

# Change the Rule

**Exhibit IV --**

**The Petition for Rulemaking filed with the FEC by Level the Playing Field.**

**This petition includes the proposed new rule based on a signature drive competition.**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 )  
Petition for Rulemaking re: )  
Sponsorship of Candidate Debates )  
 )

**PETITION FOR RULEMAKING**

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## INTRODUCTION

It has been 22 years since the American public heard from someone other than the Democratic and Republican candidates during the presidential debates, even though a majority of Americans are eager for a candidate who presents an alternative to the two major parties. Sixty-two percent of Americans do not think the federal government has the consent of the governed,<sup>1</sup> and 86% feel the political system is broken and does not serve the interests of the American people.<sup>2</sup> Eighty-one percent believe that it is important to have independent candidates run for office, and 65% say they wish they had the option to vote for an independent candidate in a U.S. presidential election.<sup>3</sup>

The Commission on Presidential Debates (“CPD”) is preventing the American people from hearing the independent candidate they desire. The CPD denies voters the opportunity to hear an alternative to the Democratic and Republican nominees by using polling to determine which candidates to invite to the debate. The CPD will only invite a candidate to participate in the presidential debates if he or she is at 15% or higher in mid-September opinion polls on the premise that a candidate polling less than 15% is not a viable contender for the presidency.

This use of polling as the deciding factor in debate admission is inconsistent with the Federal Election Commission’s rules governing debate sponsorship, as well as the purposes underlying those rules. The FEC authorizes organizations like the CPD to host debates on the theory that the debates will serve a voter educational purpose. It requires debate sponsors to use objective, unbiased criteria that are not designed to exclude third-party or independent

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<sup>1</sup> *68% Think Election Rules Rigged for Incumbents*, Rasmussen (July 13, 2014), [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/july\\_2014/68\\_think\\_election\\_rules\\_rigged\\_for\\_incumbents](http://www.rasmussenreports.com/public_content/politics/general_politics/july_2014/68_think_election_rules_rigged_for_incumbents), submitted herewith as Exhibit 1.

<sup>2</sup> Douglas E. Schoen, *Independents and the Presidential Debate System* at 9 (Aug. 29, 2014), submitted herewith as Exhibit 2.

<sup>3</sup> *Id.* at 21, 53.

candidates. The use of polling as the decisive factor in debate admission undermines these purposes. Polling criteria are inherently biased against third-party and independent candidates in two key ways.

First, nonmajor-party candidates do not have the same access as a Democrat or Republican to an abundance of free media to boost their name recognition. Without a high profile primary process or a guaranteed spot in the debates, a third-party or unaffiliated candidate can expect little press coverage. That means the candidate has to rely on paid media to garner name recognition and get his or her message to the voters. Any credible campaign consultant will advise the candidate that the cost of achieving the name recognition necessary to reach 15% would cost at least \$113 million in paid media alone, and over \$250 million in total campaign expenses. These are unprecedented sums that no third-party or independent candidate has ever come close to raising.

Second, even if it were possible for anyone other than a self-funded billionaire to amass these vast resources, it could be for nothing. The error-prone and arbitrary nature of polling three-way races could still shut a qualified and otherwise viable candidate out of the debates. Polling in three-way races is particularly inaccurate. Data shows that, two months before the election, polls in three-way races have an average error of 8%. With an error rate that large, polls will frequently show that a candidate has less support than necessary to meet a polling threshold, even though the candidate in fact has the requisite support. For example, if a debate sponsor requires a candidate to have 15% support to participate in the debates, there is a 40.2% percent chance that a candidate who actually has 17% support would still be excluded from the debates due to inaccurate polling. And even apart from this inaccuracy, the candidate could still

miss out on the debates if the vagaries of public polling leave his or her support a tick below the arbitrary polling cutoff.

Given these biases, a requirement that candidates must meet a polling threshold to participate in debates (like the CPD's) effectively institutionalizes the Democratic and Republican candidates as the only options with which the voters are presented. A third-party or independent candidate who is excluded from the debates loses the opportunity to take the stage against the major party nominees and demonstrate that he or she is a better alternative; the media does not cover the candidate; and the candidate does not get the public exposure necessary to compete. The "determination" that a candidate is not viable because he or she lacks a certain amount of support becomes a self-fulfilling prophecy.

That is not how debates in our democracy should work. Debates should be forums for candidates to appeal to voters, helping voters to decide how to cast their support. The use of biased polling measures as a decisive factor in debate admission skews the process to deny voters legitimate alternatives, and undermines the educational purposes debates are supposed to serve. In this Petition for Rulemaking, Petitioner Level the Playing Field respectfully requests that the FEC amend its debate regulations to end the partisan manipulation of the presidential debate process and restore integrity to these integral campaign events. The FEC should conduct a rulemaking to revise and amend 11 C.F.R. § 110.13(c), the regulation governing the criteria for candidate selection that corporations and broadcasters must use in order to sponsor candidate debates. The amendment should (A) preclude sponsors of general election presidential and vice-presidential debates from requiring that a candidate meet a polling threshold in order to be admitted to the debates; and (B) require that any sponsor of general election presidential and

vice-presidential debates have a set of objective, unbiased criteria for debate admission that do not require candidates to satisfy a polling threshold to participate in debates.

### **STATUTORY AND REGULATORY BACKGROUND**

The primary purpose of the Federal Election Campaign Act (“FECA”) is to “limit *quid pro quo* corruption and its appearance.”<sup>4</sup> To achieve this purpose, FECA prohibits corporations from making many types of contributions or expenditures “in connection with” any federal election.<sup>5</sup> It also requires disclosure of most federal political contributions and expenditures.<sup>6</sup>

Absent a specific exemption, FECA’s prohibitions on corporate campaign spending would preclude corporate funding of candidate debates. FECA’s definitions of contribution and expenditure are broad,<sup>7</sup> and corporate funding of a public forum in which a candidate can appear to influence voters would typically be subject to FECA’s strictures.<sup>8</sup> The FEC has in fact recognized that corporate funding of candidate debates creates “the real or apparent potential for a *quid pro quo*” corrupt payment and jeopardizes the “integrity and fairness of the [debate] process.”<sup>9</sup> If, for example, a corporation decided to spend hundreds of thousands of dollars on a debate that included its two, favored candidates and excluded the candidate the corporation opposed, the corporation would be making a valuable contribution to specific candidates in order to influence the election – a clear violation of FECA.

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<sup>4</sup> *McCutcheon v. Federal Election Comm’n*, 134 S. Ct. 1434, 1444 (2014).

<sup>5</sup> 2 U.S.C. § 441b(a).

<sup>6</sup> *See, e.g., id.* § 434.

<sup>7</sup> *See id.* § 431(8)(A), 9(A).

<sup>8</sup> *See* 11 C.F.R. § 100.52(d)(1) (noting that “[u]nless specifically exempted” under the FEC’s regulations, “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution”); 11 C.F.R. § 100.111(e)(1) (same for expenditures); *see also, e.g.*, Federal Election Commission, Advisory Opinion 1988-22 at 6 (July 5, 1988) (“A payment of costs to sponsor and finance public appearances by candidates for Federal office that are ‘campaign-related’ is considered made ‘for the purpose of influencing Federal elections’ and to constitute a ‘contribution’ to or ‘expenditure’ on behalf of such candidates, unless such payment is specifically exempted by the Act or regulations.”).

<sup>9</sup> Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates, 60 Fed. Reg. 64,260, 64,262 (Dec. 14, 1995).

Since 1980, however, the FEC has created an exception to FECA’s bans on corporate contributions and expenditures that permits corporations to fund debates, but only under certain specified conditions.<sup>10</sup> The rationale for this exception is that debates can serve a nonpartisan, voter education purpose, rather than be a contribution to favored candidates.<sup>11</sup> FECA authorizes corporations to spend funds on certain “nonpartisan registration and get-out-the-vote campaigns” and other “nonpartisan activity designed to encourage individuals to vote or to register to vote.”<sup>12</sup> The FEC extrapolated from these provisions a “legislative policy” of authorizing corporate financing of “activity directed to the general public to encourage voter participation, if the activity is conducted primarily by a nonpartisan organization.”<sup>13</sup> As the FEC explained when it first permitted debate sponsorship, “[u]nlike single candidate appearances, nonpartisan debates are designed to educate and inform voters rather than to influence the nomination or election of a particular candidate.”<sup>14</sup> Thus, the FEC concluded that “[t]he educational purpose” of a debate sponsored by a nonpartisan organization is “similar to the purpose underlying nonpartisan voter registration and get-out-the-vote campaigns” that FECA already authorized.<sup>15</sup> In light of this purpose, the FEC determined that corporate funding of nonpartisan debates should not be prohibited.<sup>16</sup>

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<sup>10</sup> See Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. 76,734, 76,734 (Dec. 27, 1979).

<sup>11</sup> See *id.*

<sup>12</sup> 2 U.S.C. § 441b(b)(2)(B); *id.* § 431(9)(B)(ii).

<sup>13</sup> Br. of Fed. Election Comm’n, *Becker v. Fed. Election Comm’n*, No. 00-2124, 2000 WL 35567185 (1st Cir. Oct. 2, 2000).

<sup>14</sup> Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. at 76,734.

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* The First Circuit has upheld the FEC’s decision to exempt debate sponsorship from the ban on corporate campaign contributions and expenditures as a permissible construction of FECA. See *Becker v. Fed. Election Comm’n*, 230 F.3d 381, 396 (1st Cir. 2000).

The FEC, however, has adopted rules to ensure that debates are nonpartisan and educational, and not a means for corporate donors to give favored candidates an improper advantage.

First, debate staging organizations must be nonpartisan. That means a debate sponsor must be either 501(c)(3) or (c)(4) nonprofits that “do not endorse, support, or oppose political candidates or political parties” or media outlets that “are not owned or controlled by a political party, political committee or candidate.”<sup>17</sup> And sponsors “shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.”<sup>18</sup> The resulting debate must be nonpartisan too, and cannot favor one candidate over other.<sup>19</sup> In all, “[a] debate is nonpartisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another.”<sup>20</sup>

Second, debate staging organizations must use objective candidate selection criteria. Specifically, they must use “pre-established objective criteria to determine which candidates may participate in the debate” and may not rely solely on nomination by particular parties.<sup>21</sup> To be objective, a criterion “must be free of content bias, and not geared to the selection of certain pre-chosen participants.”<sup>22</sup> Under this definition, objectivity means more than subject to verifiable measurement. It incorporates a “reasonableness” requirement.<sup>23</sup> Thus, as one federal court has

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<sup>17</sup> 11 C.F.R. § 110.13(a).

<sup>18</sup> *Id.* § 110.13(c).

<sup>19</sup> *See id.* § 110.13(b)(2) (prohibiting debate sponsors from “structur[ing] the debates to promote or advance one candidate over another”).

<sup>20</sup> Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. at 76,735.

<sup>21</sup> 11 C.F.R. § 110.13(c).

<sup>22</sup> First General Counsel’s Report at 7, MUR 5395 (Dow Jones) (Jan. 13, 2005) (internal quotation marks omitted).

<sup>23</sup> *Buchanan v. Fed. Election Comm’n*, 112 F. Supp. 2d 58, 74 (D.D.C. 2000).

explained, a criterion that “only the Democratic and Republican nominees could reasonably achieve” does not satisfy the FEC’s rules.<sup>24</sup>

If and only if a debate staging organization satisfies these criteria may it use corporate money to pay for candidate debates.<sup>25</sup>

### **REASONS TO GRANT THE PETITION**

Given FECA and the FEC’s purposes – ensuring nonpartisan, educational debates and reasonable, objective criteria for debate admission – debate selection criteria that measure candidate viability deserve careful scrutiny. Unlike criteria relating to eligibility for office or access to the ballot, viability is a tenuous and subjective concept. As a result, determinations about which candidates are viable can easily be used as a pretext for corrupt political discrimination.

This concern is not novel. Before the FEC adopted its current debate regulations, its General Counsel recommended that debate sponsors be prohibited from using “[s]ubjective evaluations of whether an individual is a significant, major or important candidate” and “[p]olls or other assessments of a candidate’s chances of winning the nomination or election” as debate participant selection criteria.<sup>26</sup> Those recommendations reflected the very real concern that viability determinations could be a smokescreen for the kind of partisan rigging that the debate regulations prohibit.

Although the FEC did not explicitly adopt its General Counsel’s recommended prohibition on the use of polling twenty years ago, it is time to revisit that issue. Since the FEC adopted the present debate rules, the CPD has sponsored presidential and vice presidential

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<sup>24</sup> *Id.*

<sup>25</sup> See 11 C.F.R. § 114.4(f).

<sup>26</sup> Memorandum from Lawrence M. Noble *et al.*, to Commissioners of the Federal Election Commission, dated Feb. 8, 1994, at 74, Federal Election Commission Agenda Document 94-11.

general election debates in five election cycles. Not once in that span has the CPD invited a third-party or independent candidate to the debates. Beginning in 2000, the CPD has achieved that exclusion by requiring that a candidate have 15% support in an average of five national polls taken in early to mid-September to gain entry to the debates.

The CPD's reliance on polling to determine invitation to the debates is incompatible with the purposes underlying the debates rules and FECA. As explained in detail below, the CPD's rule excludes third-party and independent candidates by design by setting a threshold that they cannot reasonably expect to meet. For this reason, the CPD's rule violates the existing rules on debate sponsorship, as detailed in a complaint that Petitioner has filed with the FEC.<sup>27</sup> But the problem is not limited to the current 15% threshold. Any reliance on polling to determine debate access will systematically disfavor third-party and independent candidates. The result is a system that entrenches the two parties rather than enhancing the public debate. And by excluding third-party and independent candidates, reliance on polling to select debate participants will also undermine the educational goals the debate rules are meant to further.

For all of these reasons, Petitioner requests that the FEC amend its rule on debate sponsorship. The amended rule should (A) preclude sponsors of general election presidential and vice-presidential debates from requiring that a candidate meet a polling threshold in order to be admitted to the debates; and (B) require that any sponsor of general election presidential and vice-presidential debates have a set of objective, unbiased criteria for debate admission that do not require candidates to satisfy a polling threshold to participate in debates.

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<sup>27</sup> See Complaint of Level the Playing Field and Peter Ackerman against the Commission on Presidential Debates and its directors, filed with the Federal Election Commission simultaneous to the filing of this petition.

## **I. POLLING-BASED CANDIDATE SELECTION CRITERIA EXCLUDE THIRD-PARTY AND INDEPENDENT CANDIDATES**

### **A. Even Seemingly “Attainable” Polling Thresholds Can Be Out Of Reach For Third-Party And Independent Presidential Candidates**

The CPD’s 15% rule may appear to be a reasonable threshold for third-party and independent candidates to achieve. In reality, it is an unreasonable criterion fixed to guarantee a preordained result in which only the Democratic and Republican nominees for president qualify for the debates.

The first step in gaining vote share is gaining name recognition. Before a voter can express an intention to vote for a candidate, the voter needs to know enough about the candidate to want to vote for him or her.<sup>28</sup> To achieve 15% support nationally, the candidate needs to become sufficiently well known by at least 15% of the electorate. That is a theoretical minimum, of course. Practically speaking, the candidate needs to become known by well more than 15% of the electorate because not every voter that knows the candidate will want to vote for him or her – the candidate will not appeal to everyone. A candidate seeking to satisfy the CPD’s rule thus needs to become sufficiently well known nationally such that 15% of the electorate will support him or her. How well known does an independent candidate need to become to satisfy the 15% rule? Data show that, on average, a candidate would have to achieve, at a minimum, 60% national name recognition to have a chance at achieving 15% voter support.<sup>29</sup> It is likely, moreover, that the necessary name recognition is much higher, approaching 80% or above.<sup>30</sup>

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<sup>28</sup> Expert Report of Dr. Clifford Young, dated Sept. 5, 2014, (hereinafter “Young Report”) at ¶ 11, submitted herewith as Exhibit 3.

<sup>29</sup> *Id.* at ¶¶ 10, 32; *see id.* at ¶¶ 24-28.

<sup>30</sup> *Id.* at ¶¶ 10, 29-30, 32. It is important to note that name recognition is even more important for unaffiliated candidates than it is for Democrats and Republicans. That is because Democrat and Republican candidates can earn vote share from voters who have knowledge of, and preference for, one of the major parties. A voter may express a preference for the Democrat without knowledge of the specific candidate simply because he or she knows that the candidate is a Democrat. *Id.* at ¶ 21.

Even 60% name recognition is a high bar, but it is one that Democratic and Republican nominees will necessarily clear after their primary process and that is outside the practical reach of third-party and independent candidates in the current campaign environment.

Achieving broad name recognition and 15% vote share is much easier for candidates who compete in the major party primaries than it is for those who do not.

First, Democratic and Republican candidates receive a default level of vote share by virtue of their partisan affiliation alone.<sup>31</sup> Accordingly, such candidates could approach 15% support without mounting a campaign at all.

Second, the primary process provides a ready-made mechanism for Democratic and Republican hopefuls to generate name recognition, and, in turn, voter support, all at a cost that is manageable for Democratic and Republican candidates without a national profile. The early primary states are small. Candidates without a national profile can raise the money necessary to become competitive in those states. That, in turn, leads to media coverage, inclusion in the primary debates, and other *free* avenues to enhanced name recognition. Data from the 2012 Republican primary bear this out. Rick Santorum began the primary process with only 47% name recognition among Republican voters in May 2011.<sup>32</sup> By February 13, 2012, his name recognition had increased to 85% among all Americans.<sup>33</sup> Santorum, however, spent no more than \$13.1 million on his campaign up to that point.<sup>34</sup> Similarly, Herman Cain saw his name recognition increase from 21% among Republican voters in March 2011 to 78% among

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<sup>31</sup> *See id.*

<sup>32</sup> Frank Newport, *With Huckabee Out, No Clear GOP Front-Runner*, Gallup (May 17, 2011), <http://www.gallup.com/poll/147584/huckabee-no-clear-gop-front-runner.aspx>, submitted herewith as Exhibit 4.

<sup>33</sup> *See CNN/ORC Poll*, CNN (Feb. 14, 2012), <http://i2.cdn.turner.com/cnn/2012/images/02/14/re12c.pdf> (reporting that only 15% of all Americans had never heard of Rick Santorum), submitted herewith as Exhibit 5.

<sup>34</sup> Presidential Pre-Nomination Campaign Disbursements February 29, 2012, Federal Election Commission, [http://www.fec.gov/press/bkgnd/pres\\_cf/pres\\_cf\\_odd\\_doc/presdisbursm32012.pdf](http://www.fec.gov/press/bkgnd/pres_cf/pres_cf_odd_doc/presdisbursm32012.pdf) (last visited Sept. 5, 2014), submitted herewith as Exhibit 6.

Republican voters by the end of October 2011<sup>35</sup> at a cost to his campaign of less than \$16 million.<sup>36</sup>

Thirteen to sixteen million dollars is a meaningful amount of money, but by no means an unattainable sum for a candidate running for national office. Indeed, it is equal to or less than what a serious Senate candidate in a populous state would need to raise.<sup>37</sup> It may cost more to win the primary, of course. But the cost of getting sufficiently known to have a chance of polling at 15% is manageable for primary participants.

By contrast, candidates unaffiliated with the Democratic and Republican parties have no analogous way to build name recognition, and as a practical matter it is virtually impossible for such candidates to satisfy the 15% threshold. These candidates do not have the benefit of a party brand identity to inflate their vote share. And unlike Democratic and Republican hopefuls who benefit from press coverage of the primary process, unaffiliated candidates lack an institutionalized process for obtaining free media that can generate name recognition. Indeed, the media pay little attention to these candidates at all<sup>38</sup>; as leading political analyst Chuck Todd put it, these candidates “typically don’t get the media attention – *and thus name ID* – that

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<sup>35</sup> Stephanie Condon, *Herman Cain becomes a familiar name, poll shows*, CBS News (Oct. 28, 2011 8:32 p.m.), <http://www.cbsnews.com/news/herman-cain-becomes-a-familiar-name-poll-shows/>, submitted herewith as Exhibit 7.

<sup>36</sup> Presidential Pre-Nomination Campaign Disbursements December 31, 2011, Federal Election Commission, [http://www.fec.gov/press/bkgnd/pres\\_cf/pres\\_cf\\_odd\\_doc/presdisbursye2011.pdf](http://www.fec.gov/press/bkgnd/pres_cf/pres_cf_odd_doc/presdisbursye2011.pdf) (last visited Sept. 5, 2014), submitted herewith as Exhibit 8.

<sup>37</sup> For example, the Republican and Democratic Senate candidates in Ohio each raised more than \$16 million in 2012. See 2012 House and Senate Campaign Finance for Ohio, retrieved on September 4, 2014 from FEC’s website using the 2012 House and Senate Campaign Finance Map, <http://www.fec.gov/disclosurehs/hsnational.do>, submitted herewith as Exhibit 9. The winners of the 2012 Senate races raised on \$10.5 million on average. See David Knowles, *U.S. Senate seat now costs \$10.5 million to win, on average, while U.S. House seat costs, \$1.7 million, new analysis of FEC data shows*, N.Y. Daily News (Mar. 11, 2013, 5:32 p.m.), <http://www.nydailynews.com/news/politics/cost-u-s-senate-seat-10-5-million-article-1.1285491>, submitted herewith as Exhibit 10.

<sup>38</sup> Expert Report of Douglas Schoen, dated Sept. 5, 2014, (hereinafter “Schoen Report”) at 5, submitted herewith as Exhibit 11.

Democrats and Republicans get.”<sup>39</sup> As a result, an unaffiliated candidate would have to rely on paid media to become known and to communicate his or her message. The cost to a third-party or independent candidate of achieving the name recognition necessary to have a chance and accessing the debates is exorbitant.

A typical third-party or independent candidate would not have 60% name recognition prior to campaigning for office. Senators, governors, and major CEOs have national name recognition well below that level before they run for president.<sup>40</sup> Experienced pollster and campaign strategist Doug Schoen estimates that the cost of just the advertising necessary to achieve 60% name recognition for an unaffiliated candidate would be in the ballpark of \$113 million, at an absolute minimum.<sup>41</sup> The chief component of that cost is paid media. To achieve 60% name recognition, a near-unknown candidate would have to plan to embark on an 18-week, broad-based advertising blitz that included ad buys on national broadcast television, cable television, and digital media.<sup>42</sup> The media purchase necessary to take a near-unknown candidate to this level of name recognition is \$106 million.<sup>43</sup> The candidate would have to spend an

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<sup>39</sup> Chuck Todd, Mary Murray & Carrie Dan, *Independents' Day? Game Rigged Against Third-Party Candidates*, NBC News (July 3, 2014 9:12 a.m.), <http://www.nbcnews.com/politics/first-read/independents-day-game-rigged-against-third-party-candidates-n147331>, submitted herewith as Exhibit 12.

<sup>40</sup> For example, Jon Huntsman, a former Republican governor and sitting Ambassador to China, had only 21% name recognition *among Republicans* before he declared his candidacy for the Republican nomination for president. See Frank Newport, *Pawlenty Begins Race With 41% GOP Name Recognition*, Gallup (Mar. 23, 2011) <http://www.gallup.com/poll/146768/pawlenty-begins-race-gop-name-recognition.aspx>, submitted herewith as Exhibit 13. In a recent Gallup poll, many possible contenders for the 2016 Democratic and Republican nominations – persons who have already benefitted from media speculation about their potential runs – are familiar to less than half of the country: Senator Marco Rubio had 46% familiarity, Massachusetts Senator Elizabeth Warren and Louisiana Governor Bobby Jindal were at 38%, and Maryland Governor Martin O'Malley was at 16%. See Jeffrey Jones, *Clinton Is Best Known, Best Liked Potential 2016 Candidate*, Gallup (July 17, 2014), <http://www.gallup.com/poll/173402/clinton-best-known-best-liked-potential-2016-candidate.aspx>, submitted herewith as Exhibit 14. Even seemingly “household” names like Chris Christie (65%), Jeb Bush (65%), and Paul Ryan (56%) were unfamiliar to more than one-third of the country. See *id.*

<sup>41</sup> Schoen Report (Exhibit 11) at 11.

<sup>42</sup> *Id.* at 6-10.

<sup>43</sup> *Id.* at 10.

additional \$6 million to produce the content to fill that media purchase.<sup>44</sup> And to achieve 80% – the more likely amount necessary – the candidate would have to spend \$150 million on paid media.<sup>45</sup>

No third-party or independent candidate has ever raised \$113 million, much less \$150 million.<sup>46</sup> To put these figures in perspective, \$113 million is seven to nine times more than what candidates like Cain and Santorum spent, in total, before seeing their name recognition rise to significant levels. Indeed, \$113 million is more than what Mitt Romney’s campaign spent to *win* the Republican nomination in 2012.<sup>47</sup>

The foregoing, however, is only the cost directly associated with paid media. A campaign faces myriad other costs, to pay for staff, consultants, polling, legal advice, travel, events, direct mail, etc.<sup>48</sup> A candidate seeking to be competitive with the major party candidates would likely budget to spend more than \$133 million on these other campaign costs (roughly 75% of Mitt Romney’s campaign nonmedia related expenses in 2012).<sup>49</sup> A third-party or independent candidate, moreover, has to spend money to coordinate the massive signature gathering effort that is necessary to achieve ballot access, which could cost upwards of \$13 million or more.<sup>50</sup> Adding up these costs for paid media, campaigning generally, and ballot access, and a third-party or independent candidate is looking at a budget of more than \$253

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<sup>44</sup> *Id.* at 11.

<sup>45</sup> *Id.*

<sup>46</sup> Billionaires may be able to afford this sum. Billionaire status, however, should not be a prerequisite for a candidate to gain access to the debates.

<sup>47</sup> Mitt Romney secured a majority of Republican delegates on May 29, 2012. Gregory Wallace, *Romney hits ‘magic number’ for GOP nomination*, CNN (May 30, 2012 5:34 a.m.), <http://www.cnn.com/2012/05/29/politics/romney-delegates/>, submitted herewith as Exhibit 15. Through May 31, 2012, his campaign had spent \$106.5 million. *See* Presidential Pre-Nomination Campaign Disbursements Through May 31, 2012, Federal Election Commission, [http://www.fec.gov/press/bkgnd/pres\\_cf/pres\\_cf\\_odd\\_doc/presdisbursm62012.pdf](http://www.fec.gov/press/bkgnd/pres_cf/pres_cf_odd_doc/presdisbursm62012.pdf) (last visited Sept. 5, 2014), submitted herewith as Exhibit 16.

<sup>48</sup> *See* Schoen Report (Exhibit 11) at 12-16.

<sup>49</sup> *Id.* at 17; *see id.* at 14-16.

<sup>50</sup> *Id.* at 17 n.8.

million to mount a competitive bid and achieve poll results of 15% or more in September.<sup>51</sup>

Factor in the approximate 5% growth in costs that occurs from one presidential cycle to the next, and that number rises to \$266 million in 2016.<sup>52</sup>

It is simply not feasible for a third-party or independent candidate to raise this kind of money. Individuals can only donate \$2600 to a candidate per election (primary and general).<sup>53</sup> In 2012, the plurality of individual donations to the major party candidates was considerably less, under \$200.<sup>54</sup> If one assumes that the average individual donation is \$200, a third-party or independent candidate would need to obtain 560,000 donations in order to raise the funds necessary to pay just for the advertising necessary to achieve 60% name recognition. If one assumes that only one out of two individuals will be willing to contribute – an aggressive assumption – then a candidate will need to solicit over one million people to raise the necessary funds. And that is only the fundraising needed for paid media – it does not begin to cover the other costs of mounting a campaign. Moreover, the candidate would have to achieve massive fundraising success *before* obtaining significant name recognition, which makes fundraising that much harder – why would someone give money to a candidate they had never heard of?

Additionally, most political donors are repeat donors, and they are typically invested in the success of one of the major parties. A third-party or independent candidate needs to either convert a donor with a partisan preference, or appeal to people who do not typically make political contributions. He or she has to do so without any guarantee of access to the presidential

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<sup>51</sup> *Id.* at 18.

<sup>52</sup> *Id.* at 17-18.

<sup>53</sup> See Contribution Limits 2013-14, Federal Election Commission, <http://www.fec.gov/pages/brochures/contriblimits.shtml> (last visited Aug. 9, 2014).

<sup>54</sup> Schoen Report (Exhibit 11) at 24.

debates, participation in which is a prerequisite to winning the election. And he or she has to do that more than half a million times. There is no evidence that that is a practical possibility.

In sum, without unparalleled sums of campaign cash that no unaffiliated candidate has ever raised, it is not possible for a third-party or independent candidate to achieve the name recognition necessary to poll at 15%. Thus, it is clear that the CPD's rule, when assessed against the realities of the presidential campaign system, creates a hurdle that third-party and independent candidates cannot reasonably expect to clear.

The CPD's primary defense of the 15% threshold has relied on historical examples. The CPD has told the FEC that the 15% rule is objective because John Anderson in 1980, George Wallace in 1968, and Ross Perot in 1992 purportedly achieved polling numbers in excess of 15% at various points in their campaigns.<sup>55</sup> The CPD, however, has never justified how campaigns conducted 46, 34, and 22 years ago, respectively, provide a barometer for what a candidate can "reasonably achieve" in a modern campaign environment. The drastic changes in media, campaign finance, and campaigns themselves demonstrate that these examples are anachronistic.

In any event, the CPD's historical "precedents" are flawed. Neither George Wallace nor John Anderson was unaffiliated with the Democratic or Republican parties. Wallace competed in the Democratic primary for president in 1964,<sup>56</sup> and Anderson competed in the Republican primary for president in 1980.<sup>57</sup> Both thus received the enhanced name recognition that results from primary participation that truly unaffiliated candidates do not receive. Their candidacies do not undercut the case that the CPD's rule is not one that unaffiliated candidates can reasonably

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<sup>55</sup> *Buchanan v. Fed. Election Comm'n*, 112 F. Supp. 2d 58, 74 (D.D.C. 2000).

<sup>56</sup> See Richard Pearson, *Former Ala. Gov. George C. Wallace Dies*, Wash. Post, Sept. 14, 1998, available at <http://www.washingtonpost.com/wp-srv/politics/daily/sept98/wallace.htm>, submitted herewith as Exhibit 17.

<sup>57</sup> See Walter Shapiro, *John Anderson: The Nice Guy Candidate*, The Atlantic, Feb. 1, 1980, available at <http://www.theatlantic.com/magazine/archive/1980/02/john-anderson-the-nice-guy-syndrome/306028/>, submitted herewith as Exhibit 18.

satisfy.<sup>58</sup> As for Ross Perot in 1992, he would not have satisfied the CPD's present rule; on the eve of the debates, Perot was polling at or below 10%.<sup>59</sup>

Examples of third-party or independent candidates predating George Wallace's 1968 candidacy have been relied on to defend the 15% rule too: When the League of Women Voters came up with a 15% threshold in 1980 to determine whether to invite John Anderson to participate in the debates, the defense of that rule relied on third-party candidacies from 1912 (Theodore Roosevelt), 1924 (Robert LaFollette), and 1948 (Henry Wallace and Strom Thurmond).<sup>60</sup> CPD board member Newton Minow has written that critics' charge that the League's rule was arbitrary was not "quite true" because of these examples.<sup>61</sup> But these examples are completely anachronistic; such campaigns predate not only the Internet age, but the television age too. They cannot provide guidance on 21st century campaigns.

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In sum, the CPD's rule requires a non-Republican or Democratic candidate to demonstrate significant level of support at a point in time when the media and public have focused intently on only the Republican or Democratic candidates. The only way to compensate for that deficit in attention is paid media, but the CPD's rule requires an amount of paid media that no third-party or independent candidate could realistically afford. The upshot is that the CPD's 15% rule guarantees a preordained result: Democratic and Republican candidates will be

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<sup>58</sup> Moreover, it is not clear that Wallace would have satisfied the CPD's rule. The CPD relies on an average of five national polls taken in early to mid-September. Comparable polling data does not appear to exist for Wallace.

<sup>59</sup> Polls conducted over October 2 to 4 by the CBS News/New York Times, the ABC News/Washington Post, and CNN/USA Today/Gallup poll – three of the five polls the CPD has previously purported to rely on in applying the 15% rule – had Perot at 7, 9, and 10%, respectively. *The 1992 Campaign: Polls; Despite Perot's Re-entry, Clinton Retains Big Lead*, N.Y. Times, Oct. 7, 1992, available at <http://www.nytimes.com/1992/10/07/us/the-1992-campaign-polls-despite-perot-s-re-entry-clinton-retains-big-lead.html>, submitted herewith as Exhibit 29. A Harris poll over the same time period had Perot at 9%. *Id.*

<sup>60</sup> See Newton Minow & Craig L. LaMay, *Inside the Presidential Debates: Their Improbable Past and Promising Future* 56 (2008), submitted herewith as Exhibit 19 (2008).

<sup>61</sup> *Id.*

included in the debate, and third-party and independent candidates will be shut out. That is clearly not what the FEC intended when promulgating the debate sponsorship regulations.

**B. Polls Are Poor Measures Of Third-Party And Independent Candidate Viability That Systemically Disfavor Them**

One might argue in response to the foregoing that there is no problem with a polling-based requirement per se, only with a polling requirement set too high, like at 15%. That would be mistaken. As a threshold matter, although the foregoing analysis is keyed to achieving 15% in vote share, the cost of achieving even 10% would still be daunting. More fundamentally, any polling-based prerequisite to admission is ill-suited to measuring the viability of a third-party or independent candidate.

First, polling is a flawed way to measure the viability of a third-party or independent candidate. It fails to account for the differential in name recognition between the major party candidates, who have benefitted from the attention resulting from the primaries, and a third-party or independent candidate who has not had a comparable opportunity to make his or her case to the public. As a result, a simple poll does not capture a candidate's potential.<sup>62</sup> An unaffiliated candidate might meet or exceed the 15% threshold if he or she had sufficient name recognition. Polling ignores that possibility.

Second, a polling prerequisite to debate admission leaves third-party and independent candidates at the mercy of arbitrary decisions of pollsters and debate sponsors on who to poll, when to poll, what polls to consider, and when to make the debate selection determination. There is no requirement that pollsters test third-party and independent candidates. Thus,

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<sup>62</sup> See Nate Silver, *A Polling Based Forecast of the Republican Primary Field*, FiveThirtyEight Politics (May 11, 2011 10:05 a.m.), <http://fivethirtyeight.com/features/a-polling-based-forecast-of-the-republican-primary-field/> (explaining that one must account for differentials in name recognition in order to evaluate a "candidate's upside"), submitted herewith as Exhibit 20.

regardless of the level of support a debate sponsor determines is necessary, a minor or third-party candidate could be excluded from the debates simply because the pollsters the sponsor relies on choose not to test his or her support. A debate sponsor's selection of which polls to rely on is also subject to manipulation. If a sponsor does not commit to using a particular poll or polls ahead of time, it can cherry pick from among the myriad polls that exist in order to engineer a specific outcome. For example, if a sponsor, like the CPD, relies on an average of 5 polls, it could select from the numerous polls available a set of five that shows the candidate below the polling threshold, whereas another set of 5 polls would yield an average above the threshold. Finally, there is no requirement that pollsters take a poll at any particular point in time. That is problematic when a debate sponsor uses a strict polling cutoff to determine debate inclusion. The difference between meeting a polling threshold could be whether the debate sponsor relied on a poll completed a day before the candidate had a positive turn in the news cycle, or a day after. Indeed, a debate sponsor can manipulate the results: it can hasten its "determination" if a candidate hovering around the polling threshold happens to be below it on one given day, or postpone its "determination" in the hopes that a candidate's support will decrease.

Third, polls in three-way races are subject to increased inaccuracy. A poll's accuracy relies on the pollster selecting the right sample, which, in turn, requires the pollster to make assumptions about the anticipated turnout on Election Day.<sup>63</sup> If a pollster's prediction about who will vote is incorrect, the accuracy of its pre-election polls will suffer.<sup>64</sup> Third-party and independent candidates complicate the selection of an appropriate sample. As polling and campaign expert Doug Schoen explains, this is "because of the new voters that serious third party and independent candidates tend to bring out in an election, just as Ross Perot did in 1992.

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<sup>63</sup> Young Report (Exhibit 3) at ¶¶ 43, 43a-43c.

<sup>64</sup> *See id.* at ¶¶ 43d-43e.

These voters, some of whom are politically inactive or even unregistered until mobilized by a compelling candidate, are easily overlooked when creating samples for pre-election polls.”<sup>65</sup>

Thus, even if a pollster chooses to test the support of a third-party or independent candidate, there is a significant chance that the test will be skewed because the pollster chose an incorrect sample.

Evidence from three-way races bears this out. As Schoen explains,

[R]aces with a serious third party or independent contender are prone to a distinct volatility in terms of voter support that limits the predictive power of pre-election data. The extent of this volatility is, of course, dependent on the nature of the electorate and its perception of that third party candidate. A recent article by Harry Enten of *FiveThirtyEight* outlined a short historical analysis over the last 12 years for gubernatorial races where a third candidate was polling at or above 5%. Analyzing polling data from the months prior to the election and comparing them to the final results, he found a median absolute error difference of 10.1% in the mid-election polls for those polling in second place. That number grows to 15.3% for those polling third. Further, it was wholly unclear whether the polling over- or underestimated the potential of the third party candidate, with some polls missing a runaway by the major-party contender and others unable to foresee a third-party victory. . . .

A hypothetical third candidate can be polling at 5% against his two opponents, excluding him from the debate due to the 15% participation standard. However, because of the pronounced volatility in a three-way race – 15.3% on average – that candidate could still finish with 20% of the vote.<sup>66</sup>

This increased error and volatility means that polling-based debate inclusion criteria will often exclude candidates with the potential to take a large share of votes on Election Day, or even win.

Statistical analysis proves this to be true. The increased inaccuracy of polling in three-way races will lead to a significant number of false results: because of the inaccuracy of polling, polling thresholds will often exclude candidates who actually satisfy them. New research shows

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<sup>65</sup> Schoen Report (Exhibit 11) at 28.

<sup>66</sup> *Id.* at 26-27.

that in three-way gubernatorial races,<sup>67</sup> the average absolute difference between a poll taken two months before the election and the final result is 8.04%.<sup>68</sup> At that error rate, a hypothetical candidate with 17% support would nonetheless fail to satisfy a 15% polling threshold 40.2% of the time.<sup>69</sup> In contrast, at the same 8.04% error rate, a hypothetical candidate with 42% support would only fail to satisfy the same threshold .04% of the time.<sup>70</sup> In other words, 4 out of 10 times, the threshold would exclude the 17% candidate from the debates, but only 4 out of 1000 times will it exclude the 42% candidate from the debates. The high risk of a false negative resulting from the application of polling threshold thus hurts only the third place candidate, which, in almost all cases, will be the third-party or independent candidate. As a result, because of the inaccuracy of three-way polling, using a polling threshold as a prerequisite for debate access will systematically reduce a third-party or independent candidate's chance of being invited to debate.

## **II. POLLING-BASED CANDIDATE SELECTION CRITERIA ARE INCONSISTENT WITH THE VOTER EDUCATION PURPOSE OF THE DEBATE RULES**

Reliance on a mandatory polling threshold to determine access to general election presidential debates does not just fix the system against third-party and independent candidates. It also runs counter to the voter educational purpose the debate regulations are supposed to further.

If the purpose of debates is to educate voters, as the FEC has explained, reliance on polling to determine who the voters should hear puts the cart before the horse. Debates enable

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<sup>67</sup> Because there is more three-way polling data for gubernatorial races, the author of the expert report drew on that larger sample to form a more robust conclusion. Young Report (Exhibit 3) at ¶ 34.

<sup>68</sup> *Id.* at ¶ 56.

<sup>69</sup> *Id.* at ¶ 66.

<sup>70</sup> *Id.*

candidates to gain support, especially third-party and independent candidates; polling thresholds deny candidates that opportunity because they have not yet gained support, which is a Catch-22. A candidate's lack of significant support in a given poll may reflect only that enough of the public has not yet become familiar with that candidate; if he or she were better known, he or she would have more support.<sup>71</sup> The lack of public exposure to third-party and independent candidates that is inherent in our election system makes the risk of a poll failing to capture a candidate's potential for popular appeal high. Polling does not account for these differences in name recognition that create this risk. In light of this risk, to exclude a candidate from a debate because of an insufficiently high poll number can be the equivalent of determining that the public should not be educated about this candidate because the public has not *yet* been educated about the candidate. That is not consistent with the educational purpose corporate-funded debates are supposed to serve.

Furthermore, polling thresholds do not measure the public's views about who it wants to hear from in a debate. Ross Perot in 1996 and Ralph Nader and Patrick Buchanan in 2000 did not satisfy the CPD's 15% rule. Yet a majority of Americans wanted to hear from those candidates in the presidential debates.<sup>72</sup> The CPD's rule denied voters that chance.

Emphasis on viability as measured by polls also ignores the role third-party and independent candidates play in issue education, agenda setting, and expanding turnout.<sup>73</sup> Third-

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<sup>71</sup> See *supra* n.62.

<sup>72</sup> More than 60% of Americans wanted Ross Perot to participate in the 1996 debates. *Debate Commission Excludes Perot*, CNN, (Sept 17, 1996), <http://cgi.cnn.com/ALLPOLITICS/1996/news/9609/17/debate.announce/>, submitted herewith as Exhibit 21. In 2000, 56% of Americans wanted Pat Buchanan and Ralph Nader to participate in the general election debates. Thomas E. Patterson, *Election 2000: How Viewers 'See' a Presidential Debate 5 (2000)*, available at [http://shorensteincenter.org/wp-content/uploads/2012/03/vv\\_debate\\_paper.pdf](http://shorensteincenter.org/wp-content/uploads/2012/03/vv_debate_paper.pdf), submitted herewith as Exhibit 22.

<sup>73</sup> The Commission has linked the debates with voter participation, noting that the purpose of the debates is "similar to the purpose underlying nonpartisan [corporate-funded] voter registration and get-out-the-vote campaigns" that

party and independent candidates can further those democratic ends, even if they do not have a high prospect of electoral success.

An election is about more than who wins and who loses. “[An] election campaign is a means of disseminating ideas as well as attaining political office.”<sup>74</sup> Elections set the public agenda by prioritizing among the many pressing issues of the day. They enable the public to weigh in on proposed solutions to society’s problems and new innovations to move society forward. Third-party and independent candidates, even those who do not win, can play a vital role in that process.<sup>75</sup> They can address issues that divide the two major parties, or that the two major parties would prefer to ignore, and can also suggest new initiatives. The Republican Party began as a third party that strongly supported abolition at a time when the two major parties, the Democrats and Whigs, were divided on the issue.<sup>76</sup> Numerous Socialist Party candidates suffered electoral defeat in the early 1900s, but their advocacy of women’s suffrage and a progressive income tax helped bring about the Sixteenth and Nineteenth Amendments.<sup>77</sup> More recently, in 1992, “there was little or no sign that George Bush and Bill Clinton were prepared to discuss [the] primal issues” of deficit reduction and generational equity, but Ross Perot’s candidacy made deficit reduction a central issue in the campaign and the Clinton

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FECA explicitly authorizes. Explanation and Justification, Funding and Sponsorship of Federal Candidate Debates, 44 Fed. Reg. at 76,736.

<sup>74</sup> *Illinois State Bd. of Elections v. Socialist Workers’ Party*, 440 U.S. 173, 186 (1979).

<sup>75</sup> See *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (“Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream.”); *Sweezy v. New Hampshire*, 354 U.S. 234, 250-51 (1957) (“History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere orthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.”).

<sup>76</sup> See Steven Rosenstone *et al.*, *Third Parties in America* 56 (1996), submitted herewith as Exhibit 23.

<sup>77</sup> See J. David Gillespie, *Politics at the Periphery* 27 (1993), submitted herewith as Exhibit 24.

administration.<sup>78</sup> Supporting third-party and independent candidacies is also a means of expressing discontent with the major parties. The participation of third-party and independent candidates in debates can thereby encourage participation in the electoral process by those whose disenchantment would otherwise cause them to sit on the sidelines.<sup>79</sup> Polling thresholds drastically curtail the voices and viewpoints heard in the debates, effectively preventing the democracy-enhancing functions that the debates could otherwise have.

### **III. NONPARTISAN, NONDISCRIMINATORY ALTERNATIVES EXIST TO DETERMINING CANDIDATE VIABILITY**

Petitioner does not oppose using debate selection criteria that take into account viability of a contender in the general presidential election. The sheer number of declared candidates for president requires some limiting principles to govern debate access. Petitioner does not even oppose a debate sponsor allowing candidates to participate if they meet a polling threshold, so long as the sponsor provides an alternative avenue for gaining entry to debates that does not rely on polling. Petitioner does not believe that the FEC needs to specify what that other avenue should be or to adopt a specific set of criteria to govern access to the general election presidential debates. But it is worth noting that polling is not necessary to measure the viability of candidates for our nation's highest office. Workable alternatives exist that can measure viability in a truly neutral and objective way without reliance on polling.

Petitioners have devised one such alternative. The new rule would work as follows: On April 30 of an election year, any candidate, party, or nominating process with ballot access in states that collectively have at least 270 Electoral College votes would notify the CPD of that

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<sup>78</sup> Tom Morgenthau, *Citizen Perot*, Newsweek, Nov. 9, 1992, submitted herewith as Exhibit 25; see Sandy Grady, *Without Ross Perot, There Would Be No Deficit Deal*, Orlando Sentinel, Aug. 5, 1993, available at [http://articles.orlandosentinel.com/1993-08-05/news/9308050846\\_1\\_ross-perot-clinton-media-trend](http://articles.orlandosentinel.com/1993-08-05/news/9308050846_1_ross-perot-clinton-media-trend), submitted herewith as Exhibit 26.

<sup>79</sup> See Rosenstone *et al.* (Exhibit 23), *supra* n.76, at 224; Gillespie (Exhibit 24), *supra* n.77, at 19.

access. If there is more than one, then whoever has gathered the most signatures as part of the ballot access process will participate in the debates with the Democratic and Republican nominees.

This new rule builds on the existing legitimating function of the ballot access process. Ballot access laws reflect a state's decision of the demonstrated level of support necessary to warrant the serious step of including a candidate among the choices citizens are given on Election Day. The minimum number of signatures necessary to achieve ballot access in states comprising 270 electoral votes represents the collective and objective political judgment of who can qualify to run for President. Achieving that number alone is a significant mark of a candidate's seriousness. Indeed, since 1988, the greatest number of third-party or independent candidates to meet this minimum in any given election was five (in 2000), and was often three or less.<sup>80</sup>

Of course, given the historic prize of entry into the debates, the competition to gain the most signatures will be vigorous and propel competitors well beyond the minimum. As a result, a legitimate third candidate will emerge. The winner should plan to stop 6 to 8 million people in the streets with the hope of 4 million signing.<sup>81</sup> The cost and scale of that endeavor – requiring at least \$13 million or more and a coordinated, nationwide network of staffers and volunteers – would not be insurmountable, but is substantial enough to ensure that only someone with significant fundraising and operational capacity could win.<sup>82</sup> And by virtue of having gotten the

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<sup>80</sup> *The 15 Percent Barrier*, Open Debates, <http://www.opendebates.org/theissue/15percent.html> (last visited Sept. 5, 2014), submitted herewith as Exhibit 27.

<sup>81</sup> Expert Report of Michael Arno, dated Sept. 5, 2014, at ¶ 23, submitted herewith as Exhibit 28.

<sup>82</sup> *Id.* at ¶¶ 16-20.

signatures of a broad cross section of Americans, the winner will have demonstrated popular appeal.<sup>83</sup>

Petitioner believes that fundraising ability, operational capacity, and countable, numerical demonstrations of popular support (like fundraising totals or attendance at rallies) are reasonable considerations for debate selection. The signature drive competition provides an objective, fair, and measurable way to implement those criteria.

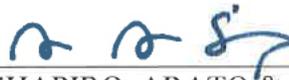
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<sup>83</sup> *Id.* at ¶¶ 21-25.

## CONCLUSION

Although it is only 2014, the presidential election campaign for 2016 will soon commence. Qualified individuals will soon begin weighing whether to run as a third-party or independent candidate, if they have not already begun doing so. Assessing whether there is a realistic chance to participate in the presidential general election debates will be a significant part of their calculus. Under the present system, there is no realistic chance that qualified third-party or independent candidates will gain entry into the debates. And this will remain the case so long as debate sponsors require candidates to meet a polling threshold in order to be permitted to debate; under the status quo, the debates can remain a rigged game that deprive voters of the viable alternative choice so many want to hear. For all of the reasons set forth herein, the FEC should amend its debate sponsorship regulation, 11 C.F.R. § 110.13, to (A) preclude sponsors of general election presidential and vice-presidential debates from requiring that a candidate meet a polling threshold in order to be admitted to the debates; and (B) require that any sponsor of general election presidential and vice-presidential debates have a set of objective, unbiased criteria for debate admission that do not require candidates to satisfy a polling threshold to participate in debates.

Respectfully submitted,



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