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April 24, 2000

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL

**BY HAND DELIVERY**

General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20453

To Whom It May Concern:

We have enclosed for filing the original and two copies of a complaint on behalf of the Natural Law Party, John Hagelin and John Moore.

If you have any questions or require further information, please do not hesitate to contact me at 202/778-3005 or, alternatively, my colleague, Kristie Haynes at 202/778-3064.

Sincerely,

William P. McGrath, Jr. / KGH

William P. McGrath, Jr.

attachments

**BEFORE THE FEDERAL ELECTION COMMISSION**

*OUR 5064*

**IN THE MATTER OF THE )  
COMMISSION ON )  
PRESIDENTIAL DEBATES )**

**COMPLAINT**

The Natural Law Party of the United States ("NLP"), John Hagelin, and John Moore hereby file this Complaint pursuant to 2 U.S.C. § 437g(a) to bring to the attention of the Commission violations of the Federal Election Campaign Act ("FECA" or "the Act") by the Commission on Presidential Debates ("CPD"), the Democratic National Committee ("DNC") and the Republican National Committee ("RNC").

CPD, which is a creation of DNC and RNC and controlled by them, has announced plans to sponsor candidate debates during the 2000 general election campaign for President. As elaborated below, CPD's sponsorship of such debates violates FECA in several ways. Because CPD's sponsorship of candidate debates is not non-partisan but is intended to and would promote the candidates of the Democratic and Republican parties to the exclusion of candidates and issues advanced by other parties: 1) CPD's expenditures in sponsorship of the debates are expenditures by a corporation in connection with an election to public office, and specifically in connection with the election of presidential electors, prohibited by 2 U.S.C. § 441b(a); 2) CPD's expenditures in sponsorship of presidential debates are contributions to DNC and RNC, receipt of which is prohibited by 2 U.S.C. § 441b(a); 3) CPD is a political committee within the meaning

of 2 U.S.C. § 431(4)(A) and has failed to register as such or make periodic reports of contributions and expenditures as required by the Act and has thereby deprived complainants and others of information required by the Act; and 4) DNC and RNC have failed to report CPD's contributions as required by the Act and thereby have thereby deprived complainants and others of information required by the Act.

### **Parties**

Complainant NLP is a non-profit corporation organized and existing under the laws of the State of Iowa. NLP is located at 402 North 'B' Street, Fairfield, IA 52556. The Federal Election Commission recognized that NLP had achieved national party status in Federal Commission Advisory Opinion 1992-30, dated September 21, 1992. NLP qualified for federal matching funds for the 1996 presidential election, and its 1996 presidential candidate appeared on the ballot of more than 43 states. NLP has qualified for federal matching funds for the 2000 presidential election, and will qualify prior to the time of the proposed debates to place its presidential and vice-presidential nominees on the ballots of states that collectively have more than 270 votes in the electoral college — the number required to elect the President and Vice-President. If NLP's candidates are not permitted to participate in candidate debates, NLP will be disadvantaged in its ability to present its views on issues of public concern, and its candidates will be disadvantaged in their ability to compete for votes. If CPD is allowed to sponsor candidate debates between the Democratic and Republican nominees as proposed, the Democratic and Republican nominees will have the unfair and unlawful advantage of the resulting free television time. As a competitor of the Democratic and Republican parties, NLP

has an interest in information about what persons and organizations are supporting CPD and thereby the Democratic and Republican parties.

John Hagelin was NLP's 1996 nominee for President. Mr. Hagelin's address is c/o The Natural Law Party, 402 North 'B' Street, Fairfield, IA 52556. He is a candidate for the NLP and Reform Party nominations in 2000. He is a registered voter in Iowa. Hagelin satisfies all of the requirements to be President set forth in Article II, Section 1 of the Constitution. As a candidate and voter, he has an interest in information about what persons and organizations are supporting CPD and thereby the Democratic and Republican parties. He also has an interest in fair competition among candidates and parties for electoral votes and presentation of ideas on issues of public importance.

Complainant John Moore is a member of the NLP Executive Committee, NLP's Director of Ballot and Media Access and Campaign Director for Hagelin 2000. Mr. Moore's address is also c/o The Natural Law Party, 402 North 'B' Street, Fairfield, IA 52556. He is a registered voter in Iowa. Moore has an interest in information about what persons and organizations are supporting CPD and thereby the Democratic and Republican parties, and in fair competition among candidates and parties for electoral votes and presentation of ideas on issues of public importance.

### **Factual Background Regarding CPD's Sponsorship of Debates**

In 1985, the chairs of DNC and RNC agreed to work together to eliminate the League of Women Voters' traditional role as the sponsor of presidential debates and to replace the League's debates with "nationally televised joint appearances conducted between the presidential and vice-presidential nominees of the two major political parties . . . ." Exhibit 1: Memorandum of

Agreement on Presidential Candidate Joint Appearances, Nov. 26, 1985. Fifteen months later the two national committees issued a joint press release announcing the creation of CPD. The release declared that the CPD was a "bipartisan" organization and that it was "formed to implement joint sponsorship of general election . . . debates . . . by the national Republican and Democratic Committees *between their respective nominees*." Exhibit 2: News From the Democratic and Republican National Committees: RNC and DNC Establish Commission On Presidential Debates, Feb. 18, 1987 (emphasis added). As has been true since its inception, "[t]he members of the CPD include a former chairman of the Democratic National Committee, a former chairman of the Republican National Committee, and other representatives of the Democratic and Republican parties." *Perot v. Federal Election Commission*, 97 F.3d 553, 555-56 (D.C. Cir. 1996).

Throughout its history, CPD has not operated on a non-partisan basis but at the direction and control of the two parties that created it. In 1988, CPD reached an initial compromise with the League of Women Voters for joint sponsorship of the debates. But when the Bush and Dukakis campaigns insisted on controlling all of the details of the staging of the debates, including the selection of questioners, the League resigned. According to a League press release, the two parties negotiated an agreement "'behind closed doors' and . . . presented [it] to the League as a 'done deal' . . . [with] 16 pages of conditions not subject to negotiation." Exhibit 3: News Release: League Refuses to "Help Perpetrate a Fraud" Withdraws Support From Final Presidential Debate, Oct. 3, 1988. In announcing the League's withdrawal from sponsorship, the news release quoted League President Nancy M. Neuman as stating that "the demands of the two campaign organizations would perpetrate a fraud on the American voter . . . The League has no

intention of becoming an accessory to the hoodwinking of the American public.” *Id.* Since that time, CPD has been the sole sponsor of general election presidential debates that have included the Democratic and Republican candidates.

Beginning with a 1987 CPD advisory committee report, CPD has purported to adhere to a standard by which only candidates with a “realistic chance” of winning the election will be included in the presidential debates. In fact, however, the inclusion or exclusion of debate candidates has been primarily a matter of negotiation between the two parties. In 1992, the Republican campaign determined that it wanted to include Reform Party candidate Ross Perot in the debates but was unsure that Perot met CPD’s announced criteria. According to Bush’s counsel,

[W]e were not able to predict with any confidence the result of applying [the CPD] criteria. Therefore, the Bush campaign insisted, and the Clinton campaign agreed, that Mr. Perot and Admiral Stockdale be invited to participate in the debates.

Exhibit 4: Hearing Before the Subcommittee on Elections of the Committee on House Administration House of Representatives: Lessons from the 1992 Presidential Debates, Testimony of Bobby R. Burchfield, June 17, 1993, at 50-51.

In 1996 the FEC promulgated 11 C.F.R. § 110.13(c), requiring “pre-established objective criteria to determine which candidates may participate in a debate.” CPD’s published criteria continued to adhere to the “realistic chance of winning” standard. But, despite § 110.13(c)’s requirement that “staging organization(s) shall not use nominations by a particular party as the sole objective criterion to determine whether to include a candidate in a debate,” the introduction to the CPD criteria specifically reserved debate spots for the Democratic and Republican nominees simply by virtue of their nominations.

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

Exhibit 5: 1996 CPD Criteria, at 1.

CPD has announced that it will sponsor debates among presidential and vice-presidential candidates in the 2000 general election and has announced criteria for inclusion in those debates. *See Exhibit 6: CPD's Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation.* The announced criteria are "(1) constitutional eligibility, (2) ballot access, and (3) electoral support." *Id.* CPD's third criteria is designed to exclude all candidates other than the nominees of the Democratic and Republican parties. Electoral support is defined as "at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly reported results at the time of the determination." *Id.* at 2. That determination is to be made after Labor Day 2000 and prior to each of three scheduled debates.

#### **FECA Violations**

1. 2 U.S.C. § 441b(a)

FECA makes it "unlawful for . . . any corporation . . . to make a contribution or expenditure in connection with any election to any political office, or . . . for any corporation whatever. . . to make a contribution or expenditure in connection with any election at which presidential or vice presidential electors . . . are to be voted for." 2 U.S.C. § 441b(a). CPD, a corporation, has raised and/or will raise a substantial amount of money from corporate contributors that it has expended and/or will expend for sponsorship of debates in connection with the 2000 presidential and vice presidential elections.

“Expenditure,” as defined by the Act, “does not include nonpartisan activity designed to encourage individuals to vote or to register to vote.” 2 U.S.C. § 431(9)(B)(ii). CPD’s sponsorship of debates is not, however, “nonpartisan activity designed to encourage individuals to vote.” CPD was formed by Democratic and Republican party leaders on a bi-partisan, not nonpartisan, basis for the purpose of controlling presidential debates that had traditionally been conducted by truly nonpartisan groups, such as the League of Women Voters. Throughout its history, CPD’s conduct of debates has been governed by bi-partisan negotiations between the major parties with the purpose and effect of reducing or eliminating the voice of third parties and their advocacy of candidates and ideas. Its debate expenditures are, therefore, unlawful under 2 U.S.C. § 441b(a).

Section 441b(a) also make it unlawful for “for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.” By accepting from CPD sponsorship of debates and resulting free television time, DNC and RNC and their nominees have violated or are about to violate that section of the Act.

CPD’s sponsorship of debates also violates FEC regulations interpreting FECA. 11 C.F.R. § 110.13(a) allows staging of candidate debates only by nonprofit organizations that “do not endorse, support, or oppose political candidates or political parties.” CPD, however, was created by the Democratic and Republican parties and continues to support and serve their joint interest in limiting the participation of third party candidates and the full-range of discussion of issues.

FEC regulations also provide that “staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.” 11 C.F.R.



110.13(c). The first two criteria announced by CPD — constitutional eligibility and ballot access — are proper objective criteria. They can, first of all, be established with certainty. A candidate either does or does not meet the requirements of the Constitution and has or has not gained ballot access in enough states to be elected. Those standards are also relevant because they identify those candidates among whom the electorate must choose.

The third standard — electoral support as measured by polls — is subjective by nature and unreasonable as a criteria for selection of debate participants. Polling results are, first of all, approximations of what they seek to measure with substantial margins of error. Results can be significantly influenced by subjective factors, including the design of the polling questions. Secondly, the selection of 15 percent as the required level of support is also subjective and arbitrary. It was apparently selected by CPD's constituents, the Democratic and Republican parties, as a presumptively safe barrier for the exclusion of third party candidates.

Most importantly, any criteria based on pre-debate electoral support is not a reasonable basis for selection of debate participants. The *nonpartisan* purpose of candidate debates is to give the public exposure to the full range of candidates and ideas and to give candidates the opportunity to earn electoral support. Exclusion based on pre-debate electoral support serves instead the CPD's *bi-partisan* purpose of protecting the status quo, excluding third party candidates and limiting the discussion of issues of public importance.

In introducing its debate criteria, CPD argues in effect that an "electoral support" criteria is necessary for the conduct of debates that would otherwise be unwieldy and unmanageable. CPD asserts without citation that "[i]n the last two elections, there were over one hundred declared candidates for the Presidency, excluding those seeking the nomination of one of the

major parties.” See Exhibit 6, at 1. But in the 1996 election only six candidates, including the Republican and Democratic nominees, met CPD’s legitimate criteria of constitutional eligibility and ballot access. In the entire history of the United States, no more than seven candidates have ever met these criteria, and that has only happened twice (in 1976 and 1980). Debates with comparable numbers of candidates have become commonplace in the primary election season. Excluding qualified candidates with ballot access from debates prior to the general election serves only to perpetuate the candidates and policies of the incumbent parties and to insulate them from open challenge and scrutiny in the democratic electoral process.

2. 2 U.S.C. §§ 433 & 434

Since CPD’s major purpose is to facilitate the election of either of the major parties’ candidates for president and to exclude other parties and candidates from the election process, and it has expended or is about to expend more than \$1,000 to that end, it is a “political committee” within the meaning of the Act. The Act defines “political committee” to include “any committee, club, association, or other group of persons which . . . makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4)(A). “The term ‘expenditure’ includes any purchase, payment, . . . or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office.” *Id.* at § 431(9)(A)(i). Political committees must register as such and must make periodic reports that include a detailing of their contributions and expenditures. *Id.* at §§ 433, 434. Candidates’ campaign committees must also make reports that include “contributions from other political committees.” *Id.* at §§ 434(b)(2)(D).

CPD, by failing to register and report as a political committee, and the Democratic and Republican campaign committees, by failing to report CPD's contributions, have violated FECA and deprived plaintiffs of information required by the Act. As a competing political party, a candidate and voters, complainants have an interest and right to know the sources of support for CPD and thereby for the Democratic and Republican campaign committees.

### **Prayer for Relief**

WHEREFORE, Complainants respectfully request that the FEC:

- 1) Find that CPD, DNC and RNC have violated or are about to violate 2 U.S.C. § 441b(a) by making prohibited expenditures and/or accepting prohibited contributions;
- 2) Find that CPD has violated or is about to violate 11 C.F.R. § 110.13 by staging candidate debates in a partisan manner and without pre-established, objective criteria.
- 3) Find that CPD, DNC and RNC have violated or are about to violate 2 U.S.C. §§ 433 and 434 by CPD's failing to register as a political committee and by failing to make required reports and disclosures;
- 4) Enjoin CPD's sponsorship of debates as presently proposed;
- 5) Require CPD to register as a political committee, and require CPD, DNC and RNC to make required reports and disclosures.

Dated this 24<sup>th</sup> day of April, 2000.

John Hagelin  
John Moore  
The Natural Law Party of the United States  
402 North 'B' Street  
Fairfield, IA 52556

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

THE NATURAL LAW PARTY

JOHN HAGELIN

By Kingsley Brooks  
Kingsley Brooks  
National Chairman

Subscribed and sworn to before me  
this 20<sup>th</sup> day of April, 2000.

By John Hagelin

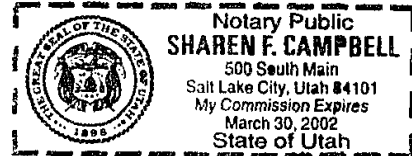
Subscribed and sworn to before me  
this 19 day of April, 2000.

Nancy L. Watkins  
Notary Public



JOHN MOORE

Sharen F. Campbell  
Notary Public



John Moore

Subscribed and sworn to before me  
this 20<sup>th</sup> day of April, 2000.

Nancy L. Watkins  
Notary Public



EXHIBIT 1

**Memorandum of Agreement on  
Presidential Candidate Joint Appearances  
November 26, 1985**

Frank J. Fahrenkopf, Jr., Chairman of the Republican National Committee, and Paul G. Kirk, Jr., Chairman of the Democratic National Committee, acknowledge and recognize that nationally televised joint appearances by the presidential nominees of both parties have often played an important and constructive role in recent presidential campaigns. We hope that they will play a similar role in future presidential campaigns, and we hereby commit ourselves toward achieving that goal. We recognize, of course, that the ultimate decision regarding participation in joint appearances will necessarily be made by the nominees themselves. Nonetheless, this memorandum of agreement is intended to express our strong belief that joint appearances deserve to be made a permanent and integral part of the presidential election process and our determination to bring that about.

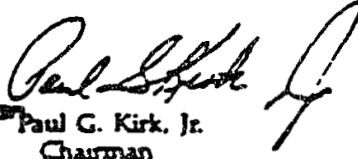
It is our bipartisan view that a primary responsibility of each major political party is to educate and inform the American electorate of its fundamental philosophy and policies as well as its candidates' positions on critical issues. One of the most effective means of fulfilling that responsibility is through nationally televised joint appearances conducted between the presidential and vice presidential nominees of the two major political parties during general election campaigns. Therefore, to better fulfill our parties' responsibilities for educating and informing the American public and to strengthen the role of political parties in the electoral process, it is our conclusion that future joint appearances should be principally and jointly sponsored and conducted by the Republican and Democratic National Committees.

We believe that the format and most other details of joint appearances for each general election campaign should be determined through negotiations between the chairmen and the nominees of the two political parties (or their designees) following the nominating conventions of each presidential election year.

We thank the League of Women Voters for having effectively laid the ground work on which we are building today. We hope that the League will continue to offer its experience, advice, and resources to the joint appearance process.

Democratic National Committee

Republican National Committee

  
Paul G. Kirk, Jr.  
Chairman

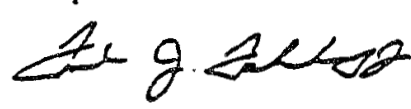
  
Frank J. Fahrenkopf, Jr.  
Chairman

EXHIBIT 2

News from the...

DEMOCRATIC AND REPUBLICAN NATIONAL COMMITTEES

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Release: Wednesday, February 18, 1987

Contact: Robert P. Schmermund, RNC  
202/863-8550

Terry Michael, DNC  
202/863-8020

RNC AND DNC ESTABLISH  
COMMISSION ON PRESIDENTIAL DEBATES

WASHINGTON, D.C.--Republican National Committee Chairman Frank J. Fahrenkopf, Jr. and Democratic National Committee Chairman Paul G. Kirk, Jr. announced the creation of the Commission on Presidential Debates at a joint press conference today at the Capitol.

The 10-member commission is a bipartisan, non-profit, tax exempt organization formed to implement joint sponsorship of general election presidential and vice presidential debates, starting in 1988, by the national Republican and Democratic committees between their respective nominees.

In launching this new initiative, the two party chairmen said, "A major responsibility of both the Democratic and Republican parties is to inform the American electorate on their philosophies and policies as well as those of their respective candidates. One of the most effective ways of accomplishing this is through debates between their nominees. By jointly sponsoring these debates, we will better fulfill our party responsibilities to inform and educate the electorate, strengthen the role of political parties in the electoral process and, most important of all, we can institutionalize the debates, making them an integral and permanent part of the presidential process."

In emphasizing the bipartisan nature of the commission, both chairmen noted the contributions to the debate process by the League of Women Voters: "We applaud the League for laying a foundation from which we can assume our own responsibilities. While the two party committees will be sponsors for all future presidential general election debates between our party nominees, we would expect and encourage the League's participation in sponsoring other debates, particularly in the presidential primary process."

Kirk and Fahrenkopf, in stressing the need to institutionalize the debates, said it will be the Commission's goal to recommend the number of presidential and vice presidential debates, as well as the



"This degree of certainty about the debates going into the general election," the chairmen said, "is an historic breakthrough in institutionalizing them. It means that we won't spend most of the general election campaign debating about debates, as we have too often in the past. The American people have an expectation that debates will occur every four years; this process is designed to assure that that expectation will be realized."

Fahrenkopf and Kirk will serve as co-chairs of the new Commission. They appointed as vice chairs:

- Richard Moe, Washington lawyer and partner in the firm of Davis, Polk & Wardwell;
- David Norcross, Washington lawyer and partner in the firm of Myers, Matteo, Rabil, Pluese & Norcross.

Others named to the Commission are:

- U.S. Rep. Barbara Vucanovich (R-NV);
- former U.S. Senator John Culver (D-IA), now a partner in the Washington law firm of Arent, Fox, Kintner, Plotkin & Kahn;
- Republican Gov. Kay Orr of Nebraska;
- Vernon Jordan, a Democrat, former president of the Urban League, now a partner in the law firm of Akin, Gump, Strauss, Hauer & Feld;
- Pamela Harriman, chairman of Democrats for the '80's;
- U.S. Senator Pete Wilson (R-CA).

The two chairmen said the Commission will hire staff and open a Washington office shortly. They said articles of incorporation for the Commission have been filed in the District of Columbia as well as an application for tax exemption with the Internal Revenue Service.

Kirk and Fahrenkopf concluded by saying, "We have no doubt that with the help of the Commission we can forge a permanent framework in which all future presidential debates between the nominees of the two political parties will be based. It is our responsibility as Party chairmen to have an informative and fair presidential process. The establishment of the Commission on Presidential Debates will go a long way toward achieving that goal."

Today's announcement stems from a recommendation of the Commission on National Elections, which during 1985 studied the presidential election system. On Nov. 26, 1985, Kirk and Fahrenkopf signed a joint memorandum agreeing in principle to pursue the party sponsorship concept.

EXHIBIT 3



# NEWS RELEASE

FOR IMMEDIATE RELEASE:  
October 3, 1968

CONTACT: Stephanie Drea  
or  
Bill Woodwell  
(202) 629-1965

## LEAGUE REFUSES TO "HELP PERPETRATE A FRAUD" WITHDRAWS SUPPORT FROM FINAL PRESIDENTIAL DEBATE

WASHINGTON, DC -- "The League of Women Voters is withdrawing its sponsorship of the presidential debate scheduled for mid-October because the demands of the two campaign organizations would perpetrate a fraud on the American Voter," League President Nancy M. Neuman said today.

"It has become clear to us that the candidates' organizations aim to add debates to their list of campaign-trail charades devoid of substance, spontaneity and honest answers to tough questions," Neuman said. "The League has no intention of becoming an accessory to the hoodwinking of the American public."

Neuman said that the campaigns presented the League with their debate agreement on September 28, two weeks before the scheduled debate. The campaigns' agreement was negotiated "behind closed doors" and was presented to the League as "a done deal," she said, its 16 pages of conditions not subject to negotiation.

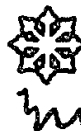
LEAGUE OF WOMEN VOTERS  
PRESIDENTIAL DEBATES  
1968

EXHIBIT 4

# PRESIDENTIAL DEBATES

HEARING  
BEFORE THE  
SUBCOMMITTEE ON ELECTIONS  
OF THE  
COMMITTEE ON  
HOUSE ADMINISTRATION  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION

JUNE 17, 1993, WASHINGTON, DC



Printed for the Committee on House Administration

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# LESSONS FROM THE 1992 PRESIDENTIAL DEBATES

TESTIMONY BEFORE THE SUBCOMMITTEE ON  
ELECTIONS, COMMITTEE ON HOUSE ADMINISTRATION,  
UNITED STATES HOUSE OF REPRESENTATIVES

June 17, 1993

Bobby R. Burchfield  
Covington & Burling  
Washington, D.C.

Good morning. My name is Bobby R. Burchfield. I am a partner at the law firm of Covington & Burling here in Washington, D.C., where I am engaged primarily in corporate problem-solving and complex litigation. During 1992, I served as General Counsel of President Bush's re-election campaign, and participated on the team that negotiated and drafted the debate agreement.

The Subcommittee has asked me to comment on the 1992 Presidential Debates. I will take this opportunity to comment in a larger context about the lessons that can be learned from the 1992 Presidential Debates, and the appropriateness of Congressional action regarding future Presidential debates. I should emphasize that I am here as an individual, not representing any client or cause, and the views expressed are solely my own.

## THE 1992 PRESIDENTIAL DEBATES

The Subcommittee might find a brief description of the 1992 debate negotiations and agreement useful. To place the events leading up to the 1992 Presidential Debates in context, we

must begin in 1987. In that year, the Commission on Presidential Debates was formed as, in its words, "an on-going entity in the recognition that its lasting legacy lies in both debate sponsorship and in a continuing commitment to promote the value of debates and the educational information which they impart."<sup>1</sup> The CPD was not established or funded by either the federal government or the Democratic or Republican Parties. It received its funding from private sponsors. "It is not an advocacy organization and does not take positions on public policy issues."<sup>2</sup> The CPD sponsored all the 1988 Presidential and Vice Presidential debates.

At the Bush campaign, our understanding was that the CPD held itself out primarily as one of many potential sponsors for the debates, that it claimed no mandate from either political party or any candidate in 1992, and that it would not insist or advocate any specific schedule or format for the 1992 Presidential debates. This view was supported by a letter dated April 16, 1992 from CPD Co-Chairman Frank Fahrenkopf, Jr. to Samuel Skinner, White House Chief of Staff. In the first paragraph of that letter, Mr. Fahrenkopf wrote:

"As I have indicated to you in person and in prior communication, it is the understanding of the CPD, and we reply to all press inquiries, that the QUESTION AS TO WHETHER DEBATES WILL BE HELD, HOW MANY, WHERE, WHEN, FORMAT, ETC., IS A MATTER THAT WILL NOT BE FINALLY RESOLVED UNTIL THE NOMINEES AND/OR THEIR REPRESENTATIVES HAVE AN OPPORTUNITY

<sup>1</sup> CPD Brochure (1992).

<sup>2</sup> *Id.*

- 3 -

TO MEET AND DISCUSS SAME FOLLOWING THE TWO  
NOMINATING CONVENTIONS." (emphasis in original).

On June 11, 1992, the CPD issued the following proposal  
for three presidential and one vice presidential debates:

Debate	Date	Format
First Presidential Debate	Sept. 23	Single Moderator
Vice Presidential Debate	Sept. 29	Single Moderator
Second Presidential Debate	Oct. 4	Single Moderator
Third Presidential Debate	Oct. 15	Single Moderator

We at the Bush campaign viewed this proposal as just that -- one proposal to be considered in direct negotiations between the candidates, and certainly not a mandate. In contrast, the Clinton campaign immediately accepted the CPD's proposal as tendered.

By August, the dynamics of the race had changed dramatically. Governor Clinton, previously trailing both President Bush and H. Ross Perot in most polls, had become the frontrunner. On August 14, 1992, the Friday before the Republican Convention, the CPD announced sites for the four debates it had proposed: East Lansing, Michigan; Louisville, Kentucky; San Diego, California; and Richmond, Virginia, respectively. On September 14, Bush-Quayle '92 campaign Chairman

Bob Teeter responded to the CPD on behalf of President Bush: "As in past campaigns, it is our belief the terms and conditions of presidential debates are appropriately the subject of discussion and agreement between the two candidates. Accordingly, I have been in contact with Governor Clinton's campaign."

- 4 -

This is the same process used in the past four Presidential elections which serve the public interest and the interest of the candidates well.

Therefore, I will not be attending any meeting involving the Commission on Presidential Debates until the two campaigns have agreed on the terms and conditions under which they will debate. I have selected the Commission as the sponsor, and the Commission has agreed to sponsor the debate or debates in accordance with those terms and conditions."

Simultaneously, Mr. Teeter wrote to Mickey Kantor, chairman of the Clinton/Gore campaign, inviting discussions of debates, and stating further:

"We strongly believe that in the General Election Campaign the candidates themselves should determine the criteria upon which they debate and then seek a sponsor who will agree to the terms and conditions of the candidates. No one organization or group should be able to arrogate unto itself the authority to unilaterally make decisions that can be so critical to the final election result. A considerable amount of time and effort has gone into arriving at these debate terms [used in prior presidential debates] by good Democrats and Republicans over a period of sixteen years."

From our perspective, it was unfortunate that the media and the public appeared to misunderstand what the CPD is and the source of its authority. Indeed, many in the public -- and I dare say in the media -- erroneously believed that the self-named "Commission on Presidential Debates" was either a government-created entity or an entity sponsored by the two political parties.

Not surprisingly, and this is not a criticism, the Clinton/Gore campaign took full advantage of this situation. Governor Clinton appeared at the sites proposed by the CPD for

the first presidential debate (East Lansing, Michigan on September 22) and the vice presidential debate (Louisville, Kentucky on September 23). Having obtained a tactical advantage for adhering steadfastly to the CPD's proposal, the Clinton/Gore campaign refused even to meet with representatives of the Bush campaign.

Only after President Bush's challenge on September 29 to Governor Clinton to debate on each of the last four Sundays before the election did the two campaigns finally sit down together, as the candidates' representatives had done in each of the preceding four elections, to negotiate a debate agreement. The negotiations began on September 30, and the outlines of an agreement were reached on October 1. Drafting the agreement consumed the next four days.

From my experience in many negotiations over the years, it is surprising in retrospect how few points of controversy there were in these negotiations. The Bush team entered the negotiations with the following goals:

First, we wanted debates, preferably four but at least three.

Second, we wanted Ross Perot to be included if, as expected, he reentered the race.

Third, it was important to us that each debate cover all topics, with a balanced treatment of both domestic and foreign policy issues.

Fourth, we preferred debates of one hour versus ninety minutes, although we recognized that inclusion of Ross Perot would likely require expansion to ninety minutes.

Fifth, the President was adamant in his refusal to sit at a table.

Sixth, we wanted the first debate to be in the traditional format featuring a moderator with a panel.

Finally, if audiences were allowed -- and we believed that audiences created a number of problems -- they should be strictly controlled, and each candidate should receive an equal share of the tickets.

The primary focus during the negotiations concerned the scheduling of the debates. As in any negotiation, both sides spent the amount of time they thought necessary to probe the contours of the other side's position. Once it became clear that President Bush was unwilling to debate before October 11, and that Governor Clinton was unwilling to debate after October 19, the schedule fell promptly into line. Harry Thompson, Governor Clinton's media advisor in the negotiations, persuaded everyone that, like a television mini-series, the compact schedule of four debates in eight days would engage the public and build viewership from debate to debate. This would, he opined, reverse the trend in recent years in which viewership declined with each debate.

Discussion of formats, while extensive, was much less problematic. The Clinton campaign proposed, and we accepted, the



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"Town Hall" format for one of the debates. Since 1979 in his first run for the presidency, George Bush had held "Ask George Bush" forums in which members of the audience could directly ask him questions; he liked the format, and had historically performed very well in it. Moreover, both campaigns recognized that popularity of radio and television call-in shows during the 1992 campaign indicated considerable potential public interest in support for such a format.

On October 1, while the negotiations were in progress, Ross Perot announced his reentry into the presidential race. At that point, Mr. Perot stood at less than ten percent in every national poll, and few if any commentators gave him a chance of winning. Under the CPD's criteria for determining whether a non-major party candidate would be included in the debates, it was far from clear that Mr. Perot would qualify. For example, those criteria required consideration of such factors as whether the candidate had declared his candidacy before the major party political conventions, or after the conventions "by disaffiliating from the party"; national newsworthiness and competitiveness based on such indices as the opinions of Washington bureau chiefs of major newspapers, news magazines, and networks; and national public enthusiasm or concern as shown by "significant public opinion polls" and reported attendance at campaign meetings and rallies. Although other criteria favored Mr. Perot's participation, we were not able to predict with any confidence the result of applying these criteria. Therefore, the

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Bush campaign insisted, and the Clinton campaign agreed, that Mr. Perot and Admiral Stockdale be invited to participate in the debates.

The final agreement was announced on October 1. It included the following schedule:

Debate	Date	Location	Format
First Presidential Debate	Oct. 11	St. Louis, MO	Panel
Vice Presidential Debate	Oct. 13	Atlanta, GA	Moderator
Second Presidential Debate	Oct. 15	Richmond, VA	Town Hall
Third Presidential Debate	Oct. 19	East Lansing, MI	Half-Moderator, Half-Panel

On October 5, the two campaigns submitted the agreement to the CPD and invited it to sponsor all the debates on a "take it or leave it" basis. The CPD expressed concern about the requirement that Mr. Perot be included, and ultimately asked its advisory committee, chaired by Professor Richard Neustadt of Harvard, to evaluate Mr. Perot's participation under the CPD's criteria. On October 6, the CPD wrote to Messrs. Teeter and Kantor accepting their invitation to sponsor the debates "subject to [four] conditions and understandings." The second such condition was:

"The Commission has determined, pursuant to the recommendation of its non-partisan advisory committee on candidate selection, that H. Ross Perot and Adm. James Stockdale should be invited to participate in the October 11 and 13, 1992 debates, respectively. The Commission will make its candidate participation determination regarding the October 15 and 19 debates after the initial debates. The Commission understands that, if it subsequently determines not to invite Mr.

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Perot to additional debates under its sponsorship, you each reserve the right to seek an alternative sponsor for these debates."

The campaigns responded that piecemeal sponsorship of the debates was unacceptable. Accordingly, the CPD reconsidered its position and informed Messrs. Teeter and Kantor by letter dated October 7 that:

"The Commission has determined that H. Ross Perot should be invited to participate in the October 11, 13, and 19 Presidential Debates and that Admiral James Stockdale should be invited to participate in the October 13 Vice Presidential Debate."

Meanwhile, on October 6, Mr. Perot and Admiral Stockdale had accepted the campaigns' invitation "to participate in the debates in accordance with the Agreement." The debates proceeded as agreed by the participants, under the sponsorship of the CPD, and achieved some of the highest ratings in the history of television.

#### LOOKING FORWARD

##### The Need to "Institutionalize" Presidential Debates by Legislation

One of the key lessons of the 1992 campaign is that, so long as public enthusiasm for debates is high, the political measure to participate in debates will be an effective inducement.

1' Letter from Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. to Robert M. Teeter and Mickey Kantor dated October 6, 1992.

1' Letter from Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. to Robert M. Teeter and Mickey Kantor dated October 7, 1992.

1' Letter from R. Clayton Mulford to Mickey Kantor and Robert M. Teeter dated October 6, 1992.

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ment for candidates to debate. For each of the last five presidential elections -- 1976, 1980, 1984, 1988, and 1992 -- the major party presidential candidates have debated each other during the fall campaign. Candidates who were perceived, whether correctly or incorrectly, as unwilling to debate (President Carter in 1980 and President Bush in 1992) paid a heavy price as a result of that perception. Not only did each candidate appear to lose support due to the uncertainty of whether he would debate, but the public and media focus on whether he would debate interfered with his campaign.

But public expectations of presidential candidates evolve over time, and it is not a foregone conclusion that the public will always be enamored of face-to-face candidate debates. Some persons have expressed the view that debates are not, in the final analysis, all that informative. Someday, the public might conclude that other forums are more effective at testing the candidates' positions and mettle. Although I personally believe that public enthusiasm for debates will continue into the foreseeable future, it is precarious at best to predict the public expectation three years hence.

#### Statutory Requirements To Debate

Even assuming debates are clearly in the public interest, attempts to require participation in such debates would present serious Constitutional and practical difficulties. Section 703 of the "Congressional Campaign Spending Limit and Election Reform Act of 1991" would add a new Section 315(b)(3)(A)

EXHIBIT 5

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

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### A. INTRODUCTION

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

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

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

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

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

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

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### B. 1996 NONPARTISAN SELECTION CRITERIA

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

general election presidential debates include:

### 1. EVIDENCE OF NATIONAL ORGANIZATION

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

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

### 2. SIGNS OF NATIONAL NEWSWORTHINESS AND COMPETITIVENESS

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

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

### 3. INDICATORS OF NATIONAL PUBLIC ENTHUSIASM OR CONCERN

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

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

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Adopted: September 19, 1995

EXHIBIT 6



## COMMISSION ON PRESIDENTIAL DEBATES

HOME ABOUT CPD DEBATE HISTORY MEDIA VOTER EDUCATION SITEMAP

### **News: CPD Announces Candidate Selection Criteria, Sites and Dates for 2000 Debates**

#### **MEDIA ADVISORY**

WASHINGTON, D.C., January 6, 2000 -- Commission on Presidential Debates (CPD) co-chairmen Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. today announced the candidate selection criteria to be used in the 2000 general election debates as well as the dates and sites for the debates.

Kirk and Fahrenkopf noted that after each of the last three general elections, the CPD had undertaken a thorough review of the candidate selection criteria used in that year's debates. After extensive study, the CPD has adopted a three-part standard for 2000 which is detailed in the attached document. "The approach we announce today is both clear and predictable," Kirk and Fahrenkopf said.

The CPD co-chairmen also announced four dates and sites for the 2000 debates:

- First presidential debate: Tuesday, October 3, John F. Kennedy Library and the University of Massachusetts, Boston, MA
- Vice presidential debate: Thursday, October 5, Centre College, Danville, KY
- Second presidential debate: Wednesday, October 11, Wake Forest University, Winston-Salem, NC
- Third presidential debate: Tuesday, October 17, Washington University in St. Louis, MO
- Madison, WI and St. Petersburg, FL have been selected as alternate sites.

Established in 1987, the nonpartisan, nonprofit CPD sponsored and produced the 1988, 1992, and 1996 general election debates. The CPD also undertakes research and partners with educational and public service organizations to promote citizen participation in the electoral process. In 2000, the CPD, with McNeil/Lehrer Productions, will produce "Debating our Destiny," a two-hour PBS special featuring interviews with participants in presidential debates since 1976.

The CPD intends to make extensive use of the Internet in its 2000 educational efforts, building on its 1996 voter outreach program, DebateWatch '96. Details of the CPD's Internet activities, which will be supported by corporate and nonprofit entities specializing in interactive application of the Internet, will be announced in the next several weeks. Background information on the CPD's mission, history and educational projects is available on its website: [www.debates.org](http://www.debates.org). The CPD will collaborate with the Freedom Channel in its work.

**COMMISSION ON PRESIDENTIAL DEBATES'  
NONPARTISAN CANDIDATE SELECTION CRITERIA  
FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION**



## **A. Introduction**

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past three general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2000 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In the last two elections, there were over one hundred declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order to most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2000 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2000 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

## **B. 2000 Nonpartisan Selection Criteria**

The CPD's nonpartisan criteria for selecting candidates to participate in its 2000 general election presidential debates are:

### **1. Evidence of Constitutional Eligibility**

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

### **2. Evidence of Ballot Access**

2.

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2000 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College (at least 270 votes), regardless of the popular vote, is elected President.

### 3. Indicators of Electoral Support

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly reported results at the time of the determination.

## C. Application of Criteria

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2000, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

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