

BEFORE THE FEDERAL ELECTION COMMISSION

John Hagelin, Ralph Nader,)
Patrick Buchanan, Howard Phillips,)
Winona LaDuke, Natural Law Party,)
Green Party of the United States, and)
Constitution Party,)
)
Complainants,)
)
v.)
)
Commission on Presidential)
Debates, Inc.,)
)
Respondant.)

MUR No. _____

COMPLAINT

1. John Hagelin, Ralph Nader, Patrick Buchanan, Howard Phillips, Winona LaDuke, the Natural Law Party, the Green Party of the United States, and the Constitution Party hereby bring this complaint before the Federal Election Commission (“FEC”) seeking an immediate FEC investigation and enforcement action against the Commission on Presidential Debates (“CPD”) for direct and serious violations of the Federal Election Campaign Act of 1971 (“FECA”), as amended, 2 U.S.C. §§ 431 *et seq.* (1997 and Supp. 1999), which violations occurred during the 2000 elections for the Offices of the President and Vice President of the United States of America, and which directly concern the 2004 federal elections.

Summary of Complaint

2. The CPD is a nonprofit organization that sponsored four debates between the presidential and vice presidential candidates of the Republican and Democratic Parties in the 2000 elections. Federal election law requires a staging

organization for candidate debates to be both nonprofit and nonpartisan. But the CPD is not a nonpartisan organization, as newly obtained evidence shows. The CPD decided to exclude all third-party candidates from even sitting in the audience of the debates, and it distributed a “face-book” of prominent third-party candidates to CPD personnel at the first presidential debate so they could recognize and deny the candidates access to the debate hall even if they had a ticket. Remarkably, the CPD's admitted intent included depriving all third-party candidates of any opportunity to engage in "campaigning" by virtue of their attending the debate event as spectators (and thus denying them ready availability to the approximately 1,700 news reporters on site). In stark contrast, the CPD benefited the Republican and Democratic Candidates and Parties by providing them with unlimited “campaigning” opportunities.

3. Because CPD operates as a partisan organization, it was neither qualified to stage the debates nor entitled to raise millions of dollars from corporations and other wealthy donors to be spent for the benefit of the Republican and Democratic Parties and their candidates. The CPD also failed to register as a “political committee” and to report its receipts and disbursements as required by the federal election laws, which, among other things, deprived Complainants of important information.

4. These violations of federal law were detrimental to and seriously harmed the Complainants – parties and candidates competing in 2000 against the Democratic and Republican Parties and their candidates for the Presidency and Vice Presidency of the

United States. The CPD's ongoing unlawful conduct threatens to similarly harm third-party candidates competing in the 2004 elections.

Complainants

5. John Hagelin, Ralph Nader, Patrick Buchanan and Howard Phillips were candidates for the Office of the President of the United States of America in the 2000 elections. Winona LaDuke was a candidate for the Office of the Vice President of the United States of America in the 2000 elections. Each of these candidates (along with several others) was pictured and identified by party affiliation, name and candidacy in the CPD's face-book, which was prepared and distributed by the CPD to its personnel for the express purpose of excluding the third-party candidates from the audience of the presidential debates held in Boston, Massachusetts on October 3, 2000. *See* Exhibit 1 hereto.

6. The Natural Law Party, Green Party of the United States, and Constitution Party were each represented by candidates for the Office of the President and Vice President of the United States of America in the 2000 elections. These parties and their candidates, along with other third-parties and their candidates, were specifically identified and targeted for exclusion by the CPD in its face-book. *See id.* The Natural Law Party, Green Party of the United States, and Constitution Party are all likely to nominate and/or intend to run a presidential and vice presidential candidate in the 2004 national elections.

Respondent

7. The Commission on Presidential Debates, Inc., is a non-profit, 501(c)(3) tax-exempt corporation that is incorporated and based in the District of Columbia. The CPD is located at 1200 New Hampshire, N.W., Box 445, Washington, D.C., 20005.

Allegations

8. The CPD is a nonprofit corporation that sponsored four debates between the presidential and vice-presidential candidates of the Republican and Democratic Parties in the 2000 elections. It raised millions of dollars from corporations and other wealthy donors, and spent those funds in staging the debates. The CPD acted as the staging organization for the debates pursuant to the safe harbor provided in 2 U.S.C. § 431 (9)(B)(ii) which exempts “nonpartisan activity designed to encourage individuals to vote or to register to vote” from the definition of regulated “expenditures.” The FEC has interpreted this statute to permit qualifying staging organizations to sponsor candidate debates as follows: “Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 C.F.R. 114.4(f).” *See* 11 C.F.R. § 110.13(a). In addition, such a qualifying nonprofit organization may “use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.” *See* 11 C.F.R. 114.4(f)(1). In this manner a qualifying organization and its donor corporations are exempt from the general prohibition on corporate contributions and expenditures, *see* 2 U.S.C. § 441b (prohibiting

corporate donations in federal elections), and other limits. *See* 2 U.S.C § 441a(a), 441a(f).

9. The CPD was founded, and is controlled by the Republican and Democratic Parties and their representatives. At least nine of its eleven board directors are prominent members of the Republican and Democratic Parties, there are no third-party representatives, and its two co-chairs (dating back to the CPD's founding in 1987) are the former heads of the two major parties' respective national committees. The CPD also operates as a partisan organization, as is evident from its conduct at the first presidential debate held in Boston on October 3, 2000. Before the debate, the CPD leadership decided to exclude all third-party candidates from attending the presidential debates as audience members. *See* Exhibit 2 hereto at page 50, lines 10-13 (excerpt of deposition transcript of CDP General Counsel Lewis Loss dated October 25, 2001 in the matter of *Nader v. Commission on Presidential Debates, et al.*, Case No. 00-12145-WEY (U.S.D.C. MA 2000) (“...the CPD had decided that Mr. Nader and third-party candidates more generally, even if they had a ticket to the debate, would not be admitted into the debate hall.”); *see also* Exhibit 3 hereto (excerpt of deposition transcripts of CPD co-chair Frank J. Fahrenkopf, Jr. dated December 5, 2001 in *Nader, supra*, at page 26, lines 2-16) (“ The position was that third party candidates would not be allowed to be present in the debate hall.... The decision was made by—well there were a number of people in the discussion. But fundamentally, Paul Kirk and I, as co-chairmen, made the final decision [for the CPD]”). *Cf. id.* at page 42, lines 15-19 (Fahrenkopf changing testimony). The decision also applied to all three of the presidential debates and presumptively the vice-presidential debates. *See id.* at pages 26 (line 25) – 27 (line 23).

The CPD's general counsel, Lewis Loss, prepared and distributed a "face-book" of prominent third-party presidential and vice-presidential candidates (*see* Exhibit 1) so that CPD personnel at the debate-hall doors could recognize the candidates and deny them access to the event even if they had a ticket. *See* Exhibit 2 at pages 57-59.

10. The CPD intended the exclusion of all third-party candidates from the debate hall to deny these candidates and their parties any "campaigning" opportunities, according to the CPD's general counsel. *See* Exhibit 2 at pages 100 (line 20) – 101 (line 8) ("Our [the CPD's] concern was that if a third-party candidate who had not qualified for participation in the debate went to the trouble to get a ticket and attend the debate that it would be for the purpose of campaigning in some way, which seemed to imply the potential for disruption."). Thus, although both the Republican and Democratic Candidates were clearly engaged in significant campaigning by attending and participating in the nationally-televised political debates, absolutely no "campaigning" by third-party candidates (not even the modicum of campaigning purportedly entailed in attending the debates) would be tolerated by the partisan CPD. Moreover, the CPD's decision was clearly intended to deny third-party candidates any media coverage in the debate hall and/or deny them ready availability to the approximately 1,700 news reporters attending the debates. As such, the CPD acted as a partisan organization to intentionally provide the Republican and Democratic Candidates and Parties with valuable benefits that it denied to all other third-party candidates and their parties, including Complainants.

11. The CPD was founded as a partisan organization (Republicans and Democrats) and its leadership is aware that, to qualify as a debate sponsor, it must be nonpartisan. *See* Exhibit 3 at page 20, lines 16-24 ("If we [the CPD] were bi-partisan,

we couldn't meet the requirements of the [election] law, as we understood it, by which you qualified to be a sponsor of debates...So it became very clear to us once we [the CPD] were created that we had to be a nonpartisan [organization] even though Paul [Kirk] and I were the party chairmen.”).

12. Because the CPD is a partisan organization – as evidenced by its partisan corporate structure, leadership and conduct – its efforts are not exempt under 2 U.S.C. §431(9)(B)(ii), nor does it meet the criteria for a qualifying organization under FECA, 11 C.F.R. 110.13(a)(1). The CPD, by its consistent pattern of exclusionary behavior and conduct, not only opposed presidential candidates and political parties, but it also supported and endorsed political candidates and political parties in violation of 11 C.F.R. 110.13(a).

13. The CPD raised significant monies and had numerous corporate co-sponsors of its debates, including Philip Morris, Anheuser-Busch, AT&T and 3Com. *See* Exhibit 4 hereto. Because the CPD was not a qualified organization under 2 U.S.C. § 431 *et seq.*, 11 C.F.R. 110.13 and 11 C.F.R. 114.4(f)(1), the millions of dollars expended by the CPD in sponsoring and staging the debates were illegal contributions and expenditures to the Republican and Democratic Parties under FECA. *See* 2 U.S.C. § 431(8)(A)(i) (defining the term “contributions” 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(9)(a)(i) (defining the term “expenditures” 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”).

14. Additionally, because the partisan CPD raised and expended millions of dollars in funds from corporations and other wealthy donors, it meets the federal definition of a “political committee” which FECA defines as “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.” *See* 2 U.S.C. § 431(4)(A). The CPD has received contributions far in excess of \$1,000 and has made expenditures far in excess of \$1,000. *See* ¶13, *supra*. Therefore, the CPD was required by law to register as a political committee and to file reports as to receipts and expenditures. *See* 2 U.S.C. §§ 433, 434. Because the CPD failed to comply with all these requirements, it is in violation of the reporting provisions, as well as 2 U.S.C. § 441a(a) (defining limitations on contributions and expenditures) and 2 U.S.C. § 441a(f) (prohibiting political committees from accepting contributions or making expenditures in violation of the section).

15. Thus, the CPD has illegally used corporate and other wealthy donors’ contributions to the benefit of the Republican and Democratic Parties and their chosen candidates, and to the detriment of the Complainant candidates and parties. It has also failed to make political committee disclosures that are important to the political process and to the Complainants in conducting their campaigns. Each Complainants’ ability to compete in the electoral process has thereby been impaired by the CPD’s unlawful activities.

16. Upon information and belief, the CPD has already begun planning to sponsor the presidential and vice presidential debates for the 2004 national elections, and has already begun soliciting, and intends to solicit, substantial contributions and other

financial support from corporations and other wealthy donors for the purpose of sponsoring its debates. For the same reasons these activities were unlawful for the 2000 debates, they are unlawful now and in the future, and must be stopped immediately to prevent harm to these Complainants and the Nation.

Count I

17. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

18. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441b, by making expenditures and/or contributions to stage and sponsor the presidential and vice-presidential debates in the 2000 elections for the benefit of Republican and Democratic Parties and their candidates.

Count II

19. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

20. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 431(9)(B)(ii) and 11 C.F.R. § 110.13(a), by staging the presidential and vice-presidential debates although it does not qualify to do so because it is a partisan organization that, by its consistent pattern of exclusionary behavior and actions, did “endorse, support or oppose political candidates or political parties....”

Count III

21. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

22. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 431(9)(B)(ii) and 11 C.F.R. § 114.4(f), by using its own funds and by accepting funds donated by corporations and other persons to defray costs incurred in staging presidential and vice-presidential candidate debates that were not held in accordance with 11 C.F.R. 110.13.

Count IV

23. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

24. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441a(a), by exceeding the defined limitations on contributions and expenditures.

Count V

25. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

26. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441a(f), by accepting contributions and making expenditures in violation of the section.

Count VI

27. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

28. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 433, by failing to register as a political committee even though it received contributions aggregating far in excess of \$1,000 during a calendar year and made expenditures aggregating far in excess of \$1,000 during a calendar year.

Count VII

29. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

30. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 434, by failing to report receipts and disbursements as required.

Count VIII

31. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

32. The Commission on Presidential Debates, by its continuing acts in preparing to sponsor the presidential and vice-presidential debates for the 2004 national elections, including by holding itself out as a qualified debate staging organization, and by unlawfully soliciting contributions from corporations and others to finance the debates, is violating, or will violate, each of the federal laws and regulations contained in Counts I through VII above.

Prayer for Relief

WHEREFORE, Complainants request that the Federal Election Commission conduct an investigation into these allegations, declare that respondent CPD has violated, and is violating, the federal election campaign laws and take such further action as may be appropriate, including but not limited to the following:

- 1) Notify the CPD that it was not qualified to act as a staging organization for the presidential and vice-presidential debates in the 2000 elections and that it is not so qualified for the 2004 debates or any others;

- 2) Prohibit the CPD from acting as a presidential debate staging organization at any time in the future;
- 3) Direct the CPD to cease and desist all activities as a presidential debate staging organization within the meaning of FECA, including holding itself out as a debate staging organization and raising contributions and making expenditures therefor;
- 4) Direct the CPD to file reports of receipts and disbursements in accordance with the law for the 2000 presidential and vice-presidential debates;
- 5) Direct the Republican and Democratic Candidates and Parties to refund the monies the CPD and its sponsoring corporations and wealthy donors improperly contributed to and/or expended for their benefit;
- 6) Impose sanctions, including but not limited to fines and penalties, against the CPD and any other appropriate persons or parties to the full extent allowed by law; and
- 7) Provide all other remedies that the Federal Election Commission deems appropriate and that the law requires.

June 17, 2003

Respectfully submitted,

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Patrick Buchanan, Howard Phillips,
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Green Party of the United States, and
Constitution Party,

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