

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

SUPERIOR COURT  
C.A. No.

_____	)	)
JILL E. STEIN AND	)	)
BARBARA JOHNSON,	)	)
	)	)
Plaintiffs,	)	)
	)	)
v.	)	)
	)	)
THE BOSTON GLOBE, WBZ-TV,	)	)
WCVB-TV, WGBH-TV, WHDH-TV, AND )	)	)
NEW ENGLAND CABLE NEWS,	)	)
	)	)
Defendants.	)	)
_____	)	)

**VERIFIED COMPLAINT**

**INTRODUCTION**

1. Plaintiffs Jill E. Stein and Barbara Johnson bring this action seeking to enjoin the gubernatorial debates scheduled to occur on the evening of Tuesday, October 1, 2002, on the grounds that the debates are being organized, financed, advertised and broadcast by six newspaper and television companies for only two of the five qualified gubernatorial candidates in the Commonwealth of Massachusetts in violation of M.G.L. Chapter 55, §§ 8 and 8A. Specifically, these newspaper and television companies have organized a debate between Democratic Candidate Shannon O’Brien and Republican Candidate Mitt Romney, while expressly excluding the three other qualified candidates for governor, two of whom have brought this action – Massachusetts Green Party Candidate Jill E. Stein and Barbara Johnson, an independent candidate (Libertarian Party Candidate Carla Howell was also excluded). Massachusetts election law, Chapter 55, § 8A, requires that

any media organization giving time and space to a candidate to do political advertising – e.g., selling their candidacy and political ideas, and distinguishing themselves from opponents – must provide the same time and equal market value to “all other qualified candidates for the same office for the same election.” By excluding three candidates from the crucial public televised gubernatorial debate on October 1, 2002, the defendants are providing free time and space to only two of five qualified candidates and their parties. Moreover, the Consortium members expressly had Green Party Candidate Stein and Libertarian Party Candidate Howell uninvited and excluded from the debates after they had been invited, thereby “antagonizing” the interests of these candidates parties in violation of Chapter 55, § 8. In violating these laws, including by financing, advertising and sponsoring the exclusive debates between only the Democratic and Republican Candidates, the defendants are selectively conferring legitimacy on only these two candidates and thus acting as king-makers. This conduct is dangerous to our democracy and expressly in violation of the Massachusetts law.

2. For these and the other reasons below, plaintiffs seek to enjoin the October 1, 2002 gubernatorial debates, or any other such exclusionary debates, from occurring unless all qualified candidates are permitted to participate equally. Plaintiffs seek injunctive relief and declaratory judgement that the gubernatorial debates are unlawful unless all qualified candidates for governor are allowed to participate..

#### JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court pursuant to M.G.L. c. 231, § 1.
4. Venue is proper because at least one of the plaintiffs resides in this county.

## THE PARTIES

5. Plaintiff Jill E. Stein is a resident of Massachusetts, County of Middlesex, and is a qualified candidate for the Green Party for the Office of Governor of the Commonwealth of Massachusetts in the 2002 elections.

6. Plaintiff Barbara Johnson is a resident of Massachusetts, County of Essex, and is a qualified independent candidate for the Office of Governor of the Commonwealth of Massachusetts in the 2002 elections.

7. Defendant The Boston Globe is operates in Massachusetts with its principal place of business at 135 Morrissey Boulevard, Boston, MA, 12107, County of Suffolk, Massachusetts.

8. Defendant WBZ-TV, a subsidiary of Viacom, Inc., has its principal place of business at 1170 Soldiers Field Rd, Allston, MA, 02134, County of Suffolk, Massachusetts.

9. Defendant WCVB, is a subsidiary of Hearst-Argyle Television, Inc., has its principal place of business at 5 TV Place, Needham, MA, 02494, County of Norfolk, Massachusetts.

10. Defendant WGBH-TV Educational Foundation has its principal place of business at 125 Western Ave, Boston, MA 02134, County of Suffolk, Massachusetts.

11. Defendant WHDH-TV, a subsidiary of Sunbeam Television, Inc., has its principal place of business at 7 Bulfinch Place, Boston, MA, 02114, County of Suffolk, Massachusetts.

12. Defendant New England Cable News, jointly owned by AT&T Broadband, Inc. and Hearst-Argyle Television, Inc., has its principal place of business at 160 Wells Avenue, Newton, MA, 02459, County of Middlesex, Massachusetts.

### ALLEGATIONS

13. A consortium of six (6) news corporations is sponsoring a televised public debate between two of the five qualified gubernatorial candidates for governor of the Commonwealth of Massachusetts, which debate is scheduled to occur on Tuesday, October 1, 2002.

14. The corporations making up the consortium are The Boston Globe, WBZ-TV (Channel 4), WCVB-TV (Channel 5), WGBH-TV (Channel 2), WHDH-TV (Channel 7), and NECN (New England Cable News) (collectively “Consortium”). Collectively, these corporations are organizing, financing and advertising the debate between Democratic Candidate Shannon O’Brien and Republican Candidate Mitt Romney. The Consortium is not permitting three other qualified candidates for governor of the Commonwealth – Green Party Candidate Jill Stein, Independent Candidate Barbara Johnson and Libertarian Candidate Carla Howell – to participate in the debate. In fact, in mid-September, 2002, Green Party Candidate Jill Stein and Libertarian Party Candidate Carla Howell were scheduled to participate in the October 1, 2002 debate, but that invitation was withdrawn due to the Consortium.

15. The Consortium members’ conduct in organizing, financing and advertising the debates for only two of the five qualified candidates for governor is a violation of M.G.L. Chapter 55, §§ 8 and 8A. In particular, Chapter 55, § 8 states that “no corporation incorporated under the laws of or doing business in the commonwealth... shall directly or

indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interests of any political party.”

16. The Consortium members are in violation of § 8 because, by organizing, financing and advertising the debates without pay by the Democratic and Republican Parties or Candidates, the Consortium members “directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interests of any political party.” The Democratic and Republican Candidates will be indirectly given money and other things of significant value for the purpose of aiding and promoting the election of one of these two candidates. Defendants have done this by 1) creating and funding a forum that legitimizes only two parties’ candidates and de-legitimizes the other three qualified candidates, particularly plaintiffs who suffered the taint of being disinvited; 2) expending monies and advertising to promote the exclusive forum and the Democratic and Republican participants; and 3) funding the forum and primary media coverage to allow only the Democratic and Republican Candidates and Parties to convey their political ideas and advertise their differences, which is being done at the expense and clear harm of plaintiffs, and all three excluded candidates generally.

17. Moreover, because the Consortium members have invited only the two major parties, and are advertising the debates in their newspapers and on television and highlighting therein only the two major candidates, and because the Consortium members

expressly had the invitations withdrawn for the two plaintiff candidates, the Consortium members are “antagonizing the interests of any political party” in violation of Chapter 55, § 8. The act of excluding candidates of two parties that were previously going to participate sends the public the message that the excluded candidates and their parties are not serious contenders for governor. In fact, their exclusion from the debates denies the public access to their political ideas and critiques of the Democratic and Republican Parties and Candidates, which discourse is vital to the electoral process and essential to ensure that all qualified candidates for governor are treated equally as is their legal right.

18. Furthermore, the Consortium members are in violation of Chapter 55, § 8A. That section, which is captioned “Media organization offering time and space to qualified candidates at no cost or reduced price; limitations,” states: “A media organization may make time or space available to a qualified candidate at no cost or at reduced cost for the purpose of presentation of the candidate’s own political advertising; provided, however, that: (a) time of the same duration and the same market value or the same amount of space and for the same market value is made available to all other qualified candidates for the same office for the same election...” Section 8A defines the term “media organization” as “any corporation, partnership or trust which owns or controls a television station, including without limitation cable television, a radio station or any other such electronic broadcast media outlet or a newspaper, periodical or any other such print outlet.” Section 8A defines a “qualified candidate” as “any candidate who qualifies to have his (sic) name appear on the ballot at an election, whether primary, general, or special election.”

19. Each of the three candidates excluded from the October 1, 2002 debate meets the definition of a qualified candidate – a status that is earned through a grueling process that requires a substantial showing of public support (e.g., 10,000 signatures from voters registered with the candidate’s party or who were unenrolled) and which takes significant time and effort to achieve.

20. Each of the six corporations comprising the Consortium meets the definition of a media organization. Because these corporations are organizing, financing and advertising the debates between only two of the five qualified candidates, they are acting in violation of § 8A, and are making illegal contributions to the Democratic and Republican Parties and their candidates.

21. Moreover, the Consortium members are making both “time” and “space” available to only two of five qualified candidates, in the form of extensive television, radio and print media coverage, “at no cost for the purpose of presentation of the candidate’s own political advertising.” It is clear that the two select candidates will use that “time” and “space” to advertise their own political positions to the public. Therefore, the Consortium members are in direct violation of § 8A.

#### COUNT I

22. Plaintiffs incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

23. Defendants, by organizing, financing and advertising the gubernatorial debate on October 1, 2002, and by directly or indirectly giving money or other things of value, and by antagonizing the interests of the plaintiffs’ parties, have and are violating M.G.L. Chapter 55, § 8.

## COUNT II

24. Plaintiffs incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

25. Defendants, by organizing, financing and advertising the gubernatorial debate on October 1, 2002, and by selectively making “time” and “space” available to some, but not all qualified gubernatorial candidates equally, have and are violating M.G.L. Chapter 55, § 8A.

### PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs are entitled to equitable relief because they are likely to succeed on the merits and will suffer irreparable harm unless they are permitted to participate in the October 1, 2002 debate, and for the reasons stated in their accompanying memorandum of law.

WHEREFORE, plaintiffs pray for the Court to:

- A. Enjoin defendants from holding, financing, sponsoring or broadcasting the Massachusetts Gubernatorial debates on October 1, 2002, or any other such debates, that excludes plaintiffs or any other qualified candidates;
- B. Grant declaratory judgement that the gubernatorial debates are unlawful unless all qualified candidates for governor are allowed to participate equally;
- C. Grant any other equitable and/or injunctive relief against defendants to the extent the Court determines that an adequate remedy at law does not exist;

- D. Award plaintiffs their costs and disbursements incurred in maintaining this action, including reasonable attorneys' and experts' fees, and pre-and post-judgment interest; and
- E. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By Jill Stein and Barbara Johnson,

By their attorneys,

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Dated: September 27, 2002

I, Jill E. Stein, state under the pains and penalties of perjury this 27<sup>th</sup> day of September, 2002, that the factual statements made in this Verified Complaint are true upon my direct knowledge or upon my best information and belief.

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Signature

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Jill E. Stein, Plaintiff