

# SANDLER REIFF

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August 3, 2018

Mr. Jeff S. Jordan  
Assistant General Counsel  
Office of Complaints Examination  
and Legal Administration  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

Digitally signed  
by Kathryn Ross  
Date: 2018.08.06  
14:56:47 -04'00'

Re: MUR 7412

Dear Mr. Jordan:

The undersigned serves as counsel to Iraq and Afghanistan Veterans of America ("IAVA"). This letter responds on behalf of IAVA to the Commission's notification that it received a complaint (the "Complaint") alleging that IAVA violated the Federal Election Campaign Act (the "Act") and Federal Election Commission (the "Commission") regulations.

This matter was initiated by a complaint filed by the Libertarian National Committee against IAVA and several other respondents alleging violations of the Commission's candidate debate regulations. For the reasons outlined below, the Commission should not find reason to believe that IAVA violated the Act or Commission's regulations. Alternatively, due to the *de minimis* nature of IAVA's costs associated with the event in question, the Commission should exercise the prosecutorial discretion afforded to it by Heckler v. Chaney to dismiss the matter against IAVA.<sup>1</sup> Pursuing enforcement against IAVA would be an inefficient use of the Commission's time and resources.

IAVA is a non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code, as amended. On September 7, 2016, IAVA co-hosted a candidate forum with NBC News/MSNBC ("NBC") branded the "Commander-in-Chief Forum" (hereinafter the "Forum") which featured then-candidates Clinton and Trump. IAVA and NBC were co-hosts of the Forum with IAVA primarily serving in an advisory role to NBC on the veteran-focused subject matter of the Forum. In fact, NBC decided which candidates to invite to participate in the Forum, negotiated terms with the participating candidates, paid for all of the costs associated with the Forum, and determined the structure of the Forum.<sup>2</sup> IAVA's incurred expenses related to the Forum were limited to the time spent by its staff advising NBC on veteran-specific issues, promoting the Forum on its platforms, and recruiting veterans to attend the Forum.<sup>3</sup>

<sup>1</sup> Heckler v. Chaney, 470 U.S. 821 (1985).

<sup>2</sup> See, Declaration of Paul Rieckhoff, paragraph 4.

<sup>3</sup> Id. at paragraph 5.

In an attempt to give additional candidates the opportunity to address the public on veteran's issues, IAVA invited third-party candidates Governor Gary Johnson and Dr. Jill Stein to participate in a separate event as part of a series of Commander-in-Chief forums.<sup>4</sup> NBC also publicly stated its intentions to include Governor Johnson in a separate event on the same set of issues to be aired on MSNBC.<sup>5</sup>

The Complaint alleges that IAVA made prohibited corporate contributions and expenditures based on its purported failure to comply with the Commission's debate regulations in 11 C.F.R. § 110.13(c). Specifically, the Complaint alleges that IAVA: (1) failed to use "pre-established objective criteria" to determine candidate selection; (2) used "nomination by particular party" as the sole criterion to select candidate participants; (3) structured the criteria to "result in the selection of certain pre-chosen participants"; and (4) failed to disclose the criteria.<sup>6</sup>

The purpose of the Commission's debate regulations is to avoid impermissible corporate contributions and expenditures in connection with federal elections and to outline a permissible structure for corporations and press entities to participate in defraying the costs of First Amendment protected candidate debates. As described above, IAVA served as a co-host of the Forum, but NBC was responsible for establishing the criteria for selecting candidates and paying for the costs associated with the debate. Other than the staff time spent advising NBC and promoting the Forum, IAVA did not incur discrete costs related to the debate. Therefore, any potential corporate contribution or expenditure is limited to an amount equal to an allocation of IAVA staff time spent on Forum-related activities.

IAVA complied with the Commission's debate regulations to the best of its ability subject to the terms of its partnership with NBC. However, the ultimate decision as to which candidates were invited to participate in the Forum was made by NBC.<sup>7</sup> As such, the responsibility for complying with the Commission's regulations ultimately rested with NBC. To be sure, NBC was subject to the same candidate-selection requirements as IAVA.<sup>8</sup> To the best of its knowledge, IAVA believes that NBC complied with the Commission's debate regulations, such that any costs associated with IAVA's debate-related staff time are properly excluded from the definitions of "contribution" and "expenditure."<sup>9</sup>

Furthermore, the Commission has expressed uncertainty as to whether it even has the jurisdiction to enforce the debate regulations on legitimate news organizations, such as NBC, under the First Amendment.<sup>10</sup> In their Statement of Reasons for MUR 6952 (Fox News), Commissioners Petersen, Hunter, and Goodman explained their position that the debate regulations serve as a safe harbor for press entities' involvement in candidate debates, but is not

<sup>4</sup> See, Exhibit A; Declaration of Paul Rieckhoff at paragraph 7.

<sup>5</sup> See, Exhibit B. To note, MSNBC did, in fact, host a town hall with Governor Johnson on September 28, 2016, accessible at <https://www.youtube.com/watch?v=m2cAUseBoWM> (last accessed on August 2, 2018).

<sup>6</sup> Complaint at paragraph 43.

<sup>7</sup> See, Declaration of Paul Reickhoff at paragraphs 4 and 6.

<sup>8</sup> See, 11 C.F.R. § 110.13.

<sup>9</sup> 11 C.F.R. §§ 100.92; 100.54

<sup>10</sup> See, MUR 6952, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman.

the only test for determining whether the entities' activities were legitimate press activities.<sup>11</sup> As such, any potential violation of the debate regulations by IAVA as a result of NBC's "legitimate exercise of its editorial or journalistic discretion" should be sheltered under NBC's First Amendment protections and the Act's press exemption.<sup>12</sup> Moreover, when "the press exemption applies, 'the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.'"<sup>13</sup>

As outlined above, IAVA did not violate the Act or the Commission's regulations by way of its participation as a co-host of the Commander-in-Chief Forum held on September 7, 2016. NBC was the ultimate decisionmaker regarding the selection of candidates to participate in the Forum and should be the party responsible for explaining those criteria to the Commission. Accordingly, the Commission should determine there is no reason to believe that IAVA violated the Act or regulations.

Even if the Commission were to find reason to believe that a violation may have occurred, the Commission has broad discretion under Heckler v. Chaney to determine whether it is worth using additional Commission resources to move forward.<sup>14</sup> Due to the *de minimis* nature of the costs incurred by IAVA related to the Forum, the Commission should exercise its prosecutorial discretion and dismiss this Complaint.

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is [reiff@sandlerreiff.com](mailto:reiff@sandlerreiff.com).

Sincerely,



Neil P. Reiff  
Counsel to Iraq and Afghanistan Veterans of America

<sup>11</sup> Id.

<sup>12</sup> Id.; See also, 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.73; 100.132.

<sup>13</sup> MUR 6952, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman (quoting FEC v. Phillips Publishing, Inc., 517 F.Supp. 1308, 1313 (D.D.C. 1981)).

<sup>14</sup> Heckler v. Chaney, 470 U.S. 821 (1985).

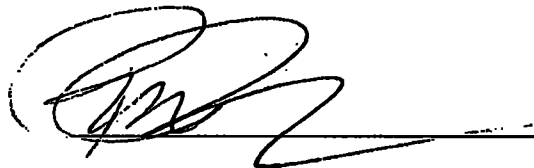
## DECLARATION OF PAUL RIECKHOFF

1. My name is Paul Rieckhoff. I am over 21 years old and make this Declaration based on my personal knowledge and under penalty of perjury that the following statements are true and correct.
2. I am the Founder and Chief Executive Officer of Iraq and Afghanistan Veterans of America (IAVA), a 501(c)(3), non-profit corporation with a mission to connect, unite, and empower post-9/11 veterans.
3. In 2016, I engaged in conversations with officials from NBC News and MSNBC ("NBC") regarding a Commander-in-Chief Forum (the "Forum") co-hosted by NBC and IAVA and held on September 7, 2016.
4. Over the course of my conversations with NBC regarding the Forum, it was agreed that NBC would negotiate all arrangements with candidates, pay for the costs associated with the Forum, and determine the format and structure of the Forum.
5. IAVA was responsible for recruiting veterans to attend the Forum, providing veteran-specific research and expertise as it related to the Forum, and promoting the Forum across all of its platforms.
6. Based on my own information and belief, NBC made the final decision as to which candidates would be invited to the Forum based on its own pre-established objective criteria.
7. On September 1, 2016, I sent letters to campaign representatives of Governor Gary Johnson and Dr. Jill Stein inviting the candidates to participate in a separate event as part of a series of Commander in Chief forums hosted by IAVA. See, Exhibit A.
8. On September 1, 2016, I also spoke on the phone with Governor Johnson about the invitation to a Commander in Chief forum event. See, Exhibits C and D.

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9. After my conversation with Governor Johnson on September 1, 2016, Johnson campaign representatives did not follow up with me on Governor Johnson's participation in a forum event.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 3, 2018.

A handwritten signature in black ink, appearing to read 'Paul Rieckhoff', with a long horizontal line extending to the right.

Paul Rieckhoff

10024741A000A

EXHIBIT A

1004742001



IRAQ AND AFGHANISTAN  
VETERANS OF AMERICA

September 1, 2016

Dr. Jill Stein  
Jill Stein for President  
PO Box 260197, Madison, WI 53726

Dear Dr. Stein,

As an organization that aspires to best advocate for its members, Iraq and Afghanistan Veterans of America would like to extend an invitation to you participate in a series of Commander in Chief forums hosted by IAVA. Based on criteria adopted by our Executive Committee, Secretary Clinton and Mr. Trump have also been invited to participate and have accepted for an event on September 7th. This will be a discussion around the issues our nation's service members, veterans and their families face. As a non-partisan organization - with an extremely politically diverse membership - we are committed to expanding the public conversation and see your contributions to such a conversation as valuable.

One of IAVA's primary goals is to give a voice to our generation of veterans by sharing our members' stories, concerns and hopes for all Americans. We applaud you for your efforts to talk seriously about issues important to American families across the country, including the members and supporters of IAVA.

We hope that you will accept our invitation and look forward to working with you to organize an opportunity that will benefit the national dialogue this election season as well as our members. If you are available to participate, please provide us with a staff contact and contact information, so that we can discuss the details and specifics such an event. I can be reached at [paul@iava.org](mailto:paul@iava.org).

Sincerely,

Paul Rieckhoff  
Founder and CEO

1604443001



**IRAQ AND AFGHANISTAN  
VETERANS OF AMERICA**

September 1, 2016

Mr. Gary Johnson  
Johnson Weld Campaign  
PO Box 4422  
Salt Lake City, UT 84110-4422

Dear Mr. Johnson,

As an organization that aspires to best advocate for its members, Iraq and Afghanistan Veterans of America would like to extend an invitation to you participate in a series of Commander in Chief forums hosted by IAVA. Based on criteria adopted by our Executive Committee, Secretary Clinton and Mr. Trump have also been invited to participate and have accepted for an event on September 7th. This will be a discussion around the issues our nation's service members, veterans and their families face. As a non-partisan organization - with an extremely politically diverse membership - we are committed to expanding the public conversation and see your contributions to such a conversation as valuable.

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Sincerely,

Paul Rieckhoff  
Founder and CEO



EXHIBIT B

11-10-74 442091



News

(/news/)

# Veterans group pressured to let Gary Johnson join forum with Trump, Clinton

By: Charlsy Panzino (/author/charlsy-panzino) 📅 August 25, 2016

A small but vocal contingent of military veterans is lobbying one of the nation's largest advocacy groups to invite Libertarian presidential hopeful Gary Johnson to its nationally televised forum with Donald Trump and Hillary Clinton.

Iraq and Afghanistan Veterans of America announced last week that it has secured agreements from the Republican and Democratic nominees to attend the hourlong event, which promises to focus exclusively on national security issues, military affairs and ongoing challenges facing the nation's veterans. It's scheduled for Sept. 7 in New York City, and will be aired on NBC and MSNBC.

Johnson, who served as New Mexico's governor from 1995 to 2003, has become a source of intrigue during an election season in which many potential voters say they are unhappy with the major party choices. Recent national polls show Johnson receiving between 9 and 12 percent of the vote (<http://www.cnn.com/2016/08/08/politics/hillary-clinton-donald-trump-cnn-poll-of-polls/>) come November, and his popularity is surging among active-duty military personnel and those who've served since 9/11, according to Dylan Milroy, a Marine Corps veteran who is leading the cause to have Johnson added to IAVA's Commander-in-Chief Forum.

"I would understand," Milroy said, "if Johnson was on just 30 or 40 state ballots and had no experience or chance of winning. But that is not the case."

Johnson, he added, "is the only candidate with a sane foreign and intervention policy. There is nothing American about these massive government policies and programs that the Clintons want to fund with trillions of more tax dollars. There is also nothing American or honorable about Trump wanting to carpet bomb anyone that throws a pebble at our boots."

Milroy estimates that, so far, he's rallied more than 100 fellow veterans via the social networking site Reddit (<https://www.reddit.com/r/garyjohnson>)-He and others have contacted IAVA repeatedly with their request but have received no response thus far.

✕ Close

A spokesman for IAVA said the organization is looking into the issue but declined to address additional questions.

Mark Kornblau, a spokesman for NBC, told Military Times that the network plans to invite Johnson to participate in a separate event to be aired on MSNBC "in the near future." It will address "the same set of issues related to national security and veterans," Kornblau said.

Johnson's campaign has not respond to inquiries.

TOP SECRET

It's unclear just how popular the Libertarian is among current troops and veterans. In a survey of nearly 2,000 active-duty service members, reservists and National Guard personnel, conducted by Military Times in July ahead of the Democratic and Republican national conventions, more than 13 percent of respondents said they intend to vote for Johnson. Those results, while not a scientific sampling of the armed forces as a whole, are representative of more senior and career-oriented troops, the men and women who run the military's day-to-day operations and carry out its policies.

Also unclear is how welcome Johnson would be at the IAVA event. Organizers spent months trying to secure agreements from Trump and Clinton. Changing the lineup now could prove challenging logistically.

Moreover, as dissatisfaction with Trump and Clinton has grown more palpable, there is no shortage of speculation ([http://www.nytimes.com/2016/08/04/upshot/can-gary-johnson-the-libertarian-nominee-swing-the-election.html?\\_r=1](http://www.nytimes.com/2016/08/04/upshot/can-gary-johnson-the-libertarian-nominee-swing-the-election.html?_r=1)) that Johnson could swing the election by siphoning votes from one or the other in key battleground states.

IAVA is a nonprofit consisting of nearly 190,000 members, according to its website. The organization says it is nonpartisan.

Milroy, who worked as an aviation technician in the Marines from 2010 to 2014, said he does not have an official role within Johnson's campaign but acknowledged that his "frustrations and passions" are fueling his motivation to see the Libertarian added to IAVA's event.

Salvador Perez-Palma, a Navy vet who served five years on active duty as a machinist repairman, noted that the voting public typically has to choose between "the lesser of two evils." But this year, he said, "the two options are so bad we are desperately pushing for a third."

In June, Johnson and his running mate, former Massachusetts governor William Weld, were invited by CNN to appear at a televised town hall event. They attacked the Obama administration's Middle East policies, and blamed the Islamic State group's rise on what they called the White House's poor judgment on military matters. Johnson also faulted Congress for refusing to formally address the issue of military force against ISIS in Iraq and Syria, saying lawmakers have abdicated their war responsibilities.

✕ Close

Like Milroy and Perez-Palma, Air Force veteran Louis Honeycutt said he has petitioned IAVA with hopes Johnson will be allowed to join Trump and Clinton in New York. "America," Honeycutt added, "needs to know his stance on national security, military affairs and veterans issues."

Follow Charlsy Panzino on Twitter: @charlsypanzino (<https://twitter.com/charlsypanzino>)

Recommended for you

Exhibit C

ALHONNANADADU

# IAVA Statement on Call with Libertarian Presidential Candidate Gary Johnson

## **Following an Invitation to Johnson, Phone Call with CEO Paul Rieckhoff Further Expands IAVA Presidential Campaign Conversation on Veterans Issues**

New York (September 2, 2016) – Yesterday, Iraq and Afghanistan Veterans of America (IAVA) Founder and Chief Executive Officer Paul Rieckhoff spoke by phone with Libertarian Party candidate for President Gary Johnson about a range of veterans issues to include IAVA's upcoming Commander-in-Chief Forum events. The two discussed the concerns of IAVA members, IAVA's Policy Agenda (<http://media.iava.org/policy-agenda-2015.pdf>) priorities and how the Johnson campaign can best serve the veteran community at large. The call followed a formal invitation from IAVA to Governor Johnson and Green Party Candidate, Dr. Jill Stein inviting them to participate in an IAVA Commander-in-Chief Forum event.

"It was an excellent, productive call with Governor Johnson. We appreciate him making time to focus on the issues facing IAVA members. He thanked IAVA for the invitation to a Commander-in-Chief event and for our continued work on behalf of veterans. We talked through a number of options that his campaign is considering and he was extremely appreciative of the opportunity," said Paul Rieckhoff. "We are a non-partisan organization and IAVA members are extremely diverse. IAVA has always been committed to the most robust public conversation around veterans issues and we are eager to engage Gov. Johnson and all candidates further in the days to come. We encourage all Americans to stay tuned to IAVA.org (<https://iava.org/>) for further updates in the days ahead."

The Johnson campaign elaborated in an interview with the Army Times published today and linked here. (<http://www.militarytimes.com/articles/johnson-iava-forum-protests>)

"Johnson campaign communications director Joe Hunter said the campaign does not see the process so far as a slight to Johnson, who also has not been invited to the nationally televised presidential debates scheduled for the final weeks of the race."

"Gov. Johnson applauded the work of IAVA and other leading (veterans groups) in America who are giving voice to the nation's veterans, and reiterated his desire that supporters of his candidacy show respect and similar appreciation for that good work," Hunter said."

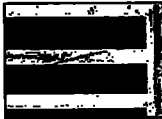
For more information on upcoming historic IAVA Commander-in-Chief Forum events at CommanderInChiefForum.org (<http://www.commanderinchiefforum.org>).

**Note to media: Email [press@iava.org](mailto:press@iava.org) or call 212-982-9699 to speak with IAVA CEO and Founder Paul Rieckhoff or IAVA leadership.**

*Iraq and Afghanistan Veterans of America ([www.IAVA.org](http://www.IAVA.org)) is the leading post-9/11 veteran empowerment organization (VEO) with the most diverse and rapidly growing membership in America. As a non-profit founded in 2004, IAVA's mission is to connect, unite and empower post-9/11 veterans. Celebrating its 12th year anniversary, IAVA has connected more than 1.2 million veterans with resources and community, and provided more than 7,300 veterans with personalized support from IAVA's Master's level social workers.*

Exhibit D

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NAVY FEDERAL MEMBERS  
SEE IF YOU QUALIFY FOR A SPECIAL  
AUTO INSURANCE DISCOUNT

GET A QUOTE

NAVY FEDERAL GEICO  
Credit Union Member Discount  
Federally Insured by NCUA

Military Times

(U)

## Johnson campaign distances itself from protesting vets

By: Leo Shane III (/author/leo-shane-iii) 📅 September 2, 2016

Officials from Libertarian presidential candidate Gary Johnson's campaign said they are reviewing options to participate in an upcoming forum on veterans issues, but no decisions have been finalized.

On Thursday, officials from Iraq and Afghanistan Veterans of America reiterated plans to include Johnson as part of a series of public conversations with potential commanders in chief, but not necessarily as part of the major televised forum set for Wednesday in New York.

"The conversation focused on veterans should not end on September 7th and with the major party candidates," group officials said in a statement. "As a non-partisan organization with an extremely politically diverse membership we are committed to expanding the public conversation about the issues facing veterans with any viable candidate for president as often as possible."

The move has enraged some of Johnson's supporters, who are rallying online activists to downvote IAVA's Facebook page and other social media accounts, and have urged donors to withdraw their support unless the third-party hopeful is given equal billing at the event with Democratic nominee Hillary Clinton and Republican nominee Donald Trump.

Several have called the veterans group's moves "censorship" and called for its nonprofit status to be revoked.

Following the IAVA announcement, Johnson campaign communications director Joe Hunter said staff are working with the veterans group and broadcast partners to find "an appropriate opportunity" for the former New Mexico governor to discuss veterans issues.

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He also said the campaign does not see the process so far as a slight to Johnson, who also has not been invited to the nationally televised presidential debates scheduled for the final weeks of the race.

"IAVA is a private organization and it is not for us to try to dictate what they do," Hunter said. "What's important is for us to have an opportunity to communicate with veterans and let them know that a ticket comprised of two experienced, serious candidates, will seriously address veterans' issues and needs."

Hunter said Johnson and IAVA CEO Paul Rieckhoff spoke on the phone Thursday, and the presidential candidate thanked the group for its outreach.

"Gov. Johnson applauded the work of IAVA and other leading (veterans groups) in America who are giving voice to the nation's veterans, and reiterated his desire that supporters of his candidacy show respect and similar appreciation for that good work," Hunter said.

When asked about the online protests, Hunter said that "we are not encouraging our supporters to harass anyone. We don't do that."

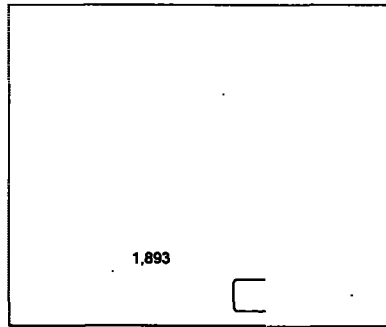




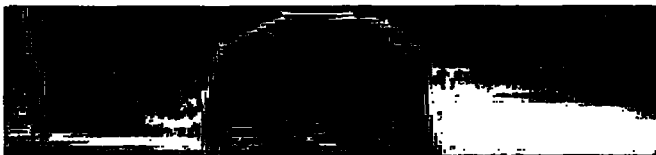
Johnson has hovered around 10 percent in most national polls, far behind both Clinton and Trump. But he has fared well in some military-specific surveys, including one conducted by Military Times in July. IAVA officials referenced that survey as a reason for including him in a forum series on veterans issues.

Wednesday's event is scheduled to air on NBC at 8 p.m. Eastern, with Clinton and Trump appearing separately to respond to questions on veterans and military policy. "Today" show host Matt Lauer will moderate the event.

Leo Shane III covers Congress, Veterans Affairs and the White House for Military Times. He can be reached at [lshane@militarytimes.com](mailto:lshane@militarytimes.com)



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**Trump blames generals for Navy SEAL's death in Yemen raid**



**The Obama era is over. Here's how the military rates his legacy**

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