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Submitted Electronically (<http://www.fec.gov/fosers>)

Robert M. Knop
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Notice 2014–13 Rulemaking Petition: Candidate Debates

Dear Mr. Knop:

These comments are submitted by the Campaign Legal Center in support of the Petition for Rulemaking filed by Level the Playing Field asking the Federal Election Commission (FEC) to initiate a rulemaking and revise the FEC’s regulations governing the inclusion of candidates in presidential and vice presidential candidate debates. 79 Fed. Reg. 68,137 (November 14, 2014).

The Commission’s debate regulations create an exemption to the Federal Election Campaign Act’s (FECA) prohibition on corporate and labor contributions in connection with federal elections to allow incorporated 501(c)(3) and (c)(4) organizations to stage candidate debates using corporate and labor donations. 11 C.F.R. § 110.13(a)(1).¹ The structure of the debates is left to the staging organization and the regulations provide little guidance regarding the exercise of that discretion. Pursuant to the regulations, 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). The only other relevant rule is that “staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.” *Id.* § 110.13(c). As for the criteria, the only specific restriction is that, for debates taking place during the general election, the 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.*

As a practical matter, these regulations have effectively allowed the Commission on Presidential Debates (“CPD”), a private corporation controlled by the Republican and

¹The regulations also provide for broadcasters, newspapers, magazines and other periodical publications to sponsor and cover debates. 11 C.F.R. § 110.13(a)(2).

Democratic Parties, to control and limit participation in the presidential debates to candidates for the two major parties through the establishment of criteria for participation that includes the use of polling data. The Level the Playing Field petition asks that the Commission initiate a rulemaking to amend 11 C.F.R. § 110.13(c) to: (1) Preclude sponsors of general election presidential and vice presidential debates from requiring that a candidate meet a polling threshold in order to be included in the debate; and (2) require sponsors of the debates to use objective, unbiased criteria for debate participation that do not require candidates to satisfy a polling threshold.

According to the petition, since 2000, the CPD has required that, to participate in the presidential debate, a “candidate have 15% support in an average of five national polls taken in early to mid-September to gain entry to the debates.” Petition at 8. As the petition explains, this criterion is subject to manipulation and has the practical effect of excluding third party and independent candidates who do not have the same funding and name recognition as the two major party candidates at the time of the polling, even if they have qualified to be on the ballot in every state. This is a vicious circle: Exclusion from participation in the debates helps ensure that a candidate does not get the name recognition and credibility he or she would need to attain higher polling numbers. The problem has just been exacerbated by the dramatic increase in the limits on what can be contributed to the national parties, which will increase the advantages of the two major parties. Further, polling practices have struggled to keep pace with evolving communication norms (e.g., cell phones replacing landlines), and the entities conducting polls have proliferated, resulting in an ongoing debate about the accuracy of various polling methods.

There is no question that there needs to be criteria for selecting who can participate in the presidential debates. But it has been over twenty years since the FEC has conducted a serious and in-depth review of its regulations governing debates, during which time much has changed and the CPD has gained a virtual monopoly on the staging of presidential debates. Through a rulemaking, the FEC will be able to learn about the most up-to-date research on the reliability of polling methods and can determine what is and is not an “objective” standard. The petitioner offers one alternative to polling as a selection criterion. Through a rulemaking, the FEC may very well identify other objective and useful methods for determining participation that are consistent with FECA, fairer to candidates and better serve the public than the reliance on a polling threshold.

Participation in the debates is considered an integral part of the method by which we elect our president. Therefore, we strongly urge the FEC to open a rulemaking to fully review its debate regulations in light of current practices and revise the rules, as necessary, to ensure they are in compliance with FECA and serve the public interest.

We appreciate the opportunity to submit these comments.

Sincerely,

/s/ J. Gerald Hebert

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