

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

John Hagelin)
 (1950 Mansion Drive, Fairfield, IA 52556),)
 Ralph Nader)
 (53 Hillside, Winsted, Connecticut 06098))
 Patrick Buchanan)
 (1017 Saville Lane, McLean, VA, 22101),)
 Howard Phillips)
 (450 Maple Ave. East, Vienna, VA 22182),)
 Winona LaDuke)
 (31146 E. Round Lake Rd, Ponsford, MN)
 56575),)
 Green Party of the United States)
 (1700 Connecticut Ave., N.W., Ste 404,)
 Washington, DC, 20009), and)
 Constitution Party)
 (23 North Lime St, Lancaster, PA, 17602),)
)
 Plaintiffs,)
)
 v.)
)
 Federal Election Commission)
 (999 E Street, N.W., Washington, DC)
 20463),)
)
 Defendant.)

Civil Action No.

COMPLAINT

INTRODUCTION

1. This lawsuit asserts that the Federal Election Commission (“FEC” or “Commission”) wrongfully dismissed the Plaintiffs’ administrative complaint against the Commission on Presidential Debates, Inc. (“CPD”). The administrative complaint, which the FEC designated as Matter Under Review (“MUR”) 5378, alleged that the CPD is committing direct and serious violations of federal law in its conduct of national

presidential debates, and that these violations are having a direct and serious detrimental impact on the 2004 presidential and vice-presidential elections.

2. The administrative complaint alleged that the CPD has unlawfully conducted past presidential debates in a partisan manner, using millions of dollars in corporate funding to benefit the Democratic and Republican parties and their candidates at the expense of all others, and that the CPD will conduct the 2004 debates in a partisan manner unless stopped from doing so. Federal election law requires a staging organization for candidate debates to be both nonprofit and nonpartisan, and permits only such an organization to raise funds from corporations and labor organizations to sponsor debates. Nevertheless, the plaintiffs provided the FEC with evidence that the CPD engages in partisan conduct, including by adopting and enforcing a policy of deliberately excluding all third-party candidates from even sitting in the audience of the 2000 presidential debates.

3. This evidence includes a "face-book" of prominent third-party candidates that the CPD distributed to 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. The CPD has admitted that it did this in order to deprive third-party candidates of any opportunity to engage in "campaigning" in the debate halls, effectively denying the third-party candidates access to the approximately 1,700 news reporters on site. In stark contrast, the CPD provided the Republican and Democratic candidates with an unparalleled platform for their views and extensive access to national media.

4. Given this evidence of CPD partisanship, the FEC's dismissal of the Plaintiffs' administrative complaint is arbitrary and capricious, contrary to law and a

clear abuse of the agency's discretion. By allowing the CPD to continue providing illegal corporate support to the major parties' nominees, the FEC has injured the ability of the plaintiff candidates and parties, and candidates supported by the plaintiffs, to compete in the presidential and vice-presidential elections. Additionally, the FEC has failed to require the CPD to register as a political committee and disclose contributions and expenditures, as required by law, thereby depriving the plaintiffs of information useful to them in their advocacy on behalf of third-party and independent candidates.

5. The FEC's wrongful dismissal threatens imminent harm to the plaintiffs. At least one candidate plaintiff, Ralph Nader, is running for President, and both political party plaintiffs are fielding or supporting candidates for President and Vice President in the current election cycle.

PARTIES

6. Plaintiff John Hagelin was a candidate for the office of President of the United States of America in the 2000 elections. Mr. Hagelin has chosen not to run as a candidate for President in the 2004 elections, including for the significant reason that he cannot compete fairly with the two major parties due to their bi-partisan control of the CPD, and the resulting exclusionary conduct of the CPD over the national debates. Mr. Hagelin was pictured and identified by party affiliation, name and candidacy in the face-book that the CPD prepared and distributed 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* Exh. A, Admin. Complaint, at Exh. 1 thereto.

7. Plaintiff Ralph Nader was a candidate for the office of President of the United States of America in the 2000 elections and is currently running as an independent candidate in the 2004 elections for the office of President of the United States. Mr. Nader was pictured and identified by party affiliation, name and candidacy in the face-book that the CPD prepared and distributed 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* Exh. A, Admin. Complaint, at Exh. 1 thereto.

8. Plaintiff Patrick Buchanan was a candidate for the office of President of the United States of America in the 2000 elections. Mr. Buchanan has chosen not to run as a candidate for President in the 2004 elections, including for the significant reason that he cannot compete fairly with the two major parties due to their bi-partisan control of the CPD, and the resulting exclusionary conduct of the CPD over the national debates. Mr. Buchanan was pictured and identified by party affiliation, name and candidacy in the face-book that the CPD prepared and distributed 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* Exh. A, Admin. Complaint, at Exh. 1 thereto.

9. Plaintiff Howard Phillips was a candidate for the office of President of the United States of America in the 2000 elections. Mr. Phillips was pictured and identified by party affiliation, name and candidacy in the face-book that the CPD prepared and distributed 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* Exh. A, Admin. Complaint, at Exh. 1 thereto. Mr. Phillips is not running as

a candidate in the 2004 elections, but intends to support the nominee of the Constitution Party, who is anticipated to be Michael A. Peroutka.

10. Plaintiff Winona LaDuke was a candidate for the office of Vice President of the United States of America in the 2000 elections. Ms. LaDuke has chosen not to run as a candidate for President or Vice President in the 2004 elections, including for the significant reason that she cannot compete fairly with the two major parties due to their bi-partisan control of the CPD, and the resulting exclusionary conduct of the CPD over the national debates. Ms. LaDuke was pictured and identified by party affiliation, name and candidacy in the face-book that the CPD prepared and distributed 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* Exh. A, Admin. Complaint, at Exh. 1 thereto.

11. Plaintiff Green Party of the United States fielded candidates for the offices of President and Vice President of the United States of America in the 2000 elections and is currently preparing to field candidates in the 2004 elections for the office of President and Vice President of the United States. This Party was identified along with its candidates who were named and pictured in the face-book that the CPD prepared and distributed to its personnel for the express purpose of excluding the Party's candidates from the audience of the presidential debates held in Boston, Massachusetts on October 3, 2000. *See* Exh. A, Admin. Complaint, at Exh. 1 thereto.

12. Plaintiff Constitution Party fielded candidates for the offices of President and Vice President of the United States of America in the 2000 elections and is currently preparing to field candidates in the 2004 elections for office of President and Vice

President of the United States. The anticipated nominee is Michael A. Peroutka. This Party was identified along with its candidates who were named and pictured in the face-book that the CPD prepared and distributed to its personnel for the express purpose of excluding the Party's candidates from the audience of the presidential debates held in Boston, Massachusetts on October 3, 2000. *See* Exh. A, Admin. Complaint, at Exh. 1 thereto.

13. Defendant Federal Election Commission ("FEC") is a federal agency created under the statutory authority of the Federal Elections Campaign Act of 1971 (FECA), 2 U.S.C. § 437c. The FEC is responsible for ensuring compliance with the FECA, including FECA's requirement that staging organizations for candidate debates be nonpartisan organizations, and that PACs register with and make disclosures to the FEC.

JURISDICTION AND VENUE

14. This action arises under the FECA, 2 U.S.C. §§ 431 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201. The jurisdiction of this Court is conferred by 2 U.S.C. § 437g and 28 U.S.C. § 1331.

15. Venue is conferred on this Court by 2 U.S.C. § 437g and 28 U.S.C. § 1391.

ALLEGATIONS

Summary of Underlying Allegations in the Administrative Complaint

16. The CPD is incorporated and based in the District of Columbia and claims status as a non-profit, 501(c)(3) corporation. The CPD is located at 1200 New Hampshire Ave., N.W., Box 445, Washington, D.C., 20005.

17. The CPD sponsored four nationally-televised 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 wealthy donors, and spent those funds in promoting and staging the debates.

18. 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.” (Emphasis added.) 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 C.F.R. 110.13.” *See* 11 C.F.R. 114.4(f)(1). In this manner a qualifying organization and its donor corporations or unions 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).

The CPD’s Partisan Structure and Leadership

19. The CPD was founded and is controlled by the Republican and Democratic Parties and their representatives. At least nine of its eleven directors are

prominent members of the Republican and Democratic Parties, and none is a representative of third parties. The CPD's only two co-chairs throughout its existence have been Frank J. Fahrenkopf, Jr. and Paul G. Kirk, who were serving as the chairmen of the Republican National Committee ("RNC") and Democratic National Committee ("DNC"), respectively, at the time the two major parties formed the CPD. The RNC and DNC jointly issued a press release in 1987 describing the CPD as a "bipartisan" organization formed "to implement joint sponsorship of general election presidential and vice presidential debates, starting in 1988, by the national Republican and Democratic committees between their respective nominees." In launching the CPD, Messrs. Fahrenkopf and Kirk revealed in the press release that "[a] major responsibility of both the Democratic and Republican parties is to inform the American electorate on their philosophies and policies as well as those of their respective candidates," and that formation of the CPD would allow them to "better fulfill our party responsibilities[.]"

The CPD's Decisions Reflect Its Partisan Structure and Leadership

20. The CPD's criteria for candidate inclusion in the debates further evidence the organization's partisan nature. These criteria are defined as (1) evidence of Constitutional eligibility for the office of President; (2) evidence that the candidate has qualified to have his or her name appear on enough state ballots to have a mathematical possibility of winning a majority of the Electoral College; and (3) a level of support of at least 15% of the national electorate as determined by taking the average of five selected national public opinion polling organizations. While the first two factors are indices of legal viability, the 15% support requirement is set so high as to exclude virtually all parties except the Republican and Democratic Parties. It requires 15% support among

decided voters – which is utterly beside the point since the relevant query is who *undecided* voters want to hear from in the debates. The same polls used to exclude third-party candidates under the 15% criterion have consistently shown that an overwhelmingly majority of all voters wants various third-party candidates to participate in the national debates. In fact, if the 15% criterion had been in place in 1992 it would have excluded then-Presidential Candidate Ross Perot from the 1992 debates because he was polling far below 15% at the time of the debates, though he ultimately obtained 19% of the vote. (The 15% criterion was first adopted for the 2000 debates.) Regardless of whether the 15% criterion is in itself unlawful, in the context of the other allegations in this complaint it further demonstrates that the CPD had and has partisan methods and goals.

21. The CPD also makes overtly partisan decisions and takes actions 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 even as audience members. See Exh. 2 to Admin. Complaint at page 50, lines 10-13 (excerpt of deposition transcript of CPD 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 (D.Mass. 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 Exh. 3 to Admin. Complaint at page 26, lines 2-16 (excerpt of deposition transcripts of CPD co-chair Frank J. Fahrenkopf, Jr. dated December 5, 2001 in *Nader, supra*) (“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 attempting to modify 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). To carry out the decision, the CPD’s General Counsel, Lewis Loss, prepared and distributed (in Boston) a “face-book” picturing prominent third-party presidential and vice-presidential candidates (*see* Exh. 1 to Admin. Complaint) 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* Exh. 2 to Admin. Complaint at pages 57-59.

22. 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* Exh. 2 to Admin. Complaint at pages 100 (line 20) – 101 (line 8) (CPD General Counsel Loss testifying, “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.”).

23. Thus, although both the Republican and Democratic Candidates were clearly engaged in significant campaigning by attending and participating in the nationally-televised political debates, and had full access to the post-debate-media on the premises, absolutely no “campaigning” by third-party candidates (not even the modicum of CPD-defined “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 (or anywhere on the campuses where debates were hosted) 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 intentionally to provide the Republican and Democratic candidates and parties with valuable support and benefits that it denied to all other third-party candidates and their parties, including plaintiffs.

24. The CPD is operated as a partisan organization (promoting Republicans and Democrats) in numerous other respects. For example, although the CPD-sponsored debates are ostensibly designed for voter education, as the law requires, the CPD allows the major-party candidates to control the timing, format, moderators, and audience of the debates, thus turning the debates into bi-partisan RNC and DNC-managed campaign opportunities. Thus, the CPD applies a double standard – allowing extensive campaigning for the two major parties while excluding third parties from even sitting in the debate hall audience to foreclose any possibility of their “campaigning.”

25. The CPD’s operation as a partisan organization occurs even though its leadership is aware that, to qualify as a debate sponsor, it must be nonpartisan. *See* Exh. 3 to Admin. Complaint 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.”). Thus, the CPD decreed itself nonpartisan, although nothing about its bipartisan origins or operations was changed.

26. The foregoing evidence, particularly when viewed as a whole, demonstrates that the CPD operated as a partisan organization in the 2000 presidential and vice presidential elections, as well as in those prior to 2000.

27. 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 has opposed third-party-presidential candidates and political parties, but it has supported and effectively endorsed the major-party political candidates and political parties in violation of 11 C.F.R. 110.13(a).

28. The CPD raised significant monies and obtained numerous corporate co-sponsors of its debates in 2000, including Philip Morris, Anheuser-Busch, AT&T and 3Com. *See* Exh. 4 to Admin. Complaint. 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 raised and expended by the CPD in sponsoring and staging the debates were illegal contributions and expenditures for the benefit of the Republican and Democratic Parties and their candidates under 2 U.S.C. § 441b(a).

29. As a result of these activities, the CPD also meets the federal definition of a “political committee,” *see* 2 U.S.C. § 431(4)(A), and was and is required to register as such and to file reports as to its financial receipts and expenditures. *See* 2 U.S.C. §§ 433, 434. Yet, the CPD has failed and is failing to comply with these requirements in violation of FECA.

The FEC's Arbitrary and Capricious Dismissal of the Administrative Complaint

30. On June 17, 2003, plaintiffs filed their Administrative Complaint with the FEC against the CPD, setting forth the allegations in the preceding paragraphs. *See* Admin. Complaint, Exh. A hereto. On March 18, 2004, the Commission found no reason to believe that the CPD had committed the violations alleged and closed the file on the matter. *See* First General Counsel's Report ("Report") and Certification, Exh. B hereto.

31. The FEC's General Counsel, in his Report recommending dismissal of the Administrative Complaint, discarded clear evidence of CPD partisan conduct and accepted nonresponsive, self-serving justifications offered by the CPD for its conduct. The Report unquestioningly accepts the CPD's assertion that its exclusion of third-party candidates from the 2000 debates "had nothing to do with partisanship" but rather "was made for the purpose of preventing disruption of the live international television broadcast of the debate." Exh. B, Report, at 6.

32. Several facts before the FEC render the CPD's justification non-credible. First, the CPD claimed only to fear that Ralph Nader would disrupt the debates, and the CPD's General Counsel admitted that the CPD felt no such threat from any other candidate, though CPD officials said they also explicitly discussed excluding Buchanan. *See* Exh. 2 to Admin. Complaint at 50 (Loss testifying that aside from Nader "we weren't aware of any other concrete threat"). Yet the CPD's policy was to exclude all third-party candidates from the debate hall, *see* Exh. 3 to Admin. Complaint at 26, and the face-book used to implement that policy included the photos and names of seven other candidates besides Nader and the names of eight others. *See* Exh. 1 to Admin. Complaint. Given

that the CPD did not even claim to fear disruption from candidates other than Nader, its justification for excluding all of them falls flat.

33. As to Nader himself, the CPD's claimed fear of disruption was clearly pretextual. The CPD did not have any evidence that Nader was planning disruption, and Fahrenkopf admitted, "I don't know of him violating the law or violating any rules in any context where there were rules." Exh. 3 to Admin. Complaint at 45. The primary evidence that the CPD cites in support of its purported fear of disruption by Nader is his remark on "NBC News' Meet the Press," "Maybe I'll crawl up on the stage there." See Exh. C hereto, letter from Stacey L. McGraw in response to Complaint in MUR 5378, at 4. In context it is clear that Nader is joking. CPD Counsel Lewis Loss admitted that the remark caused laughter on the Meet the Press show, and said, "I didn't take seriously that he would literally crawl up on the stage. Among other reasons the secret service would not permit him to do that." See Exh. D, attached, Loss Deposition at 45 (lines 7-18). And in an interview on Larry King Live the following day, Nader explicitly disavowed any intent to try to get onto the stage.¹ See Exh. E, attached. This evidence was before the FEC, as the relevant transcripts and the entire Loss deposition were attached to the CPD's response. In any event, the policy decisions and measures taken to exclude all candidates from attending the debate are inconsistent with (as well as grossly disproportionate to) the CPD's purported concern about Nader.

34. The CPD's other responses to the plaintiffs administrative complaint are equally meritless. Remarkably, it cited rallies and protests held by Nader's supporters

¹ Mr. King: Oh, you want to be in the audience
Mr. Nader: Yes, I can't be on the stage. We're excluded. It's a two-party monopoly.

(not his campaign) as a purported justification for excluding all third-party candidates. It also indicated that the CPD “wished to take reasonable measures to ensure the debate was not disrupted by an audience member who had not properly qualified for inclusion in the debate as participants [sic].” See Exh. C at 4-5. Yet the CPD took no such measures. If the CPD were actually concerned about disruption by protestors, it would have kept a list of invited guests and checked the identity of all persons entering the debate hall against this list. Instead, the CPD made no effort to control who was invited or to prevent the entry of uninvited persons. See Exh. 2 to Admin. Complaint at 55-56.

35. The CPD’s justifications do not rebut the plaintiffs’ allegations and evidence that the CPD made and enforced partisan policy decisions. Therefore, the FEC’s acceptance of these justifications, Report at 7-8, led to the wrongful dismissal of the plaintiffs’ administrative complaint.

36. Finally, the FEC General Counsel’s assertion is incorrect that “[t]he complaint’s allegations as to the CPD’s motivation are based entirely upon taking the word ‘campaigning’ from its context in the surrounding circumstances and of the sentence in which it appears.” Report at 7. The statement, made by CPD General Counsel Lewis Loss, as reproduced in full in the Administrative Complaint, para. 10, was: “Our 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.” Exh. 2 to Admin. Complaint at 101. Taken in actual context, it is clear that the CPD’s fear was indeed of *campaigning* by third-party candidates. This

Transcript, “Larry King Live,” Oct. 2, 2000, attached as Exh. D hereto.

context includes the CPD's admitted lack of any fear of disruption from candidates other than Nader; its lack of any substantiated concern as to Nader himself; and its failure to address the more likely possibility that a non-candidate could obtain the ticket of an invited guest in order to disrupt the debates. The context also includes the bi-partisan history, staffing and leadership of the CPD, as set forth *supra* in paragraphs 19-20 and 24 to 26. Understood in this context, Mr. Loss's statement expresses a policy designed to support and aid the Republican and Democratic parties and their candidates.

37. The FEC General Counsel's failure to even consider the nexus between the partisan structure and partisan decision-making of the CPD is an additional basis for finding the FEC wrongfully dismissed this action. *See* Report at 4.

38. Therefore the General Counsel's conclusion that the administrative complaint "provides no grounds in this matter to question the CPD's past or continuing eligibility to stage the debates" is clearly erroneous, and the Commission's dismissal of the complaint is contrary to law.

Harm to Plaintiffs

39. John Hagelin ran for President in 2000 and was pictured and identified by party affiliation, name and candidacy in the CPD's face-book. He has chosen not to run as a candidate for President in the 2004 elections in significant part because he cannot compete fairly with the two major parties, due to the CPD's unlawful, partisan conduct of the presidential debates and the resulting exclusion of third parties and their candidates from the debates.

40. As part of Mr. Hagelin's ongoing political activity, he wishes to persuade others that the CPD, as a partisan organization, has inappropriately received corporate

donations for the sponsorship of the debates, to the benefit of the Democratic and Republican candidates for President and Vice-President and the detriment of him and other third-party and independent candidates. In order to engage in this advocacy, he needs accurate reporting of contributions received by the CPD and used to sponsor the debates. He cannot obtain this information, due to the FEC's failure to require the CPD to register as a political committee and disclose these contributions and expenditures.

41. Ralph Nader was a candidate for the office of President of the United States of America in the 2000 elections and is running as an independent candidate for the Presidency in the 2004 elections. Mr. Nader was pictured and identified by party affiliation, name and candidacy in the CPD's face-book, and was prevented even from entering the auditorium adjacent to the debate hall for the presidential debates held in Boston, Massachusetts on October 3, 2000, although he had a ticket for the event.

42. Should the CPD's unlawful, aggressively partisan control of the presidential debates be allowed to continue, in violation of the election laws, Mr. Nader will be harmed, including because he may be excluded from the debates in 2004, even though a large proportion of the public supports his inclusion in the debates. He expects that any continued, unlawful, aggressively partisan control and conduct of the presidential debates by the CPD will substantially diminish his ability to compete with the Democratic and Republican candidates for President. The first presidential debate is scheduled to take place on September 30, 2004.

43. Mr. Nader also wishes to persuade others that the CPD, as a partisan organization, has inappropriately received corporate donations for the sponsorship of the debates, to the benefit of the Democratic and Republican candidates for President and

Vice-President and the detriment of third-party and independent candidates. In order to engage in this advocacy, he needs accurate reporting of contributions received by the CPD and used to sponsor the debates. He cannot obtain this information, due to the FEC's failure to require the CPD to register as a political committee and disclose these contributions and expenditures.

44. Patrick Buchanan was a candidate for the office of President of the United States of America in the 2000 elections. Mr. Buchanan was pictured and identified by party affiliation, name and candidacy in the CPD's face-book. He has chosen not to run as a candidate for President in the 2004 elections in significant part because he cannot compete fairly with the two major parties, due to the CPD's unlawful, partisan control of the presidential debates and the resulting exclusion of third parties and their candidates from the debates

45. Mr. Buchanan remains politically active and wishes to persuade others that the CPD, as a partisan organization, has inappropriately received corporate donations for the sponsorship of the debates, to the benefit of the Democratic and Republican candidates for President and Vice-President and the detriment of him and other third-party and independent candidates. In order to engage in this advocacy, he needs accurate reporting of contributions received by the CPD and used to sponsor the debates. He cannot obtain this information, due to the FEC's failure to require the CPD to register as a political committee and disclose these contributions and expenditures.

46. Howard Phillips ran for President in 2000 and was pictured and identified by party affiliation, name and candidacy in the CPD's face-book. He is not running as a candidate in the 2004 elections, but intends to support the nominee of the Constitution

Party, who is expected to be Michael A. Peroutka. He expects that the Constitution Party's nominee will be at a substantial disadvantage in competing against the candidates of two major parties, due to the CPD's unlawful, partisan control of the presidential debates and the resulting exclusion of third parties and their candidates from the debates.

47. Mr. Phillips remains politically active and wishes to persuade others that the CPD, as a partisan organization, has inappropriately received corporate donations for the sponsorship of the debates, to the benefit of the Democratic and Republican candidates for President and Vice-President and the detriment of him and other third-party and independent candidates. In order to engage in this advocacy, he needs accurate reporting of contributions received by the CPD and used to sponsor the debates. He cannot obtain this information, due to the FEC's failure to require the CPD to register as a political committee and disclose these contributions and expenditures.

48. Winona LaDuke was a candidate for the office of Vice President of the United States of America in the 2000 elections. She was pictured and identified by party affiliation, name and candidacy in the CPD's face-book. Ms LaDuke has chosen not to run as a candidate for President or Vice-President in the 2004 elections, in significant part because she cannot compete fairly with the two major parties, due to the CPD's unlawful, partisan control of the presidential debates and the resulting exclusion of third parties and their candidates from the debates.

49. Ms. LaDuke remains politically active and wishes to persuade others that the CPD, as a partisan organization, has inappropriately received corporate donations for the sponsorship of the debates, to the benefit of the Democratic and Republican candidates for President and Vice-President and the detriment of her and other third-party

and independent candidates. In order to engage in this advocacy, she needs accurate reporting of contributions received by the CPD and used to sponsor the debates. She cannot obtain this information, due to the FEC's failure to require the CPD to register as a political committee and disclose these contributions and expenditures.

50. The Green Party of the United States fielded candidates for the offices of President and Vice President of the United States of America in the 2000 elections and is currently preparing to field candidates in the 2004 elections for the office of President and Vice President of the United States. This Party was identified along with its candidates who were named and pictured in the CPD's face-book. The Party will hold its presidential nominating convention in Milwaukee, Wisconsin, on June 23-28, 2004. The Party expects that the candidates that it nominates or otherwise supports for President and Vice President in 2004 will suffer a competitive disadvantage, due to the CPD's unlawful, partisan control of the presidential debates and the resulting exclusion of third parties and their candidates from the debates.

51. The Constitution Party fielded candidates for the offices of President and Vice President of the United States of America in the 2000 elections. This Party was identified along with its candidates who were named and pictured in the CPD's face-book. The Party is currently preparing to field candidates in the 2004 elections for President and Vice President of the United States, and its nominees will be chosen at its June, 2004 National Convention. The party anticipates that its Presidential nominee will be Michael A. Peroutka, who has been designated as the party's stand-in candidate for purposes of gaining ballot access.

52. The Constitution Party's candidate appeared on the ballot for President in 41 states in the 2000 elections, and the party expects to appear on a similar number in 2004. The Constitution Party has already secured ballot access in 17 states for the 2004 elections and has completed or nearly completed the ballot access process in at least four others states. Nevertheless, the Party expects that its candidates for President and Vice President in 2004 will suffer a competitive disadvantage, due to the CPD's unlawful, partisan control of the presidential debates and the resulting exclusion of third parties and their candidates from the debates.

53. The injury to the plaintiffs and the candidates they support is concrete and imminent. The CPD has begun planning for the debates and has announced plans to sponsor three presidential debates as follows: on September 30, 2004 at the University of Miami; on October 8, 2004 at Washington University in St. Louis; and on October 13, 2004 at Arizona State University. In addition the CPD has announced a vice-presidential debate to be held on October 5, 2004 at Case Western Reserve University.

54. The CPD has already solicited, and is actively soliciting substantial contributions and other financial support from corporations and wealthy donors as sponsors of its debates. On November 7, 2003, the *Miami Herald* reported that the Florida-based Miccosukee Tribe "will put up more than \$1 million to underwrite the debate" scheduled for September 30, 2004 at the University of Miami." The same news article quoted University of Miami President Donna Shalala as stating, "We asked for the first debate and got the first debate. That's the one everybody watches. The whole world is going to be watching on Sept. 30." This observation reinforces the plaintiffs' claims

that the debates are a crucial part of the national elections and should not be controlled by a partisan organization.

COUNT I
(Wrongful Dismissal)

55. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 54, as if fully set forth herein.

56. The FEC's dismissal of the administrative complaint is arbitrary and capricious, an abuse of discretion, and contrary to law in violation of 437g(a)(8)(A).

57. The FEC's dismissal of the administrative complaint was based on an impermissible interpretation of the Federal Election Campaigns Act and was contrary to law in violation of 437g(a)(8)(A).

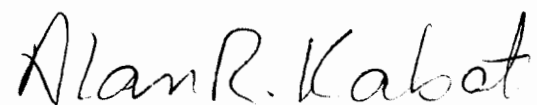
WHEREFORE, the Plaintiffs request that this Court (1) declare that the FEC's dismissal the administrative complaint was contrary to law; (2) remand the matter to the FEC with an order to conform to the declaration within 30 days; and (3) grant such other and further relief as may be appropriate, including an award of attorneys' fees and litigation expenses pursuant to 28 U.S.C. § 2412(d)(1)(A).

Date: May 5, 2004

Respectfully submitted,

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Ralph Nader,
Patrick Buchanan,
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* Motion for admission *pro hac vice* to be submitted.