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The Federal Election Commission,
Office of General Counsel,
999 E. Street NW,
Washington, D. C. 20463

May 10, 2000

Re: Complaint to the F.E.C. regarding Regulatory violations of 11 C.F.R. § 110.13 (c).

The pertinent regulation of the FEC that is in violation is 11 CFR § 110.13(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 organizations(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...." (emphasis added)

On January 6, 2000 the Commission on Presidential Debates (CPD) co-chairmen Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. announced the candidate selection criteria to be used in the 2000 general election debates as well as the dates and sites for the debates. See EXHIBIT A (also found at: <http://www.debates.org/pages/news3.html>)

One of the three Presidential Debate Commission's published 'criteria' is not 'objective' and violates the FEC Regulations mandating that 'sponsoring organizations' **MUST HAVE 'PRE-EXISTING OBJECTIVE CRITERIA'** (emphasis added) to determine which candidates may participate in the Presidential and Vice Presidential debates for year 2000. See 11 CFR §110.13 (c) Id.

The three criteria were stated by the Presidential Debate Commission: 1) That the candidate seeking to participate must be eligible under the Constitution to be President; 2) that the candidate be on the ballot in enough states to have the mathematical possibility of winning in the electoral college, and 3) that the candidate demonstrate his acceptance by the public by five polls giving that candidate at least a 15% average from their results.

While the first two criteria are indeed 'objective', i.e. easily measurable by facts, the third is NOT. While polling has come a long way towards being 'scientific' this particular 'criteria' is neither fair nor 'objective'.

Webster's Ninth New Collegiate Dictionary defines 'objective' as: "expressing or dealing with facts or conditions perceived without distortion by personal feelings, prejudices, or interpretations"; "limited to choices of fixed alternatives and reducing subjective factors to a minimum".

The Thesaurus gives 'objective' as an adjective the following meanings: "factual, actual, fair, impartial, just, judicious, equitable, neutral, disinterested, dispassionate, open-minded, detached, unbiased, unprejudiced, evenhanded, and uncolored".

A candidate's eligibility under the Constitution can be objectively determined. U.S. Constitution, ARTICLE II, Section 1., Clause 5 (also found at: <http://www.house.gov/Constitution/Constitution.html>)

The candidate's being on the ballot in enough states to establish 270 electoral votes can be objectively determined. Exhibit A1 (also found at: <http://www.nara.gov/fedreg/96ecvote.html>)

Polls under any structure or in any number CANNOT be objectively determined.

Larry Sabato, professor of government at the University of Virginia and author of *'The Rise of Political Consultants'* (Basic Books, 1981) and *'Dirty Little Secrets'* (Random House 1996) is quoted as saying "Polling is not that precise, even when you average five polls you don't eliminate the individual margins of error." This statement was in response to questions posed to him about the Presidential Debate Commission's 'new criteria' when they were first published.

In an article review of *"The Rise of Political Consultants"*, Charles E. Cruce groups 'polling' as one of the services of the "campaign professionals who are engaged in the provision of advice and services". EXHIBIT B (also found at: <http://www.tamucc.edu/~whatley/PADM5302/theo36b.htm>).

One of the stated goals of the Federal Election Commission is that they not only BE FAIR but that they GIVE THE APPEARANCE OF BEING FAIR. This is stated clearly in the 'Twenty Year Report' of the FEC. (found at: <http://www.fec.gov/pages/20year.htm>).

Recently we took a 'poll' of over 838 individuals via e-mail. Our single question was, "Do you think that political polls are objective?" The responses were at a ratio of sixteen (16) to one (1) that they are NOT objective! Some few said they were 'sometimes' objective. Several individuals said they could not answer the question as phrased.

What is gained by having a debate restricted to the Republican and Democratic candidates? Their views on issues will have been heard *ad nauseam* for over a year before the debates take place. The views on issues by third party candidates are important to the American voter. Informed decisions about voting come only with the opportunity for voter education. Debates are the most prominent decision maker since the era of televised debates came into being.

Arianna Huffington in a recent article, 'World's Greatest Democracy?', EXHIBIT C (also found at: <http://www.jewishworldreview.com/cols/arianna101999.asp>), speaks about the 'importance of opening access to debates', citing Governor Jesse Ventura's

success after being included in the Gubernatorial debates in Minnesota in 1998, and the difference between Ross Perot's 18.7% of the vote when included in the 1992 debates and his 8.4% when excluded in 1996.

According to a statement Ms Huffington quotes from George Stephanopoulos, the Clinton campaign wanted the 1996 presidential debates to be a non-event...and that's exactly what they were, with 100 million fewer viewers than the debates in 1992 garnered. The 1992 debates, by contrast, with a third candidate included, had the highest viewer turnout in history. So the presidential debates went from being the highest turnout in 1992 to the lowest viewer turnout in general-election debate history in 1996!

Let's check out polling 101 as found on the 'All About' series on the internet.
EXHIBIT D (also found at:

<http://math.about.com/education/math/library/weekly/aa011200a.htm>)

These articles give the low down on 'The Statistics Behind Political Polls', 'Polling Questions', and 'Margin of Error'. The bottom line is that polling is NOT an exact science. It is NOT objective!

The Pew Research Center For The People & The Press, posted an article entitled, POLL ANALYSIS: March 4, 1999. EXHIBIT E (also found at: <http://www.people-press.org/99watch1.htm>) The information on polls and their potential errors are clear in that article.

The best example of potential problems with polls used as 'objective criteria' are the actual polls from the 1998 Minnesota Gubernatorial race. It is obvious from those polls that the debates are paramount in winning political races! In Minnesota in 1998, Jesse Ventura 'shocked the world' and especially the pollsters! EXHIBIT F (also found at: <http://www.intellectualcapital.com/politics/minnesota.asp>)

The graph on page two of that article shows the following:

July 1998	Humphrey	39% (Democrat)
	Coleman	35% (Republican)
	Ventura	11% (Reform)
Early Sept '98	Humphrey	41%
	Coleman	31%
	Ventura	13%
Late Sept '98	Humphrey	49%
	Coleman	29%
	Ventura	10%

Then came the debates which included Jesse Ventura, between October 1st and October 27th

, a total of five(5) debates.

October '98	Humphrey	36%
	Coleman	34%
	Ventura	21%

And the election results!

Nov 4, 1998	Humphrey	28%
	Coleman	35%
	Ventura	37% THE WINNER!

In an article on October 27 Jesse Ventura was labeled 'the spoiler' when he was at 21% and Humphrey and Coleman were only a point or two away from each other. EXHIBIT G (also found at: <http://cnn.com/ALLPOLITICS/stories/1998/10/27/mn.gov/>)

The debates made the difference. They did what political debates are supposed to do, they informed the public. They gave the public information about each candidate that would otherwise not have been broadcast publicly for all voters to hear in order to make an informed decision on election day. Inclusion in the debates leveled the playing field and made it fair. Inclusion gives the voters an option between apathy and indifference and interest in exercising the right to vote! Had the criteria of the Commission on Presidential Debates been utilized in MN in 1998, Jesse Ventura, who was at 10% prior to the debates, would not have been permitted to participate and would not have won that election.

The Arizona Republic, dated Feb. 27, 2000, in the article entitled "Political polls have role, but analysis can be misleading", the author makes this statement: "A poll, remember, is a snapshot, a point in time. It doesn't predict the outcome of elections. It doesn't provide context or show a pattern unless compared with something else- another time, another place, another set of people." EXHIBIT H (also available at: <http://www.azcentral.com/news/cols/0227deur.shtml>)

In his recent article about the 'Hosing of America', Jack Koenig says, "It must be remembered that even if a polling organization has strict procedures in place to minimize manipulation, knowledgeable individuals can always circumvent the rules. The old axiom, "Figures Lie and Liars Figure" is something to remember when viewing polling results. EXHIBIT I (find full article: <http://www.impactnet.org/HosingOfAmer.htm>)

David W. Rohde, University Distinguished Professor of Political Science at Michigan State University warned us to beware of polls in a 1996 article, "What Do Political Polls Really Tell Us?". EXHIBIT J (see : <http://www.ippsr.msu.edu/policy/persp/s96/page1.htm>)

Richard Winger's "Ballot Access News" is always filled with pertinent information. The November 8, 1998 edition gives us an overview of the continued exclusion of third

parties from debates in most states, but also shows that in 1998 nineteen states minor party candidates for Governor, U.S Senate, or Congress-at-large, debated their major party opponents. This was similar to the same occurrence in 1994. EXHIBIT K (see also:

<http://www.ballot-access.org/1998/1108.html#07>)

And then we have the 'Wizard of Id' on polls! EXHIBIT L.(see also <http://home.naxs.com/mcgoats/idwizard.htm>)

We agree with the Commission on Presidential Debates that a third 'objective criteria' is needed in order to narrow the potential field and make the numbers manageable. But the criteria MUST comport with the mandatory regulations of the Federal Election Commission as found in 11 CFR §110.13(c). If it does not it will generate multiple lawsuits that would be unnecessary if the regulations are complied with.

Polling, even the average of several polls, or a hundred polls, does not meet the definition of 'objective'. The imprecision of polls rules them out. Making criteria that definitely will rule out all third parties will only increase public apathy, cynicism, and indifference.

The one time that our family was polled was in 1996. The question was: "Are you going to vote Republican or Democratic?" Our response was "Reform Party". The pollster then said, "Oh, then you're 'undecided'" We repeated, "No we're not 'undecided' we are going to vote for the Reform Party candidate!" To which the pollster said, "We count that 'undecided'!" Similar stories have emerged from our recent 'e-mail poll'.

If a third criteria that is actually 'objective' were to be substituted for polling, the debate criteria would be seen as fair and the FEC mandatory regulations would be followed.

For instance, if a monetary amount were set that a candidate must have spent on his/her campaign by a specific time prior to the first debate, say Labor Day, THAT would be 'objective' and incontestable. If this figure were \$500,000.00 by Labor Day and prior to the first debate, it would have meant the inclusion of Ross Perot, John Haeglin, and Harry Browne in the 1996 debates. No others qualified. Primary debates have more than five participants without any difficulty at all, in fact it generates much more interest. We determined who would have been eligible by checking the FEC reports online. (see: <http://www.fec.gov/publicrecords.html>)

Since the Democratic and Republican candidates are automatically included, as they are automatically on the ballot in all 50 states and the District of Columbia, it would appear that they have little interest in seeing that the American voters have the opportunity to hear the views of others and be able to make an informed decision at the polls. In fact these exclusionary tactics that pertain to elections are becoming more and more a reason for citizens to vote for a third party candidate or stay at home. Fairness gains respect and assumes honesty. Bias and prohibition causes distrust and suspicion.

We need MORE voters to turn out on election day, not less. The average citizen feels impotent, unable to make any difference in the politics of this country. The only way to generate interest is to show equity and fairness in the interpretation of existing regulations. If a regulation is mandatory it must be followed to the letter. To generate voter interest the debates must be fair, inclusive rather than exclusive, and not a non-event like the 1996 debates. In 1998 Minnesota broke all records for voter turn-out on election day.

Total Voting Age Population: 3483000

Total Voting: 2105377

Total Percentage 60.45%

Election Day Registration: 332540

Percentage: 15.79%

Absentee Voters: 93348

Percentage: 4.43%

Statistics from: 'Minnesota County Voter Turnout General Election 1998'

(found at: <http://www.sos.state.mn.us/election/ctygen.html>)

See voter turn out analysis by age, 1972-1996 at:

<http://www.fec.gov/pages/agedemog.htm>

This is an FEC analysis too complicated to print for this complaint, but interesting for those who are interested in statistics.

By contrast, EXHIBIT M (also found at:

<http://www.bettercampaigns.org/documents/turnout.htm>) clearly shows that voter turnout increased in 1992 when a third party candidate participated in the debates!

Compare the 60% vote in Minnesota in 1998 to the declining interest in Presidential elections since 1960 when THEY were at the 60% level! Again note the 1992 result of 55.24% following the inclusion of a third party candidate in the debates!

The following figures are from:

http://www.ruralvermont.com/diner/chat_government/messages/107.html

National Voter turnout:

1996	48.99%
1994	38.79%
1992	55.24%
1990	36.53%
1988	50.11%
1986	36.42%
1984	53.11%
1982	40.09%
1980	52.56%

1978	37.77%
1976	53.55%
1974	38.31%
1972	55.21%
1970	46.78%
1968	60.84%
1966	48.40%
1964	61.92%
1962	47.36%
1960	63.06%

The Federal Election Commission has but two choices in our opinion:

- 1) To exclude the Presidential Debate Commission as a 'sponsoring organization' if they maintain the three criteria as now published; or
- 2) To require that they eliminate the polling from their criteria and substitute some truly objective criteria that would still give some third party candidates the opportunity to compete.

Respectfully submitted,

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