

RECEIVED
FEDERAL ELECTION
COMMISSION

MUR # 6383H

2012 NOV -1 AM 10: 27

CELA

303 E. Broad Street
Columbus, OH 43215

October 12, 2012

2012 OCT 22 AM 11: 38

RECEIVED
FEDERAL ELECTION
COMMISSION

CELA

Anthony Herman
General Counsel
Federal Election Commission
Washington, DC 20463

Re: In the Matter of Ohio News Organization, et al., MUR No. 6383

Dear Mr. Herman,

I represent Mr. Dan La Botz, the complainant in the above-styled matter. As I am sure you are aware, the United States District Court for the District of Columbia in *La Botz v. FEC*, No. 11-1247, on September 5, 2012, remanded the matter back to the FEC for further proceedings. In anticipation of these proceedings, Mr. La Botz, through counsel, supplements his original Complaint with the following information, which he believes is both relevant and is true to the best of his belief.

As in 2010, when Mr. La Botz ran for U.S. Senate in Ohio as a Socialist Party candidate, Ohio in 2012 is conducting another senatorial election. Mr. La Botz is not running in this election. However, another minor candidate, Scott Rupert, has qualified for the ballot and is challenging the two major-party candidates, Senator Sherrod Brown (Democrat) and State Treasurer Josh Mandel (Republican). See Directive 2012-39 (<http://www.sos.state.oh.us/SQS/Upload/elections/directives/2012/Dir2012-39.pdf>) (Attachment A).

As in 2010, when Mr. La Botz was excluded from the Ohio News Organization's (ONO) debates and debate-staging process, ONO has again staged a series of debates between the major-party candidates without including the minor candidate in either the staging process or the debates. See Brown, Mandel agree to three debates, including one in Columbus, COLUMBUS DISPATCH, Aug. 17, 2012 (<http://www.dispatch.com/content/stories/local/2012/08/17/senate-debate-columbus.html>) (Attachment B).

The 2012 debates between Brown and Mandel were announced on August 17, 2012, see Attachment B, approximately three weeks before the District Court announced its decision in the

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La Botz case. On September 18, 2012, approximately two weeks after the announced decision in *La Botz*, counsel for the ONO sent to counsel for *La Botz* a revised set of criteria for candidates who wished to participate in ONO's debates. See Attachment C. These new criteria require that candidates either be nominated by a major party, or otherwise have raised at least \$500,000 to support his campaign. See ¶ 3.b (Attachment B). In addition, candidates must pull "an average of at least 10% in all polls" released by three polling services. *Id.* ¶ 3.a.

By its own terms, of course, this new policy further demonstrates ONO's preference for major-party candidates, who need not meet any fundraising level in order to participate in the debates.

But perhaps more importantly, the time-line described above indicates that when it was planning its 2012 debates between Brown and Mandel, the ONO could not have employed this new policy. It was not developed, after all, until two weeks after the District Court's decision in *La Botz*. The debates between Brown and Mandel, and excluding Rupert, were announced three weeks before the District Court's decision in *La Botz*, and over one month before the new policy was put in place. Obviously, the ONO employed some other set of "pre-existing objective criteria" to its staging of the 2012 debates. This evidence suggests that there is a strong likelihood that ONO employed precisely the same criteria that it employed in 2010, and which were questioned by the District Court in *La Botz*. Moreover, there is reason to believe that these criteria, as in 2010, were not disclosed beyond the Brown and Mandel campaigns. This evidence strongly suggests a continuing course of conduct on the part of ONO of simply selecting the major-party candidates for its senatorial debates without giving any consideration to the other candidates.

Counsel for Mr. *La Botz* on September 18, 2012 complained to counsel for ONO that the new criteria were no better than the old criteria that were questioned by the Court in *La Botz*. Counsel for ONO responded by letter dated September 19, 2012. See Attachment D. Counsel for Mr. *La Botz* sent letters to both of the major-party candidates who were invited to the ONO's 2012 debates informing them that the debates had likely been illegally staged. See Attachments E & F. Neither candidate has yet responded.

Sincerely,



Mark R. Brown
mbrown@law.capital.edu
Attorney for Mr. Dan La Botz

Attachment A



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

DIRECTIVE 2012-39

August 24, 2012

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Candidates for Statewide Office

The following candidates have been certified to the November 6, 2012 General Election:

For President and Vice President

For President
Stewart Alexander
For Vice President
Alex Mendoza
Socialist

For President
Richard Duncan
For Vice President
Ricky Johnson
Nonparty candidates

For President
Virgil Goode
For Vice President
Jim Clymer
Constitution

For President
Gary Johnson
For Vice President
James P. Gray
Libertarian

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For President

For Vice President

Democratic

For President

For Vice President

Republican

For President

Jill Stein

For Vice President

Cheri Honkala

Green

For U.S. Senator

Sherrod Brown

Democratic

Josh Mandel

Republican

Scott A. Rupert

Nonparty candidate

For Justice of the Supreme Court

(Full term commencing 1-1-2013)

Terrence O'Donnell

Mike Skindell

For Justice of the Supreme Court

(Full term commencing 1-2-2013)

Robert R. Cupp

William M. O'Neill

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For Justice of the Supreme Court
(Unexpired term ending 12-31-2014)

Yvette McGee Brown

Sharon L. Kennedy

The names of the presidential and vice-presidential nominees of the Democratic and Republican Parties will be filed with this office after their respective conventions, but no later than September 7, 2012. The nominees' names will be certified to all boards of elections no later than September 7, 2012.¹

If you have any questions concerning this Directive, please contact the Secretary of State's elections attorney assigned to your county at (614) 466-2585.

Sincerely,


Jon Husted

¹ SECTIONS 4 and 5 of Amended Substitute House Bill No. 509 (eff. June 26, 2012).

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This SAMPLE ballot provides the CORRECT TITLES and ORDER OF OFFICES for ballot layout for candidates for the November 2012 General Election.

OFFICIAL GENERAL ELECTION BALLOT

D	E	F
_____ County	General Election	November 6, 2012
For County Commissioner (Full term commencing 1-3-2013) (Vote for not more than 1)	For County Engineer (Vote for not more than 1)	For Judge of the Court of Appeals (Full term commencing 1-3-2013) (Vote for not more than 1)
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
For Prosecuting Attorney (Vote for not more than 1)	For Coroner (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
For Clerk of the Court of Common Pleas (Vote for not more than 1)	For Member of State Board of Education (_____ District) (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	For Justice of the Supreme Court (Full term commencing 1-1-2013) (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
For Sheriff (Vote for not more than 1)	<input type="radio"/> Terrence O'Donnell <input type="radio"/> Mike Skindell	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	For Justice of the Supreme Court (Full term commencing 1-2-2013) (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Robert R. Cupp <input type="radio"/> William M. O'Neill	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
For County Recorder (Vote for not more than 1)	For Justice of the Supreme Court (Unexpired term ending 12-31-2014) (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	<input type="radio"/> Yvette McGee Brown <input type="radio"/> Sharon L. Kennedy	For Judge of the Court of Common Pleas (Full term commencing 1-3-2013) (Vote for not more than 1)
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)	For Judge of the Court of Appeals (_____ District) (Full term commencing XX-XX-20XX) (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name
For County Treasurer (Vote for not more than 1)	<input type="radio"/> Print Candidate Name <input type="radio"/> Print Candidate Name	
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)		
<input type="radio"/> Print Candidate Name (Insert party affiliation or ballot designation, if any)		
D 001 TWP A	E 0001:1	F 001

Page 2 of 4

This SAMPLE ballot provides the CORRECT TITLES and ORDER OF OFFICES for ballot layout for candidates for the November 2012 General Election.

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OFFICIAL GENERAL ELECTION BALLOT

G _____ County	H General Election	I November 6, 2012
<p style="text-align: center;">State Issue 1</p> <p>Question presented pursuant to Article XVI, Section 3 of the Constitution of the State of Ohio</p> <p>A majority yes vote is necessary for passage.</p> <p>Article XVI, Section 3 of the Constitution of the State of Ohio reads as follows:</p> <p>"At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: 'Shall there be a convention to revise, alter, or amend the constitution[.]' shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon."</p> <p>Shall there be a convention to revise, alter, or amend the Ohio Constitution?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>	<p style="text-align: center;">State Issue 2</p> <p>To create a state-funded commission to draw legislative and congressional districts</p> <p>Proposed Constitutional Amendment</p> <p>Proposed by Initiative Petition</p> <p>To add and repeal language in Sections 1, 3, 4, 6, 7, 9 and 13 of Article XI, repeal Sections 8 and 14 of Article XI, and add a new Section 16 to Article XI of the Constitution of the State of Ohio</p> <p>A majority yes vote is necessary for the amendment to pass.</p> <p>The proposed amendment would:</p> <ol style="list-style-type: none"> 1. Remove the authority of elected representatives and grant new authority to appointed officials to establish congressional and state legislative district lines. 2. Create a state funded commission of appointed officials from a limited pool of applicants to replace the aforementioned. The Commission will consist of 12 members as follows: four affiliated with the largest political party, four affiliated with the second largest political party and four not affiliated with either of the two largest political parties. Affirmative votes of 7 of 12 members are needed to select a plan. 3. Require new legislative and congressional districts be immediately established by the Commission to replace the most recent districts adopted by elected representatives, which districts shall not be challenged except by court order until the next federal decennial census and apportionment. In the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission. 4. Change the standards and requirements in the Constitution for drawing legislative and congressional districts. 5. Mandate the General Assembly to appropriate all funds as determined by the Commission including, but not be limited to, compensating: <ol style="list-style-type: none"> 1. Staff 2. Consultants 3. Legal counsel 4. Commission members <p>If approved, the amendment will be effective thirty days after the election.</p> <p>SHALL THE AMENDMENT BE APPROVED?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>	<p style="text-align: center;">Proposed Tax Levy (Additional)</p> <p>(Name of subdivision submitting resolution or public library)</p> <p>A majority yes vote is necessary for passage.</p> <p>An additional tax for the benefit of _____</p> <p>(Name of subdivision submitting resolution or public library)</p> <p>for the purpose of _____ at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____</p> <p>(Rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (Life of indebtedness or number of years the levy is to run)</p> <p>commencing in _____, first (First year the tax will be levied)</p> <p>due in calendar year _____ (First calendar year which the tax shall be due)</p> <p><input type="radio"/> FOR THE TAX LEVY</p> <p><input type="radio"/> AGAINST THE TAX LEVY</p> <p style="text-align: center;">Proposed Tax Levy (Renewal)</p> <p>(Name of subdivision submitting resolution or public library)</p> <p>A majority yes vote is necessary for passage.</p> <p>A renewal of a tax for the benefit of _____</p> <p>(Name of subdivision submitting resolution or public library)</p> <p>for the purpose of _____ at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____</p> <p>(Rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (Life of indebtedness or number of years the levy is to run)</p> <p>commencing in _____, first (First year the tax will be levied)</p> <p>first due in calendar year _____ (First calendar year which the tax shall be due)</p> <p><input type="radio"/> FOR THE TAX LEVY</p> <p><input type="radio"/> AGAINST THE TAX LEVY</p>
G 001 _____ TWP A	H 0001:1	I 001

This SAMPLE ballot provides the CORRECT TITLES and ORDER OF OFFICES for ballot layout for candidates for the November 2012 General Election.

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OFFICIAL GENERAL ELECTION BALLOT

J	County	K	General Election	L	November 6, 2012
Proposed Tax Levy (Name of school district) A majority affirmative vote is necessary for passage. Shall a levy be imposed by the (Name of school district) for the purpose of _____ in IA (Purpose shall be boldface type of at least twice the size of the type immediately surrounding it) the sum of _____ (Annual amount the levy is to produce) and a levy of taxes to be made outside of the ten-mill limitation estimated by the county auditor to average _____ mills for each one (Number of mills) dollar of valuation, with amounts to (Rate expressed in dollars and cents) for each one hundred dollars of valuation, for a period of _____ (Life of indebtedness or number of years levy is to be imposed) years, commencing in _____ (First year the tax will be levied) first due in calendar year _____ (First calendar year which the tax shall be due) <input type="radio"/> FOR THE TAX LEVY <input type="radio"/> AGAINST THE TAX LEVY		_____ mills (Number of mills) for each one dollar of tax valuation, which amounts to _____ (Rate expressed in cents or dollars and cents, such as "35 cents" or "\$1.41") for each one hundred dollars of tax valuation, commencing in _____ first due (First year the tax will be levied) in calendar year _____ (First calendar year which the tax will be levied) to pay the annual debt charges on the bonds, and to pay debt charges on any notes in anticipation of those bonds? <input type="radio"/> FOR THE BOND ISSUE <input type="radio"/> AGAINST THE BOND ISSUE Proposed Municipal Income Tax (Name of subdivision) A majority affirmative vote is necessary for passage. Shall the Ordinance providing for a _____ percent levy on income for _____ (Brief description of purpose of the levy) be passed? <input type="radio"/> FOR THE INCOME TAX <input type="radio"/> AGAINST THE INCOME TAX		of Ohio") liquor permit(s) who is engaged in the business of _____ (Insert general nature of the business in which liquor permit holder or applicant is engaged, or will be engaged, at the particular location.) at _____ (Insert address of the particular location within the precinct) in this precinct?" <input type="radio"/> YES <input type="radio"/> NO (2) Shall the sale of _____ (Insert above one or more of following three choices: "beer", "wine and mixed beverages", or "spirituous liquor") be permitted for sale on Sunday between the hours of _____ by _____ (Insert one of the following: "ten a.m. and midnight" or "eleven a.m. and midnight") (Insert name (as submitted to Division of Liquor Control) of liquor permit holder or applicant, or liquor agency store, including, if applicable, trade or fictitious name under which applicant for, or holder of, liquor permit or liquor agency store either does, or intends to do, business at the particular location) a(n) _____ (Insert all that applies: "an applicant for a D-6 liquor permit, holder of a D-6 liquor permit," or "liquor agency store," "an applicant for or holder of an A-1-A, A-2, A-3a, C-1, C-2a, D-1, D-2a, D-3, D-3a, D-4, D-5, D-5a, D-5c, D-5e, D-5f, D-5h, D-5k, D-5k, D-5k, D-5m or D-7 liquor permit," (if only the approval of beer sales is sought), or "liquor agency store") who is engaged in the business of _____ (Insert general nature of the business in which liquor permit holder or applicant is engaged, or will be engaged, at the particular location.) at _____ in this precinct?" (Insert address of the particular location within the precinct) <input type="radio"/> YES <input type="radio"/> NO	
Proposed Bond Issue (Name of subdivision, district, college, library or board) A majority affirmative vote is necessary for passage. Shall bonds be issued by the (Name of subdivision) for the purpose of _____ (Purpose of the bond issue printed in boldface type) in the principle amount of _____ (Principle amount of the bond issue) to be repaid annually over a maximum period of _____ (The maximum number of years over which the principle of the bonds may be paid) years, and an annual levy of property taxes be made outside the (As applied, "ten-mill", or "...whereas...") limitation, estimated by the county auditor to average over the repayment period of this bond issue		Special Election By Petition Local Liquor Option for Particular Location A majority affirmative vote is necessary for passage. (1) Shall the sale of _____ (Insert above one of the following three choices: "beer", "wine and mixed beverages", or "spirituous liquor") be permitted by _____ (Insert name (as submitted to Division of Liquor Control) of liquor permit holder or applicant, or liquor agency store, including, if applicable, trade or fictitious name under which applicant for, or holder of, liquor permit or liquor agency store either does, or intends to do, business at the particular location) a(n) _____ (Insert "an applicant for" or "a holder of" or "an operator of") a _____ (Insert name of the type of liquor permit or permit, or if appropriate, "liquor agency store for the sale		<input type="radio"/> YES <input type="radio"/> NO	

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This SAMPLE ballot provides the CORRECT TITLES and ORDER OF OFFICES for ballot layout for candidates for the November 2012 General Election.

Brown, Mandel agree to three debates, including one in Columbus

The Columbus Dispatch Friday August 17, 2012 6:01 PM

Comments: 5 Recommend 6 Tweet 9

Ohio's leading candidates in the race for the U.S. Senate today agreed to three debates, including one in Columbus.



Campaign officials for U.S. Sen. Sherrod

Brown, a Democrat, and Republican State Treasurer Josh Mandel (right) will debate in Cleveland, Columbus and Cincinnati. Mandel, Ohio's

treasurer, agreed to the three debates late this afternoon.

Details of the debates have not been set, although it is known that one of the debates will be held at the City Club in Cleveland on Oct. 15 and another Oct. 25 in Cincinnati, which will be hosted by NBC.

The Columbus debate will be sponsored by Ohio's eight largest newspapers, including The Columbus Dispatch, and WBNS-10TV (Ch. 10).

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(BuckeyesPlanet.com)

Attachment C

**2012 CANDIDATE SELECTION CRITERIA
FOR SENATORIAL DEBATE(S)**

A. INTRODUCTION

The Ohio Newspaper Organization ("OHNO") is comprised of eight news organizations from the State of Ohio. As it has in the past, the OHNO intends to sponsor one or more debates to educate and afford the members of the public an opportunity to sharpen their views of the candidates for the office of United States Senator for the State of Ohio.

Such voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission requiring that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria. The purpose of the criteria is to identify those candidates who have achieved a level of support such that they are realistically considered to be among the principal rivals for the Senate.

In connection with the 2012 general election, the OHNO will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of the OHNO's debates. The criteria are (1) constitutional eligibility; (2) ballot access and (3) electoral support. All three criteria must be satisfied in order for a candidate to participate in a debate.

B. 2012 NONPARTISAN SELECTION CRITERIA

The OHNO nonpartisan criteria for candidates to participate in the 2012 Senatorial debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The OHNO's first criterion requires satisfaction of the eligibility requirements of the United States Constitution. The requirements are satisfied if the candidate for Senate:

- a. is inhabitant of Ohio (U.S. Const. Art. I, § 3)
- b. is at least thirty years of age (U.S. Const. Art. I, § 3)
- c. has been a United States citizen for at least nine years prior to the election (U.S. Const. Art. I, § 3)

2. EVIDENCE OF BALLOT ACCESS

The OHNO's second criterion requires that the candidate qualify to have his/her name appear on the Ohio ballot. As applicable, candidates must comply with the following timeline prescribed by the Ohio General Assembly (as outlined below) and otherwise maintain his or her ballot qualification:

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- a. Major Party Candidate: By 4:00 p.m. on the 90th day before the primary election [R.C. § 3513.05], the candidate must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Declaration of Candidacy" and its accompanying "Petition For Candidate" (Ohio Secretary of State Form No. 2-C) with 1,000 signatures. [R.C. § 3513.05]
- b. Minor Party Candidates: By 4:00 p.m. on the 90th day before the primary election [R.C. § 3513.05], must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Declaration of Candidacy" and its accompanying "Petition For Candidate" (Ohio Secretary of State Form No. 2-C) with 500 signatures. [R.C. § 3513.05]
- c. Independent Candidates: By 4:00 p.m. on the day before the primary election [R.C. § 3513.257], must file the following material with the Ohio Secretary of State Elections Division:
 - \$150 filing fee. [R.C. §§ 3513.10(A) & (B)]
 - A "Nominating Petition And Statement Of Candidacy" (Ohio Secretary of State Form No. 3-D) with 5,000 signatures. [R.C. 3513.257]

3. EVIDENCE OF ELECTORAL SUPPORT

The OHNO's third criterion requires the candidate to demonstrate electoral support by satisfying each of the following objective requirements.

- a. A candidate must have reached a minimum threshold in Ohio state polls, as measured by one of the three alternative polls: The candidate received an average of at least 10% in all polls released between March 1, 2012 and September 24, 2012 by (i) the OHNO; (ii) Rasmussen; or (iii) Quinnipiac.
- b. The candidate (i) has filed an applicable fundraising report(s) establishing candidate has raised at least \$500,000 to support his/her campaign since the formation of his/her campaign committee; (ii) is the nominee of a major party; or (iii) received in excess of 10% of the general election vote in the immediately preceding election for the office of United States Senator.

C. APPLICATION OF CRITERIA

The OHNO's determination with respect to participation in the ONO's debate(s) will be made after the publication of the OHNO public polling, but sufficiently in advance of the debate to allow for orderly planning.

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