FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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ARTHUR BLOCK
ATTORNEY AT LAW
250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

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April 25, 1988

FEDERAL EXPRESS

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Fulani v. League of Women Voters Education Fund

Dear Mr. Noble:

Please find enclosed three copies of the complaint by Dr. Lenora B. Fulani and her campaign committee against the League of Women Voters Education Fund. It is being filed pursuant to Part 111 of the Commission's regulations.

As you will see, this complaint requires prompt consideration. The complaint requests, inter alia, that the Commission take action to ensure that the complainant is included in the LWVEF's Presidential Primary Debate to be held in California on June 5, 1988.

A copy of the complaint is simultaneously being delivered to the LWVEF. We request that the Commission set May 11, 1988, as the last day for respondents to answer the complaint. This will give the respondents a full fifteen (15) days from their actual receipt of the complaint.

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ARTHUR BLOCK
ATTORNEY AT LAW

We further request that your office and the Commission schedule its review and deliberation on this matter so that a decision is reached as soon after May 11, 1988 as practicable, but in any event in sufficient time to grant the complainants full and complete relief.

Very truly yours,

Arthur Block

Arthur R. Block

ARB/esk
Enclosures

cc: League of Women Voters Education Fund (via Federal Express)

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UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS	:	
Plaintiffs,	:	
- against -	:	COMPLAINT
LEAGUE OF WOMEN VOTERS EDUCATION FUND (LWVEF) and NANCY NEUMAN, as Chairperson	:	MUR No.

Introduction

1. The Commission has ruled in a series of advisory opinions that independent candidates are active participants in the nomination phase of the Presidential election, and, therefore, are eligible to qualify for federal primary matching funds. The respondent League of Women Voters Education Fund ("LWVEF"), however, has adopted primary season debate selection criteria which are based on the assumption that independent candidates are not part of the nominating process--an assumption contrary to the Commission's rulings. No matter how significant a candidate's campaign may be, the LWVEF will not give that candidate any consideration whatsoever unless he or she is seeking the nomination of the Republican or Democratic party.

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This criterion is partisan and it is discriminatory on the basis of race and sex. The LWVEF has used this criterion to exclude from its primary season debates the first Black woman in history to receive federal primary matching funds, complainant Dr. Lenora B. Fulani ("Fulani"). If the Rev. Jesse Jackson had chosen to run as an independent in 1988, he, too, would have been excluded.

The critical issue in this complaint proceeding is the relationship between the legal principles established by the Commission's rulings in the area of Presidential primary matching funds, and its nine year old regulation regarding the sponsorship of candidates debates. This regulation, we submit, must be applied in a manner which does not contradict and undermine the principle of fairness and nonpartisanship towards independent candidates. Although the Commission has applied its debate regulation in other proceedings, it has never before been presented with the critical legal issue in this case. This is not a challenge to the LWVEF's selection criteria for its general election debates, as in Barry Commoner's 1980 complaint; the LWVEF's general election criteria did give consideration to independent candidates. This is not a challenge to the LWVEF's application of its primary season debates criteria to a major party candidate, as in Lyndon LaRouche's 1984 complaint; the significance of LaRouche's campaign was assessed by the LWVEF. We are dealing here with a narrow legal issue based on an indisputable fact--the LWVEF criteria for primary season debates will never permit any independent candidates to be heard. This constitutes partisan bias in favor of major party candidates and

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against minor party candidates. In this campaign 16 candidates were declared eligible for primary matching funds. The LWVEF assessed the significance of 15 of them, and invited 14 into its primary debates. But it refused to assess the significance of one recipient of matching funds, Fulani. Why? Solely because she is not seeking the nomination of the Democratic and Republican parties.

Thus, this case does not even reach the question of what are fair and nonpartisan standards for assessing the significance of an independent Presidential candidate. The LWVEF has preempted this issue by denying that an independent candidate receiving hundreds of thousands of dollars in federal primary matching funds is even in the primary race at all!

The LWVEF has used the Commission's debate regulation as a justification for this clearly partisan and improper behavior. In March 1988, Fulani commenced a federal lawsuit in New York against the LWVEF challenging its exclusion of her from the primary season debates. On April 12, 1988, the Court denied plaintiffs' motion for a preliminary injunction and dismissed three of the four causes of action in the complaint. Central to the Court's decision was its deference to the Commission's debate regulation. We submit that the Court "deferred" to an interpretation of the regulation which the Commission has never articulated and which, in this proceeding, the Commission should decisively repudiate.

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2. This complaint and the accompanying exhibits provide the Commission with comprehensive background facts supporting Fulani's claims.[1] At the outset, however, we would stress that the essential facts are few and undisputed. The LWVEF admits that affiliation with the Democratic or Republican Party is a necessary (but not sufficient) condition for a candidate to be included in its primary debates. Its Executive Director, Grant Thompson, explicitly states that the only reason why Fulani has not been invited to participate in the LWVEF's Presidential primary debates is that "she has not made a public announcement of her intention to run for the Democratic Party's nomination for President or the Republican Party's nomination for President." He adds, "Because plaintiff Fulani clearly does not meet this criterion, the League has not considered whether she would satisfy the criterion of significance."[2]

Thus, the LWVEF's stated position is that it will not consider the significance of any independent candidacy for the Presidency, and it specifically has not considered the viability of Fulani's candidacy.

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1. The background facts have already been developed before the federal court in Fulani et. al. v. League of Women Voters Education Fund, et. al., 88 Civ. 1441 (R.W.S.)(S.D.N.Y.). Selected affidavits and exhibits from the record in that case are annexed hereto as Exhibits 1-5, and the Court's opinion is Exhibit 7. The abbreviations used herein to refer to the court documents are set forth in the Exhibits List.

2. Thompson Statement, para. 15 (emphasis supplied).

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The Parties

3. Complainant LENORA B. FULANI ("Fulani") is a candidate for the office of President of the United States. She plans to be on the ballot in all 50 states and the District of Columbia. Her campaign organization is in the process of accomplishing that objective. The Federal Election Commission has ruled that (a) her efforts to obtain independent ballot position in some states and to obtain the nomination of various parties in other states, constitutes participation in the primary process of the 1988 Presidential election; and (b) she has demonstrated sufficient national support for her campaign to be certified for federal primary matching funds. Fulani is a woman and of African-American national origin.

4. Complainant LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS ("LBFCFE") is the duly authorized principal campaign committee for Dr. Fulani. Its principal office is 475 Fifth Avenue, Suite 1500, New York, NY 10017.

5. Respondent LEAGUE OF WOMEN VOTERS EDUCATION FUND ("LWVEF") is a not-for-profit charitable trust which has tax exempt status under Internal Revenue Code sec. 501(c)(3). It is the sponsor of eight Presidential primary debates during the 1988 election campaign. Its stated purpose is to foster voter education and participation in the electoral process, and it is obligated, under its trust agreement, the IRC, and (as a debate sponsor) under Commission regulations, to carry out this purpose in a strictly nonpartisan manner.

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6. Respondent NANCY NEUMAN ("Neuman") is the Chairperson of the Board of Trustees of LWVEF, and responsible for management of the fund.

General Allegations

a. Fulani's campaign

7. Fulani holds a Ph.D. in Developmental Psychology from the Graduate School and University Center of the City University of New York. She was a candidate for Lieutenant Governor of the State of New York in 1982, Mayor of New York City in 1985, and Governor of the State of New York in 1986. In the 1986 gubernatorial race she received 25,000 votes, the greatest number of votes received by any left-of-center candidate for Governor of New York in approximately 30 years.

8. Fulani is the national spokesperson for the New Alliance Party ("NAP"). In 1984, NAP's organizational structure was primarily responsible for obtaining ballot position for African-American Presidential candidate Dennis Serrette, in 33 states.

9. Fulani declared her candidacy for President of the United States on June 24, 1987. Her principal authorized campaign committee began door-to-door canvassing operations in July, 1987.

10. Without purchasing any advertising time on radio or television, without purchasing any advertising space in national mass media publications, the campaign has succeeded in grassroots, person to person, door-to-door canvassing to obtain,

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as of the end of March, 1988, approximately $390,000 in matchable contributions and $115,000 in nonmatchable contributions from over 24,000 persons in 47 states. (FN--Sinawski affidavit, para. 5.)

11. On December 7, 1987, Fulani and her authorized campaign committee filed an application for certification for federal primary matching funds with the Commission. On January 28, 1988, the Commission certified Fulani as eligible.

12. Fulani is the only woman who has received Presidential primary matching funds in connection with the 1988 election. She is the first Black woman ever to qualify for matching funds. She is also the first independent candidate in United States history to have been certified as eligible for matching funds; indeed, she qualified for matching funds so early in the race that the Democratic and Republican parties were still in the early stages of their nominating processes. Sinawski and Newman affs.

13. The Fulani campaign has received substantial coverage in local newspapers and other media in response to her campaign appearances. Wherever she has had an opportunity to communicate with large numbers of people, a substantial portion of the audience has responded very positively. Sinawski aff. and Sinawski r. aff., para. 2 and footnote 1.

14. But for the exclusion of Fulani's candidacy from serious coverage by the national media and her exclusion from nationally reported and televised events such as the LWVEF

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Presidential primary debates, Fulani would have significantly greater name recognition and support for her campaign across the nation.

b. The Qualifying Process

15. The United States Constitution did not provide for the creation of national political parties. Many of the Founding Fathers, in fact, believed that political parties would be a danger to democracy.

16. In modern times, political parties have come to play a major role in the shaping of choices that are available to voters in the election of the President of the United States. Presently, the dominant national parties are the Democratic and Republican parties. These parties hold their nominating conventions in the summer prior to a presidential election. The process of selecting presidential candidates has devolved into two phases--the qualifying process and the general election campaign.

17. In the qualifying process a field of candidates, many or most of whom have not yet established substantial nationwide name recognition, campaign organizations or constituencies, compete to establish name recognition, a contribution base, a nationwide campaign organization, and a base of voter support.

18. For candidates seeking the nomination of the Democratic or Republican party nomination the main focus is on entering and winning primary election contests to obtain

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delegates to the national conventions and to become known to voters of both parties through the media attention to the primary process. For Presidential candidates who are not seeking the nomination of the Democratic or Republican parties, the focus of their efforts in the qualifying phase are: (a) obtaining the necessary petition signatures and meeting the other requirements to be placed on the general election ballot as an independent candidate; (b) seeking the nomination of minor political parties that have ballot positions in various states; (c) a combination of (a) and (b). The candidates seeking major party nominations and the candidates seeking ballot status and minor party nominations are in direct competition with each other for recognition, support, financial contributions, media attention, petition signatures, and so on.

19. This competition directly impinges upon the act of voting in major party primary elections. For example, in two of the most important primary states in the nation, New York and Texas, any voter who casts a vote in a major party primary becomes legally ineligible to sign a nominating petition for an independent candidate. (Texas Election Code Sec. 181.006(g); N.Y. Election Law Sec. 6-138 and N.Y. State Board of Elections, Opinion #2 (July 21, 1980).) The LWVEF is giving a forum to Democratic and Republican candidates who urge people to come out and vote for them in the primary but will not even consider providing this forum to Fulani so she can urge these same voters to sign her nominating petition instead of participating in the

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major party primary. In the State of Texas, 34,424 valid petition signatures are needed to put a presidential candidate on the ballot; in New York the figure is 20,000.

20. During the 1984 election cycle, the Commission issued two advisory opinions finding that the qualifying process activities of independent candidates are directly analogous to the activities of the major party candidates and, therefore, the minor party candidates are eligible for primary matching funds. See FEC AO 1983-47 and FEC AO 1984-11.

21. In 1988, by certifying plaintiff Dr. Fulani eligible for primary matching funds, the Commission reaffirmed its interpretation of the federal election law.

22. The LWVEF organized and scheduled a series of eight Presidential primary debates to be held between February and June 1988. These debates have been organized as Democratic and Republican party debates and the League's procedures do not even allow for the possibility of including a candidate other than a Democrat or Republicans. (Sinawski aff. pars. 24-25 and Ex. G, Thompson Statement para. 15 and Exs A-C.)

23. Forty-five persons have notified the Commission that they are 1988 Presidential candidates and that at least $5,000 has been raised on behalf of their campaigns. Forty-one of them indicated that they are seeking the nomination of one of the major parties; three indicated that they are seeking minor party nomination(s) and/or independent ballot status. Upon

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information and belief, the forty-fifth person, Sherman Lee Tyler, Jr., is a Black man and a minor party/independent candidate.

24. The LWVEF invited 14 of the above-described major party candidates to participate in one or more of its primary debates. Each one of the invitees was an Commission certified matching funds recipient. The LWVEF invited 14 out of the 15 major party candidates certified for primary matching funds; the fifteenth person was Lyndon LaRouche. Thus, in selecting 14 candidates out of the 41 declared major party candidates, certification for primary matching funds has been the LWVEF's dominant criterion.

25. Despite Fulani's certification for matching funds, the LWVEF made no evaluation at all of the significance of her candidacy. It rejected her solely on the grounds that she did not meet their first criterion for inclusion in primary debates, i.e., to be seeking the nomination of one of the major parties.

26. Upon information and belief, there are four minor party/independent candidates among the above referenced 45, and these are: a Black woman; a Black man; a Native American man, and a white man. Hence, 75% of the minor party candidates are minority, and 25% are female.

27. Upon information and belief, approximately 5% of the major party candidates are female and a comparable small percentage are minority. Hence, the LWVEF criterion that one must be seeking the nomination of a major party causes an adverse impact on the basis of minority status and sex.

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28. Neither major party has ever nominated a Black or a woman for the Presidency, despite the fact that approximately half the population has been female, and approximately 15% of the population has been Black. This exclusion has been caused by discrimination by the major parties against Blacks and women. The LWVEF selection criteria are infected by this invidious discrimination in that they ignore Black and women candidates during the qualifying phase of the campaign unless those candidates submit to seeking a nomination through the racist and sexist processes of the Democratic and Republican parties instead of choosing to obtain ballot status through other nomination and independent petitioning processes that are non-discriminatory (or at least less severely discriminatory).

29. The 1988 Presidential election has crystalized a party realignment in the United States. In previous decades, there were various small independent parties in the electoral arena, but no stable national independent parties with support from the political mainstream emerged. There were two significant independent presidential candidates -- George Wallace in 1968 and John Anderson in 1980. But neither of these campaigns was connected to a serious party-building effort. Wallace split from the Democratic Party for the 1968 race, but was elected Governor of Alabama as a Democrat both before and after 1968. Anderson was an elected Republican Congressman who split from that party for the one election.

In the 1980's, two national independent parties have been established, the Libertarian Party, and the New Alliance

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Party. There are now three party sectors in American politics--the major party sector (Democratic and Republican), the national independent party sector (New Alliance and Libertarian), and the state/local minor party sector (numerous small parties). The Libertarian and New Alliance parties, unlike the small minor parties, have the organizational capacity to run presidential candidates in all 50 states, and to qualify for federal primary matching funds. (The Libertarians, apparently for ideological reasons, have not to date sought matching funds even though they clearly have the capacity to qualify.) The New Alliance Party has a multi-racial constituency and traces its history in part to the efforts in the 1970's to establish an independent Black political party. (Newman aff. par. 3.)

30. Fulani and representatives of her campaign and of the New Alliance Party have, over an extended period of time, communicated to the LWVEF that they considered its exclusion of independent candidates from voter education activities such as the primary debates to be partisan and discriminatory. Fulani's representatives have specifically demanded inclusion in the primary debates but the League has refused. (See Sinawski aff. par. 24, and Sinawski r. aff. pars. 7-8.) This has resulted in a situation in which the Treasury Department is paying several hundred thousand dollars of federal funds to Fulani under the Matching Payment Act so that the message of her campaign can reach the electorate during the primary phase of the 1988 election but the League, which is indirectly supported by federal

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tax subsidies, is acting in direct opposition to the intent of the Matching Payment Act and to the Commission and is refusing to recognize Fulani as a participant in the primary process.

31. The LWVEF is not an occasional sponsor of Presidential debates. It claims to be the most important and legitimate sponsor of Presidential debates ("our traditional position as the nation's independent debates sponsor"), and has solicited funds from the public based on claims that it is independent of the Democratic and Republican parties and that its "sole purpose in sponsoring debates is to improve communications between citizens and the candidates to enable citizens to make informed choices....." (See direct mail materials annexed hereto as Ex. 6). Upon information and belief, the LWVEF played a significant lobbying and consultative role in the enactment of the Commission's debate regulation.

We submit that the LWVEF's public claims of non-partisanship are misleading to the public and to potential contributors. Its refusal to consider including independent candidates in its primary season voter education activities deprives such candidates of an opportunity to obtain the necessary exposure to the public to enable them to gain the support needed to satisfy the LWVEF's criteria for inclusion in its general election debates. Hence, despite its claims of independence, the LWVEF's debate selection criteria protect the Democratic and Republican parties from competition from the independent sector, which is a partisan function. The LWVEF, moreover, does not even attempt to compensate for this bias by

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giving voters information about significant independent candidacies through other voter education activities. There are numerous ways this could be done. But the LWVEF steadfastly insists on limiting its primary season voter education to debates and nothing else.

In its fight with the Democratic and Republican parties over control of debates, and its fight with Fulani over fair and open voter education, the LWVEF's behavior indicates that its primary concern is preserving its institutional role as a debate sponsor -- along with the contribution base that role attracts -- and is less concerned with genuine nonpartisan voter education which in 1988 would require establishing criteria for inclusion of significant independent candidacies. Secondly, the LWVEF appears concerned with not alienating the Democratic and Republican parties. The Fulani campaign is part of a long-term party-building effort that is threatening to the major parties in a way that is different from the one-time splinter candidacies of Wallace and Anderson. Fulani, as a genuine independent, needs the exposure of the primary season campaign to gain sufficient name recognition to register in voter opinion surveys by the time of the general election debates. The LWVEF's criteria for the primary debate season are designed to assure that only a splinter candidate from the Democratic or Republican parties -- and not a genuine independent -- will have any realistic chance of meeting its criteria to be included in the general election debates. This is an expression of partisan bias against independents.

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VIOLATION OF THE LAW

I. The LWVEF Debates are Partisan and Violate the Non-Partisan Debate Regulations, 11 C.F.R. Section 110.13 (1980)

The present method of candidate selection adopted by the LWVEF make the staging of the primary debates a partisan event in violation of 11 C.F.R. Section 110.13 (1980).

A. LWVEF Candidate Selection Criteria for the Primary Debates Which Automatically Exclude Any Candidate Who Is Not Seeking the Nomination of the Democratic and Republican Parties Are Partisan In Structure and Application

The Commission Regulations provide, in pertinent part, that the structure of debates sponsored by certain non-profit organizations is left to the discretion of the staging organization as long as "such debates are non-partisan in that they do not promote or advance one candidate over another." 11 C.F.R. Section 110.13 (b). The primary focus in judging non-partisanship is candidate selection and the standard for reviewing candidate selection by the Commission is whether the criteria adopted fulfill the purpose of educating and informing the voters, provide fair and impartial treatment of candidates, and do not promote or advance one candidate over another. FEC Explanation and Justification for Part 110.13 (b).

The non-partisanship requirement of the regulations clearly control over the explanation and justification provisions which are merely interpretive in nature. The regulations require an examination by the Commission of the partisanship of the

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debates. See MUR Nos. 1167, 1168, and 1170. The federal Court's decision in Fulani v. League of Women Voters Education Fund supra, (Exhibit 7, p. 25) creates a pressing need for the Commission to "explain" its regulation so as to take into account the changes in the political landscape since 1979, when the regulation was enacted without any consideration to conditions that did not exist at that time, i.e. the current growth of a national independent party sector. The Court asserted that the Commission had "expressly determined" the issue of fairness in debates relative to candidates like Fulani. The Commission knows that it has not determined this issue and we submit that it must determine it to require that the LWVEF change its criteria to give fair consideration to independent candidates in the primary season.

Two Competing Models of Nonpartisanship

The historical developments in American politics that have given rise to this dispute between Fulani and the LWVEF now require the Commission to make an explicit choice between two definitions of nonpartisanship. The one urged by Fulani is fair, democratic, educational and promoting of greater participation in the electoral process by Blacks and by women, two groupings who have suffered de jure denial of the right to vote during much of this nation's history, and de facto discrimination in the electoral arena continuing to this day. The model urged by the LWVEF, on the other hand, is unfair and exclusionary, miseducative, and detrimental to the fullest participation of

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Blacks and women in the electoral process. In Fulani v. League of Women Voters Education Fund, supra, Judge Sweet deferred to what he presumed to be the Commission's position on the nonpartisanship issue. Complainants now are asking the Commission to apply and interpret 11 C.F.R. 110.13 (b) in a manner that is consistent with its matching funds rulings and other legal requirements.

Fulani claims that nonpartisan criteria for making decisions about Presidential candidates must:

(1) be blind to the political party affiliation of each candidate; and

(2) take into account, in a fair and evenhanded manner, the differences between the nominating processes applicable to major party candidates, on the one hand, and the sector of minor party and independent candidates, on the other. In short, it is necessary to be nonpartisan between candidates; between parties; and between the major party and minor party sectors.

The implementation of Fulani's model of nonpartisanship is exemplified by the decisions of the Commission over the past 13 years with respect to the criteria for certifying candidates for federal primary matching funds. In response to requests from minor party and independent candidates to formulate criteria for them to be eligible for matching funds certification, the Commission issued a series of advisory opinions which set criteria that were blind as to party affiliation, but took into account the actual differences in the nominating processes of the

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major party sector and the minor/independent party sector without favoring one sector over another. In 1984, Sonia Johnson became the first independent candidate to meet these criteria and qualify for federal primary matching funds; in 1988 Dr. Fulani became the first independent to qualify for primary matching funds while the major party primaries were still underway.

The LWVEF's model of nonpartisanship is quite different. It says its only obligation in the primary season is to be nonpartisan among the Democratic candidates, and among the Republican candidates. It says it does not have to be nonpartisan as between the major party sector and the minor party/independent sector; it can ignore independent candidates altogether.

Hence, the LWVEF's model is in direct contradiction to the Commission's rulings that say that independent candidates are in the primary process, and may not be ignored or dealt with unfairly. This contradiction brings us to the juncture in this case in which the United States Treasury is paying hundreds of thousands of tax dollars to Fulani's campaign because the Commission has ruled that she is in the primaries and the LWVEF, a tax exempt organization, is saying that Fulani is not in the primaries at all.

It is anticipated that the LWVEF will assert that 11 C.F.R. Section 110.13[3] enacts its model of nonpartisanship.

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3. C.F.R. Sec. 110.13 (1987) provides, in part:

> a. Staging organizations. (1) A non-profit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and a nonprofit organization which is

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While this argument has superficial appeal, upon closer examination one sees that its interpretation of the regulation is based on its flawed model of partisanship.

In considering the Commission rulings in the areas of matching funds and debates, we are faced with four positions:

(1) Fulani's model of nonpartisanship as heretofore described;

(2) The Commission's matching fund rulings, including the specific grant of matching funds to Fulani, which are based on the model espoused by plaintiffs;

(3) The LWVEF's model of nonpartisanship as heretofore described; and

(4) The Commission's regulation about debate sponsorship.

This is the first time that the Commission has been presented with a complaint during the primary season by an independent candidate with federal primary matching funds, so as to require it to state on which model of nonpartisanship its regulation is based.[4]

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exempt from federal taxation under 26 U.S.C. 501(c)(4) and which does not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 CFR 110.3(b) and 114.4(e).....

b. Debate structure. The structure of debates staged in accordance with 11 CFR 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.

4. The decisions in In re Complaint of the LaRouche Campaign Against the League of Women Voters Education Fund, MUR 1659 (May 22, 1984) and In the Manner of House Democratic Caucus et al.,

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If the Commission ruled that the debate regulation was based on the LWVEF's model, then it would be creating a direct conflict between the model of nonpartisanship it uses in the matching funds area, and the model it applies to debates.

In arguing for its interpretation of the regulation, the LWVEF will probably refer to the Explanation and Justification, and particularly the paragraphs of it set out in the margin.5 Clearly, this explanation was drafted from the

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MUR 1717 (May 9, 1984) are not relevant to this issue. Fulani is not challenging the application of the LWVEF's primary debate criteria to Democrats and Republicans. Indeed, its criteria do not discriminate against Democrats or Republicans on the basis of party affiliation. Furthermore, the criteria may well be a fair test of the significance of the candidacy of someone seeking the nomination on one of the major parties. The exclusion of Democratic candidate LaRouche from the Democratic primary debate and the exclusion of Democratic candidate Koczak from the Dartmouth College debate are consistent with Fulani's legal claims herein. That the Commission upheld these applications of the significance criteria to these Democrats is irrelevant to the claims in this case. The sole reason for the LWVEF to exclude Fulani from primary season debates was her failure to meet the first criterion, namely being a declared candidate for the Democratic or Republican nomination. We are not aware of any case in which the Commission has upheld the exclusion of an independent candidate certified for federal primary matching funds solely on the grounds of the candidate's lack of affiliation with the Republicans or Democrats.

5. "Under subsection (b) the precise structure of candidate debates 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.

"Although the section does not prescribe specific requirements for selection of candidates to participate, a general election debate may not be structured so as to promote one candidate over another. An organization staging a debate may invite candidates to participate in a debate on the basis of party affiliation. Hence, such an organization could stage a general election debate to which only major party candidates are invited.

"For debates at the primary, caucus or convention level, a staging organization may restrict participating to candidates

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perspective of the traditional bipartisan model. In the second excerpted paragraph it is provided that in the general election, the sponsor may have discretion to invite only "major party candidates." In the next paragraph, where the nomination phase of the campaign is discussed, the language is based on the model of the multi-candidate major party nominating process. It is not at all responsive to the independent or minor party process in which there frequently are not multiple candidates. Accordingly, the concept of nonpartisanship is limited to the nonpartisanship among the multiple candidates in a major party contest. This explanation contemplated, for example, that an appropriate organization in Chicago would be allowed to sponsor a debate for Democratic candidates, an organization in Orange County, California could sponsor a debate for Republican candidates, and these sponsorships would be considered nonpartisan so long as the candidates of each party were treated fairly. Similarly, it must be kept in mind that one of the purposes of these regulations was to make it possible for corporations and labor unions to contribute to the costs of debate sponsorship without violating campaign contribution restrictions. Thus, this explanation permits, for example, a union donating funds to a not-for-profit

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seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party." 44 Fed. Reg. 76, 734-35 (December 27, 1979).

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organization to sponsor a Democratic debate or a corporation donating funds to a not-for-profit organization to sponsor a Republican debate.

So far as the Democratic and Republican parties are concerned, this rule is fair and nonpartisan. Given the relatively comparable strengths of the two major parties there is every reason to expect that the Republicans-only and Democrats-only debates will roughly balance each other out. But if this rule is interpreted to permit the automatic exclusion of independent candidates, then it would be extremely partisan as applied to independent and minor party candidates; they would be systematically excluded from these debates across the country. This bias, however, was not really an issue in 1979 because at that time the Commission had not yet certified any independent candidate for federal primary matching funds and thereby recognize such candidate as a participant in the federal primary process. The Commission's articulation of criteria for independent and minor party candidates to obtain matching funds, and now the first-time accomplishment by an independent candidate of being certified for such primary matching funds at an early stage in the nominating process, has created a legal question of first impression. The Commission's nearly decade old rule about debates did not contemplate these recent developments. Now that these developments have occurred, the Commission should rule that a debate sponsor is acting in a partisan manner if it adopts criteria that require participation in a major party nominating process as a condition for being invited to the debate. In the

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alternative, the Commission should immediately commence a rulemaking proceeding for the purpose of amending its regulations to ensure that sponsors of debates and of other purportedly nonpartisan voter education activities do not utilize criteria that are unfair to minor party and independent candidates.

B. The LWVEF's Exclusionary Criteria Violate Fundamental Principles of Education

Fundamental to the conception of education in democratic societies, and to first amendment values, is that the recipients of education are entitled to be provided with all significant competing viewpoints so that they can make up their own minds. The extraordinary efforts used by the major parties and their supporters to keep independents from getting on the ballot and to prevent voters from learning about the message of independent candidacies is directly contrary to these values. In Anderson v. Celebrezze, 460 U.S. 780, 794 (1983), a case in which the Court found unconstitutional an Ohio statute that would have prevented independent Presidential candidate John Anderson from being on the ballot, Justice Stevens wrote:

> "By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream...[T]he primary values protected by the First Amendment...are served when election campaigns are not monopolized by the existing political parties." (citations omitted)

Nonpartisan voter education based on first amendment values requires inclusion, not exclusion. Since there are at

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most four independent presidential candidates who have raised at least $5,000 and only one of the four has qualified for matching funds, it is quite simple for the LWVEF to make an objective judgment that there are only one or two possibly significant independent candidates. The Commission has the responsibility of ensuring that the voter education activities of the LWVEF as a whole in this campaign are nonpartisan. Presently, the LWVEF is spending significant sums of money for an extensive primary season "voter education" program that by its rules forbids any education of the voters about independent candidacies no matter how significant they may be. The LWVEF is using this Commission's regulation as a shield to protect this blatantly partisan and miseducative approach to voter education from judicial scrutiny. The Commission has a duty to render an interpretation of its regulation that will not allow it to be used in this way.

An example of genuine educational judgment in this area is provided by the actions of the New York City Board of Education when it was presented by a similar complaint from Fulani in 1986. During that year's gubernatorial campaign, the New York City Board of Education held a mock election in which it told the children about the candidacies of the three white men nominated by the major parties, but did not tell them that a Black woman, Dr. Lenora Fulani, also was on the ballot. Dr. Fulani and a school child sued the Board on substantially similar

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grounds to those alleged herein. The Board subsequently agreed to include both major and minor party candidates in future mock elections. A copy of the Stipulation of Settlement is annexed as Exhibit 8.

C. The LWVEF criteria are discriminatory on the basis of race and sex

As set forth above, the LWVEF policy is that no candidate who rejects the nominating processes of the Democratic and Republican Parties, which are demonstrably racist and sexist, may be considered for inclusion in their primary season voter education activities. By the LWVEF's rules, if Rev. Jesse Jackson had decided to run as an independent in 1988, the LWVEF would have refused to even consider including him in any of their primary season debates! If the Commission interprets its regulation to permit the LWVEF to utilize debate criteria that are discriminatory on the basis of race or sex then the Commission is participating illegally in discrimination in violation, inter alia, of Title VI of the Civil Rights Act and its implementing regulations. (The LWVEF is independently subject to the impact regulations of Title VI by virtue of its receipt of grants from the Department of Energy and the Environmental Protection Agency. See, e.g. 10 CFR 1040.13.)

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II. Sponsorship of Partisan Debates Is a Contribution and The Failure of the LWVEF to Register as a Political Committee Violates Registration Provisions of the Campaign Act, 2 U.S.C. Sec. 433(a).

The funds expended to defray costs incurred in staging debates is not considered a contribution, 11 C.F.R. Sec. 100.7 (b) (21), nor an expenditure, 11 C.F.R. Sec. 100.8 (b)(23)--provided the structure of the debates is not non-partisan. The selection process used by the LWVEF is non-partisan, see discussion supra I. Therefore, the costs involved in preparation for the debates, including staff time, office rental, publication, and the cost in actual staging the debates, are expenditures which, upon information and belief, would exceed $1,000. The failure of the LWVEF to register and report as a political action committee violates 2 U.S.C. Secs. 433(a) and 434.

RELIEF SOUGHT

Complainants, therefore respectfully request:

1. That the Commission require that the response from the respondents be filed and personally served no later than 15 days after receipt by the LWVEF of a copy of the complaint,[6] and that the Commission request that the respondents file their response even sooner than that time.

6. Complainant will deliver to the LWVEF a copy of the complaint immediately and asks that the 15 days be computed from receipt of that copy. The LWVEF is fully familiar with the facts and arguments advanced by complainant, having fully briefed them a few weeks ago for the federal court in New York, and will not be prejudiced by this request, which still preserves their 15 day response time.

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2. That the Commission immediately authorize filing a suit for mandatory injunctive relief compelling inclusion of Fulani in the June 5, 1988, primary debate in California.

3. That the Commission notify the LWVEF that its primary season voter education program and its primary debate criteria are unlawfully partisan, and discriminatory on the basis of race and sex.

4. That the Commission immediately undertake a survey to determine the sex, race, and national origin of all declared 1988 Presidential candidates, as well as what party(s) nomination they are seeking, and conduct an objective and professional analysis, drawing upon skills of statisticians, sociologists, political scientists, and others, to analyze the impact of the LWVEF criteria on the basis of sex, race and national origin.

5. That the Commission promptly commence a rulemaking proceeding to review its debate regulations to guarantee fair and nonpartisan treatment of independent and minor party candidates in candidate debates and other election-related voter education activities.

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6. That the Commission render a decision in sufficient time to make it possible to take all necessary steps to include Fulani in the California debate.

Respectfully submitted,

LENORA B. FULANI
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS (LBFCFE)

By: Arthur R. Block

ARTHUR R. BLOCK
Attorney for Plaintiffs
250 West 57th Street
Suite 317
New York, New York 10019
(212) 956-5550

Dated: New York, New York
April 25, 1988

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VERIFICATION

The undersigned counsel for the complainants swears that, based on the matters of record referred to herein, the allegations and other facts in the complaint are true and correct to the best of his knowledge, information and belief.

By: Arthur R Block
ARTHUR R. BLOCK

Subscribed and sworn to before me this 25 day of April, 1988.

Notary Public

My Commission Expires:

Date

ROGER H. GRUNWALD
Notary Public, State of New York
No. 31-4760634
Qualified in New York County
Commission Expires March 30, 1988
NOV.

ROGER H. GRUNWALD
Notary Public, State of New York
No. 31-4760634
Qualified in New York County
Commission Expires March 30, 1988
NOV.

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NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

MUR No. Year 1988

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

DR. LENORA B. FULANI and
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS

Plaintiffs,

-against-

LEAGUE OF WOMEN VOTERS EDUCATION FUND
(LWVEF) and NANCY NEUMAN, as
Chairperson

COMPLAINT

Arthur R. Block

Attorney for Plaintiffs

Office and Post Office Address, Telephone

250 West 57th Street
Suite 317
New York, NY 10019
(212) 956-5550

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

----------X

DR. LENORA B. FULANI and :
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS :

Plaintiffs, :

- against - : MUR No.

LEAGUE OF WOMEN VOTERS EDUCATION FUND :
(LWVEF) and NANCY NEUMAN, as
Chairperson :

----------X

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EXHIBITS TO COMPLAINT

ARTHUR R. BLOCK
Attorney At Law
250 West 57th Street
Suite 317
New York, New York 10019
(212) 956-5550

EXHIBIT LIST

Exhibit	Description
1	Affidavit of Gary Sinawski sworn to on the 14th day of March, 1988, with annexed exhibits A-E ("Sinawski aff.")
2	Affidavit of Fred Newman sworn to on the 14th day of March, 1988, with annexed tables 1 and 2 ("Newman aff.")
3	Affidavit of Fred Newman sworn to on the 31st day of March, 1988, ("Newman r. aff.")
4	Affidavit of Gary Sinawski sworn to on the 31st day of March, 1988, ("Sinawski r. aff.")
5	Verified Statement of Grant Thompson dated March 27, 1988, with annexed exhibits A-C ("Thompson Statement")
6	LWVEF direct mail solicitation materials.
7	Opinion dated April 12, 1988, in Fulani v. League of Women Voters Education Fund, 88 Civ. 1441 (RWS) (S.D.NY).
8	Stipulation of Settlement and Discontinuance dated October 16, 1987, in Fulani v. Wagner, 86 Civ. 3705 (JRB) (E.D.NY)

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Exhibit 1

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF NEW YORK

----------X

DR. LENORA B. FULANI, et al., :

Plaintiffs, : 88 Civ. 1441 (R.W.S.)

- against - : **AFFIDAVIT**

LEAGUE OF WOMEN VOTERS EDUCATION FUND, et al., :

Defendants. :

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GARY SINAWSKI, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York. I am General Counsel to the Presidential Campaign of Dr. Lenora B. Fulani (the "Campaign") and I am General Counsel to the New Alliance Party. I have practiced extensively in the past 10 years in the field of election law, most particularly in the areas of ballot access, media access and campaign finance. Much of my experience relates to the campaigns of independent and minor party candidates. For example, I was counsel to the 1984 Presidential Campaign of Dennis Serrette, which succeeded in obtaining ballot position for Mr. Serrette in 33 states. I have also served as counsel to a least 25 other candidates for local, statewide or federal office. I have personal knowledge of the facts described herein.

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2. This affidavit is submitted in support of plaintiffs' motion for a preliminary injunction. It will first describe the Campaign, with emphasis on its fundraising drives (which have already surpassed the federal matching funds threshold) and its ballot access work (which will secure Dr. Fulani ballot positions in all 50 states and the District of Columbia). Next, it will describe the Campaign's efforts to educate the League about the growth of the Campaign and the League's refusal even to consider inviting any independent candidate into the primary debates. Finally, it will describe the irreparable harm that will be suffered if the League ise permitted to conduct partisan primary debates limited only to Democrats and Republicans, and plaintiffs' need for provisional relief.

The Campaign

3. Dr. Lenora B. Fulani is a 38-year-old African-American woman who was born and raised in Chester, Pennsylvania. She received her undergraduate degree from Hofstra University, a Master's Degree in educational psychology from Columbia University Teachers College, and went on to earn her Ph.D. in Developmental Psychology from the Graduate School and University Center of the City University of New York. Dr. Fulani has been active in electoral politics for many years, having run as an independent candidate for Lt. Governor of New York in 1982, Mayor of New York City in 1985 and Governor of New York State in 1986.

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In the latter race she received over 25,000 votes, more than any other left-of-center candidate for that office since the 1950's.

4. On June 24, 1987, Dr. Fulani publicly announced her candidacy for President of the United States. She is not seeking the nomination of the Democratic or Republican parties, but is running as an independent. Her positions on issues are very similar to those being advocated by Rev. Jesse Jackson in the Democratic nomination process, for example, favoring decreases in military spending, restoration of cutbacks in government services, non-intervention in Central America, full economic sanctions against South Africa, increased research and services to respond to the AIDS crisis, vigorous civil rights enforcement and the extension of protection to lesbians and gays, and dramatic improvements in government supplied health care. The central theme of her campaign is that the reason why social policies such as those listed above have not been enacted despite their popularity, is that the electoral process is undemocratic. In contrast to Rev. Jackson, who is running as a Democrat, Dr. Fulani contends that the Democratic Party will not vigorously support the above-stated programs, and therefore it is necessary to build an independent left-of-center national political party, and to work to reform the laws and practices which make it extremely difficult for independent candidates to get on the ballot and to have their viewpoints reported in the mass media.

5. Dr. Fulani plans to be on the ballot in all fifty states and the District of Columbia. She will attain this goal by (a) meeting petition requirements in a number of states to

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have her name on the ballot as an independent, and (b) winning the nomination of several minor parties that either have a permanent ballot position or which will be petitioning to attain a ballot position in 1988. This is a formidable task. It requires the collection of approximately 725,000 valid petition signatures nationwide. One measure of the bias in the election laws in favor of major party candidates is that the Democratic and Republican nominees will have only had to collect approximately 25,500 valid signataures each in their campaigns. Based on my experience as general counsel to the campaign that placed Dennis Serrette on the ballot in 33 states in 1984, and my knowledge of the progress being made in 1988 by the Fulani campaign (see pars. 14-19 infra), I fully expect that Dr. Fulani will be on the ballot nationwide in November 1988.

6. Dr. Fulani has been actively campaigning. She is being invited to numerous speaking engagements, forums, and interviews, at the community and local level. To date, she has personally made no fewer than 210 campaign appearances in 34 states and the District of Columbia, and has appeared on 38 local and regional television programs at 42 stations based in 18 states; eight national television programs; 174 local and regional radio programs on 158 stations based in 32 states; and 10 nationally-syndicated radio programs. She and her campaign have been the subject of 173 articles in local and regional newspapers and 10 articles in national newspapers and magazines.

7. Other campaign appearances, many of which have also received extensive local media coverage, have been made by

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representatives of the campaign, including Vernon Bellecourt, a leader of the American Indian Movement, who is a full-time campaign spokesperson.

8. As indicated in paragraph 6, supra, Dr. Fulani has received a very small amount of coverage in national media. She has appeared several times on CNN and C-SPAN, and on the College Satellite Network. After the defendants canceled their Tennessee primary debates to be held on March 6, 1988, Dr. Fulani was invited by CNN, the broadcaster of the debates, to appear on its show "Crossfire" on March 5, 1988. Communication between the Campaign and representatives of the national print and broadcast media make clear that those outlets are well aware of Dr. Fulani's campaign. However, they consistently fail to cover her in proportion to her local support and her proven ability to attract support from a significant proportion of the people who hear her speak or who learn about her Campaign.

9. On December 7, 1987 the Fulani campaign filed with the Federal Election Commission a "threshold submission" pursuant to the Federal Primary Matching Payment Account Act, 26 U.S.C. sections 1331-1342 (the "Act"), documenting that matchable contributions exceeding $5,000 had been received from residents of at least 20 states, which with respect to any one contributor did not exceed $250. Specifically, the Fulani campaign's threshold submission consisted of some 10,300 matchable contributions totalling approximately $183,000 from contributors in 23 states.

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10. Dr. Fulani is one of 14 Presidential candidates to qualify for primary federal matching funds during this Presidential election cycle. Five of these candidates have since terminated their candidacies. Dr. Fulani is only the second independent candidate for President to have been certified by the Federal Election Commission as eligible to receive federal primary matching funds. The first--Sonia Johnson--was certified in July of 1984, after the major party primaries had ended. Thus, this is the first time that an independent candidate has qualified for primary matching funds before the commencement of a Presidential primary season.

11. The campaign has mounted a national door to door matching funds operation presently consisting of 24 full time and 11 part time canvassers in 13 states. To date, approximately $310,000 in matchable contributions and $100,000 in non-matchable contributions have been received from over 20,000 contributors in 44 states. At the present rate of growth of the campaign finance operation, I estimate that the campaign's budget will exceed $2 million.

12. On January 28, 1988, the FEC determined that Dr. Fulani/Lenora B. Fulani's Committee for Fair Elections was entitled to receive payments under the Presidential Primary Payment Matching Account; it certified an initial payment of $205,565.18.

13. The Federal Election Commission has long recognized that non-major party candidates for president are eligible to receive primary matching funds and that a serious

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multi-state minor party campaign involves the candidate in a qualifying process analogous to the major party primary process. FEC Advisory Opinion ("AO") 1983-47 points out that the legislative history of the Act indicates a Congressional intent to treat all candidates alike under the Presidential Primary Matching Fund Payment Account Act irrespective of whether they seek the nomination of a minor or a major political party. In AO 1975-44, construing 18 U.S.C. section 608(b)(1), one of the provisions of the Federal Election Campaign Act of 1971, the FEC recognized the analogy between the major party primary elections and convention process and the ballot qualification process for minor party candidates:

> "However, in this case, as in the past, the Commission is concerned to construe the provisions of the Act in a manner consistent with Constitutional requirements, regardless of a candidate's party affiliation or independent status. See AOs 1975-11 (40 FR 42839 September 16, 1975) and 1975-53(40 FR 40678 September 3, 1975). The primary election and convention process is a procedure through which major parties typically determine their candidates for the general election. The procedure for candidates of minor parties, however, differs in that most states have a separate petition process whereby such candidates may qualify for the general election ballot. Accordingly, for the purpose of applying the limitations in 18 U.S.C. section 608, the commission will view the petition process required of the presidential candidates of the minor parties as the equivalent of the primary election and convention process of the major party candidates."

Similarly, in AO 1984-11 the Federal Election Commission pointed out that:

> "the regulations recognize that for non-major party candidates the requirements of state law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other

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nominating process. See 11 CFR 100.2(c)(4). Moreover, in Advisory Opinion 1975-44 (copy enclosed) the Commission addressed contribution limit issues in regard to the presidential candidate of a non-major party and held that such a candidate could receive contributions with respect to a nomination/primary election until the date on which the last major party to do so nominates its presidential candidate."

14. One of the goals of the campaign is to ensure that Dr. Fulani's name is listed on the general election ballots of all 50 states and the District of Columbia by winning the nominations of various independent parties and by meeting ballot access requirements for independent candidates.

15. Dr. Fulani is seeking the Presidential nomination of several independent parties, viz., the New Alliance Party, the United Citizens Paty of South Carolina, the Illinois Solidarity Party, the Peace and Freedom Party of California and the Labor and Farm Party of Wisconsin.

16. The New Alliance Party (the "NAP") is organized in 26 states. The NAP was largely responsible for placing independent Presidential candidate Dennis Serrecte's name on the ballot in 33 states in 1984. Dr. Fulani is the principal national spokesperson of the NAP, a member of its National Executive Board and the only announced candidate for its Presidential nomination. The NAP is a ballot qualified party in New Mexico and Vermont. It has completed the steps necessary to become a ballot qualified party in Delaware and is awaiting certification by the Delaware election officials. It is a certified political party for the 1988 general election in Alaska (7,135 signatures collected, 5,000 required), Montana (16,341

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signatures collected, 13,329 required), Nebraska (9,950 signatures collected, 5,635 required), Utah (1,040 signatures collected, 300 required) and Wyoming (11,893 signatures collected, 8,000 required). It has completed the petitioning required to become a certified political party for the 1988 general election in Maryland (18,104 signatures collected, 10,000 required) and expects to file its petition there in the next several days. It has completed the petitioning necessary to become a certified political party for the 1988 general election in Arizona (22,521 signatures collected, 17,340 required) and expects to file its petition there on May 31, 1988, the earliest date permitted by Arizona law. It is presently circulating the petitions necessary to become certified for the 1988 general election in Georgia (32,775 signatures collected to date, 25,759 required, 60,000 targetted), North Carolina (34,715 signatures collected to date, 44,535 required, 68,500 targetted) and Nevada (5,501 signatures collected to date, 7,717 required, 15,500 targetted). It began circulating the petitions necessary to become a certified party for the 1988 general election in Texas (34,424 signatures required) on March 8, 1988, the earliest date permitted by Texas law. It plans to hold a national nominating convention on August 20-21, 1988. The location of the convention has not yet been determined. The party's Presidential nominee will be selected by New Alliance Party members in the states mentioned above and in the other states where the party has an organized presence but where it is not a ballot qualified party or a certified party for the 1988 general election. Fulani

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supporters in all of these states will be seeking election as delegates to the NAP nominating convention.

17. The United Citizens Party of South Carolina, the Illinois Solidarity Party, the Peace and Freedom Party of California and the Labor and Farm Party of Wisconsin are all ballot-qualified parties in their respective states. The United Citizens Party of South Carolina, the Illinois Solidarity Party and the Peace and Freedom Party of California will all be nominating their candidates by convention. Fulani supporters in each of these states are taking the steps necessary to participate in the nomination process. Upon information and belief, the Labor and Farm Party of Wisconsin has not yet determined how it will nominate its Presidential candidate. For each of these states, the campaign has a backup plan to collect the petition signatures necessary to place Dr. Fulani's name on the ballot in the event that she does not secure the particular independent party's nomination.

18. In all of the remaining jurisdictions except Arkansas and Louisiana, which do not not require petitioning, the Fulani campaign has already circulated, is currently circulating or soon will be circulating the petitions necessary to qualify Dr. Fulani for the general election ballot as an independent candidate. Dr. Fulani has been certified to appear on the general election ballot in Kansas (4,200 signatures submitted, 2,200 required), Kentucky (8,100 submitted, 5,000 required) and New Jersey (2,000 submitted, 800 required). Petitioning has been completed in Hawaii (7,800 signatures collected, 3,492 required),

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Mississippi (1,600 collected, 1,000 required), New Hampshire (6,100 signatures collected, 3,000 required), Tennessee (700 signatures collected, 275 required), Alabama (6,800 collected, 5,000 required), but the petitions have not yet been filed with the election authorities of those states. Petitions are currently being circulated in Connecticut (7,391 signatures collected to date, 14,910 required, 25,700 targetted), Iowa (100 signatures collected to date, 1,000 required, 1,200 targetted), Ohio (3,124 signatures collected to date, 5000 required, 8,000 targetted), Florida (1,864 signatures collected to date, 56,312 required, 80,000 targetted), Massachusetts (3,545 signatures collected to date, 33,683 required, 60,200 targetted), Oklahoma (4,729 signatures collected to date, 37,670 required, 50,000 targetted), and Pennsylvania (916 signatures collected to date, 25,568 required, 51,000 targetted). Petitioning will commence in March, 1988 in Virginia (12,963 signatures required). In most of the remaining jurisdictions, applicable law does not allow petitioning to commence until a later date.

19. The Campaign has taken the steps necessary to place Dr. Fulani's name on the ballot in the Presidential preference primaries of the Peace and Freedom Party of California on June 7, 1988 and the Illinois Solidarity Party on March 15, 1988. In addition, the Secretary of State of Nebraska has informed the Campaign that Nebraska will be holding a Presidential preference primary on May 10, 1988 for the New Alliance Party of Nebraska, which in November of 1987 became a

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certified party for the 1988 general election, and that Dr. Fulani's name will be listed on the ballot.

The Fulani Campaign and the League

20. Over the past several months, I have engaged in extensive correspondence and discussion with sponsors of presidential debates and forums, including the League, on the issue of including significant independent candidates in such debates and forums and broadcasters' pre- and post-debate programming. Most sponsors have responded that the primary season debates and forums should rightfully exclude Dr. Fulani because: (a) she is not a "primary" candidate; (b) she has not been selected by a significant percentage of probable voters as their choice for President in any of the recognized presidential preference polls; or (c) because she has not received extensive coverage in the national media.

21. With regard to Dr. Fulani's standing as a "primary" candidate, I have already explained herein that Dr. Fulani is running in the primary elections in several minor parties and/or otherwise seeking their nomination and is circulating petitions to gain access to the ballot in many other states. The FEC has recognized that this process is the functional equivalent of the major party primary process. There is no rational or legal basis to assert that Dr. Fulani is not a "primary" candidate when the FEC has certified her for primary matching funds, and the Treasury Department is providing her with hundreds of thousands of federal tax dollars to support her

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participation in the primary process. (It would be more precise to refer to this as the "nomination" process.)

22. As for Dr. Fulani's failure to appear in the results of the preference polls, I am confident that no such poll has included her candidacy as one of the choices offered to voters. It should also be noted that several of the major party candidates have figured insignificantly in the polls, at best, but that their poor showing has not operated to exclude them from primary debates and forums.

23. As for Dr. Fulani's minimal recognition in national media, the critical importance of this litigation flows from the fact that inclusion in Presidential primary debates and forums is a precondition for the broad public recognition of her candidacy and the national media attention that would surely follow.

24. Copies of my correspondence with the League regarding the inclusion of independent candidates is annexed hereto as Exhibits A, B, C, and D. See my letter dated January 29, 1987; the League's letter dated February 10, 1987; my letter dated Feb. 13, 1987; and my letter dated December 14, 1987. (The "1986" dates which appear on the first and second letters are typographical errors and should read "1987"). On December 18, 1987 I met with representatives of the League and requested that Dr. Fulani be included in its Presidential primary debate series. The League representatives stated that Dr. Fulani would not be included because the League's primary season debates are open only to candidates seeking the major party nomination; Dr. Fulani

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is not a primary candidate; and (astonishingly) to include Dr. Fulani would be a "partisan" act by the League in that it would "give an edge" to her campaign.

25. In or about April of 1987 the League published "Participant Selection Criteria" for inclusion in the Democratic and Republican Presidential primary debates. A copy of the selection criteria for Democratic candidates is annexed as Exhibit E. Upon information and belief, the selection criteria for Republican candidates are substantively identical. Upon information and belief the League has not published any such selection criteria for independents. Were it to promulgate the same criteria for independents as for Democrats and Republicans, I submit that Dr. Fulani would comfortably meet all such criteria, except, perhaps, for significant recognition in the national media, which, as already explained, is extremely difficult to attain absent participation in nationally publicized primary season debates and forums.

26. On February 29, 1988 Dr. Fulani sent a telegram to the League demanding inclusion in its primary season debates and stating the reasons for her demand. A copy of this telegram is annexed as Exhibit H.

Irreparable Harm

27. Dr. Fulani is in direct competition with the other Presidential candidates for public recognition and for campaign financing and other support. To cite one example, the petitioning period through which she plans to obtain access to

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the ballot in Texas commenced immediately following the March 8, 1988 Texas presidential primary election. Texas law prohibits anyone who voted in the March 8, 1988 primary from subsequently signing a nominating petition for Dr. Fulani. Because Dr. Fulani has not appeared in nationally televised primary season debates and forums and her candidacy is not widely recogized among the Texas voting public, many would-be supporters unwittingly forfeited their opportunity to sign a nominating petition to place Dr. Fulani on the general election ballot by voting in the March 8, 1988 primary.

28. A similar situation obtains in West Virginia, where state law also prohibits a registered voter who votes in the May 10, 1988 primary from subsequently signing a nominating petition to place Dr. Fulani on the general election ballot. Thus, in West Virginia also, many prospective Fulani supporters will also forfeit their right to support Dr. Fulani by voting in the primary.

29. Other elements of irreparable harm are discussed in the affidavits of Jeffrey Aron and Dr. Fred Newman.

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WHEREFORE your deponent respectfully prays that plaintiffs' motion for a preliminary injunction be in all respects granted.

/S/

Gary Sinawski

Sworn to before me this
14 day of March, 1988

Notary Public

ARTHUR R. BLOCK
Notary Public, State of New York
No. 31-4662471
Qualified in New York County
Commission Expires March 30, 1990
April

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Exhibit A

New Alliance Party

"THE PARTY OF THE RAINBOW"

January 29, 1986

Dorothy S. Ridings, President
League of Women Voters
1730 M Street N.W.
Washington, DC 20036

Dear Ms. Ridings:

I applaud your organization's determination to sponsor Presidential debates again in 1988 in spite of the Democratic and Republican National Committees' shameful attempts to assume control of the debates and further limit the range of political views to which the American public is exposed.

The electorate's lack of enthusiasm for the major parties, their views and their candidates is apparent in Ronald Reagan's election by only 27% of the eligible voters in the United States and Edward Koch's election by a mere 16% of the eligible voters in New York City. It is not surprising that the United States has a lower rate of voter participation than almost any other electoral democracy in the world in elections at all levels of government. Yet the states continue to impose restrictions on access to the ballot by independent candidacies which afford voters an opportunity to express alternative views. An independent candidate for President must now obtain about 750,000 valid petition signatures to appear on the ballots of all 50 states and the District of Columbia, compared with 25,500 signatures for major party Presidential candidates.

It seems to me that the League of Women Voters' fight against this heavyhanded move by the Democratic and Republican National Committees will be most effective if you pledge to democratize the Presidential debates by opening them up to serious independent and third party candidates. After all, the bipartisan move to take over the debates obviously anticipates and seeks to undermine viable independent and third party candidacies.

I urge that your organization publicly pledge to sponsor two series of Presidential debates. The first series would be open to independent and third party candidates who demonstrate sufficient organizational strength and public support to have attained access to the ballot in at least 30

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states. The two winners would be included in the second series along with the Democratic and Republican Party nominees. "Winning" would be a function of public support measured by call-ins to an "800" toll free number, letters postmarked by a deadline date, or both.

Surely you could strengthen your position in this controversy by taking agressive steps to open up the process which the major party machines are trying to close down. The New Alliance Party, along with many social action organizations and civil libertarians across the country, would energetically support you.

Please let me know what you think.

Sincerely,

Gary Sinawski

Gary Sinawski
General Counsel

GS/ss

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Exhibit B

League of
Women
Voters
Education
Fund

CHAIR
DOROTHY S. RIDINGS

VICE-CHAIRS
Dorothy K. Powers
Princeton, NJ
Julia A. Holmes
Pittsford, NY

SECRETARY/TREASURER
Julia T. Richie
Birmingham, MI

TRUSTEES
Virginia B. Abbott
Birmingham, MI
Harriette Burkhalter
Hopkins, MN
Ann Q. Curry
Atlanta, GA
Margaret S. Davis
Helena, MT
Kenni Friedman
Modesto, CA
Pat Jensen
Iowa City, IA
Rosalind J. McGee
Salt Lake City, UT
Nancy M. Neuman
Lewisburg, PA
Merilyn B. Reeves
Amity, OR
Joan Rich
Atascadero, CA
Pat Shutt
Kaneohe, HI

EXECUTIVE DIRECTOR
Carol Parr

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1730 M Street, NW
Washington, DC 20036
(202) 429-1965

February 10, 1986

Gary Sinawski
General Counsel
New Alliance Party
216 W 102nd Street
New York, NY 10025

Dear Mr. Sinawski:

Thank you for your support for League of Women Voters sponsorship of the presidential debates in 1988 and your suggestions on the inclusion of third party candidates. We believe the electorate is best served by opportunities to see and hear significant third party and independent candidates as well as those from the two major parties, and we remain committed to including those with significant voter interest and support in the presidential debates. It is extremely unlikely that the Democratic and Republican parties would welcome additional contenders into debates which they might sponsor.

Again, thank you for your letter. I will share your ideas with the Debates staff and keep them in mind for League sponsored presidential debates in 1988.

Sincerely,

Dorothy S. Ridings

Dorothy S. Ridings
Chair

DSR/sr

Contributions to the Fund are deductible for income-tax purposes.

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New Alliance Party

"THE PARTY OF THE RAINBOW"

February 13, 1987

Nancy M. Neuman, President
League of Women Voters
1730 M Street, NW
Washington, DC 20036

Re: 1988 Presidential Debates

Dear Ms. Neuman:

I read with great enthusiasm the enclosed article in the February 10, 1987 "New York Times" about the League's plans for presidential debates in 1988. However, I was concerned concerned that no mention was made of independent and third party candidates.

Enclosed for your convenience are copies of my letter dated January 29, 1986 to Dorothy S. Ridings and her response dated February 10, 1986, in which she states:

> We believe the electorate is best served by opportunities to see and hear significant third party and independent candidates as well as those from the two major parties, and we remain committed to including those with significant voter interest and support in the presidential debates.

The New Alliance Party, in coalition with other organizations, ran a Black, independent candidate for president in 1984 in 33 states. For 1988 we are planning a much more ambitious coalitional, Black, independent candidacy in all 50 states, the District of Columbia and Guam. Attaining access to the ballot in all of these jurisdictions requires some 750,000 valid petition signatures. The process of collecting these signatures will entail extensive contact with people at the grassroots level all over the United States. The signatures themselves will demonstrate significant voter interest and support for the candidate.

I trust that NAP's candidate, along with other independent and third party candidates who can demonstrate public interest and support, will be included in the League's

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presidential debates. Please confirm that this is the case and keep me informed about dates, times, locations and other details.

Very truly yours,

Gary Sinawski
General Counsel

GS/sm
Enclosures

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Exhibit D

Lenora B. Fulani
Committee for Fair Elections
216 West 102 St., New York, New York 10025 (212) 864-3000

December 14, 1987

BY EXPRESS MAIL

Victoria Harian
Director, Presidential Debates
League of Women Voters Education Fund
1730 M Street, NW
Washington, DC 20036

Re: Dr. Lenora B. Fulani for President

Dear Ms. Harian:

Enclosed are materials on the Fulani Campaign. Jacqueline Salit and I are looking forward to meeting with you this Thursday, December 17, 1987.

A word of explanation: "Lenora B. Fulani's Committee for Fair Elections" is the name of Dr. Fulani's principal authorized campaign committee and is registered as such with the Federal Elections Commission. This designation underscores the campaign's central focus on participatory democracy and fair elections.

We are proposing that the format of the upcoming debates for Presidential candidates sponsored by the League of Women Voters be expanded to include Dr. Fulani and the other significant independent candidates. This could be accomplished by including independents in debates with Democratic and Republican candidates, by scheduling separate debates for independents, or by featuring independents in pre-debate or post-debate interviews and commentary.

Sponsors of major debates are inclined to argue that independents are rightfully excluded from formats designed to feature candidates in the major party primaries, many of whom are not well known and depend on the exposure that the debates provide. However, independent candidates like Dr. Fulani are participating in a process anologous to the primaries, attempting to establish the credibility and viability of their campaigns. Ballot access and matching funds are two important means of accomplishing this. Another essential part of the process is exposing such candidates to the public via the media and the major debates.

Very truly yours,

Gary Sinawski
General Counsel

GS/ss
Enclosures

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Exhibit E

1988 LEAGUE OF WOMEN VOTERS EDUCATION FUND
DEMOCRATIC PRESIDENTIAL PRIMARY DEBATES
PARTICIPANT SELECTION CRITERIA

The League of Women Voters Education Fund will sponsor during the 1988 election season a series of primary debates among significant candidates for the Democratic Party's nomination for President. The purpose of these debates is to educate the nation's electorate in a nonpartisan manner about the issues in the 1988 Presidential campaign and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process.

The League's goal of fostering voter education and participation in the electoral process is furthered by inviting to debate only candidates in whom a substantial number of voters has an interest. Inclusion of candidates in whom there is little voter interest would result in debates that are too long or that do not provide sufficient time for the meaningful expression of views by significant candidates. Accordingly, the League has chosen to limit participation in its 1988 Democratic primary debates to candidates who present a significant national candidacy for the Democratic nomination for President.

Candidates who meet the following criteria will be invited to participate in the League's 1988 Democratic primary debates:

1. The candidate must have made a public announcement of his or her intention to run for the Democratic Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Democratic Party's nomination for President.

In assessing the significance of a candidacy, the League will consider a number of factors including the following:

-- Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96). This criterion furthers the identification of significant candidates by focusing on those candidates who are significant enough to solicit, and have sufficient voter support to receive, contributions from a number of persons in a number of states.

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-- Active campaigning in a number of states for the Democratic Party's nomination. Candidates who have established an active campaign presence in several different states may pose a significant national candidacy for the Democratic Presidential nomination. A candidate's efforts to be named on primary ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount of his or her campaign appearances, as well as any other factors evidencing substantial campaign activity, may be considered.

-- Recognition by the national media as a candidate meriting media attention. Since media coverage of particular candidates by major newspapers and television networks tends to evidence a recognition by the national media of 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.

-- Other factors. The League may consider such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

Adopted by LWVEF 4/2/87

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Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DR. LENORA B. FULANI; LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS; and VIRGINIA SINCLAIR, :

Plaintiffs, : 88 Civ. 1441 (R.W.S)

- against - :

LEAGUE OF WOMEN VOTERS EDUCATION FUND; LEAGUE OF WOMEN VOTERS OF THE UNITED STATES; LEAGUE OF WOMEN VOTERS OF THE CITY OF NEW YORK EDUCATION FUND, INC.; JAMES BAKER III, Secretary of the Treasury, ROSCOE L. EGGER, JR., Commissioner of Internal Revenue, :

Defendants. :

----------X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

FRED NEWMAN, being duly sworn, deposes and says:

1. I am the campaign manager for Dr. Lenora B. Fulani's campaign for President. I am also a founder and a National Executive Board member of the New Alliance Party, the only national minor party whose nomination Dr. Fulani is seeking. (She is also seeking the nomination of three other minor parties, each of which is organized in only one state.) During the 1983-1984 Presidential election cycle, I served as campaign manager for Dennis Serrette's independent campaign for President. Mr. Serrette received the nomination of the New Alliance Party and attained access to the general election ballot in 33 states

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through the organizational efforts of the New Alliance Party on a total campaign budget of approximately $200,000. I have also managed several other electoral campaigns and have twice run for public office myself, in the Democratic primaries for Mayor of New York City in 1985 and for the United States Senate from New York in 1986.

2. This affidavit is submitted in support of the plaintiffs' motion for a preliminary injunction. I will address these specific points:

a) The Fulani candidacy;

b) Blacks, Women, and the Major Party Nominating Process;

c) The Implication of FEC Certification;

d) The Importance of the Debates;

e) Irreparable harm.

Before going on to these points, however, it is important to locate the issue of the defendants' partisanship and discrimination in the context of major/minor party relationships.

3. The 1988 Presidential election has crystalized a party realignment in the United States. In the 1950's, 1960's and 1970's there were various small independent parties in the electoral arena, but no stable national independent parties with support from the political mainstream emerged. In the 1980's, two stable national independent parties have been established, the right-of-center Libertarian Party, and the left-of-center New Alliance Party. Thus, there are now <u>three</u> party sectors in American politics--the major party sector (Democratic and

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Republican), the national independent party sector (New Alliance and Libertarian) and the small minor party sector (numerous small parties). The Libertarian and New Alliance parties, unlike the small minor parties, have the organizational capacity to run presidential candidates in all 50 states and to qualify for federal primary matching funds. (The Libertarians, apparently for ideological reasons, have not sought matching funds even though they clearly have the capacity to qualify.) The New Alliance Party has a multi-racial constituency and traces its history in part to the efforts in the 1970's to establish an independent Black political party.

4. It is the success of the New Alliance Party in emerging as the only left-of-center national independent party in the Presidential race, and the success of Fulani's 1988 campaign that precisely raise the legal issue of how far a supposedly "nonpartisan" organization can go in participating in the longstanding partisan bias against independent candidates, before it has violated its own charter, the Constitution, and federal law. By any objective standard, the Fulani campaign should be covered by the media as a national news story, not as an occasional feature or human interest story. But the actions of the League--denying that Dr. Fulani is in the primary race when federal law and the FEC say she is--is the kind of partisan bias that the press uses to justify non-coverage. Then the League cites lack of national press coverage as a further reason to exclude Dr. Fulani. Of course the actions of the League and the press make it impossible to achieve enough name recognition to

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break into the polls, providing the press and the League with yet another self-created justification for exclusion.

5. Assuming for the sake of argument that this kind of treatment could be justified with respect to candidates from the category of small parties, it is patently undemocratic when directed at a candidate who is the spokesperson and likely nominee of one of the two national independent parties.

The Fulani Candidacy

6. The message of the Fulani campaign is both simple and profound: Our national policy, as formulated, articulated and enacted into law by the major parties, their candidates and their officeholders, does not reflect the policy views of substantial majorities of Americans in favor of a national health service; in support of abortion rights; for vastly expanded AIDS research; against United States intervention in Latin American or elsewhere; in favor of deep reductions in military spending instead of further cuts in social programs. Dr. Fulani is campaigning to place these and many other progressive majoritarian positions on the public agenda for serious discussion and debate in the context of the 1988 Presidential elections. She asserts that it is because elections in the United States are not fair or democratic that these majoritarian views are not reflected in national policy. Rather, a bipartisan monopoly over the electoral process keeps alternative candidacies, which represent policy views not shared by the major parties, off the ballot and out of the media and severely limits

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their access to the public. The response of most sectors of the electorate to the narrow range of policy choices presented to them has been to stay out of the electoral process altogether. The mass media are replete with accounts of how scarcely a third of the eligible electorate participates in major statewide elections; scarcely half vote in Presidential elections; only two-thirds bother to register to vote. As a result, according to The New York Times, the United States (which holds itself out to the world as the model of participatory democracy) now ranks 75th out of 76 electoral democracies in voter participation. Nearly one-fourth of all registered voters, we are told, now identify themselves as "independents" rather than as Democrats or Republicans.

7. Measured against such criteria as fundraising, ballot access and public approval, the Fulani campaign is without question a success:

(a) The campaign has to date raised some $310,000 in matchable contributions and $100,000 in non-matchable contributions from more than 20,000 individual contributors in 44 states. At the present rate of growth of the campaign fundraising operation, I project that the campaign's budget will exceed $2 million.

(b) The campaign's 51-jurisdiction ballot access plan is right "on target," with petitioning or alternative ballot-qualification requirements completed in 20 states and in process in 11 additional states. I fully expect that Dr. Fulani will be the first left-of-center independent candidate to be

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listed on all general election ballots since Eugene Debs in 1912. (See Sinawski aff. pars. 14-19.)

(c) Dr. Fulani is a dynamic and articulate campaigner whose message draws an enthusiastic response wherever she goes. At a recent Presidential forum in Nashua, New Hampshire sponsored by New England P.O.W.E.R. (People Organized to Win Environmental Rights), where Dr. Fulani and several of the major party candidates addressed some 400 activists, she won the straw poll, receiving a higher approval rating than any of the six Democratic and four Republican candidates then in the race.

8. Dr. Fulani has not only demonstrated the significance of her candidacy by qualifying for matching funds and by her ballot access and campaign finance operations (see para. 7, infra), but also by her actual impact on the major party candidacies. I have closely followed the interrelationship between Dr. Fulani's candidacy and the candidacy of Rev. Jesse Jackson and the other Democrats. By consistently voicing a populist program slightly to the left of Jackson, and by criticizing Jackson whenever he has moved in a more conservative direction, Dr. Fulani, through her stature in the African-American community, has prevented Jackson from moving further to the political center. The other Democratic candidates, have, in my view, adopted various forms of populist themes in order to compete with Jackson. Thus, Dr. Fulani has been exerting a centrifugal influence on the Presidential race whether or not the national media covers her. When the League determines that Dr. Fulani's candidacy is insignificant, it is in essence saying that

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these currents in the African- American community and their impact on the major party candidates are insignificant.

Blacks, Women and the Major Party Nomination Process

9. Dr. Fulani is African-American and female. Our electoral system, notably including the major party nominating process, has a long and shameful history of excluding Black and female candidates who aspire to promote the social policy aspirations of Blacks, women and other disenfranchised constituencies. No African-American has ever been nominated for President or Vice President by either major party. No woman has ever been nominated for President by either major party. Geraldine Ferraro, the Democratic Party's Vice Presidential nominee in 1984, is the only woman ever to have been nominated for Vice President by either major party. Blacks and women have had to look to minor party nominations and independent candidate petitioning to mount candidacies for President and Vice President. An African-American has received the Presidential or Vice Presidential nomination of a minor party on at least 21 occasions. (See Table 1 annexed hereto.) A woman has received the Presidential or Vice Presidential nomination of a minor party on at least 26 occasions. (See Table 2.)

The Implications of FEC Certification

10. Dr. Fulani is one of only two independent candidates ever to have qualified for federal primary matching funds and the only independent candidate ever to have qualified

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before any of the major party primaries or caucuses were held. She is one of only two African- Americans ever to have qualified for primary matching funds and is the only African American woman ever to qualify.

11. We are thus presented with an historically unique situation which calls for appropriate, carefully-reasoned responses on the part of all individuals and institutions that play a role in the Presidential primary process. Excluding Dr. Fulani from the debates because she is not campaigning for the Democratic or Republican nomination is not merely inappropriate and ill-considered, but discriminatory as well.

12. It is my understanding that the stated purpose of the federal election laws, including the matching funds statutes, is to make the electoral process more democratic. By limiting the size and sources of private contributions to Presidential campaigns, and by providing federal aid, the disproportionate influence of small numbers of wealthy individuals, corporations and other entities in the selection of the President is to be reduced in favor of candidates who are able to attract large numbers of smaller contributions.

13. The Fulani campaign puts forward precisely the kind of candidate these democratic reforms intended to place on a more equal footing. With an extremely modest initial campaign budget, Dr. Fulani, her small staff and a group of volunteers began taking the message of her campaign to the people--door by door, community by community, and state by state. The enthusiastic response from voters across the country raised the

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candidacy to the threshold where Dr. Fulani qualified for federal matching funds. Now, in the 1988 election, Dr. Fulani is one of only 14 candidates who have reached that level. Five of the 14 have since dropped out of the race, so Dr. Fulani is one of nine active candidates who have crossed the matching funds threshold.

14. The FEC has ruled that the process of seeking minor party nominations and circulating petitions to qualify for the general election ballot is the functional equivalent, for independent candidates, of the primary/caucus process for major party candidates. Federal tax dollars are being spent in order to enhance Dr. Fulani's ability to compete with the other Presidential candidates for name recognition and support. It is widely recognized that one of the most effective ways for the electorate to judge this competition is through candidate forums or debates, where direct comparisons can be made.

The Centrality of Debates in the Primary Process

15. Televised debates and forums play an important role in the primary season candidate-selection process. They permit vast audiences to see, compare and form judgments about the candidates and their views. In this election cycle they have particularly served to acquaint the public with an array of candidates who, with the exception of Messrs. Bush, Jackson and Hart, were not widely recognized. This phenomenon was particularly evident in the Anderson-Reagan debate of January 5, 1980, which is widely considered to have provided tremendous impetus to Anderson's campaign. Immediately following this

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debate, the Anderson campaign experienced a 50% increase in telephone calls to headquarters; an increase in new volunteers from 10 to 50 per day; a substantial increase in mail and in campaign contributions; and intensive coverage in the media. See Greenfield, J., The Real Campaign - How the Media Missed the Story of the 1980 Campaign (1981), at 201. Of course, major debates are also preceded and followed by extensive analysis and commentary in the print and broadcast media that further exposes the participants to the public. Greenfield assesses the impact of the political debates of the 1980 Presidential elections as follows:

> In the primary and general elections [of 1980], the clash of candidates before national television audiences clearly affected the fortunes of the Presidential hopefuls. Moreover, despite the belief that the interpretation of the debates by the media is the critical part of a debate, the evidence suggests that the debates themselves had a clear impact on the voters. As a general proposition, the press treated the debates as they treated every other part of the battle for the presidency: as a whole tactical process in which candidates sought to shape images, in which every statement, every answer to a question, was to be understood as nothing but an appeal to votes. What the debates' impact suggested, however, is that, at least in 1980, the public was examining the debates for something more than tactical clues: they were attempting, in some measure, to get a sense of who these contenders for the Presidency were, and in what broad direction they intended to take the American people.

16. The Presidential primary debates expose candidates and their ideas to the public and confer legitimacy, credibility, recognition. Exclusion places a candidate at a hopeless disadvantage relative to those who are deemed fit to participate. Dr. Fulani has been excluded, for no legitimate reason and under

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circumstances which are manifestly partisan and discriminatory. This injustice should be corrected.

The League Primary Debates

17. The League of Women Voters Education Fund (the "Fund") is indirectly subsidized by the taxpayers by virtue of its exempt status under Internal Revenue Code section 501 (c)(3); is the recipient of at least one direct federal grant; and is bound by its charter, the Internal Revenue Code, and the federal election laws to be strictly nonpartisan. By its sponsorship of candidate forums and debates for many years, it has acquired an ability to confer legitimacy on some candidates (by including them) and to delegitimize others (by excluding them).

18. The Fund's justification for its selection criteria for participation in debates takes the posture that its selections merely reflect the status quo in the election campaign. This is plainly false. Its selections significantly impact upon the fortunes of candidates, and most particularly upon candidates like Dr. Fulani whose competitors would dismiss her as a "fringe" candidate rather than respond to the substantive issues her campaign is raising. With minor exceptions, the national news media have refused to cover Dr. Fulani's campaign. Her exclusion from the primary season debates is one of the justifications frequently given for this exclusion.

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The Fund actually has some control over this selection criterion --national media coverage--because if Dr. Fulani were included in its debates she would, ipso facto, begin to receive national news coverage.

19. The most objective criterion for inclusion in the debates, and one that the Fund has very little control over, is FEC matching funds certification. The Fund has invited every FEC-certified candidate into its debates except for Dr. Fulani. This is highly suspect and de facto biased.

20. Not only has the Fund excluded Dr. Fulani from the primary debates, it has not even considered including her. It does not even have a procedure for considering the inclusion of an independent candidate in the primary season debates. The purportedly nonpartisan Fund has organized these debates for Democrats and Republicans only. This is partisan on its face.

Exclusion from the League "Primary" Debates will Cause Irreparable Harm

21. Dr. Fulani is an FEC-certified recipient of primary matching funds. She is running in the primaries of several minor parties, seeking their nomination and qualifying for the ballot by means of a process which the FEC recognizes as functionally identical to the major party primary/caucus/convention process. The process in which Dr. Fulani is involved is the product of a labyrinth of discriminatory state election laws enacted by Democratic and Republican legislators. Yet she is employing her fundraising and ballot access operations, along with her personal and organizational resources, to wage a

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vigorous campaign, during this "primary" season, in direct competition with the major party candidates, for public recognition and support.

22. Dr. Fulani is a full participant in a Presidential nomination process which is thoroughly biased in its every aspect by the major parties' candidate-selection procedures. The aspect of the nomination process under scrutiny in this litigation -- "primary" debates -- is structured to exclude all but the major party candidates. The very term "primary" is defined by the manner in which the two-party system selects its candidates. This definitional fatalism (fatal, that is, to alternative candidates involved in an analogous though non-identical candidate-qualification process) enables the League adroitly to claim that Dr. Fulani is not a "primary" candidate.

23. By making the claim that Dr. Fulani is not a primary candidate and excluding her from debates reserved for primary candidates, the League profoundly undermines her credibility with an electorate which has not been equipped to comprehend why she does not appear alongside the other FEC-certified candidates on national television. Her absence from these forums casts doubt on her veracity.

24. This damage to the credibility of the Fulani candidacy, together with its lack of exposure to national television audiences and its attendant lack of other national media coverage and impaired ability to attract money and other support, obviously impacts negatively on the candidacy all the way to general election day, November 8, 1988.

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25. By excluding Dr. Fulani from its primary debates the League permanently consigns her to the category of "the other candidates" (i.e., the nonmajor party candidates), a category populated by many individuals who will not even be listed on the general election ballot in a single state. In fact, she is the only "other candidate" who has qualified for matching funds and is one of only two such candidates who has any realistic prospect of being listed on the ballots of more than a handful of states. Inclusion in the League's debates would without any doubt propel her candidacy to another level, accurately reflecting the reality that she has met all reasonable criteria for moving to a higher level. In short, it is the Fulani candidacy's very success in the category of "other candidacies" that renders it irreparably damaging for her to be permanently relegated to this category.

26. The League's position is that Dr. Fulani must sit out its primary season debates but that she may, if she wishes, seek to participate in the general election debates. One anticipates that when she does so, the League will say she is ineligible because she did not acquire sufficient public recognition during the primary season. This would be yet another politically fatal consequence of continuing to permit the League to determine whom the legitimate candidates are during the primary season.

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27. A future award of monetary damages, no matter how substantial, could not possibly undue or repair the damage caused to the Fulani candidacy by the League's exclusionary debate policies.

WHEREFORE your deponent respectfully prays that the plaintiffs' motion be in all respects granted.

/S/
Fred Newman

Sworn to before me this
14 day of March, 1988.

/S/
Notary Public

ARTHUR R. BLOCK
Notary Public, State of New York
No. 31-4662471
Qualified in New York County
Commission Expires March 30, 199[illegible]
April

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TABLE 1

Black Presidential and Vice Presidential Nominees of Minor Parties

Year	Nominee	Party	Office
1872	Frederick Douglass	Equal Rights	Vice President
1932	James Ford	Communist	Vice President
1936	James Ford	Communist	Vice President
1940	James Ford	Communist	Vice President
1952	Charlotta Bass	Progressive	Vice President
1964	Clifton DeBerry	Socialist Workers	Vice President
1968	Eldridge Cleaver	Peace & Freedom	President
	Charlene Mitchell	Communist	President
	Dick Gregory	Peace and Freedom and New Parties	President
	Paul Boutelle	Socialist Workers	Vice President
1972	Jarvis Tyner	Communist	Vice President
	Andrew Pulley	Socialist Workers	Vice President
1976	Willie Mae Reid	Socialist Workers	Vice President
	Jarvis Tyner	Communist	Vice President
	Margaret Wright	Peoples	Vice President
1980	Angela Davis	Communist	Vice President
	Andrew Pulley	Socialist Workers	Vice President

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1984	Dennis Serrette	New Alliance and Liberty Union Parties	President
	Larry Holmes	Workers World	President
	Ed Winn	Workers League	President
	Angela Davis	Communist	Vice President

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TABLE 2

Female Presidential and Vice Presidential Nominees of Minor Parties

Year	Nominee	Party	Office
1872	Victoria Woodhull	Equal Rights	President
1924	Marie Brehm	Prohibition	President
1948	Grace Carlson	Socialist Workers	Vice President
1952	Charlotta Bass	Progressive	Vice President
	Myra Weiss	Socialist Workers	Vice President
1956	Georgia Cozzini	Socialist Labor	Vice President
	Myra Weiss	Socialist Workers	Vice President
1960	Georgia Cozzini	Socialist Labor	Vice President
	Myra Weiss	Socialist Workers	Vice President
1968	Charlene Mitchell	Communist	President
1972	Genevieve Genderson	Socialist Labor	Vice President
1972	Linda Jenness	Socialist Workers	President
	Theodora Nathan	Libertarian	Vice President
1976	Connie Blomen	Socialist Labor	Vice President
1976	Willie Reid	Socialist Worker	Vice President
	Margaret Wright	Peoples	President

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1980	Angela Davis	Communist	Vice President
	Matilda Zimmermann	Socialist Workers	Vice President
	Dierdre Griswold	Workers World	Vice President
	LaDona Harris	Citizens	Vice President
	Diane Drufenbroch	Socialist	Vice President
	Maureen Smith	Peace and Freedom	President
1984	Angela Davis	Communist	Vice President
	Matilda Zimmermann	Socialist Workers	Vice President
	Gloria Lariva	Workers World	Vice President
	Nancy Ross	New Alliance	Vice President
	Sonia Johnson	Citizens	Vice President

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Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DR. LENORA B. FULANI, et al., :

Plaintiffs, : 88 Civ. 1441 (RWS)

- against - : AFFIDAVIT

LEAGUE OF WOMEN VOTERS EDUCATION FUND, et al., :

Defendants. :

----------X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

FRED NEWMAN, being duly sworn, deposes and says:

1. This affidavit is submitted in response to the defendants' argumentation opposing plaintiffs' motion for a preliminary injunction. The statements contained herein are intended to supplement those contained in my previous affidavit, which was sworn to on March 14, 1988.

2. I will discuss how the defendants have variously mischaracterized, ignored or failed to comprehend what the plaintiffs are asserting in this case.

3. Plaintiffs do not insist that Dr. Fulani must necessarily be included in the particular debates, as presently structured, which the League has scheduled for Democratic and Republican primary candidates on April 16 and 17 in Rochester, New York and on June 4 and 5 in Torrance, California. Plaintiffs do insist that, having decided to stage debates for Democratic

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primary candidates and debates for Republican primary candidates, the League therefore must either include Dr. Fulani in those debates or broaden its overall primary season debates program to include Dr. Fulani in a manner that (1) would provide her with public exposure comparable to that which the debates will afford to significant Democratic and Republican candidates, and (2) would enable the public meaningfully to compare Dr. Fulani and her positions with the significant Democratic and Republican primary candidates and their positions. There are many ways in which these objectives could be accomplished.

4. Plaintiffs do not object to the criteria which the League is employing to distinguish significant from insignificant Democratic primary contenders and to distinguish significant from insignificant Republican primary contenders. Plaintiffs do object to the League's failure to establish fair and nonpartisan criteria for including significant nonmajor party candidates in its primary season forums or debates. Of course, the publication of such criteria would presuppose a broadening of the current Democrats-and-Republicans-only format. In order to be nonpartisan, such criteria would have to be "blind" to candidates' party affiliations (or lack thereof) and would also have to be sensitive to the difference between major and nonmajor party nominating procedures and campaign dynamics. Towards this end, guidance is provided by the Federal Election Commission's regulations which place nonmajor party candidates on an equal footing with major party candidates by making it possible for them to qualify for primary matching funds, taking into

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consideration the political and structural differences between the major party primary/convention process and the ballot-qualification process for nonmajor party candidates.

5. Plaintiffs do not contend that all 281 Presidential candidates should be included or considered for inclusion in the League's primary season debates. Plaintiffs do contend that significant Democratic and Republican party candidates and significant nonmajor party candidates should be included, and plaintiffs insist that it would be possible for the League to identify significant nonmajor party candidates, just as it identifies significant Democrats and Republicans.

6. The League undermines its own position by emphasizing how neither its Democrats-and-Republicans-only format nor its selection criteria has changed over the years it has sponsored primary season debates. Plaintiffs' very point that the circumstances in which primary season debates are now being planned and staged have changed, but defendants have failed to respond in an appropriate manner to these changes: never in recent memory have there been stable independent parties in the United States like the New Alliance Party or the Libertarian Party which are capable of mounting, financing and carrying out large-scale, national, 51-jurisdiction Presidential campaigns. Never before has a Black, female, nonmajor party candidate qualified for primary matching funds. Assuming for the sake of argument that the League's static primary debates format and selection criteria were nonpartisan and nondiscriminatory in

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prior Presidential election years, they are now, in light of the changed circumstances, both partisan and discriminatory.

7. Defendants say the question of race and sex bias can be examined only by identifying the race of all candidates for president. Obviously the relevant comparison is among nominees, not candidates. The fact remains that no Black or woman has ever received the Presidential nomination of a major party and only one woman has ever received the Vice Presidential nomination of a major party, but several Blacks and several women have received the Presidential and Vice Presidential nominations of nonmajor parties. Further, the League says Jesse Jackson's inclusion in its primary debates demonstrates the absence of any racial bias. However, the League also makes it plain that had Jesse Jackson chosen to run for President as a nonmajor party candidate he would be excluded from the primary debates. Taken together, these facts fail to show an absence of racial bias but succeed in showing a partisan bias in favor of major party candidates.

8. Defendants' argumentation reduces to this: being a major party candidate is a necessary condition (though certainly not a sufficient condition) for being permitted by the League (and other major players) to compete on fair and equitable terms with major party candidates during the primary season. Conveniently redefining "nonpartisan" to mean "bipartisan" permits the defendants to argue that this proposition is a priori uncontestable. With the ground rules thusly established, the League can exclude Dr. Fulani on the theory that she is not a

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bona fide competitor, without running afoul of the strictures against partisanship, and against race and sex discrimination. It is respectfully submitted that defendants should not be permitted to engage in such manipulation of reason and of justice.

/s/
FRED NEWMAN

Sworn to before me this
31st day of March, 1988.

/s/
Notary Public

ARTHUR R. BLOCK
Notary Public, State of New York
No. 31-4862471
Qualified in New York County
Commission Expires March 30, 199[illegible]

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Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DR. LENORA B. FULANI, et al.,	:	
Plaintiffs,	:	88 Civ. 1441 (R.W.S.)
- against -	:	AFFIDAVIT
LEAGUE OF WOMEN VOTERS EDUCATION FUND, et al.,	:	
Defendants.	:	

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GARY SINAWSKI, being duly sworn, deposes and says:

1. This affidavit is submitted in order to update certain information contained in my previous affidavit submitted in support of plaintiffs' motion, which was sworn to on March 14, 1988.

2. Dr. Fulani has continued to campaign vigorously for the presidency. A qualitative development over the past two or three weeks is that the volume of requests for Dr. Fulani to conduct interviews with local and regional-level print media and

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to appear on local and regional-level broadcast media now substantially exceeds her capacity to meet these requests.[1] However, this increased recognition on the grassroots level has not been accompanied by any appreciable increase in national media coverage. As explained in my affidavit of March 14, 1988, I believe that inclusion in primary season debates and forums is a precondition for significant national media attention, and that exclusion is irreparably damaging.

3. Dr. Fulani now is one of 16 candidates to have qualified for federal primary matching funds (Babbitt, Biden, Bush, Dole, Dukakis, DuPont, Fulani, Gephardt, Gore, Haig, Hart, Jackson, Kemp, LaRouche, Robertson and Simon), eight of whom have terminated their candidacies (Babbitt, Biden, Dole, DuPont, Gephardt, Haig, Hart and Kemp). Thus, she is one of only eight active Presidential candidates who have primary matching funds.

4. The plan to have Dr. Fulani on the ballot in all 51 U.S. jurisdictions continues to be on target. (See paragraphs 14-19 of my first Affidavit).

5. In recent weeks the rate of contributions to the Fulani campaign has increased. In paragraph 11 of my affidavit

1. Updating the figures in my first affidavit, Dr. Fulani has personally made no fewer than 232 campaign appearances in 38 states and the District of Columbia; has appeared on 52 local and regional regional television programs at 56 stations based in 22 states; appeared on 9 national television programs; appeared on 211 local and regional radio programs at 190 stations based in 35 states; appeared on 11 nationally syndicated radio programs; and Dr. Fulani and her campaign have been the subject of 199 articles in local and regional newspapers and 11 articles in national newspapers and magazines.

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of March 14, 1988, I stated that approximately $310,000 in matchable contributions and $100,000 in nonmatchable contributions had been received from over 20,000 contributors in 44 states. To date, approximately $390,000 in matchable contributions and $115,000 in nonmatchable contributions have been received from over 24,000 contributors in 47 states.

6. If Dr. Fulani were included in primary season debates and forums, her campaign would be raising significantly greater sums. Concurrent with an intensification of public interest in the Democratic Party primary campaign in general and Rev. Jackson's successes in particular, the Fulani campaign's matching funds canvassers report an increase in the percentage of people who decline to make a contribution on the grounds that they have never heard of Dr. Fulani or her campaign. Given the intense publicity about the election campaign over the past three weeks, people are even more puzzled and cautious when they are told that there is a candidate whom they have not heard about in the national news.

7. The verified statement of Victoria Harian in opposition to plaintiffs' motion accurately points out that the correspondence between the League and me, attached to my March 14, 1988 affidavit as Exhibits A and B, was exchanged in 1986, not 1987. I had not recalled that I had initiated dialogue with the League on the issue of fair coverage for nonmajor party candidates as early as 1986.

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8. I must take issue with Ms. Harian's description (Harian statement, para. 3) of the December 17, 1987 meeting among her, Cynthia Hill, Jacqueline Salit and me. At that meeting Ms. Salit and I briefly described the Fulani candidacy, and I asked the League to alter its primary season debates program so as to include Dr. Fulani and any other significant independent candidates. I suggested that this could be accomplished by including independents in the debates scheduled for major party candidates; by scheduling separate debates for significant independent candidates; by including significant independent candidates in the pre- and post-debate interviews and commentary; by permitting significant independents to serve as debate moderators or otherwise permiting them to pose questions to the major party candidates; or by broadening the debates format in some other way. Ms. Salit pointed out that the Federal Election Commission's rulings on eligibility of independent candidates to receive primary matching funds (and Dr. Fulani's anticipated certification) recognized that significant independents are participants in the primary process; this, she said, provided a basis for including significant independents in primary season debates. Ms. Harian and Ms. Hill responded as set forth in paragraph 24 of my affidavit of March 14, 1988 and as set forth in all but the last sentence of paragraph 3 of Ms.

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Harian's statement. Regarding the latter, it should be noted that Ms. Hill stated that including Dr. Fulani would be "partisan."

Gary Sinawski

Gary Sinawski

Sworn to before me this
31st day of March, 1988

Arthur Block

Notary Public

ARTHUR R. BLOCK
Notary Public, State of New York
No. 31-4662471
Qualified in New York County
Commission Expires March 30, 1989

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Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. LENORA B. FULANI et al., Plaintiffs, - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND et al., Defendants.	88 Civ. 1441 (RWS)

VERIFIED STATEMENT OF
GRANT P. THOMPSON, ESQ.

Grant P. Thompson, Esq., deposes and says:

1. I am Executive Director of the defendant League of Women Voters of the United States ("LWVUS") and the defendant League of Women Voters Education Fund ("the League"). I make this verified statement in opposition to the plaintiffs' motion for a preliminary injunction against Democratic Presidential primary debates and Republican Presidential primary debates sponsored by the League. As Executive Director of the League, I have participated extensively in organizing and structuring these debates.

2. LWVUS is a nationwide nonprofit organization with approximately 1225 state and local leagues operating throughout the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. LWVUS is

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exempt from federal income taxation under Section 501(c)(4) of the Internal Revenue Code. LWVUS has approximately 110,000 members. LWVUS is dedicated to promoting active and informed participation of citizens in government. LWVUS is prohibited by its certificate of incorporation and by-laws from participating or intervening in any political campaign on behalf of a candidate or from engaging in any other partisan political activity, and it does not do so.

3. LWVUS is not a sponsor of the 1988 Presidential primary and general election debates which are sponsored by the League, and LWVUS has not participated in formulating or applying the League's selection criteria for participants in those debates. LWVUS played no role in the decision of the League not to invite plaintiff Fulani to participate in the League-sponsored Democratic and Republican Presidential primary debates.

4. The League is a separate, nonprofit trust established by LWVUS in 1957 and devoted exclusively to educational purposes. The League is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. As a 501(c)(3) organization, the League is prohibited from participating or intervening in any political campaign on behalf of any candidate and from engaging in any partisan political activity, and it does

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not do so. Like LWVUS, the League is dedicated to promoting an informed electorate and encouraging active participation in the democratic process.

5. Since its founding in 1957, the League has sponsored a variety of nonpartisan candidate debates and forums. For example, in 1976 the League sponsored four Democratic Presidential primary debates, one Vice-Presidential general election debate, and three Presidential general election debates. In 1980, the League sponsored three Republican Presidential primary debates and two Presidential general election debates. In 1984, the League sponsored four Democratic Presidential primary debates, one Vice-Presidential general election debate, and two Presidential general election debates.

6. The League's purpose in sponsoring Presidential debates is to educate the nation's electorate in a nonpartisan manner about the issues in the Presidential primary and general election campaigns and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process. In planning its 1988 Presidential debates, the Board of Trustees of the League decided, as it had consistently done in the past, that the debates' educational function would be furthered by having separate general election and

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primary election debates. It further decided that two sets of primary debates should be held -- Democratic Presidential primary debates to which only significant candidates for the Democratic Party's Presidential nomination would be invited and Republican Presidential primary debates to which only significant candidates for the Republican Party's Presidential nomination would be invited. The Board intended the primary debates to help the voters to make an informed choice in the Republican and Democratic primary elections by bringing together in one forum the significant candidates for the Democratic Party's Presidential nomination and in another forum the significant candidates for the Republican Party's Presidential nomination.

7. The debates were scheduled by the League to coincide with what the League considered to be significant dates in the Democratic Party's nominating process and the Republican Party's nominating process. The League's schedule of Democratic Presidential primary debates and Republican Presidential primary debates for 1988 is as follows:

Democratic Presidential primary debate
February 13
Manchester, New Hampshire

Republican Presidential primary debate
February 14
Manchester, New Hampshire

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Republican Presidential primary debate
March 5
Nashville, Tennessee (Canceled)

Democratic Presidential primary debate
March 6
Nashville, Tennessee (Canceled)

Democratic Presidential primary debate
April 16
Rochester, New York

Republican Presidential primary debate
April 17
Rochester, New York

Republican Presidential primary debate
June 4
Torrance, California

Democratic Presidential primary debate
June 5
Torrance, California

8. In deciding to hold Republican and Democratic primary debates, the Board of the League decided that such a format would further the League's educational purposes. In the Board's view, the League's goal of fostering voter education and participation in the electoral process is furthered by holding debates in which a substantial number of voters has an interest. The Board determined that a substantial number of voters is interested in the primary elections of the Republican and Democratic parties. However, the voter interest in minor-party primaries is slight, and the Board decided that debates among candidates for the nomination of any particular minor party would not generate sufficient voter interest to justify holding such debates. The

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relative voter interest in major party and minor party primaries is demonstrated by the fact, inter alia, that membership in the Republican and Democratic parties is extremely large, while no minority party in the U.S. has a substantial number of members.

9. The League's debates have always included only candidates who are competing against one another in a particular election or set of elections: the Democratic Presidential nomination process, the Republican Presidential nomination process, or the Presidential general election. In 1988 the League is continuing this tradition. This format has been designed by the League to promote voter information concerning the particular candidates among whom the voter must choose in an election. The inclusion of persons who are not candidates for a particular election in a debate would not further, and would detract from, the League's educational purposes in arranging the debates.

10. The Board of the League decided that the appropriate time to hold the Presidential primary debates is in the winter and spring of 1988 when the primary elections are taking place and when voter interest is focused on the Democratic and Republican primary elections. The appropriate time for the Presidential general election debates, in the Board's

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view, is the fall of 1988 when voter interest turns from the selection of the Republican and Democratic nominees to the election of the President. The Board has scheduled the League's debates accordingly.

11. The plaintiffs in this action are arguing in effect that any debate held by the League during the Presidential primary season must be open to candidates for the Presidency even if they are not candidates for a particular party's nomination -- that is, that the League must hold only Presidential general election debates even during a time when voter interest is focused on Republican and Democratic party nominations and not on the general election. Such a requirement would greatly impair the educational value of its debates and would greatly inhibit the League's ability to inform voters about their decisions in the primary election of the party of their choice. Furthermore, it is quite unlikely that the candidates for the Democratic and Republican Presidential nominations would agree to participate in such a debate during the Presidential primary season.

12. The League's debate format is based on the political system in the United States. The plaintiffs complain about that system and other matters over which the League has no control: the major parties and their nomination processes, the news media and their failure

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to cover plaintiff Fulani, the lack of voter interest in plaintiff Fulani and the state elections laws.

13. The League's Board adopted the "1988 League of Women Voters Education Fund Democratic Presidential Primary Debates Participant Selection Criteria" and the "1988 League of Women Voters Education Fund Republican Presidential Primary Debates Participant Selection Criteria" on April 2, 1987. Copies of the selection criteria are attached hereto as Attachment A and Attachment B. The sole objective of the Board in adopting these selection criteria was to structure the debates so as to further the nonpartisan educational purpose of the debates while at the same time complying fully with all applicable law.

14. The three basic criteria for selection adopted by the League were:

a. The candidate must have made a public announcement of his or her intention to run for the Democratic Party's nomination for President (as to the Democratic Presidential primary debates) or for the Republican Party's nomination for President (as to the Republican Presidential primary debates).

b. The candidate must be legally qualified to hold the office of President.

c. The candidate must be a significant candidate for the Democratic Party's nomination for President (as

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to the Democratic Presidential primary debates) or for the Republican Party's nomination for President (as to the Republican Presidential primary debates).

15. Plaintiff Fulani clearly and admittedly does not meet the first criteria described above -- that is, she has not made a public announcement of her intention to run for the Democratic Party's nomination for President or for the Republican Party's nomination for President. Therefore, plaintiff Fulani does not meet the 1988 League participant selection criteria for the primary debates. It is for this reason, and this reason alone, that plaintiff Fulani has not been invited to participate in the Presidential primary debates sponsored by the League. Because plaintiff Fulani clearly does not meet this criterion, the League has not considered whether she would satisfy the criterion of significance.

16. In making its decision not to invite plaintiff Fulani to participate in the primary debates, the League gave no consideration whatsoever to plaintiff Fulani's race, color, national origin or sex and did not decide to exclude her on any such grounds.

17. Furthermore, the League did not exclude plaintiff Fulani in order in any way to harm or to oppose her candidacy for the Presidency or to further or to support the candidacy of any other person or persons.

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18. The selection criteria adopted by the League for its 1988 Presidential primary debates are the same in all respects as the selection criteria used by the League in the 1984 Democratic Presidential primary debates sponsored by it. In 1984 those selection criteria were considered by the Federal Election Commission pursuant to a complaint concerning them filed by Lyndon LaRouche, a Democratic candidate whom the League did not invite to participate in the debates. The Federal Election Commission found that there was no basis to find that the selection criteria did not comport with the Federal Election Commission's requirements of nonpartisanship. The selection criteria were also unsuccessfully challenged by Mr. LaRouche before state and federal courts in Pennsylvania and before state courts in Texas.

19. As stated in the League's selection criteria for its Presidential primary debates, the League considers a number of factors in assessing the significance of a candidate for the Democratic or Republican Presidential nomination. Eligibility for matching payments is merely one of such factors. Other factors include active campaigning in a number of states, recognition by the national media as a candidate requiring media attention, the extent of campaign contributions and national voter poll results. The

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League assesses all information available to it relating to these factors in making a decision as to whether a candidate is a significant candidate worthy of receiving an invitation to participate in a primary debate.

20. According to paragraph 16 of Gary Sinawski's affidavit dated March 14, 1988, in support of the plaintiffs' motion for a preliminary injunction, plaintiff Fulani is the only announced candidate for the New Alliance Party. Under the Federal Election Commission's rules on election debates, even if the League's Board were to determine that it should hold a Presidential primary debate among candidates for the nomination of a minor party, the League would not be able to conduct such a debate unless two or more candidates for the minor party's nomination were to participate.

21. As noted above, the League plans to present a series of Presidential general election debates in the fall of 1988 involving candidates for the Presidency and the Vice Presidency. The debates are scheduled for September 8, 1988, in Birmingham, Alabama; October 6, 1988 in Minneapolis-St. Paul, Minnesota; October 23, 1988, in Boston, Massachusetts; and November 1, 1988, in Los Angeles, California. One of the debates will involve Vice Presidential candidates, while three of the debates will involve Presidential candidates. The

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League will consider sending invitations for these debates after the Republican and Democratic parties have chosen their nominees.

22. On October 6, 1987, the Board of the League adopted the "1988 League of Women Voters Education Fund Candidate Selection Criteria for General Elections Debate Participation." A copy of the selection criteria is attached as Attachment C. Under the selection criteria the League will sponsor one Presidential general election debate to which it will invite only the nominees of the two major parties. The League's Board decided to invite the major party nominees and any other significant candidates for the President who meet the selection criteria of the League to the other two Presidential general election debates sponsored by the League. The Board of the League decided to hold one debate between the nominees of the two major parties in recognition of the central role the two major parties play in our political system and the undeniable substantial voter interest in the positions on issues espoused by the nominees of those parties. This decision insured that the nation's voters are given at least one opportunity to hear the two major parties' nominees debate each other one-on-one.

23. In terms of selection for participation in the Presidential general election debates, there is

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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 League to ascertain whether non-major 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.

24. The League will apply three basic criteria for inviting non-major party candidates to participate in the Presidential general election debates:

a. Constitutional eligibility.

b. Ballot accessibility.

c. Demonstrated significant voter interest and support.

These basic criteria are further elaborated in the selection criteria attached as Attachment C.

25. The League's 1988 selection criteria for the Presidential general election debates are in all substantial respects the same as the 1984 selection criteria used by the League. Sonia Johnson, the Citizens Party candidate for the Presidency in 1984, was not invited to participate in the League's general

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election debates despite her eligibility for federal matching funds. She unsuccessfully challenged the selection criteria before the Federal Communications Commission and the United States Court of Appeals for the District of Columbia Circuit.

26. If plaintiff Fulani is interested in participating in the Presidential general election debates of the League, the League will consider in August 1988 an application made on her behalf that attempts to establish that she meets the League's selection criteria for non-major party candidates.

27. The League has demonstrated that it is willing to include independent candidates who are significant candidates for the office of the Presidency in Presidential general election debates. In 1980 John Anderson appeared in one of the League's Presidential general election debates at a time when he was running as an independent candidate for the Presidency.

28. On March 1, 1988, the League canceled the Democratic Presidential primary debate and the Republican Presidential primary debate scheduled for March 5 and 6, 1988, in Nashville, Tennessee. The League's reasons for canceling these debates had nothing whatsoever to do with the request that plaintiff Fulani participate in the debates. The Republican Presidential primary debate was canceled because only one of the

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League's invitees accepted the invitation to participate in the debate. A number of the invited participants for the Democratic Presidential primary debate canceled their appearances, leaving only two invitees who were willing to participate in that debate. The League canceled that debate because of the limited participation in it.

29. The League of Women Voters of the City of New York Education Fund, Inc. has not participated in any way in sponsoring the League's 1988 Presidential debates, in establishing the selection criteria or format of such debates, or in deciding not to invite plaintiff Fulani to participate in the Presidential primary debates. The League alone is the sponsor of the debates, decided upon the format and selection criteria for the debates, and decided not to invite Dr. Fulani to participate in the debates.

30. The League has received a grant from the U.S. Department of Energy in the amount of $274,287. This grant is for the purpose of conducting an education project concerning nuclear energy. The League has also received a grant from the U.S. Environmental Protection Agency in the amount of $100,000 for the purpose of conducting a drinking-water survey. None of the funds from these grants has been or will be used in any way with regard to the League's Presidential debates. The

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League is not currently the recipient of any other federal funds.

I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Grant P. Thompson

Grant P. Thompson

Washington, D.C.
March 27, 1988

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1988 LEAGUE OF WOMEN VOTERS EDUCATION FUND
DEMOCRATIC PRESIDENTIAL PRIMARY DEBATES
PARTICIPANT SELECTION CRITERIA

The League of Women Voters Education Fund will sponsor during the 1988 election season a series of primary debates among significant candidates for the Democratic Party's nomination for President. The purpose of these debates is to educate the nation's electorate in a nonpartisan manner about the issues in the 1988 Presidential campaign and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process.

The League's goal of fostering voter education and participation in the electoral process is furthered by inviting to debate only candidates in whom a substantial number of voters has an interest. Inclusion of candidates in whom there is little voter interest would result in debates that are too long or that do not provide sufficient time for the meaningful expression of views by significant candidates. Accordingly, the League has chosen to limit participation in its 1988 Democratic primary debates to candidates who present a significant national candidacy for the Democratic nomination for President.

Candidates who meet the following criteria will be invited to participate in the League's 1988 Democratic primary debates:

1. The candidate must have made a public announcement of his or her intention to run for the Democratic Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Democratic Party's nomination for President.

In assessing the significance of a candidacy, the League will consider a number of factors including the following:

-- Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96). This criterion furthers the identification of significant candidates by focusing on those candidates who are significant enough to solicit, and have sufficient voter support to receive, contributions from a number of persons in a number of states.

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-- Active campaigning in a number of states for the Democratic Party's nomination. Candidates who have established an active campaign presence in several different states may pose a significant national candidacy for the Democratic Presidential nomination. A candidate's efforts to be named on primary ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount of his or her campaign appearances, as well as any other factors evidencing substantial campaign activity, may be considered.

-- Recognition by the national media as a candidate meriting media attention. Since media coverage of particular candidates by major newspapers and television networks tends to evidence a recognition by the national media of 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.

-- Other factors. The League may consider such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

Adopted by LWVEF 4/2/87

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1988 LEAGUE OF WOMEN VOTERS EDUCATION FUND
REPUBLICAN PRESIDENTIAL PRIMARY DEBATES
PARTICIPANT SELECTION CRITERIA

The League of Women Voters Education Fund will sponsor during the 1988 election season a series of primary debates among significant candidates for the Republican Party's nomination for President. The purpose of these debates is to educate the nation's electorate in a nonpartisan manner about the issues in the 1988 Presidential campaign and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process.

The League's goal of fostering voter education and participation in the electoral process is furthered by inviting to debate only candidates in whom a substantial number of voters has an interest. Inclusion of candidates in whom there is little voter interest would result in debates that are too long or that do not provide sufficient time for the meaningful expression of views by significant candidates. Accordingly, the League has chosen to limit participation in its 1988 Republican primary debates to candidates who present a significant national candidacy for the Republican nomination for President.

Candidates who meet the following criteria will be invited to participate in the League's 1988 Republican primary debates:

1. The candidate must have made a public announcement of his or her intention to run for the Republican Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Republican Party's nomination for President.

In assessing the significance of a candidacy, the League will consider a number of factors including the following:

-- Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96). This criterion furthers the identification of significant candidates by focusing on those candidates who are significant enough to solicit, and have sufficient voter support to receive, contributions from a number of persons in a number of states.

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-- Active campaigning in a number of states for the Republican Party's nomination. Candidates who have established an active campaign presence in several different states may pose a significant national candidacy for the Republican Presidential nomination. A candidate's efforts to be named on primary ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount of his or her campaign appearances, as well as any other factors evidencing substantial campaign activity, may be considered.

-- Recognition by the national media as a candidate meriting media attention. Since media coverage of particular candidates by major newspapers and television networks tends to evidence a recognition by the national media of 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.

-- Other factors. The League may consider such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

Adopted by LWVEF 4/2/87

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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.[2]

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 CRITERION

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,"3 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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Exhibit 6

LEAGUE OF WOMEN VOTERS

Public Referendum: Presidential Debates

You have been chosen, as part of a select sample of the American voting-age population, to take part in a national referendum on candidate debates. Your participation is strictly voluntary. But your help is needed.

Your response will help form the basis for a major national campaign designed to protect independent nonpartisan sponsorship of candidate forums in national elections. *Details below:*

PLEASE RETURN ENCLOSED REFERENDUM CARD WITHIN 12 DAYS

Dear Friend,

"Why bother to watch?"

That's what you and millions of other voting-age Americans may be saying in the fall of 1988 -- IF the chairmen of the Democratic and Republican National Committees succeed in wresting sponsorship of presidential debates from the League of Women Voters.

Here's what has happened.

Recently, the chairmen of the Democratic and Republican National Committees got together and announced they have formed their own group to jointly sponsor presidential debates and raise the money they need to stage party-sponsored debates.

We at the League of Women Voters strongly object to the parties' plans to oust us from our traditional position as the nation's independent debates sponsor.

We are firmly convinced that if the two political parties do assume sponsorship of debates, they will quickly undermine -- and eventually destroy -- the value of candidate debates as objective, nonpartisan citizen forums.

And after 67 years as the nation's preeminent organization dedicated to educating citizens about their government and increasing their participation in the electoral process, we simply cannot allow that to happen.

That's why I'm writing today to ask you to help the League of Women Voters fight back by signing and returning the enclosed Public Referendum Card to me right away.

It is imperative that you and hundreds of thousands of concerned citizens like you give me your immediate,

(over, please)

1730 M STREET, N.W. WASHINGTON, D.C. 20036

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personal vote of confidence in the League's continued sponsorship of presidential debates. This is one battle we cannot win by litigation or legislation.

To win, we must have indisputable proof that citizens and candidates alike believe the integrity and significance of debates depend on the League's nonpartisan approach to debates sponsorship. Only then will we be able to convince the politicians and the media once and for all that Americans want and rely on League-sponsored presidential debates. And that continued independent League sponsorship of debates is in the voters' best interests.

Citizens trust the League because they know our sole purpose in sponsoring debates is to improve communication between citizens and the candidates, to enable citizens to make informed choices when they go to the polls.

And candidates trust the League because they know that, as a nonpartisan citizens' organization, we do our best to fairly schedule debate dates and sites and set equitable rules to govern the participation of all significant candidates.

NOW THE LEAGUE NEEDS YOUR HELP TO PROVE THIS TO THE POLITICIANS ONCE AND FOR ALL AND STOP THEM FROM CO-OPTING INDEPENDENT, NONPARTISAN CANDIDATE DEBATES.

This is not the first time the League has fought challenges to our right to sponsor candidate forums.

*** In 1976, the League beat all odds to bring the nation its first Presidential Debates since 1960.

*** In 1977, we successfully sued the Federal Election Commission for the right to raise the funds we needed to bring America's voters the 1980 Presidential Debates.

*** And in 1983 and 1984 we again went to court to fight a Federal Communications Commission decision permitting network sponsorship of debates. We fought that battle because we believed that broadcasting companies should not make the news, as well as cover it.

We are fighting now for similar reasons. Because they are partisan organizations, the two major parties are not appropriate sponsors of nonpartisan candidate debates.

You and I both know the parties' primary purpose is to get their candidates elected. And it is simply absurd to expect that the party chairmen would put the voters' need for substantive information on the candidates ahead of their nominees' efforts to win public office!

Consider, for a moment, what would happen if in 1988 a significant third-party candidate seriously challenged either of the two major party

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candidates. With sponsorship in the firm control of the two parties, would an independent or third-party challenger have a chance?

Or what would happen if in 1992, with an incumbent president, a story like the Iran-Contra arms scandal broke on the eve of a previously scheduled debate? Would either of the two chairmen be able to force the incumbent president to debate? Or even want to? Of course not!

Unless you and I take action now to stop the two party chairmen and preserve independent, nonpartisan League debates, then we can count on one of two things happening:

EITHER ... the parties will give the American public "designer" debates, with safe timing, safe formats, and safe questions carefully orchestrated to hide the candidates' weaknesses and promote their strengths;

OR ... there will be no Presidential Debates at all!

Either way, America's citizens will be deprived of the kind of information about the candidates they deserve. The kind of information that they've come to expect -- because of the League of Women Voters!

And in 1988, the first election cycle in 20 years when no incumbent president will be in the running, it is more important than ever that citizens receive the kind of substantive information on the candidates that only League-sponsored candidate debates can provide.

That's why it is so important that you register your vote of confidence in the League by returning your Public Referendum Card to me today.

And when you do, I hope you will also become a Friend of the League of Women Voters and make a generous special contribution. We will use your contribution to:

-- Send Referendum letters and cards like the one I've enclosed for you to hundreds of thousands of citizens nationwide to rally public opinion behind us;

-- Enlist the support of the majority of this nation's political editorialists; and,

-- Begin now to put aside money for the 8 primary and 4 general election debates that the League will sponsor in 1988. We've already scheduled twin presidential primary debates -- one for Republican and one for Democratic candidates -- to be held before the New Hampshire and Southern primaries. We have plans for two more series of twin debates to be held before the Midwestern and Western primary elections -- and for 4 general election debates between the presidential and vice-presidential

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contenders. Your immediate help now will ensure that each of these crucial debates do occur.

Neither you nor I nor the League can afford to lose this battle. No other campaign event defines the issues and illuminates the differences in the candidates' positions, approaches and personalities like a debate does.

And no debates sponsor can bring candidates together in an objective, nonpartisan arena like the League of Women Voters.

By becoming a Friend of the League and by giving us your special support today, you will help us send a critical, strategic message to each national political party, future candidates, the media and leaders and major funders in the business community.

Your support will send the indisputable message that you want nonpartisan, independently sponsored debates to continue. AND that you believe so strongly that the League of Women Voters is the best sponsor of national candidate debates that you are willing to help finance League debates yourself.

I assure you -- we at the League of Women Voters will make certain your opinion on candidate debates is heard.

Please take a moment right now to fill out the enclosed Public Referendum Card and return it to me with your check for $20, $25, $30 or more if you can within the next 12 days. For your convenience, we have included a return envelope.

And along with your Referendum Card, I hope you will also become a Friend of the League by enclosing a check to help us pay for our National Referendum.

America's voters deserve the opportunity to get the impartial view of the candidates and the issues that only the League can provide.

So please -- send me your vote of confidence in the League today.

Sincerely,

Nancy M. Neuman

Nancy M. Neuman
President

P.S. As you can see from the editorial quotes I've enclosed, a lot of unbiased and clear-thinking people want the League to keep on sponsoring these vital debates. Your contribution will help us reach and convince even more people of that fact. Please rush your Referendum Card to me today. NN

Enclosure
NMN/ksm

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Why the press and the public think sponsorship of presidential debates should be left to the League of Women Voters . . .

". . . The League has established its credibility as a fair and independent sponsor; it should be allowed to go on in that role. There is no guarantee that the parties are in a better position to force debate arrangements on candidates. The first thing that a nominee does after a convention is to put his own people in charge of the national party. There is some question, too, as to how the parties might deal with a strong third-party or independent challenger.

"The debates should be institutionalized, but there is no evidence that the parties will be any more successful at that than The League. For now, the debate on debates should be ended quickly, by the parties stepping aside."

The Los Angeles Times, CA

". . . the League did a good job and that is the bottom line, for it is important that the debates not evolve into entertainment events or political circuses."

Jonathan Marshall
Copley New Service

"Sure, the presidential debate process can be improved, but the best chance for improving it lies in the hands of the committed nonpartisanship of the League of Women Voters, not the committed partisanship of political parties."

Herald-Journal, Syracuse, NY

"[Presidential] debates materialized only because of the League's dogged determination. . . . The party-sponsored debates would be like bringing two baseball teams together for the World Series, then asking the coaches to umpire the games."

Nashville Tennessean

"The League is impartial, reputable, and experienced in making the arrangements. Leave it to the League."

State, Columbia, SC

"[The recommendation] that the political parties take over the debates [and] remove the non-parisan, well-organized League of Women Voters that has run the debates since the first one in 1960 [is] a slap in the face of the prestigious organization which sponsored the debates in the first place—and fought hard to get the candidates to participate. . . . The League of Women Voters deserves gratitude for its lively contribution to American democracy. It should be allowed to continue planning and executing what should be a permanent fixture of the regular presidential campaign."

Ogden Standard-Examiner, UT

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"If they try to arrange the debates, the parties probably would need an honest broker to mediate anyway. So why not stick with such a broker, the League, from the start?"

Miami News, FL

"The presidential debate caught on in 1960 only to vanish from the national scene again until a non-partisan organization with influence, the League of Women Voters, stepped forward in 1976 and offered a forum the candidates could hardly refuse."

The Oregonian, Portland, OR

". . . The League has handled previous presidential debates, has the know-how, and should be allowed to continue in this role, which clearly fits in with its overall objective of educating the public on important civic issues."

Deseret News,
Salt Lake City, UT

"The kind of neutral, third party sponsorship which the League of Women Voters has provided in the past has done more to lend credibility to presidential debates than either or both of the major national political parties would."

Manchester Herald, CT

"The League of Women Voters has done an admirable job of sponsoring the debates."

Stephen C. Fehr
Times, Kansas City, MO

"Would somebody care to tell me what was wrong with the way the League of Women Voters ran the presidential debates? Something called the Commission on National Elections . . . run by Robert S. Strauss and Melvin R. Laird, two old pros I never thought of particularly as reformers, has come forward and fixed something that wasn't broke. . . . Men can arrange these things better?"

Mary McGrory
Washington Post

America's voters deserve the opportunity to get an impartial view of the candidates and the issues. Please help us fight for continued League sponsorship of presidential debates.

LEAGUE OF WOMEN VOTERS

1730 M STREET, N.W. WASHINGTON, D.C. 20036

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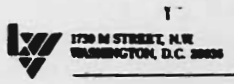
☐ **Yes.** You have my vote of confidence. I believe the League of Women Voters must continue sponsoring candidate debates in our nation's general elections.

That's why...

☐ **No.** I don't think the League should fight this battle.

However...

Signed: _____ Date: _____



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WASHINGTON, D.C. 20036

PUBLIC REFERENDUM CARD

. . . I want to become a Friend of the League and make a special contribution to help the League of Women Voters poll hundreds of thousands of Americans on this important issue. I am enclosing my tax-deductible check in the amount of:

☐ $20 ☐ ** $25 ☐ $30 ☐ $50 ☐ $100 ☐ Other $_____

** We urgently need more gifts like this to win our fight for sponsorship! [illegible]

Please make your check payable to the League of Women Voters Education Fund (LWVEF) and return it along with this Public Referendum Card to: The League of Women Voters, P.O. Box 98945, Washington, D.C. 20077. *(If you prefer to charge your contribution, please see reverse side of Referendum Card.)*

If you are already a League member or happen to receive a duplicate mailing, please pass this mailing on to a friend.

Contributions are separate from membership dues and support our national programs. Your support of [illegible] at the state and local levels is also encouraged. A contribution of $15 and above entitles you to a year's subscription to *The National Voter*, the League's journal of analysis and action. Five dollars of your contribution is applied to your one-year subscription.

I prefer to charge my special contribution:

☐ MasterCard ☐ VISA ☐ American Express

Credit Card Number

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Bank Number ☐☐☐☐ Expires ___/___
(4 digits MasterCard only) month year

Signature: _____

A copy of our last Annual Report filed with the New York Department of State may be obtained by writing to: New York Department of State, Office of Charities Registration, Albany, New York 12231, or to the League of Women Voters.

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ISADORE SHRENSKY
Editorial Page Editor

Sunday, January 11, 1987

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The political debate ploy

Although he collected only 7 percent of the total vote in the 1980 presidential election, John Anderson during that year stood right up there and slugged it out verbally with Ronald Reagan, the man who eventually would make a one-termer out of Jimmy Carter.

Mr. Anderson, then a Republican congressman from Illinois, was long on energy but short on cash during his campaign, first for the Republican nomination and then as an independent seeking the presidency.

Ninety-three percent of the voters chose to ignore Mr. Anderson in November 1980, but at least he was there as an alternative to the two major party candidates. And he owed much of the early recognition he had to a League of Women Voters-sponsored debate with Mr. Reagan that spring.

Maybe it was the recognition that Mr. Anderson gained in that debate seven years ago that initiated a move being made now by the Republican and Democratic national committees. The national committees of the two major parties are trying to muscle in on the League of Women Voters to wrest away control of the debates.

Setting up an end run, the committees plan to establish a foundation to sponsor presidential debates in the general election.

The League of Women Voters doesn't like the move. "It's a nice, safe little idea," League President Nancy Neuman said in Pittsburgh last fall. "Safe for the official candidates but lousy for the voter."

We agree with that assessment. A debate sponsored by the two parties would more probably resemble two partisan campaign speeches rather than an argument of the issues. Precious — and free — national television exposure, rather than a bout of tough questioning, would be the goal.

And the rules being formed by the national committees make certain that no future John Anderson ever will be able to cop a share of that free exposure. It comes as no surprise that only the two major party candidates would be eligible to participate in the general election debates.

Finally, to address the charge made by some politicians that the League has been high-handed in handling some of the debates, we wonder whether, say, Patrick Buchanan, the White House point-man, would be more even-handed were he placed in charge of a debate.

You don't have to bother answering

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Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DR. LENORA B. FULANI;
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS; and
VIRGINIA SINCLAIR,

Plaintiffs,

- against -

LEAGUE OF WOMEN VOTERS EDUCATION
FUND; LEAGUE OF WOMEN VOTERS OF
THE UNITED STATES; LEAGUE OF WOMEN
VOTERS OF THE CITY OF NEW YORK
EDUCATION FUND, INC.; JAMES BAKER III,
Secretary of the Treasury, ROSCOE L.
EGGER, JR., Commissioner of Internal
Revenue,

Defendants.
----------x

O P I N I O N

88 Civ. 1441 (RWS)

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SWEET, D. J.

Plaintiffs Dr. Lenora B. Fulani ("Fulani"), Lenora B. Fulani's Committee for Fair Elections, and Virginia Sinclair have moved for a temporary restraining order and preliminary injunction (a) against defendants League of Women Voters Education Fund (the "League"), League of Women Voters for the United States, and League of Women Voters of the City of New York, Inc. (collectively, the "League organizations"), restraining them from conducting any presidential primary debate to which they do not invite Fulani to participate on equal terms with the other candidates and (b) against defendants Secretary of the Treasury (the "Secretary") and Commissioner of Internal Revenue (the "Commissioner") (collectively, the "federal defendants") enjoining them to take action to cause the League to conduct the debates in a nonpartisan manner or, in the alternative, to revoke the League's exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). Following the submission of briefs, affidavits and exhibits, oral argument was held on April 1, 1988. Upon the findings and conclusions set forth below, the motion is denied.

The Complaint

The complaint alleges that the exclusion of Fulani from the League's primary season debates violates her rights under the

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First Amendment. The complaint also asserts that Fulani's exclusion is a partisan act in violation of Internal Revenue Code section 501(c)(3), 26 U.S.C. § 501(c)(3) (1987 Supp.), and a discriminatory act on the basis of race and sex in violation of the Fourteenth Amendment and the League's obligations under Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000d-2000d-4 (1981) and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1686 (1978). Finally, the complaint alleges a breach of contract claim against the League organizations for their alleged failure to be nonpartisan and to promote the inclusion of minorities and women to the fullest extent possible in the electoral process. With respect to the federal defendants, the complaint alleges that the failure of the Secretary and the Commissioner to revoke the tax exemption of the League violates both their duties under the Code and plaintiffs' rights to freedom of speech and association and to equal protection of the laws under the First and Fifth Amendments.

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The Parties

Fulani is an African-American woman who was born and raised in Chester, Pennsylvania. She received an undergraduate degree from Hofstra University, a Master's Degree in educational psychology from Columbia University Teachers College, and a Ph.D in developmental psychology from the Graduate School and University Center of the City University of New York. Fulani has

been active in electoral politics for many years, having run as an independent candidate for Lt. Governor of New York in 1982, Mayor of New York City in 1985 and Governor of New York State in 1986.

On June 24, 1987, Fulani publicly announced her candidacy for President of the United States. She is not seeking the nomination of the Democratic or Republican parties. Running as an independent, Fulani is seeking to attain a place on the ballot in all fifty states and the District of Columbia by (a) meeting petition requirements in a number of states to have her name on the ballot as an independent, and (b) winning the nomination of several minor parties, such as the New Alliance Party, which is organized in twenty-six states, the Illinois Solidarity Party, the Peace and Freedom Party of California and the Labor Farm Party of Wisconsin, that either have a permanent ballot position or will be petitioning to attain a ballot position in 1988. As her campaign progresses, Fulani has been invited to numerous speaking engagements, forums, and interviews, at the community and local level. She has submitted unrebutted evidence that she has personally made approximately 210 campaign appearances in thirty-four states and the District of Columbia, and has appeared on thirty-eight local and regional television programs at forty-two stations based in eighteen states; eight national television programs; 174 local and regional radio programs on 158 stations based in thirty-two states; and ten

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nationally-syndicated radio programs. She and her campaign have been the subject of 173 articles in local and regional newspapers and ten articles in national newspapers and magazines.

On January 28, 1988, Fulani was certified by the Federal Election Commission ("FEC") as eligible for presidential primary matching funds ("primary matching funds") based on Fulani's "threshold submission," filed with the FEC pursuant to the Federal Primary Matching Payment Account Act, 26 U.S.C. § 9033 (1987 Supp.), documenting that she had received matchable contributions exceeding $5,000 from residents of at least twenty states in amounts not exceeding $250 from any one contributor. She is the only woman who has received primary matching funds in connection with the 1988 election. She is the first black woman ever to qualify for matching funds. At the time of oral argument on the instant motion, Fulani was one of sixteen candidates to have qualified for federal primary matching funds, eight of whom had terminated their candidacies.

The League is a private, non-for-profit charitable trust exempt from federal income taxes. Its goal is to foster voter education and participation in the electoral process. Since its founding in 1957, the League has sponsored four Democratic presidential primary debates, one vice-presidential general election debate, and three presidential general election debates. In 1980, the League sponsored three Republican

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presidential primary debates and two presidential general election debates. In 1984, the League sponsored four Democratic presidential primary debates, one vice-presidential general election debate, and two presidential general election debates. The League's debates have always included only candidates who are competing against one another in a particular election or set of elections: the Democratic presidential nomination process, the Republican presidential nomination process, or the presidential general election.

Part of the League's funding consists of grants from federal agencies. The League has received a grant from the U.S. Department of Energy in the amount of $274,287. This grant is for the purpose of conducting an education project concerning nuclear energy. The League has also received a grant from the U.S. Environmental Protection Agency ("EPA") in the amount of $100,000 for the purpose of conducting a drinking-water survey. None of the funds from these grants has been or will be used in any way in connection with the League's presidential debates. The League is not currently the recipient of any other federal funds.

The Debates

The League is the sole sponsor of two presidential primary debates that Fulani seeks to enjoin by her application

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for a preliminary injunction. The League has scheduled a debate among the candidates running in the Democratic Party primaries for April 16, 1988 in Rochester, New York, and a debate among the candidates running in the Democratic Party primaries for June 5, 1988 in Torrance, California.[1] The purpose of the League's primary debates is to educate the nation's electorate about the issues in the primary election campaigns and about the positions of the candidates running in those elections and to stimulate increased voter interest and participation in the electoral process. The League scheduled separate Democratic and Republican primary debates in order to permit the voters to hear debate among the candidates who are competing against one another and in order to assist voters in making an informed choice among them.[2]

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[1] It appears that debates among the candidates running in the Republican Party primaries scheduled for April 17, 1988 and June 4, 1988 in New York and California, respectively, have been cancelled by the League on the basis of its determination that at the present stage of the campaign there is insufficient voter interest in Republican primary debates.

[2] The League plans to present a series of presidential general election debates in the fall of 1988 involving candidates for the presidency and the vice-presidency. The debates are scheduled for September 8, 1988, in Birmingham, Alabama; October 6, 1988 in Minneapolis-St. Paul, Minnesota; October 23, 1988 in Boston, Massachusetts; and November 1, 1988 in Los Angeles, California. One of the debates will involve vice-presidential candidates, while three of the debates will involve presidential candidates. The League will consider sending invitations for these debates after the Republican and Democratic parties have chosen their nominees.

On October 6, 1987, the Board of the League adopted the "1988 League of Women Voters Education Fund Candidate Selection Criteria for General Election Debate Participation." Under the selection criteria the League will sponsor one presidential general election debate to which it will invite only the nominees of the two major parties. The League's Board decided to invite

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The League invited candidates to participate in the presidential primary election debates after applying participant selection criteria adopted by the Board of Trustees of the League on April 2, 1987. The basic criteria the League adopted for selection of participants in the presidential primary debates are as follows:

> 1. The candidate must have made a public announcement of his or her intention to run for the Democratic (or Republican) Party's nomination for President.
>
> 2. The candidate must be legally qualified to hold the office of President.
>
> 3. The candidate must be a significant candidate for the Democratic (or Republican) Party's nomination for President.

Under the first criterion, only Democratic candidates have been invited to participate in the Democratic primary debates, and only Republican candidates have been invited to participate in the Republican primary debates. In assessing the significance of a candidacy, the League considers a number of factors, including:

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the major party nominees and any other significant candidates for the presidency who meet the selection criteria of the League to the other two presidential general election debates sponsored by the League. The Board of the League decided to hold one debate between the nominees of the two major parties in order to insure that the nation's voters are given at least one opportunity to hear the two major parties' nominees debate each other one-on-one.

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Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96).

. . .

Active campaigning in a number of states for the [Democratic or Republican] Party's nomination.

. . .

Recognition by the national media as a candidate meriting media attention.

. . .

Other factors . . . that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

"1988 League of Women Voters Education Fund Democratic Presidential Primary Debates Participant Selection Criteria."

Fulani is a declared independent and minor-party candidate for the presidency. Fulani's name was on the ballot in the presidential preference primary of the Illinois Solidarity Party held on March 15, 1988. Fulani will also be on the ballot in the presidential preference primaries of the New Alliance Party of Nebraska on May 10, 1988 and the Peace and Freedom Party of California on June 7, 1988. Fulani is circulating petitions to gain access to the ballot in many other states.

In December 1987 Fulani's representatives requested that the League invite her to participate in its presidential primary election debates. The request was denied on the grounds that Fulani is not a publicly announced candidate for either the

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Democratic or Republican nomination for President and, therefore, does not meet a prerequisite for invitation to participate in the League's presidential primary debates. Because Fulani did not meet this prerequisite for an invitation, the League did not consider whether she met any of its other criteria, including whether she is a significant candidate.

The Parties' Contentions

Fulani asserts that the League is required to be nonpartisan in its activities by virtue of its tax-exempt status under section 501(c)(3) of the Code and that, as a recipient of federal funds, the League is prohibited from discriminating on the basis of race or sex pursuant to Title VI and Title IX. Further, Fulani contends that the League's sponsorship of presidential primary debates is state action and thereby subject to the guarantees of the First and Fourteenth Amendments. Fulani alleges that her exclusion from the presidential primary debates on the grounds that she is not seeking the nomination of the Democratic or Republican parties is partisan and a violation of section 501(c) of the Code. She also contends that her exclusion is discriminatory on the basis of race and sex in violation of Title VI and Title IX.

The League responds that its selection criteria for the presidential primary debates are nonpartisan under both the FEC's

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regulations and rulings and the Code. The League asserts that Fulani's constitutional claims are baseless because (1) the League's debates do not involve state action and, even if they did, (2) the First Amendment does not guarantee the right to participate in a candidate's debate and (3) the League has not discriminated against Fulani on the basis of race or sex. Finally, the League contends that Fulani's Title VI and Title IX claims are without merit because there is no evidence that the conduct of the League's debates has had an adverse disparate impact on blacks or women.

The federal defendants contend that, because Fulani lacks standing to challenge the government's tax treatment of the League, there is no jurisdiction to entertain her suit. The federal defendants also contend that Fulani's exclusion from the Republican and Democratic primary debates does not give rise to a claim that the League is not entitled to a tax exemption under section 501(c)(3) of the Code.

As the Second Circuit has recently reaffirmed, a preliminary injunction is an extraordinary and drastic remedy not to be routinely granted. Hanson Trust PLC v. ML SCM Acquisition Inc., 781 F.2d 264, 273 (2d Cir. 1986). To prevail on their application for a preliminary injunction, the plaintiffs face:

> the formidable task of showing: (1) irreparable harm and (b) either (1) likelihood of success on the merits

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> or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward [the plaintiffs].

Id. "Furthermore, equitable considerations are important in the determination whether to grant preliminary relief." WPIX v. League of Women Voters, 595 F. Supp. 1484, 1487 (S.D.N.Y. 1984).

State Action

A necessary element of Fulani's constitutional claims is a finding that the League's decision to exclude Fulani from its presidential primary debates involved state action. Whether ostensibly private conduct can properly be equated with government conduct so as to invite constitutional scrutiny is an issue that Professor Charles L. Black, Jr. once described as "the most important problem in American law." Black, "State Action," Equal Protection, and California's Proposition 14, 81 Harv.L.Rev. 69 (1967). A court's inquiry into the presence of state action must be guided in part by Mr. Justice Clark's observation in Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961) that "[o]nly by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance."

The League, a private, not-for-profit charitable trust, is the sole sponsor of the presidential primary debates at issue

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here. Courts have held that no state action exists when a private organization holds a candidates' debate. In Kay v. New Hampshire Democratic Party, 821 F.2d 31 (1st Cir. 1987), the Court of Appeals for the First Circuit held that no state action existed with respect to a presidential candidates' forum sponsored by the New Hampshire Democratic Party, stating, "in holding the forum, the Party was not engaged in governmental activity." Id. at 33. In an action involving similar facts, a federal district court in New Hampshire held: "[N]o governmental action is involved when the New Hampshire Democratic Party seeks to invite one, three, or twelve candidates to debate the issues of the campaign." Koczak v. Grandmaison, No. 88-30-D, slip op. at 4 (D.N.H. Jan. 22, 1988). But cf. Martin-Trigona v. University of New Hampshire, M. 87-56-D, slip op. (D.N.H. Jan. 5, 1988) (finding state action where state university holds a political debate among Democratic presidential primary candidates).

Fulani seeks to distinguish the New Hampshire cases on the grounds that they involved a political party, not a tax-exempt organization such as the League. Fulani's claim that the League's sponsorship of the presidential debates constitutes state action relies heavily on the Honorable Abraham D. Sofaer's consideration of the League's activities in WPIX v. League of Women Voters, 595 F. Supp. 1484 (S.D.N.Y. 1984). The decision in WPIX, which denied a preliminary injunction against a

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presidential general election debate sponsored by the League in 1984, involved the assertion of First Amendment rights of press access to that debate. The plaintiff, a producer of a syndicated national news program, sought reasonable access to the debate for two television cameras. Prior to the plaintiff's request, the League had announced its decision to require pooled coverage of the debates and had accepted a proposal from the three major networks and Cable News Network to form a pool.

Although the court denied the plaintiff's request for a preliminary injunction on equitable grounds, the court stated, in dictum, that the "plaintiff has raised a substantial possibility that it will be able to prove that the League's decision to deny access to any but the pooled cameras is state action." WPIX, 595 F. Supp. at 1489. The court analyzed the League's role in sponsoring and organizing presidential debates in light of the five factors articulated by the Second Circuit in Jackson v. Statler Foundation, 496 F.2d 623 (2d Cir. 1974), as important to a determination of state action. The Statler state action factors are:

> (1) the degree to which the "private" organization is dependent on governmental aid; (2) the extent and intrusiveness of the governmental regulatory scheme; (3) whether that scheme connotes government approval of the activity or whether the assistance is merely provided to all without such connotation; (4) the extent to which the organization serves a public function or acts as a surrogate for the State; (5) whether the organization has legitimate claims to

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recognition as a "private" organization in associational or other constitutional terms.

Jackson v. Statler Foundation, 496 F.2d at 629. The WPIX court indicated that the following aspects of the League's activities weighed in favor of a finding of state action: (1) the League had consulted with candidates who received substantial public funds for their campaigns, (2) the debates would be broadcast over television in accordance with regulations of the FEC and the Federal Communications Commission, (3) the League had institutionalized its role as the sole organizer of the debates for three successive presidential elections, (4) the League's motivation in conducting the debates was "purely public and educational," and (5) the League had not invoked any private property rights to deny access to the debates. WPIX, 595 F. Supp. at 1488-89.

The League seeks to distinguish on its facts the WPIX court's discussion of whether the debates involve state action. First, the League asserts, and Fulani does not dispute, that there has been no input from any public official concerning the selection of participants in the debates at issue here. Second, the League notes that at least twenty-five presidential primary debates have been sponsored by other entities during this campaign season, none of which has been a government. This fact, the League contends, disproves the WPIX court's suggestion that

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the League's sponsorship of the primary debates is a governmental function.

Apart from these factual distinctions, the WPIX court's discussion of the state action issue was premised almost exclusively on the Statler five factor analysis. The court did not address cases decided after Statler in which the Supreme Court has applied a more restrictive concept of state action than that which would appear to be permissible under what Judge Friendly described as the Second Circuit's "loose characterization" of the doctrine. See Jackson v. Statler Foundation, 496 F.2d at 637 (Friendly, J., dissenting from denial of reconsideration en banc). Examination of the holdings in those cases reveals that the Court has tightened the proof required for a showing of state action.

In San Francisco Arts & Athletics, Inc. v. United States Olympic Committee, 107 S. Ct. 2971 (1987), the Supreme Court held that the decision of the United States Olympic Committee ("USOC") to enforce a trademark in the word "Olympic" did not involve governmental action. The USOC is a private, not-for-profit corporation established under federal law. See 36 U.S.C. § 378 (1988). Its funding is provided, in part, through the exclusive use of the Olympic words and symbols and through direct grants from the Secretary of Commerce. See 36 U.S.C. §§ 380, 384 (1988). The USOC was granted the exclusive use of the

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Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2985-86. Most important, the Court read its prior state action decisions as holding that a "government 'normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the [government].' Blum v. Yaretsky, supra." Id. at 2986.

The facts of the instant case, in the light of the Supreme Court's recent decisions, bar a finding that the League's decision to exclude Fulani from the presidential primary debates involved governmental action. Although the League does receive a federal subsidy both through its tax exemption and separate grants from federal agencies, government subsidization alone will not turn private conduct public. Similarly, since government subsidies are rarely bestowed without accompanying government regulation, which has been held not to transform the actions of the regulated entity into those of the state, the fact that both the FEC and the Code govern aspects of the League's activities does not make it a state actor. Further, while but for its tax exempt status, the League would not be permitted under FEC regulations to sponsor a debate, its decision to exercise its right to hold a debate does not require government input. Cf. San Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2986. Finally, although the League's objective is to promote educational programs that benefit the public, there has been no

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word "Olympic" by act of Congress. See 36 U.S.C. § 380 (1988). At the end of each calendar year, the USOC is required by law to submit a detailed report of its operations to the President and to both Houses of Congress. See 36 U.S.C. § 382a (1988). Despite this bundle of government grants and regulations, the Supreme Court concluded that the USOC's acts could not be attributed to the government.[3]

The Court relied on its past state action decisions that limit the scope of the Statler five factor analysis; namely, (1) that the government may subsidize private entities without assuming constitutional responsibility for their actions, see Blum v. Yaretsky, 457 U.S. 991, 1011 (1982); (2) that the fact that a private entity performs a function that serves the public does not make its acts governmental action, see Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982); and (3) that even extensive regulation by the government does not transform the actions of the regulated entity into those of the government, see Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974). See San

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[3] The Court made clear its concern that private, not-for-profit organizations not be made subject to suits for alleged constitutional violations simply on account of their federally created or nonprofit status: "It need hardly be said that if federally created private corporations were to be viewed as governmental rather than private actors, the consequences would be far-reaching. Apart from subjecting these private entities to suits under the equal protection component of the Due Process Clause of the Fifth Amendment, presumably -- by analogy-- similar types of nonprofit corporations established under state law could be viewed as governmental actors subject to such suits under the Equal Protection Clause of the Fourteenth Amendment." San Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2984 n.23.

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showing that its sponsorship of presidential primary debates constitutes the performance of a "public" function, let alone a function that has been "traditionally the exclusive prerogative of the State." Jackson, 419 U.S. at 353. Therefore, because the League is not a governmental actor, the prohibitions of the Constitution do not apply to its decision to exclude Fulani from its presidential primary debates.[4]

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[4] Even if the League's decision to exclude Fulani from the debates could be deemed to involve state action, there is no merit to her First Amendment claim. In Johnson v. Federal Communications Commission, 829 F.2d 157 (D.C. Cir. 1987), the Court of Appeals for the District of Columbia Circuit considered a challenge by the Citizens Party's Presidential and Vice Presidential candidates to the League's refusal to include them in its 1984 Presidential and Vice Presidential general election debates between the nominees of the Democratic and Republican parties. The court held that the minor-party candidates had no right under either the First Amendment or the Communications Act of 1934 to be included in those debates. Johnson, 829 F.2d at 160. The court cited Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973), as holding that no individual member of the public has a right to broadcast her own particular views on any matter. Id. at 162; see also Martin-Trigona v. University of New Hampshire, M. 87-56-D, slip op. (D.N.H. Jan. 5, 1988) ("The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.") (citing Heffron v. International Soc. for Krishna Consciousness, 452 U.S. 640, 647 (1981).

Fulani's attempt to buttress her First Amendment claim by citing to the Supreme Court's voting rights cases, see, e.g., Anderson v. Celebrezze, 460 U.S. 780 (1983); Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944), is unavailing. See Johnson, 829 F.2d at 164-65 (distinguishing the Supreme Court's voting rights and ballot access cases).

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Fulani's Title VI and Title IX Claims

Fulani claims that the League's criterion restricting participation in the primary debates to Democratic or Republican candidates discriminates against her on the basis of race and sex in violation of Title VI and Title IX.[5] As discussed above, the League receives federal assistance indirectly through its tax exemption and directly through grants from the Department of Energy and the EPA. Therefore, there is jurisdiction over Fulani's private right of action to enforce the proscriptions of Title VI and Title IX. See Guardians Association v. Civil Service Commission of the City of New York, 463 U.S. 582, 594-95 (1983); see also Cannon v. University of Chicago, 441 U.S. 677 (1979).

Title VI requires proof of actual intentional discrimination on the basis of race. See Guardians Association, 463 U.S. at 608 n.1 (Powell, J., concurring in judgment); Lora v. Board of Education, 623 F.2d 248, 250 (2d Cir. 1980). Similarly,

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[5] Section 601 of Title VI, 42 U.S.C. § 2000d (1981), prohibits race discrimination in "any program or activity receiving Federal financial assistance." Section 901(a) of Title IX, 20 U.S.C. § 1681 (1978), prohibits sex discrimination in "any education program or activity receiving Federal financial assistance."

In view of the holding above that the League's decision not to invite Fulani to participate in the primary debates does not involve state action, her claim of race and sex discrimination in violation of the Fourteenth Amendment will not be considered.

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Title IX requires that a plaintiff show intentional sex discrimination. Cannon v. University of Chicago, 648 F.2d 1104, 1109 (7th Cir.), cert. denied, 454 U.S. 1128 (1981); Nagel v. Avon Board of Education, 575 F. Supp. 105, 109 (D.Conn. 1983). Because the record here is wholly devoid of any showing that the League has intentionally discriminated against Fulani on the basis of her race or sex, it would appear that her Title VI and Title IX claims must fall. However, in Guardians Association, a majority of the Court held that proof of disparate impact would be sufficient to establish liability when the suit is brought to enforce regulations adopted pursuant to Title VI. Guardians Association, 463 U.S. at 608 n.1 (Powell, J., concurring in judgment); see Alexander v. Choate, 469 U.S. 287, 293 (1985) (explaining the holdings in Guardians Association). Assuming, without deciding, that a similar showing is sufficient for the purposes of regulations adopted pursuant to Title IX, the court will consider whether there is merit to Fulani's claim of disparate impact.

The Department of Energy has promulgated a nondiscrimination regulation that provides, inter alia,

> A recipient [of federal assistance] . . . may not directly or through contractual or other arrangements utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex . . . or have the effect of defeating or substantially impairing accomplishment of the program

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> objectives with respect to individuals of a particular race, color, national origin, or sex . . . .

10 C.F.R. § 1040.13(c) (1987). Fulani contends that she has been excluded from the League's presidential primary debates on the basis of a selection criterion that is neutral on its face but severely discriminatory in effect. The criterion is the distinction between major party candidates and non-major party candidates. Neither the Republican or the Democratic party has ever nominated an African-American or a woman for the presidency. By comparison, Fulani asserts, seven African-Americans have run for President as independents or minor party candidates. On the basis of these assertions, Fulani claims that the League's use of a major party affiliation as a criterion for participation in its primary debates has an adverse disparate impact on blacks and women.

At this stage of the litigation, Fulani has not demonstrated the likelihood that she will be able to prevail on her claim of disparate impact. Although she has presented undocumented historical data listing black and female presidential and vice-presidential candidates from minor parties, she has not identified the race and sex of the 140 current non-major party presidential candidates or the race and sex of the 141 current candidates for the Republican or Democratic nomination. That neither major party has ever nominated a black or a woman for the presidency is not proof that the League's

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criterion for its primary debates has a disproportionate impact on blacks or women.[6]

Moreover, as the Supreme Court concluded in Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 274-75 (1979), disproportionate impact fails to evince an improper purpose when a believable, historically accepted and nondiscriminatory explanation is available. See also Bryan v. Koch, 492 F. Supp. 212, 220-21 (S.D.N.Y.), aff'd, 627 F.2d 612 (2d Cir. 1980). The League has advanced such a reason for limiting the debates to participants who are candidates for the Republican or Democratic nomination: the purpose of the primary debates is to educate citizens who will vote in a particular primary about candidates who are running against each other in that primary. Fulani has not established that the League's explanation is a pretext for race or sex discrimination. At present, the record shows that one non-major party candidate, Fulani, is black and female, and that one major party candidate, Jesse Jackson, is black and male. Therefore, there is no basis for the issuance of a preliminary injunction on Fulani's Title VI and Title IX claims.

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[6] See, e.g., Butts v. National Collegiate Athletic Association, 600 F. Supp. 73, 75 (E.D. Pa.) (plaintiff showed that a rule requiring that each year of pre-collegiate basketball competition after age 20 be counted against collegiate eligibility had a disparate impact on blacks because the actual pool of applicants for college athletic programs contained a much higher percentage of blacks over the age of 20 than whites of that age), aff'd, 751 F.2d 609 (3d Cir. 1984).

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Fulani's Section 501(c)(3) Claim

The government defendants contend that Fulani does not have standing to maintain an action to force the government to revoke the League's tax exemption on the ground that the League allegedly has not complied with the statutory conditions for retaining its exemption. In response, Fulani relies on two decisions by the Honorable Robert L. Carter in Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471 (S.D.N.Y. 1982) (first motion to dismiss), 603 F. Supp. 970 (S.D.N.Y. 1985) (renewed motion to dismiss), to support her claim to standing. Although the question of Fulani's standing raises difficult issues, it need not detain the court on this expedited application for a preliminary injunction. Proceeding directly to the merits, Fulani's claim that the League has conducted its primary debates in a partisan manner has no support in law or fact.

Section 501(c)(3) of the Code provides that a tax-exempt organization may not "participate in or intervene in (including the publishing or distributing of statements), any political campaigns on behalf of (or in opposition to) any candidate for public office." I.R.C. § 501(c)(3) (1986), as amended by the Revenue Act of 1987, P.L. 100-203. In Revenue Ruling 78-248, 1978-1 C.B. 154, the Internal Revenue Service gave

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some guidance as to what kinds of voter education activities a 501(c)(3) tax-exempt organization might engage in without violating the Code's ban on political activity. The Revenue Ruling states that "certain 'voter education' activities conducted in a non-partisan manner may not constitute prohibited political activity" but that others might. The ruling goes on to give four examples of voter education activities that would be considered partisan, none of which involve public debates.

In support of her claim that the League's primary selection criteria are biased against minor party candidates, Fulani points to the fact that the FEC has interpreted the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq. (1982), to mean that presidential candidates from minor parties may receive federal matching funds in the same way as candidates from major parties. Fulani asserts that her qualification by the FEC for primary matching funds under the Presidential Primary Matching Payment Account Act establishes that she is in fact a primary candidate. As a primary candidate who has qualified for primary matching funds, Fulani now seeks to participate on an equal footing with all other party candidates, irrespective of party affiliation.

The League and the federal defendants join in arguing that Fulani's claim of a right to participate in a debate among candidates of a single party (of which she is not a member) who

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are seeking that party's nomination (which she is not seeking) is groundless on its face. The FEC regulations governing nonpartisan candidate debates under the Federal Election Campaign Act lend support for their position. The FEC regulations provide, in part:

> (a) Staging organization. (1) 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 may stage nonpartisan candidate debates in accordance with 11 CFR 110.3(b) and 114.4(e) . . .
>
> (b) Debate structure. The structure of debates staged in accordance with 11 CFR 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.

11 C.F.R. § 110.13 (1987). In its Explanation and Justification for its regulations, the FEC stated:

> For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party . . . .

44 Fed.Reg. 76,734-35 (Dec. 27, 1979). Thus, the FEC, which is the governmental entity charged with enforcing the laws relating

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to federal election campaigns,[7] has expressly determined that a primary debate is nonpartisan under the Federal Election Campaign Act even if participation is restricted to candidates seeking the nomination of one party.

The FEC has determined that the League has no obligation to hold a primary debate for every party and that its obligation to be nonpartisan extends only to candidates running against each other for a particular party's nomination. The League is not responsible for the predominance of the two major parties in American politics nor for the existence of a primary season during which the major parties nominate their candidates for the presidency. Although the League obviously operates within the parameters of the present system, the League cannot be held responsible for the disadvantage at which the system places minor party candidates. Moreover, while the League's primary debates may, in the public's eye, implicitly endorse the primacy of the two major parties, the League's influence in this regard is insignificant in comparison to the reinforcement given to the major party system each day by the morning newspapers and evening news programs. In sum, there is no basis on which the court

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[7] The Federal Election Campaign Act, 2 U.S.C. § 437c(b)(1) (1985), grants the FEC exclusive jurisdiction with respect to the civil enforcement of the provisions of the statute. Section 437h provides for review of an FEC decision by a district court. Although Fulani has circumvented the FEC's exclusive jurisdiction in this action against the federal defendants, the law requires that any direct challenge to the League's compliance with the FEC's regulations be filed in the first instance with the FEC. 2 U.S.C. § 437c(b)(1) (1985).

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could find that the League's practice of inviting only Democratic candidates to the Democratic primary debates and only Republican candidates to the Republican primary debates is a partisan act in violation of the League's tax-exempt status under the Code.

Fulani's Contract Claim

Fulani's contract claim against the League organizations is based upon Article II of the League's Trust Agreement which prohibits the League from engaging in partisan activity. In view of today's holding that the League's sponsorship of the presidential primary debates is not a partisan activity, Fulani's contract claim is without merit.

Upon the findings and conclusions set forth above, Fulani has failed to establish either a likelihood of success on the merits or sufficiently serious questions going to the merits. Therefore, the motion for a preliminary injunction is denied. The complaint will be dismissed as against the federal defendants, and counts three and four of the complaint will be dismissed as against the League organizations.

IT IS SO ORDERED.

New York, N.Y.
April 12, 1988

ROBERT W. SWEET
U.S.D.J.

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NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

MUR No. Year 19 88

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

DR. LENORA B. FULANI and
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS

Plaintiffs,

-against-

LEAGUE OF WOMEN VOTERS EDUCATION FUND
(LWVEF) and NANCY NEUMAN, as
Chairperson

EXHIBITS TO COMPLAINT

Arthur R. Block
Attorney for Plaintiffs

Office and Post Office Address, Telephone
250 West 57th Street
Suite 317
New York, NY 10019
(212) 956-5550

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

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Exhibit 8

Your reference to the above F[illegible]ber on all documents and correspondenc[illegible]ld be appreciated.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

LENORA FULANI, RACHEL HUMPRHEY, a minor by her natural mother and legal guardian, Barbara Sands, and BARBARA SANDS,

Plaintiffs,

-against-

ROBERT WAGNER, JR., as President of the Board of Education of the City School District of the City of New York, NATHAN QUINONES, as Chancellor of the City of New York, and BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Defendants.

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STIPULATION OF SETTLEMENT AND DISCONTINUANCE

86 CV 3705 (J.R.B.)

WHEREAS, plaintiffs commenced this action by filing a complaint on October 31, 1986, alleging that defendants had violated their rights under the First and Fourteenth Amendments to the United Stated Constitution, Title VI of the 1964 Civil Rights Act, and Title IX of the Education Amendments of 1972, by conducting a mock election in the New York City public school system on October 30, 1986, in which defendants informed students that Mario Cuomo, Andrew O'Rourke and Dennis Dillon were candidates for Governor of New York State and gave students a mock election ballot with the names of those candidates, but defendants did not inform students that plaintiff DR. LENORA B. FULANI, an Afro-American woman, was a candidate for Governor and did not include the name of FULANI on the mock election ballot;

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WHEREAS, defendants have denied any and all liability arising out of plaintiffs' allegations; and

WHEREAS, the parties agree that curriculum materials intended to teach children about how the electoral process works should be accurate, nonpartisan, and free of racial, ethnic or gender bias; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault of liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties by their undersigned attorneys as follows:

1. Plaintiffs' motion dated September 3, 1987 for an Order that Hon. John R. Bartels proceed no further in this action and that another judge be assigned to hear this proceeding is hereby withdrawn.

2. The above-referenced action is hereby dismissed, without prejudice, and without costs, expenses, or any fees payable by any party; provided, however, that if defendants comply with the terms of this Stipulation, plaintiffs shall not again commence an action in this Court concerning defendants' conduct of a "mock election" on or about October 30, 1986. "Mock election" is defined herein as school activities in which students are given information about actual federal, state, or local elections, and in which students are asked to evaluate the merits of candidates running for office. Examples of mock elections previously conducted by defendants are the 1984 Presidential mock election, the 1985 Mayoral mock election, and the 1986 mock election for Governor and United States Senator.

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3. Defendants hereby agree that any and all future mock election curriculum materials and activities in the City School District of the City of New York and its constituent community school districts shall adhere to the requirements set forth below:

a. The mock election curriculum materials (materials prepared for use by teachers and staff, and materials for direct use by students) shall explain what a "minor" political party is under New York law, how a "minor" party can become a "major" party, and how a "minor" party can obtain a place on the ballot in a general election, The precise length, form, and content of the discussion about minor parties shall be in the discretion of the Board.

b. The curriculum materials will set forth the name of each major party and minor party that has a place on the actual ballot and the name of each candidate whose name will appear on the actual ballot.

c. Whenever voting is conducted as part of the mock election, the paper ballot, voting machines, or other mechanism used for casting of votes shall afford students an equal opportunity to cast a vote for any of the candidates whose name will appear on the actual election ballot, or to abstain from voting for any of the candidates.

d. In the event the names of the candidates that will appear on the actual election ballot has not been finally determined at the time the mock election curriculum materials are prepared and distributed, then defendants shall make reasonable efforts to update the curriculum materials when any such ballot access issue is determined.

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4. Nothing contained herein shall be deemed to be an admission by any of the defendants that they have in any way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City government. This stipulation shall not be admissible in nor is it related to any other pending litigation or settlement negotiations to which plaintiffs or defendants are parties.

5. Plaintiffs withdraw their prayer for relief seeking monetary damages against defendants and their prayer for an order directing defendants to circulate a notice to students informing them, inter alia, that plaintiff FULANI had been excluded from the 1986 mock election.

6. Any violation of this Stipulation shall be the basis for the maintenance of a separate action in this Court.

7. This Stipulation contains all the terms and conditions agreed upon by the parties hereto and no oral agreement, entered into any time, or any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter

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of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
October 16, 1987

ARTHUR R. BLOCK
Attorney for Plaintiffs
475 Fifth Avenue
New York, New York 10017
(212) 685-8360

BY: Arthur R. Block
ARTHUR R. BLOCK

PETER L. ZIMROTH
Corporate Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Rm 6-C-44
New York, New York 10007
(212) 566-1248

BY: Anne Carson
ANNE CARSON
Assistant Corporation Counsel

8804071065

NOTICE OF ENTRY

-Please take notice that the within is a *(certified)*
copy of a
y entered in the office of the clerk of the within
ned court on 19

ed,

Yours, etc.,

orney for

Office and Post Office Address

orney(s) for

NOTICE OF SETTLEMENT

—Please take notice that an order

which the within is a true copy will be presented
settlement to the Hon.

of the judges of the within named Court, at

19

M.

ed,

Yours, etc.,

orney for

Office and Post Office Address

orney(s) for

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MUR No. Year 19 88

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

DR. LENORA B. FULANI and
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS

Plaintiffs,

-against-

LEAGUE OF WOMEN VOTERS EDUCATION FUND
(LWVEF) and NANCY NEUMAN, as
Chairperson

EXHIBITS TO COMPLAINT

Arthur R. Block
Attorney for Plaintiffs

Office and Post Office Address, Telephone
250 West 57th Street
Suite 317
New York, NY 10019
(212) 956-5550

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 3, 1988

Arthur R. Block, Esquire
Lenora B. Fulani's Committee For
Fair Elections
250 West 57th Street
Suite 317
New York, NY 10019

RE: MUR 2601

Dear Mr. Block:

This letter acknowledges receipt of your complaint, received on April 26, 1988, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the League Of Women Voters Education Fund. The respondents 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 2601. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

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Thm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 3, 1988

Nancy Neuman, Chairperson
League Of Women Voters
Education Fund
1730 M Street, NW
Washington, DC 20036

RE: MUR 2601
League Of Women Voters
Educational Fund

Dear Ms. Neuman:

The Federal Election Commission received a complaint which alleges that the League Of Women Voters Educational Fund 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 2601. 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 League Of Women Voters Educational Fund 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 Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 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 Anne Weissenborn, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 MAY -5 PM 4:37

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 5, 1988

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2601

On April 26, 1988, Dr. Lenora B. Fulani and Lenora B. Fulani's Committee For Fair Elections filed a complaint against the League of Women Voters Education Fund ("LWVEF") and Nancy Neuman, as chairperson, alleging that the criteria used by the LWVEF to select participants in that organization's primary season debates for presidential candidates are partisan in violation of 11 C.F.R. § 110.13 and discriminatory on the basis of sex and race because they assertedly will never permit an independent candidate to be selected. Complainants argue that the criteria used constitute "partisan bias in favor of major party candidates and against minor party candidates." Complainants have also asked that the Commission set May 11, 1988 as the last day on which the respondents in this matter may submit an answer to the complaint, and that the Commission authorize the filing of a suit for a mandatory injunction compelling the inclusion of Dr. Fulani in the debate of Democratic Party candidated to be sponsored by the LWVEF in California on June 5, 1988. The complainants also ask that the Commission promptly begin a rulemaking proceeding to review its regulations governing candidate debates. 1/

According to the complaint, the LMVEF assessed the significance of 15 out of the 16 presidential candidates found eligible by the Commission to receive primary matching funds, and invited 14 to take part in the primary debates. The LWVEF

1/ Further, the complaint requests that the Commission "immediately undertake a survey to determine the sex, race and national origin of all declared 1988 Presidential candidates" and conduct an analysis of "the impact of the League criteria on the basis of sex, race and national origin."

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allegedly refused to assess the significance of the Fulani candidacy only because Dr. Fulani is not seeking the nomination of the Republican or Democratic parties. The complainants state that the LWVEF's decision has used the Commission's regulations covering candidate debates at 11 C.F.R. § 110.13 as justification for this decision.

In March, 1988, complainants filed a motion for a temporary restraining order and preliminary injunction with the United States District Court for the Southern District of New York seeking to restrain the LWVEF and the League of Women Voters of the City of New York from conducting any presidential primary debate unless Dr. Fulani were included on an equal basis, and against the Secretary of the Treasury and the Commissioner of the Internal Revenue Service to require them to take action to "cause the League to conduct the debates in a nonpartisan manner or to revoke the League's tax exempt status. On April 12, 1988, the complaint was dismissed, the court holding that the LWVEF's decision did not involve state action, that there was no basis for the issuance of a preliminary injunction under Title IV of the 1964 Civil Rights Act or Title IX of the Education Amendments of 1972, and "there is no basis on which the court could find that the League's practice of inviting only Democratic candidates to the Democratic primary debates and only Republican candidates to the Republican primary debates is a partisan act in violation of the League's tax-exempt status under the [Internal Revenue] Code." The court cited the Federal Election Commission's regulations governing nonpartisan candidate debates and the Explanation and Justification in support of those regulations as a basis for the last of these decisions.

The complaint in the present matter acknowledges that the Explanation and Justification for 11 C.F.R §110.13(b) permits a staging organization to limit participation to candidates seeking the nomination of one party and does not require such a organization to stage a debate for candidates seeking the nomination of any other party. Complainants argue, however, that this language was based upon "the model of the multi-candidate major party nominating process" and "is not at all responsive to the independent or minor party process in which there frequently are not multiple candidates." Complaintns argue further that such an approach is "extremely partisan" if it permit the automatic exclusion of independent candidates and minor party candidates.

RESPONSE TIME

2 U.S.C. § 437g(a)(1) provides that before the Commission may conduct any vote on a complaint, except a vote to dismiss, the respondents must be given a period of fifteen days to demonstrate in writing that no action should be taken on the complaint. Because of the need for additional consideration of

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not now prepared to recommend that the Commission find no reason to believe that a violation has occurred. Therefore, we will wait until the fifteen day response period has elapsed, or a response has been received, before submitting a complete analysis of the allegations in this matter and appropriate recommendations.

Complainants urge the Commission to begin the fifteen day period for receipt of a response to the complaint on the date the complainants delivered a copy of the complaint to the respondents, i.e., on April 25 or 26, 1988. The Act provides for a fifteen day response period beginning upon receipt of notification of the complaint from the Commission. 2 U.S.C. § 327g(a)(1). This Office does not find that the present situation requires an exception to this statutory provision. The respondents' response time will end on May 19 or 20 or two weeks before June 5, thus providing sufficient time for Commission consideration of the matter before the date of the LWVEF-sponsored debate in California. Therefore this Office does not recommend that the Commission modify the response time allotted respondents in this matter.

INJUNCTIVE RELIEF

The complainants seek injunctive relief. The Commission is enpowered to initiate such a civil action if it is unable to correct or prevent a violation of the Act. 2 U.S.C. § 437d(a)(6) and § 437g(a)(6). While the Commission must normally wait fifteen days before taking action on a complaint, it has considered the possiblity of seeking injunctive relief prior to receipt of such a response if

1) there is a substantial likelihood that the complaint sets forth a violation of the Act;

2) failure of the Commission to act expeditiously will result in irreparable harm to a party affected by the potential violation;

3) expeditious action will not result in undue harm or prejudice to the interests of other persons; and

4) the public interest would be served by expeditious handling of the matter.

(See First General Counsel's Report in MURS 1167, 1168, and 1170 [Nashua Telegraph, 1980] and in MUR 1826 [Pro-Life Action League, 1984]; But see In re Carter-Mondale Reelection Committee, Inc., 642 F.2d 538 (D.C. Cir. 1980; Common Cause v. Schmitt, 512 F.Supp. 489 (D.D.C. 1980), aff'd by an equally divided court, 455 U.S. 129 (1982); Durkin for U.S. Senate v. FEC, 2 Fed. Elec. Camp. Fin. Guide (CCH) para. 9147 1(D.N.H. 1980).

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Although this Office is not prepared at this time to make definitive recommendations as to the merits of the complaint, serious questions arise as to whether the complaint sets forth a violation of the Act in light of the Commission's regulations covering candidate debates and the Explanation and Justification for those regulations. In addition certain facts need to be ascertained before it can be determined whether the complainants will suffer irreparable damage if an injunction against the LWVEF's June 5 debate in California for Democratic Party candidates is not obtained. For example, in light of the LWVEF's earlier cancellations of debates planned in Tennessee and of the debates of Republican Party candidates in New York and California, it should not be presumed that the June 5 debate is going to take place. Nor is information in hand regarding the candidates who will take part in such a debate. Thus, this Office cannot at this time be certain that the complainants face actual harm. Upon receipt of the response from the LWVEF, the situation will be reassessed.

RULEMAKING

As noted above, the complaint also contains a request for rulemaking. However, in view of the requirement of 2 U.S.C. § 437g(a)(12) that complaints and any investigation thereof remain confidential, it would be improper for the Commission to treat the request in the complaint as a petition for rulemaking because of the requirement that such petitions be placed on the public record immediately in order to faciliate public comment. Therefore this Office proposes to include in a letter to complainants a statement regarding the Commission's inability to consider its request in the context of the complaint and an explanation of the proper procedure for submitting a petition for rulemaking.

RECOMMENDATIONS

1. Deny complainants' request to alter the time for receipt of a response to the complaint in this matter.

2. Deny complainants' request that the Commission seek injunctive action at this time.

2. Deny complainants' request that the complaint be considered a proper petition for rulemaking.

4. Approve the attached letters advising the complainants and respondents of the Commission's decisions.

Attachments
Letters (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	
League of Women Voters Education Fund ("LWVEF") and Nancy Neuman, as Chairperson	)	MUR 2601

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 10, 1988, the Commission decided by a vote of 6-0 to take the following actions in MUR 2601:

1. Deny complainants' request to alter the time for receipt of a response to the complaint in this matter, as recommended in the General Counsel's memorandum to the Commission dated May 5, 1988.

2. Deny complainants' request that the Commission seek injunctive action at this time as recommended in the General Counsel's memorandum to the Commission dated May 5, 1988.

3. Deny complainants' request that the complaint be considered a proper petition for rulemaking, as recommended in the General Counsel's memorandum to the Commission dated May 5, 1988.

(Continued)

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4. Approve the letters advising the complainants and respondents of the Commission's decisions, as recommended in the General Counsel's memorandum to the Commission dated May 5, 1988.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

5-10-88
Date

Mary W. Dove
for Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Thurs.,	5-5-88,	4:37
Circulated on 48 hour tally basis:	Fri.,	5-6-88,	12:00
Deadline for vote:	Tues.,	5-10-88,	4:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Arthur Block, Esquire
250 West 57th Street
Suite 317
New York, New York 10019

MUR 2601 and Request for Rulemaking

Dear Mr. Block:

On April 26, 1988, the Federal Election Commission received the complaint which you have filed on behalf of Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections against the League of Women Voters Education Fund ("LWVEF") and Nancy Neuman, as chairperson.

The complaint seeks, inter alia, injunctive relief to ensure that the LWVEF includes Dr. Fulani in the presidential primary debate to be held in California on June 5, 1988. The Commission has determined that at this time there is insufficient evidence to warrant the Commission's seeking such relief. Upon receipt of the LWVEF's response to the complaint the situation will be reassessed. That response will be due fifteen days following receipt of the complaint as forwarded to respondents by the Commission.

The complaint also requests that the Commission review its regulations concerning candidate debates "to guarantee fair and nonpartisan treatment of independent and minor party candidates." Pursuant to 5 U.S.C. § 553(e) you may petition the Commission for the issuance, amendment or repeal of a rule. Please be advised, however, that because petitions for rulemaking are placed on the public record shortly after receipt in order to faciliate public comment, the Commission cannot treat a request for reconsideration of its regulations contained in a complaint as a petition for rulemaking in light of the requirement of 2 U.S.C. § 437g(a)(12) that a complaint and any investigation thereof remain confidential.

Should you wish to request that the Commission initiate a rulemaking, the procedure is to file a separate document explaining the nature of the revisions you seek and identifying the appropriate portion or portions of the Commission's

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regulations. Such petition must not contain material required to be kept confidential. You should direct the petition to the Office of the General Counsel.

As noted above, the Commission's procedure is to make rulemaking petitions available for public inspection. In addition, upon Commission approval Notices of Availability are published in the Federal Register to obtain comments from interested persons as to whether a rulemaking should be initiated.

If you have any questions concerning the Commission's enforcement procedures, please contact Anne A. Weissenborn, the attorney assigned to MUR 2601, at (202) 375-5690. If you have any questions regarding the Commission's rulemaking procedures, please contact Rosemary C. Smith, Acting Assistant General Counsel for Regulations, at the same number.

Sincerely,

Lawrence M Noble (LP)

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Nancy Neuman, Chairperson
League of Women Voters
Education Fund
1730 M Street, N.W.
Washington, D.C. 20036

MUR 2601

Dear Ms. Neuman:

The Federal Election Commission notified you on May 3, 1988 of a complaint alleging that the League of Women Voters Education Fund ("LWVEF") and you, as chairperson, have violated the Commission's regulations governing candidate debates. A copy of the complaint was forwarded to you at that time.

The complainant seeks injunctive relief to ensure that the LWVEF includes Dr. Lenora B. Fulani in the debate of Democratic Party candidates to be held in California on June 5, 1988. Please be advised that the Commission is not commencing any action for injunctive relief at this time.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble (LP)

Lawrence M. Noble
General Counsel

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GCC#9321

ARNOLD & PORTER
1200 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 872-6700
CABLE: "ARFOPO"
TELECOPIER: (202) 872-6720
TELEX: 89-2733

1700 LINCOLN STREET
DENVER, COLORADO 80203
(303) 863-1000

900 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 593-2772

BROOKSLEY BORN
DIRECT LINE: (202) 872-6832

May 20, 1988

BY HAND

RECEIVED
FEDERAL ELECTION COMMISSION
88 MAY 20 PM 3:41

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR No. 2601

Dear Mr. Noble:

I hereby submit on behalf of the League of Women Voters Education Fund and Nancy Neuman, the Chair of its Board of Trustees, three copies of a response to a complaint filed with the Federal Election Commission by Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections, including the Verified Statements of Grant P. Thompson, Esquire, Executive Director of the League, Nancy Neuman, and Victoria Harian, Presidential Debates Director of the League. Also enclosed is a designation of me as counsel for the League of Women Voters Education Fund and Nancy Neuman.

Sincerely yours,

Brooksley Born

Brooksley Born

Enclosure

cc (with enclosure): Ms. Lois G. Lerner
Ms. Anne Weissenborn

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE COMPLAINT OF DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND and NANCY NEUMAN	MUR No. 2601

RESPONSE OF THE LEAGUE OF WOMEN VOTERS
EDUCATION FUND AND NANCY NEUMAN

The League of Women Voters Education Fund ("the League") and Nancy Neuman, the Chair of its Board of Trustees, respectfully submit this memorandum in response to the complaint of Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections.[1]

PRELIMINARY STATEMENT

The complainants ask the Federal Election Commission ("the Commission") to consider an issue that the Commission, the Secretary of the Treasury, the Commissioner of Internal Revenue and the U.S. District Court for the Southern District of New York have all

[1] The Verified Statements of Grant P. Thompson, Esquire, Executive Director of the League, dated March 27, 1988 ("March 27, 1988 Thompson Statement") and May 16, 1988; Nancy Neuman; and Victoria Harian, Presidential Debates Director of the League ("Harian Statement"), accompany this memorandum.

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expressly resolved against them: whether the League may sponsor a Democratic Party Presidential primary debate without inviting the participation of minor party and independent candidates such as Dr. Fulani. They maintain that the League's failure to invite Dr. Fulani to participate in such a debate is partisan even though Dr. Fulani is admittedly not seeking the nomination of the Democratic Party and is not running in any primary election of the Democratic Party. Since Dr. Fulani is not a candidate for the Democratic Party's nomination, the League's refusal to include her in a debate of candidates for that nomination is clearly not partisan.

The Commission's debate regulations and its interpretations of the regulations clearly authorize Dr. Fulani's exclusion as nonpartisan. Furthermore, the U.S. District Court for the Southern District of New York in a suit brought by the complainants against the League ruled on April 12, 1988 that the League's exclusion of Dr. Fulani is nonpartisan. In that suit both the Secretary of the Treasury and the Commissioner of Internal Revenue argued that the League's actions were nonpartisan. It is clear that the Commission should take no action on the complaint.

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STATEMENT OF FACTS

A. The League's Debates

The League, a not-for-profit charitable trust exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), is the sole sponsor of a series of Presidential primary debates that the complaint alleges violate 11 C.F.R. § 110.13 (1987). The League held Democratic Presidential primary debates on February 13, 1988, and on April 16, 1988, and a Republican Presidential primary debate on February 14, 1988. On June 5, 1988, the League will sponsor another Democratic Presidential primary debate in Torrance, California.

The purpose of the League's Presidential primary debates is to educate the nation's electorate in a nonpartisan manner about the issues in the Democratic and Republican primary election campaigns and about the positions of the significant candidates running in those elections and to stimulate increased voter interest and participation in the electoral process.[2] Separate Democratic and Republican primary debates are scheduled in order to permit the voters to hear debate among the candidates who are competing against one another in the

[2] March 27, 1988 Thompson Statement ¶ 6. For a full discussion of the League's reasons for choosing this format for its primary debates, see id. ¶¶ 6-12.

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primary elections in order to assist the voters in making an informed choice among them.[3] The League has determined that, while there is substantial voter interest in the primary elections of the Democratic and Republican parties, there currently is not sufficient voter interest in any minor party's primaries to justify holding debates among candidates for the nomination of a minor party.[4] In the League's experience no educational purpose is served in presenting debates in which the public is not interested.

The League invited candidates to participate in its Democratic and Republican Presidential primary election debates after applying participant selection criteria adopted by the Board of Trustees of the League on April 2, 1987.[5] The basic criteria the League adopted for selection of participants in the Presidential primary debates are as follows:

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[3] Id. ¶¶ 6, 9. The League's election debates have never included persons who are not candidates for a particular election. Id. ¶ 9.

[4] March 27, 1988 Thompson Statement ¶ 8.

[5] The 1988 League of Women Voters Education Fund Democratic and Republican Presidential Primary Debates Participant Selection Criteria are attached to the March 27, 1988 Thompson Statement as Attachments A and B, respectively. They are the same as the League's selection criteria in 1984 which the Commission upheld as nonpartisan in In re Complaint of the LaRouche Campaign Against the League of Women Voters Education Fund, MUR 1659 (May 22, 1984) (final Comm. det.)

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1. The candidate must have made a public announcement of his or her intention to run for the Democratic (or Republican) Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Democratic (or Republican) Party's nomination for President.[6]

Under the first criterion, only Democratic candidates have been invited to participate in the Democratic primary debates, and only Republican candidates have been invited to participate in the Republican primary debates.

Complainant Lenora B. Fulani is a declared independent and minor-party candidate for the Presidency. In December 1987 Dr. Fulani's representatives requested that the League invite her participation in its Presidential primary debates. The request was denied because Dr. Fulani is admittedly not a publicly announced candidate for <u>either</u> the Democratic or Republican nomination for President and therefore does not meet a prerequisite for invitation to participate in the League's Presidential primary debates.[7] In making this decision, the League did not

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[6] March 27, 1988 Thompson Statement ¶ 14, Attachments A and B.

[7] Because Dr. Fulani did not meet this prerequisite for an invitation, the League did not consider whether she

[Footnote continued on next page]

consider Dr. Fulani's race or sex,[8] nor did the League intend to harm her candidacy or to advance the candidacy of any other person.[9]

B. The Federal Court Suit

On March 14, 1988, the complainants filed a complaint in the U.S. District Court for the Southern District of New York against the League, the League of Women Voters of the United States, and the League of Women Voters of the City of New York Education Fund,

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[Footnote continued from previous page]
met any of its other criteria, including whether she is a significant candidate. March 27, 1988 Thompson Statement ¶ 15.

[8] March 27, 1988 Thompson Statement ¶ 16. The League has invited Jesse Jackson, a declared candidate for the Democratic nomination for President who is black, to participate in the 1988 Democratic Presidential primary debates as he did in 1984. Harian Statement ¶ 9. In 1984 Representative Geraldine Ferraro, the Democratic Party's nominee for Vice President, participated in the League's Vice Presidential general election debate. Harian Statement ¶ 10.

[9] The League plans to hold three general election debates among Presidential candidates in the fall of 1988 and plans to provide an opportunity for significant independent and minor-party candidates to participate in two of these debates if they meet the League's selection criteria. March 27, 1988 Thompson statement ¶¶ 26-27. The League has informed Dr. Fulani's representatives that, if she is interested in participating in the Presidential general election debates of the League, the League will consider an application made on her behalf at an appropriate time. March 27, 1988 Thompson Statement ¶ 17.

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Inc.[10] The complainants sought to enjoin the League organizations from conducting any Presidential primary debate to which they did not invite Dr. Fulani to participate. The complainants also sought to require the Secretary of the Treasury and the Commissioner of Internal Revenue to take action to cause the League to include Dr. Fulani in its debates or, in the alternative, to revoke the League's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

The complainants alleged that the League's exclusion of Dr. Fulani from its Presidential primary debates violated her rights under the First Amendment, constituted a partisan act in violation of Internal Revenue Code section 501(c)(3), was a discriminatory act on the basis of race and sex in violation of the Fourteenth Amendment and the League's obligations under Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1686, and regulations thereunder, and breached an implied contract to act in a nonpartisan manner. The complaint also alleged that the failure of the Secretary and the Commissioner to revoke the tax exemption of the League violated both their

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[10] Fulani v. League of Women Voters Education Fund, No. 88 Civ. 1441 (S.D.N.Y. Apr. 12, 1988) ("Sweet Opinion"), a copy of which is attached as Exhibit 2.

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duties under the Code and complainants' rights to freedom of speech and association and to equal protection of the laws under the First and Fifth Amendments.

On April 12, 1988, the court denied the complainants' motion for preliminary injunction and, based on its ruling that the League's decision to exclude Dr. Fulani from its Presidential primary debates did not involve state action, dismissed all the constitutional claims. Citing with approval the Commission's debate regulations and its Explanation and Justification, the court also rejected the complainants' claims that the League's exclusion of Dr. Fulani from the Presidential primary debates was a partisan act, dismissed all claims against the Secretary and Commissioner and dismissed the contract claim against the League organizations.

Less than two weeks after the federal district court rendered its decision denying preliminary relief and dismissing most of their claims, Dr. Fulani and her campaign committee filed the instant complaint against the League before the Commission asserting that the League's debate selection criteria violate the Commission's debate regulations and seeking, inter alia,

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the same injunctive relief denied them by the federal court.[11]

ARGUMENT

THE COMMISSION SHOULD TAKE NO ACTION ON THE COMPLAINT

I. THE LEAGUE HAS NOT VIOLATED THE COMMISSION'S DEBATE REGULATIONS

A. The Commission Has Expressly Determined That a Primary Debate Is Nonpartisan Under Its Debate Regulations Even If Participation Is Restricted to Candidates Seeking the Nomination of One Party

The Commission has explicitly determined that the sponsor of a major-party primary debate can limit participation in the debate to candidates for the nomination of the major party and does not act in a partisan manner by excluding minor-party or independent candidates.

The Commission's debate regulations provide that the structure of a debate is left to the discretion of its sponsor as long as it is nonpartisan:

> (a) Staging organizations. (1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and a nonprofit organization which is exempt from federal taxation

[11] By letter dated May 13, 1988, the Commission informed the League that it would not grant at this time the complainants' request that the Commission file a suit for mandatory injunctive relief compelling the inclusion of Dr. Fulani in the League's June 5, 1988, primary debate in California.

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> under 26 U.S.C. 501(c)(4) and which does not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 CFR 110.3(b) and 114.4(e). . . .
>
> (b) Debates structure. The structure of debates staged in accordance with 11 CFR 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.

11 C.F.R. § 110.13 (1987) (emphasis added).[12]

Furthermore, in its Explanation and Justification for the regulations, the Commission explicitly

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[12] The history of this regulation confirms that the intention behind it was to accord the debate sponsor maximum discretion in determining selection criteria. The precursor to 11 C.F.R. § 110.13 contained detailed standards for candidate selection. See 44 Fed. Reg. 39,348 (July 5, 1979). When this proposed regulation was transmitted to Congress for approval pursuant to 2 U.S.C. § 438(d), the regulation was disapproved by the Senate. Cong. Rec. S12,821 (September 18, 1979). In a statement to the Senate, Senator Claiborne Pell, who submitted the resolution of disapproval, declared in part:

> . . . I feel that any regulation which could be interpreted as being burdensome to organizations which are likely to sponsor candidate debates, or which could in any way impede the heretofore successful debate procedure that has evolved through direct arrangements made between sponsors and candidates should not be allowed to take effect.

Id.

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determined that primary debates to which only Republicans or only Democrats are invited are not partisan:

> Under subsection (b) the precise structure of candidate debates 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.
>
> Although the section does not prescribe specific requirements for selection of candidates to participate, a general election debate may not be structured so as to promote one candidate over another. An organization staging a debate may invite candidates to participate in a debate on the basis of party affiliation. Hence, such an organization could stage a general election debate to which only major party candidates are invited.
>
> For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party. . . .

44 Fed. Reg. 76,734-35 (Dec. 27, 1979) (emphasis added).

This Explanation and Justification was transmitted along with the regulations to the United States Congress on December 27, 1979, as required

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by the Federal Election Campaign Act, 2 U.S.C. § 438(d)(1). 44 Fed. Reg. 76,734-35 (Dec. 27, 1979). The Congress took no action to disapprove the regulations as so explained and justified,[13] and the Commission promulgated them. Thus, the debate regulations as tacitly approved by the Congress and promulgated by the Commission clearly permit the League to sponsor primary debates even if participation is restricted to candidates seeking the nomination of one party.

Moreover, in its first interpretation of the debate regulations, the Commission specifically relied upon its Explanation and Justification to uphold the League's 1980 Presidential general election selection debate criteria against an attack similar to the challenge the complainants assert here. In the Matter of League of Women Voters Education Fund, MUR 1287 (Sept. 16, 1980). In that case Barry Commoner and the Citizen's Party filed a complaint with the Commission against the League and its Chair objecting to one of the League's Presidential general election debate selection criteria, which at that time provided that, in order to

[13] See 2 U.S.C. § 438(d)(2)(1982) (if either House of Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission within thirty days of receipt of the regulation, the Commission may prescribe the regulation).

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participate in the debates, a non-major party candidate had to receive either a level of voter support of fifteen percent or the level of voter support received by a major party candidate, whichever was lower. Like the complainants here,[14] Mr. Commoner and the Citizen's Party argued, inter alia, that the exclusion of minor party candidates renders the debates partisan in that they will promote the candidacies of the major party candidates over all others. The First General Counsel's Report rejected this contention because "the Commission stated in its Explanation and Justification of the regulations that a general election debate may be held for major party candidates only. . . ." Id. at 6. On September 16, 1980, the Commission voted unanimously in favor of finding no reason to believe that the League's debates would violate the Commission's debate regulations.

The current complaint presents an even weaker argument in that it involves Presidential primary debates in which candidates competing for a major party's nomination are invited to participate. Dr. Fulani is admittedly not a candidate for the

[14] See, e.g., Complaint of Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections ("Complaint") at 2-3.

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nominations of such a party, and it would be inappropriate to include her.[15]

In the face of the Commission's authoritative rulings that a primary debate is nonpartisan under the debate regulations even if participation is restricted to candidates seeking the nomination of one party, the Commission should reject as baseless complainant's allegation that the League has violated the debate regulations.

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[15] On other occasions, the Commission has specifically upheld the very Presidential primary debate selection criteria that are challenged in this case. In In re Complaint of the LaRouche Campaign Against the League of Women Voters Education Fund, MUR 1659 (May 22, 1984) (final Comm. det.), Lyndon H. LaRouche, Jr., a candidate for the Democratic Party's nomination for President, filed a complaint with the Commission alleging that the League's failure to invite him to participate in a Democratic Presidential primary debate was a partisan decision. At the time the League's selection criteria were identical in all respects to the League's 1988 Presidential primary debate selection criteria challenged in this action. The Commission determined that the League's criteria were fair and impartial.

The Commission reaffirmed the nonpartisanship of the League's Presidential primary debate selection criteria in In the Matter of House Democratic Caucus, et al., MUR 1617 (May 9, 1984) (final Comm. det.). In that case Stephen A. Kozcak, a Democratic candidate for President, alleged, inter alia, that Dartmouth College's refusal to include him in a Democratic primary debate made it a partisan event. Dartmouth's selection criteria were modeled after the League's 1984 criteria. The Commission ruled once again that these criteria were fair and nonpartisan.

B. The Commission's Interpretations of the Presidential Primary Matching Payment Account Act Have No Relevance to a Determination of Whether the League Has Violated the Commission's Debate Regulations

The complainants assert that the Commission's interpretations of federal election laws relating to federal matching funds require the Commission to hold that the League has violated the debate regulations by not including Dr. Fulani. This contention is baseless.

The Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-42 (1982), and interpretations under it have nothing whatsoever to do with selection of debate participants. Although the complainants refer to a series of Commission Advisory Opinions over the past thirteen years which they say establish that independent candidates such as Fulani are active participants in the nomination phase of the Presidential election and therefore eligible to qualify for primary matching funds, the complainants cite only two Advisory Opinions, FEC AO 1983-47 and FEC AO 1984-11. These Advisory Opinions are merely interpretations of a law which itself provides that candidates seeking the Presidential nomination "by a political party" may be eligible for matching funds[16] and are not indicative of the Commission's views on debate selection criteria.

[16] 26 U.S.C. § 9033(b)(2)(1982).

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Dr. Fulani's eligibility for matching funds and her participation in the primary process of some minor parties has nothing whatsoever to do with the partisan or nonpartisan nature of the League's debates. Dr. Fulani has been excluded from the respective Republican and Democratic debates because she is not seeking the nominations at issue in those debates. That is in no way a partisan act, as has been determined not only by the Commission in its debate regulations but also by the federal district court in its recent decision in a case against the League brought by the complainants.

In that suit complainants asserted, inter alia, that the League had breached an implied contract to act in a nonpartisan manner and had violated the Internal Revenue Code's ban on partisan activities by conducting major party Presidential primary debates without inviting minor party candidates such as Dr. Fulani.[17] Both the Secretary of the Treasury and the Commissioner of Internal Revenue joined the League in arguing that the League's Presidential primary debates are nonpartisan.[18] The court held that Dr. Fulani's claim

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[17] Sweet Opinion.

[18] See Federal Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction, a copy of which is attached as Exhibit 1.

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that the League has conducted its primary debates in a partisan manner had no support in law or fact and cited the Commission's debate regulations and Explanation and Justification with approval.[19] Thus, the Commission's position is fully supported by the court, the Secretary of the Treasury, and the Commissioner of Internal Revenue.[20]

II. THERE IS NO BASIS FOR ANY OTHER RELIEF SOUGHT BY COMPLAINANTS

The complainants allege that the League's Presidential primary debate selection criteria are discriminatory on the basis of race and sex and that, if the Commission interprets its regulations to permit the League to utilize such criteria, then it is

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[19] Sweet Opinion at 23.

[20] Even if the Commission were to agree with the complainants and decided to overturn its debate regulations, it could not find any violation by the League. The Federal Election Campaign Act provides that:

> Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this section and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of Title 26.

2 U.S.C. § 438(e) (1982). The League has acted in reliance upon and fully complied with the Commission's debate regulations as promulgated and accordingly cannot be subject to sanctions for any alleged violation.

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participating illegally in the discrimination in violation of Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972 and their implementing regulations. These claims are utterly without basis and at any rate are not within the Commission's jurisdiction.[21]

The Commission has jurisdiction to enforce the provisions of the Federal Election Campaign Act and Chapter 95 and 96 of Title 26,[22] but not to enforce the provisions of federal laws prohibiting race and sex

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[21] Because the debate selection criteria utilized by the League are nonpartisan, the Commission must reject the complainants' allegation that the failure of the League to register and to report as a political action committee violates 2 U.S.C. § 433(a) and § 434 because the funds expended to defray costs in staging the debate are contributions or expenditures under 11 C.F.R. §§100.7(b)(21) and 100.8(b)(23).

The Commission must similarly reject the complainants' request for a rulemaking. In this enforcement proceeding pursuant to 11 C.F.R., Part 111, the Commission cannot initiate rulemaking, but can only determine whether a violation of the current federal election laws or regulations has occurred. Furthermore, there is no basis whatsoever for the Commission to change its debate regulations.

The complainants also allege that the League's activities violate First Amendment principles of education. The district court authoritatively ruled that the First Amendment is inapplicable to the League's activities because they do not constitute state action and there is no merit to Dr. Fulani's First Amendment claims. Sweet Opinion at 18 and n.4. Furthermore, the Commission has no jurisdiction to determine First Amendment issues.

[22] 2 U.S.C. § 437d(a)(6)(1982).

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discrimination. Moreover, as the complainants are well aware, their race and sex discrimination claims are currently pending before the U.S. District Court for the Southern District of New York.[23]

Indeed, the complainants' urgent request for the Commission to conduct a survey of the sex, race, and national origin of Presidential candidates is nothing more than an attempt to force the Commission to develop the evidence that the court has held the complainants must marshal and present to the court. According to Judge Sweet,

> At this stage of the litigation, Fulani has not demonstrated the likelihood that she will be able to prevail on her claim of disparate impact. Although she has presented undocumented historical data listing black and female presidential and vice-presidential candidates from minor parties, she has not identified the race and sex of the 140 current non-major party presidential candidates or the race and sex of the 141 current candidates for the Republican or Democratic nomination. That neither major party has ever nominated a black or a woman for the presidency is not proof that the League's criterion for its primary debates has a disproportionate impact on blacks or women.[24]

There is no reason for the Commission to assist the complainants in meeting their responsibility to develop

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[23] See Sweet Opinion at 27.

[24] Sweet Opinion at 21-22 (footnotes omitted).

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evidence for their private suit against the League, and it should not do so.

In this proceeding, the complainants have done no more than make allegations upon information and belief that three out of four nonmajor party candidates who have raised $5000 for their campaigns are minorities or females. Obviously, even if the Commission had jurisdiction to consider Fulani's claims of race and sex discrimination, this "evidence" is insufficient to support any finding that the League's criteria are discriminatory.

CONCLUSION

For the reasons set forth herein, the Commission should take no action against the League or Nancy Neuman in connection with the complaint.

Respectfully submitted,

Brooksley Born
Arnold & Porter
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036

Attorney for the
League of Women Voters
Education Fund and
Nancy Neuman

Dated: May 20, 1988

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. LENORA B. FULANI et al., Plaintiffs, - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND et al., Defendants.	88 Civ. 1441 (RWS)

VERIFIED STATEMENT OF
GRANT P. THOMPSON, ESQ.

Grant P. Thompson, Esq., deposes and says:

1. I am Executive Director of the defendant League of Women Voters of the United States ("LWVUS") and the defendant League of Women Voters Education Fund ("the League"). I make this verified statement in opposition to the plaintiffs' motion for a preliminary injunction against Democratic Presidential primary debates and Republican Presidential primary debates sponsored by the League. As Executive Director of the League, I have participated extensively in organizing and structuring these debates.

2. LWVUS is a nationwide nonprofit organization with approximately 1225 state and local leagues operating throughout the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. LWVUS is

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exempt from federal income taxation under Section 501(c)(4) of the Internal Revenue Code. LWVUS has approximately 110,000 members. LWVUS is dedicated to promoting active and informed participation of citizens in government. LWVUS is prohibited by its certificate of incorporation and by-laws from participating or intervening in any political campaign on behalf of a candidate or from engaging in any other partisan political activity, and it does not do so.

3. LWVUS is not a sponsor of the 1988 Presidential primary and general election debates which are sponsored by the League, and LWVUS has not participated in formulating or applying the League's selection criteria for participants in those debates. LWVUS played no role in the decision of the League not to invite plaintiff Fulani to participate in the League-sponsored Democratic and Republican Presidential primary debates.

4. The League is a separate, nonprofit trust established by LWVUS in 1957 and devoted exclusively to educational purposes. The League is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. As a 501(c)(3) organization, the League is prohibited from participating or intervening in any political campaign on behalf of any candidate and from engaging in any partisan political activity, and it does

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not do so. Like LWVUS, the League is dedicated to promoting an informed electorate and encouraging active participation in the democratic process.

5. Since its founding in 1957, the League has sponsored a variety of nonpartisan candidate debates and forums. For example, in 1976 the League sponsored four Democratic Presidential primary debates, one Vice-Presidential general election debate, and three Presidential general election debates. In 1980, the League sponsored three Republican Presidential primary debates and two Presidential general election debates. In 1984, the League sponsored four Democratic Presidential primary debates, one Vice-Presidential general election debate, and two Presidential general election debates.

6. The League's purpose in sponsoring Presidential debates is to educate the nation's electorate in a nonpartisan manner about the issues in the Presidential primary and general election campaigns and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process. In planning its 1988 Presidential debates, the Board of Trustees of the League decided, as it had consistently done in the past, that the debates' educational function would be furthered by having separate general election and

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primary election debates. It further decided that two sets of primary debates should be held -- Democratic Presidential primary debates to which only significant candidates for the Democratic Party's Presidential nomination would be invited and Republican Presidential primary debates to which only significant candidates for the Republican Party's Presidential nomination would be invited. The Board intended the primary debates to help the voters to make an informed choice in the Republican and Democratic primary elections by bringing together in one forum the significant candidates for the Democratic Party's Presidential nomination and in another forum the significant candidates for the Republican Party's Presidential nomination.

7. The debates were scheduled by the League to coincide with what the League considered to be significant dates in the Democratic Party's nominating process and the Republican Party's nominating process. The League's schedule of Democratic Presidential primary debates and Republican Presidential primary debates for 1988 is as follows:

Democratic Presidential primary debate
February 13
Manchester, New Hampshire

Republican Presidential primary debate
February 14
Manchester, New Hampshire

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Republican Presidential primary debate
March 5
Nashville, Tennessee (Canceled)

Democratic Presidential primary debate
March 6
Nashville, Tennessee (Canceled)

Democratic Presidential primary debate
April 16
Rochester, New York

Republican Presidential primary debate
April 17
Rochester, New York

Republican Presidential primary debate
June 4
Torrance, California

Democratic Presidential primary debate
June 5
Torrance, California

8. In deciding to hold Republican and Democratic primary debates, the Board of the League decided that such a format would further the League's educational purposes. In the Board's view, the League's goal of fostering voter education and participation in the electoral process is furthered by holding debates in which a substantial number of voters has an interest. The Board determined that a substantial number of voters is interested in the primary elections of the Republican and Democratic parties. However, the voter interest in minor-party primaries is slight, and the Board decided that debates among candidates for the nomination of any particular minor party would not generate sufficient voter interest to justify holding such debates. The

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relative voter interest in major party and minor party primaries is demonstrated by the fact, inter alia, that membership in the Republican and Democratic parties is extremely large, while no minority party in the U.S. has a substantial number of members.

9. The League's debates have always included only candidates who are competing against one another in a particular election or set of elections: the Democratic Presidential nomination process, the Republican Presidential nomination process, or the Presidential general election. In 1988 the League is continuing this tradition. This format has been designed by the League to promote voter information concerning the particular candidates among whom the voter must choose in an election. The inclusion of persons who are not candidates for a particular election in a debate would not further, and would detract from, the League's educational purposes in arranging the debates.

10. The Board of the League decided that the appropriate time to hold the Presidential primary debates is in the winter and spring of 1988 when the primary elections are taking place and when voter interest is focused on the Democratic and Republican primary elections. The appropriate time for the Presidential general election debates, in the Board's

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view, is the fall of 1988 when voter interest turns from the selection of the Republican and Democratic nominees to the election of the President. The Board has scheduled the League's debates accordingly.

11. The plaintiffs in this action are arguing in effect that any debate held by the League during the Presidential primary season must be open to candidates for the Presidency even if they are not candidates for a particular party's nomination -- that is, that the League must hold only Presidential general election debates even during a time when voter interest is focused on Republican and Democratic party nominations and not on the general election. Such a requirement would greatly impair the educational value of its debates and would greatly inhibit the League's ability to inform voters about their decisions in the primary election of the party of their choice. Furthermore, it is quite unlikely that the candidates for the Democratic and Republican Presidential nominations would agree to participate in such a debate during the Presidential primary season.

12. The League's debate format is based on the political system in the United States. The plaintiffs complain about that system and other matters over which the League has no control: the major parties and their nomination processes, the news media and their failure

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to cover plaintiff Fulani, the lack of voter interest in plaintiff Fulani and the state elections laws.

13. The League's Board adopted the "1988 League of Women Voters Education Fund Democratic Presidential Primary Debates Participant Selection Criteria" and the "1988 League of Women Voters Education Fund Republican Presidential Primary Debates Participant Selection Criteria" on April 2, 1987. Copies of the selection criteria are attached hereto as Attachment A and Attachment B. The sole objective of the Board in adopting these selection criteria was to structure the debates so as to further the nonpartisan educational purpose of the debates while at the same time complying fully with all applicable law.

14. The three basic criteria for selection adopted by the League were:

a. The candidate must have made a public announcement of his or her intention to run for the Democratic Party's nomination for President (as to the Democratic Presidential primary debates) or for the Republican Party's nomination for President (as to the Republican Presidential primary debates).

b. The candidate must be legally qualified to hold the office of President.

c. The candidate must be a significant candidate for the Democratic Party's nomination for President (as

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to the Democratic Presidential primary debates) or for the Republican Party's nomination for President (as to the Republican Presidential primary debates).

15. Plaintiff Fulani clearly and admittedly does not meet the first criteria described above -- that is, she has not made a public announcement of her intention to run for the Democratic Party's nomination for President or for the Republican Party's nomination for President. Therefore, plaintiff Fulani does not meet the 1988 League participant selection criteria for the primary debates. It is for this reason, and this reason alone, that plaintiff Fulani has not been invited to participate in the Presidential primary debates sponsored by the League. Because plaintiff Fulani clearly does not meet this criterion, the League has not considered whether she would satisfy the criterion of significance.

16. In making its decision not to invite plaintiff Fulani to participate in the primary debates, the League gave no consideration whatsoever to plaintiff Fulani's race, color, national origin or sex and did not decide to exclude her on any such grounds.

17. Furthermore, the League did not exclude plaintiff Fulani in order in any way to harm or to oppose her candidacy for the Presidency or to further or to support the candidacy of any other person or persons.

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18. The selection criteria adopted by the League for its 1988 Presidential primary debates are the same in all respects as the selection criteria used by the League in the 1984 Democratic Presidential primary debates sponsored by it. In 1984 those selection criteria were considered by the Federal Election Commission pursuant to a complaint concerning them filed by Lyndon LaRouche, a Democratic candidate whom the League did not invite to participate in the debates. The Federal Election Commission found that there was no basis to find that the selection criteria did not comport with the Federal Election Commission's requirements of nonpartisanship. The selection criteria were also unsuccessfully challenged by Mr. LaRouche before state and federal courts in Pennsylvania and before state courts in Texas.

19. As stated in the League's selection criteria for its Presidential primary debates, the League considers a number of factors in assessing the significance of a candidate for the Democratic or Republican Presidential nomination. Eligibility for matching payments is merely one of such factors. Other factors include active campaigning in a number of states, recognition by the national media as a candidate requiring media attention, the extent of campaign contributions and national voter poll results. The

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League assesses all information available to it relating to these factors in making a decision as to whether a candidate is a significant candidate worthy of receiving an invitation to participate in a primary debate.

20. According to paragraph 16 of Gary Sinawski's affidavit dated March 14, 1988, in support of the plaintiffs' motion for a preliminary injunction, plaintiff Fulani is the only announced candidate for the New Alliance Party. Under the Federal Election Commission's rules on election debates, even if the League's Board were to determine that it should hold a Presidential primary debate among candidates for the nomination of a minor party, the League would not be able to conduct such a debate unless two or more candidates for the minor party's nomination were to participate.

21. As noted above, the League plans to present a series of Presidential general election debates in the fall of 1988 involving candidates for the Presidency and the Vice Presidency. The debates are scheduled for September 8, 1988, in Birmingham, Alabama; October 6, 1988 in Minneapolis-St. Paul, Minnesota; October 23, 1988, in Boston, Massachusetts; and November 1, 1988, in Los Angeles, California. One of the debates will involve Vice Presidential candidates, while three of the debates will involve Presidential candidates. The

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League will consider sending invitations for these debates after the Republican and Democratic parties have chosen their nominees.

22. On October 6, 1987, the Board of the League adopted the "1988 League of Women Voters Education Fund Candidate Selection Criteria for General Elections Debate Participation." A copy of the selection criteria is attached as Attachment C. Under the selection criteria the League will sponsor one Presidential general election debate to which it will invite only the nominees of the two major parties. The League's Board decided to invite the major party nominees and any other significant candidates for the Presidency who meet the selection criteria of the League to the other two Presidential general election debates sponsored by the League. The Board of the League decided to hold one debate between the nominees of the two major parties in recognition of the central role the two major parties play in our political system and the undeniable substantial voter interest in the positions on issues espoused by the nominees of those parties. This decision insured that the nation's voters are given at least one opportunity to hear the two major parties' nominees debate each other one-on-one.

23. In terms of selection for participation in the Presidential general election debates, there is

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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 League to ascertain whether non-major 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.

24. The League will apply three basic criteria for inviting non-major party candidates to participate in the Presidential general election debates:

a. Constitutional eligibility.

b. Ballot accessibility.

c. Demonstrated significant voter interest and support.

These basic criteria are further elaborated in the selection criteria attached as Attachment C.

25. The League's 1988 selection criteria for the Presidential general election debates are in all substantial respects the same as the 1984 selection criteria used by the League. Sonia Johnson, the Citizens Party candidate for the Presidency in 1984, was not invited to participate in the League's general

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election debates despite her eligibility for federal matching funds. She unsuccessfully challenged the selection criteria before the Federal Communications Commission and the United States Court of Appeals for the District of Columbia Circuit.

26. If plaintiff Fulani is interested in participating in the Presidential general election debates of the League, the League will consider in August 1988 an application made on her behalf that attempts to establish that she meets the League's selection criteria for non-major party candidates.

27. The League has demonstrated that it is willing to include independent candidates who are significant candidates for the office of the Presidency in Presidential general election debates. In 1980 John Anderson appeared in one of the League's Presidential general election debates at a time when he was running as an independent candidate for the Presidency.

28. On March 1, 1988, the League canceled the Democratic Presidential primary debate and the Republican Presidential primary debate scheduled for March 5 and 6, 1988, in Nashville, Tennessee. The League's reasons for canceling these debates had nothing whatsoever to do with the request that plaintiff Fulani participate in the debates. The Republican Presidential primary debate was canceled because only one of the

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League's invitees accepted the invitation to participate in the debate. A number of the invited participants for the Democratic Presidential primary debate canceled their appearances, leaving only two invitees who were willing to participate in that debate. The League canceled that debate because of the limited participation in it.

29. The League of Women Voters of the City of New York Education Fund, Inc. has not participated in any way in sponsoring the League's 1988 Presidential debates, in establishing the selection criteria or format of such debates, or in deciding not to invite plaintiff Fulani to participate in the Presidential primary debates. The League alone is the sponsor of the debates, decided upon the format and selection criteria for the debates, and decided not to invite Dr. Fulani to participate in the debates.

30. The League has received a grant from the U.S. Department of Energy in the amount of $274,287. This grant is for the purpose of conducting an education project concerning nuclear energy. The League has also received a grant from the U.S. Environmental Protection Agency in the amount of $100,000 for the purpose of conducting a drinking-water survey. None of the funds from these grants has been or will be used in any way with regard to the League's Presidential debates. The

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League is not currently the recipient of any other federal funds.

I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Grant P. Thompson

Grant P. Thompson

Washington, D.C.
March 27, 1988

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1988 LEAGUE OF WOMEN VOTERS EDUCATION FUND
DEMOCRATIC PRESIDENTIAL PRIMARY DEBATES
PARTICIPANT SELECTION CRITERIA

The League of Women Voters Education Fund will sponsor during the 1988 election season a series of primary debates among significant candidates for the Democratic Party's nomination for President. The purpose of these debates is to educate the nation's electorate in a nonpartisan manner about the issues in the 1988 Presidential campaign and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process.

The League's goal of fostering voter education and participation in the electoral process is furthered by inviting to debate only candidates in whom a substantial number of voters has an interest. Inclusion of candidates in whom there is little voter interest would result in debates that are too long or that do not provide sufficient time for the meaningful expression of views by significant candidates. Accordingly, the League has chosen to limit participation in its 1988 Democratic primary debates to candidates who present a significant national candidacy for the Democratic nomination for President.

Candidates who meet the following criteria will be invited to participate in the League's 1988 Democratic primary debates:

1. The candidate must have made a public announcement of his or her intention to run for the Democratic Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Democratic Party's nomination for President.

In assessing the significance of a candidacy, the League will consider a number of factors including the following:

-- Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96). This criterion furthers the identification of significant candidates by focusing on those candidates who are significant enough to solicit, and have sufficient voter support to receive, contributions from a number of persons in a number of states.

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-- Active campaigning in a number of states for the Democratic Party's nomination. Candidates who have established an active campaign presence in several different states may pose a significant national candidacy for the Democratic Presidential nomination. A candidate's efforts to be named on primary ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount of his or her campaign appearances, as well as any other factors evidencing substantial campaign activity, may be considered.

-- Recognition by the national media as a candidate meriting media attention. Since media coverage of particular candidates by major newspapers and television networks tends to evidence a recognition by the national media of 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.

-- Other factors. The League may consider such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

Adopted by LWVEF 4/2/87

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1988 LEAGUE OF WOMEN VOTERS EDUCATION FUND
REPUBLICAN PRESIDENTIAL PRIMARY DEBATES
PARTICIPANT SELECTION CRITERIA

The League of Women Voters Education Fund will sponsor during the 1988 election season a series of primary debates among significant candidates for the Republican Party's nomination for President. The purpose of these debates is to educate the nation's electorate in a nonpartisan manner about the issues in the 1988 Presidential campaign and about the positions of candidates on these issues and to stimulate increased voter interest and participation in the electoral process.

The League's goal of fostering voter education and participation in the electoral process is furthered by inviting to debate only candidates in whom a substantial number of voters has an interest. Inclusion of candidates in whom there is little voter interest would result in debates that are too long or that do not provide sufficient time for the meaningful expression of views by significant candidates. Accordingly, the League has chosen to limit participation in its 1988 Republican primary debates to candidates who present a significant national candidacy for the Republican nomination for President.

Candidates who meet the following criteria will be invited to participate in the League's 1988 Republican primary debates:

1. The candidate must have made a public announcement of his or her intention to run for the Republican Party's nomination for President.

2. The candidate must be legally qualified to hold the office of President.

3. The candidate must be a significant candidate for the Republican Party's nomination for President.

In assessing the significance of a candidacy, the League will consider a number of factors including the following:

-- Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96). This criterion furthers the identification of significant candidates by focusing on those candidates who are significant enough to solicit, and have sufficient voter support to receive, contributions from a number of persons in a number of states.

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-- Active campaigning in a number of states for the Republican Party's nomination. Candidates who have established an active campaign presence in several different states may pose a significant national candidacy for the Republican Presidential nomination. A candidate's efforts to be named on primary ballots, his or her fundraising activities, the extent of the candidate's campaign organization, the amount of his or her campaign appearances, as well as any other factors evidencing substantial campaign activity, may be considered.

-- Recognition by the national media as a candidate meriting media attention. Since media coverage of particular candidates by major newspapers and television networks tends to evidence a recognition by the national media of 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.

-- Other factors. The League may consider such other factors that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

Adopted by LWVEF 4/2/87

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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.[2]

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 CRITERION

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,"3 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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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE COMPLAINT OF DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND and NANCY NEUMAN	MUR No. 2601

VERIFIED STATEMENT OF GRANT P. THOMPSON, ESQUIRE

Grant P. Thompson, Esquire, deposes and says:

1. I am Executive Director of the League of Women Voters Education Fund ("the League"). I make this verified statement in opposition to the complaint filed in this matter and to supplement and to update my attached verified statement dated March 27, 1988.

2. In April 1988 the Board of Trustees of the League canceled the Republican Presidential primary debates scheduled by the League for April 17, 1988, and June 4, 1988. It did so because at that time the only Republican Presidential candidates who met the League's selection criteria were George Bush and Pat Robertson and George Bush had announced that he would no longer participate in primary debates.

3. Paragraph 31 of the complaint implies that the League designed its Presidential primary debates in

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order to preserve its institutional role as a sponsor of Presidential debates and in order not to alienate the Democratic and Republican parties. This allegation is untrue. The purpose of the League was to foster voter education.

4. My attached verified statement dated March 27, 1988, as updated and supplemented by this verified statement, continues to be true and correct to the best of my knowledge and belief.

I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Grant P. Thompson

Grant P. Thompson

Washington, D.C.
May 16, 1988

Attachment

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE COMPLAINT OF DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND and NANCY NEUMAN	MUR No. 2601

VERIFIED STATEMENT OF NANCY NEUMAN

Nancy Neuman deposes and says:

1. I serve as Chair of the Board of Trustees of the League of Women Voters Education Fund ("the League"). I have held this position since June 18, 1986. As Chair, I have participated extensively in the organizing and structuring of the 1988 Democratic Presidential primary debates, Republican Presidential primary debates, and Presidential general election debates sponsored by the League. I make this verified statement in opposition to the complaint filed in this proceeding.

2. I have reviewed the verified statements of Grant P. Thompson, Esquire, dated March 27, 1988, and May 16, 1988. They are true and correct to the best of my knowledge and belief.

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I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Nancy Neuman

Washington, D.C.
May 16, 1988

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. LENORA B. FULANI et al., Plaintiffs, - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND et al., Defendants.	88 Civ. 1441 (RWS)

VERIFIED STATEMENT OF
VICTORIA HARIAN

Victoria Harian deposes and says:

1. I am the Presidential Debates Director of defendant League of Women Voters Education Fund ("the League"), a position which I have held since March 1984. I was in charge of the League's 1984 Presidential debates which included Democratic Presidential primary debates, Presidential general election debates, and a Vice Presidential general election debate. I am currently in charge of the 1988 Democratic Presidential primary debates, Republican Presidential primary debates, and Presidential and Vice Presidential general election debates. I make this verified statement in opposition to the plaintiffs' motion for preliminary injunction in the above-captioned action.

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2. The plaintiffs' motion for preliminary injunction is supported by an affidavit dated March 14, 1988, by Gary Sinawski. In paragraph 24 of that affidavit, Mr. Sinawski refers to correspondence he had with the League, which is attached as exhibits to his affidavit. He states that Exhibit A to his affidavit, a letter dated January 29, 1986, from him to Dorothy S. Ridings as president of the League of Women Voters of the United States ("LWVUS") was misdated and should have been dated January 29, 1987. He further states that a letter attached as Exhibit B to his affidavit from Dorothy S. Ridings, chair of the League, to Gary Sinawski dated February 10, 1986, should properly have been dated February 10, 1987. Mr. Sinawski is incorrect in stating that those letters should have been dated 1987 rather than 1986. They were received and sent by the League and LWVUS in early 1986, as dated. Dorothy S. Ridings, who was the recipient and sender of the letters as the chair of the League and president of LWVUS, served in those capacities only until June 18, 1986, when she was replaced by Nancy M. Neuman. Mr. Sinawski's own letter to Ms. Neuman of February 13, 1987, attached to his affidavit as Attachment C, refers to the January 29 and February 10 letters as dated 1986, not 1987.

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3. Similarly in the same paragraph 24 of Mr. Sinawski's affidavit, he states that he met with representatives of the League on December 18, 1987. In fact, he and Jacqueline Salit met with me and Cynthia Hill, Esq. of the League on December 17, 1987, not December 18, 1987. During that meeting Mr. Sinawski asked that the League sponsor primary debates which would include minor-party and independent candidates and requested that plaintiff Fulani be included in the League's Democratic Presidential primary debates and Republican Presidential candidate debates. Cynthia Hill and I explained that the League has no plans to sponsor debates of minor-party candidates and independent candidates at the primary level, but that during the fall of 1988 the League plans to sponsor Presidential general election debates and to permit the participation of independent or minor-party candidates in two of those debates if any such candidate is determined to be a significant candidate for the Presidency under the League's selection criteria. We said that the League would make decisions on whom to invite after the Democratic and Republican conventions in the summer of 1988 and urged that the Fulani campaign provide the League with information on the significance of the Fulani candidacy to be considered at that time. Cynthia Hill also stated that, if the League were to broaden its

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primary debates to include plaintiff Fulani, it would be necessary for it to consider the inclusion of other minor-party and independent candidates in order to act in a nonpartisan manner.

4. Plaintiff Fulani ran as a candidate in the Illinois Solidarity Party primary and is on the ballot as a candidate for the Nebraska New Alliance Party primary and the California Peace and Freedom Party primary. Based on the League's research, I believe that she is not on the primary ballot in any other state.

5. Attached is a copy of a document prepared by the Federal Election Commission listing individuals who have declared their candidacy for the Presidency as of March 13, 1988. See Attachment 1. According to that document, there were 281 declared candidates for President at that time -- 86 candidates for the Democratic Party nomination for President, 55 candidates for the Republican Party nomination for President, and 140 candidates for the nomination of minor parties or independent candidates.

6. It would be completely unworkable to attempt to hold a debate to which these 281 persons were invited. There would be no educational value whatsoever in attempting to hold such a debate, and the League has decided not to do so.

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7. At least 27 debates among candidates for the Presidency have been held so far in this campaign season, only two of which have been sponsored by the League. Every single debate among the 27 debates of which I am aware has been a debate of candidates for the nomination of the Democratic Party or the Republican Party. I am not aware of any debates involving minor-party or independent candidates or of any debates in which one or more candidates for the Democratic nomination have debated directly with one or more candidates for the Republican nomination.

8. In 1976, 1980 and 1984 the League was the sole sponsor of Presidential general election debates. The Democratic and Republican parties have stated that they plan jointly to sponsor general election debates in the fall of 1988.

9. Jesse Jackson, who is black and is a candidate for the Democratic Party's Presidential nomination, participated in the League's four 1984 Democratic Presidential primary debates and participated in the 1988 Democratic Presidential primary debate held by the League in New Hampshire on February 13, 1988. Jesse Jackson has been invited by the League to participate in all of its scheduled 1988 Democratic Presidential primary debates.

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10. Geraldine Ferraro, who is a woman and who was in 1984 the Democratic Party's nominee for Vice President, participated in the League's 1984 Vice Presidential general election debate.

11. Lyndon H. LaRouche, Jr., a candidate for the Democratic Party's nomination for President, has qualified to receive Presidential primary matching funds. He has not been invited to participate in any of the League's debates.

12. The League's debates held in New Hampshire on February 13 and 14, 1988, were carried by the Cable News Network ("CNN") and picked up by certain local Public Broadcasting System ("PBS") television stations and certain local National Public Radio ("NPR") radio stations. CNN plans to cover the remaining Presidential primary debates sponsored by the League, and individual PBS and NPR stations may also decide to carry those debates.

13. I have reviewed the Verified Statement of Grant P. Thompson, Esq., dated March 27, 1988, in opposition to the plaintiffs' motion for a preliminary injunction in this action, a copy of which is attached as Attachment 2. It is true and correct to the best of my knowledge and belief.

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I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Victoria Harian

Victoria Harian

Dated: March 28, 1988

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Attachment 1, a copy of a Federal Election Commission list of the declared candidates for the Presidency as of March 13, 1988, is not attached.

Attachment 2, a copy of the Thompson Verified Statement dated March 27, 1988, is provided separately above.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DR. LENORA B. FULANI, et al., :

Plaintiffs, :

- against - : 88 Civ. 1441 (RWS)

LEAGUE OF WOMEN VOTERS EDUCATION FUND, et al., :

Defendants. :

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FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

RUDOLPH W. GIULIANI
United States Attorney for the
Southern District of New York
Attorney for Federal Defendants

PAUL K. MILMED
Assistant United States Attorney
- Of counsel -

PM:jik
SP-2089/2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DR. LENORA B. FULANI, et al., :

Plaintiffs, :

- against - : 88 Civ. 1441 (RWS)

LEAGUE OF WOMEN VOTERS :
EDUCATION FUND, et al.,
:

Defendants.
:

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FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Preliminary Statement

This memorandum is respectfully submitted on behalf of defendants James Baker, III, Secretary of the Treasury, and Roscoe L. Egger, Jr., Commissioner of Internal Revenue (together referred to as the "federal defendants") in opposition to plaintiffs' motion for a preliminary injunction requiring them to revoke the tax exemption of defendant League of Women Voters Education Fund (the "Education Fund"). As shown below, plaintiffs lack standing to challenge the Education Fund's tax exemption, and their complaint fails to state a claim upon which relief can be granted against the federal defendants. They thus fail to demonstrate their entitlement to any relief, much less the extraordinary relief they seek by the present motion.

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Facts

Defendant League of Women Voters Education Fund is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.* In connection with the 1988 Presidential primary elections the Education Fund is sponsoring a series of debates among the candidates for the Presidential nomination of the Republican Party, and a separate series of debates among the candidates for the Presidential nomination of the Democratic Party.

According to the Amended Complaint, plaintiff Dr. Lenora B. Fulani is an independent candidate for President.** She is not seeking either the Republican or the Democratic nomination, and is not participating in any Republican or Democratic primary election contest. Plaintiffs*** nevertheless have brought this action to require the Education Fund to include plaintiff

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* Section 501(c)(3) of the Code provides an exemption from federal income tax for an entity "organized and operated exclusively for * * * educational purposes, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Section 501(c)(3) organizations are exempted from income tax, and contributions made to them are generally deductible for federal income tax purposes under Section 170 of the Code, and are also deductible for federal estate and gift tax purposes under Sections 2055 and 2522 of the Code, respectively.

** It is not disputed that plaintiff Fulani is also black, a woman, and has qualified for federal Presidential primary matching funds under the regulations of the Federal Election Commission. See Amended Complaint, ¶ 7. However, none of these facts is relevant to plaintiff's alleged claims.

*** The other plaintiffs are "Lenora B. Fulani's Committee for Fair Elections," see Amended Complaint ¶ 8, and Virginia Sinclair, a member of the League of Women Voters, see Amended Complaint, ¶ 9.

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Fulani in its Republican and Democratic Presidential primary debates, or to prohibit debates which exclude her, and to require the federal defendants to revoke the Education Fund's tax exemption if it does not include her in such primary debates. The next debates are scheduled to be held on April 16 and 17 in Rochester, New York.

The thrust of plaintiffs' complaint is that by failing to include Dr. Fulani in its Republican and Democratic primary debates, the Education Fund is exceeding the limitations placed on organizations classified as tax-exempt under Section 501(c)(3). Specifically, plaintiffs allege that by failing to include Dr. Fulani the Education Fund is implicitly opposing her candidacy, and is thus acting in a partisan manner inconsistent with its tax-exempt status. See Amended Complaint, ¶ 53.*

As shown below, however, plaintiff Fulani's exclusion from the Republican and Democratic primary debates fails to state a claim that the Education Fund is not entitled to a tax exemption under Section 501(c)(3). (Point I, infra). Moreover, plaintiffs lack standing to challenge the government's tax treatment of the Education Fund, and the Court lacks jurisdiction to entertain their suit. (Point II, infra.) Plaintiffs' motion for a preliminary injunction must therefore be denied.**

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* Plaintiffs raise various other claims against the non-federal defendants. Those claims will be addressed by the concerned parties and will not be addressed here.

** The federal defendants also note that plaintiffs have never served them with process as required by Fed. R. Civ. P. 4. The court therefore lacks personal jurisdiction over them.

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Argument

I.

PLAINTIFFS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST THE FEDERAL DEFENDANTS

In order to qualify for tax exemption under Section 501(c)(3) of the Internal Revenue Code an organization may not "participate in, or intervene in ..., any political campaign on behalf of any candidate for public office." 26 U.S.C. § 501(c)(3). Treasury regulations further specify that indirect as well as direct participation or intervention in a campaign is prohibited, and that opposition to, as well as support for, a candidate is prohibited. Tres. Reg. § 1.501(c)(3)-1(c)(3)(iii). Plaintiffs here contend that the League of Women Voters Education Fund has exceeded those limitations in that, by failing to include plaintiff Fulani in the Democratic and Republican primary debates which it sponsors, it is indirectly opposing her candidacy.

Plaintiffs' contention is groundless on its face. Plaintiff Fulani is admittedly neither a Republican nor a Democrat, but an independent candidate for President. She concedes that she is seeking neither the Republican nor the Democratic Presidential nomination, and is not competing in any Republican or Democratic primary contest. Because she is not competing in those contests, the Education Fund's failure to invite her to join the debate among candidates for the Republican

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nomination or the debate among candidates for the Democratic nomination cannot conceivably amount to opposition to her candidacy: she is simply not a candidate for the nominations at stake. (Indeed, in which debate would plaintiffs have Dr. Fulani participate?)

Plaintiffs apparently seek to avoid the absurdity of their position by ignoring the fact that the Education Fund sponsors separate debates for the Republican and Democratic candidates. Plaintiffs would consider them as multi-party debates, misleadingly referring, for example, to "[t]he League's policy of only inviting Democrats and Republicans to their primary forums ..." Plaintiff's Memorandum in Support of Motion for Preliminary Injunction ("Pl. Mem.") at 14. Relying on this misleading premise, plaintiffs argue that exclusion of plaintiff Fulani from the debates "supports the message ... that only the Democratic and Republican party nominating processes are to be taken seriously, and... opposes [her] candidacy, and... her campaign's message that the two-party system is not working." Id. But the fact is that there is no bipartisan or multi-party forum, as there may be prior to a general election,* and excluding

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* The present motion does not raise the issue of whether Dr. Fulani would have some basis on which to assert an entitlement to participate in such a forum, and the federal defendants do not express any position on that issue.

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plaintiff Fulani from a debate among candidates of a single party (of which she is not a member), who are seeking that party's nomination (which she is not seeking), says nothing at all about, much less denigrates, her independent candidacy.*

Plaintiffs seek to make much of the fact that Dr. Fulani has qualified for Presidential primary matching funds under the regulations of the Federal Election Commission. According to plaintiffs, the relevance of this fact is that the FEC, for certain purposes, treats the petition process -- which most states require of presidential candidates of minor parties to qualify for the general election ballot -- as the equivalent of the primary election and convention process of the major parties.** Thus, plaintiffs argue, Dr. Fulani is a full-fledged primary candidate and is entitled to participate in the Education Fund's primary debates. See Pl. Mem. at 12-14. This argument, however, does nothing to advance plaintiff's alleged claim. Dr. Fulani has not been excluded from the respective Republican and Democratic debates because she is not deemed a full-fledged

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* Plaintiffs are not suggesting that the Education Fund is required to sponsor a debate for independent candidates or for members of plaintiff Fulani's New Alliance Party (if there are any other candidates competing with her for its nomination). And, to the extent they are complaining that the Education Fund's failure to sponsor debates for minor parties elevates the major parties in general over the minor parties in general, plaintiffs are simply not alleging partisan activity.

** The FEC Advisory Opinions annexed to Pl. Mem. as Appendix A do indeed treat the petition process for minor parties candidates as equivalent to the primary/convention process of the major parties so as to allow minor party candidates to receive contributions separately for their petition and general election efforts, and to allow minor party candidates to qualify for primary matching funds. Nothing in those Advisory Opinions relates to the participation of minor party candidates in Democratic or Republican Party debates.

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candidate, but because she is not seeking the nomination at issue in those debates. While she may be competing in some abstract sense with the Republican and Democratic primary candidates, she is not competing with them for Republican or Democratic primary votes.

Moreover, plaintiffs' argument is inherently contradictory. By contending that Dr. Fulani is entitled to participate in the debates by virtue of having qualified for federal primary matching funds (and thus having demonstrated her significance as a candidate), plaintiffs are acknowledging that her exclusion is not a matter of partisanship which could bear on the Education Fund's tax status. Plaintiffs, in other words, concede that the Education Fund may sponsor debates which include fewer than all of the candidates, and take issue only with the standards by which the Education Fund evaluates the significance of the candidates. But in conceding that some candidates may be excluded from the Education Fund's debates, plaintiffs are acknowledging that exclusion per se is not partisanship. Thus, even under their own view of their claim, they are in essence challenging only the significance criteria applied by the Education Fund, and have not stated a claim implicating its tax-exempt status.

Not surprisingly, plaintiffs have cited no authority for the proposition that all candidates, or even all significant candidates, must be permitted to participate in primary debates among candidates of another party, whose nomination they are not

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seeking.* On the other hand, Federal Election Commission regulation explicitly grant discretion over the structure of debates to

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* As noted above, plaintiffs rely upon FEC Advisory Opinions which treat the petition process which most states require of independent or minor-party candidates as the equivalent of the primary/convention process of the major parties for certain purposes. Thus the FEC has stated that minor-party candidates may receive contributions in connection with their petition efforts which will not be applied against limits on contributions in connection with their general election efforts. AO 1975-44 (copy annexed as part of Pl. Mem. Appendix A) at 2-3. The FEC has also stated that minor-party candidates are eligible to qualify for primary matching payments under the Matching Payment Act, A.O. 1983-47, that the primary matching payment period for minor-party candidates extends until the date on which the last major party to do so nominates its presidential candidate, A.O. 1984-11, and that the same matching payment periods apply to minor-party candidates who are seeking nomination only by state political parties as apply to those seeking nomination by national convention, A.O. 1984-25. (Copies annexed as part of Pl. Mem. Appendix A.) Even assuming, however, that the petition process for minor-party or independent candidates is the equivalent of the primary/convention process of the major parties for all purposes, it simply does not follow that minor-party or independent candidates must be permitted to participate in a debate limited to candidates of one other party. See 11 C.F.R. § 110.13(b), discussed infra.

Plaintiffs also cite Smith v. Allwright, 321 U.S. 649 (1944), in which the Supreme Court held that the Texas Democratic Party's restriction of membership to whites constituted state action when it excluded blacks from voting in a primary election. The Court held that primary elections are an integral part of the elective process, and are subject to federal law. Again, nothing in that case requires inclusion in a primary debate of another party's candidate.

Finally, plaintiffs cite Anderson v. Celebrezze, 460 U.S. 780 (1983), in which the court held unconstitutional a state's early filing deadline for independent candidates seeking to appear on the general election ballot in November. The Court held that the burden of the early deadline fell unequally on independent candidates and/or new and small political parties and thus impinged upon associational choices protected by the first amendment. While the Court recognized the rights of independent voters and candidates, the right to appear on the ballot in no way carries with it the right to participate in a primary debate limited to candidates of another party.

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the organization which stages them, provided only 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." 11 C.F.R. § 110.13(b). The Education Fund's discretion under this regulation certainly extends to its decision to hold separate Republican and Democratic primary debates restricted to candidates for the respective nominations of those parties. Indeed, in promulgating the above regulation, the FEC specifically explained that "[f]or debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party." 44 Fed. Reg. 76734-35 (December 27, 1979).

Plaintiffs' Amended Complaint therefore fails to allege any facts showing that the Election Fund has acted in a partisan manner inconsistent with its Section 501(c)(3) tax exemption.* Plaintiffs have failed to state a claim upon which relief can be grated against the federal defendants, and their motion for a preliminary injunction must be denied.**

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* Plaintiffs' allegations of constitutional violations by the federal defendants, see Amended Complaint, ad damnum ¶ (b), claim that the failure to revoke the Education Fund's tax exemption violates the first and fifth amendments. Because those allegations rely exclusively on plaintiffs' claim of a violation of Section 501(c)(3), they fall with it.

** The federal defendants note that plaintiffs' claim for declaratory relief against them, though not before the court on the present motion, is also legally insufficient. The Declaratory Judgment Act specifically prohibits declaratory relief in actions "with respect to Federal taxes" (with certain exceptions not material here). 28 U.S.C. § 2201(a).

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II.

PLAINTIFFS LACK STANDING TO CHALLENGE THE FEDERAL DEFENDANTS' TAX TREATMENT OF THE EDUCATION FUND

Plaintiffs here seek to force the Government to revoke the tax exemption of an unrelated taxpayer on the ground that the taxpayer has not complied with the statutory conditions for retaining that exemption. They manifestly lack standing to maintain such an action.

The basic principles that govern the question of whether a plaintiff has standing to maintain a lawsuit in federal court are well established. A plaintiff must "'allege[ ] such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf," Warth v. Seldin, 422 U.S. 490, 498-499 (1975) (emphasis in original), quoting Baker v. Carr, 369 U.S. 186, 204 (1962). The "core component" of standing, derived directly from the "cases" or "controversies" requirement of Article III of the Constitution, requires the plaintiff to "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief," Allen v. Wright, 468 U.S. 737, 751 (1984). That injury cannot be an "abstract" one, O'Shea v. Littleton, 414 U.S. 488, 494 (1974); it must be "'distinct and palpable,'" Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979) (citation

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omitted). The Supreme Court has explained that these requirements arise out of a "single basic idea -- the idea of separation of powers," Allen v. Wright, 468 U.S. 752 -- in that they demarcate fundamental limits on the role of the fedeal courts in our tripartite system of government.*

On several occasions in recent years, the Supreme Court has reaffirmed these basic standing principles and emphasized that their effect is generally to deny access to the federal courts by plaintiffs who seek to litigate the claim that the government is failing to enforce its laws -- in particular, laws relating to tax exemptions -- against a third party. Most recently, in Allen v. Wright, supra, the Court held that the parents of black public shool children lacked standing to challenge the tax-exempt status of allegedly discriminatory private schools. The Court explained that the plaintiffs' complaint that the government was not adequately enforcing the tax exemption laws could not alone give rise to standing: "'[a]ssertion of a right to a particular kind of Government

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* In addition to these constitutional requirements, the Court has also recognized that the standing doctrine embraces certain prudential limitations on the exercise of federal jurisdiction, including "the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches" (Allen v. Wright, 468 U.S. at 751). The Court has summarized this aspect of the standing inquiry as "[e]ssentially, . . . whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief" (Warth v. Seldin, 422 U.S. at 500 (footnote omitted)). In short, a federal court "'is not the proper forum to press' general complaints about the way in which government goes about its business" (Allen v. Wright, 468 U.S. at 760, quoting City of Los Angeles v. Lyons, 461 U.S. 95, 112 (1983)).

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conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.'" 468 U.S. at 754 (citation omitted).

The Court further held that even though the plaintiffs' more particularized allegation of their children's diminished ability to receive an eduction in a racially integrated school was sufficiently concrete and personal to support standing in some instances, 468 U.S. at 756, it did not do so in that case. The conduct complained of -- i.e., the IRS's grant of tax exemptions to some racially discriminatory schools -- was simply too indirect and too far removed from the desegregation of plaintiffs' schools to support standing. 468 U.S. at 757. As the Court noted, "[f]rom the perspective of the IRS, the injury to [plaintiffs] is highly indirect and 'results from the independent action of some third party....'" Id., citing Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 42 (1976). Plaintiffs' claims here are equally remote and indirect.

Plaintiffs here allege that Dr. Fulani's campaign has been injured in its ability to compete in some general sense with the major-party candidates, if not for votes, then indirectly for funds and publicity. Pl. Mem. at 30-31. Dr. Fulani, however, is not a competitor of the third party affected by the government's action here, the Education Fund, but, if anything, is a competitor only of the major-party candidates who have been invited to

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participate in the Education Fund's debates.*

More importantly, plaintiffs have not alleged that the Education Fund is in anyway motivated by its tax status in determining to restrict each of its primary debates to candidates of one party (as permitted by FEC regulations, supra). Absent such a showing, any injury to the plaintiffs can hardly be said to be "fairly traceable" to the challenged government conduct, and plaintiffs therefore have no standing to maintain this action.** See Allen v. Wright, supra, 468 U.S. at 758-59; Simon v. Eastern Kentucky Welfare Rights Org., supra, 426 U.S. at 42.

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* The courts have, of course, recognized that in some cases a competitive injury can confer standing on a plaintiff to challenge an action that most directly affects a third party. See, e.g., Clarke v. Securities Industry Ass'n, ___ U.S. ___, 107 S. Ct. 750 (1987); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970). But it remains an absolute prerequisite to such standing that the plaintiff must suffer a concrete injury "fairly traceable to the [government's] allegedly unlawful conduct," Allen v. Wright, supra, 468 U.S. at 751. Certainly that requirement was met in Data Processing and Clarke, where the challenged agency decisions allowed a class of companies to compete with the plaintiffs in a particular business. The indirect competitive injury alleged by plaintiffs here, however, does not satisfy the requirement. Cf. In re U.S. Catholic Conference, 824 F.2d 156, 165-66 (2d Cir. 1987), cert. granted, 56 U.S.L.W. 3399 (Dec. 7, 1987), where the Court held that there was a "colorable basis" for finding that certain advocates of abortion rights have standing to challenge the tax exemption of the Catholic Church. In that case, unlike the present one, the taxpayer was actively advocating a position directly contrary to plaintiffs. (The Second Circuit held only that the district court had a colorable basis for exercising jurisdiction, and it did not purport to rule definitively on plaintiffs' standing.)

** While FEC regulations prohibit the Education Fund from sponsoring a debate but for its tax-exempt status, see 11 C.F.R. § 110.13(a), so that it can be said that the injury suffered by the plaintiffs would likely be "redressed by the requested relief," Allen v. Wright, supra, 468 U.S. at 751, it is clear that the "redressability" and "fairly traceable" components of the constitutional standing inquiry are separate, id. at 753, n. 19, and both must be satisfied in order to comply with Article III.

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Conclusion

For the foregoing reasons, plaintiffs' motion for a preliminary injunction against the federal defendants must be denied in all respects.

Dated: New York, New York
March 29, 1988

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DR. LENORA B. FULANI;
LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS; and
VIRGINIA SINCLAIR,

Plaintiffs,

- against -

LEAGUE OF WOMEN VOTERS EDUCATION
FUND; LEAGUE OF WOMEN VOTERS OF
THE UNITED STATES; LEAGUE OF WOMEN
VOTERS OF THE CITY OF NEW YORK
EDUCATION FUND, INC.; JAMES BAKER III,
Secretary of the Treasury, ROSCOE L.
EGGER, JR., Commissioner of Internal
Revenue,

Defendants.

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OPINION

88 Civ. 1441 (RWS)

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SWEET, D. J.

Plaintiffs Dr. Lenora B. Fulani ("Fulani"), Lenora B. Fulani's Committee for Fair Elections, and Virginia Sinclair have moved for a temporary restraining order and preliminary injunction (a) against defendants League of Women Voters Education Fund (the "League"), League of Women Voters for the United States, and League of Women Voters of the City of New York, Inc. (collectively, the "League organizations"), restraining them from conducting any presidential primary debate to which they do not invite Fulani to participate on equal terms with the other candidates and (b) against defendants Secretary of the Treasury (the "Secretary") and Commissioner of Internal Revenue (the "Commissioner") (collectively, the "federal defendants") enjoining them to take action to cause the League to conduct the debates in a nonpartisan manner or, in the alternative, to revoke the League's exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). Following the submission of briefs, affidavits and exhibits, oral argument was held on April 1, 1988. Upon the findings and conclusions set forth below, the motion is denied.

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The Complaint

The complaint alleges that the exclusion of Fulani from the League's primary season debates violates her rights under the

First Amendment. The complaint also asserts that Fulani's exclusion is a partisan act in violation of Internal Revenue Code section 501(c)(3), 26 U.S.C. § 501(c)(3) (1987 Supp.), and a discriminatory act on the basis of race and sex in violation of the Fourteenth Amendment and the League's obligations under Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000d-2000d-4 (1981) and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1686 (1978). Finally, the complaint alleges a breach of contract claim against the League organizations for their alleged failure to be nonpartisan and to promote the inclusion of minorities and women to the fullest extent possible in the electoral process. With respect to the federal defendants, the complaint alleges that the failure of the Secretary and the Commissioner to revoke the tax exemption of the League violates both their duties under the Code and plaintiffs' rights to freedom of speech and association and to equal protection of the laws under the First and Fifth Amendments.

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The Parties

Fulani is an African-American woman who was born and raised in Chester, Pennsylvania. She received an undergraduate degree from Hofstra University, a Master's Degree in educational psychology from Columbia University Teachers College, and a Ph.D in developmental psychology from the Graduate School and University Center of the City University of New York. Fulani has

been active in electoral politics for many years, having run as an independent candidate for Lt. Governor of New York in 1982, Mayor of New York City in 1985 and Governor of New York State in 1986.

On June 24, 1987, Fulani publicly announced her candidacy for President of the United States. She is not seeking the nomination of the Democratic or Republican parties. Running as an independent, Fulani is seeking to attain a place on the ballot in all fifty states and the District of Columbia by (a) meeting petition requirements in a number of states to have her name on the ballot as an independent, and (b) winning the nomination of several minor parties, such as the New Alliance Party, which is organized in twenty-six states, the Illinois Solidarity Party, the Peace and Freedom Party of California and the Labor Farm Party of Wisconsin, that either have a permanent ballot position or will be petitioning to attain a ballot position in 1988. As her campaign progresses, Fulani has been invited to numerous speaking engagements, forums, and interviews, at the community and local level. She has submitted unrebutted evidence that she has personally made approximately 210 campaign appearances in thirty-four states and the District of Columbia, and has appeared on thirty-eight local and regional television programs at forty-two stations based in eighteen states; eight national television programs; 174 local and regional radio programs on 158 stations based in thirty-two states; and ten

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nationally-syndicated radio programs. She and her campaign have been the subject of 173 articles in local and regional newspapers and ten articles in national newspapers and magazines.

On January 28, 1988, Fulani was certified by the Federal Election Commission ("FEC") as eligible for presidential primary matching funds ("primary matching funds") based on Fulani's "threshold submission," filed with the FEC pursuant to the Federal Primary Matching Payment Account Act, 26 U.S.C. § 9033 (1987 Supp.), documenting that she had received matchable contributions exceeding $5,000 from residents of at least twenty states in amounts not exceeding $250 from any one contributor. She is the only woman who has received primary matching funds in connection with the 1988 election. She is the first black woman ever to qualify for matching funds. At the time of oral argument on the instant motion, Fulani was one of sixteen candidates to have qualified for federal primary matching funds, eight of whom had terminated their candidacies.

The League is a private, non-for-profit charitable trust exempt from federal income taxes. Its goal is to foster voter education and participation in the electoral process. Since its founding in 1957, the League has sponsored four Democratic presidential primary debates, one vice-presidential general election debate, and three presidential general election debates. In 1980, the League sponsored three Republican

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presidential primary debates and two presidential general election debates. In 1984, the League sponsored four Democratic presidential primary debates, one vice-presidential general election debate, and two presidential general election debates. The League's debates have always included only candidates who are competing against one another in a particular election or set of elections: the Democratic presidential nomination process, the Republican presidential nomination process, or the presidential general election.

Part of the League's funding consists of grants from federal agencies. The League has received a grant from the U.S. Department of Energy in the amount of $274,287. This grant is for the purpose of conducting an education project concerning nuclear energy. The League has also received a grant from the U.S. Environmental Protection Agency ("EPA") in the amount of $100,000 for the purpose of conducting a drinking-water survey. None of the funds from these grants has been or will be used in any way in connection with the League's presidential debates. The League is not currently the recipient of any other federal funds.

<u>The Debates</u>

The League is the sole sponsor of two presidential primary debates that Fulani seeks to enjoin by her application

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for a preliminary injunction. The League has scheduled a debate among the candidates running in the Democratic Party primaries for April 16, 1988 in Rochester, New York, and a debate among the candidates running in the Democratic Party primaries for June 5, 1988 in Torrance, California.[1] The purpose of the League's primary debates is to educate the nation's electorate about the issues in the primary election campaigns and about the positions of the candidates running in those elections and to stimulate increased voter interest and participation in the electoral process. The League scheduled separate Democratic and Republican primary debates in order to permit the voters to hear debate among the candidates who are competing against one another and in order to assist voters in making an informed choice among them.[2]

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[1] It appears that debates among the candidates running in the Republican Party primaries scheduled for April 17, 1988 and June 4, 1988 in New York and California, respectively, have been cancelled by the League on the basis of its determination that at the present stage of the campaign there is insufficient voter interest in Republican primary debates.

[2] The League plans to present a series of presidential general election debates in the fall of 1988 involving candidates for the presidency and the vice-presidency. The debates are scheduled for September 8, 1988, in Birmingham, Alabama; October 6, 1988 in Minneapolis-St. Paul, Minnesota; October 23, 1988 in Boston, Massachusetts; and November 1, 1988 in Los Angeles, California. One of the debates will involve vice-presidential candidates, while three of the debates will involve presidential candidates. The League will consider sending invitations for these debates after the Republican and Democratic parties have chosen their nominees.

On October 6, 1987, the Board of the League adopted the "1988 League of Women Voters Education Fund Candidate Selection Criteria for General Election Debate Participation." Under the selection criteria the League will sponsor one presidential general election debate to which it will invite only the nominees of the two major parties. The League's Board decided to invite

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The League invited candidates to participate in the presidential primary election debates after applying participant selection criteria adopted by the Board of Trustees of the League on April 2, 1987. The basic criteria the League adopted for selection of participants in the presidential primary debates are as follows:

> 1. The candidate must have made a public announcement of his or her intention to run for the Democratic (or Republican) Party's nomination for President.
>
> 2. The candidate must be legally qualified to hold the office of President.
>
> 3. The candidate must be a significant candidate for the Democratic (or Republican) Party's nomination for President.

Under the first criterion, only Democratic candidates have been invited to participate in the Democratic primary debates, and only Republican candidates have been invited to participate in the Republican primary debates. In assessing the significance of a candidacy, the League considers a number of factors, including:

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the major party nominees and any other significant candidates for the presidency who meet the selection criteria of the League to the other two presidential general election debates sponsored by the League. The Board of the League decided to hold one debate between the nominees of the two major parties in order to insure that the nation's voters are given at least one opportunity to hear the two major parties' nominees debate each other one-on-one.

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> Eligibility for matching payments under the Presidential Primary Matching Payment Account Act (26 U.S.C. Chapter 96).
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> . . .
>
> Active campaigning in a number of states for the [Democratic or Republican] Party's nomination.
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> . . .
>
> Recognition by the national media as a candidate meriting media attention.
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> . . .
>
> Other factors . . . that in the League's good faith judgment may provide substantive evidence of nationwide voter interest in a candidate, such as the extent of campaign contributions and national voter poll results.

"1988 League of Women Voters Education Fund Democratic Presidential Primary Debates Participant Selection Criteria."

Fulani is a declared independent and minor-party candidate for the presidency. Fulani's name was on the ballot in the presidential preference primary of the Illinois Solidarity Party held on March 15, 1988. Fulani will also be on the ballot in the presidential preference primaries of the New Alliance Party of Nebraska on May 10, 1988 and the Peace and Freedom Party of California on June 7, 1988. Fulani is circulating petitions to gain access to the ballot in many other states.

In December 1987 Fulani's representatives requested that the League invite her to participate in its presidential primary election debates. The request was denied on the grounds that Fulani is not a publicly announced candidate for either the

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Democratic or Republican nomination for President and, therefore, does not meet a prerequisite for invitation to participate in the League's presidential primary debates. Because Fulani did not meet this prerequisite for an invitation, the League did not consider whether she met any of its other criteria, including whether she is a significant candidate.

The Parties' Contentions

Fulani asserts that the League is required to be nonpartisan in its activities by virtue of its tax-exempt status under section 501(c)(3) of the Code and that, as a recipient of federal funds, the League is prohibited from discriminating on the basis of race or sex pursuant to Title VI and Title IX. Further, Fulani contends that the League's sponsorship of presidential primary debates is state action and thereby subject to the guarantees of the First and Fourteenth Amendments. Fulani alleges that her exclusion from the presidential primary debates on the grounds that she is not seeking the nomination of the Democratic or Republican parties is partisan and a violation of section 501(c) of the Code. She also contends that her exclusion is discriminatory on the basis of race and sex in violation of Title VI and Title IX.

The League responds that its selection criteria for the presidential primary debates are nonpartisan under both the FEC's

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regulations and rulings and the Code. The League asserts that Fulani's constitutional claims are baseless because (1) the League's debates do not involve state action and, even if they did, (2) the First Amendment does not guarantee the right to participate in a candidate's debate and (3) the League has not discriminated against Fulani on the basis of race or sex. Finally, the League contends that Fulani's Title VI and Title IX claims are without merit because there is no evidence that the conduct of the League's debates has had an adverse disparate impact on blacks or women.

The federal defendants contend that, because Fulani lacks standing to challenge the government's tax treatment of the League, there is no jurisdiction to entertain her suit. The federal defendants also contend that Fulani's exclusion from the Republican and Democratic primary debates does not give rise to a claim that the League is not entitled to a tax exemption under section 501(c)(3) of the Code.

As the Second Circuit has recently reaffirmed, a preliminary injunction is an extraordinary and drastic remedy not to be routinely granted. Hanson Trust PCL v. ML SCM Acquisition Inc., 781 F.2d 264, 273 (2d Cir. 1986). To prevail on their application for a preliminary injunction, the plaintiffs face:

> the formidable task of showing: (1) irreparable harm and (b) either (1) likelihood of success on the merits

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> or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward [the plaintiffs].

Id. "Furthermore, equitable considerations are important in the determination whether to grant preliminary relief." WPIX v. League of Women Voters, 595 F. Supp. 1484, 1487 (S.D.N.Y. 1984).

State Action

A necessary element of Fulani's constitutional claims is a finding that the League's decision to exclude Fulani from its presidential primary debates involved state action. Whether ostensibly private conduct can properly be equated with government conduct so as to invite constitutional scrutiny is an issue that Professor Charles L. Black, Jr. once described as "the most important problem in American law." Black, "State Action," Equal Protection, and California's Proposition 14, 81 Harv.L.Rev. 69 (1967). A court's inquiry into the presence of state action must be guided in part by Mr. Justice Clark's observation in Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961) that "[o]nly by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance."

The League, a private, not-for-profit charitable trust, is the sole sponsor of the presidential primary debates at issue

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here. Courts have held that no state action exists when a private organization holds a candidates' debate. In Kay v. New Hampshire Democratic Party, 821 F.2d 31 (1st Cir. 1987), the Court of Appeals for the First Circuit held that no state action existed with respect to a presidential candidates' forum sponsored by the New Hampshire Democratic Party, stating, "in holding the forum, the Party was not engaged in governmental activity." Id. at 33. In an action involving similar facts, a federal district court in New Hampshire held: "[N]o governmental action is involved when the New Hampshire Democratic Party seeks to invite one, three, or twelve candidates to debate the issues of the campaign." Koczak v. Grandmaison, No. 88-30-D, slip op. at 4 (D.N.H. Jan. 22, 1988). But cf. Martin-Trigona v. University of New Hampshire, M. 87-56-D, slip op. (D.N.H. Jan. 5, 1988) (finding state action where state university holds a political debate among Democratic presidential primary candidates).

Fulani seeks to distinguish the New Hampshire cases on the grounds that they involved a political party, not a tax-exempt organization such as the League. Fulani's claim that the League's sponsorship of the presidential debates constitutes state action relies heavily on the Honorable Abraham D. Sofaer's consideration of the League's activities in WPIX v. League of Women Voters, 595 F. Supp. 1484 (S.D.N.Y. 1984). The decision in WPIX, which denied a preliminary injunction against a

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presidential general election debate sponsored by the League in 1984, involved the assertion of First Amendment rights of press access to that debate. The plaintiff, a producer of a syndicated national news program, sought reasonable access to the debate for two television cameras. Prior to the plaintiff's request, the League had announced its decision to require pooled coverage of the debates and had accepted a proposal from the three major networks and Cable News Network to form a pool.

Although the court denied the plaintiff's request for a preliminary injunction on equitable grounds, the court stated, in dictum, that the "plaintiff has raised a substantial possibility that it will be able to prove that the League's decision to deny access to any but the pooled cameras is state action." WPIX, 595 F. Supp. at 1489. The court analyzed the League's role in sponsoring and organizing presidential debates in light of the five factors articulated by the Second Circuit in Jackson v. Statler Foundation, 496 F.2d 623 (2d Cir. 1974), as important to a determination of state action. The Statler state action factors are:

> (1) the degree to which the "private" organization is dependent on governmental aid; (2) the extent and intrusiveness of the governmental regulatory scheme; (3) whether that scheme connotes government approval of the activity or whether the assistance is merely provided to all without such connotation; (4) the extent to which the organization serves a public function or acts as a surrogate for the State; (5) whether the organization has legitimate claims to

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recognition as a "private" organization in associational or other constitutional terms.

Jackson v. Statler Foundation, 496 F.2d at 629. The WPIX court indicated that the following aspects of the League's activities weighed in favor of a finding of state action: (1) the League had consulted with candidates who received substantial public funds for their campaigns, (2) the debates would be broadcast over television in accordance with regulations of the FEC and the Federal Communications Commission, (3) the League had institutionalized its role as the sole organizer of the debates for three successive presidential elections, (4) the League's motivation in conducting the debates was "purely public and educational," and (5) the League had not invoked any private property rights to deny access to the debates. WPIX, 595 F. Supp. at 1488-89.

The League seeks to distinguish on its facts the WPIX court's discussion of whether the debates involve state action. First, the League asserts, and Fulani does not dispute, that there has been no input from any public official concerning the selection of participants in the debates at issue here. Second, the League notes that at least twenty-five presidential primary debates have been sponsored by other entities during this campaign season, none of which has been a government. This fact, the League contends, disproves the WPIX court's suggestion that

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the League's sponsorship of the primary debates is a governmental function.

Apart from these factual distinctions, the WPIX court's discussion of the state action issue was premised almost exclusively on the Statler five factor analysis. The court did not address cases decided after Statler in which the Supreme Court has applied a more restrictive concept of state action than that which would appear to be permissible under what Judge Friendly described as the Second Circuit's "loose characterization" of the doctrine. See Jackson v. Statler Foundation, 496 F.2d at 637 (Friendly, J., dissenting from denial of reconsideration en banc). Examination of the holdings in those cases reveals that the Court has tightened the proof required for a showing of state action.

In San Francisco Arts & Athletics, Inc. v. United States Olympic Committee, 107 S. Ct. 2971 (1987), the Supreme Court held that the decision of the United States Olympic Committee ("USOC") to enforce a trademark in the word "Olympic" did not involve governmental action. The USOC is a private, not-for-profit corporation established under federal law. See 36 U.S.C. § 378 (1988). Its funding is provided, in part, through the exclusive use of the Olympic words and symbols and through direct grants from the Secretary of Commerce. See 36 U.S.C. §§ 380, 384 (1988). The USOC was granted the exclusive use of the

word "Olympic" by act of Congress. See 36 U.S.C. § 380 (1988). At the end of each calendar year, the USOC is required by law to submit a detailed report of its operations to the President and to both Houses of Congress. See 36 U.S.C. § 382a (1988). Despite this bundle of government grants and regulations, the Supreme Court concluded that the USOC's acts could not be attributed to the government.[3]

The Court relied on its past state action decisions that limit the scope of the Statler five factor analysis; namely, (1) that the government may subsidize private entities without assuming constitutional responsibility for their actions, see Blum v. Yaretsky, 457 U.S. 991, 1011 (1982); (2) that the fact that a private entity performs a function that serves the public does not make its acts governmental action, see Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982); and (3) that even extensive regulation by the government does not transform the actions of the regulated entity into those of the government, see Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974). See San

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[3] The Court made clear its concern that private, not-for-profit organizations not be made subject to suits for alleged constitutional violations simply on account of their federally created or nonprofit status: "It need hardly be said that if federally created private corporations were to be viewed as governmental rather than private actors, the consequences would be far-reaching. Apart from subjecting these private entities to suits under the equal protection component of the Due Process Clause of the Fifth Amendment, presumably -- by analogy-- similar types of nonprofit corporations established under state law could be viewed as governmental actors subject to such suits under the Equal Protection Clause of the Fourteenth Amendment." San Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2984 n.23.

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Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2985-86. Most important, the Court read its prior state action decisions as holding that a "government 'normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the [government].' Blum v. Yaretsky, supra." Id. at 2986.

The facts of the instant case, in the light of the Supreme Court's recent decisions, bar a finding that the League's decision to exclude Fulani from the presidential primary debates involved governmental action. Although the League does receive a federal subsidy both through its tax exemption and separate grants from federal agencies, government subsidization alone will not turn private conduct public. Similarly, since government subsidies are rarely bestowed without accompanying government regulation, which has been held not to transform the actions of the regulated entity into those of the state, the fact that both the FEC and the Code govern aspects of the League's activities does not make it a state actor. Further, while but for its tax exempt status, the League would not be permitted under FEC regulations to sponsor a debate, its decision to exercise its right to hold a debate does not require government input. Cf. San Francisco Arts & Athletics v. USOC, 107 S. Ct. at 2986. Finally, although the League's objective is to promote educational programs that benefit the public, there has been no

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showing that its sponsorship of presidential primary debates constitutes the performance of a "public" function, let alone a function that has been "traditionally the exclusive prerogative of the State." Jackson, 419 U.S. at 353. Therefore, because the League is not a governmental actor, the prohibitions of the Constitution do not apply to its decision to exclude Fulani from its presidential primary debates.[4]

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[4] Even if the League's decision to exclude Fulani from the debates could be deemed to involve state action, there is no merit to her First Amendment claim. In Johnson v. Federal Communications Commission, 829 F.2d 157 (D.C. Cir. 1987), the Court of Appeals for the District of Columbia Circuit considered a challenge by the Citizens Party's Presidential and Vice Presidential candidates to the League's refusal to include them in its 1984 Presidential and Vice Presidential general election debates between the nominees of the Democratic and Republican parties. The court held that the minor-party candidates had no right under either the First Amendment or the Communications Act of 1934 to be included in those debates. Johnson, 829 F.2d at 160. The court cited Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973), as holding that no individual member of the public has a right to broadcast her own particular views on any matter. Id. at 162; see also Martin-Trigona v. University of New Hampshire, M. 87-56-D, slip op. (D.N.H. Jan. 5, 1988) ("The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.") (citing Heffron v. International Soc. for Krishna Consciousness, 452 U.S. 640, 647 (1981).

Fulani's attempt to buttress her First Amendment claim by citing to the Supreme Court's voting rights cases, see, e.g., Anderson v. Celebrezze, 460 U.S. 780 (1983); Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944), is unavailing. See Johnson, 829 F.2d at 164-65 (distinguishing the Supreme Court's voting rights and ballot access cases).

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Fulani's Title VI and Title IX Claims

Fulani claims that the League's criterion restricting participation in the primary debates to Democratic or Republican candidates discriminates against her on the basis of race and sex in violation of Title VI and Title IX.[5] As discussed above, the League receives federal assistance indirectly through its tax exemption and directly through grants from the Department of Energy and the EPA. Therefore, there is jurisdiction over Fulani's private right of action to enforce the proscriptions of Title VI and Title IX. See Guardians Association v. Civil Service Commission of the City of New York, 463 U.S. 582, 594-95 (1983); see also Cannon v. University of Chicago, 441 U.S. 677 (1979).

Title VI requires proof of actual intentional discrimination on the basis of race. See Guardians Association, 463 U.S. at 608 n.1 (Powell, J., concurring in judgment); Lora v. Board of Education, 623 F.2d 248, 250 (2d Cir. 1980). Similarly,

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[5] Section 601 of Title VI, 42 U.S.C. § 2000d (1981), prohibits race discrimination in "any program or activity receiving Federal financial assistance." Section 901(a) of Title IX, 20 U.S.C. § 1681 (1978), prohibits sex discrimination in "any education program or activity receiving Federal financial assistance."

In view of the holding above that the League's decision not to invite Fulani to participate in the primary debates does not involve state action, her claim of race and sex discrimination in violation of the Fourteenth Amendment will not be considered.

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Title IX requires that a plaintiff show intentional sex discrimination. Cannon v. University of Chicago, 648 F.2d 1104, 1109 (7th Cir.), cert. denied, 454 U.S. 1128 (1981); Nagel v. Avon Board of Education, 575 F. Supp. 105, 109 (D.Conn. 1983). Because the record here is wholly devoid of any showing that the League has intentionally discriminated against Fulani on the basis of her race or sex, it would appear that her Title VI and Title IX claims must fall. However, in Guardians Association, a majority of the Court held that proof of disparate impact would be sufficient to establish liability when the suit is brought to enforce regulations adopted pursuant to Title VI. Guardians Association, 463 U.S. at 608 n.1 (Powell, J., concurring in judgment); see Alexander v. Choate, 469 U.S. 287, 293 (1985) (explaining the holdings in Guardians Association). Assuming, without deciding, that a similar showing is sufficient for the purposes of regulations adopted pursuant to Title IX, the court will consider whether there is merit to Fulani's claim of disparate impact.

The Department of Energy has promulgated a nondiscrimination regulation that provides, inter alia,

> A recipient [of federal assistance] . . . may not directly or through contractual or other arrangements utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex . . . or have the effect of defeating or substantially impairing accomplishment of the program

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> objectives with respect to individuals of a particular race, color, national origin, or sex . . . .

10 C.F.R. § 1040.13(c) (1987). Fulani contends that she has been excluded from the League's presidential primary debates on the basis of a selection criterion that is neutral on its face but severely discriminatory in effect. The criterion is the distinction between major party candidates and non-major party candidates. Neither the Republican or the Democratic party has ever nominated an African-American or a woman for the presidency. By comparison, Fulani asserts, seven African-Americans have run for President as independents or minor party candidates. On the basis of these assertions, Fulani claims that the League's use of a major party affiliation as a criterion for participation in its primary debates has an adverse disparate impact on blacks and women.

At this stage of the litigation, Fulani has not demonstrated the likelihood that she will be able to prevail on her claim of disparate impact. Although she has presented undocumented historical data listing black and female presidential and vice-presidential candidates from minor parties, she has not identified the race and sex of the 140 current non-major party presidential candidates or the race and sex of the 141 current candidates for the Republican or Democratic nomination. That neither major party has ever nominated a black or a woman for the presidency is not proof that the League's

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criterion for its primary debates has a disproportionate impact on blacks or women.[6]

Moreover, as the Supreme Court concluded in Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 274-75 (1979), disproportionate impact fails to evince an improper purpose when a believable, historically accepted and nondiscriminatory explanation is available. See also Bryan v. Koch, 492 F. Supp. 212, 220-21 (S.D.N.Y.), aff'd, 627 F.2d 612 (2d Cir. 1980). The League has advanced such a reason for limiting the debates to participants who are candidates for the Republican or Democratic nomination: the purpose of the primary debates is to educate citizens who will vote in a particular primary about candidates who are running against each other in that primary. Fulani has not established that the League's explanation is a pretext for race or sex discrimination. At present, the record shows that one non-major party candidate, Fulani, is black and female, and that one major party candidate, Jesse Jackson, is black and male. Therefore, there is no basis for the issuance of a preliminary injunction on Fulani's Title VI and Title IX claims.

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[6] See, e.g., Butts v. National Collegiate Athletic Association, 600 F. Supp. 73, 75 (E.D. Pa.) (plaintiff showed that a rule requiring that each year of pre-collegiate basketball competition after age 20 be counted against collegiate eligibility had a disparate impact on blacks because the actual pool of applicants for college athletic programs contained a much higher percentage of blacks over the age of 20 than whites of that age), aff'd, 751 F.2d 609 (3d Cir. 1984).

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Fulani's Section 501(c)(3) Claim

The government defendants contend that Fulani does not have standing to maintain an action to force the government to revoke the League's tax exemption on the ground that the League allegedly has not complied with the statutory conditions for retaining its exemption. In response, Fulani relies on two decisions by the Honorable Robert L. Carter in Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471 (S.D.N.Y. 1982) (first motion to dismiss), 603 F. Supp. 970 (S.D.N.Y. 1985) (renewed motion to dismiss), to support her claim to standing. Although the question of Fulani's standing raises difficult issues, it need not detain the court on this expedited application for a preliminary injunction. Proceeding directly to the merits, Fulani's claim that the League has conducted its primary debates in a partisan manner has no support in law or fact.

Section 501(c)(3) of the Code provides that a tax-exempt organization may not "participate in or intervene in (including the publishing or distributing of statements), any political campaigns on behalf of (or in opposition to) any candidate for public office." I.R.C. § 501(c)(3) (1986), as amended by the Revenue Act of 1987, P.L. 100-203. In Revenue Ruling 78-248, 1978-1 C.B. 154, the Internal Revenue Service gave

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some guidance as to what kinds of voter education activities a 501(c)(3) tax-exempt organization might engage in without violating the Code's ban on political activity. The Revenue Ruling states that "certain 'voter education' activities conducted in a non-partisan manner may not constitute prohibited political activity" but that others might. The ruling goes on to give four examples of voter education activities that would be considered partisan, none of which involve public debates.

In support of her claim that the League's primary selection criteria are biased against minor party candidates, Fulani points to the fact that the FEC has interpreted the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq. (1982), to mean that presidential candidates from minor parties may receive federal matching funds in the same way as candidates from major parties. Fulani asserts that her qualification by the FEC for primary matching funds under the Presidential Primary Matching Payment Account Act establishes that she is in fact a primary candidate. As a primary candidate who has qualified for primary matching funds, Fulani now seeks to participate on an equal footing with all other party candidates, irrespective of party affiliation.

The League and the federal defendants join in arguing that Fulani's claim of a right to participate in a debate among candidates of a single party (of which she is not a member) who

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are seeking that party's nomination (which she is not seeking) is groundless on its face. The FEC regulations governing nonpartisan candidate debates under the Federal Election Campaign Act lend support for their position. The FEC regulations provide, in part:

> (a) Staging organization. (1) 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 may stage nonpartisan candidate debates in accordance with 11 CFR 110.3(b) and 114.4(e) . . .
>
> (b) Debate structure. The structure of debates staged in accordance with 11 CFR 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.

11 C.F.R. § 110.13 (1987). In its Explanation and Justification for its regulations, the FEC stated:

> For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party . . . .

44 Fed.Reg. 76,734-35 (Dec. 27, 1979). Thus, the FEC, which is the governmental entity charged with enforcing the laws relating

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to federal election campaigns,[7] has expressly determined that a primary debate is nonpartisan under the Federal Election Campaign Act even if participation is restricted to candidates seeking the nomination of one party.

The FEC has determined that the League has no obligation to hold a primary debate for every party and that its obligation to be nonpartisan extends only to candidates running against each other for a particular party's nomination. The League is not responsible for the predominance of the two major parties in American politics nor for the existence of a primary season during which the major parties nominate their candidates for the presidency. Although the League obviously operates within the parameters of the present system, the League cannot be held responsible for the disadvantage at which the system places minor party candidates. Moreover, while the League's primary debates may, in the public's eye, implicitly endorse the primacy of the two major parties, the League's influence in this regard is insignificant in comparison to the reinforcement given to the major party system each day by the morning newspapers and evening news programs. In sum, there is no basis on which the court

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[7] The Federal Election Campaign Act, 2 U.S.C. § 437c(b)(1) (1985), grants the FEC exclusive jurisdiction with respect to the civil enforcement of the provisions of the statute. Section 437h provides for review of an FEC decision by a district court. Although Fulani has circumvented the FEC's exclusive jurisdiction in this action against the federal defendants, the law requires that any direct challenge to the League's compliance with the FEC's regulations be filed in the first instance with the FEC. 2 U.S.C. § 437c(b)(1) (1985).

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could find that the League's practice of inviting only Democratic candidates to the Democratic primary debates and only Republican candidates to the Republican primary debates is a partisan act in violation of the League's tax-exempt status under the Code.

Fulani's Contract Claim

Fulani's contract claim against the League organizations is based upon Article II of the League's Trust Agreement which prohibits the League from engaging in partisan activity. In view of today's holding that the League's sponsorship of the presidential primary debates is not a partisan activity, Fulani's contract claim is without merit.

Upon the findings and conclusions set forth above, Fulani has failed to establish either a likelihood of success on the merits or sufficiently serious questions going to the merits. Therefore, the motion for a preliminary injunction is denied. The complaint will be dismissed as against the federal defendants, and counts three and four of the complaint will be dismissed as against the League organizations.

IT IS SO ORDERED.

New York, N.Y.
April 12, 1988

ROBERT W. SWEET
U.S.D.J.

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GC#9391

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 MAY 27 PM 4:02

ARNOLD & PORTER
1200 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 872-6700
CABLE: "ARFOPO"
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1700 LINCOLN STREET
DENVER, COLORADO 80203
(303) 863-1000

900 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 593-2772

May 27, 1988

BY HAND

Anne Weissenborn, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR No. 2601

Dear Ms. Weissenborn:

Enclosed are the originals of the Verified Statement of Nancy Neuman, the supplemental Verified Statement of Grant P. Thompson, Esq. and the Statement of Designation of Counsel for the League of Women Voters Education Fund and Nancy Neuman in MUR No. 2601. Due to inadvertance, copies of the verified statements and the designation of counsel were filed on May 20, 1987 with the response of the League of Women Voters Education Fund and Nancy Neuman to a complaint filed with the Federal Election Commission by Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections.

If you have any questions, please do not hesitate to call me at 785-7699.

Sincerely,

Marie V. O'Connell

Marie V. O'Connell*

enclosures

* Admitted in New York only

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE COMPLAINT OF DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND and NANCY NEUMAN	MUR No. 2601

VERIFIED STATEMENT OF NANCY NEUMAN

Nancy Neuman deposes and says:

1. I serve as Chair of the Board of Trustees of the League of Women Voters Education Fund ("the League"). I have held this position since June 18, 1986. As Chair, I have participated extensively in the organizing and structuring of the 1988 Democratic Presidential primary debates, Republican Presidential primary debates, and Presidential general election debates sponsored by the League. I make this verified statement in opposition to the complaint filed in this proceeding.

2. I have reviewed the verified statements of Grant P. Thompson, Esquire, dated March 27, 1988, and May 16, 1988. They are true and correct to the best of my knowledge and belief.

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I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Nancy Neuman

Washington, D.C.
May 16, 1988

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE COMPLAINT OF DR. LENORA B. FULANI and LENORA B. FULANI'S COMMITTEE FOR FAIR ELECTIONS - against - LEAGUE OF WOMEN VOTERS EDUCATION FUND and NANCY NEUMAN	MUR No. 2601

VERIFIED STATEMENT OF GRANT P. THOMPSON, ESQUIRE

Grant P. Thompson, Esquire, deposes and says:

1. I am Executive Director of the League of Women Voters Education Fund ("the League"). I make this verified statement in opposition to the complaint filed in this matter and to supplement and to update my attached verified statement dated March 27, 1988.

2. In April 1988 the Board of Trustees of the League canceled the Republican Presidential primary debates scheduled by the League for April 17, 1988, and June 4, 1988. It did so because at that time the only Republican Presidential candidates who met the League's selection criteria were George Bush and Pat Robertson and George Bush had announced that he would no longer participate in primary debates.

3. Paragraph 31 of the complaint implies that the League designed its Presidential primary debates in

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order to preserve its institutional role as a sponsor of Presidential debates and in order not to alienate the Democratic and Republican parties. This allegation is untrue. The purpose of the League was to foster voter education.

4. My attached verified statement dated March 27, 1988, as updated and supplemented by this verified statement, continues to be true and correct to the best of my knowledge and belief.

I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Grant P. Thompson

Grant P. Thompson

Washington, D.C.
May 16, 1988

Attachment

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2601

NAME OF COUNSEL: Brooksley Born

ADDRESS: Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

TELEPHONE: 202-872-6832

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.

May 16, 1988
Date

Nancy Neuman
Signature

RESPONDENT'S NAME: League of Women Voters Education Fund and Nancy Neuman

ADDRESS: 1730 M Street, N.W.
Washington, D.C. 20036

HOME PHONE:

BUSINESS PHONE: 202-429-1965

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 220463

SENSITIVE

FEDERAL ELECTION COMMISSION RECEIVED
SECRETARIAT

88 MAY 31 PM 4:23

FIRST GENERAL COUNSEL'S REPORT

MUR 2601
DATE COMPLAINT RECEIVED
BY OGC 4/28/88
DATE OF NOTIFICATION TO
RESPONDENTS 5/1/88
STAFF MEMBER Weissenborn

COMPLAINANTS: Dr. Lenora B. Fulani
Lenora B. Fulani's Committee
for Fair Elections

RESPONDENTS: League of Women Voters Education Fund
Nancy Neuman, as chairperson

RELEVANT STATUTES: 2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 438(e)
11 C.F.R. § 110.13

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

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I. GENERATION OF MATTER

On April 26, 1988, the Commission received a complaint filed by Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Elections against the League of Women Voters Education Fund ("the League"). 1/ The complainants allege that the League has violated 11 C.F.R. § 110.13 by establishing selection criteria for the primary season Presidential debates to be sponsored by the League which "will never permit any independent candidate to be heard." (Emphasis in original.) Further, the complainants allege that the same selection criteria "violate fundamental principles of education" and are discriminatory on the basis of sex and race in violation of Title VI of the Civil Rights Act of 1964 and of Title IX of the Education Amendments of 1972. Finally, the

1/ The League is an unincorporated, not-for-profit charitable trust.

complaint apparently asserts that because the structure of the debates sponsored by the League is not non-partisan 2/, the costs of the debates are not exempt from the definitions of contribution and expenditure pursuant to 11 C.F.R. § 100.7(b)(21) and 11 C.F.R. § C.F.R. § 100.8(b)(23), thus placing the League in violation of 2 U.S.C. §§ 433 and 434 for neither registering with the Commission nor submitting reports.

The complainants also request that the Commission authorize the filing of a suit for mandatory injunctive relief to compel the League to include Dr. Fulani in the June 5, 1988, Democratic primary debate which the League will sponsor in California, that the Commission undertake a survey of the sex, race and national origin of all declared 1988 Presidential candidates, and that the Commission commence a rulemaking proceeding to review its regulations governing debates. 3/

II. FACTUAL AND LEGAL ANALYSIS

1. 11 C.F.R. § 110.13

The Commission's debate regulations at 11 C.F.R. § 110.13 permit non-profit, tax-exempt organizations which do not endorse, support or oppose political candidates to serve as staging organizations for nonpartisan candidate debates. The regulations further provide that the structure of such debates is left to the discretion of the

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2/ The actual language of the complaint at Section II, page 27, states the opposite; however, this appears to be in error given the remainder of the complaint.

3/ On May 10, 1988, the Commission voted to deny at that time the complainants' request that the Commission seek injunctive relief and to deny the request that the complaint be considered a petition for rulemaking.

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staging organization provided at least two candidates are included and the debates are nonpartisan, i.e, "they do not promote or advance one candidate over another."

The Explanation and Justification for 11 C.F.R § 110.13(b) states

> For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party. . . .
>
> A debate is nonpartisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another. 44 Fed. Reg. 76,734-35 (Dec. 27, 1979).

Dr. Lenora B. Fulani is seeking the nomination of several minor parties for the Office of President. On January 28, 1988, the Commission certified that she was eligible to receive primary matching funds pursuant to 26 U.S.C. § 9031 et.seq. According to the complaint, Dr. Fulani was the only one of 16 presidential candidates declared eligible by the Commission to receive primary matching funds whose significance was not assessed by the League for purposes of issuing invitations to participate in League-sponsored Presidential primary debates in 1988.

The League, in its response to the complaint, states that the three criteria used in selecting participants in the debates were 1) the candidate must have made a public announcement of his or her intention to run as a candidate for the nomination of the

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Democratic Party or the Republican Party, 2) the candidate must be legally qualified to become President, and 3) the candidate must be "a significant candidate of one of the major parties." According to this same response, "only Democratic candidates have been invited to participate in the Democratic primary debates, and only Republican candidates have been invited to participate in the Republican primary debates."

Dr. Fulani's December, 1987, request to participate in the League's Presidential primary debates was denied, according to the League, because she "is admittedly not a publicly announced candidate for either the Democratic or Republican nomination for President and therefore does not meet a prerequisite for invitation to participate in the League's Presidential primary debates." In a footnote the respondents' state further, "Because Dr. Fulani did not meet this prerequisite for an invitation, the League did not consider whether she met any of its other criteria, including whether she is a significant candidate."

The complainants argue that "[t]he Commission has the responsibility of ensuring that the voter education activities of the [League] . . . are nonpartisan." They allege that the League's program" by its rules forbids any education of the voters about independent candidates, no matter how significant they may be." The complainants term the League's approach "blatantly partisan and miseducative."

As quoted above, the Commission's Explanation and Justification for 11 C.F.R. § 110.13(b) permits the limitation of

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debate participants to those candidates seeking the nomination of one party. The complainants do not ignore the existence of this language in the Explanation and Justification. Rather, they argue that the Explanation and Justification is "merely interpretative in nature" and that it was written prior to "the current growth of a national independent power sector." The complainants urge Commission reconsideration of the concept of nonpartisanship and the adoption of a new "model" that is "blind to the political party affiliation of each candidate" and which "take(s) into account, in a fair and evenhanded manner, the differences between the nominating processes applicable to major party candidates . . . and the sector of minor party and independent candidates . . . ." They point to the Commission's decisions regarding the criteria for certifying minor party and independent candidates as eligible to receive public matching funds as exemplifying the kind of nonpartisanship they are seeking. The complainants contrast this model with that of the League which, they assert, requires nonpartisanship only among Democratic or Republican candidates and not between major party candidates and "the minor party/independent sector." They argue that if the regulations are read to permit "the automatic exclusion of independent candidates, then [the regulations] would be extremely partisan as applied to independent and minor party candidates . . . ." 4/

4/ On March 14, 1988, the complainants filed a complaint against the League and others in the United States District Court for the Southern District of New York alleging violations of the First and Fourteenth Amendments, of the Internal Revenue Code, of Title (continued)

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In response to the complaint, counsel for the League argues that "[t]he Commission's debate regulations and its interpretations of the regulations clearly authorize Dr. Fulani's exclusion as nonpartisan." Counsel states that the purpose of the League's debates is to educate the electorate on the issues involved in the Democratic and Republican primary election campaigns and also "to stimulate increased voter interest and participation in the electoral process."

> The League has determined that while there is substantial voter interest in the primary elections of the Democratic and Republican parties, there currently is not sufficient voter interest in any minor party's primaries to justify holding debates among candidates for the nomination of a minor party. In the League's experience no educational purpose is served in presenting debates in which the public is not interested.

The League also argues that "Dr. Fulani's eligibility for matching funds and her participation in the primary process of

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4/ (continued) VI of the 1964 Civil Rights Act, and of Title IX of the Education Amendments of 1972. The complainants moved for a temporary restraining order and a preliminary injunction against the defendents to restrain them from conducting a presidential primary debate if they did not invite Dr. Fulani to participate. On April 12, 1988, the court denied the motion for a preliminary injunction, dismissed all constitutional claims on the basis of no state action, found there had been no showing of either intentional discrimination or disparate impact pursuant to Title VI and Title IX, and rejected the claim that the exclusion of Dr. Fulani was a partisan act. In the latter instance, the court cited the Commission's debate regulations and their Explanation and Justification, stating that the Commission "has expressly determined that a primary debate is nonpartisan under the Federal Election Campaign Act even if participation is restricted to candidates seeking the nomination of one party." Fulani v. League of Women Voters Education Fund, et.al., 88 Civ. 1441 (R.W.S.) (S.D.N.Y.). The complainants in the present matter argue that the Commission has not determined "the issue of fairness in debates relative to candidates like Fulani."

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some minor parties has nothing whatsoever to do with the partisan or nonpartisan nature of the League's debates"; her exclusion was based upon her not seeking the nominations at issue in the Republican and Democratic debates.

It is clear that the Commission's regulations as interpreted by the Explanation and Justification permit the League as a staging organization to limit the selection of candidates to participate in a debate to those seeking the nomination of one party. Thus the regulations permit the holding of a debate, such as that being planned for June 5, 1988, in California, which is limited to candidates for the nomination of the Democratic Party. The League is also expressly permitted not to hold like debates for candidates for the nomination of the Republican Party or any other, minor party.

Further, 2 U.S.C. § 438(e) provides that "any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provision of this section and who acts in good faith in accordance with such rule or regulation, shall not as a result of such act, be subject to any sanction provided by [the] Act . . . ." Therefore, the fact that the League relied upon this regulation in formulating its procedures for selecting candidates to be invited to League-sponsored debates would prevent the Commission from pursuing an enforcement action with regard to the application of Section 110.13.

This Office recommends that the Commission find no reason to believe that the League has violated 11 C.F.R. § 110.13.

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2. 2 U.S.C. § 433 and § 434

2 U.S.C. § 433 requires all political committees to file statements of organization with the Commission, while 2 U.S.C. § 434 requires political committees to file periodic reports of receipts and expenditures. 2 U.S.C. § 431(4) defines "political committee" to "include any committee, club, association or other group of persons" which receives contributions or makes expenditures in excess of $1,000 for purposes of influencing federal elections. 2 U.S.C. § 431(9)(B)(ii) exempts from the definition of "expenditure" "nonpartisan activity designed to encourage individuals to vote or to register to vote, while 11 C.F.R. § 100.7(b)(21) and § 100.8(b)(23) exempt from the definitions of "contribution" and "expenditure" the financing of nonpartisan candidate debates.

In the present matter the complainants argue that the League's debates are not nonpartisan in the selection of participants, and therefore the costs of the debates constitute expenditures which are not exempt pursuant to 2 U.S.C. § 431(9)(B)(ii). The League is thus assertedly required to register and report as a political committee.

As discussed above, the League's selection of candidates to participate in its debates meets the requirements of the Commission's regulations for nonpartisanship. There is no basis for determining that the debates were not nonpartisan; their costs are thus exempt from the definitions of "contribution" and "expenditure" pursuant to the Act and regulations; and the League does not become a political committee by virtue of these expenditures.

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This Office recommends findings of no reason to believe that the League has violated 2 U.S.C. § 433 and § 434.

3. Allegations of Discrimination and Request for Survey

The complainants argue that the League's debate selection rules discriminate against independent candidates on the basis of race and sex. The complainants further argue that if the Commission interprets its regulations to permit the League to use discriminatory criteria, "the Commission is participating illegally in discrimination in violation, inter alia, of Title IV of the Civil Rights Act and its implementing regulations." The complainants also ask the Commission to undertake a survey of the sex, race and national origin of all declared 1988 Presidential candidates to analyze the impact of the League's criteria.

The Commission's jurisdiction extends only to the enforcement of the Federal Election Campaign Act of 1971, as amended, and to 26 U.S.C. § 9001 et seq, and § 9031 et seq. Therefore the Commission is not the proper forum with which to raise allegations of violations of the 1964 Civil Rights Act or other such statutory provisions. Nor is the Commission the appropriate source of the type of survey requested by the complainants.

4. Request for Injunctive Relief

The complainants have requested that the Commission file an action for a preliminary injunction to force the inclusion of Dr. Fulani in the League's June 5, 1988, debate of candidates for the nomination of the Democratic Party in California. In light of the recommended determinations that the League's candidate selection procedures do not result in violations of either the

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Act or the Commission's regulations and that the Commission has no jurisdiction over the allegations of race and sex-based discrimination included in the complaint, there are no grounds upon which the Commission could pursue a preliminary injunction on behalf of the complainants. Therefore, this Office recommends that the Commission deny the complainants' request that the Commission seek a preliminary injunction with regard to the League's June 5, 1988, Democratic presidential primary debate.

RECOMMENDATONS

1. Find no reason to believe that the League of Women Voters Education Fund and Nancy Neuman, as chairperson, have violated 2 U.S.C. § 434 and § 434, or 11 C.F.R. § 110.13.

2. Deny the complainants' request that the Commission file an action for a preliminary injunction against the League of Women Voters Education Fund and Nancy Neuman, as chairperson, with regard to the June 5, 1988, Democratic presidential primary debate.

3. Approve the attached letters.

4. Close the file in this matter.

Lawrence M. Noble
General Counsel

5/31/88
Date

BY: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

Attachments
1. Response to complaint
2. Proposed letters (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2601
League of Women Voters Education Fund	)	
Nancy Neuman, as Chairperson	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 3, 1988, the Commission decided by a vote of 4-0 to take the following actions in MUR 2601:

1. Find no reason to believe that the League of Women Voters Education Fund and Nancy Neuman, as chairperson, have violated 2 U.S.C. § 434 and § 434, or 11 C.F.R. § 110.13.

2. Deny the complainants' request that the Commission file an action for a preliminary injunction against the League of Women Voters Education Fund and Nancy Neuman, as chairperson, with regard to the June 5, 1988, Democratic presidential primary debate, as recommended in the First General Counsel's report signed May 31, 1988.

3. Approve the letters, as recommended in the First General Counsel's report signed May 31, 1988.

(Continued)

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4. Close the file in this matter.

Commissioners Aikens, Elliott, Josefiak, and Thomas voted affirmatively for the decision; Commissioner McDonald and McGarry did not cast a vote.

Attest:

6-3-88
Date

Mary W. Dove
for Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Tues., 5-31-88, 4:23
Circulated on 48 hour tally basis: Wed., 6-01-88, 11:00
Deadline for vote: Fri., 6-03-88, 11:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1988

Arthur Block, Esquire
250 West 57th Street
New York, New York 10019

RE: MUR 2601

Dear Mr. Block:

On June 3, 1988, the Federal Election Commission reviewed the allegations in the complaint dated April 25, 1988, filed on behalf of Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Election, and found that, on the basis of the information provided in the complaint and information submitted on behalf of the League of Women Voters Education Fund ("the League"), there is no reason to believe to believe that the League has violated 2 U.S.C. § 433 and § 434 or 11 C.F.R. § 110.13. The Commission also voted to deny the complainants' request that the Commission authorize the filing of an action for a mandatory injunction regarding the League's Democratic presidential primary debate in California on June 5, 1988.

The Commission's jurisdiction extends only to the enforcement of the Federal Election Campaign Act of 1971, as amended, and of 26 U.S.C. § 9001 et seq. and § 9031 et seq. Therefore the Commission is not the proper forum to address allegations of discrimination, nor is it the appropriate source of the type of survey requested by the complainants.

Accordingly, on June , 1988, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1988

Brooksley Born, Esquire
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2601
League of Women Voters
Education Fund
Nancy Neuman, as
chairperson

Dear Ms. Born:

On May 3, 1988, the Federal Election Commission notified your clients, the League of Women Voters Education Fund and Nancy Neuman, as chairperson, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and of the Commission's regulations. The complaint also requested that the Commission immediately authorize the filing of an action for a mandatory injunction regarding the League's Democratic presidential primary debate to be held in California on June 5, 1988; that the Commission undertake a survey of the race, sex and national origin of all 1988 Presidential candidates; and that the Commission begin a rulemaking proceeding to review its debate regulations.

On June 3, 1988, the Commission found, on the basis of the information in the complaint and information provided on behalf of your client, that there is no reason to believe that your clients have violated 2 U.S.C. § 433 and §434 or 11 C.F.R. § 110.13. The Commission also voted to deny the complainant's request that the Commission file an action for a mandatory injunction regarding the League's June 5, 1988, debate and to deny their request for a survey of all 1988 Presidential candidates. Earlier, on May 13, 1988, the Commission had informed the complainants that it would be necessary to file a separate request for rulemaking.

The Commission's jurisdiction extends only to the enforcement of the Federal Election Campaign Act of 1971, as amended, and of 26 U.S.C. § 9001 et seq and § 9031 et seq. Therefore the Commission is not the proper forum to address allegations of discrimination, nor is it the appropriate source of the type of survey requested by the complainants.

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Accordingly, the Commission has closed its file in this matter. The matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1988

Brooksley Born, Esquire
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2601
League of Women Voters
Education Fund
Nancy Neuman, as
chairperson

Dear Ms. Born:

On May 3, 1988, the Federal Election Commission notified your clients, the League of Women Voters Education Fund and Nancy Neuman, as chairperson, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and of the Commission's regulations. The complaint also requested that the Commission immediately authorize the filing of an action for a mandatory injunction regarding the League's Democratic presidential primary debate to be held in California on June 5, 1988; that the Commission undertake a survey of the race, sex and national origin of all 1988 Presidential candidates; and that the Commission begin a rulemaking proceeding to review its debate regulations.

On June 3, 1988, the Commission found, on the basis of the information in the complaint and information provided on behalf of your client, that there is no reason to believe that your clients have violated 2 U.S.C. § 433 and §434 or 11 C.F.R. § 110.13. The Commission also voted to deny the complainant's request that the Commission file an action for a mandatory injunction regarding the League's June 5, 1988, debate and to deny their request for a survey of all 1988 Presidential candidates. Earlier, on May 13, 1988, the Commission had informed the complainants that it would be necessary to file a separate request for rulemaking.

The Commission's jurisdiction extends only to the enforcement of the Federal Election Campaign Act of 1971, as amended, and of 26 U.S.C. § 9001 et seq and § 9031 et seq. Therefore the Commission is not the proper forum to address allegations of discrimination, nor is it the appropriate source of the type of survey requested by the complainants.

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Accordingly, the Commission has closed its file in this matter. The matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1988

Arthur Block, Esquire
250 West 57th Street
New York, New York 10019

RE: MUR 2601

Dear Mr. Block:

On June 3, 1988, the Federal Election Commission reviewed the allegations in the complaint dated April 25, 1988, filed on behalf of Dr. Lenora B. Fulani and Lenora B. Fulani's Committee for Fair Election, and found that, on the basis of the information provided in the complaint and information submitted on behalf of the League of Women Voters Education Fund ("the League"), there is no reason to believe to believe that the League has violated 2 U.S.C. § 433 and § 434 or 11 C.F.R. § 110.13. The Commission also voted to deny the complainants' request that the Commission authorize the filing of an action for a mandatory injunction regarding the League's Democratic presidential primary debate in California on June 5, 1988.

The Commission's jurisdiction extends only to the enforcement of the Federal Election Campaign Act of 1971, as amended, and of 26 U.S.C. § 9001 et seq. and § 9031 et seq. Therefore the Commission is not the proper forum to address allegations of discrimination, nor is it the appropriate source of the type of survey requested by the complainants.

Accordingly, on June , 1988, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2601

DATE FILMED 7/1/88 CAMERA NO. 2

CAMERAMAN K.A.U.

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