, each will be considered consistent with the principles set out in today's decision, taking account of differences in context, as appropriate.

V. CONCLUSION

38. We believe that our decision today implements Congress's intent in enacting the news exemptions by allowing broadcasters to inform the public about election-related news while ensuring that candidates are treated fairly. Accordingly, IT IS ORDERED that the programming proposals presented to the Commission by Fox, PBS and ABC ARE DECLARED EXEMPT under Section 315(a)(4) of the Communications Act from the equal opportunities requirements.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²⁷ In Aspen, for example, the Commission stated that "realistically the likelihood of broadcaster abuse is remote in the coverage of more prominent political users." 55 FCC 2d at 707. The Commission in King similarly reasoned that [w]here both of the major opposing candidates for President are interviewed pursuant to an unbiased format, the potential for favoritism in coverage is even more remote." Id. at 5000, quoting the Commission in Aspen.

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APPENDIX A

LIST OF COMMENTERS

Benjamin Barber, Director of the Walt Whitman Center for the Culture and Politics of
Democracy, Rutgers University
The Benton Foundation
Capital Cities/ABC, Inc. ("ABC")
CBS Inc.
Committee for the Study of the American Electorate ("CASE")
Common Cause
Jan Crawford Communications
Frank J. Fahrenkopf, Jr. and Charles T. Manatt
Henry Geller
The Robert Wood Johnson Foundation - Healthy Nations Program
Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche
Exploratory Committee ("The LaRouche Committee")
Media Access Project ("MAP")
Michael Meyerson, Professor of Law, University of Baltimore School of Law
National Association of Broadcasters ("NAB")
National Broadcasting Company ("NBC")
US Department of Commerce/NTIA (as delivered by Larry Irving, the Assistant Secretary for
Communications and Information) ("NTIA")
Natural Law Party
Norman Ornstein, American Enterprise Institute
People for the American Way
Public Broadcasting Service ("PBS")
Paul Taylor, The Free TV for Straight Talk Coalition
Daniel Walker
Woodstock Theological Center, Georgetown University
Workers World Party Presidential Campaign Committee
Window To The World Communications, Inc. ("WTTW")

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APPENDIX B

PARTICIPANTS IN JUNE 25, 1995 EN BANC HEARING

United States Senators Bill Bradley and John McCain appeared and made statements.

The following witnesses appeared and participated on the panel.

- Rupert Murdoch, Chairman and CEO, Fox Broadcasting Company
- Paul Taylor, Executive Director, The Free TV for Straight Talk Coalition
- Timothy B. Dyk, Jones Day Reavis & Pogue (on behalf of Natl. Assn. of Broadcasters)
- Frank J. Fahrenkopf, Jr., Former Chairman, Republican National Committee
- Charles T. Manatt, Former Chairman, Democratic National Committee
- Dr. John Hagelin, Presidential Candidate, Natural Law Party
- Norman J. Ornstein, Resident Scholar, American Enterprise Institute
- Andrew J. Schwartzman, Executive Director, Media Access Project
- John K. Andrews, Jr., Managing Director, TCI News
- Michael I. Meyerson, Professor, Univ. of Baltimore Law School
- William J. McCarter, President, WTTW(TV), Chicago, Illinois
- Kathleen Hall Jamieson, Dean, Annenberg School, University of Pennsylvania

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CURTIS EMERY VON KAHN
CATHY A. BIRCH
DAVID H. BISCH
RICHARD A. SIMPSON
LEE LEVINE
SEAN N. MARFIN
PETER B. THOMPSON
ELIZABETH SARAH BERK
BARBARA S. EYUNG
ROBERT M. POZIN
REBECCA L. ROSS
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LEWIS R. LOBB

WILLIAM H. BRIDGE, JR.
JAMES E. GROSSBERG
CHARLES I. HADSEN
WILLIAM E. O'BRIAN, JR.
LONA TRIPLETT PERRY
ANDREW L. SHAPIRO
CELESTE PHILLIPS
ELIZABETH C. HOCH
KENNETH J. HUGHES
DANIEL J. STANBISH
MARTIN S. MACALA
JOEL B. THOMSON
WILLIAM B. HOPKINS
DAVID S. BRIDGES
LESLIE S. ANAST
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GARRICK P. GROBLER
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October 31, 1996

VIA HAND DELIVERY

Colleen T. Sealander, Esquire
Office of the General Counsel
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4451 -- Natural Law Party Complaint
MUR 4473 -- Perot '96, Inc. Complaint

Dear Ms. Sealander:

We submit this letter on behalf of the Commission on Presidential Debates ("CPD") in response to the Natural Law Party's ("NLP") September 5, 1996 letter complaint ("NLP Letter Complaint") and Perot '96, Inc.'s ("Perot") September 19, 1996 letter complaint ("Perot Letter Complaint"). The NLP and Perot Letter Complaints raise virtually identical issues. Accordingly, we address the Letter Complaints jointly herein.

The Letter Complaints were filed shortly in advance of the CPD's 1996 presidential debates by political organizations with a decidedly partisan goal: to secure for their respective presidential candidates an invitation to participate in CPD's 1996 debates. With this end in mind, each advances a highly cramped reading of the Federal Election Commission's ("FEC") regulations concerning the sponsorship of debates.

In brief, complainants' principal contention is that the provision in 11 C.F.R. § 110.13(c) that requires "staging organizations" to use "objective criteria" to extend debate

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invitations mandates that such determinations be made based solely on criteria that can be mechanically applied. Complainants would read the rule to bar the exercise of any judgment whatsoever by the staging organization, even if, as here, the staging organization made its invitation decisions pursuant to a published standard that (1) is capable of objective application as to which rational minds would not differ, (2) provides very substantial constraints on the staging organization's exercise of discretion, and (3) bears a close relationship to the nonpartisan educational purposes of the debates in question.

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The construction complainants advance is unwarranted under the plain language of the regulation, would render general election presidential debates that include the leading candidates highly unlikely, and would raise a host of serious legal issues. As demonstrated below, neither the NLP nor Perot Letter Complaint would support a finding that there is reason to believe that CPD has violated the Federal Election Campaign Act of 1971, as amended (the "Act").^{1/}

I. BACKGROUND

A. The Commission on Presidential Debates

The 1984 presidential election campaign focused national attention on the role of debates in the electoral process. Specifically, although face-to-face debates between the leading presidential candidates ultimately were held in 1984, they were hastily arranged, virtually at the last minute, after an extended period of sporadic negotiations between representatives of the

^{1/} In addition to the Letter Complaints, Perot and NLP also filed, in September 1996, separate lawsuits in the United States District Court for the District of Columbia against CPD and the FEC pertaining to the subject matter at issue in the Letter Complaints. Plaintiffs in those actions sought emergency injunctive relief. The two lawsuits, which were consolidated by the district court, have been dismissed, as described more fully in the October 4, 1996 Opinion by the United States Court of Appeals for the District of Columbia Circuit. Perot v. Federal Election Comm'n, No. 96-5287 and Hagelin v. Federal Election Comm'n, No. 96-5288 (D.C. Cir. Oct. 4, 1996) (attached as Exhibit A).

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nominees of the Republicans and Democrats, President Ronald Reagan, and former Vice-President Walter Mondale. The ultimate decision to hold debates during the 1976 and 1980 general election campaigns followed a similar flurry of eleventh-hour negotiations among the leading candidates. In 1972, 1968 and 1964, such last-minute jockeying resulted in no presidential debates at all during the general election campaign. Thus, the 1984 experience reinforced a mounting concern that, in any given election, voters could be deprived of the opportunity to observe the leading candidates for president debate each other.^{2/}

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Following the 1984 election, therefore, two distinguished national organizations, the Georgetown University Center for Strategic and International Studies and the Harvard University Institute of Politics, conducted separate, detailed studies of the presidential election process generally, and of the role of debates in that process specifically. Declaration of Janet Brown (hereinafter, "Brown Declaration") (attached as Exhibit B), ¶ 6. The reports produced by these two independent inquiries found, inter alia, that: (1) debates are an integral and enhancing part of the process for selecting presidential candidates; (2) American voters expect debates between the leading candidates for president; and (3) debates among those candidates should become institutionalized as a permanent part of the electoral process. Both the Georgetown and Harvard reports recommended that the two major political parties endorse a mechanism designed to ensure, to the greatest extent possible, that presidential debates between the leading candidates "be made a permanent part of the electoral process."^{2/}

In response to the Harvard and Georgetown studies, the then-chairmen of the Democratic and Republican National Committees jointly supported creation of the CPD. Id. ¶ 8. The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize,

^{2/} See generally N. Minow & C. Sloan, For Great Debates 21-39 (1987); Commission on National Elections, Electing the President: A Program for Reform 41-42 (R.E. Hunter ed. 1986); Swerdlow, The Strange -- and Sometimes Surprising -- History of Presidential Debates in America, in Presidential Debates 1988 and Beyond 10-16 (J. Swerdlow ed. 1987).

^{3/} See N. Minow & C. Sloan, supra note 1, at 45.

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manage, produce, publicize and support debates for the candidates for President of the United States." Id. ¶ 3, 9. The CPD Board is jointly chaired by Frank J. Fahrenkopf, Jr., former chairman of the Republican National Committee, and Paul G. Kirk, Jr., former chairman of the Democratic National Committee.^{4/} Id. ¶ 8, 11.

CPD sponsored two presidential debates during the 1988 general election, id. ¶ 20, and four debates during the 1992

^{4/} While Messrs. Kirk and Fahrenkopf served as chairmen of the Democratic and Republican National Committees, respectively, at the time the CPD was formed, they no longer do so. Brown Declaration, ¶ 8. The current chairs of the national party committees do not sit on the CPD's Board of Directors. Id. No CPD board member is an officer of the Democratic or Republican National Committees. Id. CPD receives no funding from the government or any political party. Id. ¶ 4.

NLP's and Perot's claims to the contrary notwithstanding, CPD is not controlled by the two major political parties nor has it been operated for the purpose of strengthening the major parties. While the CPD's creation was enthusiastically supported by the then-chairmen of the major parties, it was formed as a separate and independent corporation. Before the CPD began its operations in earnest, there were, as Perot notes, isolated references to the CPD as a "bi-partisan" effort. See, e.g., Perot Letter Complaint at 2. In context, however, such references spoke only to the efforts of the CPD's founders to ensure that it was not controlled by any one political party, not an effort by the two major parties to control the CPD's operations or to exclude debate participation by non-major party candidates in CPD-sponsored debates. Perhaps more importantly, these isolated references ignore not only the undisputed efforts of the CPD and its Advisory Committee to research and establish a scrupulously non-partisan procedure for selecting debate participants, see infra, at 5-6, but also the well-settled law that, for example, a taxpayer may engage in partisan activities in one capacity and nevertheless maintain a § 501(c)(3) exemption to engage in non-partisan activities in another. See Regan v. Taxation with Representation, 461 U.S. 540 (1983) (organization with dual structure could maintain § 501(c)(3) exemption for non-partisan activities, even though it engaged in partisan lobbying in a separate tax capacity).

election, three between presidential candidates and one between vice presidential candidates, id. ¶ 26. In connection with the 1996 general election campaign, CPD sponsored two presidential debates and one vice presidential debate. CPD's debates have been viewed by tens of millions of Americans, and have served a valuable voter-education function. In addition, CPD has undertaken a number of broad-based, nonpartisan voter education projects designed to enhance the educational value of the debates themselves. Id. ¶ 38.

B. CPD's Promulgation Of Objective Candidate Selection Criteria

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The specific voter education purpose of CPD's debates is to bring before the American people, in a debate, the leading candidates for the Presidency and Vice-Presidency. Brown Declaration, ¶ 36; Declaration of Richard Neustadt, ¶ 5 (hereinafter "Neustadt Declaration") (attached as Exhibit C). In any given presidential election year, there are scores of declared non-major party presidential candidates, including over 130 in 1996. Brown Declaration, ¶ 37; Neustadt Declaration, ¶ 9. Accordingly, virtually from its inception, CPD recognized the need to develop nonpartisan criteria to ensure that it identifies all of the candidates in a particular election year who, regardless of party affiliation and in light of the educational goals of the CPD's debates, properly should be invited to participate in those debates. Brown Declaration, ¶ 13.

In 1987, to assist in the development of participant selection criteria, CPD formed an Advisory Committee, comprised of distinguished persons from various fields, including individuals with no known affiliations with any major party. Brown Declaration, ¶ 15; Neustadt Declaration, ¶ 4. After the Advisory Committee completed its deliberations, the CPD Board of Directors appointed a subcommittee of that group, headed by Professor Richard Neustadt of Harvard University, to develop specific nonpartisan criteria for the identification of appropriate candidates to participate in CPD-sponsored debates. Brown Declaration, ¶ 16; Neustadt Declaration, ¶ 4.

In 1988, pursuant to the recommendations of that committee, and consistent with its educational mission, CPD determined that it would invite to participate in its debates any non-major party candidate with a "realistic chance" of being elected President or Vice President of the United States and

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adopted a series of indicators it would consider in applying that standard. Brown Declaration, ¶ 17; Neustadt Declaration, ¶ 5. Those criteria were applied in connection with the CPD's sponsorship of 1988 debates. Brown Declaration, ¶¶ 19-20; Neustadt Declaration, ¶¶ 6, 8. Subsequently, CPD adopted and applied these criteria again, with only minor changes, in connection with the 1992 debates. Brown Declaration, ¶¶ 22-23; Neustadt Declaration, ¶¶ 6, 8.^{2/}

2/ Among the background allegations in the Perot Letter Complaint is an attack on aspects of the CPD's sponsorship of debates in 1988 and 1992. With respect to the 1988 debates, the Perot Letter Complaint repeats baseless allegations that, somehow, an agreement between the Bush and Dukakis campaigns rendered the debates a fraud and a "hoodwinking of the American public." Perot Letter Complaint at 3. In fact, the 1988 debates, in which distinguished journalists including Jim Lehrer, Peter Jennings, Bernard Shaw and Tom Brokaw participated, Brown Declaration, ¶ 21, were widely praised. For example, the Wall Street Journal noted, after the first of CPD's 1988 presidential debates, that "the 'no-issues' campaign issue is dead; by the time the debate finished, voters knew they had a clear-cut choice." Wall St. J., Sept. 27, 1988, § 1, at 34. The Baltimore Sun asserted that the first Bush-Dukakis encounter was a "Gold Medal Debate" and "the best presidential debate in history." Baltimore Sun, Sept. 26, 1988, § A, at 6. Nationally syndicated columnist David Broder wrote that the debates provided the voters the "invaluable experience of watching the presidential and vice presidential candidates engage each other -- and panels of journalists" and further opined that sponsorship of future debates by CPD "ought to be continued." Wash. Post, Nov. 9, 1988, § A, at 15.

With respect to the 1992 debates, presented with the inconvenient fact that CPD invited Ross Perot and Admiral James Stockdale to participate in those debates, Perot urges that CPD only invited Messrs. Perot and Stockdale to debate because the major party candidates so insisted. See Perot Letter Complaint at 3-4. This is simply false. As the CPD's contemporaneous correspondence demonstrates, see October 6, 1992 and October 7, 1992 letters from CPD to the Bush and Clinton campaigns (attached as Exhibits D & E); see also Brown Declaration, ¶ 26, CPD made very clear to the major party candidates that it would only agree to sponsor debates that were consistent with its voter education

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C. CPD's Adoption Of Criteria For 1996

On October 31, 1995, CPD publicly announced that it would again employ its "realistic chance of being elected" standard, with only minor changes, when making its determination of which nonmajor party candidates to invite to its 1996 debates. Brown Declaration, ¶ 27. The CPD's Candidate Selection Criteria for 1996 General Election Participation (attached to the Brown Declaration as Exhibit 1) ("1996 Candidate Selection Statement") that were applied to the 1996 debates, and that are put at issue by the NLP and Perot Letter Complaints, state:

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The mission of the Commission on Presidential Debates ("the Commission") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The Commission sponsored a series of such debates in 1988 and again in 1992, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 1996 general election.

The goal of the Commission's debates is to afford the members of the voting public an opportunity to sharpen their views of those candidates from among whom the next President or Vice President will be selected. In light of the large number of declared candidates in any given presidential election, the Commission has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such

purposes and its candidate selection criteria, even if that meant the 1992 debates would be conducted by another sponsor. For the reasons set forth in the Advisory Committees' 1996 recommendation to the CPD, see Neustadt Declaration, Exhibit 1, Mr. Perot was deemed to satisfy the CPD's criteria in 1992. See note 7, infra.

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historical prominence and sustained voter interest warrants the extension of an invitation to the respective nominees of the two major parties to participate in the Commission's 1996 debates.

In order to further the educational purposes of its debates, the Commission has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (*i.e.*, more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency. The realistic chance of being elected need not be overwhelming, but it must be more than theoretical.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a Commission-sponsored debate. Rather, the Commission will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

See Brown Declaration, Exhibit 1 at 1.

Specifically, with respect to evidence of national organization, the criteria provide for:

- Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States;
- Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority;
- Organization in a majority of congressional

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- districts in those states; and
• Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

Id. at 1.

Likewise, the criteria focus on the national newsworthiness and competitiveness of a candidate's campaign, including evidence of the news coverage of the candidacy over time and the state of the candidacy at the point the CPD makes its invitation decisions. The evidence to be considered includes:

- The professional opinions of Washington bureau chiefs of major newspapers, news magazines, and broadcast networks;
- The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration;
- The opinions of representative political scientists specializing in electoral politics at major universities and research centers;
- Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates; and
- Published views of prominent political commentators.

Id. at 1-2.

Finally, the criteria consider evidence of national public enthusiasm or concern, including:

- The findings of significant public opinion polls conducted by national polling and news organizations; and

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- Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Id. at 2.

D. Application Of The 1996 Criteria

On September 16, 1996, the 1996 Advisory Committee met to apply the CPD's candidate selection criteria in light of the facts and circumstances presented by the 1996 campaign. Brown Declaration, ¶ 31; Neustadt Declaration, ¶ 9.^{1/} In connection with its deliberations, the 1996 Advisory Committee was provided with voluminous public information concerning the 1996 general election campaign and the over one hundred candidates who have declared their candidacy for the office of President or Vice President. Brown Declaration, ¶ 32.

After reviewing and discussing the facts and assembled materials, the 1996 Advisory Committee unanimously concluded that, as described in the CPD's 1996 Candidate Selection Statement, only President Clinton and Senator Dole qualified for participation in the CPD's 1996 debates. Brown Declaration, ¶ 33; Neustadt Declaration, ¶ 9. The Advisory Committee communicated its recommendation in this regard to the CPD Board by letter dated September 17, 1996. Brown Declaration, ¶ 34; Neustadt Declaration, ¶ 10.^{2/} The CPD Board unanimously

^{1/} The 1996 Advisory Committee, as it did in 1992, consisted of the following distinguished citizens: Professor Neustadt; Professor Diana Carlin of the University of Kansas; Dorothy Ridings, President, Council on Foundations and former President, League of Women Voters; Kenneth Thompson, Director of the Miller Center, University of Virginia; and Eddie Williams, President, Joint Center for Political and Economic Studies. See Brown Declaration, ¶ 11.

^{2/} The Advisory Committee's September 17 letter explained:

We have concluded that, at this stage of the campaign, Mr. Perot has no realistic chance either of popular election in November or of subsequent election by the

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accepted that recommendation, after its own deliberation and discussion, in a meeting held that same day. Brown Declaration, ¶ 35.

House of Representatives, in the event no candidate obtains an Electoral College majority.

* * *

Four years ago, we confronted an unprecedented condition when Mr. Perot rejoined the campaign in October. We were mindful that the preceding Spring, before his withdrawal, he had registered approximately 40 percent in the polls, and that upon rejoining the campaign, he could spend unlimited funds on television campaigning. Unable to predict the consequences of this combination, we agreed that he must be presumed to have a remote chance of election, should he do well enough so that no one else won a majority of electoral votes. His chances in the House of Representatives we found incalculable. So, we concluded that his prospect of election was unlikely but not unrealistic.

With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a federal subsidy, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

Neustadt Declaration, Exhibit 1.

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II. CPD HAS FULLY COMPLIED WITH THE ACT AND APPLICABLE FEC REGULATIONS

A. CPD's Candidate Selection Criteria Fully Comply With Applicable FEC Regulations

CPD's criteria are fair, objective, non-partisan, and lawful; they meet the requirements of 11 C.F.R. § 110.13(c) in all respects.

In applicable part, 11 C.F.R. § 110.13(c) provides as follows:

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

Both Letter Complaints argue that CPD's debate selection criteria fail to comply with 11 C.F.R. § 110.13(c) in two respects. First, NLP and Perot assert that the CPD does not use solely "objective criteria" in its selection process. Second, both argue that the CPD provided an "automatic" invitation to the major party nominees and that to do so violated the regulation. As explained below, the Letter Complaints badly misconstrue both 11 C.F.R. § 110.13(c) and the CPD's debate selection criteria.

1. The CPD's Criteria Are Objective

Complainants advance the strained proposition that debate invitations should have been extended to any candidate who satisfied the following indicators specified in CPD's Candidate Selection Criteria -- Constitutional eligibility to hold the office of President of the United States, ballot access and eligibility for matching funds from the FEC. See NLP Letter Complaint at 3.^{1/} The result-oriented Letter Complaints reject

^{1/} The Perot Complaint states that four elements of CPD's selection criteria satisfy FEC regulations, although it does not provide the FEC with a listing of the specific criteria to which

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CPD's other indicia as "subjective" (including even polling data), and appear to reject the application of any criteria that would require a debate sponsor to exercise any judgment whatsoever in putting together a debate. Given that presidential candidates are not legally required to debate, it is, frankly, difficult to imagine purely mechanical criteria of the sort envisioned by complainants that would have any real prospect of resulting in debates among leading candidates.^{2/}

In fact, the FEC's regulations are not the anti-debate straitjacket NLP and Perot maintain.

First, the regulations do not define the phrase "objective criteria" at all, and certainly do not define the phrase as NLP and Perot would.^{12/} Indeed, in 1994, the FEC Office of General

it gives its imprimatur.

^{2/} As the D.C. Circuit has noted, there is great uncertainty, at a minimum, whether the major party candidates would agree to debate candidates with only modest levels of popular support. See Fulani v. Brady, 935 F.2d 1324, 1329 (D.C. Cir. 1991), cert. denied, 502 U.S. 1048 (1992). Indeed, Mr. Perot's own unwillingness to appear on Larry King Live or to participate in various debates among the "minor" party candidates in 1996 has been well publicized.

A sponsor of general election debates that hopes to afford the American public with a debate that includes all of the leading candidates has a difficult task: to be inclusive enough to invite all those who genuinely are among the leading candidates, but not so inclusive as to eliminate any real chance that the principal candidates will participate. It is very difficult to conceive, in the context of general election presidential debates, of purely mechanical criteria, announced well in advance of the debates (i.e., "pre-established" as required by 11 C.F.R. § 110.13(c)), that could strike the delicate balance needed to serve this legitimate voter education goal.

^{10/} Although complainants urge in the Letter Complaints that the only construction of the phrase "objective criteria" is the equivalent of "mechanical criteria," Perot expressly argued in the litigation that the regulation was "void for vagueness" and

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Counsel submitted for the FEC's consideration a proposal that the regulations be amended to give examples of criteria that would qualify as objective, and examples of those that would not. See NCFL Rulemaking Memorandum at 73-74 (March 9, 1994) (excerpts attached as Exhibit H). Thus, the FEC staff expressly proposed that the FEC consider whether "objective criteria" should exclude "subjective evaluations of whether an individual is a significant, major or important candidate" or "[p]olls or other assessments of a candidate's chances of winning the nomination or election." Id. at 74. This portion of the proposed regulation was rejected by the FEC and is not a part of the rule.¹¹

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susceptible to a construction entirely compatible with the CPD's criteria. Plaintiffs' Amendment to Verified Complaint for Declaratory Judgment and Injunctive Relief (attached as Exhibit F); Transcript of Hearing in Hagelin v. Federal Election Comm'n, C.A. 96-2132 and Perot v. Federal Election Comm'n, C.A. 96-2196 (D.C. Cir. Oct. 1, 1996) (attached as Exhibit G).

¹¹ NLP substantially overreaches by implying that the FEC should apply the "logic and reasoning" of a recommendation that it rejected, rather than adopted. See NLP Letter Complaint at 11. To attribute to the FEC the intention to adopt NLP and Perot's construction of the phrase "objective criteria" is even less tenable in light of the way the term "objective" has been used previously in the context of debate candidate selection criteria. For instance, in the League of Women Voters' candidate selection criteria for the 1988 election, which were very similar to CPD's criteria, the League referred to the criteria as being capable of "objective application." See 1988 League of Women Voters Education Fund Criteria for General Election Debate Participation at 1 (attached as Exhibit I). And in a matter before the FEC, Dartmouth College described its candidate selection criteria, which again were much like the CPD's, as "objective," a characterization with which the FEC did not quarrel when upholding Dartmouth's conduct in its debate. See FEC MUR 1617 (May 9, 1984) (attached as Exhibit J).

Additionally, prior to the adoption of the current regulation, the FEC expressly approved of debate criteria substantially similar to those being used by the CPD. For instance, in connection with a Democratic primary debate in 1984, the League of Women Voters employed selection criteria that, in part, sought to identify "a significant candidacy," as evidenced

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Second, in other contexts, courts have rejected the proposition that the phrase "objective criteria" has a meaning such as NLP and Perot advance here. In Wilson v. Department of Health and Human Services, 770 F.2d 1048, 1052 (Fed. Cir. 1985), for instance, the Federal Circuit explicitly held that the federally mandated usage of "objective criteria" in evaluating agency employees did not require the application of "numerical or quantitative standards" because such a mechanical application of the term could result in "unrevealing, bizarre, or counter-productive" conclusions. In fact, the Wilson court expressly acknowledged that the utilization of "objective criteria" "allows for some subjective judgment on the part of [the] evaluators." Id. at 1055. See also DePauw v. U.S. Int'l Trade Comm., 782 F.2d 1564, 1566 (Fed. Cir.), cert denied, 479 U.S. 815 (1986). Similarly, in this instance, the CPD must retain at least a modicum of judgment in applying its "objective criteria" so as to ensure the avoidance of a potentially "bizarre" or unwelcome result (*i.e.*, an unwieldy debate involving many candidates with no chance of being elected or a debate that does not include the leading candidates) based solely on quantitative factors.^{12/}

Third, most significantly, CPD's criteria are, in fact, objective within the ordinary meaning of that term. Among the definitions of the term found in a leading dictionary is "independent of what is personal or private in our apprehension and feelings: of such nature that rational minds agree in holding it true or valid." Webster's Third New International Dictionary 1556 (1986). The standard employed by the CPD does not rely on the "personal" or "private" "feelings" of its

by, among other things, "recognition by the national media as a candidate meriting media attention" and "other factors providing substantive evidence of national voter interest in a candidate. . . ." See FEC MUR 1659 (May 9, 1984) (attached as Exhibit K). The FEC, in upholding the validity of the League's selection criteria pursuant to § 110.13, ruled that the criteria were "fair and impartial" and properly applied toward "selecting those individuals who had significant candidacies." Id.

^{12/} See also Delaware v. Prouse, 440 U.S. 648, 654-55, 661 (1971) (random automobile "safety checks" may only be conducted by police if they utilize "objective criteria" to guide their discretion; "objective criteria" found lawful were "articulable and reasonable suspicion" of certain violations of law).

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members. The CPD had strictly proscribed the types of evidence that is gathered and considered (evidence of national organization, signs of national newsworthiness and competitiveness, and indicators of national enthusiasm), and has set forth directly the nonpartisan, objective standard that is to be applied in determining eligibility to debate: whether a candidate has a realistic chance of election. The criteria are utterly reasonable in the context of the sponsorship of general election debates. They are capable of logical and consistent application, and they provide very substantial constraints on CPD's exercise of its discretion in extending invitations to debate. This is an objective approach.^{11/}

When the FEC adopted the current version of the regulation, it not only rejected a definition of "objective" like that proposed in this action by NLP and Perot, it also made clear that staging organizations would maintain substantial discretion in extending debate invitations, noting, for instance, that "[t]he choice of which objective criteria to use is largely left to the discretion of the staging organization," and that the criteria may be set "to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate." See 60 Fed. Reg. 64,260, 64,262 (1995).^{11/} There is simply

^{11/} Significantly, neither the NLP nor Perot maintains that this standard was misapplied as to them.

^{11/} Clearly 11 C.F.R. § 110.13(c) does not specify the precise "objective" criteria that a staging organization must employ to determine whom to invite to a debate other than that they must be "reasonable." Moreover, as noted in the text, the FEC emphasized the broad discretion that a staging organization has to select the criteria it will use and the number of participants it will invite to its debates.

Given these indisputable facts, there is fundamental problem with the NLP and Perot premise that a mechanistic interpretation of the regulation will be more inclusive than CPD's. Even were NLP and Perot correct in asserting that purely mechanistic criteria are required by the regulation (and they are not), the selection and application of such criteria would not automatically yield the debate invitation they seek for their candidates. For example, seemingly nothing in the regulation

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nothing in law or logic to suggest that otherwise proper criteria that require the exercise of some objective judgment should be barred.^{15/}

Fourth, NLP and Perot's construction of the regulation would render it unlawful as having been promulgated without adequate notice. The FEC's Notice of Proposed Rulemaking with respect to the amendments to 11 C.F.R. § 110.13(c) gave no indication that the FEC would alter its long-standing practice of approving debates in which participants were selected with criteria similar to CPD's. See 57 Fed. Reg. 33,548, 33,553 (1992). If subparagraph (c) and its "objective" criteria are interpreted to alter radically the standards the FEC previously accepted, the regulation would go well beyond the limited purpose or effect of the rule as initially proposed (i.e., preventing a

would prohibit a staging organization from holding a debate between candidates whose parties had received at least 20% of the votes in the last general election. While such a criterion would indisputably be purely mechanical (and objective under the NLP and Perot definitions of the term), it would present a far greater obstacle for third party candidates than does the more flexible, but objective standard currently used by the CPD, i.e., whether the candidate has a realistic chance of being elected. See also note 9, supra.

^{15/} Perot's citation to Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989), is inapplicable to this matter. In Association of the Bar, the Second Circuit upheld the Internal Revenue Service's denial of a Section 501(c)(3) tax exemption to the Association as a nonprofit corporation because of its practice of rating candidates for judicial office as "approved," "approved as highly qualified" or "not approved." Id. at 877. The Court found that the ratings of a candidate's ability were subjective and that -- as the Association conceded -- they were designed to prevent the election of candidates considered unqualified. As such, the ratings by their very nature constituted intervention "on behalf of (or in opposition to)" candidates for public office. Id. at 880-81. CPD does not assess the merit of any candidate's views and does not advocate the election of any candidate. Complainants cite no case holding that conduct of a debate sponsor in selecting candidates for debate violates § 501(c)(3), and CPD is aware of no such case.

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staging organization from "favor[ing] one or more participating candidate[s]"), and serious issues would arise as to whether the FEC provided sufficient notice of the rule in order for it to be effective. See American Water Works Assoc. v. EPA, 40 F.3d 1266, 1275 (D.C. Cir. 1994) (vacating EPA rule because "interested parties could not reasonably have anticipated the final rulemaking from the draft") (quotation marks and citation omitted); Kooritzky v. Reich, 17 F.3d 1509, 1513 (D.C. Cir. 1994); AFL-CIO v. Donovan, 757 F.2d 330, 338 (D.C. Cir. 1985).^{16/}

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Fifth, NLP and Perot's construction of the regulation would raise serious constitutional problems. In order to withstand First Amendment scrutiny, government regulation of political activity must be narrowly tailored to serve a compelling government interest.^{17/} The only governmental interest that is sufficiently compelling to justify restrictions on the expression of participants in the political process is the prevention of corruption or the appearance of corruption. See, e.g., Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 296 (1981) (limits on political activity are contrary to the First Amendment unless they regulate large contributions given to secure a political quid pro quo); Buckley v. Valeo, 424 U.S. 1, 14, 18 (1976). In addition, even when a given regulation is designed to serve the government's compelling interest in preventing corruption, it must be closely drawn so as not to inhibit protected expression unnecessarily. Carver v. Nixon, 72 F.3d 633, 644 (8th Cir. 1995), cert. denied, 116 S. Ct. 2579 (1996). Thus, the government must demonstrate both that "the recited harms are real" and that "the regulation will in fact alleviate these harms in a direct and material way." United

^{16/} Attached as Exhibit L hereto is a comparison of the text of the pertinent part of the rule as initially proposed and as finally adopted.

^{17/} In the recently concluded litigation concerning the 1996 presidential debates, the D.C. Circuit specifically recognized the First Amendment concerns implicated by governmental restrictions on a debate sponsor's invitation decisions. Exhibit A at 11 ("[I]f this court were to enjoin the CPD from staging the debates or from choosing debate participants, there would be a substantial argument that the court would itself violate the CPD's First Amendment Rights.").

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States v. National Treasury Employees Union, 115 S. Ct. 1003, 1017 (1995) (quoting Turner Broadcasting Sys. v. FCC, 114 S. Ct. 2445, 2470 (plurality opinion) (recognizing that the government must show that the asserted interest is in "genuine jeopardy" and that the remedy it has adopted does not "burden substantially more speech than is necessary" to further that interest), rehearing denied, 115 S. Ct. 30 (1994)).

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The regulation at issue, if construed in the manner suggested by NLP and Perot, would be unconstitutional precisely because it would greatly limited CPD's First Amendment rights, yet it would not be narrowly tailored to reduce corruption or the appearance of corruption. Indeed, as NLP and Perot construe it, the regulation sweeps both too broadly and not broadly enough. On the one hand, putative debate sponsors could limit debate participation to candidates improperly beholden to them by the simple expedient of gauging their selection criteria to some "objective" characteristic shared only by those candidates. By the same token, the NLP and Perot's construction would surely serve to preclude debates in which the participants are selected pursuant to criteria that pose no such risk -- including CPD's requirement that any invited candidate had a realistic prospect of election. Thus, the regulation would be unconstitutional because it is not narrowly tailored to serve the only legitimate interest that might otherwise support governmental regulations of the debate process.

2. CPD Acted Properly In Extending Invitations To The Major Party Nominees

NLP and Perot also incorrectly argue that the CPD violated FEC regulations by providing an "automatic" invitation to the nominees of the Republican and Democratic parties. In fact, as stated in the Candidate Selection Statement:

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation to the respective nominees of the two major parties to participate in the Commission's 1996 debates.

See Brown Declaration, Exhibit 1 at 1 (emphasis added).

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The CPD concluded that, in 1996, given the "historical prominence" of, and "sustained voter interest" in, the Republican and Democratic parties, an invitation to the Republican and Democratic nominees was warranted.^{18/} Thus, as an initial matter, the CPD did not extend an automatic invitation based solely on nomination by a particular party. Rather, it made a reasonable determination regarding the prominence and voter interest, in 1996, in the Republican and Democratic nominees and, on that basis, extended debate invitations to the respective nominees of the Democratic and Republican parties.

Moreover, complainants misconstrue the regulation. Both on its face and in the explanatory material the FEC issued when it published the regulation, the FEC made clear that party affiliation could be used as a basis for inviting a candidate so long as other objective criteria were also available and applied to candidates who were not affiliated with that particular party. When it amended the regulations, the FEC made clear that it did not intend to prevent a staging organization from providing an automatic invitation to one or both of the major party candidates, but rather to prohibit "a staging organization [from]

^{18/} The nominees of the major parties traditionally have been the leading candidates for election to the Presidency. This is neither a "partisan" nor a "bipartisan" observation, but rather a fact of our political life reflected in a host of Congressional enactments governing presidential elections. See, e.g., 26 U.S.C. § 9004 (major-party candidates treated more favorably than minor-party candidates for purposes of public funding of general election campaigns); id. § 9008 (major-party presidential nominating conventions treated more favorably than minor-party nominating conventions for purposes of public financing); id. § 9033 (candidates seeking presidential nomination of a political party treated more favorably than independent candidates for purposes of primary matching funds). The aforementioned provisions of the tax code have all withstood constitutional scrutiny. See, e.g., Buckley v. Valeo, 424 U.S. 1, 85-105 (1976).

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bar[ring] minor party candidates . . . from participating simply because they have not been nominated by a major party." See 60 Fed. Reg. 64,260, 64,262 (1995) (emphasis added).^{12/}

In short, major party affiliation is not the "sole objective criterion [used by CPD] to determine whether to include a candidate in a debate." 11 C.F.R. § 110.13(c). Accordingly, CPD's decision to invite the Republican and Democratic Presidential nominees to debate in 1996 did not violate 11 C.F.R. § 110.13(c).

B. CPD, A Nonprofit, Nonpartisan Corporation, Is Eligible To Sponsor Candidate Debates Pursuant to Applicable FEC Regulations

The Perot Letter Complaint advances a number of ancillary attacks, each of which fails because CPD's debate selection criteria are entirely in compliance with 11 C.F.R. § 110.13(c). Nevertheless, in an abundance of caution, we briefly respond to Perot's "secondary" challenges to the CPD.

First, the Perot Letter Complaint argues that CPD is in violation of 11 C.F.R. § 110.13(a) "because it is an organization which 'supports' two political parties, and 'opposes' all others." See Perot Letter Complaint at 5. In full, 11 C.F.R. § 110.13(a) states that

Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with this section and 11 C.F.R. 114.4(f).

^{12/} When it adopted the earlier version of 11 C.F.R. § 110.13(c), the FEC explained that a debate sponsor could properly "stage a general election debate to which only major party candidates are invited." 44 Fed. Reg. 76734, 76735 (Dec. 27, 1979). The current version of the regulation requires a mechanism for identifying additional candidates whom should be invited, but does not require staging organizations to turn a blind eye on the role of the major parties in our political system.

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As discussed supra, at 4, CPD is a nonprofit corporation, which has been granted tax exempt status by the Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code. A § 501(c)(3) corporation, by definition, "does not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). CPD's limited mission, sponsoring presidential debates and closely related educational activities, is fully in accordance with the requirements of 501(c)(3), and similarly does not violate 11 C.F.R. 110.13(a)'s prohibition of endorsement, support or opposition to any candidate or party. As discussed above, see, supra at 17-18, n.15, CPD makes no assessment of the merits of any candidate's or party's views, and does not advocate or oppose the election of any candidate or party.

At best, Perot's claim that CPD has violated 11 C.F.R. § 110.13(a) amounts to an argument that the very act of inviting candidates to debates constitutes "endorsement" of those invited and "opposition" to those not invited, regardless of the nonpartisan manner in which those selections are made. Under Perot's analysis, no staging organization could ever hold a debate pursuant to § 110.13, because the act of using criteria required by § 110.13(c) would always result in an improper endorsement under § 110.13(a). This result cannot be reconciled with the FEC's regulations and must be rejected.

Second, Perot alleges that CPD is in violation of the Act because it has failed to register as a "political committee" pursuant to 2 U.S.C. § 433. See Perot Letter Complaint at 2. In fact, FEC regulations provide that "[f]unds used to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 C.F.R. 110.13" do not constitute contributions or expenditures subject to the provisions of the Act, see 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23), and thus CPD does not constitute a "political committee" under the Act, see 2 U.S.C. § 431(4).^{20/} As stated in its corporate charter, and as

^{20/} In an attempt to defeat the safe harbor provided in the FEC's regulations, Perot asserts that CPD is an "affiliated committee of the Democratic National Committee and the Republican National Committee." See Perot Letter Complaint at 2. As set forth supra, at 4, CPD is an independent, nonpartisan corporation, on which no current members of the Democratic or

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evidenced by its actions, CPD's major purpose is to sponsor educational debates, not to nominate or elect a particular candidate or candidates. See Brown Declaration, ¶ 9. CPD is not a "political committee" under the Act, and thus it is not in violation of 2 U.S.C. § 433 for failure to register as such. See FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 252 n.6 (1986) (recognizing that "an entity subject to regulations as a 'political committee' under the Act is one that is either 'under the control of a candidate or the major purpose of which is the nomination or election of a candidate'") (quoting Buckley v. Valeo, 424 U.S. at 79).

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Finally, Perot argues generally that CPD's sponsorship of presidential and vice presidential debates constitutes "illegal in-kind contributions to the Clinton campaign and the Dole campaign," in violation of 2 U.S.C. § 441b. See Perot Letter Complaint at 2, 6. As discussed supra, CPD is in full compliance with 110.13, and funds it has received or spent do not constitute "contributions" or "expenditures" as defined in the Act. See 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23). Perot's interpretation of the Act is in direct conflict with the FEC's reading of § 441b. As recognized by the Court of Appeals in Perot v. Federal Election Commission,

[a]s early as 1976, the FEC recognized that § 441b could be construed to bar the use of corporate funds to stage debates. See 44 Fed. Reg. 59,162 (1979). To remove doubt about the legality of corporate sponsorship of debates, the FEC promulgated a regulation incorporating its view that "nonpartisan debates are designed to educate and inform voters rather than to influence the

Republican National Committee serve, and which receives no funds from the Democratic or Republican parties. As such, it does not constitute an "affiliated committee" under the Act. The facts that some members have connections to the Democratic and Republican parties, and that the Democratic and Republican National Committees were involved in the formation of CPD, do not meet the threshold connection required to make the CPD an "affiliated committee" pursuant to relevant FEC regulations. See, e.g., 11 C.F.R. § 100.4(g) ("affiliated committees" includes those "established, financed, maintained or controlled by another committee or sponsoring organization").

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nomination or election of a particular candidate,"
and thus "funds expended . . . to defray costs
incurred in staging nonpartisan debates" ought not
run afoul of § 441b. 44 Fed. Reg. 76,734 (1979).

Exhibit A at 2.

The current version of the regulation applicable to sponsorship
of debates continues to afford a "safe harbor" from 441b for the
sponsorship of educational debates.

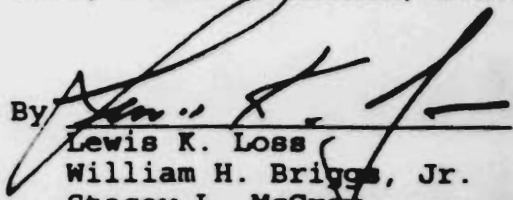
* * * *

For the foregoing reasons, the Letter Complaints filed by
NLP and Perot fail to set forth a possible violation of the Act,
and therefore CPD respectfully urges that no action be taken
against it by the FEC in connection with MUR 4451 and MUR 4473.

Respectfully submitted,

ROSS, DIXON & MASBACK, L.L.P.

By


Lewis K. Loss
William H. Briggs, Jr.
Stacey L. McGraw

COUNSEL FOR THE COMMISSION ON
PRESIDENTIAL DEBATES

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EXHIBITS TO:

CPD's October 31, 1996 Letter
To Colleen T. Sealander, Esq.
Regarding

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 31 4 49 PM '96

MUR 4451 -- Natural Law Party Complaint
MUR 4473 -- Perot '96, Inc. Complaint

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 3, 1996

Decided October 4, 1996

No. 96-5287

Ross Perot, Pat Choate, and
Perot '96, Inc.,
Appellants

United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 04 1996

v.

Federal Election Commission,
and the Commission on Presidential Debates,
Appellees

No. 96-5288

Dr. John Hagelin, Dr. Mike Tompkins, and
the Natural Law Party of the United States of America,
Appellants

v.

Federal Election Commission,
the Commission on Presidential Debates,
Appellees

Appeals from the United States District Court
for the District of Columbia
(96cv2196 & 96cv2132)

Thomas O. Gorman argued the cause for appellants Ross Perot, et al., with whom *Samuel W. Lanham, Jr., Jamin B. Raskin, and Thomas O. Sargentich, pro hac vice,* and *Robert E. Steinberg* were on the briefs.

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Thomas M. Newmark argued the cause (*pro hac vice*) for appellants Dr. Hagelin, et al., and was on the brief.

Richard B. Bader, Associate General Counsel, argued the cause for appellee Federal Election Commission, with whom *Lawrence M. Noble*, General Counsel, was on the brief.

Lewis K. Loss, Attorney, argued the cause for appellee Commission on Presidential Debates, with whom *William H. Briggs, Jr.*, was on the brief.

Before: SILBERMAN, RANDOLPH, and ROGERS, *Circuit Judges*.

Opinion for the Court filed *Per Curiam*.

Per Curiam: Two days hence a series of debates between candidates nominated by the Democratic Party and the Republican Party for President and Vice President of the United States is scheduled to begin. One day ago this court heard argument concerning those debates. The case was argued before the district court on October 1, 1996. In view of the importance of the issues and the short time remaining before the debates begin, this court granted the motions for expedited review.

Appellants in these consolidated appeals are Ross Perot and Pat Choate, the presidential and vice-presidential nominees of the Reform Party, and their campaign organization, Perot '96, Inc. (collectively "Perot"); and Dr. John Hagelin and Dr. Mike Tompkins, the nominees of the Natural Law Party of the United States, and their party (collectively "Dr. Hagelin"). They appeal from the denial of injunctive relief and the grant of summary judgment to the Federal Election Commission ("FEC") and the Commission on Presidential Debates ("CPD"). Appellants now raise only two contentions. Perot contends that the FEC has unlawfully delegated legislative authority to a private, non-profit corporation, in violation of Article I of the Constitution. Dr. Hagelin contends that the district court erred in granting summary

judgment on the grounds that it lacked jurisdiction to enjoin a violation of the Federal Election Campaign Act of 1971 ("FECA"), 2 U.S.C. § 431 *et seq.* (1994), despite the inability of the FEC to address the violation prior to the 1996 presidential debates scheduled by the CPD to begin on October 6, 1996. Hence, we do not address the merits of appellants' other claims, presented to the district court, that they were wrongfully excluded from the debates. On the issues before this court, we find no merit to Perot's constitutional challenge or Dr. Hagelin's contentions. As to the validity of the FEC regulation at the center of this controversy, we conclude that the grant of summary judgment sustaining it was premature. Accordingly, we affirm the denial of injunctive relief, vacate the grant of summary judgment relating to the claim that the regulation is inconsistent with the statute, and remand with instructions to dismiss the regulatory claim without prejudice.

I.

The CPD is a private, non-profit corporation formed in 1987 for the purpose of sponsoring presidential debates. In prior years, that task had been performed by another non-profit entity, the League of Women Voters. Beginning with the 1988 presidential election, the CPD assumed that function. The members of the CPD include a former chairman of the Democratic National Committee, a former chairman of the Republican National Committee, and other representatives of the Democratic and Republican parties. In connection with the 1996 presidential election, the CPD has scheduled a series of two presidential and one vice-presidential debates, with the first presidential debate scheduled to take place on October 6, 1996. The only candidates invited to participate are President William Jefferson Clinton and former Senator Robert J. Dole, the respective nominees of the Democratic and Republican

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Parties, and their vice-presidential running mates. The CPD, relying on its preannounced criteria, and the recommendation of an advisory committee consisting primarily of political scientists, based its decision to exclude other candidates on the grounds that no other candidates have a "realistic chance of winning" the 1996 election.

To understand the nature of appellants' claims, we set forth the underlying statutory and regulatory framework. The FECA prohibits "any corporation" from making "a contribution or expenditure in connection with" any federal election. 2 U.S.C. § 441b(a). Both a "contribution" and an "expenditure" are defined to include, *inter alia*, any advance of "anything of value ... for the purpose of influencing any election for Federal office." *Id.* § 431(8)(A)(I); *id.* § 431(9)(A)(I). An "expenditure" does not, however, include "nonpartisan activity designed to encourage individuals to vote or to register to vote." *Id.* § 431(9)(B)(ii).

As early as 1976, the FEC recognized that § 441b could be construed to bar the use of corporate funds to stage debates. *See* 44 Fed. Reg. 59,162 (1979). To remove doubt about the legality of corporate sponsorship of debates, the FEC promulgated a regulation incorporating its view that "nonpartisan debates are designed to educate and inform voters rather than to influence the nomination or election of a particular candidate," and thus "funds expended ... to defray costs incurred in staging nonpartisan debates" ought not run afoul of § 441b. 44 Fed. Reg. 76,734 (1979). The current version of this regulation, to be codified at 11 C.F.R. § 110.13, was transmitted to Congress in December 1995, and became effective March 13, 1996. It provides that eligible non-profit organizations may stage candidate

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debates, so long as they "use pre-established objective criteria to determine which candidates may participate in a debate."¹

On September 19, 1995, approximately six months before the effective date of § 110.13, the CPD announced its selection criteria for participants in the 1996 presidential debates. The CPD had concluded that the historical prominence of Democratic and Republican nominees warranted an invitation to the respective nominees of the two major

¹ The regulation reads in relevant part:

§ 110.13 Candidate debates.

(a) *Staging organizations.* (1) Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 C.F.R. 114.1(f).

* * * *

(b) *Debate Structure.* The structure of debates staged in accordance with this section and 11 C.F.R. 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection.* For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate....

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parties in 1996. With respect to "non-major party candidates," the CPD announced criteria by which it could identify those who had "a realistic (i.e., more than theoretical) chance of being elected." These criteria included evidence of national organization (such as placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority), signs of national newsworthiness (as evidenced, for example, by the professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks), and indicators of public enthusiasm (as, for instance, reflected in public opinion polls). On September 17, 1996, the CPD issued a press release indicating its conclusion that no candidate other than President Clinton or Senator Dole had a realistic chance of being elected, and that, therefore, only those candidates and their vice-presidential running mates, would be invited to participate in the debates.

On September 6, 1996, Dr. Hagelin filed an administrative complaint against the CPD with the FEC, asserting that the CPD violated 11 C.F.R. § 110.13(c) by using subjective criteria to choose whom to invite as participants in its debates and by inviting President Clinton and Senator Dole based solely on their nominations by the Democratic and Republican parties. On September 13, Dr. Hagelin filed a verified complaint against the FEC and the CPD in the United States District Court for the District of Columbia seeking to enjoin the CPD from using unlawful debate selection criteria or, in the alternative, to order the FEC to take immediate action on his complaint as well as authorize it to take expedited action against the CPD's alleged violations of FECA.

Meanwhile, on September 20, 1996, Perot filed an administrative complaint against the CPD with the FEC. He too challenged the CPD's application of its selection criteria. On

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September 23, 1996, Perot filed a verified complaint in the district court, requesting that the court enjoin the FEC and the CPD from violating FEC regulations, the FECA, and various constitutional provisions.

The FEC and the CPD filed motions to dismiss the complaints. The district court consolidated the cases for argument, and, after expedited briefing, heard oral argument and ruled from the bench on October 1, 1996. The district court denied appellants' requests for preliminary injunctive relief. Applying the factors set forth in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977), the court determined first that neither Dr. Hagelin nor Perot could show a likelihood of success on the merits. The court noted that Congress had granted the FEC exclusive primary jurisdiction to adjudicate civil claims under the FECA, and it emphasized that the FECA precluded its exercise of jurisdiction over the instant claims until the FEC acted on the claims or until 120 days after those claims had been filed. The district court then looked to the balance of equities presented in the appellants' claims for injunctive relief. This factor also weighed against Dr. Hagelin and Perot, as the damage they would suffer if the debates were to be held without their participation could at least be partially remedied in subsequent proceedings, and in any event it did not outweigh the public interest in allowing the debates to go forward without interference.

In addition to denying both appellants' claims for injunctive relief, the district court rejected Perot's claim that the CPD threatened a violation of his First Amendment right to freedom of speech. Relying on *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522 (1987), the court held that no such claim could lie against CPD

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since it was not a state actor. The court summarily rejected Perot's equal protection, due process, and nondelegation claims. Finally, the court, treating the motions to dismiss as motions for summary judgment, granted summary judgment for the FEC on the claim that § 110.113 was beyond the scope of its statutory authority. Fed. R. Civ. P. 12(b), 56. Under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the court found the regulation a permissible interpretation of FECA's exemption from the definition of "expenditure" nonpartisan activity designed to encourage individuals to vote.

II.

We agree with the district court that it lacked jurisdiction to adjudicate the validity of the complaints filed with the FEC or to order the FEC to do so before the CPD-sponsored debate on October 6, 1996. Accordingly, we affirm the district court's dismissal of these claims on jurisdictional grounds.

Congress could not have spoken more plainly in limiting the jurisdiction of federal courts to adjudicate claims under the FECA. The statute explicitly states that "[e]xcept as provided in section 437g(a)(8) of this title, the power of the [FEC] to initiate civil actions under subsection (a)(6) shall be the exclusive civil remedy for the enforcement of the provisions of this Act." 2 U.S.C. § 437d(e); accord 2 U.S.C. § 437c(b)(1) ("The [FEC] shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act The [FEC] shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.").

Section 437g requires the FEC to proceed with due deliberation after it receives a complaint alleging violations of the Act. 2 U.S.C. § 437g(a)(1). Dr. Hagelin filed his

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complaint with the FEC on September 6, 1996; Perot filed his complaint on September 20, 1996. CPD, which is alleged to have violated the Act, had to be notified within 5 days. *Id.* § 437g(a)(1). We presume this was done. The next step is for the FEC to vote to determine whether there is reason to believe the subject of the complaint has violated the Act. *Id.* § 437g(a)(2). If the complaint is not dismissed at that stage, the FEC conducts an investigation. *Id.* If the FEC's general counsel recommends that the FEC proceed to the next statutory step - a vote on whether there is probable cause to believe the respondent violated the Act - the respondent is notified and is given 15 days to submit a brief stating its legal and factual position and replying to the general counsel's brief. *Id.* § 437g(a)(3). If the FEC then decides there is probable cause, it "shall attempt, for a period of at least 30 days," or at least 15 days if an election is imminent, to have the respondent correct or prevent the violation. *Id.* § 437g(a)(4)(A)(i) & (ii). The FEC may skip this step and refer the matter to the Attorney General for enforcement action only if it determines that the violation is knowing and willful and only if the violation is of a type included in § 437g(d). *Id.* § 437g(a)(5)(C).

Other procedural requirements, unnecessary to mention, also bind the FEC's deliberations about, and investigation of, complaints. The end of the administrative road is a civil complaint filed by the FEC in the district court or an action by the complaining party. Section 437g(a)(8)(A) states: "[a]ny party aggrieved by an order of the [FEC] dismissing a complaint filed by such party under paragraph (1), or by failure of the [FEC] to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a

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petition with the United States District Court for the District of Columbia." *Id.* §

437g(a)(8)(A).² The district court's decision may be appealed to this court. *Id.* § 437g(a)(9).

Dr. Hagelin claims that we may ignore these elaborate statutory requirements and force the FEC to act immediately because otherwise he would suffer irreparable harm. To do so, however, would place us in conflict with our decision in *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980). *Carter-Mondale* is, as the FEC argues, directly on point. The plaintiffs in that case asked the court to find a violation of the federal election laws, and requested alternatively "that the FEC be directed to conduct an immediate investigation of the [plaintiffs'] charges." *Id.* at 542. The court held that "the exclusive jurisdiction of the FEC extends to assure that the [FEC's] initial investigation is completed, or the statutory time limit allowed for an investigation has expired, before any judicial review is invoked." *Id.* It therefore declined to hear the case because "the entire matter at this time is within the exclusive jurisdiction of the Federal Election Commission." *Id.*

It is true, as Dr. Hagelin points out, that the *Carter-Mondale* opinion said there might be extraordinary circumstances allowing a party to "hurdle the explicit time restraints of the [Federal Election Campaign] Act." 642 F.2d at 543. But the opinion never specified what these circumstances might be. It did not indicate on what basis, short of holding § 437g unconstitutional (which no one urges), a court could disregard the statutory commands. And the statement in *Carter-Mondale* was made before the Supreme Court instructed us that if

² Apart from § 437g(a)(8)(C), there is no private right of action to enforce the FECA against an alleged violator. See *Karahalios v. National Fed'n of Fed. Employees, Local 1263*, 489 U.S. 527, 533 (1989); see also *Corn v. Ash*, 422 U.S. 66, 82-85 (1975).

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"Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Section 437g is as specific a mandate as one can imagine; as such, the procedures it sets forth -- procedures purposely designed to ensure fairness not only to complainants but also to respondents -- must be followed before a court may intervene. We assume that in formulating those procedures Congress, whose members are elected every two or six years, knew full well that complaints filed shortly before elections, or debates, might not be investigated and prosecuted until after the event. Congress could have chosen to allow judicial intervention in the face of such exigencies, but it did not do so. And as we have said, a court is not free to disregard that congressional judgment.

Even if we could somehow ignore the jurisdictional requirements of § 437g(a), *but see Carter-Mondale*, 642 F.2d at 542, Dr. Hagelin could not achieve the result he seeks. This court could not compel the FEC to enforce its regulation in accordance with the FECA. We have interpreted § 437g(a)(8)(C) to allow nothing more than an order requiring the FEC action when the FEC's failure to act is contrary to law. *See FEC v. Rose*, 806 F.2d 1081, 1084 (D.C. Cir. 1986). Since the FEC is given 120 days to act on a submitted complaint, § 437g(a)(8)(A), its delay in this case is neither unlawful nor unreasonable. *See Rose*, 806 F.2d at 1084-85. Second, if this court were to enjoin the CPD from staging the debates or from choosing debate participants, there would be a substantial argument that the court would itself violate the CPD's First Amendment rights. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976) (prior restraint); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 115 S. Ct. 2338 (1995) (speaker's choice of content).

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III.

In addition to the statutory arguments, Perot also raises a novel constitutional claim. As we understand it, he contends that the FEC's "candidate debates" regulation unlawfully delegates legislative authority to a private, non-profit corporation, in violation of Article I of the Constitution. In fact, this attack on the regulation rests on what might be termed a subdelegation of authority theory, since the claim is that the Congress has delegated authority to the FEC, which in turn has delegated some portion of that authority to the CPD. The FEC acknowledges that we have jurisdiction under 28 U.S.C. § 1331 to decide this issue, although it questions whether Perot is entitled to any relief. We agree that we have jurisdiction over the claim, but we are unpersuaded that the regulation delegates legislative authority to the CPD.

It is well established that Congress may, by a legislative act, grant authority to an executive agency such as the FEC to adopt rules and regulations, so long as it provides some "intelligible principle" by which the agency is to exercise that authority. *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (quoting *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1928)). We agree with the general proposition that when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor such as the CPD. *Cf. A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935).

In the cases before us, however, the FEC has not delegated any authority to the CPD. It has issued a regulation permitting eligible nonprofit organizations to stage candidate debates, provided that they employ "pre-established objective criteria" to determine who may participate. Rather than mandating a single set of "objective criteria" all staging organizations

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must follow, the FEC gave the individual organizations leeway to decide what specific criteria to use. 60 Fed. Reg. 64,262 (1995). One might view this as a "delegation," because the organizations must use their discretion to formulate objective criteria they think will conform with the agency's definition of that term. But in that respect, virtually any regulation of a private party could be described as a "delegation" of authority, since the party must normally exercise some discretion in interpreting what actions it must take to comply.

The contention that the regulation delegates authority to the CPD because it does not spell out precisely what the phrase "objective criteria" means goes far beyond the normal usage of the term "delegation." This position would go further than the position of Justice Scalia, who dissented from the Supreme Court's decision in *Mistretta* that a congressional grant of rulemaking authority to the United States Sentencing Commission was not an unconstitutional delegation of legislative power, but acknowledged that "no statute can be entirely precise, and ... some judgments, even some judgments involving policy considerations, must be left to the officers executing the law and to the judges applying it" 488 U.S. at 415 (Scalia, J., dissenting). So too, a regulation's use of a term that may be susceptible to differing interpretations does not automatically result in a delegation of authority to the entities that it governs.

Here, the FEC has chosen to give the CPD and any other organizations that wish to sponsor debates the latitude to choose their own "objective criteria." In adopting such standards, a staging organization acts at its peril, unless it first secures an FEC advisory opinion pursuant to 2 U.S.C. § 437f. Without such an opinion, the organization runs the risk that the FEC will subsequently determine that its criteria are not objective, and that its

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sponsorship of the debate violated § 441b. If that happens, the staging organization may be subject to the penalties provided in the FECA. The authority to determine what the term "objective criteria" means rests with the agency, however, and to a lesser extent with the courts that review agency action.

In sum, we are unpersuaded that the FEC has unconstitutionally delegated legislative authority to the CPD. At oral argument counsel suggested that this court should order the FEC, either through mandamus or some other extraordinary remedy, to "take back" the authority it has "delegated" to the CPD. As we understand this argument, Perot seeks to have the FEC either withdraw its regulation or revise it to define in detail what are "objective criteria." It is unclear how the FEC could accomplish this goal in time to have any effect on the presidential debates. Before prescribing new regulations, the FEC must transmit a statement of its proposed action to Congress, and the regulation may not take effect until thirty legislative days have passed. 2 U.S.C. § 438(d). Nor may the FEC render an advisory opinion concerning the legality of the CPD's preannounced criteria upon request of a third party. *Id.* § 437f(a)(1). As noted in Part II, a complaint is subject to the statutory timetable that also would preclude relief prior to the debates.

IV.

Before the district court, Perot also argued as an appendage to the request for a preliminary injunction that the FEC lacked authority to promulgate 11 C.F.R. §§ 110.13 and 114.4(f) and that the regulations carve out an illegal exception to the corporate contribution and expenditure limits of 2 U.S.C. § 441b. On appeal Perot mentions this argument -- that the

FEC's debate regulation, 11 C.F.R. § 110.13, is *ultra vires* -- only in a footnote of his brief, and counsel did not address it at oral argument.

The district court granted summary judgment on this claim, finding the regulations permissible under 2 U.S.C. § 431(9)(B)(ii), which exempts from the definition of "expenditure" "nonpartisan activity designed to encourage individuals to vote or to register to vote." Perot's footnote claims that the CPD's sponsorship of debates does not fall within this exemption, primarily because it is not truly nonpartisan. We need not reach the merits of this contention.

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The FECA has no provisions governing judicial review of regulations, so an action challenging its implementing regulations should be brought under the judicial review provisions of the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.* Among other things, the APA directs courts to consider the administrative record in determining the legality of agency action. *Id.* § 706. Perot has not invoked the APA, and no party has produced the administrative record. *See* Fed R. App. P. 15, 17. Consequently, the district court did not have the opportunity to consider the regulations' legality in terms of that record or the APA and the case law under it. Especially since we do not have the administrative record before us, and this issue was not fully briefed, we will refrain from reviewing the district court's grant of summary judgment. The case is simply not in a posture to permit an important question of this sort to be properly adjudicated.

Accordingly, we remand this part to the district court with instructions to dismiss without prejudice only Count IV of Perot's complaint, which raises this claim. Perot will then be free to file a new suit properly challenging the FEC's authority to promulgate the

regulations. He will not suffer unduly from any delay in resolving this issue, as even an immediate order invalidating the regulations would not provide him with any meaningful relief from the alleged harms. In all other respects, the district court's order is affirmed.

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4. CPD receives no government funding; nor does it receive funds from any political party.

5. CPD sought and has been granted by the Internal Revenue Service tax exempt status under § 501(c)(3) of the Internal Revenue Code.

6. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies and (2) the Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission.

7. Both of these studies underscored the importance presidential debates had assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.

8. Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., then-chairman of the Republican and Democratic National Committees respectively, responded by initiating CPD as a not-for-profit corporation separate and apart from their party organizations. While Messrs. Kirk and Fahrenkopf served as the chairs of the major national party committees at the time CPD was

formed, they no longer do so; nor do the current chairs of those committees sit on CPD's Board of Directors. No CPD Board member is an officer of the Democratic or Republican National Committee.

9. CPD's very first corporate document, its February 19, 1987 Articles of Incorporation, identified its purpose as "to organize, manage, produce, publicize and support debates for the candidates for President of United States . . ."

10. Prior to CPD's sponsorship in 1988, televised presidential debates were produced in only four general election years: by the networks in 1960, and by the non-profit League of Women Voters in 1976, 1980, and 1984. To my knowledge, the federal government has never sponsored a televised debate between presidential candidates.

11. CPD has a ten-member Board of Directors ("CPD Board"). The members of the CPD Board, all volunteers, are:

Frank J. Fahrenkopf, Jr., President, American Gaming Association (Co-Chairman of the Commission.)

Paul G. Kirk, Jr., Lawyer and of counsel, Sullivan & Worcester. (Co-Chairman of the Commission.)

The Honorable Paul Coverdell, Member of the U.S. Senate from Georgia.

John C. Danforth, Lawyer and Partner, Bryan Cave.

Antonia Hernandez, President, Mexican American Legal Defend Fund.

Caroline Kennedy, Author.

The Honorable John R. Lewis, Member of the U.S. House of Representatives from Georgia.

Newton Minow, Lawyer and Partner, Sidley & Austin.

The Honorable Kay Orr, former Governor of Nebraska.

The Honorable Barbara Vucanovich, Member of the U.S. House of Representatives from Nevada.

12. Former Presidents Gerald Ford, Jimmy Carter and Ronald Reagan serve as Honorary Co-Chairmen of CPD.

13. From virtually the beginning of CPD's operations, CPD's Board recognized that, although the leading contenders for the offices of President and Vice President of the United States historically have come from the major parties, CPD's educational mission would be furthered by developing criteria by which to identify any nonmajor party candidate who, in a particular election year, was a leading candidate for the Office of President or Vice President of the United States, and to whom an invitation should be extended to participate in one or more CPD-sponsored debate.

14. I understand that plaintiffs in this action challenge CPD's candidate selection criteria both on their face and as applied in connection with preparations for the 1996 debates. The criteria were promulgated and applied as follows.

15. Over nine years ago, on July 7, 1987, CPD formed an advisory panel of distinguished Americans, including individuals not affiliated with any major party, in order to provide guidance to CPD with respect to several areas, including nonmajor party candidate participation in CPD sponsored debates. The individuals serving on the advisory panel (and their then-current principal affiliation) included:

Charles Benton, Chairman, Public Media Inc.;

Ambassador Holland Coors, 1987 Year of the Americas;

Marian Wright Edelman, President, Children's Defense Fund;

Mary Hatwood Futrell, President, National Education Association;

Carla A. Hills, Partner, Weil, Gotshall & Manges;

Barbara Jordan, Professor, LBJ School of Public Affairs, University of Texas;
Melvin Laird, Senior Counselor, Readers' Digest;
Ambassador Carol Laise;
William Leonard, former President, CBS News;
Kate Rand Lloyd, Managing Editor, Working Woman Magazine;
Newton Minow, Partner, Sidley & Austin;
Richard Neustadt, Professor, Kennedy School of Government, Harvard University;
Ed Ney, Vice Chairman, Paine Webber Inc.;
Paul H. O'Neill, Chairman and Chief Executive Officer, Aluminum Company of America;
Nelson W. Polsby, Professor, University of California at Berkeley;
Jody Powell, Chairman and Chief Executive Officer, Ogilvy & Mather Public Affairs;
Murray Rossant, Director, Twentieth Century Fund;
Jill Ruckelshaus;
Lawrence Spivak, former Producer and Moderator, "Meet the Press";
Robert Strauss, Partner, Akin, Gump, Strauss, Hauer & Feld;
Richard Thornburgh, Director, Institute of Politics, Harvard University;
Marietta Tree, Chairman, Citizen's Committee for New York City;
Anne Wexler, Chairman, Wexler, Reynolds, Harrison & Schule;
Mrs. Jim Wright.

16. The advisory panel convened in Washington on October 1, 1987 to discuss the issues of its mandate, including the candidate selection criteria. Formal presentations, including a presentation on the inclusion of nonmajor party candidates by Professor Richard Neustadt of the Kennedy School of Government, Harvard University, were followed by deliberations. After

the advisory panel had completed its discussion, the CPD Board appointed a subcommittee of the advisory panel, headed by Harvard Professor Neustadt, to draw on the deliberations and develop nonpartisan criteria for the identification of appropriate third-party candidates to participate in CPD sponsored debates.

17. On November 20, 1987, Professor Neustadt's subcommittee reported back to the CPD Board and recommended the adoption of specific nonpartisan candidate selection criteria intended to identify those candidates other than the major party nominees with a realistic chance of becoming President or Vice President of the United States. According to the Neustadt Subcommittee, its criteria were intended to distinguish those candidates who, by virtue of ballot access in a sufficient number of states, have a mathematical, but no more than theoretical, chance of becoming President from independent and third party candidates who have a more than theoretical chance of becoming President. The Neustadt subcommittee reported that the adoption and application of such criteria would help ensure that the primary educational purpose of CPD -- to ensure that future Presidents and Vice Presidents of the United States are elected after the voters have had an opportunity to hear them debate their principal rivals -- would be fulfilled.

18. While the candidate selection criteria themselves are quite detailed, they include a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national public enthusiasm or concern, to determine whether a candidate has a realistic chance of election.

19. On February 4, 1988, the CPD Board unanimously adopted the selection criteria proposed by Professor Neustadt's subcommittee. The sole objective of the criteria adopted by CPD in 1988 was to structure the CPD debates so as to further the nonpartisan educational purpose of those debates while at the same time complying fully with applicable law. An

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Advisory Committee to the CPD Board, chaired by Professor Neustadt, was created for the purpose of applying the 1988 candidate selection criteria to the facts and circumstances of the 1988 campaign.

20. Pursuant to the guidelines of the 1988 candidate selection criteria, CPD sponsored two Presidential debates during the 1988 general election. No nonmajor party candidate was invited to participate in either debate.

21. Although the Bush and Dukakis campaigns reached an agreement that applied to certain production aspects of the 1988 debates, that agreement did not impair the voter education value of those debates, in which a number of prominent journalists participated, including Jim Lehrer, Peter Jennings, Tom Brokaw and Bernard Shaw.

22. On or about January 16, 1992, the CPD Board requested that the Advisory Committee, again chaired by Professor Neustadt, assist the CPD in promulgating nonpartisan candidate selection criteria in connection with the 1992 election. Pursuant to the Advisory Committee's recommendation, the CPD Board adopted the same selection criteria used in 1988, with minor technical changes.

23. The 1992 advisory committee, consisting of Professor Neustadt, Professor Diana Carlin of the University of Kansas, Dorothy Ridings, Publisher and President of the Bradenton (Fla.) Herald and former President, League of Women Voters; Kenneth Thompson, Director of the Miller Center, University of Virginia; and Eddie Williams, President, Joint Center for Political and Economic Studies (the "1992 Advisory Committee"), met on September 9, 1992 to apply the candidate selection criteria to the 100-plus declared presidential candidates seeking election in 1992. It was the unanimous conclusion of the 1992 Advisory Committee that no

nonmajor party candidate then seeking election had a realistic chance in 1992 of becoming the next President of the United States. As of September 9, 1992, Ross Perot was not a candidate for President.

24. After receipt of the data provided to the 1992 Advisory Committee and its own deliberation and discussion, the CPD Board accepted the 1992 Advisory Committee's recommendation.

25. On October 5, 1992, the 1992 Advisory Committee reconvened at the request of the CPD Board to update its application of the 1992 criteria to include subsequent developments, including Ross Perot's October 1, 1992 reentry into the campaign. After consideration of the selection criteria, the Advisory Committee concluded that Mr. Perot satisfied the selection criteria. As stated by Professor Neustadt in his October 6, 1992 letter to the co-chairmen of CPD, reporting the results of his committee's meeting:

Four days after Mr. Perot's reentry, we believe that he has a remote, but real -- more than theoretical -- chance of becoming President next January 20 Our discussion took into account Mr. Perot's previous ability to gain a large national constituency, his present resources, financial and otherwise, the media attention he currently attracts, and the reported "softness" in support for other candidates. We therefore recommend Mr. Perot's inclusion in the first debate.

26. The CPD Board subsequently determined that it would accept the recommendations of the Advisory Committee and that Mr. Perot and his running mate, Adm. James B. Stockdale, would be extended an invitation to participate in the 1992 debates sponsored by CPD. See October 6, 1992 letter (Exhibit A to Plaintiffs' Verified Complaint) (letter to Bush and Clinton campaigns, agreeing to sponsor debates on condition that Mr. Perot be able to participate, per advisory committee's recommendation). When it became clear that the debate schedule -- four debates in eight days -- would prevent any meaningful reapplication of the

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selection criteria, CPD extended its original recommendation that the Perot/Stockdale campaign participate in two debates to four debates. See October 7, 1996 letter (Exhibit B to Plaintiffs' Verified Complaint). Thereafter, CPD produced three presidential debates, involving President Bush, Governor Clinton, and Mr. Perot, and one vice presidential debate between Senator Gore, Admiral Stockdale, and Vice President Quayle.

27. On September 19, 1995, the CPD Board adopted the same selection criteria, with minor changes, for use in the 1996 debates. The CPD's Candidate Selection Criteria for 1996 General Election Debate Participation are attached hereto as Exhibit 1. The criteria document states in its introductory paragraph that:

The goal of the Commission's debates is to afford the members of the voting public an opportunity to sharpen their views of those candidates from among whom the next President or Vice President will be selected. In light of the large number of declared candidates in any given presidential election, the Commission has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

* * *

In order to further the educational purposes of its debates, the Commission has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency. The realistic chance of being elected need not be overwhelming, but it must be more than theoretical.

28. In light of the fact that a Democrat or a Republican has been elected to the presidency in each election for more than a century, and because the attainment of the nomination of one of the major parties is itself great evidence of widespread voter interest and

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national enthusiasm in the nominee's candidacy, the CPD concluded that it was reasonable to conclude that in the 1996 campaign, the nominees of the major parties met the criteria for inclusion.

29. On October 31, 1995, at a press conference held in Washington, D.C., CPD publicly announced its adoption of the 1996 criteria and released the criteria to the public. A copy of CPD's October 31, 1995 press release on this and other topics in connection with the 1996 debates is attached as Exhibit 2. Since that time, those criteria have been available on CPD's site on the WorldWide Web, and CPD has consistently and repeatedly indicated that it intends to apply those criteria in connection with the 1996 debate.

30. In July of 1996, CPD formed a 1996 advisory committee, which would provide recommendations to the CPD Board regarding application of its candidate selection criteria. The 1996 advisory committee consists of the same members as the 1992 Advisory Committee: Professors Neustadt and Carlin, Ms. Ridings (formerly of the League of Women Voters and now President of the Council on Foundations), Mr. Thompson and Mr. Williams (the "1996 Advisory Committee").

31. On September 16, 1996, the 1996 Advisory Committee met to apply the candidate selection criteria to the over 130 declared nonmajor party presidential candidates seeking election in 1996. At that time, CPD anticipated that the first presidential debate would be held on September 25, 1996 at Washington University in St. Louis.

32. In connection with its deliberations, the 1996 Advisory Committee was provided with voluminous information concerning the 1996 general election campaign and candidates. Neither the major parties nor any CPD sponsor had any input into or influence on CPD's candidate selection process. Moreover, the Federal Election Commission had no direct input

into or influence on CPD's candidate selection process, beyond its rules and regulations that apply to any debate sponsor.

33. I was in attendance on September 16, 1996, when the 1996 Advisory Committee convened for the purpose of applying CPD's 1996 criteria to the facts and circumstances of the 1996 general election campaign. Although the 1996 Candidate Selection Criteria do not require it to do so, the 1996 Advisory Committee independently applied the criteria to the Democratic and Republican party candidates. After reviewing and discussing the facts and assembled materials, the 1996 Advisory Committee unanimously concluded that only President Clinton and Senator Dole have realistic chances of being elected President and only Vice President Gore and Congressman Kemp have realistic chances of being elected Vice President in the 1996 general election.

34. In light of its findings, the 1996 Advisory Committee recommended to CPD's Board that only President Clinton and Senator Dole be invited to participate in CPD's 1996 Presidential debate and only Vice President Gore and Congressman Kemp be invited to participate in CPD's 1996 Vice Presidential debate. The Advisory Committee communicated its recommendation in this regard to the CPD Board by letter dated September 17, 1996.

35. On September 17, 1996, the CPD Board met to consider the recommendation of the 1996 Advisory Committee and to consider itself, pursuant to its criteria, which candidates have a realistic chance of becoming President or Vice President of the United States in 1996. I was in attendance at this meeting. After receipt of the data provided to the 1996 Advisory Committee and its own deliberation and discussion, the CPD Board unanimously accepted the 1996 Advisory Committee's recommendation that only President Clinton and Senator Dole be invited to participate in CPD's 1996 Presidential debate and only Vice President Gore and

Congressman Kemp be invited to participate in CPD's 1996 vice presidential debate. CPD informed Mr. Perot's representatives of the decision promptly.

36. Immediately following the September 17, 1996 CPD Board meeting, CPD issued a press release (attached as Exhibit 3), which announced that

The Commission unanimously agreed with the unanimous recommendation of our independent Advisory Committee that only President Clinton and Senator Dole and their running mates be invited to participate [in the debates sponsored by CPD].

Our decision and that of our Advisory Committee was made on the basis that only President Clinton and Senator Dole have a realistic chance, as set forth in our criteria, to be elected the next President. The application of the criteria to Mr. Perot and other third-party or independent candidates did not result in a finding that any of them has a "realistic" chance to win election. As we have consistently indicated publicly, participation is not extended to candidates because they might prove interesting or entertaining. The purpose of the CPD is to bring before the American people, in an unvarnished debate format, those candidates from whom the American people actually will choose the next President and Vice President of the United States.

37. It would be completely unworkable to conduct a debate to which all declared candidates in 1996 or any other year were invited. As noted above, there are over 130 nonmajor party candidates seeking election to the Presidency in 1996. See Federal Election Commission's "1996 Presidential Address List" (Aug. 31, 1996) (attached as Exhibit 4). There would be no educational value whatever in a debate to which all of those candidates were invited. Accordingly, if a debate is to have any education value whatsoever, choices among candidates must be made. As described in this affidavit, CPD has determined in good faith that a choice should be made between those candidates who have a realistic chance of becoming the next President or Vice President of the United States and those candidates who do not, and toward that goal has applied its candidate selection criteria in good faith.

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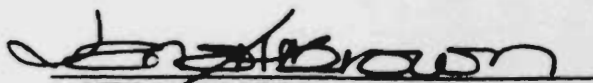
38. In addition to sponsorship of the 1988 and 1992 debates and planned sponsorship of the 1996 debates, CPD has engaged in a number of other related voter education activities, each intended in a nonpartisan manner to enhance the educational value of the debates themselves. In 1988, CPD, in conjunction with the Library of Congress and the Smithsonian Institute, prepared illustrated brochures on the history and role of political debates. In 1990, the CPD sponsored a symposium on debate format attended by academic experts, journalists, political scientists and public policy observers. Also in 1990, the CPD produced a videotape and brochure giving guidance to schools and civic groups on how to sponsor debates. In addition, CPD has produced a 1992 viewers guide to debates in cooperation with the Speech Communication Association. Finally, in connection with the 1996 Debates, CPD is sponsoring its largest voter education project to date, Debate Watch '96, in which over 130 organizations will be participating by hosting forums in which citizens view the debates together and have the opportunity to discuss the debates afterwards with other viewers and listeners. Organizations participating in Debate Watch '96 include numerous cities and town, high schools, Presidential libraries, associations, universities and chambers of commerce.

39. Currently, CPD is in the final, and very intense, stages of four years of preparations for the production of the 1996 debates. At this time, President Clinton and Senator Dole have agreed to participate in presidential debates under CPD sponsorship on October 6, 1996 in Hartford, Connecticut and on October 16, 1996 in San Diego, California, and Vice President Gore and Congressman Kemp have agreed to participate in a vice presidential debate under CPD's sponsorship on October 9, 1996 in St. Petersburg, Florida.

40. I know of no other debate sponsor who has adopted pre-established candidate selection criteria for debates in 1996. If CPD's 1996 debates are enjoined, or disrupted by

injunction, debates including the major party candidates are very likely not to take place this year. If that were the case, in addition to the immeasurable injury to the American public and the electoral process, the time, energy and effort of an enormous number of people would have been expended for naught. Among those who would be injured are CPD's many contributors, Debate Watch hosts and participants, and the time, money and effort spent in preparing for the debates would be lost. Moreover, communities hosting the debates themselves (Hartford, Connecticut; St. Petersburg, Florida; San Diego, California and the University of San Diego) would be greatly damaged.

41. I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of September, 1996.


JANET H. BROWN

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**COMMISSION ON PRESIDENTIAL DEBATES'
CANDIDATE SELECTION CRITERIA
FOR 1996 GENERAL ELECTION DEBATE PARTICIPATION**

A. INTRODUCTION

The mission of the Commission on Presidential Debates ("the Commission") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The Commission sponsored a series of such debates in 1988 and again in 1992, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 1996 general election.

The goal of the Commission's debates is to afford the members of the voting public an opportunity to sharpen their views of those candidates from among whom the next President or Vice President will be selected. In light of the large number of declared candidates in any given presidential election, the Commission has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation to the respective nominees of the two major parties to participate in the Commission's 1996 debates.

In order to further the educational purposes of its debates, the Commission has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency. The realistic chance of being elected need not be overwhelming, but it must be more than theoretical.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a Commission-sponsored debate. Rather, the Commission will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

Judgments regarding a candidate's election prospects will be made by the Commission on a case-by-case basis. However, the same multiple criteria will be applied to each nonmajor party candidate. Initial determinations with respect to candidate selection will be made after the major party conventions and approximately contemporaneously with the commencement of the general election campaign. The number of debates to which a qualifying nonmajor party candidate will be invited will be determined on a flexible basis as the general election campaign proceeds.

B. 1996 NONPARTISAN SELECTION CRITERIA

The Commission's nonpartisan criteria for selecting nonmajor party candidates to participate in its 1996 general election presidential debates include:

1. EVIDENCE OF NATIONAL ORGANIZATION

The Commission's first criterion considers evidence of national organization. This criterion encompasses objective considerations pertaining to the eligibility requirements of Article II, Section 1 of the Constitution and the operation of the electoral college. This criterion also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success. The factors to be considered include:

- a. Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.
- c. Organization in a majority of congressional districts in those states.
- d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

2. SIGNS OF NATIONAL NEWSWORTHINESS AND COMPETITIVENESS

The Commission's second criterion endeavors to assess the national newsworthiness and competitiveness of a candidate's campaign. The factors to be considered focus both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time the Commission makes its invitation decisions. The factors to be considered include:

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

3. INDICATORS OF NATIONAL PUBLIC ENTHUSIASM OR CONCERN

The Commission's third criterion considers objective evidence of national public enthusiasm or concern. The factors considered in connection with this criterion are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The factors to be considered include:

- a. The findings of significant public opinion polls conducted by national polling and news organizations.
- b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Adopted: September 19, 1995

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HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
CAMBRIDGE, MASSACHUSETTS 02138

Richard E. Neustadt
Douglas Dillon Professor
of Government, Emeritus

Tel: (617) 495-1196
Fax: (617) 495-1972

September 17, 1996

Mr. Paul G. Kirk, Jr.
Mr. Frank J. Fahrenkopf, Jr.
Commission on Presidential Debates
601 13th Street, N.W.
Washington, D.C. 20005

Dear Chairman Kirk and Chairman Fahrenkopf:

The Advisory Committee has been asked to review the electoral prospects of minor party candidates in light of the latest available data on the Commission's criteria, and then to judge, by the Commission's standard for admission to its debates, whether each candidate does or does not have a realistic chance of becoming President of the United States next January 20. The chance need not be overwhelming but must be more than theoretical. An affirmative answer to that question is the only basis, under long-established policy, for the Commission to invite him or her to the debates it sponsors. That single standard ("realistic chance") is for the Commission to apply. This Committee merely offers its advisory judgment.

The electoral principle behind the Commission's single standard is, as we understand it, that this Fall's debates, coming at the end of a year-long nomination and election process, should help the voters face the actual choice before them, and therefore ought to be as realistic as possible. Since 1987, you, the Commissioners, have stressed, rightly in our view, that your debates should be confined to the presidential and vice presidential candidates who will be sworn in next January, along with their principal rivals.

"Realistic chance" is meant to focus attention on that real choice.

We began with Mr. Ross Perot, now of the Reform Party. We have reviewed the data your staff has assembled for us, supplemented by telephonic inquiries of our own to political scientists and political journalists across the country. We have concluded that, at this stage of the campaign, Mr. Perot has no realistic chance either of popular election in November or of subsequent election by the House of Representatives, in the event no candidate obtains an Electoral College majority. None of the expert

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Chairman Kirk and Chairman Fabronkopf
September 17, 1996
Page 2

observers we have consulted think otherwise. Some point to possibilities of extraordinary events later in the campaign, but grant that those possibilities do not change the likelihoods as of today.

Four years ago, we confronted an unprecedented condition when Mr. Perot rejoined the campaign in October. We were mindful that the preceding Spring, before his withdrawal, he had registered approximately 40 percent in the polls, and that upon rejoining the campaign, he could spend unlimited funds on television campaigning. Unable to predict the consequences of this combination, we agreed that he must be presumed to have a remote chance of election, should he do well enough so that no one else won a majority of electoral votes. His chances in the House of Representatives we found incalculable. So, we concluded that his prospect of election was unlikely but not unrealistic.

With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a federal subsidy, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

Moving on to the other minor party candidates, we find no one with a realistic chance of being elected President this year. Applying the same standard and criteria to them individually as to Mr. Perot, our response is again "no" in each case. The observers we have consulted take the same view. Three of the minor party candidates, in addition to Mr. Perot, do have a theoretical chance of election in November, by virtue of placement on the ballots of enough states to produce an Electoral College majority. We do not, however, see their election as a realistic possibility.

Therefore, the Advisory Committee unanimously concludes at this time that only President Clinton and Senator Dole qualify for admission to CPD's debates. We stand ready to recognize should present circumstances change.

Sincerely yours,



Richard E. Neustadt
For the Advisory Committee on Candidate Selection

Richard E. Neustadt, Chairman
Diana Feinstein Carlin
Dorothy S. Ridings
Kenneth W. Thompson
Eddie N. Williams



COMMISSION ON
PRESIDENTIAL DEBATES

601 Thirteenth Street, N.W. • Suite 510 South • Washington, DC 20005 • (202) 872-1020 • Fax (202) 783-5923

October 31, 1995
Embargoed for release until 11.30 a.m. EST

Contact: Janet Brown
(202) 872-1020

COMMISSION ON PRESIDENTIAL DEBATES
RECOMMENDS FOUR DEBATES, SINGLE MODERATOR, SCHEDULE,
VARIED FORMATS FOR 1996

The co-chairmen of the nonpartisan Commission on Presidential Debates (CPD), which sponsored all the presidential debates in 1988 and 1992, today announced the CPD board of directors' recommendations for 1996. Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. stated that the recommendations were based on lessons learned from the 1992 debates which drew the largest television audience for any political event in history, culminating in 97 million viewers for the third and final presidential debate. Exit poll data for both 1988 and 1992 showed that more voters based their balloting decisions on the debates than on any other single issue.

The CPD board of directors made the following recommendations for the 1996 general election debates:

- Three presidential debates and one vice presidential debate will be held in 1996.
- The four debates, each ninety minutes in length, will take place on four consecutive Wednesdays: September 25, October 2, October 9, and October 16 with October 2 being the vice presidential debate.
- Each debate will be moderated by a single individual.
- Three different formats will be utilized: during one presidential debate, the candidates will stand behind the traditional podiums; during a second, citizens will question the candidates in a town meeting format; and during a third, the candidates and moderator will be seated. The vice presidential debate will also be held with the candidates and moderator seated.
- Each debate will cover both foreign and domestic policy topics.

Kirk and Fahrenkopf said that the recommendations reflected substantial study by the CPD. "In 1992, we sponsored the first focus groups ever convened to measure the effectiveness

Chairmen
Frank J. Fahrenkopf, Jr.
Former Republican
National Committee Chairman
Paul G. Kirk, Jr.
Former Democrat
National Committee Chairman

Minority Chairmen
Gerald R. Ford
Jimmy Carter
Kareem Abdul-Jabbar
Executive Director
Janet H. Brown

Deputies
—
Secretary Paul Casperelli
Terry C. Dinkowitz
Assistant Executive Director
Joseph A. Kestel

Representative John R. Lewis
Nathan D. Miller
Ken Cuccinelli
Representative Barbara Vucanich

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of various debate formats. Focus group participants expressed their clear preference for the single moderator and a variety of formats. They also stated their strong support for the citizen involvement which occurred during the Richmond town hall meeting. We listened to their suggestions and are now acting on them."

The CPD also announced sites which have asked to announce the 1996 debates. They are:

Furman University, Greenville, SC
George Washington University, Washington, DC
Hartford/Trinity College, Hartford, CT
Michigan State University, East Lansing, MI
St. Petersburg/Tampa/University of South Florida, FL
University of Maryland, College Park, MD
University of Oklahoma, Norman, OK
University of Pennsylvania, Philadelphia, PA
University of San Diego, San Diego, CA
Washington University, St. Louis, MO

"We are very pleased with the quality of the proposals submitted by these sites, and by the community interest they reflect," the co-chairmen said.

Kirk and Fahrenkopf also issued the candidate selection criteria which will be used to determine the participants in the 1996 debates. A copy of the criteria is attached.

Finally, the co-chairmen announced plans for "DebateWatch '96," the CPD's nationwide voter education project. "The 1992 focus group participants told us they had learned much more from the debates by watching and discussing them with people they did not know and with whom they did not necessarily agree. They urged that more citizens be given a similar opportunity in 1996. DebateWatch '96 will bring people together in schools, libraries, and civic auditoriums in all fifty states to watch and talk about the candidates and their views."

Kirk and Fahrenkopf introduced the DebateWatch '96 packet which includes all the materials necessary to host a DebateWatch. It will be available in hard copy and on the CPD's home page on the Internet. The CPD is working in partnership with the Internet Multicasting Service to create a home page which will feature not only information regarding 1996 but also historic data, research and transcripts on past debates.

DebateWatch '96 will be run by CPD advisory board member Dr. Diana Carlin of the University of Kansas. "We owe Dr. Carlin great thanks for developing and organizing the focus groups and resulting research, including editorship of The 1992 Presidential Debates in Focus (Westport, CT: Praeger)," Kirk and Fahrenkopf said. Carlin will direct DebateWatch '96 from the University campus in Lawrence, KS.

Fundraising for DebateWatch is underway with a \$1 million goal. Kirk and Fahrenkopf noted that early support for the production of the debates has already been received from the Dun & Bradstreet Corporation, the Philip Morris Companies, the Marjorie Kovler Fund, and the Sara

Lee Corporation.

The CPD plans to work with its voter education partners to promote DebateWatch. They include the American Library Association, Close Up Foundation, League of Women Voters, National Association of Broadcasters, National Association of Secondary School Principals, National Association of Secretaries of State, National Cable Television Association, National Federation of State High School Associations, National Forensic League, National School Boards Association, Newspaper Association of America, and Speech Communication Association.

Established in 1987, the nonpartisan CPD is a non-profit corporation based in Washington, DC. For more information, please contact the CPD at the telephone number listed above or consult the CPD home page at: <http://park.org/fair/Events/Debates>.

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COMMISSION ON PRESIDENTIAL DEBATES 601 Thirteenth Street, N.W. • Suite 310 South • Washington, DC 20005 • (202) 872-1020

For immediate release
September 17, 1996

Contact: Janet H. Brown
(202) 872-1020

Commission on Presidential Debates Announces
Results of Candidate Selection Process

Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., Co-chairmen of the nonprofit Commission on Presidential Debates, today issued the following statement.

"The nonpartisan Commission on Presidential Debates (CPD) has just concluded its scheduled meeting where we considered the recommendation of our independent Advisory Committee on the question of whether any independent or third-party candidate qualifies to be invited to participate in the 1996 presidential and vice presidential debates to be sponsored by the CPD. The Commission unanimously agreed with the unanimous recommendation of our independent Advisory Committee that only President Clinton and Senator Dole and their running mates be invited to participate.

"Our decision and that of our Advisory Committee was made on the basis that only President Clinton and Senator Dole have a realistic chance, as set forth in our criteria, to be elected the next President. The application of the criteria to Mr. Perot and other third-party or independent candidates did not result in a finding that any of them has a 'realistic' chance to win election. As we have consistently indicated publicly, participation is not extended to candidates because they might prove interesting or entertaining. The purpose of the CPD is to bring before the American people, in an unvarnished debate format, those candidates from whom the American people actually will choose the next President and Vice President of the United States."

Co-chairmen

Frank J. Fahrenkopf, Jr.
Former Republican
National Committee Chairman
Paul G. Kirk, Jr.
Former Democratic
National Committee Chairman

Honorary Co-chairmen

Gerald R. Ford
Jimmy Carter

Executive Director

Janet H. Brown

Directors

Senator John C. Danforth
Antonio Hernandez
Representative John R. Lewis
Newton N. Minow

Key Our

Caroline Kennedy Schlossberg
Representative Barbara Vucanovich

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1996 PRESIDENTIAL ADDRESS LIST

THIS COMPUTER PRINTOUT LISTS THE NAMES AND ADDRESSES OF INDIVIDUALS AND COMMITTEES INVOLVED IN THE 1996 PRESIDENTIAL CAMPAIGNS. SECTION I OF THE LIST INCLUDES ALL PERSONS WHOSE CAMPAIGNS HAVE SUBMITTED STATEMENTS AND REPORTS TO THE FEDERAL ELECTION COMMISSION INDICATING THAT THEY CONSIDER THEMSELVES TO BE 'CANDIDATES' FOR THE OFFICE OF PRESIDENT. THE TERM 'CANDIDATE' IS DEFINED IN 2 U.S.C. SEC. 431 TO MEAN 'AN INDIVIDUAL WHO SEEKS NOMINATION FOR ELECTION, OR ELECTION, TO FEDERAL OFFICE, AND FOR PURPOSES OF THIS PARAGRAPH, AN INDIVIDUAL SHALL BE DEEMED TO SEEK NOMINATION FOR ELECTION, OR ELECTION--

- (A) IF SUCH INDIVIDUAL HAS RECEIVED CONTRIBUTIONS AGGREGATING IN EXCESS OF \$5,000 OR HAS MADE EXPENDITURES AGGREGATING IN EXCESS OF \$5,000; OR
- (B) IF SUCH INDIVIDUAL HAS GIVEN HIS OR HER CONSENT TO ANOTHER PERSON TO RECEIVE CONTRIBUTIONS OR MAKE EXPENDITURES ON BEHALF OF SUCH INDIVIDUAL AND IF SUCH PERSON HAS RECEIVED SUCH CONTRIBUTIONS AGGREGATING IN EXCESS OF \$5,000 OR HAS MADE SUCH EXPENDITURES AGGREGATING IN EXCESS OF \$5,000.

SECTION II IS A LISTING OF ALL INDIVIDUALS WHO HAVE FILED STATEMENTS OF CANDIDACY AND/OR COMMITTEE STATEMENTS OF ORGANIZATION, REGARDLESS OF THE AMOUNTS OF ACTIVITY IN THE CAMPAIGN.

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FEDERAL ELECTION COMMISSION

DATE 08/31/1996

1996 PRESIDENTIAL CANDIDATES WITH PRINCIPAL CAMPAIGN OR AUTHORIZED COMMITTEES REPORTING RECEIPTS OR DISBURSEMENTS GREATER THAN \$5000

SECTION 1
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P60003229	ALEXANDER, ANDREW L REP	PO BOX 23071	NASHVILLE	TN 37202
PCC C00300673	ALEXANDER FOR PRESIDENT INC TODD EARDENSON 512 N WASHINGTON STREET	TREASURER	ALEXANDRIA	VA 22314
P60003043	BROOME, BARRY LTD	3027 QUAIL RIDGE RD	LAFAYETTE	CA
PCC C00300480	BARRY BROOME FOR PRESIDENT INC SHARON AYRES 2600 VIRGINIA AVE NW SUITE 100	TREASURER	WASHINGTON	DC 20037
P60000805	BUCHANAN, PATRICK J REP	6862 ELM STREET SUITE 210	MCLEAN	VA 22101
PCC C00301093	BUCHANAN FOR PRESIDENT INC SCOTT B WICKERIEE 6862 ELM STREET SUITE 210	TREASURER	MCLEAN	VA 22101
P60004215	CASAMASSIMA, SALVATORE J DEM	15 GREENWAY PLAZA #27D	HOUSTON	TX 77046
PCC C00311613	SAL CASAMASSIMA CAMPAIGN EDYTHE S HANSON 5090 RICHMOND RD 329	TREASURER	HOUSTON	TX 77056
P60003332	CASEY, ROBERT P		SCRANTON	PA
PCC C00301762	CASEY FOR PRESIDENT EXPLORATORY COMMITTEE FRANCIS J HERKEL CPA 203 FRANKLIN AVENUE	TREASURER	SCRANTON	PA 18503
P60004184	CHESTER, ERIC (VICE-PRESIDENT) SNP	55 LAFAYETTE ST	ARLINGTON	MA 02174

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FEDERAL ELECTION COMMISSION

DATE 08/31/1996

1996 PRESIDENTIAL CANDIDATES WITH PRINCIPAL CAMPAIGN OR AUTHORIZED COMMITTEES REPORTING RECEIPTS OR DISBURSEMENTS GREATER THAN \$5000

SECTION 1
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
PCC C00309211	BOLLIS/CHESTER 1996 CAMPAIGN GREGORY PASCH 40 WASHINGTON ST SUITE C-10	TREASURER	EAST ORANGE	NJ 07017
P40004397	CRIVENTO, CARMEN C SEN	24 OLD MILFORD RD	BROOKLINE	MA 03033
PCC C00315007	CARMEN C CRIVENTO COMMITTEE 24 OLD MILFORD RD	TREASURER	BROOKLINE	MA
P20000642	CLINTON, WILLIAM JEFFERSON SEN	1600 PENNSYLVANIA AVE NW	WASHINGTON	DC 20000
PCC C00302265	CLINTON/BORR '96 PRIMARY COMMITTEE INC JOAN POLLITT 2100 H ST NW	TREASURER	WASHINGTON	DC 20036
P40003004	COLLINS, CHARLES EDWIN REP	8501 NORTH LAGOON DR P O BOX 9450	PANAMA CITY BEACH	FL 32408
PCC C00299420	CHARLES E COLLINS ELECTION COMM FOR 1996 PRISCILLA FORD 10279 FRONT BEACH RD SUITE 2	TREASURER	PANAMA CITY BEACH	FL 32407
P40003421	DIDONINICUS, WICK	3680 MONROE ST 1605	RIVERSIDE	CA 92504
PCC C00302455	COMMITTEE TO ELECT WICK DIDONINICUS NICHOLAS A DIDONINICUS 10062 KLOIBER STREET	TREASURER	RIVERSIDE	CA 92505
P40003421	DILLARD, BURGESS GLENN SEN	1209 S CLINTON AVE	TRENTON	NJ 08611
PCC C00303407	COMMITTEE OF ONE (PCC: DILLARD) BURGESS GLENN DILLARD 1209 S CLINTON AVE	TREASURER	TRENTON	NJ 08611

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FEDERAL ELECTION COMMISSION

DATE 08/31/1996

1996 PRESIDENTIAL CANDIDATES WITH PRINCIPAL CAMPAIGN OR AUTHORIZED COMMITTEES REPORTING RECEIPTS OR DISBURSEMENTS GREATER THAN \$5000

SECTION 1
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P00000409	SOLE, ROBERT J REP	141 HART SENATE OFFICE BUILDING	WASHINGTON	DC 20510
PCC C00017743	SOLE/SENAT '96 INC ROBERT E LFOURTIER PO BOX 77000	TREASURER	WASHINGTON	DC 20013
P00003300	BOWMAN, ROBERT E REP	9097 WORTHEDGE DR	SPRINGFIELD	VA 22153
PCC C00301465	BOWMAN FOR PRESIDENT INC ROBERT E BOWMAN, MC 6320 AUGUSTA DRIVE SUITE 1101	TREASURER	SPRINGFIELD	VA 22150
P40004033	BUCEY, SUSAN GAIL REP	422 OHIO AVE	WILMONT PARK	PA 19033
PCC C00300486	SUSAN BUCEY FOR PRESIDENT JAN C RUTHER PO BOX 146	TREASURER	RIDLEY PARK	PA 19070
P20000009	FELLURE, LOWELL JACKSON REP	P O BOX 507	HURRICANE	WV 25526
PCC C00270457	JACK FELLURE CAMPAIGN COMMITTEE '96 LOWELL JACKSON FELLURE P O BOX 507	TREASURER	HURRICANE	WV 25526
P40003052	FORBES, MALCOLM S JR REP	1400 ROUTE 206 NORTH	BEDMINSTER	NJ 07921
PCC C00306472	FORBES FOR PRESIDENT COMMITTEE INC JOSEPH A CANNON PO BOX 1009	TREASURER	BEDMINSTER	NJ 07921
P40001344	GRANL, WILLIAM PHILLIP REP	1735 I STREET N W SUITE 900	WASHINGTON	DC 20006

9 3 0 4 3 8 6 4 9 9 1

FEDERAL ELECTION COMMISSION

DATE 08/31/1996

1996 PRESIDENTIAL CANDIDATES WITH PRINCIPAL CAMPAIGN OR AUTHORIZED COMMITTEES REPORTING RECEIPTS OR DISBURSEMENTS GREATER THAN \$5000

SECTION I
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
PCC C00299917	PHIL CRASH FOR PRESIDENT, INC. KEITH A DAVIS 220 S WASHINGTON STREET 0200	TREASURER	ALEXANDRIA	VA 22314
P40004165	GRIFFIN, JAMES D SEN	420 DORRANCE AVE	BUFFALO	NY 14218
PCC C00309007	JIM GRIFFIN FOR PRESIDENT JUDICE A DUFFY 6616 POWERS ROAD	TREASURER	ORCHARD PARK	NY 14127
P20001601	HAMELTH, JOHN EARL SEN	W10 FACULTY BOX 1069	FAIRFIELD	IA 52557
PCC C00304956	DR JOHN HAMELTH FOR PRESIDENT 1996 MICHAEL SPIVAK 51 WEST WASHINGTON	TREASURER	FAIRFIELD	IA 52556
P40004462	HALSTED, LAURA ELLEN GARZA (VP) SEN	125 SEAMAN AVE 04B	NEW YORK	NY 10034
PCC C00310154	SOCIALIST WORKERS 1996 NATIONAL CAMPAIGN COMMITTEE (HARRIS FOR PRES/GARZA FOR VICE PRES) ORIS MCCARTAN 406 WEST STREET	TREASURER	NEW YORK	NY 10014
P40003035	HARDER, HEATHER ANNE DR SEN	210 SOUTH MAIN STREET SUITE 102	CROWN POINT	IN 46307
PCC C00298042	COMMITTEE TO ELECT DR HEATHER ANNE HARDER PRESIDENT MARY DARR 210 SOUTH MAIN STREET SUITE 102	TREASURER	CROWN POINT	IN 46307
F20000550	HOWARD, MILDRED (MILLIE) ? REP	1405 FAGIN'S RUN ROAD	NEW RICHMOND	OH 45157
PCC C00279745	MILLIE HOWARD FOR PRESIDENT USA 1996 BEARD BRANLIN P O BOX 162	TREASURER	NEW RICHMOND	OH 45157

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FEDERAL ELECTION COMMISSION

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1996 PRESIDENTIAL CANDIDATES WITH PRINCIPAL CAMPAIGN OR AUTHORIZED COMMITTEES REPORTING RECEIPTS OR DISBURSEMENTS GREATER THAN \$5000

SECTION 1
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P60003639	JORGENSEN, JO ANNE LID	300 BUTLER AVE	GREENVILLE	SC 29601
PCC C00303529	JO JORGENSEN FOR VICE-PRESIDENT COMMITTEE EDWARD M ALFORT 1754 WOODRUFF RD 0201	TREASURER	GREENVILLE	SC 99607
P60003076	REYES, ALAN LEE REP	13533 SCOTTISH AUTUMN LAKE	DARWESTOWN	MD 20070
PCC C00303214	ALAN REYES FOR PRESIDENT '96 INC WILLIAM G SPISSEL P.O. BOX 73643	TREASURER	ALEXANDRIA	VA 22313
P60004546	LAMM, RICHARD D REP	5401 E DAROTA NO 20	DENVER	CO 80222
PCC C00320945	LAMM FOR PRESIDENT INC PETER D HINS 601 BROADWAY SUITE 211	TREASURER	DENVER	CO 80203
P60000452	LAROCHE, LYNDON H JR SEN	RT 1 BOX 284	ROUND HILL	VA 22141
PCC C00203465	COMMITTEE TO REVERSE THE ACCELERATING GLOBAL ECONOMIC & STRATEGIC CRISIS: LAROCHE EXPL CNT KATHY A MORGAN P O BOX 730	TREASURER	LEESBURG	VA 22075
P60004348	LEGAS, FRANK SEN	319 N ASHFORD PLACE	FULLERTON	CA 92631
PCC C00315002	LEGAS-96 PRESIDENTIAL COMMITTEE JULIA LEGAS POST OFFICE BOX 0806	TREASURER	FULLERTON	CA 92634
P60004363	LETULLE, MARY FRANCES REP	PO BOX 24551	AUSTIN	TX 78755

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SECTION 1
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
PCC C00315020	LETULLE, MARY FRANCES MARY FRANCES LETULLE PO BOX 26881	TREASURER	AUSTIN	TX 78755
P60003555	LLOTO-SUFFIE, ELVENA E SEN	1519 S NEWCASTLE AV	WESTCHESTER	IL 60154
PCC C00309591	FRIENDS FOR ELVENA TEMPLE KING PO BOX 7501	TREASURER PO BOX 7501	WESTCHESTER	IL 60154
P60003266	LOGAN, RICHARD S REP	3200 RICHWOODS COURT	INDIANAPOLIS	IN 46222
PCC C00301333	LOGAN FOR PRESIDENT COMMITTEE INC PATRICK J FIELD 3021 NORTH MERIDIAN STREET	TREASURER	INDIANAPOLIS	IN 46208
P60003078	PAULINE, DAVID SEN	5709 BRATTON ST	TEMPLE TERRACE	FL 33617
PCC C00306540	PAULINE FOR PRESIDENT NICOLE E PAULINE PO BOX 350	TREASURER	TAMPA	FL 33601
P60003159	PHILLIPS, DEAN A SEN	604 E CAPITOL ST NE	WASHINGTON	DC 20003
PCC C00300106	PHILLIPS FOR PRESIDENT DEAN PHILLIPS 205 PENNSYLVANIA AVE SE	TREASURER	WASHINGTON	DC 20003
P60003613	SAFRAN, JOHN SEN	9822 SHARP ROAD	CLIFFORD	MI 48727
PCC C00303479	JOHN SAFRAN FOR PRESIDENT EDWIN G BOND 1922 SHARP RD	TREASURER	CLIFFORD	MI 48727

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SECTION I
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P60004017	SCHOENFELD, HYRON R MD DEN	2 OVERRILL ROAD	SCARSDALE	NY 10583
PCC C00307892	DR SCHOENFELD-FOR-PRESIDENT CAMPAIGN COMMITTEE GLORIA T EDIS 2 OVERRILL ROAD SUITE 202	TREASURER	SCARSDALE	NY 10583
P60003894	SCRUG, THOMAS GARY REP	1431 RIDGEVIEW DR	WASILLA	AK 99687
PCC C00306509	COMMITTEE TO ELECT THOMAS SCRUG FOR PRESIDENT 96 THOMAS GARY SCRUG PO BOX 770169	TREASURER	EAGLE RIVER	AL 99577
P60003309	SHELLENBERG, FRED THOMAS REP	221 SOUTH 10TH	LIVINGSTON	MT 59047
PCC C00306558	TOM SHELLENBERG FOR PRESIDENT FRED THOMAS SHELLENBERG 221 S 10TH	TREASURER	LIVINGSTON	MT 59047
P60004288	SKILLEN, RICHARD D REP	14 BELLEVUE AVE	CLAREMONT	NH 03743
PCC C00314013	SKILLEN FOR PRESIDENT CYNTHIA J BOWARD RR 2 BOX 435	TREASURER	CLAREMONT	NH 03743
P60003233	SPECTER, ARLEN REP	444 NORTH CAPITOL ST NW SUITE 517A	WASHINGTON	DC 20001
PCC C00300772	ARLEN SPECTER '96 PAUL S DIAMOND PACKARD BUILDING 14TH FLOOR	TREASURER	PHILADELPHIA	PA 19102
P60003365	TAYLOR, MAURICE H JR REP	1477 MAINE	QUINCY	IL 62301

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SECTION I
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS			
PCC 000302216	TAYLOR FOR PRESIDENT INC BARBARA BROWN 1477 MAINE STREET	TREASURER	QUINCY	IL	62301
P60004066	TEMPLIN, DIANE BEALL REP	1016 CIRCLE DRIVE	ESCONDIDO	CA	92025
PCC 000300296	DIANE BEALL TEMPLIN FOR PRESIDENT JEFF ADAMS 1016 CIRCLE DRIVE	TREASURER	ESCONDIDO	CA	92025
P60003029	TOMPKINS, RICHARD LTD	4730 W NORTHERN AVE #1063	GLENDALE	AZ	85301
PCC 000306369	RICK TOMPKINS LIBERTARIAN FOR PRESIDENT SUSANNE KAMMARA 0129 N 39TH AVE 02-262	TREASURER	PHOENIX	AZ	85051
P60004264	WATSON, JERRY B JR REP	PO BOX 92145	WASHINGTON	DC	20090
PCC 000312397	JERRY B WATSON JR FOR PRESIDENT 1996 JERRY B WATSON JR PO BOX 92145	TREASURER	WASHINGTON	DC	20090
P60003301	WILSON, PETE REP	1020 12TH STREET SUITE 300	SACRAMENTO	CA	95814
PCC 000301970	PETE WILSON FOR PRESIDENT COMMITTEE INC BENEE CROSS 20 SOUTH GARDNER LANE SUITE 200	TREASURER	ALEXANDRIA	VA	22314
TOTAL: 43					

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SECTION II
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P60000002	ADKINS, GORDON HALLAM UNK	8618 TURTLE CREEK NORTH STE 312	DALLAS	TX 75225
PCC C00203004	GORDON ADKINS FOR PRESIDENT COMMITTEE GORDON HALLAM ADKINS 13100 PARKWAY DR, 01003A	TREASURER	DALLAS	TX 75238
P60004520	ADKINS, JACKSON ALLEN UNK	775 NORTH 440 WEST	PROVO	UT 84601
P60003225	ALEXANDER, ANDREW L REP	PO BOX 23071	NASHVILLE	TN 37202
PCC C00300673	ALEXANDER FOR PRESIDENT INC TODD EARDENSON 512 N WASHINGTON STREET	TREASURER	ALEXANDRIA	VA 22314
AUT C00315424	ALEXANDER AUDIT FUND INC TODD EARDENSON 512 N WASHINGTON STREET	TREASURER	ALEXANDRIA	VA 22314
AUT C00300764	ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE INC TODD EARDENSON 512 N WASHINGTON STREET	TREASURER	ALEXANDRIA	VA 22314
P60003993	ALLEN, MICHAEL REP	620 46TH AVE NORTH	ST PETERSBURG	FL 33703
P60003993	ALLEN, THOMAS WAYNE REP	2720 KNOWLES ST	RALEIGH	NC 27603
PCC C00307043	COMMITTEE TO ELECT ALLEN FOR PRESIDENT THOMAS W ALLEN 2720 KNOWLES ST	TREASURER	RALEIGH	NC 27603
P20000003	AMERICA, GEORGE WASHINGTON REP	142 WEST 112TH ST SUITE B-45	NEW YORK	NY 10026

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SECTION II
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P40000127	BAKER, LARRY LEE DEM	1010 S MAIN ST APT B	COLFAX	WA
PCC C00275891	DEMOCRACY COMMITTEE '96 LARRY LEE BAKER 1010 S MILL APT 7	TREASURER	COLFAX	WA 99111
P60004100	BALDWIN, JAMES L UNK	5022 TRIMBLE RD	TOLEDO	OH 43613
PCC C00309161	COMMITTEE TO ELECT JAMES BALDWIN JAMES L BALDWIN 5022 TRIMBLE RD	TREASURER	TOLEDO	OH 43613
P20001410	BALLARD, GEORGE B III DEM	PO BOX 90702	PHILADELPHIA	PA 19102
P20004162	BAROLA, FRANK III REP	1712-C EAST VILLA ST #316	PHX	AZ 85006
PCC C00241489	PEOPLE'S REVOLUTIONARY CONTINENTAL ARMY FRANK BAROLA P.O. BOX 1200	TREASURER	PHOENIX	AZ 85001
P20000469	BANKARTNER, DONALD DEM	PO BOX 7921	MISBOULA	MT 59807
P60004330	BECK, JERRY G UNK	123 S MAIN POB 205	WINDSOR	MO 65360
P60004413	BECKENDORF, FRANK WILLIAM IND	1009 KINGFISHER DR	ST BERNARD	LA 70005
P00 C00314927	BECKENDORF FOR PRESIDENT AT LAST FRANK W BECKENDORF 1009 KINGFISHER DR	TREASURER	ST BERNARD	LA 70005

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ID#	NAME/PARTY	ADDRESS		
P60002013	BENGALES, KATHERINE UNK	914 19TH STREET S	ARLINGTON	VA 22202
P60002219	BENINTENDI, GUY IND	3660 CATALPA WAY	BOULDER	CO 80304
PCC C00203040	BENINTENDI FOR PRESIDENT COMMITTEE GUY BENINTENDI 3660 CATALPA WAY	TREASURER	BOULDER	CO 80304
P60002592	BENTLEY, THOMAS ALAN IND	15 SHEPARD AVENUE	MT MORRIS	NY 14510
PCC C00150409	COALITION TO ELECT TOM BENTLEY PRESIDENT THOMAS A BENTLEY 15 SHEPARD AVENUE	TREASURER	MT MORRIS	NY 14510
P60004050	BIRCHLER, DAVID HAROLD REP	2932 CENTRAL	INDIANAPOLIS	IN 46205
PCC C00300122	DAVID HAROLD BIRCHLER COMMITTEE DAVID HAROLD BIRCHLER 2932 CENTRAL	TREASURER	INDIANAPOLIS	IN 46205
P60003408	BITAR, NADEEM UNK	PO BOX 610046	HOUSTON	TX 77208
PCC C00302745	NADEEM BITAR FOR PRESIDENT NADEEM BITAR PO BOX 610046	TREASURER	HOUSTON	TX 77208
P60003241	BIRKINS, HAROLD TAYLOR REP	11541 RITCHING ST	MORENO VALLEY	CA 92557
P20000531	BRADLEY, THOMAS JOSEPH JR REP	912 PENNSYLVANIA AVE	SCHENECTADY	NY 12303

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SECTION II
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ID#	NAME/PARTY	ADDRESS		
PCC	C00306845 PEOPLE'S CHOICE COMMITTEE TO ELECT ROGER A SMITH FOR PRESIDENT REBECCA ANN SMITH 109 WEST CHESTNUT STREET	TREASURER	GRANFORDSVILLE	IN 47933
P60004140	SPAID, STEPHEN L IND	6031 WESTCHESTER PK DR T-1	COLLEGE PARK	MD 20740
PCC	C00309435 STEPHEN L SPAID ELECTION COMMITTEE STEPHEN L SPAID BOX 634	TREASURER	SILVER SPRING	MD 20910
P60003233	SPECTER, ARLEN REP	444 NORTH CAPITOL ST NW SUITE 517A	WASHINGTON	DC 20001
PCC	C00300772 ARLEN SPECTER '96 PAUL S DIAMOND PACKARD BUILDING 14TH FLOOR	TREASURER 111 SOUTH 15TH STREET	PHILADELPHIA	PA 19102
P60003019	STAGGS, CLYDE LEROY REP	GENERAL DELIVERY	PAYSON	AS 99541
PCC	C00295873 CLYDE STAGGS FOR PRESIDENT CLYDE L STAGGS GENERAL DELIVERY	TREASURER	PAYSON	AS 99541
P20000972	STARADUMSKY, JOHN J IND	30 RUDDERON AVE APT 48B	MAPLESHADE	NJ 08052
PCC	C00255943 COMMITTEE TO ELECT JOHN J STARADUMSKY JOHN JOSEPH STARADUMSKY 30 RUDDERON AVE APT 48	TREASURER PO BOX 316	MAPLE SHADE	NJ 08052
P00000331	STAAR, FRANK UNK	RCR33-BOX 450	ELKINS	AR 72727
PCC	C00297259 COMMITTEE TO ELECT FRANK STAAR PRESIDENT FRANK STAAR MCR33-BOX 450	TREASURER	ELKINS	AR 72727

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EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
PCC C00300400	LACEY BIVAR FOR PRESIDENT IN 1996 LACEY BIVAR PO BOX 9214	TREASURER	BOISE	ID 83768
P60004280	SKILLEN, RICHARD D REP	14 BELLEVUE AVE	CLAREMONT	NH 03743
PCC C00314013	SKILLEN FOR PRESIDENT CYNTHIA J HOWARD RR 2 BOX 435	TREASURER	CLAREMONT	NH 03743
P20001640	BLINKER, KEITH HAROLD REP	412 RIDGE AVENUE	BUTLER	PA 16001
PCC C00266569	BLINKER FOR PRESIDENT KEITH HAROLD BLINKER 412 RIDGE AVENUE	TREASURER	BUTLER	PA 16001
P60003373	SMITH, JACK UNK	PO BOX 922004	STANIS	CA 91302
PCC C00301903	WATCH OUT JACK IS BACK COMMITTEE JACK SMITH PO BOX 922004	TREASURER	STANIS	CA 91302
P20000949	SMITH, OSCAR JR DEM	340 DUNMONT AVENUE 10-B	BROOKLYN	NY 11212
P80000250	SMITH, ROBERT J REP	1205 WEST 110TH PLACE	CHICAGO	IL 60643
PCC C00201269	PRINCE FOR THE REPUBLIC ROBERT J SMITH 1205 W 110TH PL	TREASURER	CHICAGO	IL 60643
P60003928	SMITH, ROGER ALAN UNK	109 WEST CHESTNUT STREET	CRANFORDVILLE	IN 47933

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SECTION II
EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P20001582	SELMA, ROBERT A		ST CLAIR SHORES	MI
PCC C00304303	WHITE HOUSE CANDIDATE COMMITTEE FOR ROBERT A SELMA ROBERT A SELMA 20919 ARDMORE PARK DRIVE	TREASURER	ST CLAIR SHORES	MI 48061
P60003936	SHARP, CRAIG ERIC DEM	9502 CHARLESTON	EL PASO	TX 79924
PCC C00306886	CRAIG ERIC SHARP CRAIG ERIC SHARP 9502 CHARLESTON	TREASURER	EL PASO	TX 79924
P60003415	SHEAR'REE, REP	5761 E LA PALMA AVE #121	ARABIAN HILLS	CA 92007
PCC C00302315	SHEAR'REE PRESIDENTIAL CAMPAIGN SHEAR'REE 5761 E LA PALMA AVE #121	TREASURER	ARABIAN HILLS	CA 92007
P60003209	SHELLENBERG, FRED THOMAS REP	221 SOUTH 10TH	LIVINGSTON	NY 59047
PCC C00300558	TOM SHELLENBERG FOR PRESIDENT FRED THOMAS SHELLENBERG 221 S 10TH	TREASURER	LIVINGSTON	NY 59047
P60004314	SHEPHERD, LARRY E SR DEM	14719 CONDON AVE	LANSDALE	CA 90260
PCC C00314526	SHEPHERD, LARRY E SR LARRY E SHEPHERD 14719 CONDON AVE	TREASURER	LANSDALE	CA 90260
P60003183	SIVAK, LACEY UNK	PO BOX 5214	BOISE	ID 83705

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ID#	NAME/PARTY	ADDRESS			
PCC	C00298844 ROBERT 96 ROBERT L SAUNDERS PO BOX 1737	TREASURER	NEW YORK	NY	10274
AUT	C00234153 BOBBY SAUNDERS FOR PRESIDENT BOBBY SAUNDERS PO BOX 2399	TREASURER	WASHINGTON	DC	20002
AUT	C00279059 BOBBY SAUNDERS FOR PRESIDENT 96' ROBERT LEE SAUNDERS PO BOX 2399	TREASURER	WASHINGTON	DC	20013

P60004488	SAUTER, DONALD IND	9316 WYATT DRIVE	LAWRAH	MD	20706
PCC	C00318758 DONALD SAUTER FOR PRESIDENT DONALD SAUTER 9316 WYATT DR	TREASURER	LAWRAH	MD	20706

P60004017	SCHOENFELD, MYRON R MD DEM	2 OVERHILL ROAD	SCARBDALE	NY	10583
PCC	C00307892 DR SCHOENFELD-FOR-PRESIDENT CAMPAIGN COMMITTEE GLORIA T EDIS 2 OVERHILL ROAD SUITE 202	TREASURER	SCARBDALE	NY	10583

P60003894	SCMUG, THOMAS GARY REP	1431 RIDGEVIEW DR	WASILLA	AK	99607
PCC	C00306589 COMMITTEE TO ELECT THOMAS SCMUG FOR PRESIDENT 94 THOMAS GARY SCMUG PO BOX 770169	TREASURER	EAGLE RIVER	AL	99677

P60003126	SEIP, LARRY ARLING IND	250 STERLING HWY #4	SEVEN	AK	99603
PCC	C00300061 LARRY SEIP AND THE PEOPLE LARRY ARLING SEIP 250 STERLING HWY #4	TREASURER	SEVEN	AK	99603

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ID#	NAME/PARTY	ADDRESS		
P40003472	ROSS, MAX WADE REP	789 ST MICHAEL WAY	SALINAS	CA 93005
PCC C00302630	ROSE FOR PRESIDENT DEBBIE A ROSE 789 ST MICHAEL WAY	TREASURER	SALINAS	CA 93005
P60001351	ROSS, JOHN MICHAEL LEWIS IND	7129 NE BROADWAY	PORTLAND	OR 97213
P40002425	RUBIN, RONALD EDWARD UNK	5113 GLENWOOD POINTE LANE NE	ALBUQUERQUE	NM 87111
P40003613	SAFRAN, JOHN DEM	9822 SHARP ROAD	CLIFFORD	MI 48727
PCC C00303479	JOHN SAFRAN FOR PRESIDENT EDWIN W BUND 9822 SHARP RD	TREASURER	CLIFFORD	MI 48727
P40001109	SAINT AUGUSTINE, CAESAR UNK	PO BOX 4005	MALIBU	CA 90264
P60004439	SAMBATARO, JAMES VINCENT IND	50 GLEN RIDGE AVENUE	GLEN RIDGE	NJ 07020
P60004447	SAMBATARO, JOSEPH ANTHONY JR IND	50 GLEN RIDGE AVENUE	GLEN RIDGE	NJ 07020
P20000303	SARTAIN, AARON WAYNE UNK	2415 FRANCIS	ST JOSEPH	MO 64501
P80000326	SAUNDERS, ROBERT L IND	PO BOX 1737	NEW YORK	NY 10274

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EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P60003202	REED, HARRY THOMAS REP	110 PEARSE ST	GEORGE CHRISTI	TX 70415
P60003464	REMS, BOB S REP	906 GARLAND #10	FLINT	MI 48503
PCC C00302620	BOB S REMS BOB S REMS 906 GARLAND #10	TREASURER	FLINT	MI 48503
P60003605	ROBINSON, RICHARD GUY II IND	165 ELM RD SE	WARREN	OH 44403
PCC C00303370	COMMITTEE TO ELECT RICHARD ROBINSON ROSEANN L ROBINSON 165 ELM RD SE	TREASURER	WARREN	OH 44403
P60003563	ROGERS, ALFORD UNK	PO BOX FROM GENERAL DELIVERY	SAINY PAULS	NC 28304
PCC C00303081	AMERICAN DOLLAR (PCC ROGERS) ALFORD ROGERS PO BOX 623	TREASURER	SAINY PAULS	NC 28304
P60001799	ROGERS, LEROY IND	3725 JACQUELINE ROAD	FT WORTH	TX 76112
PCC C00201642	LEROY ROGERS FOR PRESIDENT LEROY ROGERS 2907 WEST 7TH STREET	TREASURER	FORT WORTH	TX 76107
P20001210	ROGERS, TENNIE BEATRICE REP	6710 SOUTH QUAKER AVENUE	TULSA	OK 74136
PCC C00301986	ROGERS FOR PRESIDENT TENNIE BEATRICE ROGERS PO BOX 701558	TREASURER	TULSA	OK 74170

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EXTRACTION FROM THE 1996 DATABASE

ID#	NAME/PARTY	ADDRESS		
P00002667	POLAND, HAROLD LAWRENCE DEM	100 EAST LINDEN ST	ALEXANDRIA	VA 22301
PCC C00314534	POLAND FOR PRESIDENT LEATHER RUTH POLAND 100 E LINDEN ST	TREASURER	ALEXANDRIA	VA 22301
P60003050	POWELL, COLIN L		LARGO	MD
P60004009	POWELL, SAMUEL LYNDELL UNK	1956 - 2ND ST NW	WASHINGTON	DC 20001
P80001142	PRINCEVAC, SINISA MD DR IND	2475 W GUNNISON ST	CHICAGO	IL 60625
PCC C00279349	INDEPENDENT SINISA PRINCEVAC SINISA PRINCEVAC MD 2475 W GUNNISON ST	TREASURER	CHICAGO	IL 60625
P80002587	QUAYLE, DAN		NASVILLE	TN
P20000576	RANGE, MARGARET S REP	70-9TH AVE NORTH	B' HAM	AL 35204
PCC C00281782	MARGARET RANGE FOR PRESIDENT COMM MARGARET S RANGE 70-9TH AVE NO	TREASURER	B' HAM	AL 35204
AUT C00252932	REPUBLICAN PARTY OF THE U S MARGARET S RANGE 1120 SOUTHWOOD DRIVE	TREASURER	B' HAM	AL 35217
P60003456	RAVEN, WILLIAM W IND	1021 SO 19TH ST	LA CROSSE	WI 54601

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ID#	NAME/PARTY	ADDRESS		
P60003787	PHILLIPS, CHARLES A		PALMDALE	CA
PCC	C00305243 CHARLES ANTON PHILLIPS PRESIDENTIAL CAMPAIGN FUND BEATRICE A MACHUE PO BOX 901334	TREASURER	PALMDALE	CA 93590
P60003159	PHILLIPS, DEAN A DEM	604 E CAPITOL ST NE	WASHINGTON	DC 20003
PCC	C00300186 PHILLIPS FOR PRESIDENT DEAN PHILLIPS 205 PENNSYLVANIA AVE SE	TREASURER	WASHINGTON	DC 20003
P20001434	PHILLIPS, HOWARD UNK	9520 BENT CREEK LANE	VIENNA	VA 22182
PCC	C00310847 HOWARD PHILLIPS 1996 CAMPAIGN COMMITTEE JOE P LUTE SR 9520 BENT CREEK LANE	TREASURER	VIENNA	VA 22182
AUT	C00259390 TAXPAYERS FOR PHILLIPS MARK WEAVER 9520 BENT CREEK LANE	TREASURER	VIENNA	VA 22182
P60004082	PHILLIPS, RICK L DEM	PO BOX 583	SEASBORO	IA 50242
P60003118	PITTMAN, DENNIS WALDO IND	657 NOEL CONAWAY	GUTTON	GA 31312
PCC	C00300012 INDEPENDANT (PITTMAN) DENNIS W PITTMAN 657 NOEL CONAWAY RD	TREASURER	GUTTON	GA 31312
P60003340	PITTMAN, MONTY GENE DEM	113 SOUTH ST	TAFT	CA 93268

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ID#	NAME/PARTY	ADDRESS		
P60004306	PENWELL, MARJORIE A DEM	13603 WOODMORE RD	MITCHELLVILLE	MO 20711
PCC	C00314369 PENWELL FOR PRESIDENT MARJORIE PENWELL 13603 WOODMORE RD	TREASURER	MITCHELLVILLE	MO 20721
P60002326	PEREZ, DAVID UNK	431 W GLENDON WAY	SAN GABRIEL	CA 91776
PCC	C00285007 GENERAL MOTORS (DAVID PEREZ) DAVID CORTES PEREZ 431 W GLENDON WAY	TREASURER	SAN GABRIEL	CA 91776
P60002201	PERKINS, MARVIN EDWARD IND	PO BOX 278	ROWLETT	TX 75088
P20001558	PEROT, ROSS REP	1700 LAKESIDE SQUARE	DALLAS	TX 75251
PCC	C00321778 PEROT '96 J MICHAEL POSS 7616 LBJ FREEWAY SUITE 727	TREASURER	DALLAS	TX 75251
AUT	C00263145 PEROT '92 MIKE POSS 12377 MERIT DRIVE SUITE 1700	TREASURER	DALLAS	TX 75251
AUT	C00315762 PEROT REFORM COMMITTEE MIKE POSS 7616 LBJ FREEWAY SUITE 727	TREASURER	DALLAS	TX 75251
P60002342	PETRY, RAYMOND KENNETH UNK	CO 439 KEONIANA ST PH2B	HONOLULU	HI 96813
PCC	C00302794 PETRY FOR VEEP/USA 96 RAYMOND KENNETH PETRY C/O 439 KEONIANA ST PH2B	TREASURER	HONOLULU	HI 96813

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AUT C00164335	NATIONAL COMMITTEE TO ELECT GRADY O' CUMMINGS III WINIFRED ROSS-O' CUMMINGS 198 MCDUGAL ST APT 3R	TREASURER	BROOKLYN	NY 11233
P40000382	OGIN, FRED EUGENE REP	18668 LAMSON RD	CASTRO VALLEY	CA 94546
PCC C00251231	FREDERICK E OGIN FREDERICK E OGIN SEC 1 VA DOM	TREASURER	WHITE CITY	OR 97503
P60004322	OGLE, JAMES ORLANDO UNK	715 9TH STREET	PACIFIC GROVE	CA 93950
P60003514	OWENS, THOMAS ROBERT UNK	6544 MANGROVE DRIVE	WESLEY CRAPEL	FL 33544
P80002405	PATTY, HUBERT DAVID REP	131 E BROADWAY	MARTVILLE	TN 37003
PCC C00301747	AMERICA REGENERATED PATTY FOR PRESIDENT M M CUMMINGS 210 HARPER AVENUE	TREASURER	MARTVILLE	TN 37003
P60003878	PAULING, DAVID DEM	5709 BRATTON ST	TEMPLE TERRACE	FL 33617
PCC C00306548	PAULING FOR PRESIDENT NICOLE E PAULING PO BOX 350	TREASURER	TEMPA	FL 33001
P60003761	PAULSEN, PATRICK LAYTON DEM	6924 ESTEPA DR	TEJUNGA	CA 91042
PCC C00305219	COMMITTEE TO ELECT PAT PAULSEN MONA B PAULSEN 7543 WOODLEY AVE #200	TREASURER	VEN HITS	CA 91406

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PCC C00304014	COMMITTEE TO ELECT DAVID J MORASCINI PRESIDENT FRANK ROBERT SIMLICK 13 FURNACE AVE		STAFFORD SPRINGS	CT 06076
P60004389	MOTOR, LEON IND	24C LONGFELLOW DR	MORRISVILLE	PA 15120
P00000729	MUEYK, GEORGE ALEXANDER DEM	19500 CRYSTAL ROCK DRIVE APT 22	GERMANTOWN	MD 20874
PCC C00283325	DEMOCRATS FOR AMERICANUM GEORGE A MUEYK 19500 CRYSTAL ROCK DRIVE APT 22	TREASURER	GERMANTOWN	MD 20874
P20000527	HADER, RALPH		OAKLAND	CA
P60004272	NOBLE, SANDRA DEM	4506 GEORGIA AVE NW #104	WASHINGTON	DC 20011
PCC C00312405	SANDRA NOBLE FOR PRESIDENT SANDRA NOBLE 4506 GEORGIA AVE NW #104	TREASURER	WASHINGTON	DC 20011
P60003092	NOBOA, RAFAEL ALEJANDRO REP	3838 COLUMBUS RD SW	GRANVILLE	OH 43023
PCC C00299974	NOBOA PRESIDENTIAL COMMITTEE RAFAEL NOBOA 3838 COLUMBUS RD SW	TREASURER	GRANVILLE	OH 43023
P00000588	O'CUMMINGS, GRADY 3RD DEM	198 MACDOUGAL STREET	BROOKLYN	NY 11233
PCC C00304451	NATIONAL COMMITTEE TO ELECT GRADY O'CUMMINGS 3RD IN 96 MINIFRED C ROSS-O'CUMMINGS 198 MACDOUGAL STREET	TREASURER	BROOKLYN	NY 11233

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ID#	NAME/PARTY	ADDRESS		
P60003100	MICHAEL, STEPHEN D DEM	1339 14TH ST NW 05	WASHINGTON	DC 20005
PCC C00299958	STEVE MICHAEL PRESIDENTIAL CAMPAIGN COMM WAYNE TURNER 25 U STREET NW	TREASURER	WASHINGTON	DC 20001
P60004231	MILKO, HILARY MICHAEL REP	BX 72344	LAS VEGAS	NV 89170
P20000220	MILLER, KATHERINE BENGALEE REP	914 19TH STREETS	ARLINGTON	VA 22202
P80001043	MILTON, JERRY R IND	PO BOX 392	FORT MCCOY	FL 32134
PCC C00268086	MILTON FOR PRESIDENT JERRY R MILTON RT 1 BOX 168	TREASURER PO BOX 392	FORT MCCOY	FL 32134
AUT C00215392	JERRY ROGER MILTON (PCC) JERRY ROGER MILTON PO BOX 339	TREASURER 401 SE 3RD AVE	ALACHUA	FL 32615
P00001982	MOONEY, BEATRICE J REP	1278 QUINLAN AVE S	LAKE ST CROIX BCH	MI 55043
P60004405	MOOREHEAD, MONICA GAIL SNP	60 GLENWOOD AVE 0508	JERSEY CITY	NJ 07306
PCC C00316091	WORKERS WORLD PARTY PRESIDENTIAL CAMPAIGN COMMITTEE (MOOREHEAD) GARY WILSON 55 W 17TH ST 5TH FL	TREASURER	NY	NY 10011
P20001145	MORASCINI, DAVID JOHN IND	26 AMIDON DRIVE	ASHFORD	CT 06278

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ID#	NAME/PARTY	ADDRESS		
P60002565	MABARDY, JACK REP	PO BOX 1422	FRAMINGHAM	MA 01701
PCC C00291450	JACK MABARDY FOR PRESIDENT U S A JACK MABARDY PO BOX 1422	TREASURER	FRAMINGHAM	MA 01701
P40000853	MASTERS, ISABELL REP	2425 WE 24TH ST	OK CITY	OK 73111
PCC C00304626	DR ISABELL MASTERS-LOOKING BACK COMMITTEE ISABELL MASTERS 242 WREHA DR	TREASURER	WEST PALM BEACH	FL 33409
P60001468	MATTI, THOMAS ALLEN UNK	GENERAL DELIVERY	ARLINGTON HEIGHTS	IL 60005
P00000133	MCDANIELS, EDISON PENRON SR IND	1224 WEST 26TH STREET	SAN BERNARDINO	CA 92405
PCC C00301168	CRUSADE TO ELECT EDISON P MCDANIELS SR PRESIDENT EDISON P MCDANIELS SR PO BOX 2700	TREASURER	SAN BERNARDINO	CA 92406
P40000820	MCDOWELL, EDDIE IND	PO BOX 568	BE	NY 10460
P60003290	MCHILLAN, JAMES III REP	1996 NOSTRAND AVE	BROOKLYN	NY 11210
PCC C00301408	JIMMY MCHILLAN FOR PRESIDENT JAMES MCHILLAN III PO BOX 10-0086	TREASURER	BROOKLYN	NY 11210
P60004538	MENTER, DAVID NEWBIE IND	4834 PECAN GROVE DRIVE	PEARLAND	TX 77584

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ID#	NAME/PARTY	ADDRESS		
PCC C00300079	THOMAS LIENWEG FOR PRESIDENT FRED GILL 10615 PARKWOOD DR	TREASURER	BENNINGTON	MD 20895
P60004090	LLOYD, TYRESE ROSS UNK	6205 WILLOW WAY	CLINTON	MD 20735
P60003555	LLOYD-DUFFIE, ELVENA R DEM	1519 S NEWCASTLE AV	WESTCHESTER	IL 60154
PCC C00309591	FRIENDS FOR ELVENA TEMPIE KING PO BOX 7581	TREASURER PO BOX 7581	WESTCHESTER	IL 60154
P60001187	LOVEWELL, ROBERT S REP	86 1/2 PLEASANT ST	CONCORD	MA 03301
P60003266	LUGAR, RICHARD G REP	3200 RICHMONDS COURT	INDIANAPOLIS	IN 46222
PCC C00301333	LUGAR FOR PRESIDENT COMMITTEE INC PATRICK J KIELY 3921 NORTH MERIDIAN STREET	TREASURER	INDIANAPOLIS	IN 46208
AUT C00303289	LUGAR FOR PRESIDENT COMMITTEE LEGAL AND ACCOUNTING COMPLIANCE FUND PATRICK J KIELY PO BOX 20484	TREASURER	INDIANAPOLIS	IN 46220
AUT C00315416	LUGAR FOR PRESIDENT-AUDIT FUND PATRICK J KIELY POST OFFICE BOX 20484	TREASURER	INDIANAPOLIS	IN 46220
P20001483	LUMMIS, LESLIE IND	CUMA TRANQUILIDAD APT J-5	TAMWING	GU 96911
P60004553	LUSK, MICHAEL JAMES UNK	4434 VAN TRL	GILBERT	MI 49541

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ID#	NAME/PARTY	ADDRESS		
P60003324	LAUR, GEORGE C II DEM	2017 BEAR RIDGE ROAD #104	BALTIMORE	MD 21222
PCC C00301713	COMMITTEE FOR LAUR CHARLES LAUR 2017 BEAR RIDGE	TREASURER	BALTIMORE	MD 21222
P20000055	LEE, KIP LIB	1797 KENYON DRIVE	REDDING	CA 96001
PCC C00140459	FOR PRESIDENT KIP LEE KIP LEE 1797 KENYON DRIVE	TREASURER	REDDING	CA 96001
P60003704	LEECH, STEPHEN WAYNE UNK	111 BASCO DRIVE	JACKSONVILLE	NC 28540
PCC C00304162	STEVE LEECH FOR PRESIDENT STEPHEN WAYNE LEECH PO BOX 392	TREASURER	JACKSONVILLE	NC 28541
P60004348	LEGAS, FRANK DEM	319 W ASHFORD PLACE	FULLETON	CA 92631
PCC C00315002	LEGAS-96 PRESIDENTIAL COMMITTEE JULIA LEGAS POST OFFICE BOX 6806	TREASURER	FULLETON	CA 92634
P60004363	LETULLE, MARY FRANCES REP	PO BOX 26551	AUSTIN	TX 78755
PCC C00315028	LETULLE, MARY FRANCES MARY FRANCES LETULLE PO BOX 26551	TREASURER	AUSTIN	TX 78755
P60003134	LIEKWEG, THOMAS DINEEN IND	10615 PARKWOOD DR	KENSINGTON	MD 20895

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ID#	NAME/PARTY	ADDRESS		
P60000452	LAROUCHE, LYNDON H JR DEM	RT 1 BOX 284	ROUND HILL	VA 22141
PCC C00283465	COMMITTEE TO REVERSE THE ACCELERATING GLOBAL ECONOMIC & STRATEGIC CRISIS: LAROUCHE SEPL CNT KATHY A MAGRAN P O BOX 730	TREASURER	LEESBURG	VA 22075
AUT C00107391	CITIZENS FOR LAROUCHE PATRICIA DOLBEARE 65 HILLSIDE AVE	TREASURER	SALISBURY	NY 10040
AUT C00031781	COMMITTEE TO ELECT LYNDON LAROUCHE (1976 COMMITTEE) RICHARD E. WELSH 2458 27TH ST, 83A CPO	TREASURER	LONG ISLAND CITY	NY 11102
AUT C00250191	DEMOCRATS FOR ECONOMIC RECOVERY-LAROUCHE IN 92 KATHY A MAGRAN PO BOX 690	TREASURER	LEESBURG	VA 20178
AUT C00231902	DEMOCRATS FOR NATIONAL ECONOMIC RECOVERY - LAROUCHE IN 88 RICHARD E WELSH P O BOX 926	TREASURER	LEESBURG	VA 22075
AUT C00188888	INDEPENDENT DEMOCRATS FOR LAROUCHE GERALD ROSE C/O WELSH 108 NORTH ST NE	TREASURER	LEESBURG	VA 22075
AUT C00171538	LAROUCHE CAMPAIGN EDWARD SPANNAUS 108 NORTH ST NE	TREASURER	LEESBURG	VA 22075
AUT C00198671	LAROUCHE DEMOCRATIC CAMPAIGN EDWARD SPANNAUS P O BOX 210 DOWNTOWN STATION	TREASURER	LEESBURG	VA 22075
AUT C00272781	LAROUCHE FOR PRESIDENT-INDEPENDENTS FOR ECONOMIC RECOVERY KATHY A MAGRAN PO BOX 266	TREASURER	LEESBURG	VA 22075
AUT C00187435	TEXAS DEMOCRATS TO DRAFT LAROUCHE LINDA BRAUWE 5401 RAMPART #300	TREASURER	HOUSTON	TX 77001

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ID#	NAME/PARTY	ADDRESS		
AUT C00309492	KLEINMAN FOR PRESIDENT MARK HAROLD KLEINMAN PO BOX 5473	TREASURER	WASHINGTON	DC 20016
P60003845	KOLB, KENNETH WAYNE IND	1311 DONARD PARK AVENUE	LOUISVILLE	KY 40218
PCC C00306381	COMMITTEE TO ELECT WAYNE KOLB PRESIDENT WILLIAM F PERKINS III PO BOX 34232	TREASURER	LOUISVILLE	KY 40232
P60003217	KOPITSKE, GLENN M UNK	N795 LESSOR-NAVARINO RD	BONDUEL	WI 54187
PCC C00300582	GLENN M KOPITSKE FOR PRESIDENT GLENN M KOPITSKE N795 LESSOR-NAVARINO RD	TREASURER	BONDUEL	WI 54187
P60004249	LACASSE, RUSSELL ARMAND IND	372A RIVER ROAD	NAPLES	ME 04055
P60004546	LAMM, RICHARD D REP	5401 E DAKOTA HWY 20	DENVER	CO 80222
PCC C00320945	LAMM FOR PRESIDENT INC PETER D WIMS 601 BROADWAY SUITE 211	TREASURER	DENVER	CO 80203
P80001472	LANDY, BRUCE ALAN REP	2601 VIRGINIA AVE NW	WASHINGTON	DC 20037
P60004074	LANG, OTMAR O MR IND	2475 N CUNNINGHAM STR	CHICAGO	IL 60625
P40001364	LARIVA, GLORIA ESTELA SWP	3207 MISSION STREET APT 9	SAN FRANCISCO	CA 94118

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AUT	C00313569 MICHIGAN FOR KEYES '96 BART LEE STAKER 1931 DUFFIELD #4277	TREASURER	ANN ARBOR	MI 48109
AUT	C00314161 MINNESOTA FOR KEYES THOMAS W STRAHAN SR 6313 LONGFELLOW AVE S	TREASURER	RICHFIELD	MI 55423
AUT	C00307215 NORTHWESTERN STATES FOR KEYES BONNIE J HADSON P O BOX 9127	TREASURER	BROOKS	OR 97305
AUT	C00311100 SOUTH CAROLINIANS FOR KEYES '96 CAROLYN B RICE 374-P PINECROFT DRIVE	TREASURER	TAYLORS	SC 29607
AUT	C00311894 SOUTH DAKOTANS FOR ALAN KEYES '96 GRETCHEN A BOFFMAN 300 N DAKOTA AVE SUITE 510	TREASURER	SIOUX FALLS	SD 57102
AUT	C00309427 TEXANS FOR ALAN KEYES FOR PRESIDENT '96 CHRISTOPHER T KUHLMAN 5450 NORTHWEST CENTRAL SUITE 101	TREASURER	HOUSTON	TX 77092
AUT	C00307736 WISCONSIN FOR ALAN KEYES MICHAEL J HEINEN 705 SOUTH 26TH STREET	TREASURER	SHEBOYGAN	WI 53081

P60000957	KILLEN, CAROLINE P UNK	262 S PLUMER	TUCSON	AZ 85719

P60001476	KING, HENRY IND	15006 WESTROPP	CLEVELAND	OH 44110

P60004157	KLEINMAN, MARK HAROLD IND	3800 VEASEY ST NW	WASHINGTON	DC 20016
PCC	C00315663 COMMITTEE TO ELECT MARK HAROLD KLEINMAN PRESIDENT MARK HAROLD KLEINMAN 3800 VEASEY ST NW	TREASURER	WASHINGTON	DC 20016

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ID#	NAME/PARTY	ADDRESS		
AUT	C00309393 ALAN KEYES FOR PRESIDENT '96 - COLORADO WILLIAM VICTOR NOTE 2025 EDDINGTON WAY	TREASURER	COLORADO SPRINGS	CO 80916
AUT	C00311902 ALAN KEYES FOR PRESIDENT '96 KENTUCKY AFFILIATE JOHN ALVIN SHELTON 2335 BUTTERMILK CROSSING #303	TREASURER	CRESCENT SPRINGS	KY 41017
AUT	C00310433 ALAN KEYES FOR PRESIDENT '96 NORTH CAROLINA COMMITTEE DANIEL CAMERON MORRIS 2022 SUITE B SHADOWOOD COURT	TREASURER	GREENVILLE	NC 27850
AUT	C00311118 ALAN KEYES FOR PRESIDENT '96 NORTHERN TEXAS OFFICE JAMES D GREEN PO BOX 2081	TREASURER	DENTON	TX 76202
AUT	C00309518 ALAN KEYES FOR PRESIDENT - IOWA JONATHAN ANDREW JACKSON 6000 DOUGLAS	TREASURER	DES MOINES	IA 50322
AUT	C00312926 ARIZONA FOR ALAN KEYES '96 ROBERT A GENTALA 10171 E RIO DE ORO DRIVE	TREASURER	TUCSON	AZ 85749
AUT	C00311704 CALIFORNIANS FOR KEYES DAVID JEAN QUACKENBUSH 325 EAST OAK VIEW AVE	TREASURER	OAK VIEW	CA 91022
AUT	C00307835 COMMITTEE TO ELECT ALAN KEYES PRESIDENT OF THE UNITED STATES MARIAN MOBLEY 3075 W KEARNEY BLVD	TREASURER	FRESNO	CA 93706
AUT	C00312934 KEYES CAMPAIGN IN ILLINOIS EUGENE T CARTER 2604 W SIBLEY	TREASURER	PARK RIDGE	IL 60068
AUT	C00309500 MARYLAND FOR KEYES '96 TERRY TURNER 13600 AMBASSADOR DRIVE	TREASURER	GERMANTOWN	MD 20874
AUT	C00311126 MASSACHUSETTS FOR ALAN KEYES PATRICK LANNON 213 SUMMER STREET #3R	TREASURER	BONERVILLE	MA 02143

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ID#	NAME/PARTY	ADDRESS		
P60003670	KASICH, JOHN		SEMIHOLE	FL
P80000060	KEMP, JACK (VICE-PRES) REP		BETHESDA	MD
PCC C00321620	KEMP FOR VICE PRESIDENT MR KIRK L CLINKENBEARD 2233 WISCONSIN AVENUE NW SUITE 500	TREASURER	WASHINGTON	DC 20007
C00217372	KEMP/DANNENHEYER COMMITTEE SCOTT B HACKENZIE 5201 LEEBURG PIKE SUITE 1207	TREASURER	FALLS CHURCH	VA 22041
AUT C00238972	JACK KEMP COMPLIANCE FUND SAL RUSSO 770 L STREET SUITE 950	TREASURER	SACRAMENTO	CA 95814
AUT C00214221	JACK KEMP FOR PRESIDENT '88 SAL RUSSO 770 L STREET SUITE 950	TREASURER	SACRAMENTO	CA 95814
P60003696	KESSLER, KEITH KELVIN IND	14405 ANTEY LAKE #11	WOODBRIDGE	VA 22193
P60003076	KEYES, ALAN LEE REP	13533 SCOTTISH AUTUMN LAKE	BARRELSTOWN	MD 20878
PCC C00303214	ALAN KEYES FOR PRESIDENT '96 INC WILLIAM G SPIEGEL P.O. BOX 25643	TREASURER	ALEXANDRIA	VA 22313
AUT C00312918	ALABAMA KEYES COMMITTEE AMELIA CAROL WISDOM 207 FARRETT COURT	TREASURER	HUNTSVILLE	AL 35810
AUT C00299313	ALAN KEYES COMMITTEE ALAN KEYES 34 PEACHTREE ST W W SUITE 2320	TREASURER	ATLANTA	GA 30303

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PCC C00301960	ROGER JEWELL FOR PRESIDENT '96 COMMITTEE ROGER JEWELL 4020 CHICAGO #123	TREASURER	RIVERSIDE	CA 92507
P60003753	JOCHEN, EDWIN EDWARD III IND	4706 LIBERTY AVE	NIAGARA FALLS	NY 14305
PCC C00305169	ED FOR THE PEOPLE 96 (PCC JOCHEN) JUWE ALEEN MASCA 4706 LIBERTY AVE	TREASURER	NIAGARA FALLS	NY 14305
P60003191	JOHNSON, AUBREY F DEM	PO BOX 2531	BELMAR	CA 92014
P80000532	JONES, ALFONSO DEM	8624-6 RUTLAND #685	DET	MI 48220
PCC C00211771	COMMITTEE TO ELECT MR ALFONSO JONES FOR PRESIDENT ALFONSO JONES 8624-6 RUTLAND #685	TREASURER	DET	MI 48220
P60003639	JORGENSEN, JO ANNE LIB	300 BUTLER AVE	GREENVILLE	SC 29601
PCC C00303529	JO JORGENSEN FOR VICE-PRESIDENT COMMITTEE EDWARD M ALPORT 1754 WOODRUFF RD #201	TREASURER	GREENVILLE	SC 29607
P60003530	JUDD, KEITH RUSSELL UNK	504 VIRGINIA NE APT D	ALBUQUERQUE	NM 87100
PCC C00302919	KEITH JUDD FOR PRESIDENT KEITH R JUDD 504 VIRGINIA NE APT D	TREASURER	ALBUQ	NM 87100
P60001864	KANE, JOHN VINCENT UNK	18 VALLEY RIDGE DRIVE	SOUTH BURLINGTON	VT 05401

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ID#	NAME/PARTY	ADDRESS		
PCC C00310722	HUDSON, FRED JR FRED HUDSON JR PO BOX 392	TREASURER	CENTER	TX 75935
P60004371	JACKSON, ROSE ANNA REP	PO BOX 126144	SAN DIEGO	CA 92112
PCC C00315309	ROSY JACKSON FOR U S PRESIDENT ROSE JACKSON PO BOX 126144	TREASURER	SAN DIEGO	CA 92112
P60002086	JENKINS, MICHAEL DWAYNE IND	121 SOUTH COLONIAL AVENUE	RICHMOND	VA 23221
PCC C00282574	MICHAEL DWAYNE JENKINS I 96 FOR PRESIDENT OF THE UNITED STATES OF AMERICA MICHAEL D JENKINS 121 SOUTH COLONIAL AVENUE	TREASURER	RICHMOND	VA 23221
P20000998	JENSEN, PAUL DEM	BX 4372	ANN ARBOR	MI 48106
PCC C00302836	NEW DEMOCRAT/96 PAUL JENSEN DEMOCRAT FOR US PRESIDENT P JENSEN BX 4372	TREASURER	A A	MI 48106
AUT C00256073	JENSEN FOR PRESIDENT PAUL JENSEN 2040 CHARLTON #5	TREASURER	ANN ARBOR	MI 48103
P60004470	JESERNIG, WILLIAM G REP	2947 E 10TH	REHOBETH	WA 99336
PCC C00318493	COMMITTEE TO ELECT WILLIAM JESERNIG WM JESERNIG 2947 EAST 10TH	TREASURER	REHOBETH	WA 99336
P60002458	JEWELL, ROGER HENRY IND	4020 CHICAGO #123	RIVERSIDE	CA 92507

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ID#	NAME/PARTY	ADDRESS		
PCC C00301580	COMMITTEE TO ELECT JERRY D WOLCOMBE TROY LYNN CRANDAL 4859 CEDAR SPRINGS #136	TREASURER	DALLAS	TX 75219
P60004116	BOLLIS, MARY CAL SNP	500 SUGAR LOAF ROAD	BOULDER	CO 80302
P60003506	BORION, NORMAN ROBERT V IND	25 OLD CANDIA ROAD	AUBURN	NH 03032
PCC C00302786	N R N FOR PRESIDENT (BORION PCC) NORMAN BORION 25 OLD CANDIA ROAD	TREASURER	AUBURN	NH 03032
P60002466	BOUSTON, GUY VIRGIL JR DEM	2720 NW 18 AVE PL A	MIAMI	FL 33142
PCC C00320861	NO COMMITTEE OTHER THAN MYSELF GUY VIRGIL BOUSTON JR 2720 NW 18 AVE PL A	TREASURER	MIAMI	FL 33142
P20000550	HOWARD, MILDRED (MILLIE) T REP	1485 FAGIN'S RUN ROAD	NEW RICHMOND	OH 45157
PCC C00279745	MILLIE HOWARD FOR PRESIDENT USA 1996 DIANA SHAMBLIN P O BOX 262	TREASURER	NEW RICHMOND	OH 45157
AUT C00252833	COMMITTEE TO ELECT MILLIE HOWARD PRESIDENT USA 1992 DIANA DARLENE SHAMBLIN 1485 FAGIN'S RUN RD	TREASURER	NEW RICHMOND	OH 45157
P60004173	HUBBARD, ANTHONY W IND	6630 OLD JACKS CREEK RD	RENDERSON	TN 38340
P60004199	HUDSON, FRED JR		CENTER	TX

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ID#	NAME/PARTY	ADDRESS		
P20000543	HIRSNOW, RUSSELL IND	1630 B BEECHMAN PL NW	WASHINGTON	DC 20009
PCC	C00311605 RUSSELL HIRSNOW'S COMMITTEE OF THUGS DEANN SHAFFER 1630 B BEECHMAN PL NW	TREASURER	WASHINGTON	DC 20009
AUT	C00253062 COMMITTEE TO PUT RUSSELL HIRSNOW IN THE BIG HOUSE JOYCE R WALKER 1630 FLORIDA AVE NW #202	TREASURER	WASHINGTON	DC 20009
P60003571	BOELEEL, JOHN RICHARD JR IND	1005 S JOSEY LN STE 204	CARROLLTON	TX 75006
PCC	C00303115 JOHN R BOELEEL JR FOR PRESIDENT JOHN RICHARD BOELEEL JR 1005 S JOSEY LN STE #204	TREASURER BOX #1237	CARROLLTON	TX 75006
P80000672	HOFF, SAMUEL B DR IND	813 MAPLE PARKWAY	DOVER	DE 19901
PCC	C00213306 FOR THE RIGHT MIX VOTE HOFF IN 1996 PHYLLIS OLIVETO-HOFF 813 MAPLE PARKWAY	TREASURER	DOVER	DE 19901
P80001134	BOLCOMB, MARGOT SIERRA REP	3700 LAS VEGAS BLVD	LAS VEGAS	NV 89109
PCC	C00302851 MARGOT FOR PRESIDENT MARGOT SIERRA BOLCOMB 3700 LAS VEGAS BLVD	TREASURER	LAS VEGAS	NV 89109
AUT	C00252460 MARGOT BOLCOMB FOR PRESIDENT OF THE UNITED STATES JOSEPH E BOLCOMB 3830 SWENSON SUITE 706	TREASURER	LAS VEGAS	NV 89119
P40003316	BOLCOMBE, JERRY D IND	1922-D TARRANT PLACE	DALLAS	TX 75208

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ID#	NAME/PARTY	ADDRESS		
PCC C00298042	COMMITTEE TO ELECT DR HEATHER ANNE HARDER PRESIDENT MARY DABL 210 SOUTH MAIN STREET SUITE 102		CRENN POINT	IN 46307
P00000984	HARRIS, CALVIN DURANT REP	PO BOX 2570	CAMP VERDE	AZ 86302
P60004454	HARRIS, JAMES EDWARD JR SWP	342 S MATHEWS AVENUE	ATLANTA	GA 30307
P60003142	HART, JAMES BYRON REP	4112 COLE WAY	SAN DIEGO	CA 92117
PCC C00300103	JAMES B HART PRESIDENTIAL ELECTION COMMITTEE JAMES BYRON HART 4112 COLE WAY		SAN DIEGO	CA 92117
P60003738	HARTMAN, RUSSELL T UNK	401 WEST A STREET SUITE 500	SAN DIEGO	CA 92101
P20000915	HAYES, JIM REP	309 EAST BLEEKER ST	ASPEN	CO 81611
P00000091	HILL, RICHARD RORER DEM	2817 EASTGROVE LAWE	BOSTON	TX 77027
PCC C00213165	HILL '88 COMMITTEE ROBBINS L MITCHELL JR 5000 MONTROSE #7B	TREASURER	BOSTON	TX 77006
P60004207	HIRSCH, RONALD R DEM	2761 S 70TH	MILWAUKEE	WI 53219
PCC C00310730	RONALD R HIRSCH FOR PRESIDENT COMMITTEE RONALD R HIRSCH 2761 S 70TH	TREASURER	MILWAUKEE	WI 53219

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ID#	NAME/PARTY	ADDRESS		
PCC C00311654	NATIONAL COMMITTEE TO ELECT TED L GUNDERSON FOR PRESIDENT JOAN A LYNCH 236 SO RAINBOW BLVD SUITE 252	TREASURER	LAS VEGAS	NV 89120
P60003274	GUTHRIE, DAVID A IND	2801 COTTAGE GLEN DR E	MOBILE	AL 36695
P20001681	HAGELIN, JOHN SAMUEL UNK	H10 FACULTY BOX 1069	FAIRFIELD	IA 52557
PCC C00304956	DR JOHN HAGELIN FOR PRESIDENT 1996 MICHAEL SPIVAK 51 WEST WASHINGTON	TREASURER	FAIRFIELD	IA 52556
P60004512	HALL, WILLIAM A III REF	2657 APT AVE	NAPLES	FL 33742
PCC C00319129	HALL REFORM COMMITTEE MARION HALL 1811 J & C BLVD	TREASURER	NAPLES	FL 33942
P60004462	HALSTEAD, LAURA ELLEN CARIA (VP) SWP	125 SEAMAN AVE 04B	NEW YORK	NY 10034
PCC C00318154	SOCIALIST WORKERS 1996 NATIONAL CAMPAIGN COMMITTEE (HARRIS FOR PRES/CARIA FOR VICE PRES) GREG MCCARTAN 406 WEST STREET	TREASURER	NEW YORK	NY 10014
P60003027	HARDCASTLE, PATRICE DEM	3731 NORTH 15TH STREET	PHILADELPHIA	PA
PCC C00295956	POLITICAL COMMITTEE TO ELECT PATRICE HARDCASTLE PATRICE HARDCASTLE 3731 NORTH 15TH STREET	TREASURER	PHILADELPHIA	PA 19145
P60003035	HARDER, WEATHER ANNE DR DEM	210 SOUTH MAIN STREET SUITE 102	CROWN POINT	IN 46307

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ID#	NAME/PARTY	ADDRESS		
AUT C00303107	ROSANNA GRAY-HILL & POWELL DEVINE ORDER WAY REV PERCY JOHN NEWTON PO BOX 25391	TREASURER	BARBER WOODS	MI 48225
P80001506	GREEN, RAY FERRILL REP	8 WOODBINE ST	ROXBURY	MA 02119
PCC C00301739	COMMITTEE TO ELECT RAY F GREEN PRESIDENT OF THE UNITED STATES OF AMERICA REV J E BYRD 8 WOODBINE ST	TREASURER	ROXBURY	MA 02119
AUT C00249920	LAWSON FUEL OIL CLIFFORD A FRANKLIN 622 BLUE HILL AVE	TREASURER	DORCHESTER	MA 02122
AUT C00217794	LAWSONS BARBERING (PCC GREEN) ROBERT FULLER 1979 COLUMBUS AVE	TREASURER	ROXBURY	MA 02119
P60001922	GREGORY, PAUL STEVEN REP	BX 4372	NEW ARBOR	MI 48106
PCC C00282467	GREGORY FOR U S PRESIDENT PAUL GREGORY BX 4372	TREASURER	NEW ARBOR	MI 48106
P60004165	GRIFFIN, JAMES D DEM	420 DORRANCE AVE	BUFFALO	NY 14210
PCC C00309807	JIM GRIFFIN FOR PRESIDENT JANICE A DUFFY 6616 POWERS ROAD	TREASURER	ORCHARD PARK	NY 14127
P40001349	GUENTHER, IRVIN J		LOUISVILLE	KY
P60004223	GUNDERSON, TED L DEM	750 ROYAL CREST CIRCLE UNIT 252	LAS VEGAS	NV 89109

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ID#	NAME/PARTY	ADDRESS		
PCC C00302489	BENJY'S PRESIDENTIAL DREAMS & HOPES BENJAMIN GLEITMAN 12667 MEMORIAL DR APT 19	TREASURER	BOSTON	TX 77024
P60001419	COMBOS, EDWARD ANDREW UNK	619 S ADDISON ROAD	ADDISON	IL 60101
P80000912	GORE, ALBERT		NASHVILLE	TN
P60002532	COBLEE, SAMUEL C SR MR DEM	526 WEST ISABELLA ST	SALISBURY	MD 21001
P60003779	GOTTIER, ROBERT WILLIAM UNK	5117 NIEMBRO	LAGUNA HILLS	CA 92653
P60001344	GRAMM, WILLIAM PHILLIP REP	1735 I STREET N W SUITE 900	WASHINGTON	DC 20006
PCC C00299917	PHIL GRAMM FOR PRESIDENT, INC. KEITH A DAVIS 228 S WASHINGTON STREET #200	TREASURER	ALEXANDRIA	VA 22314
AUT C00300632	PHIL GRAMM FOR PRESIDENT AUDIT FUND KEITH A DAVIS 228 S WASHINGTON STREET #200	TREASURER	ALEXANDRIA	VA 22314
P20001046	GRATTO, KAREN LEE DEM	2340 MORO PLACE	ANN ARBOR	CA 92001
P80001936	GRAY, ROSANNA JESSE O DEM	PO BOX 25391	SEASIDE WOODS	MI 48225
PCC C00220079	ROSANNA JESSE O GRAY 1996 DEVINE ORDER YEAR OF JUBILEE PERCY JOHN NEWTON PO BOX 25391	TREASURER	SEASIDE WOODS	MI 48225

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ID#	NAME/PARTY	ADDRESS		
AUT C00250779	LEMORA B FULANI FOR PRESIDENT FRANCINE MILLER 200 W 72ND ST 830	TREASURER	NEW YORK	NY 10023
AUT C00278614	LEMORA B FULANI FOR PRESIDENT (GEN '92) RACHEL MASSAD C/O BLOCK 72 SPRING ST 01201	TREASURER	NEW YORK	NY 10012
P80000904	GEE, HOOVER MARK REP	507 BUSH STREET 0206	SAN FRANCISCO	CA 94108
P60003811	GEISENDORFER, PAUL UNK	BOX 197 500 4TH ST	GRANDY	CO 80446
P60004298	GIDDENS, EMORY LANE IND	803 N OAK ST	VALDOSTA	GA 31601
PCC C00314260	GIDDENS FOR PRESIDENT EMORY LANE GIDDENS 803 N OAK ST	TREASURER	VALDOSTA	GA 31601
P60003886	GILLIAM, DANIEL RICHARD UNK	940 MARJORIE LANE	MADISONVILLE	KY 42431
P60003654	GINGRICH, NEWT		STURBANTON	IN
P60004504	GIUMARRA, ROSEMARY (VICE-PRES) IND	412 NORTH KANAI DRIVE	PORTERVILLE	CA 93257
AUT C00318923	ROSEMARY GIUMARRA FOR VICE-PRESIDENT 1996 TRACY RENEE MAXWELL 412 NORTH KANAI DRIVE	TREASURER	PORTERVILLE	CA 93257
P60003449	GLEITHAN, BENJAMIN SAMSON REP	12667 MEMORIAL DR APT 19	HOUSTON	TX 77024

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ID#	NAME/PARTY	ADDRESS		
PCC C00304535	COMMITTEE TO ELECT ARTHUR FLETCHER FOR PRESIDENT CHARLES N OFORI 516 G STREET NW	TREASURER	WASHINGTON	DC 20024
P20001475	FLYNN, RICHARD FRANCIS DEM	1602 WASHINGTON ST APT #4	LAREDO	TX 78040
PCC C00279893	RICHARD FRANCIS FLYNN FOR PRESIDENT 1996 RICHARD FRANCIS FLYNN 1602 WASHINGTON APT #4	TREASURER TRAVELER'S HOTEL	LAREDO	TX 78040
P60003852	FORBES, MALCOLM S JR REP	1400 ROUTE 206 NORTH	BEDMINSTER	NJ 07921
PCC C00306472	FORBES FOR PRESIDENT COMMITTEE INC JOSEPH A CANNON PO BOX 1009	TREASURER	BEDMINSTER	NJ 07921
P60004355	FREDRICKSEN, LYNN MAGDA DEM	2367 S KINNICKINNIC	MILWAUKEE	WI 53207
PCC C00315010	JOHNSONS SPACE CONTROL CENTER (PCC FREDRICKSEN) LYNN FREDRICKSEN 2367 S. KINNIC KINNIC	TREASURER	MILWAUKEE	WI 53207
P60003480	FRICKE, DOUGLAS CARL REP	5901 21ST AVE NORTH	ST PETERSBURG	FL 33710
PCC C00312660	MURRAY FOR DOOG (FRICKE) BRIAN M TRIMBLE 5901 21ST AVE	TREASURER	ST PETERSBURG	FL 33710
P80001118	FULANI, LEMORA B UNK	884 WEST END AVENUE	NEW YORK	NY 10025
PCC C00315614	LEMORA B FULANI FOR PRESIDENT 96 JACQUELINE SALIT 200 WEST 72ND STREET #37	TREASURER	NEW YORK	NY 10023

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ID#	NAME/PARTY	ADDRESS		
P00001792	ENGLERIUS, MAXIMUS T UNK	POST OFFICE BOX 2622	SEATTLE	WA 98111
PCC C00197384	ENGLERIUS FOR PRESIDENT CAMPAIGN COMMITTEE CAMERON TAYLOR POST OFFICE BOX 2622	TREASURER	SEATTLE	WA 98111
P80000870	FABISH, THOMAS S REP	265 N GILBERT ROAD #2101	MESA	AZ 85203
P20000089	FELLURE, LOWELL JACKSON REP	P O BOX 507	HURRICANE	WV 25526
PCC C00278457	JACK FELLURE CAMPAIGN COMMITTEE '96 LOWELL JACKSON FELLURE P O BOX 507	TREASURER	HURRICANE	WV 25526
AUT C00227330	JACK FELLURE CAMPAIGN COMMITTEE LOWELL JACKSON FELLURE POST OFFICE BOX 507	TREASURER	HURRICANE	WV 25526
P20000733	FIGUEROA, FERNANDO RIVERA DEM	HOMELESS	WASHINGTON	DC
PCC C00299693	FIGUEROA FOR PRESIDENT FERNANDO FIGUEROA 1232 M STREET NW	TREASURER	WASHINGTON	DC 20005
P60002292	FIOLA, WELL R IND	1008 WEST BURNSVILLE PKWY APT 225	BURNSVILLE	MN 55337
PCC C00048553	NEW MILLENIUM COMMITTEE (PCC FIOLA) MRS PATRICIA MIKELSON 1008 WEST BURNSVILLE PKWY APT 225	TREASURER C/O MRS WELL R FIOLA	BURNSVILLE	MN 55337
P60003746	FLETCHER, ARTHUR A REP	516 G STREET NW	WASHINGTON	DC 20024

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P60003944	DREW, JOHN		SPRINGFIELD	VA
PCC C00307462	NEW WORLD PARTY (DREW) A JOHN STEWART 8457 KITCHENER DRIVE SUITE 202	TREASURER	SPRINGFIELD	VA 22153
P60004033	DUCEY, SUSAN GAIL REP	422 OHIO AVE	MILMONT PARK	PA 19033
PCC C00308486	SUSAN DUCEY FOR PRESIDENT JAN C KUFNER PO BOX 146	TREASURER	RIDLEY PARK	PA 19078
P60003399	EASTON, ERNEST LEE UNK	3616 WEST WASHINGTON STREET	SOUTH BEND	IN 46619
PCC C00302042	VETERANS INDUSTRIAL POLITICAL PARTY (PCC EASTON) ERNEST LEE EASTON 3616 WEST WASHINGTON STREET	TREASURER	SOUTH BEND	IN 46619
P60003837	EDWARDS, B MYRON MIKE UNK	10017 ESTELLE DRIVE	ROSEMONT	IL 60010
P60004421	EL-RAI, JACK B UNK	430 FIRST AVENUE N SUITE 740	MINNEAPOLIS	MN 55401
PCC C00317545	AMERICANS FOR A HYPHENATED PRESIDENT JACK EL-RAI JACK EL-RAI 430 FIRST AVENUE N SUITE 740	TREASURER	MINNEAPOLIS	MN 55401
P60002136	EMMONS, ROSE MARY REP	2234 N 26 STREET	MILWAUKEE	WI 53205
P60002409	ENGEL, ROBERT D REP	34 SOUTH WASHINGTON STREET	HAVERVILLE	IL 60540

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ID#	NAME/PARTY	ADDRESS		
P60003621	DILLARD, BURGESS GLENN UNK	1209 S CLINTON AVE	TRENTON	NJ 08611
PCC C00303487	COMMITTEE OF ONE (PCC DILLARD) BURGESS GLENN DILLARD 1209 S CLINTON AVE	TREASURER	TRENTON	NJ 08611
P60003910	DOERSCHUCK, GEORGIANA H REP	5 NEW CASTLE DR APT 12	NASHUA	NH
P00000489	DOLE, ROBERT J REP	141 HART SENATE OFFICE BUILDING	WASHINGTON	DC 20510
PCC C00317743	DOLE/KEMP '96 INC ROBERT E LIGHTHIZER PO BOX 77658	TREASURER	WASHINGTON	DC 20013
AUT C00300608	DOLE FOR PRESIDENT INC ROBERT E LIGHTHIZER PO BOX 77658	TREASURER	WASHINGTON	DC 20013
AUT C00301077	DOLE/KEMP '96 COMPLIANCE COMMITTEE INC ROBERT E LIGHTHIZER PO BOX 77658	TREASURER	WASHINGTON	DC 20013
P60003308	DORNAN, ROBERT K REP	9057 NORTHEDGE DR	SPRINGFIELD	VA 22153
PCC C00301463	DORNAN FOR PRESIDENT INC ROBERT K DORNAN, NC 6320 AUGUSTA DRIVE SUITE 1101	TREASURER	SPRINGFIELD	VA 22150
P40000473	DOTY, CHARLES RICHARD DEM	1366 E 52 N	TULSA	OK 74126
PCC C00313460	CHARLES R DOTY FOR PRESIDENT REBECCAS A DOTY 1366 E 52 N	TREASURER	TULSA	OK 74126

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ID#	NAME/PARTY	ADDRESS		
P60003720	CRAIG, RON K UNK	3834 WEBER RD	LAUREL	MO 63125
P60003688	CVOROVIC, JANKA LIB	319 CALHOUN AVE	BROOK	NY 10465
PCC C00317453	JUSTICE FOR ALL (PCC CVOROVIC) JANKA CVOROVIC 319 CALHOUN AVE BK NY	TREASURER	BROOK	NY 10465
P60003423	DANIELS, BRUCE C DEM	210 WALNUT ST	WINNIPEG/MANITOBA	SS
PCC C00302406	DANIELS COMMITTEE TO ELECT A LIBERAL DEMOCRAT BRUCE C DANIELS 210 WALNUT ST	TREASURER	WINNIPEG/MANITOBA	SS
P60003803	DAVIS, ROGER THOMAS UNK	RFD1 BOX 66	BAHRY	IL 62312
P60003522	DE MEO, SAM J UNK	146 RUTLEY AVENUE	DAYVILLE	NJ 08721
P60003712	DEAGEN, CHRIS IND	2791 PELICAN CT	NICE	AK 99515
P60003357	DICKERSON, LINDA M UNK	1744 E NEW YORK DRIVE	ALBANY	CA 91001
P60003431	DIDONINICUS, NICK	3680 MONROE ST 9405	RIVERSIDE	CA 92504
PCC C00302455	COMMITTEE TO ELECT NICK DIDONINICUS NICHOLAS A DIDONINICUS 10862 KLOIBER STREET	TREASURER	RIVERSIDE	CA 92505

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PCC	C00302265 CLINTON/GORE '96 PRIMARY COMMITTEE INC JOAN POLLITT 2100 M ST NW	TREASURER	WASHINGTON	DC 20036
AUT	C00253690 CLINTON FOR PRESIDENT INC J L "SKIP" RUTHERFORD 410 THIRD STREET	TREASURER	LITTLE ROCK	AR 72203
AUT	C00272161 CLINTON/GORE '92 COMMITTEE J L "SKIP" RUTHERFORD 410 W THIRD STREET	TREASURER	LITTLE ROCK	AR 72203
AUT	C00268722 CLINTON/GORE '92 GENERAL ELECTION COMPLIANCE FUND J L "SKIP" RUTHERFORD 410 W THIRD STREET	TREASURER	LITTLE ROCK	AR 72203
AUT	C00305938 CLINTON/GORE '96 GEN ELECTION LEGAL & ACCOUNTING COMPLIANCE JOAN POLLITT 2100 M STREET NW	TREASURER	WASHINGTON	DC 20036

P60003548	COFFIN, ROBERT JOSEPH LOUIS IND	606 ARAGELLA STREET	NEW ORLEANS	LA 70115

P60003084	COLLINS, CHARLES EDWIN REP	8501 NORTH LAGOON DR P O BOX 9458	PANAMA CITY BEACH	FL 32408
PCC	C00299420 CHARLES E COLLINS ELECTION COMM FOR 1996 FRISCILLA FORD 10279 FRONT BEACH RD SUITE 2	TREASURER	PANAMA CITY BEACH	FL 32407

P20001319	COOPER, JAMES R DEM	809 WOODLAWN	DALLAS	TX 75208
PCC	C00303917 OUR WORK FOR THE PUBLIC (PCC COOPER) MARTIN FROST 809 WOODLAWN	TREASURER	DALLAS	TX 75208
AUT	C00258087 JAMES R COOPER JAMES ROBERT COOPER 1503 KINGS HIGHWAY	TREASURER	DALLAS	TX 75208

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ID#	NAME/PARTY	ADDRESS		
P60000270	CLEGG, BILLY JOE REP	2361 GRANTS FERRY DR	BILONI	MS
PCC	C00254292 CLEGG (WOM'T PULL YOUR LEG) FOR PRESIDENT BILLY JOE CLEGG 2361 GRANTS FERRY DR	TREASURER	BILONI	MS 39531
AUT	C00235366 CEIG COMMITTEE BILLY JOE CLEGG P O BX 6675	TREASURER	TAMPA	FL 33600
AUT	C00239152 CHRISTIAN INVOLVED ACTIVISTS BILLY JOE CLEGG 263 EISENHOWER DR #27	TREASURER	BILONI	MS 39531
AUT	C00214403 CHRISTIANS FOR CLEGG FOR PRESIDENT BILLY JOE CLEGG 4877 SE 44 #142	TREASURER	DEL CITY	OR 73135
AUT	C00239327 FDA (FOUNDATION DRUG AMNIIATION) BILLY JOE CLEGG PO BOX 4987	TREASURER	BILONI	MS 39531
AUT	C00236166 JUST KAUS' COMMITTEE BILLY JOE CLEGG 6815 INTERBAY BLVD	TREASURER	TAMPA	FL 33616
AUT	C00272799 LOYAL U S A PARTY (CLEGG PCC) BILLY JOE CLEGG 251 EISENHOWER DRIVE SUITE 177	TREASURER	BILONI	MS 39531
AUT	C00236182 SAVE AMERICA PROGRESSIVE PARTY BILLY JOE CLEGG PO BOX 6675	TREASURER	TAMPA	FL 33600
P20000642	CLINTON, WILLIAM JEFFERSON DEM	1600 PENNSYLVANIA AVE NW	WASHINGTON	DC 20000
PCC	C00321414 CLINTON/GORE '96 GENERAL COMMITTEE JOAN POLLITT 2100 M STREET NW	TREASURER	WASHINGTON	DC 20036

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FEDERAL ELECTION COMMISSION

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ALL INDIVIDUALS WHO HAVE FILED STATEMENTS OF CANDIDACY AND/OR ORGANIZATION-1996 PRESIDENTIAL CAMPAIGN

SECTION II
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ID#	NAME/PARTY	ADDRESS		
PCC C00311613	SAL CASAMASSIMA CAMPAIGN EDYTHE S RAMSON 5090 RICHMOND NO 329	TREASURER	BOSTON	TX 77056
P60003332	CASEY, ROBERT P		SCRANTON	PA
PCC C00301762	CASEY FOR PRESIDENT EXPLORATORY COMMITTEE FRANCIS J MERKEL CPA 203 FRANKLIN AVENUE	TREASURER	SCRANTON	PA 18503
P60003068	CAUSSEY, CHARLES DWAIN REP	PO BOX 341	RIDGE CREST	CA 93555
PCC C00298836	CHARLES DON CAUSSEY CHARLES DON CAUSSEY PO BOX 314	TREASURER	SEATTLE	WA 98111
P60004124	CHESTER, ERIC (VICE-PRESIDENT) SNP	55 LAFAYETTE ST	ARLINGTON	MA 02174
PCC C00309211	HOLLIS/CHESTER 1996 CAMPAIGN GREGORY PASON 40 WASHINGTON ST SUITE C-10	TREASURER	EAST ORANGE	NJ 07017
P60004397	CRIMENTO, CARMEN C DEM	24 OLD MILFORD RD	BROOKLINE	MA 03033
PCC C00315887	CARMEN C CRIMENTO COMMITTEE 24 OLD MILFORD RD	TREASURER	BROOKLINE	MA
P60002516	CHRISTENSEN, FRANKLIN DEAN REP	317 C MAPLE DRIVE	SALINA	UT 84654
PCC C00288753	COMMITTEE TO ELECT DEAN CHRISTENSEN AS PRESIDENT IN 1996 DEAN CHRISTENSEN 317 C MAPLE DRIVE	TREASURER	SALINA	UT 84654

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ID#	NAME/PARTY	ADDRESS		
P00002485	CAIN, DARYL O REP	LELAND HOTEL RM 17	SAN DIEGO	CA 92101
P20000329	CAPLETTE, RAYMOND J		GLENDALE	AZ
PCC C00306688	CAPLETTE FOR PRESIDENT RAYMOND J CAPLETTE 4728 W BROWN ST	TREASURER	GLENDALE	AZ 85302
P20000774	CAREY, DENNIS BARKER UNK	16831 GREENFIELD APT 34	DETROIT	MI 48235
P00000679	CARROLL, JERRY LEON IND	PO BOX 9079	STOCKTON	CA 95200
PCC C00214999	JERRY CARROLL COMMITTEE FOR PRESIDENT VIVIAN ELAINE CARROLL PO BOX 9079	TREASURER	STOCKTON	CA 95200
P60004496	CARTER, LEWIS SUITER UNK	904 HOMESTEAD RD 83	CHAPEL HILL	NC 27516
PCC C00318840	COMMITTEE TO ELECT LEWIS CARTER LEWIS SUITER CARTER 904 HOMESTEAD RD 83	TREASURER	CHAPEL HILL	NC 27516
P60004181	CARTER, RONALD H IND	ROUTE 1 BOX 462	WESLACO	TX 78596
PCC C00310450	RONALD H CARTER INDEPENDENT CANDIDATE FOR THE PRESIDENT OF THE UNITED STATES LUCINDA MONTENEGRO CARTER ROUTE 1 BOX 462	TREASURER	WESLACO	TX 78596
P60004215	CASAMASSIMA, SALVATORE J DEM	15 GREENWAY PLAZA 827D	BOSTON	TX 77046

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ID#	NAME/PARTY	ADDRESS		
PCC C00300475	LAWRENCE FREDERICK BROWNSTEIN FOR PRESIDENT LAWRENCE FREDERICK BROWNSTEIN 6920 SEPULVEDA BL 0243	TREASURER	VAN NUYS	CA 91405
P20001822	BRYK, WILLIAM MICHAEL DEM	335 EAST 58 STREET 05R	NEW YORK	NY 10022
P80000805	BUCHANAN, PATRICK J REP	6862 ELM STREET SUITE 210	MCLEAN	VA 22101
PCC C00301093	BUCHANAN FOR PRESIDENT INC SCOTT B MACKENZIE 6862 ELM STREET SUITE 210	TREASURER	MCLEAN	VA 22101
AUT C00282715	BUCHANAN COMPLIANCE FUND 6862 ELM STREET	TREASURER SUITE 210	MCLEAN	VA 22101
AUT C00256677	BUCHANAN FOR PRESIDENT ANGELA M. "BAY" BUCHANAN 6862 ELM STREET, SUITE 210	TREASURER	MCLEAN	VA 22101
P60003589	BULLARD, DONALD STEVEN UNK	ROUTE 5 BOX 122	BURLESON	TX 76028
PCC C00303222	OUR FATHER'S WILL (PCC BULLARD) GEORGINA BULLARD ROUTE 5 BOX 122	TREASURER	BURLESON	TX 76028
P60002839	BUONACORSI, JOSEPH HERBERT DEM	ROUTE 1 BOX 770	LEE	FL 32059
P60002524	BUONACORSI, JOSEPH HERBERT DEM	ROUTE 1 BOX 770	LEE	FL 32059
P60001708	BURGESS, TERRY WATTER UNK	169 BLOWING CAVE RD	GURLEY	AL 35748

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SECTION II
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ID#	NAME/PARTY	ADDRESS		
PCC C00310441	SOUTH 23 30' OR FIGHT ELECT TOM BRADLEY PRESIDENT JULIA ELIZABETH BRADLEY 912 PENNSYLVANIA AVE	TREASURER	SCHENECTADY	NY 12303
AUT C00252619	BRADLEY FOR PRESIDENT WILLIAM T DARDEN 1659 OLD HAYWOOD RD	TREASURER	ASHEVILLE	NC 28806
P00001065	BRIDGES, JAMES ROBERT IND	3737 MEADOW FIELD RD	DALLAS	TX 75253
PCC C00293860	JAMES ROBERT BRIDGES FOR PRESIDENT USA JAMES R BRIDGES 5445 WILLIS AVENUE	TREASURER	DALLAS,	TX 75206
P60003647	BRITT, GEORGE G JR DEM	906 SO 60TH ST	PHILA	PA 19143
PCC C00303537	FRIENDS OF GEORGE G BRITT JR PRESIDENT FAITH AVILES 906 SO 60TH ST	TREASURER	PHILA	PA 19143
P60002771	BROWN, SAMMY MUREL IND	1834 FM 418	HOUSTON	TX 77625
PCC C00293050	SAMMY MUREL BROWN FOR PRESIDENT CARLIN RUTH BROWN 1832 FM 418	TREASURER	HOUSTON	TX 77625
P60003043	BROWNE, HARRY LIB	3927 QUAIL RIDGE RD	LAFAYETTE	CA
PCC C00298489	HARRY BROWNE FOR PRESIDENT INC SHARON AYRES 2600 VIRGINIA AVE NW SUITE 100	TREASURER	WASHINGTON	DC 20037
P60003167	BROWNSTEIN, LAWRENCE F DEM	6920 BOLPULVIDA BLVD #243	VAN NUYS	CA 91405

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ID#	NAME/PARTY	ADDRESS		
P80000474	STEM, MICHAEL DEM	4103 24TH ST W APT 302	BRADENTON	FL 34205
PCC C00299966	STEM FOR PRESIDENT LISA STEM 4103 24TH ST WEST SUITE 302	TREASURER	BRADENTON	FL 34205
P40000259	STEWART, FRANK ROSS MRS DEM	PO BOX 295	CENTRE	AL 35960
PCC C00305047	COMMITTEE TO ELECT MRS FRANK ROSS STEWART PRESIDENT MRS FRANK ROSS STEWART PO BOX 295	TREASURER	CENTRE	AL 35960
P20000337	STRAUSS, MICHAEL ROSS TWICK DEM	56 FEDERAL ST	NEWBURYPORT	MA 01950
PCC C00250003	COMMITTEE TO REELECT MICHAEL STRAUSS MICHAEL STRAUSS 56 FEDERAL ST	TREASURER	NEWBURYPORT	MA 01950
P40001480	STRICKLAND, JAMES MICHAEL IND	402 RIVER RD	SELMA	NC 27576
P40000739	SWIDER, PETER PAUL SEBASTIAN REP	33 N ATLANTIC AVE #9	COCOA BEACH	FL 32931
PCC C00240179	SWIDER FOR PRESIDENT ROBERT LEWIS WICK 105 B BUCHANAN	TREASURER	CAPE CANAVERAL	FL 32920
P60003902	TATE, CARTER MARSHALL DEM	44533 VA	PETERSBURG	VA 23804
PCC C00306597	TATE FOR U S PRESIDENT MARK TATE C/O CARTER W TATE	TREASURER	PETERSBURG	VA 23804

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ALL INDIVIDUALS WHO HAVE FILED STATEMENTS OF CANDIDACY AND/OR ORGANIZATION-1996 PRESIDENTIAL CAMPAIGN

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ID#	NAME/PARTY	ADDRESS		
P60003365	TAYLOR, MORRICE M JR REP	1477 MAINE	QUINCY	IL 62301
PCC C00302216	TAYLOR FOR PRESIDENT INC BARLENE BOWE 1477 MAINE STREET	TREASURER	QUINCY	IL 62301
P60004066	TEMPLIN, DIANE BEALL REP	1016 CIRCLE DRIVE	ESCONDIDO	CA 92025
PCC C00306296	DIANE BEALL TEMPLIN FOR PRESIDENT JETT ADAIR 1016 CIRCLE DRIVE	TREASURER	ESCONDIDO	CA 92025
P60003795	TRIMBON, TOMMY		BOYNTON BEACH	FL
P60001004	THORPE, OSIE SEN	2900 CENTRAL AVE NE	WASH	DC 20018
PCC C00305946	COMMITTEE TO ELECT OSIE THORPE PRESIDENT OSIE THORPE PO BOX 4522	TREASURER	WASH	DC 20017
P60003662	TOMBO, BEN JOSEPH REP	7101 SCHERSET FARMS DRIVE	NASHVILLE	TN 37221
P60003829	TOMPkins, RICHARD LID	4730 W NORTHERN AVE 01063	GLENDALE	AZ 85301
PCC C00306365	NICK TOMPKINS LIBERTARIAN FOR PRESIDENT SUSANNE KANARA 0129 W 115TH AVE 00-262	TREASURER	PHOENIX	AZ 85051
P60001294	TOPPAN, LAWRENCE REY IWO	406 8TH AVENUE	SALT LAKE CITY	UT 84103

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ID#	NAME/PARTY	ADDRESS		
PCC C00291302	TOPHAM FOR PRESIDENT LAWRENCE RAY TOPHAM 406 8TH AVENUE	TREASURER	SALT LAKE CITY	UT 84103
P60002632	TOUCHETT GESS, NICHELE ANN REP	1599 NORTH PORT WASHINGTON RD N30	CRAFTON	WI 53024
PCC C00232720	NICHELE ANN GESS FOR PRESIDENT NICHELE ANN GESS 1599 NORTH PORT WASHINGTON RD N30	TREASURER	CRAFTON	WI 53024
P60004256	TRASK, BRUCE CALVIN SEN	16741 SW 146 CT	DADE COUNTY	FL 33177
P60002700	URBAN, CASNER JR SEN	PO BOX 1493	HALL COUNTY	GA 30503
PCC C00203662	USA, EMMC, UJC PRES CANDIDATE (URBAN) CASNER (URBAN) 1600 PENNSYLVANIA AVE	TREASURER WRITE HOUSE	WASHINGTON	DC 20500
P60004025	WALLACE, JEFFERSON SMITH SEN	20727 SO GARFIELD AVE	RIVERDALE LAHARE	CA 93656
P60004041	WARD, ED IND	91 EAST GUNLOG	RUSSELLVILLE	AR 72801
P60004264	WATSON, JERRY B JR REP	PO BOX 92145	WASHINGTON	DC 20090
PCC C00312397	JERRY B WATSON JR FOR PRESIDENT 1996 JERRY B WATSON JR PO BOX 92145	TREASURER	WASHINGTON	DC 20090
P20001632	WATTS, VERA SEN	919.5 W WASHINGTON ST	LANSING	MI 48901

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SECTION II
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ID#	NAME/PARTY	ADDRESS		
PCC 000260396	VERA WATTS FOR PRESIDENT OF THE U S OF A VERA WATTS 919.5 W HASTINGS	TREASURER PO BOX 11099	LANSING	MI 48901
P20000702	WESS, ROBERT GENE UNK	PO BOX 6364	LARADO	TX
PCC 000254600	ROBERT GENE WESS ROBERT GENE WESS PO BOX 6364	TREASURER	LARADO	TX 78040
P60003060	WILLIAMS, DAVID CONCRETT JR IND	20411 STEEPLE COURT	TERACRAFT	CA 93581
P60003951	WILLIAMS, RONALD WENDELL SEN	5703 EDECPARK DR	BALTIMORE	MD 21239
PCC 000307470	PRESIDENT JUST FOR YOU ELAMBA SPRING 5703 EDECPARK DR	TREASURER	BALTIMORE	MD 21239
P60003301	WILSON, PETE REP	1020 12TH STREET SUITE 300	SACRAMENTO	CA 95814
PCC 000301970	PETE WILSON FOR PRESIDENT COMMITTEE INC RENEE CROCE 20 SOUTH QUAKER LANE SUITE 200	TREASURER	ALEXANDRIA	VA 22314
AUT 000311006	PETE WILSON FOR PRESIDENT AUDIT FINES AND PENALTIES ACCOUNT INC RENEE CROCE 20 S QUAKER LANE SUITE 200	TREASURER	ALEXANDRIA	VA 22314
AUT 000302463	PETE WILSON FOR PRESIDENT COMPLIANCE COMMITTEE INC RENE CROCE 20 S QUAKER LANE SUITE 200	TREASURER	ALEXANDRIA	VA 22314
P40000648	WYNN, ROBERT DEWITT UNK	455 EAST 1ST AVE 06	MESA	AZ 85204

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ID#	NAME/PARTY	ADDRESS		
PCC C00301527	CAMPAIGN COMMITTEE OF ROBERT B WINE DIXIE L BELAND 223 S MESA DRIVE APT B	TREASURER	MESA	AZ 85204
P60003597	WINDLOW, WILLIAM M UNK	PO BOX 580	LINDALE	TX 75771
PCC C00303562	HERNICK TRANSITIONS (PCC WINDLOW) WELLEN BOVDEEN PO BOX 580	TREASURER	LINDALE	TX 75771
P60003250	WOLF, WYONING REP	ROUTE 3 BOX A15 - HELL TOWN	TORRINGTON	WY 82240
PCC C00301267	WOTE WYONING WOLF FOR PRESIDENT IN 96 AL BROWNE ROUTE 3 BOX A15 - HELL TOWN	TREASURER	TORRINGTON	WY 82240
P20001772	WORSWICK, WYTON DAWLEY UNK	PO BOX 0129	SILVER CITY	NV 89428
PCC C00298404	WORSWICK FOR PRESIDENT LEANN BADER PO BOX 0129	TREASURER	SILVER CITY	NV 89428
P40001653	YAGER, JAMES BELL IND	727 MOON ROAD	PLAINFIELD	IN 46168
P60003497	YAGER, KENNETH EDWARD SEN	2112 N 64TH	SEATTLE	WA 98103
PCC C00302150	NEW YAGER FOR PRESIDENT KENNETH EDWARD YAGER 2112 N 64TH	TREASURER	SEATTLE	WA 98103
P60004132	YOUNG, RUBIN REP	11918 S W 12TH STREET	PENNSBORO PINES	FL 33020

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ID#	NAME/PARTY	ADDRESS		
720001202	SAR. CURTIS UNK	2501 E COMMERCIAL BLVD	FT LAUDERDALE	FL 33308
PCC 000257261	COMMITTEE TO INSURE CURTIS SAR AS PRISONER FOR FEDERAL GOVERNMENT CURTIS SAR 2501 E COMM BLVD SUITE 205	TREASURER	FT LAUD	FL 33308
000002720	SWILLINGER, DANIEL IAN UNK	63 GREYLOCK ROAD	NEWTON	MA 02160
ANT 000234400	SWILLINGER FOR PRESIDENT DANIEL IAN SWILLINGER 63 GREYLOCK ROAD	TREASURER	NEWTON	MA 02160

TOTAL: 273

- 1954-55 "Presidency and Legislation," American Political Science Review, Sept. 1954, April 1955.
- 1955 "Congress and the Fair Deal," Public Policy, IX (1955).
- 1956 "The Presidency at Mid-Century", Law and Contemporary Problems, Winter, 1956.
- 1960
rev. 1990 Presidential Power, New York: Wiley.
- 1963 "Staffing the Presidency: Notes on FDR and JFK," American Political Science Review, Winter, 1963.
- 1964
rev. 1971 "Politicians and Bureaucrats" in D.B. Truman (ed.) Congress and America's Future, New York: American Assembly.
- 1966 "White House and Whitehall," The Public Interest, Fall, 1966.
- 1970 Alliance Politics, New York: Columbia University Press.
- 1971 "Afterword" (with Graham T. Allison) in Robert F. Kennedy, Thirteen Days, New York: Norton.
- 1974 "The Presidency after Watergate," British Journal of Political Science, Winter, 1974.
- 1986 "Presidents, Politics, and Analysis," The Brewster C. Denny Lecture, Graduate School of Public Affairs, University of Washington, Seattle.
- 1986 Thinking in Time (with Ernest R. May), New York: Free Press.

2. I am a member of several organizations, including the American Philosophical Society, Philadelphia, the American Academy of Arts & Sciences, Cambridge, the American Political Science Association, Washington, D.C., the International Institute for Strategic Studies, London, and the Council on Foreign Relations, New York. In 1961, I was awarded the

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Woodrow Wilson Award of the American Political Science Association. In 1982, I was awarded the Charles E. Merriam Award. In 1993, I was awarded the Hubert H. Humphrey Award of the American Political Science Association.

3. I have served the Commission on Presidential Debates ("CPD") in several different capacities, as described in the following paragraphs.

4. On July 7, 1987, CPD formed a 23-member advisory panel in order to provide guidance to it with respect to several areas, including third-party participation in CPD sponsored debates. I served on that advisory panel, which met on October 1, 1987, to discuss and advise CPD with respect to several issues, including third-party candidate participation in CPD-sponsored debates. Also on October 1, 1987, the CPD Board of Directors ("CPD Board") requested that I chair a subcommittee of the advisory committee formed to develop and recommend to the CPD Board nonpartisan criteria for the identification of appropriate third-party candidates to participate in CPD-sponsored debates.

5. After study of the issue, on November 20, 1987, my subcommittee and I reported back to the CPD Board and recommended the adoption of specific nonpartisan candidate selection criteria intended to identify those candidates with a realistic chance of being elected President or Vice President of the United States. We reported to the CPD Board that the adoption and application of such criteria would, in our view, help ensure that the primary educational purpose of CPD -- to ensure that future Presidents and Vice Presidents of the United States are elected after the voters have had an opportunity to hear him/her debate his/her principal rivals -- would be fulfilled.

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6. The indicia to be examined pursuant to the proposed criteria were, in broad terms, evidence of national organization, signs of national newsworthiness and competitiveness and signs of national public enthusiasm and concern. The CPD employed these criteria in 1988, and with minor changes, employed them in 1992 and 1996.

7. The sole objective of the criteria the advisory committee recommended to CPD was to establish a structure for the CPD debates that would further the nonpartisan educational purpose of those debates, while at the same time complying fully with applicable law.

8. In both 1988 and 1992, I chaired advisory committees that applied the CPD's candidate selection criteria and made recommendations to the CPD Board based on their deliberations. In 1988, the advisory committee did not recommend that CPD invite any non-major party candidates to participate in its debates. The 1992 advisory committee recommended that CPD invite Ross Perot and his running mate, Admiral James Stockdale, to participate in its debates based on application of the CPD's candidate selection criteria. That recommendation was made following the reconvening of the committee after Mr. Perot's re-entry into the 1992 presidential race.

9. Again, in 1996, the CPD Board asked me to act as chairman of the advisory committee that applied the 1996 candidate selection criteria. The advisory committee convened on September 16, 1996 for the purpose of applying CPD's nonpartisan candidate selection criteria to the more than 130 candidates running for the Presidency and Vice Presidency in the 1996 general election campaign. Although the candidate selection criteria do not require it to do so, the advisory committee independently applied the criteria to the Democratic and

Republican party candidates. After reviewing and discussing the facts and circumstances of the 1996 general election campaign, it was the unanimous conclusion of the advisory committee that, as of September 16, 1996, only President Clinton and Senator Dole have a realistic chance in 1996 of being elected President, and only Vice President Gore and Congressman Kemp have a realistic chance in 1996 of being elected Vice President.

10. The committee's recommendation was conveyed to the CPD Board by letter dated September 17, 1996, which is attached as Exhibit 1. The Advisory Committee's letter recognized that certain

minor party candidates . . . do have a theoretical chance of election in November, by virtue of placement on the ballots of enough states to produce an Electoral College majority. [The committee does] not, however, see their election as a realistic possibility.

Therefore, the Advisory Committee unanimously concludes at this time that only President Clinton and Senator Dole qualify for admission to CPD's debates. We stand ready to reconvene should present circumstances change.

I understand that, on September 17, 1996, the CPD Board unanimously approved our recommendation.

11. In applying the 1996 criteria to Mr. Perot and his running mate, Pat Choate, the committee considered, among other things, the percentage of the popular vote Mr. Perot received in the 1992 general election and the federal campaign funds he has received based on his 1992 performance. Nonetheless, the committee concluded, based on all of the evidence available, that "Mr. Perot has no realistic chance either of popular election in November or of subsequent election by the House of Representatives, in the event no candidate obtains an Electoral College majority." See Exhibit 1.

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12. All three CPD advisory committees on which I served were motivated solely by the desire to formulate and apply nonpartisan candidate selection criteria that would further the educational purposes for which CPD-sponsored debates will be held, and acted in good faith at all times. The committees' recommendations were not designed to support or oppose the candidacy of any particular candidate or party to serve any partisan purpose.

13. I declare under penalty of perjury that the foregoing is true and correct. Executed on September 26, 1996.


RICHARD E. NEUSTADT

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**COMMISSION ON
PRESIDENTIAL DEBATES**

971 Third Street, N.W. Suite 310 South Washington DC 20005 (202) 872-1030

October 6, 1992

VIA FACSIMILE

Mr. Robert M. Teeter
Campaign Chairman
Bush/Quayle '92
1030 15th Street, N.W.
Washington, D.C. 20005

Mr. Mickey Kantor
National Campaign Chair
Clinton/Gore '92
National Campaign Headquarters
Post Office Box 615
Little Rock, Arkansas 72203

Gentlemen:

The Board of Directors of the Commission on Presidential Debates voted today to accept your invitation to sponsor debates between the leading candidates for President and Vice President of the United States on October 11, 13, 15, and 19, 1992. The Commission's decision is based on its conclusion that the Memorandum of Understanding (the "Memorandum") executed by your respective campaigns, a copy of which has been provided to us, appears to envision debates that comport with and further the Commission's nonpartisan, educational mission.

The Commission's acceptance is subject to the following conditions and understandings:

- (1) The Commission's sponsorship is expressly contingent upon the ongoing validity of the conclusion that the debates envisioned by the Memorandum will comport with the Commission's nonpartisan educational mission;
- (2) The Commission has determined, pursuant to the recommendation of its nonpartisan advisory committee on candidate selection, that H. Ross Perot and Adm. James Stockdale should be invited to participate in the October 11 and 13, 1992 debates, respectively. The Commission will make its candidate participation determination regarding the October 15 and 19 debates after the initial debates. The Commission understands

Co-Chairman
Frank J. Edwards, Jr.
Former Republican
National Committee Chairman
Paul G. Cobb, Jr.

Member Co-Chairman
Conrad R. Paul
Randy (COP) [unclear]
Executive Director

Secretary
John C. Culver
Parade Hartman
Thomas E. [unclear]

David [unclear]
Ray [unclear]
Representative [unclear]

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Mr. Robert M. Tester
Mr. Mickey Kantor
October 6, 1992
Page 2

In all other respects, our letter of October 6, 1992 stands as submitted. If we do not hear from you to the contrary by 4:00 p.m. today, we will assume you are in full agreement and we will proceed accordingly.

Yours sincerely,

COMMISSION ON PRESIDENTIAL DEBATES

By:


Paul G. Kirk, Jr.
Co-Chairman

By:


Frank J. Fahrenkopf, Jr.
Co-Chairman

cc: R. Clayton Mulford, Esq. (via facsimile)
Bobby Burchfield, Esq. (via facsimile)
Tom Donilon, Esq. (via facsimile)

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**COMMISSION ON
PRESIDENTIAL DEBATES**

One Thirtieth St. NW • Suite 311 South • Washington DC 20004 • (412) 872-1020

October 7, 1992

VIA FACSIMILE

**Mr. Robert M. Teeter
Campaign Chairman
Bush/Quayle '92
1030 15th Street, N.W.
Washington, D.C. 20005**

**Mr. Mickey Kantor
National Campaign Chair
Clinton/Gore '92
National Campaign Headquarters
P.O. Box 615
Little Rock, AK 72203**

Gentlemen:

The Board of Directors of the Commission on Presidential Debates convened a special meeting today to review changed circumstances since our letter to you of October 6, 1992. Paragraph (2) of the aforementioned letter of October 6 is hereby amended by the Commission to provide as follows:

- (2) The Commission has determined that **W. Ross Perot** should be invited to participate in the October 11, 13, and 19 presidential debates and that **Admiral James Stockdale** should be invited to participate in the October 13 vice presidential debate.

Chairman
Paul J. Schoen
 Former Republican
 National Committee Chairman
Paul G. Kirk, Jr.
 Former Democrat
 National Committee Chairman

Honorary Co-Chairmen
Conrad A. Ford
 Former Mayor
Executive Director
Joel H. Brown

Directors
John C. Coatsworth
 Former Mayor
Thomas E. Jordan
 Former Mayor
Richard M. ...

David ...
Ray ...
 Representative ...
Governor ...

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Mr. Robert M. Teeter
Mr. Mickey Kantor
October 6, 1992
Page 2

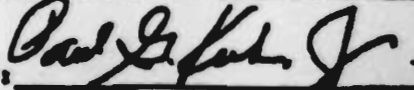
that, if it subsequently determines not to invite Mr. Perot to additional debates under its sponsorship, you each reserve the right to seek an alternative sponsor for these debates;

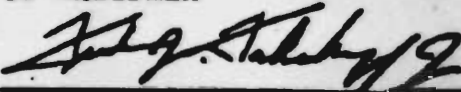
- (3) The Commission understands that Mr. Perot finds the terms of the Memorandum to be acceptable; and
- (4) The Commission has undertaken to provide an opportunity for the University of Richmond community to participate in the October 13 debate. The Commission's acceptance is subject to the understanding that suitable arrangements will be made for a modest number of representatives of the University of Richmond to attend the debate in Richmond. The Commission, working with University officials, will take all reasonable measures to attempt to ensure that the attendees do not interfere with the debate.

Please advise us at your earliest opportunity if these conditions are acceptable to you.

Yours sincerely,

COMMISSION ON PRESIDENTIAL DEBATES

By: 
Paul G. Kirk, Jr.
Co-Chairman

By: 
Frank J. Fahrenkopf, Jr.
Co-Chairman

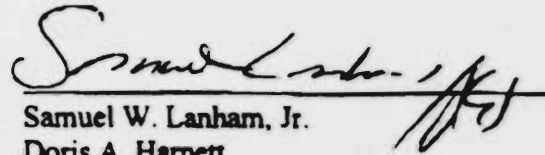
cc: R. Clayton Mulford, Esq. (via facsimile)
Bobby Durchfield, Esq. (via facsimile)
Tom Demilon, Esq. (via facsimile)

b. said regulation, as applied to Plaintiffs was applied incorrectly, arbitrarily and capriciously.

WHEREFORE, Plaintiffs pray this Court enter an order declaring 11 C.F.R. § 110.13(c) unconstitutionally void for vagueness in violation of the First and Fourteenth Amendments.

Dated: September 24, 1996

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 1996, a copy of the foregoing PLAINTIFFS' AMENDMENT TO ITS VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF was served on the following:

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COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. JOHN HAGELIN, DR. MIKE
TOMPKINS, and the NATURAL
LAW PARTY,

Civil Action No. 96-2132

Plaintiffs,

vs.

Washington, D.C.
October 1, 1996
10:05 a.m.

FEDERAL ELECTION COMMISSION,
and COMMISSION ON PRESIDENTIAL
DEBATES,

Defendants.

-----X

ROSS PEROT, PAT CHOATE, and
PEROT '96, INC.,

Civil Action No. 96-2196

Plaintiffs,

vs.

FEDERAL ELECTION COMMISSION,
and COMMISSION ON PRESIDENTIAL
DEBATES,

Defendants.

MORNING SESSION

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(APPEARANCES CONT'D. ON PAGE 2)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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ALSO PRESENT:

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JANET H. BROWN

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1 since then?

2 MR. RASKIN: Which claims, Your Honor?

3 THE COURT: Your constitutional issues you have raised.

4 MR. RASKIN: About the regulation?

5 THE COURT: Yes.

6 MR. RASKIN: That is right, Your Honor.

7 THE COURT: I'm just wondering on the timing of this.

8 MR. RASKIN: Yes. Well, my colleague and co-counsel,
9 Mr. Sargentich, will address this more carefully when he argues
10 about jurisdiction. I think that that's a jurisdictional issue.

11 But the central point is that the obligation should not
12 be put on a candidate for office to run around the country
13 challenging every unconstitutional regulation; that is, Mr. Perot
14 was running for president, and the point was he was hoping that
15 the law would be enforced. It's not up to the citizenry to make
16 sure that the government is going to enforce the law and the
17 Constitution in the proper way.

18 But beyond that, Your Honor, I would prefer to defer to
19 my colleague, who will follow me in just a moment.

20 THE COURT: All right.

21 MR. RASKIN: So the statute -- so the regulation allows
22 private corporations to base their decisions about who should
23 participate explicitly on political party affiliation as long as
24 it's not the exclusive factor. It also charges corporations to
25 use objective criteria in selecting the candidates who will

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1 participate, an absurdly loose instruction which ignores the
2 entire purpose and meaning of the ban on corporate intervention
3 in presidential campaigns and allows corporate-funded debates
4 that clearly are inconsistent with the statute.

5 Now, Your Honor, there are only two plausible
6 constructions of the statute, two plausible constructions of what
7 the statute requires with respect to debates, and either
8 instruction compels this Court to strike down the regulation.

9 The first construction is that corporations may not
10 spend any money at all in connection with presidential election
11 debates, period. This is probably the most faithful reading of
12 the statute, since Congress meant in FECA not simply to prevent
13 corporations from using their funds to favor one candidate over
14 another, but generally to break the nexus between corporations
15 and presidential elections. Congress wanted to prevent the
16 fusion of corporate power with the electoral process even on a
17 nonpartisan basis.

18 THE COURT: What is the exception in the law for then,
19 the nonpartisan activity designed to encourage individuals to
20 vote?

21 MR. RASKIN: You mean in the statute?

22 THE COURT: Yes.

23 MR. RASKIN: Yeah. Well, it's okay internally; that
24 is, the statute says that corporations may proselytize their own,
25 their own corporate personnel and their stockholders, but I think

1 you might be reading from -- oh, are you referring -- well, that
2 is not explicitly designed for corporations.

3 THE COURT: 2 U.S.C. 931(9)(B)(ii).

4 MR. RASKIN: Okay. Yes. And this is the provision
5 that's not cited by the FEC, but it is cited by the CPD --

6 THE COURT: Right.

7 MR. RASKIN: -- in defense of its regulation.

8 THE COURT: Yes.

9 MR. RASKIN: Your Honor, that provision says nothing
10 about debates. Moreover, the debates regulation does not say
11 anything about registering people to vote or people voting, and
12 moreover, in these debates, no one is ever registered to vote.
13 The debates usually take place long since the deadlines have
14 passed for voters to register to vote.

15 So, I mean, I admire the acrobatics in trying to bring
16 the debates under that provision, but it simply won't wash. This
17 statute is very clear that corporations are not to be involved
18 unless they're dealing with their own members.

19 Now the second plausible construction of the statute
20 was the FEC's own interpretation in the 1970s, when the act was
21 first written, when it was interpreting it as a matter of
22 original impression. Looking at this categorical language,
23 seeing no exception for debates, the FEC took the position that
24 the act absolutely prohibited corporations from spending money on
25 any candidate debates that did not invite every legally qualified

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1 candidate to participate.

2 Any corporation that put together a so-called debate
3 between two candidates when it was a five-candidate field or six-
4 candidate field was making an illegal campaign contribution to
5 the two candidates who got the invitation.

6 The FEC told the League of Women Voters that the only
7 corporate-sponsored debates allowed under the statute are truly
8 nonpartisan, educational affairs in which all candidates have a
9 seat at the table. The league was allowed by the FEC to use
10 corporate contributions for its 1976 primary debates only because
11 they invited all candidates to the forums, whether they were big
12 names like Scoop Jackson or unknown fringe candidates like Jimmy
13 Carter.

14 Now most importantly in the general election, when the
15 league planned its two-person debate between Ford and Carter,
16 just like the one scheduled for this Sunday between Dole and
17 Clinton, the FEC ruled that while the act could not stop the
18 league from, quote, sponsoring such an exclusionary bipartisan
19 debate, quote, the league could not use its own money to pay for
20 them, nor could it use corporate contributions of the sort it
21 relied on for the primary forums, that is, where it had invited
22 all candidates.

23 Because the debates featured just two of the citizens
24 running for office and closed out many legally qualified
25 candidates, the FEC found they were just dressed-up campaign

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1 contributions to or expenditures on behalf of the two parties
2 invited. The FEC's position was so categorical that the National
3 Journal observed critically, quote, events are nonpartisan, the
4 FEC seems to be saying, only if every candidate, major and minor,
5 is invited to appear, and corporations may help to sponsor such
6 events only if all 350 candidates appear.

7 Now we have a lawful way to make the FEC's original
8 doctrine, which is understandable, less absolute than it
9 originally wanted it still without descending into the current
10 FEC's wholesale and ultra vires abandonment of the statute, whose
11 relevant terms have not changed a word since the FEC interpreted
12 it 20 years ago. Our approach is clean, Your Honor, and it goes
13 to the questions that you are addressing to counsel for Natural
14 Law Party.

15 Corporations that want to spend money on general
16 election presidential debates must remain politically neutral
17 within the meaning of the statute by inviting all candidates who
18 are, one, constitutionally eligible to serve as president under
19 Article II, Section 1; two, qualified on sufficient state ballots
20 that it is possible for them to collect a majority in the
21 Electoral College; that is, they could win; and three, they have
22 received federal funds under the General Election Presidential
23 Campaign Fund Act.

24 We don't need to leave it up to a random group of
25 pundits and pollsters whether a candidate is serious, because in

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1 this act, Congress itself defied the objective seriousness of
2 minor party candidates by allocating them millions of dollars of
3 our taxpayer money if they reached 5 percent of the popular vote
4 in the last election, and they get money equal to the major
5 parties if they reach 25 percent, but the FEC and the CPD are
6 taking the position that even if they scale those hurdles, they
7 could still deny them a right in the debate even -- simply
8 because some pundit or pollster that happens to be on their
9 Rolodex says that they don't make the grade.

10 The statutory definition of seriousness in FECA is
11 already embodied in law, and it's the only one that may lawfully
12 be imposed by the FEC or any private actor purporting to operate
13 under the authority of this statute.

14 Now as a practical manner, Your Honor, because
15 obviously we're dealing with a practical problem with the debates
16 on Sunday, there are only three candidates who meet these
17 criteria: Bill Clinton, Robert Dole, and Ross Perot, and I put
18 them in alphabetical order. But let's assume that the regulation
19 allowing corporate debate sponsors to choose their own objective
20 criteria has a basis somewhere in the statute. Well, then this
21 regulation is profoundly unconstitutional. It's so bad, as one
22 of my research assistants said, it's almost like an issue spotter
23 on a constitutional law exam.

24 First of all, on its face, it authorizes corporations
25 to practice a viewpoint-based partisan discrimination by saying

1 that political party membership may not be the sole criterion for
2 a candidate selection, but may be used as one factor to be
3 considered among many.

4 Well, imagine if a government agency decided that
5 citizens could receive some public benefit, say, health care or a
6 public job or the right to speak on the basis of a process where
7 their political party affiliation was one relevant factor.
8 Indeed, the Supreme Court has been systematically striking down
9 the use of political party as the basis for the distribution of
10 public benefits. I direct your attention to the Elrod and Rutan
11 cases.

12 Secondly, more importantly, the directive to use
13 objective criteria is hopelessly vague and essentially delegates
14 standardless discretion over fundamental political rights to a
15 private corporation and the political parties it chooses to ally
16 with.

17 The scheme is similar to the one struck down in Larkin
18 v. Grendel's Den, where Massachusetts gave churches and schools
19 the right to veto liquor licenses granted to any premises within
20 500 feet of them. The court said such a delegation on its face
21 violated the First Amendment, because these private actors could
22 decide on an ideological and non-neutral basis even if there had
23 been no proof in court that they had. It struck it down on its
24 face.

25 It's also similar to the Lakewood decision, where the

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1 Supreme Court struck down a municipal ordinance that gave the
2 mayor the right to decide which street corners news racks could
3 be placed on, requiring only a reasonable basis to be stated by
4 the mayor for his decision. This scheme clearly vested
5 discretion to decide on a potentially non-neutral and politically
6 biased basis, and the court struck it down on its face. As it
7 said, without standards governing the exercise of discretion, an
8 official may decide who may speak and who may not based upon the
9 content or viewpoint of the speaker.

10 And that is the problem here, Your Honor. As the CPD
11 puts it beautifully in its brief summing up the whole case, the
12 regulations do not define the phrase "objective criteria" at
13 all. There are no standards governing the exercise of its
14 discretion.

15 Because "objective" is such a nice-sounding word, it
16 may be hard to see at first blush what's wrong with it, but it
17 becomes clear that there are two radically different kinds of
18 standards that can be and are being articulated and enforced
19 under this statute. They both travel under the name
20 "electability," but one is constitutional, Your Honor, and one
21 is not.

22 The first theory of electability is the one I outlined
23 just before: Are you eligible to be president, can you win the
24 Electoral College, have you qualified for federal funding under
25 the statute that most closely defines seriousness.

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1 THE COURT: So it's strictly a mechanical, number-
2 counting criteria, that's all? There's nothing else allowed to
3 inform that decision?

4 MR. RASKIN: That's absolutely right, because the
5 minute you allow arbitrary and subjective criteria into it, then
6 viewpoint and content-based discrimination take over, and I think
7 that we have examples of that in this case.

8 THE COURT: All right. You've got a couple more
9 minutes.

10 MR. RASKIN: Okay. Let me just describe quickly what's
11 wrong with the other interpretation of objective criteria. Even
12 if it's implemented in good faith, as perhaps it was in this
13 case, and we're willing to assume it's implemented in good faith,
14 this standard is not one of legal electability. It's of
15 political electability.

16 On this theory, what matters is where you stand in the
17 polls, with the pollsters, the pundits, the journalists, how many
18 inches of newspaper you get, the Washington Bureau Chiefs, and so
19 on. Now as seductive as this definition may be inside the
20 beltway, this version of electability is a blatant, per se
21 violation of the First Amendment, and I think this is the heart
22 of the case.

23 First, as the Eighth Circuit found, these judgments are
24 so inherently and arbitrary and speculative as to provide no
25 secure basis for exercise of governmental power consistent with

1 the First Amendment. Second, it's anti-democratic to use
2 predictions of election results to restrict debate. The American
3 people themselves have the right to hear the candidates and to
4 decide for themselves who they want. They are the real party in
5 interest here.

6 The court said in Red Lion it's the right of the
7 viewers and listeners, not the right of the broadcasters, which
8 is paramount, and the White primary cases tell us you cannot
9 substitute an exclusionary private selection process for an open
10 public election process.

11 THE COURT: Well, so Forbes, the Forbes case just
12 doesn't count in your analysis? I'm not sure I follow this.
13 You're saying that this debate, this is not a private forum; this
14 is a public forum basically to apply the First Amendment
15 analysis.

16 MR. RASKIN: Well, here I'm making the argument that if
17 the FEC wants to develop a regulation which says use of objective
18 criteria, there are only certain objective criteria that are
19 constitutionally permissible.

20 THE COURT: But if this is strictly a private
21 operation --

22 MR. RASKIN: Oh, Your Honor, I tried to deal with that
23 at the beginning, when I showed if the, if a group wants to go
24 out and sponsor a debate and they're not covered by any law,
25 Mr. Perot has absolutely no First Amendment right to be there or

1 statutory right. What we're talking about is the interpretation
2 of the Federal Election Campaign Act.

3 THE COURT: I understand.

4 MR. RASKIN: Now third, let's say we had a computer, an
5 election Web site that could tell us with absolute certainty who
6 was going to win. It would still violate the constitutional
7 rights of candidates to exclude them from debates because they
8 were going to lose. Government could not pass a law that would
9 require Ross Perot and Bob Dole to return their federal funds,
10 say, four weeks before the election because they're behind more
11 than 15 points in the polls, and they both are.

12 Losers have the same First Amendment rights that
13 winners do, and there's a critical First Amendment reason why.
14 In politics, winning is not everything. Candidates run for a lot
15 of legitimate reasons, including raising issues and ideas that
16 others would prefer to ignore or to establish legitimacy for a
17 party or a future run for office.

18 Perot raised the deficit issue in the 1992 campaign.
19 He got 19 percent of the vote, never having run for office
20 before, and he made the deficit public policy issue No. 1 in the
21 Clinton Administration. He also launched a new party that has
22 the potential to change the direction of America.

23 Another example comes from the last century and the
24 most famous debater in our history, Abraham Lincoln. In 1858,
25 after having debated Stephen Douglas on seven occasions all over

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in a context that is beyond the scope of this rulemaking. Therefore, we recommend that they be addressed in a separate rulemaking. This will be discussed further in Part III, section H.11., below. A separate NPRM is also warranted to address cablecasters sponsoring candidate debates, and to seek additional comments on whether to initiate a rulemaking concerning candidate appearances in churches and religious facilities.

I. OVERVIEW OF AREAS ADDRESSED IN THE PROPOSED RULES

The NPRM sought comments on proposed revisions to 11 CFR 109.1, 114.13, and 114.1 through 114.4, 114.12 and proposed new section 114.10 in light of recent judicial interpretations of 2 U.S.C. 441b. This section of the Federal Election Campaign Act of 1971 ("the Act" or "FECA") generally prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. In particular, the NPRM sought comments on the following changes in the regulations:

1. Replacing the partisan/nonpartisan standards in current 11 CFR Part 114 with new language at draft section 114.2 prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. This new language would apply only to expenditures, since NCFL did not limit the prohibitions on contributions.

2. Revising the definition of express advocacy at 11 CFR 109.1 to provide further guidance on what types of communications constitute express advocacy, in accordance with the judicial interpretation in Walley v. Voth, 434 U.S. 1, 44 n. 52 (1977), and NCFL and Federal Election Commission v. Curtis, 100 F.2d 1011, 1012, 117 F.2d 1011, cert. denied, 108 U.S. Ct. 151 (1941).

3. Revising the provisions regarding candidate debates, candidate registration and voting, and conducting voter registration drives in sections 114.3 and 114.4 to revise the partisan/nonpartisan standard with new language and to resolve a number of questions that have arisen since the NCFL decision.

4. Revising the provisions to address activities undertaken by candidates and universities, the use of logos, endorsements of candidates, and the making of contributions.

5. Revising the language to 11 CFR 114.2, 114.3 and 114.4 to clarify the question of when election-related communications by a corporation or labor organization will be considered and therefore in-kind contributions.

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6. Adding new 11 CFR 114.10 to implement the NCPL Court's conclusion that nonprofit corporations possessing certain essential features (hereinafter "qualified nonprofit corporations") may not be bound by the restrictions on independent expenditures contained in section 441b. This new section would expressly permit qualified nonprofit corporations to use general treasury funds for independent expenditures, and would set out the reporting obligations for qualified nonprofit corporations that make independent expenditures.

II. BACKGROUND ON THE COURT DECISIONS AND THE RULEMAKING

In Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986), the Supreme Court held that expenditures must constitute express advocacy to be subject to the prohibition of section 441b. NCPL at 249. In addition, the Supreme Court distinguished between different types of corporations in considering the constitutionality of 2 U.S.C. 441b. The Supreme Court concluded that nonprofit corporations having certain essential features do not have the potential to exert an undesirable influence on the electoral process. Thus, they do not implicate the concerns that legitimately prompted regulation by Congress. The Court cited "three features essential to [its] holding that the [NCPL] may not constitutionally be bound by § 441b's restriction on independent spending." 479 U.S. at 264. First, NCPL was formed for the express purpose of promoting political ideas and cannot engage in business activities. Second, it has no shareholders or other persons affiliated so as to have a claim on assets or earnings or other economic disincentives for disassociating with the corporation. Third, it was not established by a business corporation or a labor union, and it has a policy of not accepting contributions from such entities. NCPL at 264. The Court concluded that section 441b's prohibition of independent expenditures is unconstitutional as applied to nonprofit corporations with these three characteristics.

The NCPL case involved a nonprofit corporation organized to promote specific ideological beliefs. NCPL financed its activities with voluntary contributions from members of the public who shared its beliefs, and with other fundraising activities, such as bake sales and raffles. The case arose because the corporation expended general treasury monies for the production and public distribution of a special newsletter which indicated whether certain clearly identified federal candidates supported or opposed its positions on particular issues. The newsletter also urged readers to vote "pro-life."

When the case reached the Supreme Court, NCPL argued, inter alia, that its special newsletter did not expressly advocate the election or defeat of a clearly identified federal candidate, and that only communications containing express advocacy should be prohibited under 2 U.S.C. 441b. First, the Supreme Court stated that "an expenditure must constitute 'express advocacy' in order

to be subject to the prohibition of § 441b." MCPL at 249. The Supreme Court then ruled that MCPL's publication "goes beyond issue discussion to express electoral advocacy. ... The 'Special Edition' thus falls squarely within § 441b, for it represents express advocacy of the election of particular candidates distributed to members of the general public." Id. at 249-50.

Based on this portion of the decision, the National Right to Work Committee filed a Petition for Rulemaking urging the Commission to revise 11 CFR 114.3 and 114.4 to conform to the statement in the MCPL opinion that "express advocacy" is the appropriate standard for determining when independent communications by corporations and labor organizations are prohibited under section 441b. See Rulemaking Petition; National Right to Work Committee, Notice of Availability, 52 FR 16275 (May 4, 1987). Thus, the petition took the position that the Commission's partisan/nonpartisan standards governing corporate and labor organization communications to the entity's restricted class and the general public are unconstitutional under MCPL.

The Commission subsequently sought public input on whether to initiate a rulemaking to determine the extent to which the MCPL case necessitated changes in the Part 114 rules governing independent expenditures by qualified nonprofit corporations possessing the three essential features, changes in the scope of the "independent expenditure" provisions at 11 CFR Part 109, or the implementation of an "express advocacy" test for all corporations and labor organizations covered by 11 CFR Part 114. An Advance Notice of Proposed Rulemaking, published on January 7, 1988 (53 FR 416), presented these issues. The Commission indicated in the Advance Notice that it viewed the express advocacy statement in MCPL as dicta, noting that the statement was unnecessary to the resolution of the case, and thus did not represent a final resolution of the issue by the Court. ANPRM, 53 FR 416. The Advance Notice also raised the following ancillary questions concerning this portion of the opinion: 1. Should the Commission revise its regulations at that time, or wait until the Court has an opportunity to clarify this area in a case where the issue is squarely presented? 2. Should the Commission revise the 441b regulations to distinguish between independent expenditures that solely involve communications and other activities where communication plays little or no part? 3. Can the nonpartisan standard in 11 CFR 114.4 be interpreted consistently with an express advocacy test, thus eliminating the need for regulatory revision? 4. To what extent and how should the Commission revise the definition of "expressly advocating" in 11 CFR 109.1(b)(2) in light of the MCPL and Furgatch opinions?

The Commission received over 17,000 comments in response to the Advance Notice. Nearly all of the commenters submitted virtually identical letters urging the Commission to act favorably on NMNC's rulemaking petition, and to limit application of its regulations to communications expressly advocating the election or defeat of candidates so as to avoid impinging upon First Amendment.

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rights. However, the Commission received detailed comments from seven sources, and also held a public hearing on November 16, 1988 at which two commenters testified as to how the Commission should implement the NCPL opinion. The detailed comments and testimony reflect a wide range of views as to how the Commission should proceed in response to the NCPL decision.

Some commenters supported adoption of an express advocacy standard and opposed the Commission's position that this statement is dicta that need not be followed. However, these commenters disagreed as to how broadly or narrowly to define express advocacy. Some believed that the concept should be narrowly limited to the phrases enumerated by the Supreme Court in Buckley. However, others pointed to statements in the NCPL and Furgatch opinions to support a substantially broader interpretation of express advocacy.

The Commission also received suggestions concerning election-related activities by business corporations or labor unions where no communication is involved, such as providing the use of facilities to a candidate's campaign. One possibility suggested was to treat such activity as an impermissible in-kind contribution made in connection with a federal election, but not to treat it as an impermissible expenditure. Another suggestion was to adopt an express advocacy standard for contributions as well as expenditures and to treat providing corporate or union facilities as a form of express advocacy. Finally, the Commission notes that two other commenters, including one of the testifying witnesses, favored simply retaining the current statutorily-created prohibition against both contributions and expenditures in connection with federal elections, while creating an exception allowing qualified nonprofit corporations to make independent expenditures.

In subsequent litigation, two lower courts relied upon an express advocacy standard to evaluate corporate communications under section 441b of the FECA. In Faucher v. Federal Election Commission, 743 F. Supp. 64, (D.Me. 1990) ("Faucher"), the court invalidated the Commission's voter guide regulations at 11 CFR 116.4(b)(5)(1). The Court concluded that the Commission's voter guide rule is not authorized by the FECA "as interpreted by the Supreme Court in [NCPL], to the extent that the regulation makes the permissibility of voter guides . . . hinge upon on whether such guides are 'nonpartisan' in a broad sense that includes issue advocacy rather than the narrower test of 'express advocacy.'" Id. at 72. Similarly, in Federal Election Commission v. National Organization of Women, 713 F. Supp. 428 (D.D.C. 1989) ("NOW"), another district court applied an express advocacy test to determine whether section 441b permitted an incorporated membership organization to use general treasury funds for membership recruitment letters directed to the general public. The court concluded that the letters in question did not go beyond issue discussion to express electoral advocacy. The Commission appealed both of these lower court decisions.

In addition, the Supreme Court provided further guidance regarding the exception for qualified nonprofit corporations through its interpretation of a Michigan statute very similar to section 441b of the FECA. Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) ("Austin"). This case prompted the Commission to issue a second notice seeking further comments on what changes to its regulations are warranted. 55 FR 40397 (Oct. 3, 1990), comment period extended 55 FR 45809 (Oct. 31, 1990). This notice also welcomed comments on the express advocacy questions raised by the Faucher and NOW decisions.

Eight commenters responded to the second notice, including some who reiterated their earlier positions. Most, but not all, of the commenters urged the Commission to adopt an express advocacy test for expenditures under section 441b. One comment favored the development of definitions which precisely set out what activity will be deemed within the scope of the FECA under such a standard, while another comment supported the use of a case by case approach. There was also some support for revising the regulations to reflect the approach to express advocacy taken in the Furgatch opinion. The Commission also received specific suggestions for delineating the class of nonprofit corporations falling within NCFL's exemption. Two comments advocated a broad scope for the exemption created in NCFL, while a third comment emphasized the narrowness of the group of organizations possessing the three essential features delineated in NCFL and Austin.

Subsequently, the Court of Appeals for the First Circuit upheld the District Court's decision in Faucher. Faucher v. Federal Election Commission, 928 F.2d 468 (1st Cir. 1991), cert. denied, U.S. 2-, 112 S. Ct. 79 (1991). Consequently, the Commission sought certiorari in Faucher, arguing that the express advocacy standard should not be made applicable to the 441b prohibition on corporate expenditures. On October 7, 1991, the Supreme Court ~~denied~~ the petition for certiorari, and thus ~~declined to consider~~ ~~denied~~ ~~or otherwise modifying~~ the statements it made in NCFL regarding the scope of section 441b. Accordingly, the Commission moved for the dismissal of its appeal in NOW and resumed consideration of several substantial changes to its regulations necessitated by the NCFL decision.

The Commission published a Notice of Proposed Rulemaking on July 29, 1992 seeking public comment on draft rules codifying the reduced scope of the prohibition on corporate expenditures. The proposed language set forth the general rule that corporations and labor organizations are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate. The draft regulations also sought to establish criteria for determining whether nonprofit corporations qualify for the exemption from section 441b's prohibition on independent expenditures.

The Commission received 35 separate comments on the NPRM from 32 commenters between July 29, 1992 and November 23, 1993. The Commission also received 149 form comments during that period. The Commission held a public hearing on October 15 and 16, 1992, at which 18 of these commenters testified on the issues presented in the NCFL decision and the proposed rules. The comments and testimony are discussed in more detail below.

III. DISCUSSION

A. The Express Advocacy Standard

The draft final rules incorporate an express advocacy standard in several sections of 11 CFR Part 114. First, new language in section 114.2 prohibits corporations and labor organizations from making expenditures for communications to the general public that expressly advocate the election or defeat of a clearly identified candidate, group of candidates, or candidates of a clearly identified political party.¹ The express advocacy standard in the final rules would apply to expenditures, but not contributions. The current prohibition against contributions made by corporations and labor organizations in connection with federal elections remains the same. Most, but not all, commenters supported the adoption of an express advocacy standard for evaluating expenditures under section 441b of the FECA.

The provision prohibiting expenditures for communications containing express advocacy applies to all corporations and labor organizations except for qualified nonprofit corporations meeting the criteria set out in new section 114.10. Thus, these qualified nonprofit corporations may make expenditures for communications to the general public which contain express advocacy, including registration and voting communications, official registration and voting information, voting records and voter guides, if made independently of any candidates. However, if the qualified nonprofit corporation coordinated these activities with candidates, it would be subject to the rules set forth in section 114.4 regarding coordination, and could not include express advocacy if the communication is directed beyond the restricted class. Coordination may compromise the independence of the communications and possible future communications, thereby resulting in prohibited in-kind contributions.

The draft final rules preserve the current distinction between communications to the restricted class (set forth at 11 CFR 114.3) and communications beyond the restricted class (set

¹ Please note that some portions of the regulations refer to "communications containing express advocacy." This term has the same meaning as the references elsewhere to "communications expressly advocating the election or defeat of a clearly identified candidate, group of candidates, or candidates of a clearly identified political party."

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this will result in prohibited in-kind contributions, and will compromise the independence of future communications to the general public. For example, a prohibited in-kind contribution would result if a memorandum is prepared and distributed after consulting with the candidate regarding his or her plans, projects or needs regarding the campaign. Please note that, in the case of a communication just to the restricted class, coordination will not cause that activity or future communications to the restricted class to be considered in-kind contributions. However, such coordination may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures to those outside the restricted class in the future. Reference to the definition of expenditure, which is found in 114.1, would also be added in section 114.2 for clarity.

The provisions in section 114.3(a)(1) regarding communications to the restricted class would be revised to explicitly state that election-related activities described in this section may be coordinated with candidates and political committees. For example, they may involve discussions with campaign staff regarding a candidate's plans, projects, or needs. While such coordination will not affect subsequent activities directed only to the restricted class, communications to the restricted class that are based on a candidate's plan, projects and needs may influence the substance of subsequent communications to the general public. The proposed revised section 114.4, communications to the general public, is based on a candidate's plan, projects and needs, regarding the independence of communications to the general public, but would not apply to communications to the restricted class.

Additional proposed rules regarding candidate debates, candidate appearances, candidate appearances, voting records, endorsements, and issue-driven, and other activities are described below.

B. Section 114.4 (General Public)

The proposed rule regarding candidate debate provisions in section 114.4(2) and 116.4(2) by deleting the current prohibition on partisan, and replacing it with a prohibition on partisan advocacy by the staging organization. The proposed rules also addressed the relationship between the staging organization and the candidate regarding coordination. In response to the comments received on this topic, this Office recommends revising the final rules in a number of significant respects.

(1) Definition of Staging Organization

Section 110.15(a) of the attached rules would address several issues that have been raised regarding nonprofit groups and media organizations that wish to be staging organizations for candidate debates. First, this provision was rewritten to clarify that nonprofit organizations described in 26 U.S.C. 501(c)(3) and (6)(4) may stage debates even if they have not received official confirmation from the Internal Revenue Service of their status as nonprofit organizations. The current language may be confusing because it describes these entities as "exempt from federal taxation", when they may be required to pay taxes on their nonexempt function income. Please note that under section 110.13, it is possible for a candidate debate to be sponsored by multiple staging organizations. The Internal Revenue Service commented that while the requirements in the FEC's rules are not identical to the factors the Service considers, they do not conflict with the Service's rules regarding political activity carried out by 501(c) organizations. Another commenter questioned the reason for disqualifying organizations from staging debates if they endorsed candidates, as long as the debate is fair. This Office recommends retaining this requirement because it is needed to ensure the integrity of candidate debates.

Section 110.13(a)(2) follows the current provision by indicating that broadcasters and the print media may stage candidate debates, but it does not indicate whether local cable stations or cable networks may stage debates. This question was not presented in the NRM and was not discussed in the comments. Thus, we believe it should be raised in a separate NRM. It is an area that is currently subject to any changes, and this Office would want to consult with Federal Communications Commission staff.

The comments also raised the issue of the term "non profit" to describe the staging organization. It is necessary to determine what is a non profit organization. The first amendment to the rules regarding staging organizations was the first amendment to the rules regarding staging organizations and media organizations. The first amendment to the rules regarding staging organizations and media organizations is contained in the first amendment to the rules regarding staging organizations and media organizations, which appear at 44 Fed. Reg. 76734 (Dec. 27, 1979). These rules were transmitted to Congress on December 28, 1979, together with the Explanation and Summary. They became effective on April 1, 1980, after neither House of Congress disapproved them under 2 U.S.C.

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438(d)(2).² This is, as the Supreme Court has noted, an "indication that Congress does not look unfavorably" upon the Commission's construction of the Act. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34 (1981). See also, U.S. v. Wilson, 343 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Accordingly, the draft final rules would follow the current provisions by retaining the term "bona fide" to describe newspapers and magazines that may stage candidate debates.

Finally, please note that the purpose of section 110.13 and 114.4(f) is to provide a specific exception to permit certain types of corporations to stage debates, without being deemed to have made contributions to the candidates taking part in the debate. Thus, individuals and unincorporated entities wishing to stage debates are not covered by the exception.

(2) Debate Structure and Requirements

This Office recommends modifying the requirements in section 110.13(b) regarding the structure of candidate debates by eliminating the proposed restriction on discussing campaign strategy and tactics, and by adding language focusing on whether there was coordination in ~~advance~~ of the candidate's plans, projects or needs relating to the campaign. These changes recognize that a limited amount of contact with candidates is necessary to conduct debates. The comments were critical of the original proposal.

The draft final rules indicate that staging organizations may not expressly advocate in support of or opposition to any clearly identified candidate during the debates. This restriction applies during the entire event, including any pre-debate or post-debate commentary and analysis. However, a news organization that stages a candidate debate may publish editorial containing express advocacy with respect to candidates within the definitions of contribution and campaign activity under 100.7(b)(2) and 100.8(b)(2).

The final rules have revised the requirements regarding debate structure to clarify that staging organizations may not manipulate the debate by allocating the time unequally between the candidates or by giving only one candidate advance information as to the nature of the topics to be covered or the specific questions to be asked.

² An earlier version of the candidate debate rules was disapproved by Congress on September 18, 1979. 44 Fed. Reg. 52348 (July 9, 1979)

2. Candidate Appearances (11 CFR 114.3(c)(2) and 114.4(b))

(1) Notifying and Inviting Other Candidates; Audience

The Commission sought comments on several questions regarding corporate and labor organization funding of candidate appearances before the restricted class and other employees, and on several possible amendments to the regulations at 11 CFR 114.3(c)(2) and 114.4(b).

Section 114.4(b), as set out in the NPRM, followed the current rules at 11 CFR 114.4(a)(2) by allowing rank and file employees who are not in the restricted class to attend candidate appearances organized by corporations or labor organizations. In situations where one candidate appears at a corporate or labor organization event, the proposed rules in section 114.4(b) followed the current provisions by requiring corporations and labor organizations to let the other candidates for that office come and speak if they so request. However, comments were sought on possibly requiring a corporation to notify the other candidates in advance whenever they invite a candidate to appear. Prior activities would provide the other candidates with a real opportunity to request comparable appearances. In cases where a candidate comes to their home or corporate premises, without a prior invitation, notice could be given to the other candidates as soon as possible. However, the commenters expressed concern that such a requirement would be burdensome. Instead, the draft final rule would require the candidate to be notified by requiring corporations and labor organizations to do so in advance, upon request. In situations where a candidate would remain on the premises, notice could be given to all candidates for the event and they could appear, upon request. Also, the number of presidential appearances...

...language in section 114.4(b)(1) regarding the structure or organization of the event. For example cited was giving equal time to one candidate but not to others. In situations where candidates appear after a labor organization event, in response to another comment the Commission considered the format and timing of a candidate's appearance. The Commission is revising the language in section 114.4(b)(1) to clarify that candidates cannot be given substantially unequal amounts of time or locations for their appearances.

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The proposed rules also sought to replace the current language in section 114.3 allowing "limited invited guests" to attend candidate appearances with more specific language covering guests who are being honored or speaking or participating in the event. In response to a concern of one commenter, this change has also been made in section 114.4(b). Another commenter was concerned that the provision in section 114.3 would interfere with its ability to allow its members to attend. Under these provisions, all those who qualify as members, and are therefore in its restricted class, would be able to attend.

(2) Collection of Contributions by Candidates and Party Representatives During the Appearance

Another question presented in the NPRM was whether the candidate or party representative may solicit and collect contributions during an appearance before either the restricted class or all employees. This is specifically allowed under current section 114.3(d)(1) for appearances before the restricted class. There is no provision in section 114.4 either allowing or disallowing this activity when the audience extends to all employees. The NPRM sought comments on whether the candidate should be able to pass the hat or place donation boxes in the room. Both the present and the proposed language in section 114.4 prohibits the corporation or labor organization from soliciting contributions during appearances by candidates or party representatives. The new rules in section 114.3(d) also incorporated the established policy that corporations and labor organizations are permitted to facilitate the making of contributions to candidates or political committees other than their own. The proposed rules would allow envelopes for contributions to be distributed to the audience. The proposed rules would also allow candidates to use donation boxes without this being treated as a solicitation by the corporation or labor organization.

The proposed rules would allow candidates to request contributions from the audience. The rules needed to clarify that this request is not a solicitation by the corporation or labor organization. The Internal Revenue Service found no conflict between the proposed rules regarding candidate appearances and its rules regarding solicitation.

Section 114.3(d)(2) of the final rules provides that a candidate or party representative may ask for contributions and may accept contributions from the audience, such as by passing the hat or mailing address. However, this section also provides that candidates and party representatives may not solicit contributions during the event. A reference in section 114.3(d)(2)(iv) would be added to indicate that this rule applies to appearances before the restricted class, and that contributions are not in the restricted class. The proposed rules would also allow the candidate or the campaign staff to collect contributions during the event.

would, in essence, turn the candidate appearance into a fundraising event sponsored by the corporation or labor organization. In both situations, the corporation or labor organization also may not collect these contributions.

(3) Presence of the News Media

Several issues have arisen regarding section 114.3(c)(2), which governs the presence of news media at candidate appearances before only the restricted class. For example, a news organization may wish to reprint or broadcast the candidate's appearance in its entirety. Concerns have been raised that a candidate appearance before a corporation's or labor organization's restricted class would be transformed by this type of level-to-level coverage into a general public appearance. Accordingly, the Commission sought comments on two alternative proposals. Under Alternative C-1, such coverage was contemplated for appearances before the restricted class, as well as those to the other employees, provided that two conditions are met. First, if the corporation or labor organization permits one media representative to cover the appearance, all bona fide media organizations must be given the opportunity to cover the event. This could be accomplished through pooling arrangements, if necessary. Secondly, if the corporation or labor organization permits the news media to cover an appearance by one candidate, the news media must be given the opportunity to cover all other candidates who appear. Alternative C-2 indicated that the corporation or labor organization may not permit the media to cover such candidate appearances before just the restricted class. Instead, under Alternative C-2, in addition to the two requirements on media access, media coverage of candidate appearances is only permissible if rank and file employees may also attend, all candidates for the same seat who request to appear are given a similar opportunity, and the corporation or labor organization does not explicitly advocate or encourage the audience to express its views on the election or defeat of any candidate.

One commenter felt that level-to-level coverage indicated that the candidate's speech is newsworthy, and that there is no evidence of a problem involving the exclusion of the news media. Others objected that it interfered with their ability to have officials address employees on topics of interest to the employees when the officials are candidates for office.

This Office believes that Alternative C-2 is preferable. It ensures that the basic considerations of fairness are accorded to all candidates wishing to appear at an event that is broadcast to the general public. Consequently, this approach is found in sections 114.3(e)(2)(iii) and 114.4(b)(2)(viii).

It is important to note that these amendments do not adversely affect the ability of corporations or labor organizations to invite their restricted class or other employees

to attend a speech given by an officeholder or other prominent individual who is also a federal candidate, if the speech is not campaign-related. See, e.g., AO 1992-6.

F. Colleges and Universities (11 CFR 114.4(c)(7))

(1) General Considerations

The FECA prohibits corporations from making contributions to or giving anything of value to a federal candidate, including free use of facilities, such as halls and auditoriums. Since most private colleges and universities are incorporated, this prohibition applies to them. The proposed rules included provisions to clarify the Commission's interpretation of this statutory prohibition as it applies to educational institutions. In the proposed rules, section 114.4(c)(7) included an exception to permit colleges, universities, and other incorporated nonprofit educational institutions that are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups that are associated with the school and wish to invite candidates to address students, faculty and the general public, under certain conditions.

Several comments and witnesses expressed an overall concern that the Commission is attempting to over-regulate political speech on campuses. They pointed out that historically, universities have sought to promote the free exchange and debate of ideas in an intellectual environment, and have tried to stimulate student interest in democratic processes and institutions. They were also concerned that the new rules could affect classroom discussions.

The intent of the new provisions was to clarify the law as it applies to colleges, universities, and other incorporated nonprofit educational institutions that make their premises available to groups and individuals with candidates to address students, faculty and the general community. Through this rulemaking, the Commission is trying to modify its rules in this area by specifying conditions under which auditoriums and halls could be made available to candidates at no cost or for less than the usual and normal charge. Moreover, under the new provisions, educational institutions may continue to charge candidates the usual and normal charge for the use of their facilities. They may also continue to allow individuals who are candidates to appear in another capacity, such as an officeholder or a prominent speaker on a particular issue. See, e.g., AO 1992-6. Finally, the draft final rules do not prevent candidates from participating in campus events in other capacities, such as when the candidate is also a faculty member.

(2) Public vs. Private Institutions; Candidate Debates

Some commenters did not understand why the proposals were restricted to private colleges and universities, and did not apply

election, such as "Smith '92" or "Jones Is The One".

(4) Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate means-

(iii) And also does not include limited communications with candidates, candidates' agents and authorized committees of candidates regarding candidate appearances, candidate debates, voter guides, endorsements and publications, to the extent described in 11 CFR 110.13(b)(4), 114.2(e), 114.3 and 114.4.

PART 110 - CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

§ 110.13 Candidate Debates

(a) Staging organizations

(1) Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters, mass film newspapers, magazines and other periodical publications may stage candidate debates in

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accordance with this section and 11 CFR 114.4(f).

(b) Debate structure. The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

- (1) Such debates include at least two candidates;
- (2) No candidate receives more time than other participating candidates during the debate or more advance information regarding the topics to be addressed or the specific questions to be asked;
- (3) No communication made by the staging organization(s) during the debate expressly advocates the election or defeat of any clearly identified candidate, clearly identified group of candidates, or candidates of any clearly identified political party. Communications made at other times by staging organizations that are broadcasters, bona fide newspapers, magazines and periodical publications shall be governed by 11 CFR 100.7(b)(2) and 100.8(b)(2); and
- (4) Communication with the candidate, the candidate's agents and the candidate's authorized committee(s) may include discussions of the structure, format and timing of the debate and the candidate's positions on issues, but shall not include discussions of the candidate's plans, projects or needs relating to the campaign.

(c) Criteria for candidate selection. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the

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nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. If more than six (6) candidates meet the pre-established objective criteria, the staging organization(s) may use additional objective criteria to limit the candidate debate to no more than six (6) candidates.

(1) Examples of objective criteria may include, but are not limited to:

- (i) Whether a candidate satisfies all legal requirements to hold the office sought;
- (ii) Whether the individual has publicly announced his or her intention to be a candidate, or has become a candidate under 11 CFR 100.3, 9002.2, or 9032.2, as appropriate;
- (iii) Whether the candidate's name will appear on the ballot, or for presidential candidates, on the ballot in a predetermined number of states;
- (iv) Whether the candidate's authorized committee(s) have raised a pre-established amount of contributions within a specific time period; or
- (v) Whether the candidate is entitled to receive payments from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account, but such entitlement shall not be the sole

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criterion for inclusion in or exclusion from a candidate debate.

(2) Objective criteria shall not include:

- (i) Subjective evaluations of whether an individual is a significant, major or important candidate;
- (ii) Polls or other assessments of a candidate's chances of winning the nomination or election;
- (iii) For general election debates, nomination by a major party; or
- (iv) Criteria based on the specific characteristics of the candidates in a particular election, such as place of residence or offices previously or currently held.

PART 114 - CONGRESS AND LABOR ORGANIZATION ACTIVITY

§ 114.2 Definitions.

- (a) (1) The terms contribution and expenditure shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.7(b)(11)) to any candidate, political party or committee, organization, or any other person in

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of paragraph (d)(4) of this section. The notification shall be made in writing at the time of the registration or get-out-the-vote drive.

(e) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock. An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (viii) of this section.

(f) Candidate debates.

- (1) A nonprofit organization described in 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.
- (2) A broadcaster, bona fide newspaper, magazine or other periodical publication may use its own funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.
- (3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR

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110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and 114.4(g).

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§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures.

(a) Scope. This section describes those nonprofit corporations that qualify for an exemption from the prohibition on independent expenditures contained in 11 CFR 114.2. It sets out the requirements for demonstrating qualified nonprofit corporation status, for reporting independent expenditures, and for disclosing the potential use of solicited funds to support or oppose candidates. It also indicates when these corporations will be considered political committees.

(b) Definitions. For the purposes of this section --

(1) The promotion of political ideas includes issue advocacy, election influencing activity, and research, training or educational activity that is expressly tied to the organization's political goals.

(2) A corporation's express purpose includes:

(i) The corporation's purpose as stated in its charter, articles of incorporation, or bylaws, except that a statement such as "any lawful purpose," "any lawful activity," or other comparable statement will not preclude a finding under paragraph (c) of this section that the corporation's only express purpose is the promotion of political ideas;

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1988
LEAGUE OF WOMEN VOTERS EDUCATION FUND
CANDIDATE SELECTION CRITERIA
FOR GENERAL ELECTION DEBATE PARTICIPATION

ADOPTED October 6, 1987

It is the intention of the League of Women Voters Education Fund (LWVEF) to sponsor a series of nonpartisan debates among significant candidates for the offices of President and Vice President of the United States in the 1988 general election.

The LWVEF sponsors the debates to educate the public about the issues in the campaign and the candidates' positions on those issues. At the same time, the debates are intended to stimulate and to increase voter interest and participation in the general election. These purposes are best served by inviting to participate in the debates only those candidates who have a possibility of winning the general election and who have demonstrated a significant measure of nationwide voter interest and support.

In recognition of the central role the two major parties play in our political system and the undeniably substantial voter interest in the positions on issues espoused by the nominees of those parties, the LWVEF will sponsor one presidential debate to which it will invite only the nominees of the two major parties. This debate will ensure that the nation's voters are given at least one opportunity to hear the two major parties' nominees debate each other one on one. Invitations to the other debates in the series will be extended to the nominees of the two major parties and may be extended to other significant candidates who meet the selection criteria of the LWVEF.¹

The criteria for selecting candidates to participate in the debates have been developed in light of the requirements of the Federal Election Commission and the purposes of the debates. Federal Election Commission regulations permit the LWVEF to sponsor nonpartisan candidate debates. The structure of such debates is left by the FEC "to the discretion" of the LWVEF "provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another."

The LWVEF has adopted criteria for selection which it believes are nonpartisan, are capable of objective application, are understandable by the general public, and draw upon the LWVEF's long history of involvement in and study of policy issues inherent in sponsorship of nonpartisan candidate debates.

The criteria are designed to ensure that the debates further the LWVEF's educational purposes.

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The LWVEF will invite the presidential nominees of the two major parties to each of its presidential debates. In the event that the LWVEF schedules a vice presidential debate, the running mates of these nominees will be invited to participate in the vice presidential debate.

The eligibility for participation of non-major party candidates in the debates which may include non-major party candidates will be determined by the LWVEF initially in August 1988 on a case-by-case basis pursuant to the selection criteria discussed below. In the event that the LWVEF schedules a vice presidential debate, the running mates of presidential candidates eligible to debate automatically will be eligible to participate in that vice presidential debate.

There are three basic criteria for inviting Presidential candidates to debate: (1) constitutional eligibility; (2) ballot accessibility; and (3) demonstrated significant voter interest and support. Throughout the debate series, the LWVEF will retain the option to reassess the participation of non-major party candidates in the event of significantly changed circumstances. The LWVEF may do so in order to determine whether any additional candidates who did not meet the criteria in August have become eligible pursuant to those criteria to be invited to participate in the remaining debates or whether participation by a non-major party candidate would no longer advance the purposes of the debates, because he or she no longer meets the criteria.

SELECTION CRITERIA FOR NON-MAJOR PARTY PRESIDENTIAL CANDIDATE PARTICIPATION

I. CONSTITUTIONAL ELIGIBILITY CRITERION

Only those candidates who meet the eligibility requirements of Article II, Section I, of the Constitution will be invited to participate in the debates since the purposes of the LWVEF would not be served by permitting participation of the candidates who are ineligible to become President.

II. BALLOT ACCESS CRITERION

1. A Presidential candidate must be on the ballot in a sufficient number of states to have a mathematical possibility of winning a majority of votes (270) in the Electoral College.

EXPLANATION: One of the LWVEF's purposes in sponsoring the debates is to educate the public about the candidates who may become President of the United States in the general election. A candidate must win a majority of electoral votes to be elected. Adoption of a standard that allows participation in the debates by candidates who are not on enough ballots to win in the Electoral College would not further that purpose.

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2. At the time the LWVEF decides whom to invite to debate, it is possible that in a number of states there will be no clear indication of candidate ballot status. In some states, a candidate may have filed the requisite numbers of signatures but not be officially certified on the ballot. In others, there may be legal challenges to (1) early filing deadlines and (2) independent and third party candidate petitions. In addition, candidates still may be in the process of qualifying to be on ballots when the LWVEF is making its decisions on participants.

The LWVEF will request non-major party candidates who have expressed an interest in participating in the debates to provide it with reasonable assurances that they will meet the ballot access criterion by the date of the election. The LWVEF will then assess whether the candidate is likely to qualify, taking into account, for example, the number of signatures already collected, the extent of the candidate's past efforts to qualify, and the likelihood that the candidate's planned efforts will be successful. To the extent indicated, the LWVEF will confirm with appropriate state officials the facts presented to it.

EXPLANATION: The LWVEF will not require candidates to be qualified on the requisite number of ballots at the time it needs to issue invitations to debate. This is because the law in some states permits candidates to qualify to be on the ballot after the time that the LWVEF will need to make its decisions. The LWVEF will not require candidates to meet a more onerous ballot access criterion than that required by the states themselves; what the LWVEF seeks to ascertain by this criterion is whether a presidential candidate has a possibility of winning a general election in November.

III. DEMONSTRATED SIGNIFICANT VOTER INTEREST AND SUPPORT CRITERIA

The LWVEF will also require that non-major party Presidential candidates have significant voter interest and support. For all debates but its debate between the two major party nominees, the LWVEF, exercising its "good faith editorial judgment," will decide whether any non-major party candidates satisfy the standard of having demonstrated significant voter interest and support.

In assessing the significance of a candidacy, the LWVEF will consider a number of factors including the following:

a) Active campaigning in a number of states for the presidency. Candidates who have established an active campaign presence in a number of states nationwide may pose a significant national candidacy for the general election. A candidate's efforts to be named on ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount and scope of his or her campaign appearances as well as other factors evidencing substantial national campaign activity may be considered.

b) Substantial recognition by the national media that a candidate merits serious national media attention. Since coverage of candidates by major electronic and print media tends to evidence a recognition of

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substantial voter interest in a candidate and serves independently to foster such interest, this criterion is an appropriate consideration in determining the significance of particular candidates in the national campaign.

c. Such other factors that in the LWVEF's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as national voter poll results.

END NOTES

1 There is ample justification for treating the candidates of major parties differently from non-major party candidates. Major party nominees already have demonstrated voter interest and support by virtue of their nomination. Non-major party candidates, however, have not met any similar test. It is therefore necessary for the LWVEF to ascertain whether non-major political party presidential candidates have the support of a significant portion of the electorate in addition to their being eligible for office and theoretically capable of winning the election.

2 The LWVEF will not invite any such person to participate in the vice presidential debate if he or she is not eligible for the office of president under Article II, Section I of the U.S. Constitution.

3 This phrase was used by former U.S. Representative Frank Thompson, then Chairman of the House Committee on Administration, in a 1980 letter to the Federal Election Commission (Congressional Record H1822, 3/12/80) in response to the Commission's decision in the Nashua Telegraph case, involving candidate selection criteria.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20008

Stephen A. Koczak
2923 Macomb Street, N.W.
Washington, D.C. 20008

Re: MUR 1617

Dear Mr. Koczak:

The Federal Election Commission has reviewed the allegations of your complaint dated January 17, 1984, and determined that on the basis of the information provided in your complaint and information provided by the Respondents, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") has been committed. Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles M. Steele
General Counsel

By **Kenneth A. Gross**
Associate General Counsel

Enclosure
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
House Democratic Caucus, et. al.) MUR 1617

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 14, 1984, the Commission decided by a vote of 6-0 to take the following actions in MUR 1617:

1. Find no reason to believe that Dartmouth College and Rockefeller Center for the Social Sciences violated the Federal Election Campaign Act of 1971, as amended.
2. Find no reason to believe that the House Democratic Caucus violated the Federal Election Campaign Act of 1971, as amended.
3. Find no reason to believe that Corporation for Public Broadcasting and the Program Fund violated the Federal Election Campaign Act of 1971, as amended.
4. Find no reason to believe the Public Broadcasting Service violated the Federal Election Campaign Act of 1971, as amended.
5. Find no reason to believe the University of New Hampshire Public Television violated the Federal Election Campaign Act of 1971, as amended.
6. Find no reason to believe that WGBH Educational Foundation violated the Federal Election Campaign Act of 1971, as amended.
7. Find no reason to believe Askew for President Committee violated the Federal Election Campaign Act of 1971, as amended.

(Continued)

8. Find no reason to believe Hollings for President, Inc., violated the Federal Election Campaign Act of 1971, as amended.
9. Find no reason to believe Americans with Hart violated the Federal Election Campaign Act of 1971, as amended.
10. Find no reason to believe John Glenn Presidential Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.
11. Find no reason to believe Jesse Jackson for President violated the Federal Election Campaign Act of 1971, as amended.
12. Find no reason to believe Mondale for President Committee, Inc. violated the Federal Election Campaign Act of 1971, as amended.
13. Find no reason to believe McGovern for President Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.
14. Find no reason to believe Cranston for President Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.
15. Find no reason to believe Ted Koppel violated the Federal Election Campaign Act of 1971, as amended.
16. Find no reason to believe Phil Donahue violated the Federal Election Campaign Act of 1971, as amended.
17. Close the file.

(Continued)

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Certification
MUR 1617
General Counsel's Report
Signed May 9, 1984

18. Approve the letters as attached to the General Counsel's Report signed May 9, 1984.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter.

Attest:

May 15 1984

Date

John C. Reiss

for Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary:
Circulated on 48 hour tally basis:

5-10-84, 10:40
5-10-84, 4:00

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

REC'D
MAY 10 1984

In the Matter of

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House Democratic Caucus,)
 Corporation for Public Broadcasting,)
 Public Broadcasting Service, University)
 of New Hampshire Public Television,)
 WGBH Educational Foundation, Program)
 Fund-Corporation for Public Broad-)
 casting, Dartmouth College, Ted Koppel,)
 Phil Donahue, Nelson A. Rockefeller)
 Center for the Social Sciences, Askew)
 for President Committee, Hollings for)
 President, Inc., Americans With Hart,)
 John Glenn Presidential Committee, Inc.,)
 Jesse Jackson for President,)
 Mondale for President Committee, Inc,)
 McGovern for President Committee, Inc.,)
 and Cranston for President Committee,)
 Inc.)

MUR 1617

GENERAL COUNSEL'S REPORT

I. BACKGROUND/PREVIOUS COMMISSION ACTION

This matter was generated by a complaint filed by Stephen A. Koczak (hereinafter "Complainant") alleging violations of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act") by the following parties (hereinafter "Respondents"):

House Democratic Caucus, Corporation for Public Broadcasting, Public Broadcasting Service, University of New Hampshire Public Television, WGBH Educational Foundation, Program Fund-Corporation for Public Broadcasting, Dartmouth College, Ted Koppel, Phil Donahue, Nelson A. Rockefeller Center for the Social Sciences, Askew for President Committee, Hollings for President Inc., Americans With Hart, John Glenn Presidential Committee, Inc., Jesse Jackson for President, Mondale for President Committee, Inc. and McGovern for President Committee, Inc., and Cranston for President Committee, Inc.

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Due to the granting of extensions of time to Respondents, a First General Counsel Report without recommendation was circulated to the Commission on March 5, 1984. Responses have been received from all the Respondents except Cranston for President Committee, Inc. (See Attachment 1, pages 1-77 of the attachments).

II. FACTUAL AND LEGAL ANALYSIS

Complainant is running for the Office of President of the United States and has filed with the Federal Election Commission. Complainant has also filed with the Secretary of State in New Hampshire for the Presidential Primary which was held on February 28, 1984. Complainant was not invited to participate in the January 15, 1984, New Hampshire Dartmouth College Debate.

The complaint is not specific as to what violations of the Act have occurred. However, Complainant appears to allege that because he was excluded as a participant, the Dartmouth College Debate was a partisan event. Complainant contends that his exclusion constitutes a violation of Commission regulations which state that candidate debates should be nonpartisan in that they must not promote or advance one candidate over the other (11 C.F.R. § 110.13(b)(2)).

Therefore, Complainant concludes that the Dartmouth College Debate was illegal under the Act. Consequently, Complainant contends that: a) the stager and any sponsor or producer of the debate made illegal in-kind or corporate contributions to the

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eight candidates; b) the candidates have accepted illegal in-kind or corporate contributions; c) the House Democratic Caucus must register and report as a political committee; and d) those receiving matching funds have exceeded the amount that they may legally expend on a primary election campaign. Complainant also requests an accounting of all money spent to produce the Dartmouth College Debate.

In general, the question before the Commission is whether Respondents have violated the Act by staging, funding, sponsoring, covering and or participating in the Dartmouth College Debate.

a. NonPartisanship under 11 C.F.R. § 110.13/Dartmouth College

Dartmouth College (hereinafter "Dartmouth") and the Nelson A. Rockefeller Center for the Social Sciences^{1/} staged and provided the facilities for the January 15, 1984, debate in New Hampshire.

Under 11 C.F.R. § 110.13(a)(1) a nonprofit educational and charitable organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and does not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 C.F.R. § 110.13(b) and § 114.4(e).

^{1/} According to Dartmouth College, the Nelson A. Rockefeller Center for Social Sciences has no status independent of Dartmouth and, thus, it should not have been named as a separate respondent in Mr. Koczak's complaint.

According to the response of Dartmouth, it is a non-profit tax exempt organization under 501(c)(3) of the Internal Revenue code which does not endorse, support or oppose candidates for elective office or political parties (See Attachment 1, pages 2 and 4 of the attachments). Therefore, Dartmouth was a proper staging organization for the event.

Dartmouth states that its purpose in sponsoring the debate "was to educate the public about campaign issues and the candidates' positions on those issues, and to stimulate increased voter interest and participation in the electoral process (See Attachment 1, page 2 of the attachments). Dartmouth, in consultation with the House Democratic Caucus, determined "that only those Presidential candidates who had a possibility of winning the Democratic Party's presidential nomination and who had demonstrated a significant measure of nationwide voter support and interest should be invited to participate in the debate" (See Attachment 1, page 3 of the attachments). Due to the time constraints of the January 15, 1984, debate, Dartmouth decided to limit the debate to candidates the public viewed as truly significant candidates.^{2/}

Dartmouth College argues that nonpartisan and objective criteria were developed and applied to determine which

^{2/} According to Dartmouth, there were 22 candidates on the ballot in New Hampshire for the Democratic nomination. Dartmouth also states, "that traditionally, the New Hampshire Presidential Primary attracts a large number of marginal candidates since a person can get on that ballot simply by filing a declaration of candidacy and paying a \$1,000 fee. Many of these candidates subsequently are unable to gain access to other states' ballots because that usually requires some empirical evidence of voter support, e.g. signed petitions" (See Attachment 1, page 3 of the attachments).

candidates should be invited to the debate (See Attachment 1, page 2 of the attachments). Dartmouth and the Center state that the criteria used was modeled after the criteria used by the League of Women Voters' Education Fund (See Attachment 1, pages 2, 4, 6, and 7 of the attachments).

The basic tests used by Dartmouth for determining participation in the debate were:

- (1) Public announcement of the intention to seek the Democratic Party's presidential nomination;
- (2) Constitutional eligibility to hold the Office of President;
- (3) A significant candidacy as evidenced by
 - (a) eligibility for federal matching funds,
 - (b) active campaigning in several states,
 - (c) recognition by the national media as a national candidate, and
 - (d) other factors including public opinion polls and broad based fundraising efforts.

(See Attachment 1, page 4 of the attachments).

Dartmouth, in applying these criteria, noted that the Complainant was qualified to appear on the ballot in only one state, New Hampshire. Complainant had made no submission to qualify for matching funds. Additionally, Complainant appeared to lack other elements that would evidence a significant national campaign. He was not actively campaigning in several states, was not recognized as a national candidate, and had not scored on public opinion polls. Based on the foregoing, Dartmouth determined that "Mr. Koczak simply did not pass muster under these criteria" (See Attachment 1, page 2 of the attachments).

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11 C.F.R. § 110.13(b) defines the parameters of candidate debates stating:

the structure of debates staged in accordance with 11 C.F.R. § 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another. emphasis added.

The Explanation and Justification in prescribing 11 C.F.R. § 110.13(b) states that although the precise structure of the candidate debate is left to the discretion of the staging organization: "such debates must, however, be nonpartisan in nature and they must provide fair and impartial treatment of candidates. The primary question in determining nonpartisanship is the selection of candidates to participate in such debates." 44 Fed. Reg. 76,735 (1979).

Although, no specific requirements are listed for the selection of candidates to participate in a debate, the Explanation and Justification implies that fair and reasonable criteria must exist in order to be applied in the selection of candidates for a debate. In promulgating the debate regulations, the Commission recognized that "[a] nonpartisan candidate debate ... provides a forum for significant candidates to communicate their views to the public." 44 Fed. Reg. 76,734 (1979).

Dartmouth College has complied with the Commission regulations. First, it appears that the Complainant did not meet the threshold requirements of candidacy under the Act. The 1979 amendments to the Act that became effective January 8, 1980,

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added new criteria to the determination of candidacy. Now the threshold requirement for candidate status is the receiving of contributions or the making of expenditures that in either case aggregate over \$5,000. 2 U.S.C. § 431(2). Once an individual becomes a candidate he has 15 days to designate in writing a principal campaign committee by filing a statement of candidacy (FEC Form 2). 2 U.S.C. § 432(e). All political committees must register (Statement of Organization, FEC Form 1) and report under the Act. 2 U.S.C. § 433 and § 434.

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On December 13, 1983, Complainant filed a statement of candidacy designating the Koczak for President Committee as his principal campaign committee. This committee, if it exists, has not registered or filed reports as required by 2 U.S.C. § 433 and § 434. Therefore, it appears that the \$5,000 threshold for candidacy was never reached by the Complainant.

Second, Dartmouth adopted criteria which were used in inviting candidates to participate in the debate. The criteria were fair and impartial and were aimed at selecting those individuals who had significant candidacies. Mr. Koczak's candidacy did not meet the standards when evaluated by Dartmouth. Dartmouth's evaluation was reasonable and fair.

In conclusion, Mr. Koczak does not appear to be a candidate for purposes of the Act and did not meet the criteria employed by Dartmouth College. Therefore, the exclusion of Mr. Koczak from the Democratic presidential debate in New Hampshire on

January 15, 1984, does not violate 11 C.F.R. § 110.13(b). Consequently, Dartmouth has not made illegal corporate contributions or expenditures.

b. House Democratic Caucus

Complainant alleges that the House Democratic Caucus is a political committee and that it failed to register and report as required by the Act.

According to the response of the House Democratic Caucus it is an official entity within the House of Representatives.^{3/} The role of the House Democratic Caucus as a consultant was to encourage participation in the Debate (See Attachment 1, page 52 of the attachments). Dartmouth College, not the House Democratic Caucus, paid for the costs incurred in staging the debate. The debate was in compliance with the requirements of nonpartisanship under 11 C.F.R. § 110.13(b). Accordingly, the House Democratic Caucus was not required to register and to report as a political committee.

c. Broadcasters/Media Entities

Complainant alleges that the broadcasters of the debate made illegal corporate contributions. The broadcast entities involved were the Corporation for Public Broadcasting, Public Broadcasting Service, The University of New Hampshire - Public Television and WGBH Educational Foundation.

^{3/} From this, the House Democratic Caucus argues that it is statutorily excluded from being a political committee since the federal government is specifically excluded from the definition of "person" under the Act (See Attachment 1, pages 8-10 of the attachments). However, it is not necessary to reach this question since the debate was paid for by Dartmouth College and staged in compliance with 11 C.F.R. § 110.13(b).

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The above mentioned broadcasters did not have any control over the structure of the debate, e.g. choice of moderators, format, and candidate participants (See Attachment 1, pages 39, 41, and 48 of the attachments). The only involvement of these media entities were as co-producers of the public television coverage of the debate (See Attachment 1, pages 37-49 of the attachments).

2 U.S.C. § 431(9)(B)(i) creates an exclusion for "any news story, commentary or editorial distributed through the facilities of any broadcasting station ... unless such facilities are owned or controlled by any political party, political committee, or candidate" 11 C.F.R. § 110.7(b)(2) and 11 C.F.R. § 100.8(b)(2). Moreover, the Explanation and Justification of the debate regulations emphasizes the right of broadcasters stating:

Nothing in this section limits the right of broadcasters ... to cover or broadcast debates staged by other entities. That activity is specifically exempted from the provisions of the Act

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The media entities argue that the New Hampshire debate was a bona fide news story within the meaning of this exemption (See Attachment 1, pages 38, 39, 41-42, 44, and 49 of the attachments). A large number of the press attended the debate, and it received live television and radio coverage, as well as extensive commentary in the print media and in nightly newscasts (See Attachment 1, pages 41 of the attachments).

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Additionally, the actual location of the debate at Dartmouth and the broadcast of the debate through the facilities of PBS, were facilities that are neither owned nor controlled by any political party or candidate.

The Broadcasters fall squarely within the exemption provided by 2 U.S.C. § 431(9)(B)(i). Therefore, their role of distributing and financing broadcast coverage of the debate was not an illegal corporate contribution.

d. Candidates

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Complainant alleges that the illegal funds contributed to the candidates exceeded the spending limit permitted those candidates receiving matching funds. As discussed supra, the selection of candidates to participate in the debate complied with the requirements of nonpartisanship under 11 C.F.R. § 110.13 (See also, Attachment 1, pages 50-68 of the attachments). Therefore, no illegal in-kind or corporate contribution has been accepted by the candidates. Consequently, the funds involved would not be chargeable to the amount that the candidate may legally expend on a primary election campaign.

e. Commentators

As noted by the responses of Ted Koppel and Phil Donahue no specific allegations are made against them. The only reference to them in the complaint are in the enumeration of the Respondents and the statement in the complaint requesting the Commission "[t]o obtain from Mr. Ted Koppel and from Mr. Phil Donohue statements as to costs, contracts, undertakings

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and agreements reached with any of the parties named in the complaint" (See Attachment 1, pages 69-77 of the attachments).

Mr. Ted Koppel's and Mr. Phil Donohue's roles as commentators of the New Hampshire Debate did not violate any provision of the Act.

RECOMMENDATION

1. Find no reason to believe that Dartmouth College and Rockefeller Center for the Social Sciences violated the Federal Election Campaign Act of 1971, as amended.

2. Find no reason to believe that the House Democratic Caucus violated the Federal Election Campaign Act of 1971, as amended.

3. Find no reason to believe that Corporation for Public Broadcasting and the Program Fund violated the Federal Election Campaign Act of 1971, as amended.

4. Find no reason to believe the Public Broadcasting Service violated the Federal Election Campaign Act of 1971, as amended.

5. Find no reason to believe the University of New Hampshire Public Television violated the Federal Election Campaign Act of 1971, as amended.

6. Find no reason to believe that WGBH Educational Foundation violated the Federal Election Campaign Act of 1971, as amended.

7. Find no reason to believe Askev for President Committee violated the Federal Election Campaign Act of 1971, as amended.

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8. Find no reason to believe Rollings for President, Inc., violated the Federal Election Campaign Act of 1971, as amended.

9. Find no reason to believe Americans with Hart violated the Federal Election Campaign Act of 1971, as amended.

10. Find no reason to believe John Glenn Presidential Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.

11. Find no reason to believe Jesse Jackson for President violated the Federal Election Campaign Act of 1971, as amended.

12. Find no reason to believe Mondale for President Committee, Inc. violated the Federal Election Campaign Act of 1971, as amended.

13. Find no reason to believe McGovern for President Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.

14. Find no reason to believe Cranston for President Committee, Inc., violated the Federal Election Campaign Act of 1971, as amended.

15. Find no reason to believe Ted Koppel violated the Federal Election Campaign Act of 1971, as amended.

16. Find no reason to believe Phil Donahue violated the Federal Election Campaign Act of 1971, as amended.

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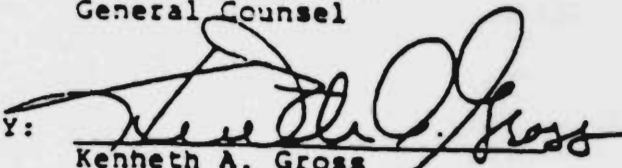
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17. Close the file.
18. Approve attached letters.

Charles N. Steele
General Counsel

May 9, 1984
Date

BY: 
Kenneth A. Gross
Associate General Counsel

Attachments

1. Responses from Respondents (pages 1-77)
2. Letters to Respondents (pages 78-93)
3. Letter to Complainant (page 94)

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INFORMATION 1
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MUR 1617
Cury

March 9, 1984

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20005

Re: MUR 1617

Dear Mr. Gross:

This letter constitutes the response of The Trustees of Dartmouth College ("Dartmouth") and the Nelson A. Rockefeller Center for the Social Sciences ("Center") to the complaint filed by Mr. Stephen A. Koczak ("Koczak") with the Federal Election Commission ("Commission") alleging violations by Dartmouth and the Center of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, Mr. Koczak's complaint appears to allege, inter alia, that Dartmouth and the Center violated the Act by failing to permit Koczak to participate in the debate between significant candidates for the Democratic Party's presidential nomination that was sponsored by Dartmouth on January 15, 1984.

As to the allegations regarding Dartmouth and the Center, Mr. Koczak's complaint is totally without merit. Accordingly, the Commission should take no action against Dartmouth or the Center and should dismiss the complaint as it pertains to each institution. Dartmouth's actions in sponsoring the January 15, 1984 debate were fully consistent with the Act, the Commission's specific regulations governing political debates and the Commission's decisions interpreting and enforcing those regulations. As the Commission's regulations and previous enforcement decisions make clear, an organization staging a political debate is not obligated to invite every single declared

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candidate for the elective office at issue so long as the criteria used to select the participants are both nonpartisan and objective. Rather, a staging organization may invite to its debate only those candidates that it determines are significant.

That is exactly what happened here. Nonpartisan and objective criteria, patterned after those used by the League of Women Voters' Education Fund, were employed to select the participants in the January 15 debate. Mr. Koczak simply did not pass muster under these criteria. Accordingly, there was no obligation to invite Mr. Koczak to participate in the debate. For these reasons, Mr. Koczak's allegations have no merit and should be dismissed.

As further support for this conclusion, Dartmouth submits the following:

1. Dartmouth is a private educational institution located in Hanover, New Hampshire. In addition to the four-year undergraduate college, other major academic centers at Dartmouth include the Dartmouth Medical School, the Thayer School of Engineering, the Amos Tuck School of Business Administration and the Rockefeller Center ^{1/}

As a private educational institution, Dartmouth is an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. In addition, it has never been Dartmouth's policy or practice to support or oppose candidates for elective office or to support one political party over another.

2. In deciding to sponsor the January 15 Democratic Presidential Debate, Dartmouth's intention was to educate the public about campaign issues and the candidates' positions on those issues, and to stimulate increased voter interest and participation in the electoral process. In order to achieve this

^{1/} As an academic center within Dartmouth College, the Center has no status independent of Dartmouth and, thus, should not have been named as a separate respondent in Mr. Koczak's complaint.

objective, it was determined, in consultation with the Democratic Caucus of the House of Representatives ("Caucus")^{2/} that only those Democratic presidential candidates who had a possibility of winning the Democratic Party's presidential nomination and who had demonstrated a significant measure of nationwide voter support and interest should be invited to participate in the debate.

As experience with the political debate framework has shown, there is an inverse relationship between the number of participants, on the one hand, and the time available for the expression of views and the opportunity for effective interchange between or among the participants, on the other. Debates that are too lengthy or that include candidates for whom the public has little voting interest will not be effective.

3. Because of the limited amount of time available in the January 15 debate, it was decided that it was necessary to limit participation to candidates whom the public would regard as truly significant candidates. To do the opposite, i.e., invite all declared candidates for the Democratic presidential nomination would have been impossible. For example, in New Hampshire alone, there were 22 candidates on the ballot contesting for the Democratic presidential nomination.^{3/}

Therefore, nonpartisan and objective criteria were developed to determine which candidates should be invited to appear in the

2/ From the outset, Dartmouth, in its role as sponsor of the debate, worked closely with the Caucus. Dartmouth affirmatively sought the Caucus' active assistance and expertise to help manage and implement the complex tasks involved in staging a televised, multi-candidate debate.

3/ Traditionally, the New Hampshire Presidential Primary attracts a large number of marginal candidates since a person can get on that ballot simply by filing a declaration of candidacy and paying a \$1,000.00 fee. Many of these candidates subsequently are unable to gain access to other states' ballots because that usually requires some empirical evidence of voter support, e.g. signed petitions.

debate. These criteria were modeled after the criteria employed on numerous occasions by the League of Women Voters' Education Fund. See Attachment A. The basic tests for determining participation in the January 15 debate were:

- (1) Public announcement of the intention to seek the Democratic Party's presidential nomination;
- (2) Constitutional eligibility to hold the Office of President;
- (3) A significant candidacy as evidenced by
 - (a) eligibility of federal matching funds,
 - (b) active campaigning in several states,
 - (c) recognition by the national media as a national candidate, and
 - (d) other factors including public opinion polls and broad based fundraising efforts.

Based on these criteria, it was determined that Mr. Koczak was not eligible to participate in the Dartmouth debate.

4. In view of these facts, the allegations raised by Mr. Koczak against Dartmouth and the Center must be dismissed as groundless. Under the Commission's regulations, Dartmouth, as a nonpartisan and nonprofit organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code, "may stage nonpartisan candidate debates in accordance with 11 C.F.R. § 110.13(b)." Section 110.13(b) states that "[t]he structure of debates...is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another."

4/ 11 C.F.R. § 110.13(a)(1).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

8330-D
CI-670
CR-137

In re Complaint of)
Stephen A. Koczak)
against)
University of New Hampshire)

Staff Ruling

Adopted: February 16, 1984 ; Released: February 16, 1984

By the Chief, Fairness/Political Programming Branch:

1. The Commission has before it a complaint, received on January 24, 1984, filed by Mr. Stephen A. Koczak, a Democratic candidate for the Office of President of the United States.

2. Koczak states that on January 15, 1984, New Hampshire Public Television 1/ aired a program he referred to as the "Dartmouth College Debate," which was a debate among eight Democratic presidential candidates. 2/ Koczak states that at the time the Dartmouth College Debate was aired he was a legally qualified candidate in New Hampshire 3/, and three days after the debate was aired, he requested "equal opportunities," pursuant to 47 U.S.C. 315(a), based on the appearance of his eight opponents on that program. He states that the licensee denied his request on the basis that the subject program was a "bona fide news event."

3. Koczak alleges "that New Hampshire Public Television, licensed to telecast noncommercial broadcasts, had relinquished control over the debate because it was in fact a partisan broadcast which should have been telecast commercially." He states that the debate was actually organized by a partisan political body, the National House Democratic Caucus, which had arbitrarily excluded other Democratic candidates from the debate. Furthermore, he alleges

1/ Commission records indicate that the University of New Hampshire is the licensee of five New Hampshire noncommercial television stations, which are WEDS-TV, Berlin, WENE-TV, Durham, WHED-TV, Hanover, WENH-TV, Keene, and WLED-TV, Littleton.

2/ The Democratic candidates who appeared on the program were Bobbie Ashew, Ernest Hollings, Alan Cranston, Jessie Jackson, John Glenn, George McGovern, Gary Hart, and Walter Mondale.

3/ In this connection, Mr. Koczak has enclosed a copy of his "Declaration of Candidacy" filed with the Secretary of State in New Hampshire.

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that "the broadcast was tainted by the illegal use and misappropriation of Federal government funds by the National House Democratic Caucus, the Corporation for Public Broadcasting . . . and the Public Broadcasting Service." Therefore, Koczak alleges that this debate, which was organized by a partisan political body and funded with federal monies, could not be considered a "bona fide news event."^{4/}

Discussion

4. The Commission has ruled that a broadcaster-sponsored debate will fall within the § 315(a)(4) exemption as on-the-spot coverage of a bona fide news event. Henry Geller, FCC 2d (FCC 83-529, released November 16, 1983). Therefore, with respect to the allegation that New Hampshire Public Television had relinquished control over the subject debate, we find that control is an irrelevant consideration for purposes of a broadcaster determining whether a debate is a bona fide news program. The Geller decision served to broaden Section 315(a)(4) to include broadcaster-sponsored debates, but it did not remove third-party sponsored debates from the scope of the exemption.

5. With regard to Koczak's allegation that the debate was "tainted" by the use of federal funds, such matters are beyond the scope of the Commission's statutory jurisdiction. Koczak has presented no information which would indicate New Hampshire Public Television was unreasonable in concluding that the subject debate was a newsworthy event.

6. Therefore, the complaint IS DENIED.

7. Staff action is taken under delegated authority. Application for Review by the full Commission may be requested within thirty days of the date of public notice of this document (see Commission Rule 1.4(b) [47 C.F.R. § 1.4(b)]) by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if

^{4/} By letter received February 7, 1984, Koczak amended his complaint to make the same allegations against WGBH Educational Foundation (WEF). Commission records indicate that WEF is the licensee of the following noncommercial broadcast stations, which have been included in this proceeding: WGBH-TV, WGBX-TV, and WGBH-FM, all in Boston, Massachusetts, and WGBY-TV, Springfield, Massachusetts.

Because the service areas of these stations allegedly extend into New Hampshire, where the debate was held and Koczak is legally qualified, he includes them as part of his complaint. He states that he made an "equal opportunities" request of WEF within seven days of the debate, but he has received no response to date. Due to our ruling herein, it is unnecessary for the Commission to determine which service areas of these noncommercial Massachusetts stations extend into New Hampshire, and if any do, whether such coverage is sufficient to warrant Section 315 obligations.

ailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. See Commission Rule 1.115 (47 C.F.R. § 1.115).

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Cross, Chief,
Fairness/Political Programming Branch
Enforcement Division
Mass Media Bureau

cc: University of New Hampshire
WGBH Educational Foundation
Council

90043665120

FEDERAL ELECTION COMMISSION
1325 K Street, NW
Washington, D.C. 20463

COMM. 100-1000000000

84 MAR 6 A10: 00

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION:
3/6/84
10:00

MUR 1617
DATE COMPLAINT REC'D BY OGC
1-18-84
DATE OF NOTIFICATION TO
RESPONDENT 1-25-84
STAFF MEMBER: Deborah Curry

COMPLAINANT'S NAME: Stephen A. Koczak

RESPONDENTS' NAMES: House Democratic Caucus, Corporation for
Public Broadcasting, Public Broadcasting
Service, University of New Hampshire Public
Television, WGBH Educational Foundation,
Program Fund-Corporation for Public Broad-
casting, Dartmouth College, Ted Koppel,
Phil Donahue, Nelson A. Rockefeller Center
for the Social Sciences, Askew for President
Committee, Hollings for President, Inc.,
Americans With Hart, John Glenn Presidential
Committee, Inc., Jesse Jackson for President,
Mondale for President Committee, Inc,
McGovern for President Committee, Inc., and
Cranston for President Committee, Inc.

RELEVANT STATUTE: 2 U.S.C. §§ 431(4)(8) & (9), 433, 434; 11
C.F.R. §§ 110.13, 114.4(e) and 26 U.S.C.
§ 9033

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On January 18, 1984, the Office of General Counsel received
a signed, sworn and notarized complaint (Attachment 1) from
Stephen A. Koczak alleging violations of the Federal Election
Campaign Act of 1971, as amended (hereinafter the "Act") by the
following parties (hereinafter "Respondents"): House Democratic
Caucus, Corporation for Public Broadcasting, Public Broadcasting

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Service, University of New Hampshire Public Television, WGBH Educational Foundation, Program Fund-Corporation for Public Broadcasting, Dartmouth College, Ted Koppel, Phil Donahue, Nelson A. Rockefeller Center for the Social Sciences, Askew for President Committee, Hollings for President Inc., Americans With Hart, John Glenn Presidential Committee, Inc., Jesse Jackson for President, Mondale for President Committee, Inc. and McGovern for President Committee, Inc.

Complainant alleges that because he was excluded as a participant, the Dartmouth College Debate was a partisan event. Complainant contends that his exclusion constitutes a violation of Commission regulations which states that candidate debates should be nonpartisan in that they must not promote or advance one candidate over the other. 11 C.F.R. § 110.13(b). Therefore, complainant concludes that the Dartmouth College Debate was illegal under the Act. Consequently, complainant contends that:

- a) the sponsors and producers of the debate have made illegal in-kind or corporate contributions to the eight candidates;
- b) the candidates have accepted illegal in-kind or corporate contributions;
- c) the House Democratic Caucus must register and report as a political committee;
- d) those receiving matching funds have exceeded the amount that they may legally expend on a primary election campaign.

Complainant also requests an accounting of all money spent to produce the Dartmouth College Debate.

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Complainant filed a amendment and supplement to the complaint on January 24, 1984. (Attachment 2) Responses to the complaint and amendment were due on March 1, 1984. However, Dartmouth College, the Nelson A. Rockefeller Center for the Social Sciences, the Mondale for President Committee and the House Democratic Caucus have asked for and have been granted an extension of time to answer the notification of complaint. The due date of their responses is March 9, 1984.


FACTUAL AND LEGAL ANALYSIS

Complainant is running for the Office of President of the United States and has filed with the Federal Election Commission. Complainant has also filed with the Secretary of State in New Hampshire for the Presidential Primary which was held on February 28, 1984. Complainant was not invited to participate in the New Hampshire Dartmouth College Debate.

The question before the Commission is whether the Respondents have violated the Act by funding, sponsoring or participating in the New Hampshire debates. As soon as the Respondents have submitted their responses, a report will be circulated to the Commission for its consideration.

Charles N. Steele
General Counsel

March 5, 1984
Date

BY: 
Kenneth H. Gross
Associate General Counsel

Attachments

1. Complaint
2. Amendment and Supplement to the complaint

98043085123



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

May 25, 1984

Brooksley Born
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1659
League of Women Voters
Education Fund

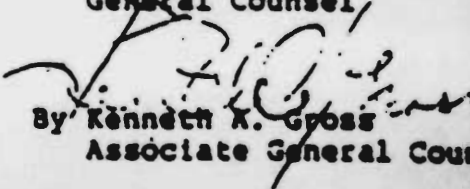
Dear Ms. Born:

On April 3, 1984, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on May 22, 1984, determined that on the basis of the information in the complaint, and information provided by your client, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth K. Gross
Associate General Counsel

Enclosure
First General Counsel's Report

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K

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
MAY 10 1984

FIRST GENERAL COUNSEL'S REPORT MAY 10 10:40

DATE AND TIME OF TRANSMITTAL BY OCC TO THE COMMISSION: 5/10/84 - 10:40
SER 1659
DATE COMPLAINT RECEIVED BY OCC: 4-2-84
DATE OF NOTIFICATION TO RESPONDENT: 4-3-84
STAFF MEMBER: Deborah Curry

COMPLAINANT'S NAME: The LaRouche Campaign
RESPONDENTS' NAMES: League of Women Voters Education Fund
RELEVANT STATUTE: 2 U.S.C. §441b, 11 C.F.R. § 110.13 and 11 C.F.R. § 110.6(e)
INTERNAL REPORTS CHECKED: RULES 1207, 1167, 1168 and 1170
FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On April 2, 1984, the Office of General Counsel received a signed, sworn and notarized complaint (See Attachment 1, pages 1-5 of the attachments) from the LaRouche Campaign committee (hereinafter "Complainant") alleging violations of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act"), by the League of Women Voters Education Fund (hereinafter "LWVFP").

Specifically, Complainant alleges that Lyndon H. LaRouche, Jr. was excluded from a debate sponsored by Respondent. Complainant alleges that the exclusion of Mr. LaRouche violates the requirements of nonpartisanship under 11 C.F.R. § 110.13(b). Therefore, Complainant contends that a violation of 2 U.S.C. § 441b has occurred.

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On April 18, 1984 LWVEF responded to the complaint (See Attachment 2, pages 6-142 of the attachments).

FACTUAL AND LEGAL ANALYSIS

A. Background

Mr. LaRouche is seeking the Democratic Party's nomination for President. Mr. LaRouche has filed with the Federal Election Commission. The Complainant, the LaRouche Campaign, is Mr. LaRouche's principal campaign committee.

On April 5, 1984, LWVEF sponsored a debate in Pittsburgh, Pennsylvania among three candidates for the Democratic Party's nomination for President. Mr. LaRouche was not invited to participate in the April 5, 1984, debate.

The Complainant, on behalf of Mr. LaRouche, alleges that LaRouche's exclusion from the April 5, 1984, debate "makes it a partisan enterprise which will 'promote or advance one candidate over another'" (See Attachment 1, pages 2 of the attachments). Therefore, Complainant contends that the sponsors of the April 5, 1984, debate have violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 (See also Attachment 1, page 2 of the attachments).

Complainant states that "Mr. LaRouche is a significant candidate for the Democratic presidential nomination as defined by the League's Selection Criteria" (See Attachment 1 page 1 of the attachments). In support of this assertion, Complainant states that Mr. LaRouche has raised over \$1 million dollars and has qualified for matching funds. Complainant believes that this fundraising capacity is comparable to the three candidates invited to the April 5, 1984 debate (See Attachment 1, page 1

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of the attachments). Complainant states that Mr. LaRouche is recognized by the national media as a significant candidate. Additionally, Complainant states that Mr. LaRouche is on the "primary ballot or scheduled to participate in state caucuses where approximately forty percent of the delegates to the Democratic National Convention are at stake" (See Attachment 1, page 2 of the attachments). Mr. LaRouche plans to actively campaign "in the large pivotal states of Pennsylvania, Texas, Ohio, New Jersey, and California" (See Attachment 1, page 2 of the attachments).

B. Staging Organization

11 C.F.R. § 110.13(a) limits the sponsorship of candidates debates to three types of groups. One of those groups is a non profit organization which is exempt from federal taxation under 26 U.S.C. § 501(c)(3) and which does not endorse, support or oppose political candidates or political parties.

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According to LWVEF, it is a nonprofit, nonpartisan charitable trust established by the League of Women Voters in 1957. It is devoted exclusively to educational purposes. (See Attachment 2, page 9 of the attachments). Its specific educational purpose is to inform citizens "about public affairs and the democratic process." LWVEF states that it is exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code. LWVEF indicates that in order to maintain its 501(c)(3) status, it may not participate in political campaigns or any partisan activity (See Attachment 1, page 9 of the attachments).

Therefore, LWVEF was a proper staging organization for the April 5, 1984, debate. Complainant does not challenge LWVEF on this ground.

C. Selection Criteria

LWVEF in its response to the complaint recounts its historical role in conducting debates for Presidential candidates at the primary and general election level. LWVEF states that its goal in sponsoring Presidential primary debates this year "is to educate the nation's electorate about the issues in the 1984 campaign and to stimulate increased voter interest and participation in the electoral process" (See Attachment 2, pages 10-11 of the attachments). LWVEF determined to limit participation in the debates to "significant candidates whose participation would further these ends" (See Attachment 2, page 11 of the attachments).

According to LWVEF, Mr. LaRouche's request to participate in the April 5, 1984, debate was the second request made by Mr. LaRouche to participate in a LWVEF debate. In January, Mr. LaRouche had also requested to participate in the New Hampshire debate. (See Attachment 2, page 13 of the attachments). On each occasion LWVEF requested Mr. LaRouche to submit supporting materials evidencing a significant national candidacy. On each occasion, Mr. LaRouche submitted written information and documents (See Attachment 2, pages 7-8, pages 51-96, and 89-142 of the attachments).

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According to LWVEF each request by Mr. LaRouche received careful consideration. Based on the "material provided by LaRouche, as well as other information available to LWVEF" the Executive "Committee concluded unanimously that LaRouche was not a significant national candidate for the Democratic Party's nomination for President" (See Attachment 2, page 14 of the attachments).

The basic components of LWVEF's selection criteria are as follows:

- 1) Public announcement of intention to seek the Democratic Party's presidential nomination;
- 2) Legally qualified to hold the office of President;
- 3) A significant candidacy as evidenced by a number of factors
 - a) eligibility to receive federal matching funds
 - b) active campaigning in a number of states for the Democratic Party's nomination;
 - c) recognition by the national media as a candidate meriting media attention;
 - d) other factors providing substantive evidence of national voter interest in a candidate, such as national voter poll results (Attachment 2, pages 12, 49 and 50 of the attachments).

The Complainant does not assert that all candidates must be included in the debate sponsored by LWVEF. Nor does the Complainant challenge the selection criteria employed by LWVEF in

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determining which candidates to invite to the debate. Rather, the complainant alleges that LWVEF made a partisan decision when it applied the selection criteria and determined not to invite Mr. LaRouche.

LWVEF states that its decision not to invite Mr. LaRouche was an independent nonpartisan decision and was determined by applying the above listed criteria. First, LWVEF states Mr. LaRouche was not certified eligible to receive matching funds nor did he receive any matching funds prior to the April 5, 1984, debate. Although Mr. LaRouche states that he has qualified for matching funds, the Commission did not make a final determination of his eligibility to make receive matching funds until April 12, 1984.^{1/}

Second, LWVEF concluded that Mr. LaRouche did not have an active national campaign. LWVEF notes that Mr. LaRouche stated in his March 20, 1984, submission that he was on the ballot in nine states. However, LWVEF contends that the documentary evidence in this submission only confirmed that he was on the ballot in two states. Further, LWVEF states that the LaRouche submission failed to indicate the "size and extent of his national campaign organization" (See Attachment 2, page 23 of the attachments). LWVEF states that materials submitted by LaRouche to evidence a national campaign focused on the efforts of "LaRouche candidates" to be elected to local public office and

^{1/} Mr. LaRouche was certified eligible to receive 1984 matching funds after he finally satisfied conditions set by the Commission in late January.

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not on Mr. LaRouche's efforts to further his own Presidential candidacy (Attachment 2, page 25 of the attachments).

Third, LWVEF determined that Mr. LaRouche had not attracted serious media attention. LWVEF states that the information provided by LaRouche on coverage of his candidacy did not evidence national media recognition nor substantial voter interest. LWVEF indicates that broadcast coverage of Mr. LaRouche consisted primarily of paid appearances by Mr. LaRouche or appearances on the networks pursuant to FCC's "equal time" requirements under 47 C.F.R. § 73.1940 (See Attachment 2, page 26 of the attachments). LWVEF notes that most of the newspaper clippings were from local rather than national newspapers and that most of the reports did not stress the serious nature of his candidacy. (See Attachment 2, pages 26-27 of the attachments). Most of the newspaper clippings dealt with the fringe nature of LaRouche's candidacy and with his various problems with different entities including the FEC, NBC and the Treasury Department (See Attachment 2, page 27 of the attachments).

Fourth, LWVEF looked at major national opinion polls from January through March.^{2/} LWVEF states that none of the polls

^{2/} Among the polls consulted were the following: Year End ABC New Poll; CBS/New York Times Poll, January 1984; Gallop Poll, February 16, 1984; Lou Harris Survey, February 20, 1984; National Public Radio/Harris Poll, February 28, 1984; Harris Survey, March 5, 1984; Gallop Poll, March 7, 1984; and New York Times Poll, March 27, 1984.

inquired about Mr. LaRouche or reflected any voter interest in his candidacy. LWVEF indicates "that LaRouche's inability to impress major national polls takers sufficiently to inquire about him demonstrates the low level of voter interest in his candidacy" (See Attachment 2, page 28 of the attachments).

Fifth, LWVEF states that other factors also indicated the marginal nature of the LaRouche candidacy. LWVEF states that LaRouche has participated in only one primary (Pennsylvania). LWVEF also states that Mr. LaRouche won only .05 percent of the popular vote in 1976 and he won only one percent of the total votes cast in the 1980 Democratic primaries (See Attachment 2, page 30 of the attachments). Additionally, LWVEF notes that Mr. LaRouche has not qualified for secret service protection. Secret service protection is given to all presidential candidates determined by an advisory committee to be major candidates.

11 C.F.R. § 110.13(b) defines the parameters of candidate debates stating:

the structure of debates staged in accordance with 11 C.F.R. § 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another. emphasis added.

The Explanation and Justification in prescribing 11 C.F.R. § 110.13(b) states that although the precise structure of the candidate debate is left to the discretion of the staging

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organization: "such debates must, however, be nonpartisan in nature and they must provide fair and impartial treatment of candidates. The primary question in determining nonpartisanship is the selection of candidates to participate in such debates." 44 Fed. Reg. 76,735 (1979).

Although, no specific requirements are listed for the selection of candidates to participate in a debate, the Explanation and Justification implies that fair and reasonable criteria must exist in order to be applied in the selection of candidates for a debate. In promulgating the debate regulations, the Commission recognized that "[a] nonpartisan candidate debate ... provides a forum for significant candidates to communicate their views to the public." 44 Fed. Reg. 76,734 (1979).

LWVEF has complied with the Commission regulations. It adopted criteria which were used in inviting candidates to participate in the debate. The criteria were fair and impartial and were aimed at selecting those individuals who had significant candidacies. Mr. LaRouche's candidacy did not meet the standards when evaluated by the LWVEF. LWVEF's evaluation was reasonable and fair.

Therefore, the Office of General Counsel recommends that the Commission find no reason to believe the League of Women Voters violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13.

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RECOMMENDATION

1. Find no reason to believe the League of Women Voters violated the Federal Election Campaign Act, as amended.
2. Approve attached letters.

Charles N. Steele
General Counsel

May 9, 1984
Date

Kenneth A. Gross
By: Kenneth A. Gross
Associate General Counsel

Attachment

1. Complaint (pages 1-5)
2. Response of Respondent (pages 6-142)
3. Letters to Respondent (page 143)
4. Letter to Complainant (page 144)

9804565134



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

24 MAY 17 09:43

SENSITIVE

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel
Kenneth A. Gross
Associate General Counsel *KAG*
SUBJECT: Addendum MUR 1659; First General Counsel's
Report

Please add a recommendation to close the file in MUR 1659, which is dated May 9, 1984, and scheduled for Commission discussion on May 22, 1984. All the other recommendations remain the same.

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11 CFR 110.13 PUBLISHED AT 57 FED. REG. 33561, JULY 29, 1992
FEDERAL ELECTION COMMISSION NOTICE OF PROPOSED RULE MAKING
FULL TEXT

§ 110.13 Candidate debates.

(a) Staging organizations.

(1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and which does not endorse, support or oppose political candidates or political parties may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

(2) Broadcasters, bona fide newspapers, magazines and other periodical publications may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

(b) Debate structure.-- the structure of debates staged in accordance with 11 CFR 110.12 and 114.4(f) is left to the discretion of the staging organization, provided that:

(1) Such debates include at least two candidates;

(2) No candidate is favored through the structure of the candidate debate, such as [b]y designing the debate to provide one or more candidates with more time than other participating candidates, or by providing one candidate with more advance information regarding the topics to be addressed or the specific questions to be asked;

(3) No communication made by the staging organization during the debate expressly advocates the election or defeat of any clearly identified candidate, clearly identified group of candidates, or candidates of any clearly identified political party. Communications made at other times by staging organizations that are broadcasters, bona fide newspapers, magazines and periodical publications shall be governed by 11 CFR 100.7(b)(2) and 100.8(b)(2).

(4) Contact with the candidate, the candidate's agents and the candidate's authorized committee(s) shall be limited to communications reasonably necessary to staging the debate, such as discussions of the structure, format and timing of the debate, and discussion of the candidates' positions on issues, but shall not include discussion of campaign strategy or tactics not necessary to staging the debate.

57 Fed. Reg. 33561 (July 29, 1992).

11 CFR 110.13 PUBLISHED AT 60 FED. REG. 64273, DECEMBER 14, 1995
FEDERAL ELECTION COMMISSION NOTICE OF FINAL RULE
FULL TEXT

§ 110.13 Candidate debates.

(a) Staging organizations.

(1) Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters, bona fide newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(b) Debate structure. The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

60 Fed. Reg. 64273 (December 14, 1995).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 15, 1997

Dr. Mike Tompkins
Natural Law Party of the United States
51 W. Washington Ave.
Fairfield, IA 52556

RE: MUR 4451

Dear Dr. Tompkins:

In your complaint dated September 5, 1996, against the Commission on Presidential Debates, et al., you requested the opportunity to review the information submitted by the respondents and to respond to their arguments. This letter responds to your request. Based upon 2 U.S.C. §§ 437g(a)(4)(B) and (12)(A), any investigation in an enforcement matter shall remain confidential, unless the person with respect to whom such investigation is made waives confidentiality.

The respondents in MUR 4451 have not provided their written consent to release their responses. Therefore, the responses may not be released to the public or to any other person. Further, the Federal Election Campaign Act of 1971, as amended, does not provide complainants with the opportunity to respond to arguments of the respondents. You will be notified once the Federal Election Commission takes final action on your complaint.

If you have any questions, you may contact me at (202) 219-3690.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jane J. Whang".

Jane J. Whang
Attorney

98043865130



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

January 15, 1997

Dr. John Hagelin
Natural Law Party of the United States
51 W. Washington Ave.
Fairfield, IA 52556

RE: MUR 4451

Dear Dr. Hagelin:

In your complaint dated September 5, 1996, against the Commission on Presidential Debates, et al., you requested the opportunity to review the information submitted by the respondents and to respond to their arguments. This letter responds to your request. Based upon 2 U.S.C. §§ 437g(a)(4)(B) and (12)(A), any investigation in an enforcement matter shall remain confidential, unless the person with respect to whom such investigation is made waives confidentiality.

The respondents in MUR 4451 have not provided their written consent to release their responses. Therefore, the responses may not be released to the public or to any other person. Further, the Federal Election Campaign Act of 1971, as amended, does not provide complainants with the opportunity to respond to arguments of the respondents. You will be notified once the Federal Election Commission takes final action on your complaint.

If you have any questions, you may contact me at (202) 219-3690.

Sincerely,

Jane J. Wang
Attorney

98043865139



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

January 15, 1997

Mr. Kingsley Brooks
Natural Law Party of the United States
51 W. Washington Ave.
Fairfield, IA 52556

RE: MUR 4451

Dear Mr. Brooks:

In your complaint dated September 5, 1996, against the Commission for Presidential Debates, et al., you requested the opportunity to review the information submitted by the respondents and to respond to their arguments. This letter responds to your request. Based upon 2 U.S.C. §§ 437g(a)(4)(B) and (12)(A), any investigation in an enforcement matter shall remain confidential, unless the person with respect to whom such investigation is made waives confidentiality.

The respondents in MUR 4451 have not provided their written consent to release their responses. Therefore, the responses may not be released to the public or to any other person. Further, the Federal Election Campaign Act of 1971, as amended, does not provide complainants with the opportunity to respond to arguments of the respondents. You will be notified once the Federal Election Commission takes final action on your complaint.

If you have any questions, you may contact me at (202) 219-3690.

Sincerely,

Jane J. Whang
Attorney

98043865140



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1997

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W., Suite 1100
Washington, D.C. 20036

Eric Kleinfeld
Clinton/Gore '96 Committee
P.O. Box 19100
Washington, D.C. 20036

RE: MUR 4451

Dear Ms. Utrecht and Mr. Kleinfeld:

The Federal Election Commission received a complaint which indicates that the Clinton/Gore '96 General Committee ("Committee") and Joan Pollitt, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Due to administrative oversight, a copy of this complaint was not forwarded to you previously. A copy of the complaint is now enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and Joan Pollitt, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

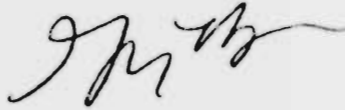
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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Letter to Ms. Utrecht and Mr. Kleinfeld
Page 2

If you have any questions, please contact me at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Gregory R. Baker
Special Assistant General Counsel

Enclosures

1. Complaint
2. Procedures

9 8 U 4 3 8 6 5 1 4 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1997

Douglas C. Wurth
General Counsel
Dole/Kemp '96, Inc.
810 First St., N.W. Suite 300
Washington D.C. 20002

RE: MUR 4451

Dear Mr. Wurth:

The Federal Election Commission received a complaint which indicates that the Dole/Kemp '96, Inc., ("Committee") and Robert E. Lighthizer, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Due to administrative oversight, a copy of this complaint was not forwarded to you previously. A copy of the complaint is now enclosed. We have numbered this matter MUR 4451. Please refer to this number in all future correspondence.

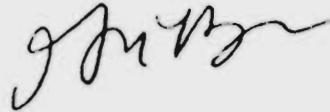
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and Robert Lighthizer, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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If you have any questions, please contact me at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Gregory R. Baker
Special Assistant General Counsel

Enclosures

1. Complaint
2. Procedures

98043865144

CLINTON GORE 96



RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 11 10 26 AM '97

February 6, 1997

Lawrence M. Noble, Esquire
Office of General Counsel
Federal Election Commission
999 E St., N.W.
6th Floor
Washington, D.C. 20463

RE: MUR 4451
Clinton/Gore '96 General Committee, Inc. and Joan Pollitt, as treasurer

Dear Mr. Noble:

This letter requests an extension of time on behalf of the Clinton/Gore '96 General Committee, Inc. (the "Committee") and Joan Pollitt, Treasurer to respond to the complaint filed by Dr. John Hagelin and Dr. Mike Tompkins of the Natural Law Party.

Due to our need to obtain and adequately review all of our records in order to file a complete response, we hereby request an extension of time of fifteen days. Accordingly, we propose to file our response on March 5, 1997.

If you have any questions concerning this matter, please contact me at (202) 728-1010.

Sincerely,

Lyn Utrecht
Lyn Utrecht
General Counsel

9804365145



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 12, 1997

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
Suite 1100
818 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 4451

Dear Ms. Utrecht:

This is in response to your letter dated February 6, 1997, requesting a 15-day extension to respond to the complaint filed by Dr. John Hagelin and Dr. Mike Tompkins of the Natural Law Party. After considering the circumstances presented in your letter, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on March 5, 1997.

If you have any questions, please contact me at (202)219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory R. Baker".

Gregory R. Baker
Special Assistant General Counsel

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★ ★ ★

DOLE KEMP

February 18, 1997

Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20436

RE: MUR 4451

FEB 19 12 28 PM '97

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Ms. Sealander:

This letter responds to your January 30, 1997 letter in the above-referenced MUR regarding a complaint by the Natural Law Party ("NLP") and Dr. John Hagelin and Dr. Mike Tompkins, (collectively, "Complainants") against the Commission on Presidential Debates ("CPD"), Fox Broadcasting Company, Capital Cities/ABC, Inc., and Public Broadcasting Service, (collectively, "Respondents"). Complainants argue that they were impermissibly excluded from various televised candidate formats because the selection criteria relied upon by Respondents to exclude Complainants, i.e., the CPD's nonpartisan candidate selection criteria, were overly subjective and in violation of 11 CFR § 110.13 (c). Based on these claimed violations of the Federal Election Commission's ("FEC") debate regulations, the complaint infers that expenditures by Respondents should be viewed as corporate contributions to the Republican and Democratic presidential campaigns in violation of 2 U.S.C. § 441b.

The inferences in the complaint that Respondents' expenditures on various televised candidate formats should be attributed to Dole/Kemp '96 are misplaced. The CPD made its selections on September 17, 1996. John Hagelin and Ross Perot both filed complaints in federal district court seeking a preliminary injunction based on the same allegations discussed above, among others. The Perot and Hagelin complaints were dismissed by the United States District of Columbia and the dismissal was affirmed by the United States Court of Appeals for the District of Columbia Circuit before the first presidential debate was held. U.S. Court of Appeals for the District of Columbia Circuit (96-5287 and 96-5288); U.S. District Court for the District of Columbia (96-2196 and 96-2132). Neither the Federal courts nor the FEC took any action before the 1996 presidential and vice presidential debates that indicated the CPD's selections violated Federal election law in any way. Thus, Dole/Kemp '96 reasonably relied on the CPD's public statements that its selection criteria were objective, fair, and complied with Federal law.

Although Dole/Kemp '96 has no independent knowledge of the CPD's selection process, the CPD's inquiry into which candidates have a "realistic chance" of winning the general election appears to be rigorous and objective. The CPD's published "Candidate Selection Criteria for 1996 General Election Debate Participation," which are attached to the complaint as exhibit E, define "realistic chance" of winning by reference to four factors that indicate evidence of national

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Colleen T. Sealander, Esq.
November 27, 1996
Page 2

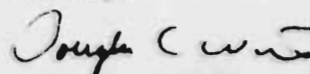
organization, five factors that constitute signs of national newsworthiness and competitiveness, and two factors that indicate national public enthusiasm or concern. The selection criteria also require the CPD's independent advisory committee to consider the advice of nonpartisan professionals and federal election experts as to whether proposed participants have anything more than a theoretical chance of winning. The independent advisory committee found, and the CPD unanimously agreed, that based on application of the published criteria only President Clinton and Senator Dole had a "realistic chance" of winning the 1996 general election.

The Respondents' use of the CPD's criteria in its candidate selections demonstrates that they do not support or oppose any candidate in violation of FEC regulations. History also bears out the fact that the criteria has been used in a nonpartisan manner. In 1992, Ross Perot had dropped out of the presidential race and reentered just before debate selections were made. Nevertheless, the CPD's independent advisory committee concluded -- based on public polls before Mr. Perot's withdrawal and on Mr. Perot's access to campaign funding -- that Mr. Perot's prospects for winning were "unlikely but not unrealistic." See September 17, 1996 Richard E. Neustadt Letter for the Advisory Committee on Candidate Selection, attached to the complaint as exhibit H. The CPD invited Mr. Perot and his running mate to participate in the 1992 presidential and vice presidential debates in reliance on this conclusion, despite the strong likelihood that they would not win the general election. The nonpartisan nature of the CPD cannot be questioned four years later merely because Mr. Perot failed to meet the same objective criteria for inclusion in the 1996 presidential debates.

Finally, even if the FEC were to find that Respondents impermissibly relied upon the CPD criteria, this finding would not compel a conclusion that Respondents violated 2 U.S.C. § 441b. The CPD used the same selection criteria in 1992 that were used in 1996, and the CPD has been recognized as a nonpartisan sponsor of presidential debates since 1988. Any finding that the composition of the CPD or its application of the selection criteria violates the Federal Election Campaign Act, as amended, would require thorough consideration of the CPD's constitutional rights and any indications of legislative intent regarding sponsorship of presidential debates.

For the reasons discussed above, the FEC should find no reason to believe Dole/Kemp '96 violated any Federal law by participating in Respondents' televised formats. Please advise me of any further information you may need.

Sincerely,



Douglas C. Wurth
General Counsel

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CLINTON GORE '96

March 4, 1997

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

MAR 4 4 10 PM '97

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

**Re: MUR 4451, The Clinton/Gore '96 General Committee
and Joan C. Pollitt, Treasurer**

Dear Mr. Noble:

This is the response of the Clinton/Gore '96 General Committee (the "Committee") and Joan C. Pollitt, as treasurer, to the complaint filed in the above-captioned matter. As more fully demonstrated below, the Commission should find no reason to believe that the Committee has violated any provision of the Federal Election Campaign Act of 1971, as amended, (the "Act"), 2 U.S.C. section 431 et seq. or the Commission's regulations and dismiss this complaint forthwith.

INTRODUCTION

It should be noted at the outset that the complaint is dated September 5, 1996, yet, due to an apparent administrative oversight, the Commission did not forward a copy of the complaint to the Committee until January 30, 1997. Although the Commission has not explained this delay, the Committee is filing this response in a timely manner, based on the late date of service.

The Committee also notes for the Commission that the Natural Law Party (the "complainant") named the Commission on Presidential Debates (the "CPD"), Fox Broadcasting Company ("Fox"), Capital Cities/ABC, Inc. ("ABC"), and Public Broadcasting Service ("PBS") as the respondents against whom the complaint is being filed. Despite the fact the complainant did not intend to name the presidential campaigns in this matter, the Office of General Counsel, on its own initiative, and without any consideration as to the merits of the claim, has apparently made the major party presidential campaigns respondents. While the

Committee appreciates the opportunity to respond, albeit at this late date, making the participants in the activities complained of respondents is not only extraneous to the appropriate analysis for the Commission, it also renders the Commission's regulations unworkable in the context of a presidential campaign.

DISCUSSION

Complainant's allegations, in short, contend that certain debates and news events during the presidential campaign did not constitute legitimate debates and news events, despite the lack of any evidence or support for such allegations. Complainant is simply trying to alter bona fide press functions into campaign events, even though the campaigns were not the sponsors of these events, but were rather the invited participants. The Committee's response, as set forth below, is divided into sections according to the respondents named by complaint.

1. Commission on Presidential Debates

The Committee incorporates herein its response to the Commission in MUR 4473, filed October 11, 1996, and has attached a copy hereto. See Attachment 1. The factual circumstances in that MUR are identical to those herein. The Commission should especially note page 2, paragraphs 3 - 5 of that response as applicable here.

Accordingly and for the reasons stated in the Committee's previous response, the Commission should find no reason to believe that the Committee violated any provision of the Act or Commission regulations in connection with its CPD participation.

2. Fox Broadcasting Company

With respect to Fox, the Committee incorporates its response to the Commission in MUR 4473, as indicated above, since, under the Fox proposal, the selection of the participants was determined by reference to the selections made by the CPD. In addition, should the Commission conclude that the appropriate analysis is whether the Fox format constituted a debate for purposes of the Act, as urged by complainant, then the Committee stands by and incorporates its response in MUR 4473.

Moreover, while the Committee agrees with the complainant that the more appropriate analysis is whether the Fox broadcasts qualified for the news exemption under the Commission's regulations, obviously, the Committee believes that complainant's conclusion is absolutely wrong and that the broadcasts so qualify. In essence, complainant is asking the Commission to "reverse" the Federal Communications Commission (the "FCC") which concluded

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during the heat of the campaign that the Fox proposal constituted coverage of a "bona fide news event".

A copy of the FCC Declaratory Ruling of August 19, 1996 is attached. See Attachment 2. The FCC concluded that the Fox proposals were "on-the-spot coverage of bona fide news events", and thus, exempt from the requirements of the Federal Communications Act. See Attachment 2, page 12. While the Committee recognizes that FCC rulings in no way bind the FEC, the findings are instructive in analyzing the press exemption in the Commission's regulations and making a determination that the activity is part of covering a news story and exempt from the definitions of contribution and expenditure. The Committee urges the Commission to adopt a position similar or identical to that taken by the FCC to eliminate any confusion during the heat of an intensely fought presidential campaign.

Complainant's single argument on favor of its position to the contrary is "that Fox is turning over control of its facilities to the candidates . . ." Such an idea is ludicrous. The Committee in no way controlled Fox facilities. In fact, because the FCC required that certain "structural safeguards" be put in place by the broadcaster, those structural safeguards precluded ceding control of the broadcaster's facilities.¹ Fox specifically did not allow candidates to engage in any post-production modification, editing or enhancement of the taped candidate statements. Fox controlled the length of time and the subject matter of the statements, as well as the time of the broadcasts. Finally, Fox imposed other production requirements relating to the setting of the taped statements.²

Contrary to complainant's argument, there is no requirement in the Commission's regulations that the broadcaster control or edit the content of the news story, commentary or editorial.³ As long as an analysis of all relevant factors indicates that the broadcaster maintained control, as here, then the content, i.e., the spoken words, must be left to the participants. See Advisory Opinion 1996-41, CCH Federal Election Campaign Financing Guide, paragraph 6220 (October 4, 1996).

¹ The structural safeguards required by the FCC are to ensure that no candidate is favored by the broadcaster. Those same safeguards accomplish the different but related purpose necessary for analysis here -- that the broadcasters, rather than the candidates, control the facilities.

² For example, Fox imposed certain limitations on the backdrop or background appearing behind the candidates.

³ In fact, in the case of a commentary or editorial, it is unlikely that a broadcaster would edit its content. Rather, the commentator is typically given a set amount of time to comment on a particular topic, and often, the commentary is accompanied by a disclaimer that it does not reflect the views of the broadcaster.

Quite simply, complainant has provided no evidence whatsoever to support its allegation that the candidates somehow controlled Fox's facilities. In addition, complainant has provided no evidence to contradict the FCC's conclusion that the Fox proposals are coverage of a news story. In the absence of any such evidence with the complaint, the FEC should not attempt to define for broadcasters or other organizations what constitutes news when it relates to the presidential campaign.

Accordingly, the Commission should find no reason to believe that the Committee violated any provision of the Act or Commission regulations in connection with its Fox participation.

3. Public Broadcasting Service

With respect to PBS, complainant alleges that the PBS format constituted a debate under the Act and Commission regulations. While rejecting that conclusion, the Committee for purposes of responding to this matter incorporates its response to the Commission in MUR 4473, as indicated above. In addition, the Committee incorporates herein its response set forth above with respect to the Fox broadcasts, as it relates to the application of the Commission's news exemption to PBS.

Accordingly, the Commission should find no reason to believe that the Committee violated any provision of the Act or Commission regulations in connection with its PBS participation.

4. ABC

The Committee did not participate with ABC in the programming described by complainant. Accordingly, the Commission should find no reason to believe that the Committee violated any provision of the Act or Commission regulations in connection with its ABC non-participation.

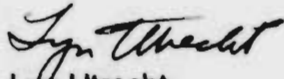
CONCLUSION

In light of the unsupported allegations made by the complainant and the response contained herein, there is simply no basis for a Commission finding of reason to believe that the Committee has violated any provision of the Act or Commission regulations. In fact, any such Commission determination will unquestionably cause this Committee and future presidential candidates, as well as news organizations, to be deprived of their First Amendment rights.

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Moreover, there are important public policy reasons and widespread support for expanded news coverage of presidential campaigns. For that reason, the Commission should dismiss the complaint and close this matter as soon as possible.

Respectfully submitted,


Lyn Utrecht
General Counsel


Eric Kleinfeld
Chief Counsel

Attachments

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ATTACHMENT 1

CLINTON GORE '96

October 11, 1996

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 11 11 25 AM '96

Re: MUR 4473, The Clinton/Gore '96 General
Committee and Joan C. Pollitt, Treasurer

Dear Mr. Noble:

This is the response of the Clinton/Gore '96 General Committee, Inc. (the "Committee") and Joan C. Pollitt, as treasurer, to the complaint in the above-captioned matter. As more fully demonstrated below, the Commission should find no reason to believe that the Committee has violated any provision of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"), 2 U.S.C. §431 *et seq.* or the Commission's regulations and dismiss this complaint forthwith.

It should be noted at the outset that the complaint filed by Perot '96, Inc. (the "complainant") names the Commission on Presidential Debates (the "CPD") as the sole respondent against whom the complaint is being filed. Despite the fact that complainant did not intend to name the other presidential campaigns in this matter, the FEC, on its own initiative and without any consideration as to the merit of the claim, has made the major party presidential campaigns respondents. While the Committee appreciates the opportunity to respond to this matter, for the reasons stated below, making the debate participants in this particular case respondents is not only extraneous to the appropriate FEC analysis, it renders the Commission's debate regulations unworkable.

It is a matter of public record, as widely disseminated through the news media, that, since the start of the general election, the Committee fully supported the wishes of Ross Perot to be included in the CPD-sponsored presidential debates and had hoped that the CPD would make a determination to include him. The Committee has attached to this response a number of news articles reflecting this viewpoint. In addition, numerous statements were made by Committee representatives to broadcast media reflecting this point of view.

P.O. Box 19100 • WASHINGTON, D.C. 20036-9100 • VOICE: 202-331-1996 • TTY: 202-530-2170 • FAX: 202-496-4849

PAID FOR BY THE CLINTON/GORE '96 GENERAL COMMITTEE, INC.

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As a review of the attachments reveals, the statements of Committee representatives were unequivocal, both before and after the CPD made its determination on September 17, 1996 to exclude Perot. For example, on September 18th, The Cleveland Plain Dealer reported that "[t]he Clinton campaign, which thinks including Perot would help its cause, called the ruling regrettable and pledged to continue to push for Perot's inclusion." *Perot Is Denied Role In Debates*, The Cleveland Plain Dealer, Sept. 18, 1996, at A1. The Washington Post, Newsday, USA Today, and The Houston Chronicle, to name just a few, contained similar reports.

Accordingly, there can be no doubt, regardless of the legal analysis of this matter, of the Committee's position with respect to the inclusion of Perot in the CPD debates. Obviously, the Committee's position, while known to the CPD through its public statements, had absolutely no influence on the CPD, which made an independent determination contrary to the Committee's wishes.

The Committee was thus left with the facts being that two candidates only were extended invitations to participate in the CPD-sponsored debates. Under 11 C.F.R. §110.13, which governs candidate debates, a debate may be structured to include as few as two candidates, despite the wishes of the those included as to who else will be invited to participate. Nothing under that provision allows debate participants to dictate or otherwise select who else may participate, and the Committee was unable to do so here. In addition, nothing under 11 C.F.R. §110.13, requires the candidates, as a condition of participating, to make an independent conclusion as to whether the sponsor complied with the requirements of that section.

As far as the Committee knew, then, two candidates were invited to participate, and the CPD made its determination in accordance with the FEC's regulations. Certainly, the FEC's regulations do not require, or even suggest, that President Clinton decline to participate, simply because the number or identity of other presidential candidates desired by him is not reflected in the sponsor's independent determination as to who to should be included.

Moreover, as a practical matter, to hold participating candidates responsible for the costs of the debates, when the sponsor has exercised its independent decision-making authority as to who should be included, is inconsistent with the Act and is unworkable in a presidential campaign. Clearly, participants should not have contributions attributed to them from the debate funding source, when the determination as to who to include in the debate was made independently by the sponsor.¹ To otherwise place the legal burden of shouldering the debate costs on the candidates will have an obvious chilling effect on the debates and cause candidates to decline participation in a forum which, to them, appears to be otherwise permissible, though in:

¹See Advisory Opinion 1986-37, Fed. Election Campaign Financing Guide, (CCH) ¶5875 (November 10, 1986).

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a less than preferred structure.²

Accordingly, even though the Committee had made its desires for participants well known, the Committee concluded that it would nonetheless participate in the debates of two rather than three candidates, despite the structure not being precisely to its liking. While this determination was made on obviously political, rather than legal, grounds, the facts herein are sufficient to dismiss this matter as it affects the Committee. Therefore, the Committee respectfully requests that the Commission find no reason to believe that the Committee has violated any provision of the Act or regulations.

Sincerely,


Lyn Utrecht
General Counsel


Eric Kleinfeld
Chief Counsel

Attachment

²As is well known, the Dole/Kemp campaign is on record as opposing Ross Perot's inclusion. If the FEC were to accept Mr. Perot's argument, then the adoption of the Dole/Kemp "position" on this issue by the CPD could result in a contribution from the CPD to the Dole/Kemp Committee. Conversely, if the CPD had included Mr. Perot and Bob Dole had declined to debate, then, under the complainant's reasoning, the CPD could have made a contribution to the participating campaigns. These consequences are unworkable and make obvious why the Commission should not have named the campaigns as respondents.

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ATTACHMENT 2

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Requests of)
)
Fox Broadcasting Company,)
Public Broadcasting Service,)
and Capital Cities/ABC, Inc.)
)
For Declaratory Rulings)

DECLARATORY RULING

Adopted: August 19, 1996

Released: August 21, 1996

By the Commission:

1. The Commission has before it three separate requests for declaratory ruling filed by the Fox Broadcasting Company (Fox), the Public Broadcasting Service (PBS) and Capital Cities/ABC, Inc. (ABC). Each seeks a Commission ruling that its respective proposal to provide free air time in the context of news coverage to the major presidential candidates prior to the November 5, 1996 general election is exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act of 1934, as amended. 47 U.S.C. Section 315(a). For the reasons discussed below, we believe that the proposals are consistent with the statutory exemptions and related Commission and judicial case law and that, accordingly, each should be deemed exempt from the equal opportunities requirement as "on-the-spot coverage of bona fide news event" programming under Section 315(a)(4).

I. FACTUAL BACKGROUND

2. Fox Proposal. Fox proposes the following two-pronged format for presentations by the "major" presidential candidates in order to "contribute to the public interest in an open and vigorous exchange of ideas prior to the November 5, 1996, general election":

- (1) A taped one-hour prime time program to be aired election eve, with each candidate accorded an equal amount of time to make a statement in response to the question, "Why should the American voter vote for you?" The statements would be broadcast back-to-back, the candidates would have no interaction with reporters or with each other, and the order of appearance would be determined by coin flip if two candidates participate or by a drawing of straws if there are more than two; and

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(2) During the last six weeks of the campaign, each candidate would respond, in taped one-minute "position statements," to ten questions to be furnished to them by September 1, 1996. Each candidate would be asked the same questions, and the questions would be formulated by an independent consulting or polling organization. The statements, though not contemplated as back-to-back, would be "broadcast in prime-time programs of comparable audience size." The initial order of the statements would be determined by a coin toss or by drawing straws and would alternate in sequence for the duration of the broadcasts. The statements would be publicized and regularly scheduled.

3 Under the Fox proposal, selection of major presidential candidates for participation in both elements of its proposed programming will be determined by reference to selections made by the Commission on Presidential Debates for participation in the presidential debates.¹ Further, Fox states that it will not exercise any control over the content of the candidates' statements with respect to either of these proposals. Finally, Fox states that it will make production facilities available, "free of charge and at mutually convenient times and locations," for the candidates to record both their one-minute position statements and their election eve statements. The statements are to be recorded "live on videotape," which Fox explains means that "the candidates appear live and provide . . . responses, without any opportunity to edit or otherwise modify or enhance the responses in the post-production process."

4 In support of its request, Fox claims that "the spoken presentations by the candidates on issues of concern to voters," consistent with the Commission's 1991 King decision,² may reasonably be viewed as news events subject to broadcast coverage in the exercise of its good faith news judgment. Fox states that it has designed structural safeguards to prevent against possible candidate favoritism, a concern of Congress when it enacted the news exemptions. Fox maintains, for example, that, by deferring to a third party for the selection of candidates, it has removed itself from even the possibility of broadcaster favoritism. Fox thus contends that both formats are *bona fide* news events consistent with the Commission's interpretations of Section 315(a)(4) of the Act and, alternatively, that both formats also satisfy the criteria enunciated by the Commission for *bona fide* news interviews under Section 315(a)(2) of the Act.³

5. **PBS Proposal.** PBS proposes to present a series of programs as part of its "PBS Democracy Project," to "contribute to a better informed and active electorate in the forthcoming

¹ The Commission on Presidential Debates is an organization established to plan and sponsor debates among the leading candidates for the Presidency and Vice Presidency. The debate Commission selects candidates based upon a variety of factors including the newsworthiness of their candidacy. It would not be involved in Fox's production in any manner.

² King Broadcasting Company, 6 FCC Rcd 4998 (1991), on remand from King Broadcasting Company, 3 FCC 860 F.2d 465 (D.C. Cir. 1988), vacating WEBE-108 Radio Company, 2 FCC Rcd 5963 (M.M. Bur. 1987), review denied, FCC 88-162, released May 13, 1988 (King).

³ In light of our finding herein that both parts of the Fox proposal satisfy the requirements for the *bona fide* news event exemption, analysis of the alternative news interview exemption request is unnecessary.

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presidential election" and "to stimulate voter interest and involvement." Candidate selection would be based on objective criteria such as national polling results or could be predicated on selections made by the Commission on Presidential Debates. Conditioned on the acceptance by the presidential candidates of at least the two "major parties," individual candidate statements lasting at least 2½ minutes would be broadcast on successive days during prime time, for several weeks before the November 5, 1996 election. Each candidate would be afforded an opportunity to present his or her views without restriction as to content.⁴ The statements would be aired each day at the same time and would be rotated with one candidate statement per night.

6. The following conditions would be imposed by PBS on each candidate: (1) only the candidate would be permitted to appear and would have to be on screen for the entire length of the broadcast; and (2) the candidate's visual appearance would be limited to a prescribed format, such as a depiction of only the candidate's head and shoulders, with no props or sound effects permitted. PBS asserts that any station agreeing to carry the programming would be obligated to carry all of the programs in the series. PBS contends that its proposal will provide for a more extensive and substantive discussion than that afforded by 30-second candidate advertising, which, in its view, is obscured by the use of production techniques typically associated with the selling of products and services. PBS argues that both the newsworthiness of its proposed programming and its good faith news judgment in deciding to carry it are consistent with Commission precedent, most notably the King decision. PBS thus requests that the Commission rule that its proposed programming is exempt *bona fide* news event programming under Section 315(a)(4) of the Act.

7. ABC Proposal. ABC proposes to offer the "major" presidential candidates the opportunity to appear on a one-hour prime-time special during the final week of the campaign. ABC states that this would be a "live unrestricted event," with the candidates appearing without interruptions or questions from any third party. ABC explains that the candidates would discuss with each other, and the American people, the issues they believe to be most important in the election. ABC contends that spontaneous interaction and dialogue between or among the candidates is indistinguishable from debates, which have been held by the Commission to be exempt news events for over twenty years. ABC also contends that the Commission's decision in King is even more clearly supportive of its format, particularly in light of the structural safeguards identified in its request.

8. ABC asserts that it will defer selection of the candidates to be included in the program until a point later in the campaign when it can determine who the major candidates are. ABC commits to prevent favoritism by looking to objective criteria such as polling results, the number of states in which the candidate is on the ballot, and whether the candidate has engaged in a nationwide campaign, to make the selection. ABC believes that a free form discussion involving the major presidential candidates in the week before the election is a highly newsworthy event and that its use of the proposed safeguards against favoritism indicate its good

⁴ Because these appearances would, if the request is granted, not be "uses" under Section 315, which cannot be censored, PBS reserves the right to edit any potentially libelous remarks or personal attacks.

faith news judgment. ABC thus asks that the Commission rule that its proposed programming would be exempt news event programming under Section 315(a)(4) of the Act.

II. COMMENTS AND *EN BANC* TESTIMONY

9. On May 13, 1996, the Commission issued a Public Notice asking interested parties to comment on the issues raised by the Fox request and, more generally, on the Commission's interpretations of the news exemptions to the equal opportunities requirement.⁵ The Commission also announced that it would conduct an *en banc* hearing on June 25, 1996, to provide further public exploration of the issues generated by the various network proposals and requests.⁶

10. In our request for comments, we asked whether approval of the Fox proposal would be consistent with statutory language, legislative history, and judicial and Commission case law regarding the news exemptions. In addition, we sought comments on whether the Commission's current interpretation of Section 315 of the Act limits ways in which broadcasters may voluntarily provide time for candidates to speak directly to voters, and whether programming that broadcasters in good faith deem to be *bona fide* news should be exempt regardless of format.

11. We received a total of 25 comments in response to our request and 12 panelists participated in the *en banc* hearing. In addition, United States Senators Bill Bradley (D-NJ) and John McCain (R-AZ) appeared at the hearing and made statements. The majority of commenters and *en banc* participants generally recognize the benefits to the public of free, unfiltered broadcast presentation of the major presidential candidates and specifically support finding both parts of the Fox proposal exempt as "on-the-spot coverage of *bona fide* news event"

⁵ The list of commenting parties is attached as Appendix A hereto. PBS and ABC first described their programming proposals to the Commission as part of their comments for this proceeding. In addition, at the time of the Public Notice, the CBS, NBC and CNN networks had also announced plans for news coverage of the presidential campaign. Those networks have not sought a Commission ruling concerning their respective programming.

⁶ A list of participants in the *en banc* hearing is attached as Appendix B. The *en banc* hearing was scheduled in response to the April 16, 1996 request of The Free TV for Straight Talk Coalition (Coalition), who asked the Commission to convene an *en banc* hearing "to promote a maximum contribution by the electronic media, especially broadcast television, to the coming general election campaign for President, with special focus on recent proposals to provide free network television time to the major presidential candidates." The Coalition argued that a hearing should address the Commission's statutory responsibility to interpret Section 315 of the Act so as to increase the amount and level of substantive political discussion. The Coalition stated that it had urged the television networks to offer the major candidates "a few minutes a night during prime time in the culminating weeks of the 1996 presidential campaign," and argued that if the networks accepted its proposal, such coverage would be exempt as *bona fide* news event programming under Section 315(a)(4). The Coalition did not, however, file with us a specific request for a ruling on whether its proposal is exempt under Section 315(a). Nonetheless, our decision here addressing the requests by Fox, PBS and ABC serves to provide general guidance to others who wish to offer various types of exempt programming formats.

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programming.⁷ These commenters contend that uninterrupted presentations by the major presidential candidates reasonably can be considered news events under the statute and Commission precedent. Consistent with the views of a number of commenters, the National Association of Broadcasters (NAB) stated that the election eve back-to-back portion of Fox's proposed format fully satisfies the criteria established in the Commission's 1991 King decision. In addition, NAB asserts that the same rationale should apply to the sixty-second statements, even if they are not back-to-back, so long as they air in comparable time periods.

12. Senator Bradley commented on the importance of having the candidates themselves communicate directly with the voters, in contrast with the negative campaigning increasingly associated with paid political advertising. He also stated that broadcasters are granted a privilege to use a limited public resource and that use of the airwaves should not be available only to the highest bidder. Senator McCain endorsed the Coalition's call for the networks to give the major Presidential candidates several minutes of time per night in the closing weeks of the campaign. He stated that simulcasting the candidates' appearances on the major networks would provide the greatest impact on the electorate.⁸

13. To the extent that commenters supportive of the Fox proposals voice any concerns about the impact of granting the requested rulings, they generally relate to the treatment of third-party candidates and the likelihood that these candidates may be excluded from coverage. In addition, three commenters (The LaRouche Committee, Daniel Walker and the World Workers Party) oppose the Fox proposal entirely because they believe it would exclude coverage of minor candidates.⁹ However, Frank Fahrenkopf, Jr. and Charles Manatt state that political communication is enhanced -- and the public interest served -- by focusing the public's attention on the major candidates through political broadcasts. PBS states that there are often numerous candidates on the ballot in Presidential elections, yet there is usually a demonstrable lack of interest on the part of the public in most minor party candidacies. PBS points out that the top three vote recipients in the 1992 Presidential election received 99.37% of all votes cast.¹⁰ During his *en banc* testimony on behalf of Fox, Rupert Murdoch stated that, although the views of all candidates are respected, it is simply not possible to offer time to candidates who have failed

⁷ Fox's proposal is supported by the comments of ABC, CSAE, Common Cause, Frank Fahrenkopf, Jr. and Charles Manatt, Henry Geller, the Robert Wood Johnson Foundation-Healthy Nations Program, Media Access Project, Michael Meyerson, the National Association of Broadcasters, NBC, NTIA, Norman Ornstein, People for the American Way, Public Broadcasting Service, Paul Taylor, Woodstock Theological Center, and WTTW.

⁸ The broadcast industry describes the kind of simulcasting proposed by the Coalition and supported by Senator McCain as "roadblocking." It would involve a voluntary decision by the networks to provide broadcast time to cover a news event at exactly the same time.

⁹ The Natural Law Party, while not opposing the Fox proposal, asks the Commission to make clear that, if time is provided to candidates of the two major parties, it also be provided to other candidates meeting a prescribed standard.

¹⁰ According to information compiled by the Federal Election Commission, 23 candidates for the presidency received votes in the 1992 general election.

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during the campaign to obtain significant public support.

14. Concern over the possibility of broadcaster favoritism was also voiced by a number of commenters who support Fox's request, and they stress the importance of the Commission's emphasis on safeguards against abuse. For example, Professor Michael Meyerson expressed concern that broadcaster favoritism may more readily occur in local races where multiple candidacies and parochial concerns abound. Consequently, he urges the Commission to be careful in its consideration of the Fox request to assess the potential impact of our ruling at the local level. Most of the commenters, including Common Cause and NTIA, pointed out that the Fox proposal contains adequate safeguards against possible broadcaster favoritism, such as removing itself from the selection of the participating candidates and the questions to be presented, as well as ensuring that the one-minute statements air in periods of comparable audience share.

15. CBS and ABC recommend that the Commission rule that programming which broadcasters in good faith deem to be *bona fide* news coverage is exempt regardless of format, provided there are adequate safeguards against broadcaster favoritism. They argue that the public is best served by giving broadcasters the freedom to employ a variety of formats to cover and present views of candidates for public office. These commenters thus suggest that the Commission eliminate from its news exemption analysis the determination of whether the program at issue falls under one of the enumerated formats of Section 315(a). Henry Geller states that the Commission should continue granting exemptions as broadly as possible consistent with its wide discretion under the statute. However, eliminating format considerations from Section 315(a), Geller argues, must occur through congressional action, something he asserts the Commission should urge Congress to do. WTTW states that it would be helpful for the Commission to give specific guidance as to the permissible variations of exemption formats. During his *en banc* testimony, Timothy B. Dyk, on behalf of the NAB, voiced a similar concern about the need for broadcasters to request Commission rulings on a case-by-case basis.

16. While supporting Fox's request, MAP strongly opposes further expanding the news exemptions as suggested by ABC and CBS, arguing that the Commission has already interpreted the news exemptions too broadly. Instead, MAP suggests that the Commission consider changing the definition of "legally qualified candidate" contained in its rules.¹¹ By more narrowly defining a legally qualified candidate in the Commission's rules, MAP argues, the Commission could at least at the national level reduce the number of candidates entitled to equal opportunities without having to assess the merits of particular news programming. Under MAP's proposal, the standards for the redefinition would include: support in independent opinion polls; signatures on nominating petitions; amount of campaign contributions; and votes in prior elections. The

¹¹ Only "legally qualified" candidates are afforded equal opportunities rights under Section 315 of the Communications Act. Section 73.1940 of the Commission's rule defines a legally qualified candidate by reference to whether a candidate has qualified for a place on the ballot in accordance with the law of the election jurisdiction or has made a substantial showing of candidacy. A substantial showing involves the traditional indicia of an actual candidacy such as the establishment of campaign headquarters, speech making, fund raising, etc. In the Presidential context, a candidate who has so qualified in at least 10 states is deemed a candidate in all states. 47 C.F.R. Section 73.1940.

Natural Law Party requests that the Commission make clear that all candidates achieving national party status, as evidenced by qualifying for the ballot in states with a total of at least 270 electoral votes and qualifying for matching funds from the Federal Election Commission, should be entitled to participate in Fox's programming.

III. DISCUSSION

A. Legal Background

17. We begin our analysis with a review of the statute, the legislative history, and the relevant precedent. Section 315 of the Act provides that if a broadcaster or origination cablecaster¹² permits a legally qualified candidate for public office to "use" a broadcast station or cable television system,¹³ it must afford equal opportunities to all legally qualified opponents for the same office. In 1959, the Commission ruled that the appearance of the incumbent Mayor of Chicago on a local newscast during his reelection campaign triggered equal opportunities rights for his opponents. In re Telegram to CBS, Inc. (Lar Daly), 18 Rad. Reg. 238, recon. denied, 26 FCC 715 (1959). Congress, fearing that the ruling would inhibit news coverage of the political arena, within months enacted four news exemptions to the equal opportunities requirement:

- 1) *bona fide* newscast;
- 2) *bona fide* news interview;
- 3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); and
- 4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1)-(4).

18. Rather than specifically enumerating the characteristics of the programming formats intended to be covered by the exemptions, Congress left it to the Commission to interpret the full scope of the exemptions. See S. Rep. No. 1539, 86th Cong., 2d Sess. 2 (1960). The legislative history evidences Congress's recognition that the exemptions defied clear format characterizations and that the Commission was to have broad discretion to interpret them:

It is difficult to define with precision what is a newscast, news interview, news

¹² For purposes of applying the equal opportunities requirement, Section 315(c) defines "broadcasting station" as including cable television systems. In implementing this provision, the Commission has applied Section 315 only to a cable system's origination cablecasting, defined as programming over which it exercises exclusive control. 47 C.F.R. Section 76.5(p).

¹³ In general, a use is any "positive" identified or identifiable appearance of a legally qualified candidate. This excludes disparaging depictions by opponents or third-party adversaries. See Report and Order, 7 FCC Red 678, 684 (1991).

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documentary, or on the spot coverage of news events. . . . That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission.

. . . . In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, news interview, news documentary, [or] on the spot coverage of a news event . . . is *bona fide* or a "use" of the facilities requiring equal opportunities.

S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959). Furthermore, as the U.S. Court of Appeals for the D.C. Circuit observed in Chisholm v. FCC, 538 F.2d 349, 358 (D.C. Cir. 1976), Congress came to the realization that the notion of absolute equality for all competing candidates, first envisioned when Section 315 was enacted in 1934, would have to give way to two other noteworthy objectives:

First, the right of the public to be informed through broadcasts of political events; and

Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Chisholm v. FCC, *supra*, at 358, quoting Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959) (Comments of Chairman Harris). With respect to Congress's intent to facilitate greater news coverage of the political process, the court in Chisholm v. FCC also observed that "the basic purpose" of the news exemptions is "[t]o enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."¹⁴ Thus, the Commission was faced with the formidable task of implementing Congress's intention to strike a balance between fairness to the candidates and greater broadcast coverage of elections.

19. Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions. In recognition of Congress' primary goal in enacting the exemptions -- to facilitate a better informed electorate through greater news coverage of the political process -- the Commission has accorded greater deference to a licensee's good faith news judgment. The following discussion outlines the interpretive evolution reflected in the rulings most pertinent to the issues raised by the instant requests.

¹⁴ Chisholm v. FCC, *supra*, at 356, quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland).

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B. On-The-Spot Coverage of a *Bona Fide* News Event

20. The Commission narrowly construed the news event exemption until its 1975 decision in Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom., Chisholm v. FCC, supra, cert. denied, 429 U.S. 890 (1976) (Aspen), when the Commission reversed earlier rulings that had denied requests to treat debates and press conferences as exempt *bona fide* news events. In Aspen, The Commission reevaluated its reading of the statute and legislative history, concluding that:

[t]here is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activities of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster in such cases had made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. . . . In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which are patently not bona fide news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event.

Aspen at 705. Thus, the Commission determined that it could be flexible in evaluating whether a format was reasonably within the news event exemption and that, in the absence of bad faith, it should defer to a broadcaster's good faith news judgment in deciding to broadcast an event.

21. In Aspen, the Commission also adopted a two-part test for analyzing whether a program should be considered *bona fide* news event programming. First, it determined whether the format of the program reasonably fit within the news event exemption category and, second, it assessed whether the decision to carry a particular event was the result of good faith news judgment and not based on partisan purposes.¹⁵ After deciding that debates and press conferences could reasonably fit the news event exemption under the first prong of the test, the Commission decided that, under the second prong, it could, when certain safeguards were present, defer to a broadcaster's good faith news judgment in deciding to broadcast an "event." With respect to candidate debates, the Commission ruled that, to be considered an exempt news event, a debate

¹⁵ In Kennedy for President Committee (Kennedy), 77 FCC 2d 965, 968-69, aff'd sub nom. Kennedy for President Committee v. FCC, 636 F.2d 417 (D.C. Cir. 1980), the Commission further clarified Aspen and emphasized that in making the analysis of whether a program is exempt, the Commission will first "determine whether a particular scenario falls within one of the classes of appearance exempt under Section 315(a)(1)-(4)." Id. at 969. Second, the Commission will explore "whether a particular broadcast which is claimed exempt was presented using a broadcaster's good faith news judgment." Id. The second aspect of this analysis places considerable reliance on the exercise of a broadcaster's discretion to determine "newsworthiness" once it is determined an exempt news event is involved. Thus, "absent evidence of the broadcaster's intent to advance a particular candidacy, newsworthiness of an event is left to the reasonable news judgment of the professionals." Kennedy for President Committee v. FCC, 636 F.2d at 427.

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must be sponsored by a non-broadcaster third party, such as the League of Women Voters, must be aired in its entirety, and must be aired live. Press conferences also were required to be aired live and in their entirety to qualify for the exemption.

22. In Henry Geller, 95 FCC 2d 1236, aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983) (Geller), the Commission held that its decision in Aspen had, in some respects, been unnecessarily restrictive. Applying the two-prong test, it therefore allowed broadcasters to sponsor and air debates from their own studios and to tape and air a "reasonably recent event." The Commission reasoned that, although there was a chance that according broadcasters additional freedom and flexibility in their news programming might result in an occasional abuse, Congress clearly had accepted that risk in order to foster a more informed electorate.¹⁶ The Commission explained that the common denominator of all exempt programming was *bona fide* news value and that the identity of a debate sponsor should not affect the *bona fides* of the programming. Similarly, Geller eliminated the so-called "one-day rule," which had required that the broadcast be nearly contemporaneous with the event covered. The Commission reasoned that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event in order to maximize audience potential did not destroy its "on-the-spot" nature and furthered, to an even greater degree, Congress's goal of increasing the presentation of political campaign news. Accordingly, the Commission determined that the "rule-of-thumb" on the timing of an exempt news event program should be that the program encompasses news reports of any "reasonably recent event," so long as intended in good faith by the broadcaster to inform the public and not intended to favor or disfavor any candidate.¹⁷

23. In its 1991 decision in King, the Commission further expanded the Section 315(a)(4) exemption by granting a request for a broadcaster-initiated news event involving appearances alone, with no journalistic or other interaction with the candidates.¹⁸ The Commission reasoned that "candidate presentations, in which the major nominees for the highest office in the land set forth in speeches 'their essential campaign messages to the American people' reasonably may be viewed as news 'events' subject to broadcast coverage within the meaning" of Section 315(a)(4).¹⁹ It thus concluded that "the mere fact that the presentations

¹⁶ See Geller at 1244.

¹⁷ Id.

¹⁸ The first program in the series proposed by the licensee consisted of a one-hour taped program in which the two major party nominees for President would be allocated 30 minutes each to set forth their respective campaign messages without the involvement of journalists or any interaction between the candidates. The order of appearance would be reversed in a similar one-hour broadcast at the end of the series. The licensee indicated that there would be one, possibly two, broadcasts in between the opening and closing programs, which would consist of separate 45-minute interviews with each of the two candidates, combined into 90-minute programs. The series would be made available to broadcast stations and cable systems for airing no later than one week after taping.

¹⁹ Id. at 4999.

allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news exemption."²⁰

24. The Commission emphasized as critical to its decision the need for structural safeguards to avoid the possibility of abuse, such as the back-to-back appearances by opposing candidates, which the licensee in King included as part of its proposed format.²¹ The Commission also reasoned, as it had in Geller, that, on balance, Congress's goal of fostering greater news coverage of the political process outweighed any increased possibility of abuse.²² Finally, the Commission stressed in King that the exclusion of third-party candidates whose "significance" can be established by objective criteria such as polling results, would raise questions about the *bona fides* of the programming.²³

C. Legal Analysis of Pending Proposals

25. As explained above, since the Aspen decision more than twenty years ago, the Commission's interpretations of the news event exemption have accorded broadcasters significant discretion in the formulation of innovative news programming formats and in the overall exercise of their good faith news judgment. These decisions have served to promote the central objective underlying the Section 315 exemptions. They are fully consistent with congressional intent to permit increased broadcaster discretion, and to encourage greater coverage of political news, in a context in which "the Commission has been granted greater than normal discretion." Chisholm v. FCC, 538 F.2d at 364. According to a number of commenters, allowing broadcasters to sponsor and air debates from their own studios and to present those debates live or on a reasonably tape-delayed basis in Geller has increased the number of such events and the public has clearly benefited. Likewise, the decision in King to allow for more innovation has increased the amount of broadcaster-initiated news event programming, again increasing the amount of election-related information available to the public.

26. Although the Commission has appropriately relied on broadcaster discretion, we nevertheless retain an obligation to ensure that there exist reasonable safeguards against broadcaster favoritism. As discussed below, we conclude that, consistent with the principles established in our prior decisions, the proposals under consideration are within the statutory exemption for on-the-spot coverage of a *bona fide* news event. Hence, the programs are not subject to the equal opportunities requirement in Section 315 of the Act.

²⁰ Id.

²¹ King, 6 FCC Rcd at 5000.

²² Id.

²³ Id.

27. Fox Proposal. We agree with the majority of commenters and *en banc* panelists that the back-to-back election eve appearances fall squarely within the Commission's King decision and are exempt as on-the-spot coverage of a *bona fide* news event. First, it is clear that these are *bona fide* news events. As we observed in King, appearances by major presidential candidates, "by any reasonable standard, are news 'events,'" provided that sufficient structural safeguards against broadcaster favoritism are in place. Furthermore, Geller established that the "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date as long as the broadcast is of a "reasonably recent event." Thus, Fox's proposed election-eve broadcast of back-to-back appearances satisfies the first prong of our analysis.

28. With respect to the second prong of our analysis -- whether the broadcaster is exercising good faith judgment that the event is newsworthy -- it is also clear that Fox has met the test enunciated in King. There is no evidence of intent to advance a particular candidacy. The election eve statements are identical to the back-to-back programming approved in King with the added safeguard that each candidate's statement would respond to the same question. The candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors. While we do not require a broadcaster to defer selection of candidates to independent third parties in order to demonstrate good faith, doing so adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates. The World Workers Party argues that exclusion from the news prevents third-party candidates from gaining sufficient public support to warrant their being deemed newsworthy. However, through the news exemptions, Congress intended to do no more than ensure that broadcasters are not inhibited from covering newsworthy events.

29. The one-minute position statements are also exempt as on-the-spot coverage of *bona fide* news events. Again, as in the election eve broadcast, statements by the major presidential candidates are, consistent with the Commission's reasoning in King, reasonably viewed as news events, provided safeguards against favoritism are built into the format. Also consistent with Geller, the tape delay does not present an impediment to the "on-the-spot" element of the exemption. Furthermore, we agree with the comments of Henry Geller that in light of Fox's plan to present a series of candidate statements in response to identical questions about important campaign issues, these statements can reasonably be treated as exempt "mini-debates" in that the public will be exposed to the differing views of each candidate on identical important campaign questions. As with reliance on independent third parties for candidate selection, we do not require that a broadcaster pose questions to candidates, but doing so helps demonstrate that a broadcaster is exercising good faith news judgment.

30. Further, although Fox's format for the one-minute statements does not envision back-to-back presentation, it does incorporate other safeguards. King did not require presentations to be back-to-back to meet the good faith test; rather, the Commission explicitly contemplated the need to clarify in future rulings, on a case-by-case basis, any other safeguards

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that would suffice.²⁴ Fox's pledge to air the statements during comparable time periods will serve the same essential purpose as back-to-back statements by ensuring that the candidates have roughly equal access to viewers. Further, the questions to be answered during the statements are to be formulated by independent nonpartisan organizations. This element of Fox's format lends an additional assurance that Fox's proposed programming is not designed to favor any candidate in the same way as the decision to defer to the Commission on Presidential Debates for its candidate selections. Finally, we do not believe that the short length of each statement affects the *bona fides* of the programming. The legislative history is silent on the issue of whether Congress envisioned a minimum length for a news program, and we see no reason to impose one.²⁵ These programs are also distinguishable from political advertising. The candidates must appear throughout the broadcast and are not permitted to edit or utilize other post-taping production techniques. The presence of these structural safeguards satisfies us that Fox does not intend to favor one candidate over another.

31. PBS Proposal. We similarly find that PBS's proposal qualifies for a news event exemption. The Commission has stated that statements by the major candidates for President are "by any reasonable standard 'news events'" provided adequate safeguards against favoritism are implemented. As stated above, a licensee is not required to ask questions of candidates or to arrange for third parties to do so. Though PBS's programming will not be aired live, Geller makes clear that the rebroadcast of any "reasonably recent event" suffices for the purpose of being "on-the-spot." Consequently, we find that PBS's proposal involves a *bona fide* news event satisfying the first prong of our analysis.

32. Nor is there any basis to question the good faith news judgment of PBS with respect to its decision to broadcast the event. PBS's format includes reasonable safeguards. First, PBS states that it will select the candidates for inclusion in its programming based upon objective criteria such as national polling data, or as in Fox's proposal, by reference to those candidates selected by the Commission on Presidential Debates. Further, the statements will be equal in length and aired at the same time each day. While airing the spots at the same time of day is not a requirement, it is a significant safeguard against the potential for broadcaster favoritism. Thus, we find that PBS has satisfied the second prong of our analysis -- that the decision to broadcast the event is the result of good faith news judgment, not an intention to favor one candidate over

²⁴ In King, 6 FCC Rcd at 5000, n.4, we stated:

We emphasize here that the balanced nature of the program format, which includes structural safeguards for objective news coverage of political candidates, is critical to our assessment of the *bona fides* of a news event under Section 315(a)(4) in this case. We will carefully scrutinize any future requests for exemption pursuant to these standards. To the extent there is need for further clarification of the kind of objective structural criteria we might consider in allowing an exemption under Section 315(a)(4) in any future cases, we shall address such matters on a case-by-case basis.

²⁵ In Silver King Broadcasting Company, 3 FCC Rcd 2819 (MMB 1988), the Mass Media Bureau ruled that a program of 3-4½ minute duration was exempt as *bona fide* news interview programming.

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another.

33. ABC Proposal. Last, we find ABC's proposed one-hour prime-time "live unrestricted event" to be exempt under King. As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a *bona fide* news event. Furthermore, ABC has indicated that its programming would be aired live, which is not required in light of Geller, but adds to the event's newsworthiness. In fact, as ABC points out, its proposal is somewhat similar to a debate format which we exempted twenty years ago in Aspen and subsequently permitted broadcasters to sponsor in Geller. Consequently, ABC's proposal satisfies the first prong of our analysis.

34. With respect to the second prong, there is no indication that ABC's news judgments will not be *bona fide*. ABC asserts that it will employ objective criteria in selecting the candidates, considering polling results, the number of states in which a candidate has achieved ballot status, and the extent to which a candidate has engaged in a nationwide campaign. As we pointed out above, a licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection is reasonable. We find that the criteria that ABC has committed to use for candidate selection meets this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another.

IV. OTHER MATTERS

35. As discussed above, and in accordance with congressional intent, we have flexibly construed the statutory exemption for on-the-spot coverage of *bona fide* news events. However, we are unwilling to abandon completely our review of programming formats as proposed by ABC and CBS. Had Congress intended that the Commission take such an approach, it would have been unnecessary to enumerate the four exemption formats of Section 315(a). Moreover, we do not believe that review of program formats to determine exempt status impedes broadcasters in providing election-related information to the public. Our interpretations of the exemptions have allowed broadcasters substantial discretion and flexibility to formulate formats they believe will provide for a more informed electorate.

36. We also decline in this proceeding to adopt MAP's suggestion that the Commission redefine the term "legally qualified candidate." This term is used in determining those candidates entitled to equal opportunities under Section 315 and to reasonable access pursuant to Section 312(a)(7).²⁶ In this proceeding, we are asked to determine whether a licensee can reasonably consider certain appearances by candidates it deems newsworthy as news events exempt from equal opportunities requirements. To do so, we need not reach the question of whether the candidates are "legally qualified." Moreover, to the extent that MAP believes that reducing the number of legally qualified candidates will alleviate the necessity for expanding the news

²⁶ Section 312(a)(7) provides that broadcast stations must provide or make available for sale reasonable amounts of time to candidates for federal elective office. 47 U.S.C. Section 312(a)(7).

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exemptions, we note that the definition of "legally qualified candidate" is codified in our rules (see 47 C.F.R. § 73.1940) and, as such, any change thereto must be considered in the context of a rule making proceeding.

37. A number of commenters voiced concern that a favorable ruling on the Fox request would risk a greater potential for broadcaster favoritism at the local level. While the Commission has speculated that the potential for favoritism may be less in "prominent" elections, particularly presidential campaigns,²⁷ we have not limited our news exemption rulings only to the presidential level. However, the proposals and the record before us involve coverage only of the presidential election and thus do not directly implicate other elections. As discussed above, in King the Commission stated that it would review future requests, on a case-by-case basis, to determine whether particular formats in particular contexts are consistent with the statute. Accordingly, should requests for exemptions regarding elections below the presidency be made, each will be considered consistent with the principles set out in today's decision, taking account of differences in context, as appropriate.

V. CONCLUSION

38. We believe that our decision today implements Congress's intent in enacting the news exemptions by allowing broadcasters to inform the public about election-related news while ensuring that candidates are treated fairly. Accordingly, IT IS ORDERED that the programming proposals presented to the Commission by Fox, PBS and ABC ARE DECLARED EXEMPT under Section 315(a)(4) of the Communications Act from the equal opportunities requirements.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²⁷ In Aspen, for example, the Commission stated that "realistically the likelihood of broadcaster abuse is remote in the coverage of more prominent political users" 55 FCC 2d at 707. The Commission in King similarly reasoned that [w]here both of the major opposing candidates for President are interviewed pursuant to an unbiased format, the potential for favoritism in coverage is even more remote." Id. at 5000, quoting the Commission in Aspen.

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APPENDIX A

LIST OF COMMENTERS

Benjamin Barber, Director of the Walt Whitman Center for the Culture and Politics of
Democracy, Rutgers University
The Benton Foundation
Capital Cities/ABC, Inc. ("ABC")
CBS Inc.
Committee for the Study of the American Electorate ("CASE")
Common Cause
Jan Crawford Communications
Frank J. Fahrenkopf, Jr. and Charles T. Manatt
Henry Geller
The Robert Wood Johnson Foundation - Healthy Nations Program
Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche
Exploratory Committee ("The LaRouche Committee")
Media Access Project ("MAP")
Michael Meyerson, Professor of Law, University of Baltimore School of Law
National Association of Broadcasters ("NAB")
National Broadcasting Company ("NBC")
US Department of Commerce/NTIA (as delivered by Larry Irving, the Assistant Secretary for
Communications and Information) ("NTIA")
Natural Law Party
Norman Ornstein, American Enterprise Institute
People for the American Way
Public Broadcasting Service ("PBS")
Paul Taylor, The Free TV for Straight Talk Coalition
Daniel Walker
Woodstock Theological Center, Georgetown University
Workers World Party Presidential Campaign Committee
Window To The World Communications, Inc. ("WTTW")

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APPENDIX B

PARTICIPANTS IN JUNE 25, 1995 *EN BANC* HEARING

United States Senators Bill Bradley and John McCain appeared and made statements.

The following witnesses appeared and participated on the panel:

- Rupert Murdoch, Chairman and CEO, Fox Broadcasting Company
- Paul Taylor, Executive Director, The Free TV for Straight Talk Coalition
- Timothy B. Dyk, Jones Day Reavis & Pogue (on behalf of Natl. Assn. of Broadcasters)
- Frank J. Fahrenkopf, Jr., Former Chairman, Republican National Committee
- Charles T. Manatt, Former Chairman, Democratic National Committee
- Dr. John Hagelin, Presidential Candidate, Natural Law Party
- Norman J. Ornstein, Resident Scholar, American Enterprise Institute
- Andrew J. Schwartzman, Executive Director, Media Access Project
- John K. Andrews, Jr., Managing Director, TCI News
- Michael I. Meyerson, Professor, Univ. of Baltimore Law School
- William J. McCarter, President, WTTW(TV), Chicago, Illinois
- Kathleen Hall Jamieson, Dean, Annenberg School, University of Pennsylvania

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STATEMENT OF DESIGNATION OF COUNSEL

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 6 2 15 PM '97

MUR 4457

NAME OF COUNSEL: Arthur B. Goodkind

FIRM: Koteen & Naftalin, L.L.P.

ADDRESS: 1150 Connecticut Avenue, N.W.

Suite 1000

Washington, DC 20036

TELEPHONE: (202) 467-5700

FAX: (202) 467-5915

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/3/97
Date

Gregory Ferenbach
Signature

RESPONDENT'S NAME: Public Broadcasting Service

ADDRESS: 1320 Braddock Place

Alexandria, Virginia 22314-1698

TELEPHONE: HOME()

BUSINESS(703) 739-5063

Gregory Ferenbach
Deputy General Counsel for Legal Affairs

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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 4451

DATE COMPLAINT FILED: September 6, 1996
DATE OF NOTIFICATION: September 13, 1996
DATE ACTIVATED: April 15, 1997

STAFF MEMBERS: J. Duane Pugh Jr.
Susan L. Kay

MUR 4473

DATE COMPLAINT FILED: September 20, 1996
DATE OF NOTIFICATION: September 26, 1996
DATE ACTIVATED: April 15, 1997

STAFF MEMBERS: J. Duane Pugh Jr.
Susan L. Kay

COMPLAINANTS:

MUR 4451 Dr. John Hagelin
Dr. Mike Tompkins
Natural Law Party

MUR 4473 PEROT '96, INC.

RESPONDENTS:

MUR 4451 ABC, Inc
Clinton/Gore '96 General Committee, Inc., and Joan C.
Pollitt, as Treasurer
Commission on Presidential Debates
Dole/Kemp '96, Inc., and Robert E. Lighthizer, as
Treasurer
Fox Broadcasting Company
Public Broadcasting Service

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MUR 4473

Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as Treasurer
 Commission on Presidential Debates
 DNC Services Corporation/Democratic National Committee and Carol Pensky, as Treasurer
 Dole/Kemp '96, Inc., and Robert E. Lighthizer, as Treasurer
 Republican National Committee and Alec Poitevint, as Treasurer

RELEVANT
 STATUTES/REGULATIONS:

2 U.S.C. § 431(4), (8) and (9)
 2 U.S.C. § 433
 2 U.S.C. § 434
 2 U.S.C. § 441a(b)
 2 U.S.C. § 441b(a) and (b)(2)
 11 C.F.R. § 100.5
 11 C.F.R. § 100.7(a)(1), (a)(1)(iii)(A), (b)(2) and (b)(21)
 11 C.F.R. § 100.8(a)(1), (a)(1)(iv)(A), (b)(2) and (b)(23)
 11 C.F.R. § 102.1(d)
 11 C.F.R. § 104.1(a)
 11 C.F.R. § 110.8(g)
 11 C.F.R. § 110.13
 11 C.F.R. § 114.1(a)(1) and (a)(2)(x)
 11 C.F.R. § 114.2(b)
 11 C.F.R. § 114.4(f)
 11 C.F.R. § 114.10
 11 C.F.R. § 114.12(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES
 CHECKED: None

I. GENERATION OF MATTERS

These matters arose from two complaints filed with the Federal Election Commission (the "Commission"). The first complaint, MUR 4451, was submitted by the Natural Law Party and Drs. John Hagelin and Mike Tompkins, the Natural Law Party's candidates in the 1996 election for President and Vice President of the United States, respectively (collectively "NLP").

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The second complaint, MUR 4473, was submitted by PEROT '96, INC. ("Perot"), which is the authorized general election campaign committee of Mr. Ross Perot, who was the Reform Party's candidate for President in the 1996 election.¹

Both the NLP and Perot complaints challenge the criteria used by the Commission on Presidential Debates ("CPD") to select the candidates for President and Vice President to be invited to participate in debates sponsored by CPD, alleging that CPD's criteria do not comply with the standards for such criteria in 11 C.F.R. § 110.13(c). On this basis, the Perot complaint alleges that the debates constitute a corporate contribution to the participants' campaigns in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(b).² The Perot complaint further alleges that CPD is a political committee that has failed to register pursuant to 2 U.S.C. § 433(a) and 11 C.F.R. § 102.1(d). The NLP also challenges election-related television programming proposed by three television networks, alleging that the proposed programs would not qualify as news coverage or debate sponsorship and would therefore constitute prohibited corporate contributions.

In addition to CPD, the NLP names as respondents three television networks: ABC, Inc. ("ABC"), Fox Broadcasting Company ("Fox") and the Public Broadcasting Service ("PBS"),

¹ The complainants were also among the parties to a lawsuit related to these debates, in which plaintiffs sought injunctive and declaratory relief. The U.S. District Court for the District of Columbia denied the requested injunctive relief and, deferring to the Commission's administrative enforcement procedure, granted summary judgment to the Commission. See *Hagelin v. FEC*, 1996 WL 566762 (D.D.C. Oct. 1, 1996), *aff'd sub nom. Perot v. FEC*, 97 F.3d 553 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 1692 (1997). In the candidates' appeal, the court of appeals held that the proper procedure was to dismiss the actions on jurisdictional grounds without prejudice to the filing of a new suit that challenges the Commission's authority to promulgate 11 C.F.R. § 110.13. See *Perot*, at 557 and 561. In doing so, the court of appeals expressly noted that it did not address "the merits of appellants other claims . . . that they were wrongfully excluded from the debates." See *id.*, at 555.

² Unlike the Perot complaint, the NLP complaint does not allege that the failures of CPD's debate participant selection criteria render the debates corporate in-kind contributions to the participants' campaigns. This analysis infers that NLP, like Perot, alleges that CPD's noncompliance renders the debates prohibited contributions to the campaigns. The respondents made similar assumptions.

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alleging that the television programming each of the networks proposed would constitute corporate contributions to participating candidates.

The Office of General Counsel notified additional entities fairly implicated in the allegations in the complaints. To the NLP complaint, this Office also sought a response from Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer (collectively "Clinton/Gore"), and Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer (collectively "Dole/Kemp"). To the Perot complaint, this Office also sought a response from the general election committees and their treasurers named above and from the DNC Services Corporation/Democratic National Committee and Carol Pensky, as its treasurer (collectively the "DNC"), and from the Republican National Committee and Alec Poitevint, as its treasurer (collectively the "RNC").³

All of the responses to the complaints that were sought have been received.

Attachments 1-10.

³ Several of the additional respondents noted objections to this Office's provision of an opportunity to respond when they were not named as respondents by the complainants. See Attachment 5, at 1; Attachment 7, at 1; and Attachment 8, at 1-2. The complainants' allegations implicate the additional respondents in the allegedly illegal conduct. This Office provided the respondents with an opportunity to respond in order to permit the respondents to be heard at the earliest feasible point and to provide the Commission with full information regarding the allegations. See 11 C.F.R. § 111.5(a).

Clinton/Gore responded to the complaint in MUR 4473 on October 11, 1996. Clinton/Gore responded to the complaint in MUR 4451 on March 4, 1997. In its response in MUR 4451, Clinton/Gore states that it is relying upon the response it submitted in connection with MUR 4473. Dole/Kemp responded to the complaint in MUR 4473 on November 27, 1996. Dole/Kemp responded to the complaint in MUR 4451 on February 18, 1997. With the exception of noting that the complaints were filed by different complainants and have different MUR numbers, both responses are otherwise identical.

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II. CPD'S DEBATE SELECTION CRITERIA

A. Legal Standard

Under the Federal Election Campaign Act of 1971, as amended ("FECA"), corporations are prohibited from making contributions⁴ or expenditures⁵ in connection with federal elections. 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(b).⁶ The Commission has promulgated a regulation that defines the term "contribution" to include: "A gift, subscription, loan . . . , advance or deposit of money or anything of value made . . . for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.7(a)(1). *See also* 11 C.F.R. § 114.1(a). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The regulatory definition of contribution also provides: "[u]nless specifically exempted under 11 C.F.R. § 100.7(b), the provision of any goods or services without charge . . . is a contribution."

Id.

Section 100.7(b) of the Commission's regulations specifically exempts expenditures made for the purpose of staging debates from the definition of contribution. 11 C.F.R. § 100.7(b)(21). This exemption requires that such debates meet the requirements of 11 C.F.R. § 110.13,⁷ which establishes parameters within which staging organizations must conduct such

⁴ FECA defines contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

⁵ FECA defines expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

⁶ The presidential candidates of the major parties who accept public funds cannot accept contributions from any source, except in limited circumstances that are not raised herein. 26 U.S.C. § 9003(b)(2); *see also* 11 C.F.R. § 9012.2(a).

⁷ The exemption also requires that such debates meet the requirements of 11 C.F.R. § 114.4, which permits certain nonprofit corporations to stage candidate debates and other corporations and labor organizations to donate funds to organizations that are staging such debates. 11 C.F.R. §§ 114.4(f)(1) and (3). This section also requires the debates to be staged in accordance with the standards in 11 C.F.R. § 110.13. *Id.*

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debates. The parameters address: (1) the types of organizations that may stage such debates, (2) the structure of debates, and (3) the criteria that debate staging organizations may use to select debate participants. With respect to participant selection criteria, 11 C.F.R. § 110.13(c) provides, in relevant part:

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

11 C.F.R. § 110.13(c). When promulgating this regulation, the Commission explained its purpose and operation as follows:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

. . . . Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rule, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But . . . nomination by a major party may be one of the criteria.

60 Fed. Reg. 64,262 (Dec. 14, 1995).

Thus, if an appropriate corporation staged a debate among candidates for federal office and that debate was staged in accordance with all of the requirements of 11 C.F.R. § 110.13, then the costs incurred by the sponsoring corporation would be exempt from the definition of contribution pursuant to the operation of 11 C.F.R. § 100.7(b)(21). See also 11 C.F.R.

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§§ 114.1(a)(2)(x) and 114.4(f)(1). Similarly, other corporations could legally provide funds to the sponsoring corporation to defray expenses incurred in staging the debate pursuant to the operation of 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(3). Conversely, if a corporation staged a debate that was not in accordance with 11 C.F.R. § 110.13, then staging the debate would not be an activity "specifically permitted" by 11 C.F.R. § 100.7(b), but would constitute a contribution to any participating candidate under the Commission's regulations. See 11 C.F.R.

§ 100.7(a)(1)(iii)(A) (noting "unless specifically exempted" anything of value provided to the candidate constitutes a contribution). The participating candidates would be required to report receipt of the in-kind contribution as both a contribution and an expenditure pursuant to 11 C.F.R. § 104.13(a)(1) and (2). See 2 U.S.C. § 434(b)(2)(C) and (4).

B. CPD's Debate Participant Selection Criteria

CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States." See Attachment 4, at 45. Prior to the 1996 campaign, CPD sponsored six debates, five between candidates for President, and one between candidates for Vice President. In the 1996 campaign, CPD sponsored two Presidential debates and one Vice Presidential debate. Only the candidates of the Democratic and Republican parties were invited to participate in the debates. CPD produced written candidate selection criteria for the 1996 general election debate participation. The introduction to these criteria explains as follows:

In light of the large number of declared candidates in any given presidential election, [CPD] has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest

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warrants the extension of an invitation to the respective nominees of the two major parties to participate in [CPD's] 1996 debates.

In order to further the educational purposes of its debates, [CPD] has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a [CPD]-sponsored debate. Rather, [CPD] will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

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Attachment 4, at 57-58. Thus, CPD identified its objective of determining which candidates have a realistic chance of being elected the next President, and it specified three primary criteria for determining which "nonmajor" party candidates to invite to participate in its debates. CPD further enumerated specific factors under each of the three primary criteria that it would consider in reaching its conclusion.

For "evidence of national organization," CPD introduces the factors by explaining that the criterion "encompasses objective considerations pertaining to the eligibility requirements . . . [and] also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success." *Id.* The factors to be considered include:

- a. Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.
- c. Organization in a majority of congressional districts in those states.

d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsement by federal and state officeholders.

Id.

CPD's selection criteria note that the second criterion, "signs of national newsworthiness and competitiveness" focuses "both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time [CPD] makes its invitation decisions." *Id.* Five factors are listed as examples of "signs of national newsworthiness and competitiveness":

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

Id.

Finally, CPD's selection criteria state that the factors to be considered as "indicators of national public enthusiasm" are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The listed factors include:

- a. The findings of significant public opinion polls conducted by national polling and news organizations.
- b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Id.

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C. Complainants' Allegations

Both complainants allege that CPD's criteria violate 11 C.F.R. § 110.13(c) in two ways: first, both allege that CPD's selection criteria are not objective as required by 11 C.F.R. § 110.13(c); and second, both allege that CPD's selection criteria provide an invitation to the Democratic and Republican nominees solely on the basis of their parties' nominations in violation of 11 C.F.R. § 110.13(c). On this basis, the Perot complaint alleges that the debates constitute a corporate contribution to the participants' campaigns in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(b).⁸

The Perot complaint alleges that CPD's criteria are not objective as required by 11 C.F.R. § 110.13(c). The Perot complaint contends that three of the factors listed under signs of national newsworthiness are examples of the "predominantly subjective" CPD criteria.⁹ The Perot complaint identifies another factor that calls for examination of the findings of significant public opinion polls as "leaving much room for subjectivity." Finally, the Perot complaint cites *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989), and argues that the Commission should adopt the Second Circuit's analysis in that case of whether data are objective or subjective. In the context of examining the Bar Association's tax exempt status, the Second Circuit evaluated what is objective by defining "objective data."¹⁰ The Second Circuit stated:

⁸ See note 2 *supra*.

⁹ The three factors identified as "predominantly subjective" in the Perot complaint are: "[t]he professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks; [t]he opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration; [and] [t]he published views of prominent political commentators." Although the Perot complaint concedes that four elements of CPD's criteria are objective, it does not identify which four are objective in its view.

¹⁰ The Second Circuit stated that the Bar Association's ratings and endorsements of judicial candidates as "approved," "not approved," or "approved as highly qualified" were not objective, disagreeing with the bar

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Objective data are data that are independent of what is personal or private in our apprehension and feelings, that use facts without distortion by personal feelings or prejudices and that are publicly or intersubjectively observable or verifiable, especially by scientific methods. *Webster's Third International Dictionary*, 1556 (1971). Objective representations have been described judicially as "representations of previous and present conditions and past events, which are susceptible of exact knowledge and correct statement." *United Ben. Life Ins. Co. v. Knapp*, 175 Okla. 25, 26, 51 P.2d 963, 964 (1935).

Id., at 880-81.¹¹

Similarly, the NLP complaint discusses each of CPD's three criteria and the factors related to each, arguing that CPD's criteria are "inherently vague and subjective." With respect to the "evidence of national organization" criterion, the NLP complaint admits that the first two factors are objective, as is the portion of the third factor that examines eligibility for federal matching funds. NLP cites CPD's description of the remaining factors under this criterion, in which CPD admits: "This criterion also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success." Organization in a majority of congressional districts in those states in which a candidate is on the ballot is too indefinite to be deemed objective, according to NLP. NLP added that this factor is also irrelevant and

association's defense that it merely collected and disseminated objective data. The Second Circuit overturned the Tax Court's grant of a tax exemption under 26 U.S.C. § 501(c)(3) to the local bar association based on Section 501(c)(3)'s bar on participating or intervening in political campaigns. See *Assoc. of the Bar of the City of New York v. Commissioner*, 858 F.2d at 880-81.

¹¹ The Perot complaint argues that the Second Circuit's rationale in *Association of the Bar of the City of New York* with respect to subjective criteria was applied to a candidate debate sponsor in *Fulani v. Brady*, 809 F. Supp. 1112 (S.D.N.Y. 1993), *aff'd on other grounds*, 35 F.3d 49 (2d Cir. 1994).

In the *Fulani* case, the Southern District of New York found the League of Women Voters' debate participant selection criteria to be subjective and therefore inconsistent with the League's tax exempt status. *Fulani*, 809 F. Supp. at 1125-26 (stating that the following criteria are subjective: "significant candidate," "recognition by the national media as a candidate meriting media attention," "active campaigning in a number of states for the . . . nomination," and "such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest"). The district court also held, however, that it did not have the authority to grant the requested relief. *Id.* at 1127-28. The Second Circuit affirmed the result, but on the grounds that the plaintiff had no standing to challenge the tax exempt status of the League. 35 F.3d 49 (2d Cir. 1994). This case is part of a series of challenges brought by the plaintiff against the League and CPD. See *Fulani v. League of Women Voters Educ. Fund*, 684 F. Supp. 1185 (S.D.N.Y. 1988), *aff'd*, 882 F.2d 621 (2d Cir. 1989) and *Fulani v. Brady*, 729 F. Supp. 158 (D.D.C. 1990), *aff'd*, 935 F.2d 1324 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 1048 (1992).

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constitutes a "significant obstacle" to "debate inclusion" of third party candidates. NLP also argues that "ability to fund a national campaign" is too indefinite, as is "endorsement by federal and state officeholders." The latter is also deemed an attempt "to disguise partisan bias as an objective criteria" due to the dominance of the Democratic and Republican parties among federal and state officeholders. Further, NLP alleges that endorsements are merely subjective evaluations, and such "secondhand subjective evaluations" should not be permitted in debate participant selection criteria.

NLP attacks each of the factors under the "national newsworthiness" criteria. Four of the five are based on the opinions of specified individuals, and NLP alleges that on this basis alone the four factors are subjective. All five of the factors under this criteria require the CPD to consider evidence from sources that are described, but not precisely identified, and NLP alleges that this permits CPD to "shop around" and include only certain opinions within its consideration.

Both of the factors related to the "national public enthusiasm" criteria are deficient according to the NLP. The first, related to findings of "significant public opinion polls," is subjective because the polls are not identified, leaving too much room for subjective decision making, in NLP's view. Additionally, the polls themselves reflect the subjective judgments of those polled and may also reflect biases of the polltakers. Reported attendance at rallies is insufficiently defined, and comparisons to the major parties are inappropriate because such standards reflect the preferential treatment afforded to the major parties, according to NLP.

Finally, the NLP complaint challenges CPD's criteria considered together because CPD fails to specify any relative weights assigned to each of the factors and criteria, which renders the

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process of applying the criteria to candidates and evaluating the responses subjective.¹² Thus, even if the criteria were objective, "the process of evaluating and weighing the criteria is a subjective one," according to the NLP complaint. NLP argues that the logic and reasoning of this Office's 1994 recommendation to the Commission that the regulation should specify objective criteria should be invoked to invalidate CPD's criteria as subjective.¹³

Both the Perot complaint and the NLP complaint further allege a second failing of CPD's criteria to comply with 11 C.F.R. § 110.13(c), arguing that CPD's criteria provide an invitation to the Democratic and Republican nominees based solely on their nominations by their respective parties. Citing the CPD's selection criteria for 1996, the Perot complaint alleges that CPD did not reach the conclusion that either of the major party's candidates had a "realistic chance of being elected."

D. Responses

1. CPD's Response

CPD explains that both to develop and subsequently to apply the debate participant selection criteria, it convened advisory committees, which submitted recommendations to CPD. The Advisory Committee that was convened to apply the criteria to the 1996 candidates reached the unanimous conclusion that only the Democratic and Republican candidates met all of CPD's criteria and had a realistic chance of being elected. The CPD Board of Directors unanimously approved the Advisory Committee's recommendation that only the Democratic and Republican candidates met CPD's debate participant selection criteria.

¹² The NLP complaint also alleges that CPD's criteria fail to provide any other indication as to exactly how the criteria will be applied to a given candidate.

¹³ NLP refers to a Memorandum from this Office to the Commission dated February 8, 1994 regarding "[FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986)] Rulemaking: Summary of Comments and Draft Rules."

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CPD maintains that its criteria are objective and that the process used fully complies with the requirements of 11 C.F.R. § 110.13(c). CPD points out the regulation does not define "objective." CPD argues that its criteria are consistent with the ordinary meaning of that term because the criteria do not call for CPD members to rely on "personal" or "private feelings," but instead require CPD to consider a strictly proscribed body of evidence. CPD also points to several prior uses of the term "objective" in the context of debate participant criteria, arguing that these uses were similar to its own.¹⁴

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Furthermore, CPD asserts that "complainants would read the rule to bar the exercise of any judgment whatsoever by the staging organization," but would instead mandate "that . . . determinations be made solely on criteria that can be mechanically applied." CPD argues that it "must retain at least a modicum of judgment in applying its 'objective criteria' so as to ensure the avoidance of a potentially 'bizarre' or unwelcome result . . . based solely on quantitative factors." In support of its position, CPD points to federal appellate court decisions that held that "objective criteria" in contexts other than debate participant selection criteria were not limited to "numerical or quantitative standards" and conceded that "utilization of 'objective criteria' allows for some subjective judgment on the part of the evaluators."¹⁵ CPD claims that the interpretation of "objective" advanced in the Perot and NLP complaints is such a radical alteration of the previous

¹⁴ CPD cites a previous complaint before the Commission, MUR 1617, in which respondent Dartmouth College referred to similar debate participant selection criteria as objective, and the Commission did not challenge that characterization in its disposition of that complaint. CPD also cites the League of Women Voters Education Fund's 1988 Criteria for General Election Debate Participation, which stated that similar criteria would be "objectively appli[ed]."

¹⁵ See *Wilson v. Dep't of Health & Human Servs.*, 770 F.2d 1048, 1055 (Fed. Cir. 1985). In this regard, CPD distinguishes the relevance of *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989). CPD argues that that case is irrelevant because CPD does not assess the merits of any candidate and does not endorse the election of any candidate. CPD cites the Bar Association's admission that its criteria were designed to prevent the election of the unqualified as a distinguishing factor.

standard that the regulation would be unenforceable as having been promulgated without adequate notice. CPD argues that Perot and NLP's interpretation of "objective" would render the regulation defective under the First Amendment to the Constitution for its failure to be narrowly tailored to achieve a compelling governmental interest.

Finally, CPD disputes that it "automatically" invited the nominees of the Democratic and Republican parties. CPD maintains that its determination to invite the nominees of the two major parties was limited to 1996 and was based on its evaluation of the sustained voter interest in the major parties as witnessed by the historical prominence of those parties. Furthermore, both the Executive Director of CPD, Janet H. Brown, and the chairman of CPD's Advisory Committee, Professor Richard E. Neustadt of Harvard University's John F. Kennedy School of Government, stated in declarations submitted with the response that the Advisory Committee applied the 1996 selection criteria to the Democratic and Republican candidates, although the criteria did not require them to do so.¹⁶

2. Clinton/Gore's Response

In response to the complaints, Clinton/Gore requests that the Commission find no reason to believe that any violations occurred and dismiss these matters. Clinton/Gore acknowledges that President Clinton participated in the debates, but maintains that it is inconsistent with FECA "to hold participating candidates responsible for the costs of the debates, when the sponsor has exercised its independent decision-making authority as to who should be included" in the debate,

¹⁶ The declarations were submitted to the United States District Court for the District of Columbia in the lawsuit described above in note 1 and the accompanying text. CPD's counsel does not refer to the Advisory Committee's application of the criteria to the major party candidates in its response to the Perot and NLP complaints.

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citing Advisory Opinion ("A.O.") 1986-37.¹⁷ Clinton/Gore maintains that doing so will "have an obvious chilling effect on the debates and cause candidates to decline participation in a forum which, to them, appears to be otherwise permissible, though in a less than perfect structure." Clinton/Gore further states that the Commission's regulations do not require "candidates, as a condition of participating [in a debate], to make an independent conclusion as to whether the sponsor complied with the requirements of" 11 C.F.R. § 110.13 and notes that it had nonetheless publicly sought for Perot to be included in the debates at issue here.

3. Dole/Kemp's Response

In its response to the complaints, Dole/Kemp also requests that the Commission find no reason to believe that any violations occurred. Dole/Kemp acknowledges that Senator Dole and Representative Kemp participated in the events, but asserts that Dole/Kemp "reasonably relied upon [CPD's] public statements that its selection criteria were objective, fair, and complied with Federal law." Dole/Kemp further states that CPD's selection criteria appear "to be rigorous and objective." In support of this assertion, Dole/Kemp identifies the various criteria that make up the CPD selection criteria and notes that CPD "relies upon the advice of nonpartisan professionals and federal election experts as to whether proposed participants have anything more than a theoretical chance of winning."

E. Analysis

Based upon the available evidence, there is reason to believe that CPD's Candidate Selection Criteria for 1996 General Election Debate Participation do not comply with the

¹⁷ In A.O. 1986-37, the Commission determined that the debates proposed by the National Conservative Foundation would not qualify as candidate debates because they would not include a face-to-face confrontation among the candidates. The Commission held that the proposed events would therefore violate 2 U.S.C. § 441b.

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requirements of 11 C.F.R. § 110.13(c). Some of the factors appear to be subjective on their face and other factors are so vague as to be imprecise in their definition. Given the resulting uncertainty, it appears that CPD's criteria are not objective as required by 11 C.F.R. § 110.13(c).

As a general standard, CPD assessed whether particular candidates had a "realistic chance" of winning the general election. CPD used three elements to make this determination. CPD's criteria contain examples of factors to be considered with respect to each element. However, the list of factors to be considered uses nonexhaustive terms, which suggests that CPD may have used other factors that were not enumerated in making its decision.

Of the enumerated factors, CPD describes some of the factors as "more subjective" in its document presenting the candidate selection criteria. See Attachment 4, at 57.¹⁸ Furthermore, Professor Neustadt, who served as Chair of the subcommittee that developed CPD's criteria and as Chair of the Advisory Committee that applied the criteria in 1996, has been quoted as describing CPD's standard of realistic chance of election and underlying criteria as follows:

The criteria that were listed are to inform [CPD's] judgment [in applying] that standard. It's a single standard, it's a standard for the future, and to that extent it is by nature subjective. It has to be--it's a judgment in the future.

Campaign for President: The Managers Look at '96, 165 (Harvard Univ. Inst. of Pol., ed. 1997).

The five factors that are specified as part of CPD's criterion "signs of national newsworthiness and competitiveness" are the most problematic of the three groups of factors. Four of those five factors call for consideration of the opinions of groups of professionals that are described, but not precisely identified in the pre-established criteria. The Office of General

¹⁸ CPD first established its selection criteria under the earlier version of 11 C.F.R. § 110.13 which did not require that the criteria be objective. Despite the Commission's rulemaking that added the objectivity requirement, CPD adopted nearly identical criteria and continued to describe some of those criteria as "subjective." See Attachment 4, at 51, 57 and 124; see also 60 Fed. Reg. 64,260 (Dec. 14, 1995).

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Counsel is unsure how CPD applied these factors, but such factors appear to suffer from at least two deficiencies. First, the data that underlie each factor appear to be accumulated subjective judgments. For example, "opinions of representative political scientists specializing in electoral politics at major universities and research centers" seems to call for consideration of the subjective determinations of the political scientists. Second, it seems that a number of highly subjective judgments must be made to compile the data underlying this factor, ranging from the identification of which universities can be considered major universities to the question of what mix of political scientist would be "representative." Thus, there is reason to believe that such criteria fail CPD's proffered definition of objective because such matters may not be independent of what is personal and rational minds could certainly disagree on such questions. Such criteria can be said to include two levels of subjectivity: first, identifying the pool of sources involves numerous subjective judgments, and second, once the pool is identified, the subjective judgments of its members is considered. Criteria with such double levels of subjective judgments may not be consistent with 11 C.F.R. § 110.13(c).¹⁹

Moreover, in the absence of additional information, there is reason to believe that the other selection criteria appear to be similarly insufficiently defined to comply with 11 C.F.R. § 110.13(c)'s objectivity requirement: "other demonstration of the ability to fund a national campaign," "[c]olumn inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates," "the findings of significant public opinion polls conducted by national polling and news organizations," and "reported attendance at meetings and

¹⁹ See also *Fulani v. Brady*, 809 F. Supp. 1112, 1124-25 (S.D.N.Y. 1993) (characterizing similar criteria as subjective).

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rallies across the country (locations as well as numbers) in comparison with the two major party candidates.”

As noted by the Commission when it promulgated the current version of 11 C.F.R. § 110.13, “[s]taging organizations must be able to show that their objective criteria were used to pick the participants,” 60 Fed. Reg. 64,262 (Dec. 14, 1995), and so too must the staging organization be able to show that its criteria were objective. Thus, this Office does not foreclose the possibility that a criterion that is vague or undefined as written could be shown to be sufficiently objective to meet the requirements of 11 C.F.R. § 110.13(c).²⁰

CPD’s failure to describe its multifaceted analysis of its factors and criteria makes it impossible to know at this point whether the criteria were applied in an objective or subjective manner. Although 11 C.F.R. § 110.13(c) does not specifically require staging organizations to specify the relative importance of each factor, the Commission contemplated that a method of application would be included in debate participant selection criteria, as is shown by the example in the explanation and justification for this regulation. See 60 Fed. Reg. 64,262 (Dec. 14, 1995) (stating: “for example, candidates must satisfy three of five objective criteria”).

The manner in which the factors are to be considered and used to compare candidates is not clear. For example, the Advisory Committee cited Mr. Perot’s acceptance of federal funds and the resultant limitation on total expenditures as one of the reasons why the committee recommended that he not be invited to participate in the CPD debates. See Attachment 4, at 128.

²⁰ For example, one of CPD’s criteria considers the endorsements of federal and state officeholders. As CPD puts forth this factor under its “evidence of national organization” criterion, it is vague in that it fails to identify which federal and state officeholders are to be considered. However, a staging organization could defend a similar criterion as objective if it narrowed the group of officeholders, thus eliminating the vagueness of the factor.

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Yet, CPD's criteria list eligibility for federal funds as a factor that appears to support the invitation of a candidate.

CPD also lists its criteria and factors in non-exhaustive fashions, each time stating: "The factors to be considered include." That CPD apparently reserves the right to introduce additional criteria or factors into the consideration may add another aspect of subjectivity to the process.²¹ Omitting such important aspects of the operation of the criteria is also inconsistent with the Commission's advice to make such criteria available to the candidates prior to the election. *See* 60 Fed. Reg. 64,262 (Dec. 14, 1995) ("staging organizations would be well advised to reduce their objective criteria to writing and to make the criteria available to all candidates before the debate").

Moreover, this Office has received additional information regarding the role that Clinton/Gore and Dole/Kemp may have played in excluding Mr. Perot from CPD's debates. In December 1996, a conference entitled "Campaign Decision Makers" was held, and it included representatives of Clinton/Gore, Dole/Kemp, and Perot as well as Frank Fahrenkopf, Co-Chair of CPD, and Professor Neustadt, Chair of CPD's Advisory Committee. An edited transcript of the conference was recently published, and some of the statements made at the conference appear to show that Clinton/Gore and Dole/Kemp both played a role in the decision to exclude Mr. Perot from CPD's debates. For example, George Stephanopoulos, Senior Adviser to the President, stated, referring to Dole/Kemp:

[t]hey didn't have leverage going into the negotiations. They were behind, they needed to make sure Perot wasn't in it. As long as we would agree to Perot not

²¹ The Advisory Committee cited the election results of 1992 as one of the reasons why the committee recommended that Mr. Perot not be invited to participate in the CPD debates. *See* Attachment 4, at 128. Yet, CPD's criteria do not list prior election results as part of the debate participant selection criteria.

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being in it we could get everything else we wanted going in. We got our time frame, we got our length, we got our moderator.

Campaign for President: The Managers Look at '96, 170 (Harvard Univ. Inst. of Pol., ed. 1997).

Tony Fabrizio, Chief Pollster for Dole/Kemp, seems to confirm Mr. Stephanopoulos's statement by following it with: "And the fact of the matter is, you got the number of dates." *Id.* Mr.

Fabrizio also later stated: "George made very good observations about the positions we walked into the negotiations." *Id.*, at 171. Thus, there is evidence that both Clinton/Gore and

Dole/Kemp campaigns appear to have participated in the selection process. Such information further obfuscates CPD's methodology and raises the possibility that CPD did not apply its pre-established criteria.

Thus, there is reason to believe that CPD's selection criteria, as written and as applied in 1996, do not comply with 11 C.F.R. § 110.13(c). If so, CPD is not entitled to the protection of the safe harbor created by 11 C.F.R. §§ 100.7(b)(21) and 110.13(c). *See also* 11 C.F.R.

§§ 114.1(a)(2)(x) and 114.4(f). On this basis, there is reason to believe that the debates CPD sponsored were contributions to both of the participating candidates. Therefore, this Office recommends that the Commission find reason to believe that CPD violated 2 U.S.C. § 441b(a).

Additionally, CPD's criteria, as written, specify that the nominees of the Democratic and Republican parties are to be invited solely by virtue of their nominations by the respective parties. Such "automatic" invitations are in direct violation of 11 C.F.R. § 110.13(c). In this instance, however, CPD alleges that it did not follow its standards as written. Instead, CPD states that it applied its analysis of a realistic chance of being elected to both President Clinton and Senator Dole and determined that both candidates met the test. *See Attachment 4*, at 53 and 124-25. The Perot complaint contradicts CPD's claim, alleging that these criteria were not

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applied to the Democratic and Republican candidates. Information obtained in discovery should resolve this disputed factual issue and determine whether CPD's selection criteria failed to comply with 11 C.F.R. § 110.13(c) in this regard.

In response to the allegation that they received an in-kind contribution, the Clinton/Gore and Dole/Kemp campaigns claim that they merely relied on CPD's determination of debate participants. However, these arguments appear to be inconsistent with the information showing that both campaigns played a role in the selection process. Even if the campaigns were not involved in the selection process, their claimed reliance upon CPD's determination of which candidates could participate in the debates would not vitiate their receipt of free appearances in the debates sponsored and organized by CPD, a corporation, as an in-kind contribution. FECA provides that it is unlawful for any candidate or political committee to "knowingly . . . accept or receive" corporate contributions, and it appears that Clinton/Gore and Dole/Kemp knowingly accepted the in-kind contributions from CPD.²² 2 U.S.C. § 441b(a). Because CPD's standards include a statement that at least some of its criteria are subjective, reliance on any assurance that CPD's criteria complied with 11 C.F.R. § 110.13 may have been unreasonable. Therefore, there is reason to believe that Clinton/Gore and Dole/Kemp knowingly accepted a prohibited contribution. Accordingly, this Office recommends that the Commission find reason to believe

²² In *FEC v. California Medical Association*, 502 F. Supp. 196 (N.D. Calif. 1980), the court held that the recipient committee's knowledge of the facts that rendered its conduct unlawful was sufficient to create civil liability under the "knowing" standard of 2 U.S.C. § 441a(f). *Id.*, at 203. That court so held despite its specific finding that a legal issue related to the illegal conduct had not yet been resolved at the time the committee received the contribution. *See id.* *See also* *FEC v. John A. Dramezi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (holding that a facially defective contribution requires further inquiry to determine whether it is in compliance); *United States v. Marvin*, 687 F.2d 1221 (8th Cir. 1982), *cert. denied*, 460 U.S. 1081 (1983) (analyzing knowing standard similarly in another context). The Commission's Advisory Opinion 1986-37, which is cited by Clinton/Gore, stated that the debates proposed therein would violate 2 U.S.C. § 441b, but does not state which parties would violate that provision. The cited statutory section prohibits both corporate contributions and the receipt of such contributions by candidates or committees.

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that Clinton/Gore and Dole/Kemp violated 2 U.S.C. § 441b(a) by knowingly accepting a prohibited corporate contribution from CPD.²³ If Clinton/Gore and Dole/Kemp accepted an in-kind contribution from CPD, the general election committees were required to report the contribution.²⁴ However, neither committee did so. Therefore, this Office further recommends that the Commission find reason to believe that Clinton/Gore and Dole/Kemp violated 2 U.S.C. § 434(b) by failing to report CPD's in-kind contribution.

III. CPD'S ALLEGED STATUS AS A POLITICAL COMMITTEE

A. Legal Standard

FECA defines "political committee" as, in part: "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); *see also* 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with FECA and the Commission's regulations. *See* 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d) (requiring political committees to register with the Commission); *see also* 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a) (requiring political committees to file specified reports with the

²³ As publicly financed candidates, Clinton/Gore and Dole/Kemp are subject to an expenditure limit, 2 U.S.C. § 441a(b)(1)(B), and expenditures made by any person at the candidates' request or authorization are counted toward the limit, 2 U.S.C. § 441a(b)(2)(B)(ii). *See also* 11 C.F.R. § 110.8. Any contributions from CPD may have caused Clinton/Gore and Dole/Kemp to exceed their expenditure limits. Both Clinton/Gore and Dole/Kemp have not reported expenditures in response to FEC Form 3P, line 13, "Expenditures Subject to Limitation," during the period from their inception through September 30, 1997. The amount of actual expenditures subject to the limitation will be determined in the Commission's audit and examination of each committee pursuant to 26 U.S.C. § 9007(a). Therefore, the Office of General Counsel will make any appropriate recommendations based on information from the Commission's audits and examinations.

²⁴ *See* 2 U.S.C. § 434(b)(2)(A) and (D) (requiring committees to report contributions from persons other than political committees and from political committees); 434(b)(3)(A) and (B) (requiring committees to identify certain contributors); 434(b)(4)(A) (requiring committees to report expenditures); *see also* 11 C.F.R. § 104.13(a)(2) (requiring committees to report in-kind contributions as expenditures).

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Commission). Political committees that are "established, financed, maintained or controlled by the same . . . person, or group of persons . . . are affiliated." 11 C.F.R. § 100.5(g)(2).

In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Supreme Court cited *Buckley v. Valeo*, 424 U.S. 1, 79 (1976), and its requirement that "an entity subject to regulation as a 'political committee' under [FECA] is one that is either 'under the control of a candidate or the major purpose of which is the nomination or election of a candidate.'" *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 252 n.6. Thus, in order to be a political committee under FECA, an organization that is not controlled by a candidate must have as its major purpose the nomination or election of a candidate in addition to meeting the statutory contribution or expenditure thresholds in 2 U.S.C. § 431(4).²⁵

Political committees remain subject to the prohibition of contributing corporate funds to federal candidates in 2 U.S.C. § 441b. See 11 C.F.R. § 114.12(a) (exempting political committees that are incorporated "for liability purposes only"). In *FEC v. Massachusetts Citizens for Life*, the Supreme Court held that application of 2 U.S.C. § 441b's ban on corporate independent expenditures to corporations that meet certain qualifications was an unconstitutional restriction of First Amendment rights. However, its holding was expressly limited to corporate independent expenditures; even qualified nonprofit corporations remain subject to the prohibition of corporate contributions. See 11 C.F.R. § 114.10(d)(2).²⁶

²⁵ *But see Akins v. FEC*, 101 F.3d 731, 742 (D.C. Cir. 1996) (holding that Supreme Court's major purpose test applies only to expenditures, and not to contributions or coordinated expenditures), *cert. granted*, 117 S.Ct. 2451 (1997). The Commission continues to contest this decision, and its petition for certiorari was granted. The Supreme Court has heard oral argument on the case, but has not yet issued a decision. See also A.O. 1996-3 (April 19, 1996) and A.O. 1996-13 (June 10, 1996) (applying major purpose test to organizations that made contributions after the *Akins en banc* hearing was granted and the panel decision was vacated).

²⁶ The Commission has codified the *FEC v. Massachusetts Citizens for Life* decision in its regulations. 11 C.F.R. § 114.10. CPD is not eligible for the exemption in 11 C.F.R. § 114.10 because it is a 26 U.S.C. § 501(c)(3) corporation. See 11 C.F.R. § 114.10(c)(5). Additionally, the exemption in 11 C.F.R. § 114.10 is limited to

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Staging organizations for candidate debates are limited to organizations that are exempt from federal taxation under 26 U.S.C. §§ 501(c)(3) or 501(c)(4) and that do not endorse, support or oppose political parties or candidates. 11 C.F.R. § 110.13. Therefore, if political committees stage candidate debates, their efforts will be contrary to 11 C.F.R. § 110.13(a)(1) and the debates will be contributions to the participating candidates and must comply with the prohibitions and limitations for contributions.

B. Complainants' Allegations

The Perot complaint alleges that CPD qualifies as a political committee under FECA. Consequently, CPD is ineligible to stage candidate debates pursuant to 11 C.F.R. § 110.13(a) and it has failed to register as required by 2 U.S.C. § 433, according to the Perot complaint. The Perot complaint alleges that CPD is an affiliated committee of the Democratic National Committee and the Republican National Committee. CPD is "a bipartisan political organization that expends money and resources to assist in the election of either the nominee of the Democratic Party or of the Republican Party," according to the Perot complaint, which cites as evidence of this affiliation each of CPD's joint chairmen's status as a former chairman of one of the two major parties and CPD's membership's alleged equal division between representative of the Democratic and Republican parties. The Perot complaint also cites DNC and RNC press releases at the time of CPD's formation that describe the organization as "bi-partisan" that was formed to sponsor debates "by the National Republican and Democratic Committees between

independent expenditures, 11 C.F.R. § 114.10(d), and CPD's activities were sufficiently coordinated with the campaigns to constitute contributions. With respect to 11 C.F.R. § 114.10, see *Minnesota Citizens Concerned for Life v. FEC*, 113 F.3d 129 (8th Cir. 1997) (holding 11 C.F.R. § 114.10 void) and *FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995) (holding requirement that qualified nonprofit corporations have a policy of not accepting corporate contributions invalid).

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their respective nominees.” The NLP complaint also includes an allegation that CPD is a “bipartisan organization composed of Republicans and Democrats.”

C. Responses

1. CPD's Response

CPD characterizes the Perot complaint's argument that CPD is a political committee as an “ancillary attack” that fails because CPD's debate participant selection criteria are in compliance with 11 C.F.R. § 110.13(c). CPD cites its limited mission to sponsor presidential debates and conduct closely related educational activities as evidence that its expenditures are not made to endorse, support or oppose any candidate or party. CPD cites *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 252 n.6 (1986), as stating that an entity's “major purpose” must be to secure the nomination or election of a candidate in order for that entity to constitute a political committee under FECA.

CPD maintains that it does not assess or endorse candidates; it only invites certain candidates to participate in debates sponsored by CPD. According to CPD, the Commission's debate regulation is premised on the notion that such invitations cannot constitute endorsement or support of the invited candidates. Finally, CPD states that because its funds are used to defray cost incurred staging debates, the expenditures do not constitute contributions or expenditures under FECA, and therefore, CPD does not meet FECA's definition of a political committee.

2. RNC's Response

In its response to MUR 4473, the RNC requests that the Commission find no reason to believe that a violation occurred. According to the RNC, the “CPD is not an affiliated committee of the RNC.” The RNC acknowledges that the CPD was established by Frank Fahrenkopf and

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Paul Kirk, then the chairs of the RNC and the DNC, respectively, but the RNC maintains that they did so "separate and apart from their party organizations" and that they no longer serve as the chairs of the major national party committees. The RNC further maintains that the CPD "was never an officially sanctioned or approved organization of the RNC," nor is it "a political committee established, . . . financed, maintained or controlled by the RNC." The RNC argues that, accordingly, the complaint in this matter should be dismissed.

3. DNC's Response

In its response to MUR 4473, the DNC also requests that the Commission find no reason to believe that any violations occurred in this matter and dismiss the complaint. The DNC argues that "even if CPD could conceivably be considered a 'political committee,' it has not been 'established, financed, maintained or controlled' by the DNC." The DNC acknowledges that CPD was established by the former chairs of the Democratic and Republican national parties, but denies that the DNC in anyway controls CPD. The DNC argues that the "CPD is controlled by an independent board of directors, none of whom are DNC members, officers or employees."

D. Analysis

The Office of General Counsel is recommending that the Commission find reason to believe that CPD violated 2 U.S.C. § 441b(a) as a result of CPD's status as a corporation. However, there are also allegations and some supporting information that CPD may be a political committee. Political committees that are incorporated for liability purposes are not prohibited by 2 U.S.C. § 441b(a) from making contributions or expenditures even though they have corporate status. 11 C.F.R. § 114.12(a). The reason for CPD's incorporating is unknown, so it is not possible to determine if 11 C.F.R. § 114.12(a) is applicable to CPD. Therefore, the questions

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that must be addressed are whether CPD made expenditures of \$1,000 and whether its major purpose is the nomination or election of a candidate.

As set forth in its Articles of Incorporation, CPD's purpose is "to organize, manage, produce, publicize and support debates for the candidates for President of the United States." CPD's purpose may have been to conduct debates and to do so in a manner that would not result in a contribution to either candidate. However, it appears that Clinton/Gore and Dole/Kemp may have played a role in the selection of debate participants. Such a role is not anticipated in CPD's criteria and the extent of involvement of the two campaigns in CPD actions cannot be known without further investigation. This factual issue raises the possibility that CPD might have a major purpose related to the election of candidates. Until the activities of Clinton/Gore and Dole/Kemp in connection with CPD have been investigated, it is impossible to be assured of CPD's major purpose.

Moreover, it appears that both the DNC and RNC played a substantial role in founding CPD. CPD continues to refer to its Co-Chairs' prior positions as former chairman of either the DNC or the RNC. At CPD's establishment in 1987, both Messrs. Fahrenkopf and Kirk were Chairman of the RNC and DNC, respectively, and it was in their capacity as party chairmen that they announced the creation of CPD at a joint press conference, according to a press release from the Democratic and Republican National Committees. According to that press release, the parties' chairmen stated that CPD was created to "better fulfill our party responsibilities to inform and educate the electorate, [and] strengthen the role of political parties in the electoral process" (emphasis added). Finally, the press release also cites an earlier agreement between the two party chairmen in which they "agree[d] in principle to pursue the party [debate] sponsorship

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concept." That Memorandum of Agreement from November 26, 1985 was signed by both chairmen explicitly on behalf of their respective parties.

The role played by Clinton/Gore and Dole/Kemp in CPD's debate participant selection process and the role played by the DNC and the RNC in the creation CPD suggest that CPD's major purpose may be to facilitate the election of either of the major parties' candidates for president. Therefore, there is reason to believe that CPD is a political committee, and this Office recommends that the Commission find reason to believe that CPD violated 2 U.S.C. §§ 433 and 434.²⁷

IV. NETWORKS' PROGRAMS

A. Legal Standard

FECA specifically exempts costs incurred by media organizations covering news stories from the definition of expenditures. The exemption states: "The term 'expenditure' does not include any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i). The Commission's regulations similarly exclude coverage of news events from the definitions of both contribution and expenditure. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).²⁸

²⁷ Because the role that the DNC and the RNC played in CPD's status as a political committee is unclear, the Office of General Counsel is not making any recommendations against the DNC and the RNC at this time. Additionally, if CPD is a political committee, it would be prohibited from receiving corporate contributions, 2 U.S.C. § 441b(a), and it would be permitted to accept contributions subject to the contribution limitations, 2 U.S.C. § 441a(f). With respect to these issues, this Office may make additional recommendations based on the investigation.

²⁸ The regulatory exemption is limited if the facility is owned or controlled by any political party, political committee, or candidate. If a facility is so-owned or controlled, the exemption will still apply if the costs for a news story "represent[] a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility, and which is part of campaign-related news account which give reasonably equal coverage to all opposing candidates in the circulation or listening area." 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

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The legislative history for the statutory exemption for news stories explains that the exemption was intended "to make it plain that it is not the intent of Congress . . . to limit or burden in any way the first amendment freedoms of the press or of association. [This exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 1239, 93d Cong., 2d Sess. 4 (1974). Thus, television networks (as groups of television broadcasting stations) enjoy a statutory and regulatory exemption for any of the described costs incurred covering the election campaigns.

Certain media organizations are also permitted to sponsor candidate debates. The Commission's regulation on candidate debates permits broadcasters that are not owned or controlled by a political party, political committee or candidate to stage debates in accordance with the provisions of 11 C.F.R. § 110.13. 11 C.F.R. § 110.13(a)(2). That regulatory provision explicitly recognizes the dual role played by broadcasters in connection with candidate debates. It states: "In addition, broadcasters (including a cable television operator, programmer or producer), *bona fide* newspapers, magazines and other periodical publications, acting as press entities, may also cover or carry candidate debates in accordance with 11 C.F.R. 100.7 and 100.8." *Id.*

B. NLP's Allegations

NLP's complaint challenges television programming that Fox, PBS and ABC proposed to produce and broadcast in pleadings filed with the Federal Communications Commission ("FCC"). According to published reports, Fox permitted both President Clinton and Senator Dole to make 10 one-minute statements on its network. PBS permitted each of the two candidates to make six statements of two and one-half minutes per statement on its network. See

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C. Adasiewicz et al., *Free Television for Presidential Candidates: the 1996 Experiment*, 6-7 (Annenberg Pub. Policy Ctr. of the Univ. of Pa. No. 11, 1997). ABC had proposed a one-hour debate, but both of the major parties' candidates declined to participate, and ABC canceled its program. See Stephen Seplow, *Experiment in Giving Candidates Free Airtime Had Mixed Results*, *Phila. Inquirer* (Nov. 1, 1996).

According to NLP, Fox and PBS proposed to invite only those candidates selected by CPD for participation in CPD's debates to participate in their programs. NLP alleges that, under Fox's proposal, Fox would place its production facilities at the candidates' disposal free of charge, and that such an action must constitute a contribution under FECA. NLP anticipates Fox's claim that the news story exemption would apply, but NLP argues that the news story exemption does not apply to the cost of producing (only "covering" or "carrying") a news story. NLP alleges that Fox's proposal is more analogous to an advertisement than to a news story. Further, NLP alleges that the news story exemption is inapplicable because Fox's facilities will be under the control of the candidates at least briefly and the news story exemption specifically requires that broadcasters with facilities under the control of candidates provide reasonably equal coverage to all opposing candidates in the viewing area.

The NLP complaint also challenges PBS's proposal because candidates would be "unrestricted as to content within certain minimal guidelines," according to NLP. This "gift of free air time" constitutes a contribution, according to NLP. Alternatively, NLP alleges that if PBS's programming is to be considered a debate, its debate participant selection are neither pre-announced, nor objective, to the extent PBS intends to rely on CPD's selection of candidates.

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C. The Networks' Responses

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In its response, Fox outlined its proposal, which included the format of the programs as aired: a series of one-minute position statements by each participating candidate, responding to ten identical questions from Fox that pertain to issues of "demonstrable concern to voters" that were broadcast on Tuesdays, Saturdays and Sundays from September 17 to October 15, 1996. *See Adasiewicz, supra*, at 6. Fox selected the candidates to participate "by reference to the decision of [CPD]" of which candidates to invite to participate in its debates. Fox retained a nonpartisan team of consultants to formulate the questions posed to candidates, and the order of appearance was determined by a coin toss. Fox did not permit the candidates to edit or otherwise modify or enhance the responses in the post-production process, and both candidates' presentations were recorded under the supervision of a Fox representative. The candidates declined Fox's offer to use its production facilities.

PBS responded by correcting a fact asserted in NLP's complaint: **PBS proposed and, in fact, provided candidates with segments of two and one-half minutes, not hours, during which candidates stated their views without restriction as to content, except for PBS's reservation of the right to delete libelous material. These segments were broadcast on successive business days from October 17 to November 1, 1996. See Adasiewicz, supra, at 7. PBS also described its efforts to ensure equality of treatment. PBS maintained control over the program in the exercise of its bona fide news judgment. To prevent candidates from incorporating campaign materials into the program, PBS required that only candidates appear on camera and that the candidates remain on screen for the entire length of the program.**

Both networks defend their proposals as meeting FECA's standards for news coverage that is excluded from the definitions of contribution and expenditure. Similarly, both networks presented the alternative argument that their programs also meet the standards of a candidate debate that is excluded from the definitions of contribution and expenditure. Both networks also emphasized that the FCC had determined that the programming as proposed in the networks' pleadings would be exempt from the "equal opportunities" requirement of Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. § 315, because the programming would constitute *bona fide* news event coverage under the Communications Act.²⁹

D. Analysis

Initially, the Office of General Counsel notes that NLP's complaint was filed before any of the programming was actually broadcast, and its allegations are based on the proposals for such programming put forth by Fox, PBS and ABC in their FCC pleadings. *See* 11 C.F.R. § 111.4(a). Some of the program details as actually produced and broadcast differed from the proposals; however, none of the variations was material to this analysis. Therefore, this report analyzes the programs as they were broadcast. Additionally, because ABC canceled its program, the complaint with respect to ABC is moot.

The networks' programs appear to comply with the requirements for the news story exemption from the definition of a contribution. Prior Commission actions have held similar programs to constitute news stories. The Commission has issued several Advisory Opinions that held programs similar to those challenged by NLP to fall within the news story exemption. In

²⁹ The FCC's declaratory ruling resolved issues related to the Communications Act that are of great importance to networks, as broadcasters regulated by the FCC. However, the FCC's resolution of Communications Act issues raised by the networks' proposal does not resolve this matter that involves issues under FECA. Nonetheless, this Office's recommendation is consistent with the FCC's action in this matter.

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Advisory Opinion 1982-44, the Commission stated that the provision of free air time on a cable television network was not a contribution. The air time was to be given to both of the major parties, one of which had outlined a program that included various leading party members discussing public issues from their party's perspective and soliciting contributions to their party. Some of the participants were candidates for office. Nonetheless, the Commission held that the program qualified as commentary on the election and therefore it fell within the news story exemption.

Another advisory opinion authorized a multimedia presentation proposed by U.S. News & World Report to include a series of articles and candidate interviews in its magazine and television programs. In this Advisory Opinion, the Commission did not limit its holding to any particular structure of the proposed news coverage. *See* A.O. 1987-8. Thus, Commission precedent does not require that news stories or commentary conform to particular formats. The presentation of candidate views and positions that each of the networks' programs entails qualifies each of the networks' programs to meet the standard for the news story exemption. On this basis, there is reason to believe that both networks' programs constitute the presentation of a news story or commentary that meets FECA's standards for an exemption from the definition of contribution and expenditure.

Finally, neither of the programs constituted a debate under the Commission's requirement that a face-to-face confrontation is an essential element to a debate for purposes of 11 C.F.R. § 110.13. *See* A.O. 1986-37. The programs consisted of serial appearances by the participating candidates and lacked even opportunities for one candidate to respond to another. Thus, the programs did not provide any confrontation and cannot be considered a debate. Therefore, the

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requirements of 11 C.F.R. § 110.13(c) are not applicable to the networks' programs.

Consequently, this Office recommends that the Commission find no reason to believe that any of the respondents³⁰ violated 2 U.S.C. § 441b(a) with respect to the challenged television programs.

V. CONCLUSION AND PROPOSED DISCOVERY PLAN

The Office of General Counsel proposes to seek information about CPD's selection criteria. Such information would include documents indicating how CPD defined the enumerated factors, how CPD applied the selection criteria, and what criteria were used to determine that the major parties' candidates should be invited to participate in the debates. Additionally, this Office proposes to seek information regarding the role of the Clinton/Gore and Dole/Kemp campaigns in the selection of debate participants. This Office also proposes to seek information to identify CPD's major purpose, including specifically the role of the campaigns and of the DNC and RNC in CPD's activities. In order to evaluate whether CPD should be considered a political committee that is affiliated with the DNC and RNC, information related to CPD's establishment is included within the information this Office proposes to seek. Finally, this Office proposes to seek documentation of the cost incurred by CPD to stage the debates by the candidates as a measure of the value of any contribution to Clinton/Gore and Dole/Kemp for the two Presidential debates and the Vice Presidential debate.³¹

In order to do so, this Office recommends that the Commission approve the attached subpoena directed to CPD requiring it to submit written answers to questions and to produce

³⁰ The respondents to this allegation are: ABC, Inc.; Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its Treasurer; Dole/Kemp '96 and Robert E. Lighthizer, as its Treasurer; Fox Broadcasting Company, and the Public Broadcasting Service.

³¹ The value of any media coverage of CPD's debates is not included in the value of the contribution because the media's coverage of the debates is exempt pursuant to the news story exemption in 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R. § 100.7(b)(2).

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documents that relate to the debates it staged. Additionally, this Office recommends that the Commission approve the attached subpoenas directed to the participating candidates' committees and to the DNC and the RNC. After this Office has reviewed the responses to the subpoenas, we will report back to the Commission with appropriate recommendations.

VI. RECOMMENDATIONS

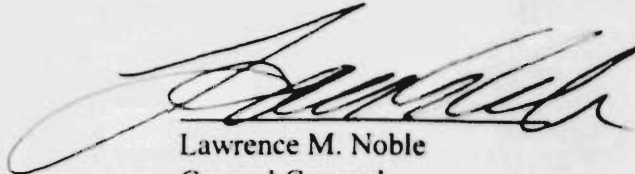
1. Find reason to believe that the Commission on Presidential Debates violated 2 U.S.C. §§ 433, 434 and 441b(a).
2. Find reason to believe that the Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer; and Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, violated 2 U.S.C. §§ 434(b)(2)(C), 434(b)(4) and 441b(a) with respect to the candidate debates staged by the Commission on Presidential Debates.
3. Find no reason to believe that ABC, Inc., Fox Broadcasting Company or the Public Broadcasting Service violated 2 U.S.C. § 441b(a).
4. Find no reason to believe that the Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer; and Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, violated 2 U.S.C. § 441b(a) with respect to the television programs challenged by the complaints filed in MURs 4451 and 4473.
5. Approve the appropriate letters.
6. Approve the attached Factual and Legal Analyses and subpoenas.

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7. Close the files in MUR 4451 with respect to ABC, Inc., Fox Broadcasting Company and Public Broadcasting Service.

Date

2/6/98



Lawrence M. Noble
General Counsel

Attachments:

- 1 Response from Fox Broadcasting Company
- 2 Response from ABC, Inc.
- 3 Response from Public Broadcasting Service
- 4 Response from Commission on Presidential Debates
- 5 Response from Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, to MUR 4451
- 6 Response from Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer, to MUR 4451
- 7 Response from Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer, to MUR 4473
- 8 Response from DNC Services Corporation/Democratic National Committee and R. Scott Pastrick, as its treasurer, to MUR 4473
- 9 Response from the Republican National Committee and William J. McManus, as its treasurer, to MUR 4473
- 10 Response from Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, to MUR 4473
- 11 Factual and Legal Analyses (3)
- 12 Subpoenas (5)

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: FEBRUARY 13, 1998

SUBJECT: MURs 4451 & 4473 - First General Counsel's Report

MFW

The above-captioned document was circulated to the Commission
on Tuesday, February 10, 1998.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

- Commissioner Aikens **XXX**
- Commissioner Elliott **XXX**
- Commissioner McDonald **XXX**
- Commissioner McGarry —
- Commissioner Thomas **XXX**

This matter will be placed on the meeting agenda for
Tuesday, February 24, 1998.

Please notify us who will represent your Division before the Commission on this
matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
ABC, Inc.;) MURs 4451
) and 4473
Clinton/Gore '96 General)
Committee, Inc., and Joan)
C. Pollitt, as Treasurer;)
Commission on Presidential Debates;)
Dole/Kemp '96, Inc., and Robert E.)
Lighthizer, as Treasurer;)
Fox Broadcasting Company;)
Public Broadcasting Service;)
DNC Services Corporation/Democratic)
National Committee and Carol)
Pensky, as Treasurer;)
Republican National Committee and)
Alec Poitevint, as Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 24, 1998, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MURs 4451 and 4473:

1. Find no reason to believe that the Commission on Presidential Debates violated 2 U.S.C. §§ 433, 434, and 441b(a).
2. Find no reason to believe that the Clinton/Gore '96 General Committee, Inc., and Joan C. Pollitt, as its treasurer; and Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, violated 2 U.S.C. §§ 434(b)(2)(C), 434(b)(4) and 441b(a) with respect to the candidate debates staged by the Commission on Presidential Debates.

(continued)

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Federal Election Commission
Certification for MURs 4451 and 4473
February 24, 1998

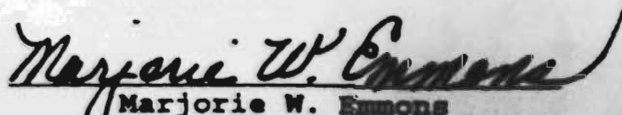
Page 2

3. Find no reason to believe that ABC, Inc., Fox Broadcasting Company or the Public Broadcasting Serviced violated 2 U.S.C. § 441b(a).
4. Find no reason to believe that the Clinton/Gore '96 General Committee, Inc. and Joan C. Pollitt, as its treasurer; and Dole/Kemp '96 and Robert E. Lighthizer, as its treasurer, violated 2 U.S.C. § 441b(a) with respect to the television programs challenged by the complaints filed in MURs 4451 and 4473.
5. Approve the appropriate letters.
6. Close the file with respect to all of the respondents in MURs 4451 and 4473.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

2-25-98
Date


Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 12, 1998

Dr. John Hagelin
Dr. Mike Tompkins
Natural Law Party of the United States
51 West Washington Avenue
Fairfield, Iowa 52556

RE: MUR 4451

Dear Dr. Hagelin and Dr. Tompkins:

On February 24, 1998, the Federal Election Commission reviewed the allegations in your complaint dated September 5, 1996, and found that on the basis of the information provided in your complaint, there is no reason to believe any of the respondents violated the Federal Election Campaign Act of 1971, as amended. Accordingly, on February 24, 1998, the Commission closed the file in this matter. A Statement of Reasons providing a basis for the Commission's decision and the General Counsel's Report will follow.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(3).

Sincerely,

Lawrence M. Noble
General Counsel

Kim Bright-Coleman

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

98043865217



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

Joseph E. Sandler, General Counsel
Democratic Party Headquarters
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MURs 4451 and 4473

Dear Mr. Sandler:

On September 26, 1996 and on January 30, 1997, the Federal Election Commission notified DNC Services Corporation/Democratic National Committee and R. Scott Pastrick, as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission closed the file with respect to the Republican National Committee.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and these matters are now public. In addition, although the complete files must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the files may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Duane Pugh, the attorney assigned to these matters at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

980043065218



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

Thomas J. Josefiak, Esq.
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MURs 4451 and 4473

Dear Mr. Josefiak:

On September 26, 1996 and on January 30, 1997, the Federal Election Commission notified Republican National Committee and William J. McManus, as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission closed the file with respect to the Republican National Committee.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and these matters are now public. In addition, although the complete files must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the files may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Duane Pugh, the attorney assigned to these matters at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in cursive script that reads "Kim L. Bright-Coleman".

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

March 12, 1998

Arthur B. Goodkind, Esq.
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 4451

Dear Mr. Goodkind:

On September 13, 1996, the Federal Election Commission notified your client, Public Broadcasting Service, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaint, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

90043865220



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William S. Reyner, Jr., Esq.
Mace J. Rosenstein, Esq.
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

March 12, 1998

RE: MUR 4451

Dear Messrs. Reyner and Rosenstein:

On September 13, 1996, the Federal Election Commission notified your client, Fox Broadcasting Company, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaint, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosures
Certification of Commission Action

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

Douglas C. Wurth, Esq.
Dole/Kemp '96, Inc.
810 First Street, N.E.
Suite 300
Washington, D.C. 20002

RE: MURs 4451 and 4473

Dear Mr. Wurth:

On September 26, 1996 and on January 30, 1997, the Federal Election Commission notified Dole/Kemp '96, Inc. and Robert E. Lighthizer, as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaints, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its files in these matters. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and these matters are now public. In addition, although the complete files must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the files may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Duane Pugh, the attorney assigned to these matters at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

Lewis K. Loss, Esq.
Ross, Dixon & Masback, L.L.P.
601 Pennsylvania Avenue, N.W.
North Building
Washington, D.C. 20004-2688

RE: MURs 4451 and 4473

Dear Mr. Loss:

On September 13, 1996 and on September 26, 1996, the Federal Election Commission notified your client, the Commission on Presidential Debates, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaints, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its files in these matters. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and these matters are now public. In addition, although the complete files must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the files may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Duane Pugh, the attorney assigned to these matters at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Eric Kleinfeld, Esq.
Clinton/Gore '96 General Committee, Inc.
P.O. Box 19100
Washington, D.C. 20036

RE: MURs 4451 and 4473

Dear Ms. Utrecht and Mr. Kleinfeld:

On September 26, 1996 and on January 30, 1997, the Federal Election Commission notified Clinton/Gore '96 General Committee, Inc. and Joan C. Pollitt, as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaints, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its files in these matters. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and these matters are now public. In addition, although the complete files must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the files may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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If you have any questions, please contact Duane Pugh, the attorney assigned to these matters at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

Kim Bright-Coleman
BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1998

John W. Zucker, Esq.
Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

RE: MUR 4451

Dear Mr. Zucker:

On September 13, 1996, the Federal Election Commission notified ABC, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On February 24, 1998, the Commission found, on the basis of the information in the complaint, that there is no reason to believe that any of the respondents violated the Act. Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision and the General Counsel's Report will follow.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman
Associate General Counsel

Enclosure
Certification of Commission Action

98043865226



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

John W. Zucker, Esq.
Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

RE: MUR 4451

Dear Mr. Zucker:

Enclosed please find a copy of the General Counsel's Report in the above-cited matter. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in this matter will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Duane Pugh Jr.".

J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Eric Kleinfeld, Esq.
Clinton/Gore '96 General Committee, Inc.
P.O. Box 19100
Washington, D.C. 20036

RE: MURs 4451 and 4473

Dear Ms. Utrecht and Mr. Kleinfeld:

Enclosed please find a copy of the General Counsel's Report in the above-cited matters. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in these matters will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

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J. Duane Pugh Jr.
Attorney

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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

J. Duane Pugh Jr.
J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

Lewis K. Loss, Esq.
Ross, Dixon & Masback, L.L.P.
601 Pennsylvania Avenue, N.W.
North Building
Washington, D.C. 20004-2688

RE: MURs 4451 and 4473

Dear Mr. Loss:

Enclosed please find a copy of the General Counsel's Report in the above-cited matters. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in these matters will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Duane Pugh Jr.", written in dark ink.

J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

Dr. John Hagelin
Dr. Mike Tompkins
Natural Law Party of the United States
51 West Washington Avenue
Fairfield, Iowa 52556

RE: MUR 4451

Dear Dr. Hagelin and Dr. Tompkins:

Enclosed please find a copy of the General Counsel's Report in the above-cited matter. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in this matter will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

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J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

98043865231



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

Arthur B. Goodkind, Esq.
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 4451

Dear Mr. Goodkind:

Enclosed please find a copy of the General Counsel's Report in the above-cited matter. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in this matter will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Duane Pugh Jr.".

J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

William S. Reyner, Jr., Esq.
Mace J. Rosenstein, Esq.
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: MUR. 4451

Dear Messrs. Reyner and Rosenstein:

Enclosed please find a copy of the General Counsel's Report in the above-cited matter. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in this matter will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

J. Duane Pugh Jr.
Attorney

Enclosure

General Counsel's Report

98043865233



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1998

Douglas C. Wurth, Esq.
Dole/Kemp '96, Inc.
810 First Street, N.E.
Suite 300
Washington, D.C. 20002

RE: MURs 4451 and 4473

Dear Mr. Wurth:

Enclosed please find a copy of the General Counsel's Report in the above-cited matters. As stated to you in a letter from this Office dated March 12, 1998, a Statement of Reasons providing a basis for the Commission's decision in these matters will also be provided to you.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Duane Pugh Jr.", written over a horizontal line.

J. Duane Pugh Jr.
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Commission on Presidential Debates)
)
 Clinton/Gore '96 General Committee,)
 Inc., and Joan C. Pollitt, as Treasurer)
)
 Dole/Kemp '96, Inc., and)
 Robert E. Lighthizer, as Treasurer)
)
 DNC Services Corporation/Democratic)
 National Committee and Carol Pensky,)
 as Treasurer)
)
 Republican National Committee and)
 Alec Poitevint, as Treasurer)

MURs 4451 and 4473

STATEMENT OF REASONS

Chairman Joan Aikens
 Vice Chairman Scott E. Thomas
 Commissioner Lee Ann Elliott
 Commissioner Danny Lee McDonald
 Commissioner John Warren McGarry

I. INTRODUCTION

On February 24, 1998, the Commission found no reason to believe that the Commission on Presidential Debates ("CPD") violated the law by sponsoring the 1996 presidential debates or by failing to register and report as a political committee. The Commission also found no reason to believe that Clinton/Gore '96 General Committee, Inc., Dole/Kemp '96, and their treasurers (collectively, the "Committees"), violated the law by accepting and failing to report any contributions from CPD. The Commission

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closed the file with respect to all of the respondents. The reasons for the Commission's findings are set forth in this statement.

II. SELECTION OF PARTICIPANTS FOR CANDIDATE DEBATES

A. Legal Framework

Under the Federal Election Campaign Act of 1971, as amended ("FECA"), corporations are prohibited from making contributions¹ or expenditures² in connection with federal elections. 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(b).³ The Commission has promulgated a regulation that defines the term "contribution" to include: "A gift, subscription, loan . . . , advance or deposit of money or anything of value made . . . for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.7(a)(1). *See also* 11 C.F.R. § 114.1(a). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The regulatory definition of contribution also provides: "[u]nless specifically exempted under 11 C.F.R. § 100.7(b), the provision of any goods or services without charge . . . is a contribution." *Id*

Section 100.7(b) of the Commission's regulations specifically exempts expenditures made for the purpose of staging debates from the definition of contribution. 11 C.F.R. § 100.7(b)(21). This exemption requires that such debates meet the requirements of 11 C.F.R. § 110.13,⁴ which establishes parameters within which staging organizations must conduct such debates. The parameters address: (1) the types of organizations that may stage such debates, (2) the structure of debates, and (3) the criteria that debate staging organizations may use to select debate participants. With respect to participant selection criteria, 11 C.F.R. § 110.13(c) provides, in relevant part:

¹ FECA defines contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."

2 U.S.C. § 431(8)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

² FECA defines expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

³ The presidential candidates of the major parties who accept public funds cannot accept contributions from any source, except in limited circumstances that are not raised herein. 26 U.S.C.

§ 9003(b)(2); *see also* 11 C.F.R. § 9012.2(a).

⁴ The exemption also requires that such debates meet the requirements of 11 C.F.R. § 114.4, which permits certain nonprofit corporations to stage candidate debates and other corporations and labor organizations to donate funds to organizations that are staging such debates. 11 C.F.R. §§ 114.4(f)(1) and (3). This section also requires the debates to be staged in accordance with the standards in 11 C.F.R. § 110.13. *Id*

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Criteria for candidate selection For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

11 C.F.R. § 110.13. When promulgating this regulation, the Commission explained its purpose and operation as follows:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

. . . Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rules, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But, in situations where, for example, candidates must satisfy three of five objective criteria, nomination by a major party may be one of the criteria. This is a change from the Explanation and Justification for the previous rules, which had expressly allowed staging organizations to restrict general election debates to major party candidates. See Explanation and Justification, 44 FR 76735 (December 27, 1979). In contrast, the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party.

60 Fed. Reg. 64,260, 64,262 (Dec 14, 1995).

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Thus, if an appropriate corporation staged a debate among candidates for federal office and that debate was staged in accordance with all of the requirements of 11 C.F.R. § 110.13, then the costs incurred by the sponsoring corporation would be exempt from the definition of contribution pursuant to the operation of 11 C.F.R. § 100.7(b)(21). See also 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(1). Similarly, other corporations legally could provide funds to the sponsoring corporation to defray expenses incurred in staging the debate pursuant to the operation of 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(3). On the other hand, if a corporation staged a debate that was not in accordance with 11 C.F.R. § 110.13, then staging the debate would not be an activity "specifically permitted" by 11 C.F.R. § 100.7(b), but instead would constitute a contribution to any participating candidate under the Commission's regulations. See 11 C.F.R. § 100.7(a)(1)(iii)(A) (noting "unless specifically exempted" anything of value provided to the candidate constitutes a contribution). The participating candidates would be required to report receipt of the in-kind contribution as both a contribution and an expenditure pursuant to 11 C.F.R. § 104.13(a)(1) and (2). See 2 U.S.C. § 434(b)(2)(C) and (4).

B Commission on Presidential Debates Selection Criteria

CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation designed to organize, manage, produce, publicize and support debates for the candidates for President of the United States. Prior to the 1992 campaign, CPD sponsored six debates, five between candidates for President, and one between candidates for Vice President. In the 1996 campaign, CPD sponsored two Presidential debates and one Vice Presidential debate. Only the candidates of the Democratic and Republican parties were invited to participate in the 1996 debates. CPD produced written candidate selection criteria for the 1996 general election debate participation. Relying on these criteria and the recommendation of an advisory committee consisting of a broad array of independent professionals and experts, the CPD determined that only the Democratic and Republican candidates had a "realistic chance of winning" the 1996 election.

The introduction to the candidate selection criteria explains, in pertinent part:

In light of the large number of declared candidates in any given presidential election, [CPD] has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation

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to the respective nominees of the two major parties to participate in [CPD's] 1996 debates.

In order to further the educational purposes of its debates, [CPD] has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a [CPD]-sponsored debate. Rather, [CPD] will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

February 6, 1998 General Counsel's Report ("G.C. Report") at Attachment 4, at 57.

Thus, CPD identified its objective of determining which candidates have a realistic chance of being elected the next President, and it specified three primary criteria for determining which "nonmajor" party candidates to invite to participate in its debates. CPD further enumerated specific factors under each of the three primary criteria that it would consider in reaching its conclusion.

For its first criterion, "evidence of national organization," CPD explained that this criterion "encompasses objective considerations pertaining to [Constitutional] eligibility requirements . . . [and] also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success." *Id.* The factors to be considered include:

- a. Satisfaction of the eligibility requirements for Article II, Section I of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.

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c. Organization in a majority of congressional districts in those states.

d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsement by federal and state officeholders.

Id

CPD's second criterion, "signs of national newsworthiness and competitiveness," focuses "both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time [CPD] makes its invitation decisions." *Id* Five factors are listed as examples of "signs of national newsworthiness and competitiveness":

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

Id at 58.

Finally, CPD's third selection criterion states that the factors to be considered as "indicators of national public enthusiasm" are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The listed factors include:

- a. The findings of significant public opinion polls conducted by national polling and news organizations.

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b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Id

C. Discussion

After a thorough and careful examination of the factual record, the undersigned commissioners unanimously concluded the Commission on Presidential Debates used "pre-established objective criteria" to determine who may participate in the 1996 Presidential and Vice-Presidential debates. 11 C.F.R. §110.13.⁵ As a result, CPD did not make, and the candidate committees did not receive, a corporate contribution.

The CPD was set up and structured so that the individuals who made the ultimate decision on eligibility for the 1996 debates relied upon the independent, professional judgment of a broad array of experts. The CPD used multifaceted selection criteria that included: (1) evidence of a national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. We studied these criteria carefully and concluded that they are objective. Moreover, we could find no indication or evidence in the factual record to conclude that the criteria "were designed to result in the selection of certain pre-chosen participants." Explanation and Justification of 11 C.F.R. §110.13(c), 60 *Fed. Reg.* at 64262.

The CPD debate criteria contain exactly the sort of structure and objectivity the Commission had in mind when it approved the debate regulations in 1995. Through those regulations, the Commission sought to reduce a debate sponsor's use of its own personal opinions in selecting candidates. It was essential, in the Commission's view, that this selection process be neutral. It is consistent with the 1995 regulations for a debate sponsor to consider whether a candidate might have a reasonable chance of winning through the use of outside professional judgment. Indeed, if anything, the use of a broad array of independent professionals and experts is a way of ensuring the *decision makers* are objective in assessing the "realistic chances" of a candidate.

⁵ Although not required to do so under the Commission's regulation, CPD reduced its candidate selection criteria to writing. See Explanation and Justification of 11 C.F.R. §110.13, 60 *Fed. Reg.* at 64262.

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The pool of experts used by CPD consisted of top level academics and other professionals experienced in evaluating and assessing political candidates. By basing its evaluation of candidates upon the judgment of these experts, CPD took an objective approach in determining candidate viability.⁶

Significantly, the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use. During the Commission's promulgation of §110.13, the Commission considered the staff's recommendation to specify certain ostensibly objective selection criteria in the regulations and to expressly preclude the use of "[p]olls or other assessments of a candidate's chances of winning the nomination or election." See Agenda Document #94-11 at 74 (February 8, 1994) and Explanation and Justification of 11 C.F.R. §110.13, 60 *Fed. Reg.* at 64262. The Commission unanimously rejected this approach. *Id.* Instead, the Commission decided the selection criteria choice is at the discretion of the staging organization and indicated that the use of outside professional judgment in considering candidate potential is permissible. Accordingly, the Commission cannot now tell the CPD that its employment of such an approach is unacceptable and a violation of law.

The Office of General Counsel, in effect, seemed to want to apply its own debate regulation proposal from several years ago in the instant matters. It argued the use of candidate assessments, such as CPD's "signs of newsworthiness and competitiveness," are "problematic" for many of the same reasons it argued in 1994. G.C. Report at 17. Specifically, the Office of General Counsel contended the CPD criteria contain "two levels of subjectivity: first, identifying the pool of sources involves numerous subjective judgments, and second, once the pool is identified, the subjective judgments of its members is considered." *Id.* at 18. The staff further insisted that there also is "reason to believe that the other selection criteria appear to be similarly insufficiently defined to comply with §110.13(c)'s objectivity requirement." *Id.*

⁶ That one reference in CPD's materials states that the criterion for evidence of national organization "encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success", see G.C. Report at 11 (emphasis added), is not dispositive. Indeed, the factors referred to appear to be objective on their face and not subjective.

- a. Satisfaction of the eligibility requirements of Article II, Section I of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.
- c. Organization in a majority of congressional districts in those states.
- d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

Id. at Attachment 4, at 57.

⁷ Under the staff's proposed regulation, a debate sponsor could not look at the latest poll results even though the rest of the nation could look at this as an indicator of a candidate's popularity. This made little sense to us.

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The questions raised in the General Counsel's Report are questions which can be raised regarding *any* candidate assessment criterion. To ask these questions each and every time a candidate assessment criterion is used, however, would render the use of that criterion unworkable, contrary to the direction given by the Commission at the regulatory stage. Absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion. This approach is consistent with the Commission's Explanation and Justification which states "reasonableness is implied" when using objective criteria. Explanation and Justification of 11 C.F.R. §110.13(c), 60 *Fed. Reg.* at 64262. We are satisfied with the affidavits presented by the CPD that its "criteria were not designed to result in the selection of certain pre-chosen participants." *Id.* See G.C. Report at Attachment 4, at 121-126 (affidavit of professor Richard E. Neustadt), Attachment 4 at 43-56 (affidavit of Janet H. Brown). Significantly, we have been presented with no evidence in the factual record which threatens the veracity of these sworn affidavits.

The General Counsel's Report contains several other points which must be addressed. First, the Report's suggestion that CPD misapplied Mr. Perot's qualification for public funding reflects a misunderstanding of CPD's reasoning. See G.C. Report at 19-20. While qualification for public funding is significant, the CPB observed that as a practical matter Mr. Perot's hands would be tied since he could not contribute his own money. Thus, compared to 1992, his "realistic" chances of winning in 1996 were greatly reduced:

[In 1992], we concluded that his prospect of election was **unlikely** but not unrealistic. With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a *federal subsidy*, we see **no similar** circumstances at the present time. Nor do any of the **academic or journalistic** individuals we have consulted.

G.C. Report at Attachment 4, at 128 (Letter of Professor Richard E. Neustadt) (**emphasis added**). A limit on the amount of funds which can be spent by a candidate is **certainly an objective factor** which can be legitimately used by a sponsoring organization.

The General Counsel's Report also asserts the Democratic and Republican party nominees were issued "automatic" invitations to the debates as a result of their party nominations in violation of §110.13. See February 6, 1998 G.C. Report at 21-22. We find persuasive the specific denials by the CPD on this point. The CPD **flatly denies** it based its decision on this factor alone.

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[I]n 1996, the CPD Board asked me to act as chairman of the advisory committee that applied the 1996 candidate selection criteria. The advisory committee convened on September 16, 1996 for the purpose of applying CPD's nonpartisan candidate selection criteria to more than 130 candidates running for the Presidency and Vice-Presidency in the 1996 general election campaign. *Although the candidate selection criteria do not require it to do so, the advisory committee independently applied the criteria to the Democratic and Republican party candidates.* After reviewing and discussing the facts and circumstances of the 1996 general election campaign, it was the unanimous conclusion of the advisory committee that, as of September 16, 1996, only President Clinton and Senator Dole have a realistic chance in 1996 of being elected President, and only Vice President Gore and Congressman Kemp have a realistic chance of being elected Vice President.

G.C. Report at Attachment 4, at 124-125 (Affidavit of Professor Richard E. Neustadt)(emphasis added). *See also id* at 53-54 (Affidavit of Janet H. Brown)("After receipt of the data provided to the 1996 Advisory Committee and its own deliberation and discussion, *the CPD Board unanimously accepted the 1996 Advisory Committee's recommendation that only President Clinton and Senator Dole be invited to participate in CPD's 1996 Presidential debate and only Vice President Gore and Congressman Kemp be invited to participate in CPD's 1996 vice presidential debate.*")(emphasis added).

Additionally, we do not fully agree with the staff's conclusion that "'automatic' invitations are in direct violation of 11 C.F.R. §110.13(c)." G.C. Report at 21. Section 110.13(c) provides, in pertinent part, that "[f]or general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." The phrase "whether to include" was intended to prevent a debate sponsor from *excluding* a candidate from a debate solely because the candidate was not a major party nominee. For example, a debate sponsor could not use the following as its "objective" criterion: "Only major party candidates are eligible to participate in the debate." The regulation's purpose was not to prevent a debate sponsor from issuing debate invitations to major party nominees.

The Explanation and Justification of §110.13(c) confirms this understanding of the regulation: "Under the new rules, nomination by a particular party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate." Explanation and Justification of 11 C.F.R. §110.13(c), 60 Fed. Reg. at 64262 (emphasis added). Indeed, the entire paragraph explaining this new regulatory language focuses on the fact that "the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating

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simply because they have not been nominated by a major party." *Id.* Conversely, no mention is made in the Explanation and Justification that the new rules were somehow intended to prevent the issuance of invitations to major party nominees. We believe it is consistent with the purpose of the regulation for the CPD to issue an invitation to the major party candidates in view of the "historical prominence" of, and "sustained voter interest" in, the Republican and Democratic parties. G.C. Report at Attachment 4, at 57.

Finally, the General Counsel's Report suggests the Clinton/Gore Committee and the Dole/Kemp Committee expressed an interest to either include or exclude Mr. Perot and that, as a result, the two candidate committees somehow tainted the debate selection process. G.C. Report at 20-21. Absent specific evidence of a controlling role in excluding Mr. Perot, the fact the Committees may have discussed the effect of Mr. Perot's participation on their campaigns is without legal consequence. There certainly is no credible evidence to suggest the CPD acted upon the instructions of the two campaigns to exclude Mr. Perot. To the contrary, it appears one of the campaigns wanted to include Mr. Perot in the debate. See G.C. Report at Attachment 6, at 7 ("since the start of the general election, the [Clinton/Gore] Committee fully supported the wishes of Ross Perot to be included in the CPD-sponsored presidential debates and had hoped that the CPD would make a determination to include him.") (response of Clinton/Gore '96). In fact, CPD's ultimate decision to exclude Mr. Perot (and others) only corroborates the absence of any plot to equally benefit the Republican and Democratic nominees to the exclusion of all others.

III. STATUS AS A POLITICAL COMMITTEE

The FECA defines "political committee" as, in part: "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the FECA and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d) (requiring political committees to register with the Commission); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a) (requiring political committees to file specified reports with the Commission). Since CPD did not make a contribution to or an expenditure on behalf of the Committees, it was not a political committee within the meaning of 2 U.S.C. § 431(4). Accordingly, CPD was not required to register and report with the Commission.

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IV. CONCLUSION

For all the reasons set forth above, the Commission did not approve the General Counsel's recommendations with regard to alleged violations of the FECA by the Commission on Presidential Debates, Clinton/Gore '96 General Committee and the Dole/Kemp '96 Committee and their treasurers.

4/6/98
Date

Joan D. Aikens
Joan D. Aikens
Chairman

4/6/98
Date

Scott E. Thomas
Scott E. Thomas
Vice Chairman

Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

4/6/98
Date

Danny L. McDonald
Danny L. McDonald
Commissioner

Date

John Warren McGarry
John Warren McGarry
Commissioner

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

THIS IS THE END OF MUR # 4451

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