

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 4987

Date Complaint Filed: March 21, 2000

Date of Notification: March 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

The Reform Party of the United States of America
Patrick J. Buchanan
Pat Choate
Buchanan Reform Committee
Angela M. Buchanan

RESPONDENTS:

Commission on Presidential Debates
Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates
Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates
Democratic National Committee and Andrew Tobias, as
treasurer
Republican National Committee and Alex Poitevint, as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1(a)
11 C.F.R. § 110.13
11 C.F.R. § 114.1(a)(2)(x)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

MUR 5004

Date Complaint Filed: April 24, 2000

Date of Notification: April 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

Natural Law Party

John Hagelin

John Moore

RESPONDENTS:

Commission on Presidential Debates

Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates

Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates

Democratic National Committee and Andrew Tobias, as
treasurer

Republican National Committee and Alex Poitevint, as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 441b(b)(2)

11 C.F.R. § 100.7(b)(21)

11 C.F.R. § 102.1(d)

11 C.F.R. § 104.1(a)

11 C.F.R. § 110.13

11 C.F.R. § 114.1(a)(2)(x)

11 C.F.R. § 114.2(b)

11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

MUR 5021

Date Complaint Filed: May 30, 2000

Date of Notification: June 2, 2000

Date Activated: June 21, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

Mary Wolhford
Bill Wolhford

RESPONDENTS:

Commission on Presidential Debates
Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates
Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1(a)
11 C.F.R. § 110.13
11 C.F.R. § 114.1(a)(2)(x)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

These matters arose from three complaints filed with the Federal Election Commission (the "Commission"). The first complaint, MUR 4987, was submitted by the Reform Party of the United States of America; Patrick J. Buchanan, a candidate for the Reform Party nomination for President of the United States; Pat Choate, Chairman of the Reform Party; Buchanan Reform Committee, the principal campaign committee of Mr. Buchanan; and Angela M. Buchanan (collectively, the "Reform Party"). The second complaint, MUR 5004, was submitted by the Natural Law Party; John Hagelin, a candidate for the Natural Law Party nomination in 2000; and John Moore, a member of the Natural Law Party's Executive Committee (collectively, the "Natural Law Party"). The third complaint, MUR 5021, was submitted by Mary Wohlford and Bill Wohlford (collectively, "Wohlford").

The three complaints allege that the criteria the Commission on Presidential Debates (the "CPD") adopted for selecting candidates to be invited to participate in debates are subjective and thus, violate 11 C.F.R. § 110.13(c). Furthermore, the Reform Party and Natural Law Party complaints allege that as a result of the subjective criteria, the CPD has violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 433 by failing to register the CPD as a political committee with the Commission, 2 U.S.C. § 441a(f) by accepting prohibited contributions as a political committee, and 2 U.S.C. § 434 by failing to file reports of receipts and disbursements with the Commission.

Additionally, the Reform Party and Natural Law Party complaints allege that the Democratic National Committee (the "DNC") and Andrew Tobias, as treasurer, and the Republican National Committee (the "RNC") and Alex Poitevint, as treasurer, have violated

2 U.S.C. § 441b(a) by accepting prohibited contributions from the CPD and 2 U.S.C. § 434 by failing to report contributions received from the CPD. The Wohlford complaint made no allegations against the DNC and the RNC.

All of the respondents in MURs 4987, 5004 and 5021 have responded to the complaints.¹

See Attachments 1 through 5.

II. FACTUAL AND LEGAL BACKGROUND

A. Law

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(b). The Act defines a contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 2 U.S.C. § 441b(b)(2). A contribution is also defined in the Commission's regulations at 11 C.F.R. § 100.7(a)(1). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The Act defines an expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

The Commission's regulations at 11 C.F.R. § 100.7(b)(21) specifically exempt expenditures made for the purpose of staging candidate debates from the definition of contribution provided that the debates meet the requirements of 11 C.F.R. §§ 110.13 and

¹ In responding to MURs 5004 and 5021, the CPD submitted cover letters responding to the allegations and attached copies of the response that it submitted to MUR 4987.

114.4(f). Non-profit organizations described in 26 U.S.C. §§ 501(c)(3) or 501(c)(4) that do not endorse, support, or oppose political candidates or political parties may stage candidate debates. 11 C.F.R. § 110.13(a)(1). The debates must include at least two candidates, and not be structured to promote or advance one candidate over another. 11 C.F.R. §§ 110.13(b)(1) and (2).

Organizations that stage presidential debates must use pre-established objective criteria to determine which candidates may participate in the debate. 11 C.F.R. § 110.13(c). With respect to general election debates, staging organizations shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. *Id.*

If a corporation staged a debate in accordance with 11 C.F.R. § 100.13, the expenditures incurred by that sponsoring corporation would be exempt from the definition of contribution. See 11 C.F.R. §§ 100.7(b)(21), 114.1(a)(2)(x) and 114.4(f)(1). As long as the sponsoring corporation complied with 11 C.F.R. § 110.13, other corporations may provide funds to the sponsoring corporation to defray expenses incurred in staging the debate without being in violation of the Act. 11 C.F.R. § 114.4(f)(3).

The Act defines the term "political committee" to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the Act and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a).

B. CPD's Criteria for Selecting Candidates to Participate in the 2000 General Election Debate

The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States. See Attachment 1 at 5. The Co-Chairmen of the CPD are Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr. The CPD sponsored two presidential debates during the 1988 general election, three presidential debates and one vice presidential debate in 1992, and two presidential debates and one vice presidential debate in 1996. *Id.* The CPD plans to sponsor three presidential and one vice presidential debate during the 2000 general election. The CPD accepts donations from corporations and other organizations to fund these debates.

On January 6, 2000, the CPD announced its candidate selection criteria for the 2000 general election debates. *Id.* at 2. It stated that "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." *Id.* The criteria are: (1) evidence of the candidate's constitutional eligibility to serve as President of the United States pursuant to Article II, Section 1 of the United States Constitution; (2) evidence of ballot access, such as the candidate appearing on a sufficient number of state ballots to have at least a mathematical chance of securing an Electoral College majority; and (3) indicators of electoral support by having a level of support of at least 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 of

eligibility.² *Id.* at 9, 10. A candidate must meet all three criteria to participate in the debate.

The CPD also stated that it will determine participation in the first scheduled debate after Labor Day 2000. *Id.* at 75. Furthermore, the CPD will extend invitations to participate in the vice presidential debate to the running mates of the presidential candidates qualifying for participation in the CPD's first presidential debate, and invitations to participate in the second and third debates will be based upon the same criteria prior to each debate. *Id.*

C. Complaints

1. Reform Party Complaint

The Reform Party alleges that the CPD was created to provide the Republican and Democratic Parties with control over the presidential and vice presidential candidate debates in the general election and to exclude third party candidates from those debates. The Reform Party also states that the Republican and Democratic Parties continue to control the presidential debates sponsored by the CPD. Thus, the Reform Party argues that the CPD does not satisfy the requirement that staging organizations not support or oppose political parties. 11 C.F.R. § 110.13(a). Furthermore, the complaint states that the CPD developed subjective criteria for selection of candidates to participate in the 2000 general election debate which does not satisfy 11 C.F.R. § 100.13(c) and thus, contributions made to the CPD and expenditures incurred by the CPD are prohibited contributions under 2 U.S.C. § 441b. The Reform Party also states that the CPD must register as a political committee and report its receipts and expenditures.

² Those five polling organizations are the ABC News/*Washington Post*; CBS News/*New York Times*; NBC News/*Wall Street Journal*; CNN/*USA Today*/Gallup; and Fox News/*Opinion Dynamics*. The CPD has also retained Frank Newport, Editor-in-Chief of the Gallup Poll, as a consultant in implementing the 2000 candidate selection criteria. *Id.* at 9, 10.

Specifically, the complaint challenges the third criterion, the level of electoral support, as subjective because it is based on the use of polls. The Reform Party criticizes the use of polling because they believe that polls have significant margins of error which make it difficult to determine the actual level of support. Furthermore, the Reform Party questions the CPD's polling methodology to take the average of five polls which may have different sample sizes, and target different populations, such as eligible voters versus eligible voters most likely to vote. The complaint also argues that in using polls, the CPD grants complete discretion to the polling organizations with respect to deciding the portion of the electorate polled, the wording of the questions, and the names of the candidates about which the polls inquire. Additionally, the Reform Party argues that the electoral support requirement of fifteen percent is three times the statutory requirement of five percent of the general election vote that presidential candidates of a political party must receive in order for the political party to receive federal funding in the next general election.

Furthermore, the complaint argues that participation in the debates provides extensive television exposure and media coverage, which increases the candidate's ability to communicate his or her message and obtain support of the voters. The Reform Party cites the example of Ross Perot, a third party candidate in 1992, who had support of 7% of the electorate in the polls prior to the debates, but received 19% of the vote in the 1992 general election.

The Reform Party complaint requests that the Commission find reason to believe that the CPD's current candidate selection criteria, particularly the level of electoral support in the national electorate criterion, violates the Act and Commission regulations because it is neither pre-existing nor objective, and direct the CPD to substitute the level of electoral support criterion

with the criterion of qualification for public funding in the general election. The complainants also request that the Commission find reason to believe that, as a result of the CPD's candidate selection criteria, the CPD is acting as an illegal, non-reporting political committee receiving and making illegal corporate contributions and expenditures in violation of the Act and the Commission's regulations. Finally, the complainants request that the Commission take action to correct and prevent continued illegal activities of the CPD.

2. Natural Law Party Complaint

The Natural Law Party argues that the CPD's sponsorship of candidate debates is intended to promote the candidates of the Democratic and Republican parties to the exclusion of the candidates of other parties, and thus, the CPD's expenditures in sponsoring the debates are expenditures by a corporation in connection with an election to public office in violation of 2 U.S.C. § 441b(a). Furthermore, the Natural Law Party complaint states that the CPD's sponsorship of the debates does not satisfy the requirement of 11 C.F.R. § 110.13(a) to be nonpartisan because the CPD was created by the Democratic and Republican parties and continues to serve their joint interest in limiting the participation of third party candidates. The complaint also argues that the CPD does not satisfy the requirement of 11 C.F.R. § 110.13(c) to use pre-established, objective criteria because the level of electoral support criterion depends upon polling results that are approximations with "substantial" margins of error and are influenced by the design of the polling questions. The Natural Law Party alleges that CPD's expenditures incurred in sponsoring the presidential debates are prohibited contributions to the DNC and RNC in violation of 2 U.S.C. § 441b(a), and any corporate contributions received by the CPD are prohibited contributions. Additionally, the complaint alleges that the CPD is a

political committee within the meaning of 2 U.S.C. § 431(4)(A), and has failed to report contributions as required by the Act. The Natural Law Party also argues that the DNC and the RNC have failed to report contributions from the CPD.

The Natural Law Party complaint requests that the Commission find reason to believe that the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 441b(a) by making and/or accepting prohibited contributions. The Natural Law Party also requests that the Commission find reason to believe that the 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. Additionally, the Natural Law Party requests that the Commission find reason to believe that the CPD has violated or are about to violate 2 U.S.C. § 433 by failing to register as a political committee, and the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 434 by failing to report contributions and expenditures. Finally, the Natural Law Party requests that the Commission enjoin the CDP's sponsorship of debates as presently proposed, require the CPD to register as a political committee, and require the CPD, DNC and RNC to make required reports.

3. Wohlford Complaint

The Wohlford complaint alleges that the CPD's criteria for selecting candidates to participate in the 2000 general election is subjective, specifically the criterion which requires a candidate to demonstrate electoral support by averaging 15% in five selected polls, because polling is neither fair nor objective. Furthermore, the Wohlford complaint states that instead of the electoral support criterion, an example of an objective criterion would be to require a candidate to have spent a certain monetary amount on his or her campaign by a specific time

prior to the first debate. Finally, the complaint states that the Commission has two choices to remedy the alleged violations, such as excluding the CPD as a sponsoring organization if they maintain the criteria now published or require that the CPD eliminate polling from its criteria and substitute "truly objective" criteria.

D. Responses

1. Responses from the CPD to the Reform Party, Natural Law Party and Wohlford Complaints

In response to the complaints, the CPD argues that no CPD Board member is an officer of either the Democratic National Committee or the Republican National Committee, and the CPD receives no funding from the government or any political party. Attachment 1 at 5. The CPD also argues that any references to its founding as a bipartisan effort was an effort to ensure that it was not controlled by any one party, not an effort by the two major parties to control CPD's operations or to exclude non-major party candidates in CPD-sponsored debates. *Id.*, footnote 6.

In regard to its candidate selection criteria, the CPD argues that the purpose of the candidate selection criteria is to identify those candidates, regardless of party, who realistically are considered to be among the principal rivals for the Presidency. Attachment 1 at 2. Moreover, in regard to the third criterion, the CPD states that it sets forth a bright line standard with respect to electoral support, which is at least 15% of the national electorate as determined by the average results of five selected national public opinion polling organizations at the time of the CPD's determination of eligibility before each debate. Attachment 1 at 3. The CPD argues that in promulgating the regulation, 11 C.F.R. § 110.13, the Commission permits the staging organization to determine the objective criteria. *Id.*

With respect to the issue of electoral support and polling, the CPD argues that the Commission has ruled in a previous matter regarding its 1996 candidate selection criteria that it is appropriate for the criteria to include a measure of candidate potential or electoral support and to use polls to measure that support. Attachment 1 at 3. Moreover, the CPD states that the five polling organizations that it will employ are well-known, well-regarded, and will poll frequently throughout the 2000 election. *Id.* at 16. The CPD also argues that because public opinion shifts, it will use the most recent poll data available before the debates. *Id.* In regard to any methodological differences among the polls, the CPD states that taking the average of five polls may reduce the random error that could come from using only one source, and averaging does not invalidate the results. *Id.* at 16. Furthermore, the CPD, citing the declaration of Dorothy Ridings, a CPD Board member, argues that requiring a level of electoral support of 15% of the national electorate is reasonable because the "fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of support."³ *Id.* at 14.

In regard to the Reform Party's argument that a candidate's eligibility for public funding in the general election should be used instead of electoral support of 15 % of the national electorate, the CPD states that it is opposed to a candidate's eligibility for public funding as a criterion because it is premised on the results of the previous election and not at all on the level of present public interest in the candidates running for office. Attachment 1 at 3.

³ The CPD also notes that John Anderson achieved this level of electoral support prior to the first presidential debate in 1980 and was invited by the League of Women Voters to participate in that debate. Furthermore, the CPD states that other presidential candidates, such as George Wallace in 1968 and Ross Perot in 1992, had high levels of support. *Id.* at 14.

**2. Response from the DNC to Reform Party and Natural Law Party
Complaints**

In response to the complaints, the DNC urges the Commission to dismiss the complaints against them and find no reason to believe that the DNC has violated the Act or Commission regulations. Furthermore, the DNC argues that it is independent of the CPD and that Mr. Paul Kirk, CPD Co-Chairman, who also served as DNC Chairman from 1985-1989, has held no office and played no role in the DNC since 1989. Attachment 3. The DNC also states that no DNC member, officer or employee sits on the Board of the CPD, and the DNC does not now play, nor has it ever played, any role in determining CPD's criteria for candidate selection for the debates. Attachments 2 and 3. Additionally, the DNC argues that any violation by the CPD of the Commission's debate regulations would not constitute an in-kind contribution to the DNC, which is distinct from a presidential candidate. Attachment 2.

**3. Response from the RNC to the Reform Party and Natural Law Party
Complaints**

The RNC requests that the Commission find no reason to believe that violations of the Act occurred.⁴ Furthermore, the RNC states that the complaints should be dismissed against the RNC because the CPD is not an affiliated committee or "alter ego" of the RNC. Attachments 4 and 5. The RNC acknowledges that Mr. Frank Fahrenkopf, Co-Chairman of the CPD, was Chairman of the RNC during the founding of the CPD, but the CPD was never an official or

⁴ The RNC was a respondent in MUR 4473 in which Perot '96, Inc. challenged the CPD's 1996 candidate selection criteria for participation in the debates. The RNC's response to MUR 4473 was attached to its response to MUR 4987 and incorporated by reference.

approved organization of the RNC. *Id.* Finally, the RNC states that no CPD Board Member is an officer of the RNC, and that the RNC neither organized nor controls the CPD. *Id.*

III. ANALYSIS

Based upon the available evidence, it appears that CPD has complied with the requirements of section 110.13 of the Commission's regulations governing sponsorship of candidate debates. While the Reform Party and the Natural Law Party argue that the CPD's Co-Chairmen, Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., are former Chairmen of the Democratic and Republican Parties respectively, they have not provided evidence that the CPD is controlled by the DNC or the RNC. There is no evidence that any officer or member of the DNC or the RNC is involved in the operation of the CPD. Moreover, there does not appear to be any evidence that the DNC and the RNC had input into the development of the CPD's candidate selection criteria for the 2000 presidential election cycle. Thus, it appears that the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties. 11 C.F.R. § 110.13(a).

Furthermore, CPD's criteria for participation in the candidate debates appear to be pre-established, objective criteria as required by 11 C.F.R. § 110.13(c), and not designed to result in the selection of certain pre-chosen participants. The CPD's criteria for determining who may participate in the 2000 general election presidential debates consist of constitutional eligibility, appearance on sufficient state ballots to achieve an Electoral College majority, and electoral support of 15% of the national electorate based upon an average of the most recent polls of five national public opinion polling organizations at the time of determination of eligibility. The complainants acknowledge that the first and second criteria, constitutional eligibility and ballot

access, are objective, but argue that the third criterion, level of electoral support, is subjective because it is based upon polling.

The Commission has accorded broad discretion to debate sponsors in determining the criteria for participant selection. In promulgating 11 C.F.R. § 110.13(c), the Commission stated:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

. . . . Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes that there are too many candidates to conduct a meaningful debate.

60 Fed. Reg. 64,262 (December 14, 1995).

The CPD's candidate selection criteria have been challenged in the past. In MURs 4451 and 4473, the Natural Law Party and Perot '96, Inc. filed complaints with the Commission against the CPD regarding its 1996 candidate selection criteria. The Commission found no reason to believe that the CPD violated the law by sponsoring the presidential debates or by failing to register and report as a political committee.⁵ The Commission noted that "the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use." Statement of Reasons in MURs 4451 and 4473 at 8 (April 6, 1998). With respect to polling and electoral support, the Commission noted in MURs 4451 and 4473 that it declined to preclude the use of polling or "other assessments of a candidate's chances of winning the nomination or election" when promulgating 11 C.F.R. § 110.13. Furthermore, the Commission stated that

⁵ In those matters, the Commission rejected the Office of General Counsel's recommendations that the Commission find reason to believe that the CPD violated the law.

questions can be raised regarding any candidate assessment criterion and "absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion." *Id.* at 9. Finally, in MURs 4451 and 4473, the Commission referred to the Explanation and Justification for 11 C.F.R. § 110.13 which states that reasonableness is implied when using objective criteria. *Id.* In view of the Commission's prior decisions, the CPD is not required to use qualification for public funding in the general election as a debate participant criterion as the Reform Party argues.

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it has proposed for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate selection criteria were: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. With respect to signs of national newsworthiness and competitiveness, the CPD listed factors, such as the professional opinions of Washington bureau chiefs of major newspapers, news magazines and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional eligibility, ballot access, and a level of electoral support of 15% of the national electorate based upon the average of polls conducted by five major polling organizations, appear to be relatively

easier to determine which candidates will qualify, and appear to be even more objective than the 1996 candidate selection criteria. Given this, and the fact that the Commission did not find a problem with the 1996 criteria, it appears that the CPD's candidate selection criteria for participation in the 2000 general election debates are in accordance with the requirements of 11 C.F.R. § 110.13.

Based upon the available evidence, it appears that the CPD satisfies the requirements of 11 C.F.R. § 110.13 to stage the debates, the CPD's expenditures are not contributions or expenditures subject to the Act, and the CPD does not meet the definition of a political committee subject to the registration and reporting requirements of the Act.⁶ Moreover, any contributions from corporations to the CPD would not be prohibited contributions in violation of 2 U.S.C. § 441b(a).

For the foregoing reasons, the Office of General Counsel recommends that the Commission find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 441a(f) by accepting prohibited contributions from corporations or making contributions to the Democratic National Committee or the Republican National Committee, 2 U.S.C. § 433 by failing to register as a political committee, or 2 U.S.C. § 434 by failing to report contributions.

Furthermore, the Office of General Counsel recommends that the Commission find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer,

⁶ The Reform Party complaint also states generally that the CPD's expenditures will benefit the presidential candidates of the Republican and Democratic parties. Since the general election candidates for the Democratic and Republican parties have not been nominated, the complainants could not allege any violations against the committees of those candidates.

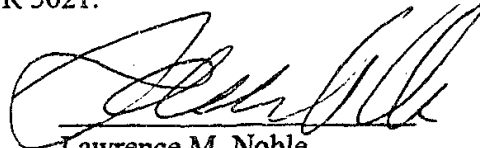
violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates. The Office of General Counsel also recommends that the Commission find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates.

IV. RECOMMENDATIONS

1. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 4987.
2. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
3. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
4. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5004.
5. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
6. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
7. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5021.
8. Approve the appropriate letters.

9. Close the files in MUR 4987, MUR 5004, and MUR 5021.

7/13/00
Date


Lawrence M. Noble
General Counsel

Attachments

1. Response from the Commission on Presidential Debates to MURs 4987, 5004 and 5021.
2. Response from the Democratic National Committee to MUR 4987.
3. Response from the Democratic National Committee to MUR 5004.
4. Response from the Republican National Committee to MUR 4987.
5. Response from the Republican National Committee to MUR 5004.



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: July 13, 2000

SUBJECT: MURs 4987,5004,5021-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE
NON-SENSITIVE

☒
☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐
MUR ☐
DSP ☐

STATUS SHEETS

Enforcement ☐
Litigation ☐
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐