

**DETECTING DEMOCRACY:
HOW THE COMMISSION ON PRESIDENTIAL DEBATES
UNDERMINES DEMOCRACY**

A Report Jointly Issued By:

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Executive Summary

For the last sixteen years, the general election presidential debates have been controlled by a private, tax-exempt corporation – the Commission on Presidential Debates (CPD) – that has deceptively served the interests of the Republican and Democratic parties at the expense of the American people.

In 1986, the Republican and Democratic National Committees ratified an agreement for the “parties to take over the presidential debates.”ⁱ Fifteen months later, then-Republican Party chair Frank Fahrenkopf and then-Democratic Party chair Paul Kirk created the CPD, which immediately seized control of the debates from the genuinely nonpartisan League of Women Voters.

Still co-chaired by Frank Fahrenkopf and Paul Kirk, the CPD secretly submits to the demands of the Republican and Democratic candidates. Behind closed-doors, negotiators for the major party nominees jointly draft debate contracts called Memoranda of Understanding that dictate precisely how the debates will be run – from decreeing who can participate, to selecting who will ask the questions, to ordaining the temperature in the auditoriums. Masquerading as a nonpartisan sponsor, the CPD obediently implements and conceals the contracts.

These candidate-controlled debates are now primarily funded through tax-deductible corporate contributions, and debate sites have become crass corporate carnivals, with Anheuser-Busch girls passing out free beer and pamphlets denouncing beer taxes. This is not surprising; Fahrenkopf is the nation’s leading gambling lobbyist, and Kirk has lobbied for pharmaceutical companies.

The consequences of such deceptive major party control are distressing. Candidates that voters want to see are often excluded, such as Ross Perot. Issues the American people want to hear about are often ignored, such as free trade and child poverty. And the debates have been reduced to a series of glorified bipartisan news conferences, in which the Republican and Democratic candidates exchange memorized soundbites. Accordingly, debate viewership has plummeted; twenty-five million *fewer* people watched the 2000 presidential debates than watched the 1992 presidential debates. Walter Cronkite called CPD-sponsored presidential debates an “unconscionable fraud” and accused the major party candidates of “sabotaging the electoral process.”ⁱⁱ

In 1996, for example, Republican nominee Bob Dole and Democratic nominee Bill Clinton hatched a deal to keep Reform Party nominee Ross Perot out of the presidential debates, even though three-quarters of eligible voters wanted Perot included. Dole demanded Perot’s exclusion because it appeared that Perot would take more votes away from him, and Clinton desired the smallest possible audience for the debates – what George Stephanopolous called a “nonevent”ⁱⁱⁱ – because he was comfortably leading in the polls. So, Clinton agreed to exclude Perot as long as he could dictate the schedule of the debates. Clinton then cancelled one debate, and scheduled the remaining two debates opposite the baseball World Series, attracting the smallest audience in debate history.

The major party candidates are rarely criticized for such debate manipulations because the CPD conveniently assumes responsibility for the debates. If the major party candidates transparently hosted their own debates in their own living rooms, at least they would be held accountable for them. And under the ensuing public scrutiny, the candidates would be less likely to select compliant moderators, to exclude popular third-party challengers, to prohibit candidate-to-candidate dialogue, to abolish follow-up questions and to avoid discussing difficult issues.

By implementing secret contracts drafted by the major party campaigns, the CPD also violates federal regulations established by the Internal Revenue Service (IRS) and the Federal Election Commission (FEC). IRS regulations prohibit tax-exempt 501(c)(3) organizations from “participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office,”^{iv} and FEC regulations require presidential debate sponsors that accept corporate contributions to employ “pre-established objective” candidate selection criteria and to *not* “endorse, support, or oppose political candidates or political parties.”

Finding declining debate viewership and the lack of transparency unacceptable, seventeen national civic leaders from the left, center and right of political spectrum formed the Citizens' Debate Commission in January 2004, including Chellie Pingree of Common Cause, former Ambassador Alan Keyes, Tom Gerety of the Brennan Center for Justice, Bay Buchanan of The American Cause, TransAfrica Forum founder Randall Robinson, Heritage Foundation co-founder Paul Weyrich, former FEC General Counsel Larry Noble, and Jehmu Greene of Rock the Vote. Bolstered by an advisory board comprised of sixty civic groups and endorsed by major newspapers such as the *Los Angeles Times*, the Citizens' Debate Commission aspires to host future presidential debates that serve the American people first, not political parties. The Citizens' Debate Commission would likely restore voter education and transparency to the presidential debates, and major party nominees should participate in debates proposed by the Citizens' Debate Commission.

Formation of an Unsuitable Sponsor

A presidential debate sponsor is supposed to work for the American voter. The presidential debates are the most important electoral events in the process of selecting a president, and the Republican and Democratic candidates do everything they can to avoid difficult questions, free-flowing formats and third-party challengers. Only a genuinely nonpartisan sponsor committed to voter education can resist the candidates' antidemocratic demands and ensure that the presidential debates are truly informative.

From 1976 until 1984, the League of Women Voters nobly served as a nonpartisan presidential debate sponsor, aggressively negotiating with the major party candidates in advance of each debate to ensure that popular independent challengers were included and that debate formats were engaging and revealing.

In 1980, over President Jimmy Carter's objections, the League invited independent candidate John B. Anderson to participate in a presidential debate. When Carter refused to debate Anderson, the League went forward anyway and hosted a debate between John B. Anderson and Republican nominee Ronald Reagan that attracted over 50 million viewers.

Four years later, when the Ronald Reagan and Walter Mondale campaigns vetoed 68 proposed panelists in order to eliminate difficult questions from the debates, the League held a press conference and lambasted the candidates for "totally abusing the process." The ensuing public outcry persuaded the candidates to accept the League's suggested panelists for the next debate.

And in 1988, when the George Bush and Michael Dukakis campaigns drafted the first secret debate contract – a Memorandum of Understanding that dictated precisely how the debates would be structured, from who would participate, to who would ask the questions, to the heights of the podiums – the League declined to implement it. Instead, the League withdrew its sponsorship of the debates and issued a blistering press release, claiming that "the demands of the two campaign organizations would perpetrate a fraud on the American voter" and that "the League has no intention of becoming an accessory to the hoodwinking of the American public."^v

The nonpartisan League served the public interest well, and it's precisely because the League served the public interest so well that the CPD was created. The major parties did not want a debate sponsor to include popular independent candidates and employ challenging formats. The major parties wanted a debate sponsor that would merely submit to the demands of their presidential nominees.

In fact, the Democratic and Republican parties initially planned to directly sponsor the presidential debates themselves. In 1984, Democratic National Committee chairman Charles Mannat and Republican National Committee chairman Frank Fahrenkopf met several times to discuss joint party sponsorship of the debates. "I am a believer and I think chairman Manatt is that the two major political parties should do everything in their power to strengthen their own position," said Fahrenkopf. "We're party builders."^{vi}

The next year, Fahrenkopf and Paul Kirk (who replaced Mannat) participated in the Commission on National Elections, a private study of the election process to which the CPD attributes its creation.^{vii} The Commission on National Elections was co-chaired by Melvin Laird, a former Republican Congressman, and Robert S. Strauss, former chairman of the Democratic National Committee. Strauss had also served as chairman of President Jimmy Carter's reelection campaign in 1980, and he had vociferously criticized the League's decision to include Anderson. The Commission on National Elections recommended that the major parties usurp control over the presidential debates:

The commission therefore urges the two parties to assume responsibility for sponsoring and otherwise ensuring that presidential candidate joint appearances are made a permanent and integral part of the presidential election process. If they do so, the commission believes that the parties will strengthen both the process and themselves.

Major questions remain regarding the equal time requirements for television coverage of party versus independent or third-party candidates. Yet in the commission's judgment, the importance of television forums argues for erring on the side of favoring the party nominating processes rather than the rights of other candidates.

In 1986, the Democratic National Committee and the Republican National Committee actually ratified an agreement between Fahrenkopf and Kirk "for the parties to take over presidential debates."^{viii} Fifteen months later, Fahrenkopf and Kirk incorporated the CPD, and that same day, the Democratic and Republican parties jointly issued a press release calling the CPD "a bipartisan, non-profit, tax-exempt 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."^{ix} For the next 18 months, Fahrenkopf and Kirk served simultaneously as co-chairmen of their parties and co-chairmen of the CPD.

The CPD has sponsored all general election presidential debates since 1988, when it gladly implemented the Memorandum of Understanding that had been unequivocally rejected by the League of Women Voters.

The CPD claims to "provide the best possible information to viewers and listeners," and it purports to objectively determine who will participate in the debates and under what conditions. However, the CPD has consented to virtually every joint request of the major party candidates, substantially undermining voter education. "The commission does what you tell them to do," said Scott Reed, chairman of Bob Dole's 1996 presidential campaign.^x Through the CPD, the Republican and Democratic nominees often exclude popular third-party candidates, eliminate challenging debate formats, and avoid addressing many important national issues. The CPD is bipartisan, not "nonpartisan."

Bipartisan Negotiations

The League of Women Voters always brought a team of experts to negotiate with the candidates on important elements of the debates, particularly format, and it operated with transparency. By contrast, the CPD allows the major party candidates to secretly and unilaterally determine the significant components of the presidential debates.

The CPD denies it submits to demands of the major party candidates. Fahrenkopf explained:

We will not use the CPD to do a debate if the candidates come to us and they sit down and they negotiate and they say all right, we've agreed we're going to do three debates. We've agreed that so-and-so is going to be the moderator, we're going to do this thing. We'll say hey, we announced a year ago what the criteria was going to be; we announced a year ago what our standards were going to be, what the format was going to be and how we're going to do it. Your proposal does not meet our criteria. We will walk.^{xi}

But they don't walk. On the contrary, the CPD readily endorses the joint decisions of the Republican and Democratic candidates.

Every four years, the CPD proposes debate formats and publishes candidate selection criteria. However, questions concerning third-party participation and debate formats are ultimately resolved between Republican and Democratic negotiators, who draft binding contracts called Memoranda of Understanding behind closed-doors. The Memoranda of Understanding dictate precisely how the debates will be run—from decreeing who can participate, to selecting compliant moderators, to requiring the pre-screening of town-hall questions. The CPD, posing as an independent sponsor, implements and conceals the Memoranda of Understanding, thereby shielding the major-party candidates from public criticism. Scott Reed, Bob Dole's campaign manager, explained how it really works:

In 1996, we told the commission what to do. We agreed with the Clinton people when we were going to meet to talk about the debates. The commission gave us their conference room, but big deal. We could have met in anybody's conference room. They were really a neutral party. Once we agreed with the Clinton team what we wanted to do on the details, we handed it to the commission and they implemented it. We told them the cities. It wasn't the cities they wanted. We told them the dates. It wasn't the dates they wanted. We told them the format. It wasn't the format they wanted. But their job was to implement it and execute it and perform it, and they did a good job.^{xii}

Frank Donatelli, senior advisor to the Bob Dole presidential campaign, said, "The commission throws the party, the commission gets the food, hires the band, but as to who shows up, what the time is and what the dress is, those are the candidates' decisions."^{xiii} *Washington Post* reporter David Von Drehle concluded that the CPD "is designed to let the major parties control the process."^{xiv}

Each campaign employs seasoned teams to handle debate negotiations. The list of negotiators -- from Commerce Secretary Mickey Kantor to DNC Chairman Ronald

Brown to Labor Secretary Alexis Herman to Defense Secretary Donald Rumsfeld - reveals the gravity campaigns attach to debate negotiations, and understandably so. Every campaign that has "won" the debate negotiations has gone on to win the election.^{xv}

These Republican and Democratic negotiators have very significant ties to the CPD. Pamela Harriman was a CPD director when she became the chairman of Bill Clinton's 1992 presidential campaign. Vernon Jordan was a CPD director before becoming Clinton's debate negotiator in 1996. Fahrenkopf appointed Fred Malek deputy chairman of the Republican Party before Malek became President Bush's negotiator in 1992. Before managing Dole's campaign, Scott Reed worked directly for Frank Fahrenkopf, his mentor. David Norcross was the vice-chairman of the CPD before becoming Dole's debate negotiator in 1996.

Under CPD sponsorship, secretly negotiated Memoranda of Understanding have dramatically increased in size and depth. There were no Memoranda of Understanding in 1976 and 1980. In 1984, the League of Women Voters and the major party campaigns collectively negotiated a three-page Memorandum of Understanding. In 1988, Bush and Dukakis surreptitiously drafted a seven-page Memorandum of Understanding - the first time a debate sponsor had been excluded from the negotiations. In 1992, 1996 and 2000, the Memoranda of Understanding, which were all written without any input from the CPD, ran at least 11 pages long. (Open Debates secured copies of the 1992 and 1996 Memoranda of Understanding through a whistleblower, and the organization made the contracts public in April 2004.^{xvi})

Since 1992, Memoranda of Understanding have been remarkably similar, all addressing in like fashion: candidate participation, formats, staging design, podium heights, audience placement, selection of moderators and panelists, camera shot restrictions, division of tickets, time limits on responses, opening and closing statements, and even coin tosses. In fact, entire paragraphs, word for word, are included in the agreements year after year, which is why the American people end up with the same sanitized debates year after year.

Each Memorandum of Understanding stipulates that it is a binding contract. The 1996 Memorandum of Understanding begins: "This memorandum of understanding constitutes the agreement between the Dole/Kemp 96 and Clinton/Gore 96 General committees regarding that rules that will govern any presidential and vice presidential debates in 1996." Each Memorandum of Understanding also includes the following provision: "The debates will be sponsored by the Commission on Presidential Debates, provided that the Commission agrees to all provisions of this Agreement."

And each Memoranda of Understanding prohibits the candidates from participating in any other debates. The 1996 Memorandum of Understanding stipulates, "The parties agree that they will not (1) issue any challenges for additional debates, (2) appear at any other debates or adversarial forum with any other presidential or vice presidential candidate, or (3) accept any network air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate."

These provisions award the CPD a monopoly over general election presidential debates.

Lack of Transparency

Were the CPD eliminated, Republicans and Democrats could set up their own debates, exclude popular third-party candidates, employ stilted formats, and ignore pressing national issues. Nobody could stop them from exercising that First Amendment right, and television networks would surely broadcast their debates.

However, there would be a significant benefit to party-sponsored debates — they would make the major-party candidates accountable for them. Under the auspices of direct party sponsorship, the public would realize that third-party challengers, revealing formats, and important national issues were excluded for political reasons, and major-party candidates would likely pay a price on Election Day.

Such transparency would force the major party candidates to reconcile the benefits of debate manipulation with the desire to appear democratic, which, in of itself, would increase the likelihood of democratic debates. Frank Donatelli, debate negotiator for Dole, said, "Believe me, politicians are risk averse, the parties are risk averse. The last thing they're gonna want to do is to alienate a substantial segment of the public by being perceived as the person that kept out a legitimate candidate who could be president."^{xvii} The debate over debates would become a unique voter education tool; voters could learn to what extent candidates value their personal political ambitions over the democratic process.

But under the existing sponsorship regime, the CPD is blamed for the debates' flaws — not the candidates. The CPD conceals all agreements secretly negotiated by the major party candidates, and dishonestly poses as an independent sponsor while implementing those agreements. Such concealment of the major party candidates' instructions is instrumental to their implementation because it prevents the candidates from being held accountable for their manipulations.

The Dole campaign, for example, excluded Perot in 1996 without suffering a severe public backlash. "We were able to hide behind the commission," said Scott Reed, Dole's campaign manager.^{xviii} A Hotline poll found that only 5 percent of eligible voters held the Clinton campaign responsible for Perot's exclusion; only 13 percent blamed the Dole campaign; and over 50 percent blamed the CPD. Alan Keyes, former Republican presidential candidate, said:

What's happening in these debates is that they are standing up and saying, "Here are the nonpartisan debates, at which we are presenting the serious candidates for president on a nonpartisan basis so that we can educate the people of this country in a fair fashion." If you are going to present a partisan brawl, in which you have excluded anybody but your chosen few, I would say just do it. You have the right to do it. It's a free country. Don't pretend, however, to do it under a rubric of nonpartisanship. Don't pretend to do it in a fashion that then uses monies that are supposed only to be used for nonpartisan purposes. That's cheating. That's corruption. That's lying. That's an effort to manipulate the perception of the voters in order to favor your power.^{xix}

Format Manipulation

Under CPD sponsorship, the major party candidates design all the formats and select all the questioners. Consequently, challenging questions, assertive moderators, follow-up questions, candidate-to-candidate questioning, rebuttals and surrebuttals are often excluded from the presidential debates. The CPD's formats prevent in-depth examination of critical issues, and allow the candidates to deliver pre-packaged soundbites during the debates that are repeated over and over again on the campaign trail.

At first glance, the CPD seems to have had a neutral, if not positive, effect on presidential debate formats. Unlike the League of Women Voters, the CPD managed to escape the restrictive Press Panelist Format, which consisted of seated reporters asking all the questions. The CPD hosted the first Single Moderator and Town Hall presidential debates.

But the CPD never developed the "new" formats. The major party candidates, for various reasons, chose to break from the Press Panelist Format. For example, the CPD publicly took credit for selecting the popular Town Hall Format when, in fact, Governor Bill Clinton came up with the format in 1992 because it paraded his interpersonal skills.^{xx}

Moreover, as a consequence of major-party manipulation, a structural deficiency still mars all CPD-sponsored debates: they are not really debates. Despite the purported format diversity, the public is still left with glorified news conferences. The only difference from joint news conference to joint news conference is who asks all the questions - a panel of reporters or Jim Lehrer or a group of undecided voters. The candidates never speak to each other, and because they are peppered by a succession of disparate questions, they usually glaze over the issues, reciting a series of memorized soundbites. "It's too much show business and too much prompting, too much artificiality, and not really debates," said former President George Bush. "They're rehearsed appearances."^{xxi}

Most importantly, while the basic formats have changed for the better, the structure and the rules governing them have become much worse. Candidates have manipulated the details within the selected formats to purge spontaneity from the debates:

- When the League of Women Voters sponsored the debates, panelists and moderators were always permitted follow-up questions, which allowed them to get past rehearsed answers, really delve into an issue, and challenge the responses of the candidates. But when the CPD took over, the candidates frequently banned follow-up questions. The 1996 Memorandum of Understanding stipulates, "No follow-up questions by the moderator will be permitted."
- The candidates have strictly prohibited themselves from questioning each other or talking to each other. The 1992 Memorandum of Understanding stipulates, "There will be no direct candidate-to-candidate questioning." The 1996 Memorandum of Understanding provides that "no cross-questions by candidates or cross-conversation between the candidates will be allowed under these rules."

- In 1980, the League of Women Voters selected Bill Moyers, "the conscience of American journalism," to serve as moderator after consulting with the Nieman Foundation, Pulitzer Prize authorities, the Radio and TV News Directors Association, Newspaper Publishers' Association, and the American Society of Newspaper Editors.^{xxii} It is unlikely, however, that someone as engaging as Moyers will ever moderate a CPD-sponsored debate. The CPD allows the major party candidates to handpick the panelists and moderators. As to be expected, the candidates select moderators and panelists who ask predictable, safe questions. After the 2000 presidential debates, Senator John Kerry said, "You could have picked 10 people off the street who didn't know Jerusalem from Georgia and they would have had better questions."^{xxiii}
- According to polls and focus groups, the general public prefers debates that give candidates more time to answer questions. Restrictive time limits can reduce the candidates' responses to memorized soundbites. Nonetheless, response times have been severely whittled down under CPD sponsorship. In 1984, the League of Women Voters allotted the candidates 4.5 minutes per question sequence, whereas in 1996, the CPD limited the candidates' responses to a mere 90 seconds.
- Viewers and pundits have praised the town hall format for maximizing spontaneity and citizen participation. But with no opposition from the CPD, major party negotiators transformed the popular format into a staged charade. In 1992, audience members could ask anything they wanted, including follow-up questions. In 1996, follow-ups and questions seeking clarification were banned. In 2000, the questions actually had to be written down on index cards and screened by moderator Jim Lehrer before the debates.

Walter Cronkite, former anchor of CBS News, called CPD-sponsored presidential debates an "unconscionable fraud" because "the candidates participate only with the guarantee of a format that defies meaningful discourse."^{xxiv}

The CPD is partly responsible for these format deficiencies. No other sponsor has allowed the major party candidates to negotiate exclusively. No other sponsor has implemented, without protest, Memoranda of Understanding that diminish spontaneity, accountability and confrontation.

Candidate Exclusion

Six weeks before the 1998 gubernatorial election in Minnesota, *The Star Tribune* pegged Reform Party candidate Jesse Ventura at 10 percent in the polls. Three debates later, on October 20, he was at 21 percent. Remarkably, Ventura's cash-strapped campaign had not yet aired a single television advertisement. On Election Day, Ventura captured 37 percent of the vote and became the governor of Minnesota. Governor Ventura explained his astounding victory, "I was allowed to debate. I proved that you could go from 10 percent to 37 percent and win if you're allowed to debate. Rest assured these two parties don't want to ever see that happen again."^{xxv}

Minnesota public radio and the Minnesota chapter of the League of Women Voters, which alternated sponsorship of the eight gubernatorial debates, insisted that Ventura be allowed to participate. When pro-democracy institutions committed to voters' interests run the presidential debates, popular third-party candidates are invited to participate.

The CPD, however, is committed to the interests of the Republican and Democratic parties. Consequently, the CPD excludes independent and third-party candidates that the American people want to see, even though those candidates raise pressing national issues, have a potential chance of victory, and increase voter turnout and debate viewership.

1988

The CPD established a candidate selection process in 1988 to comply with federal debate regulations. This process, which was used again in 1992 and 1996, automatically invited the Republican and Democratic candidates to participate in the presidential debates. To determine which, if any, third-party candidates would also be invited, the CPD created an Advisory Committee comprised of high-profile academics and political figures.

The Advisory Committee was charged with deciding which third-party candidates had a "realistic chance of being elected." However, the CPD picked individuals to serve on the Advisory Committee who were ideologically committed to the Republican and/or Democratic parties. For example, Vernon Jordan – who served as chairman of Clinton's 1992 presidential transition team and as President Clinton's trusted advisor – served on the Advisory Committee.

And the Advisory Committee applied entirely subjective criteria that could rhetorically justify the exclusion of any third-party candidate, such as "the professional opinions of Washington bureau chiefs of major newspapers, magazines and broadcast networks."

Moreover, if the Advisory Committee interpreted the subjective criteria in a manner displeasing to the CPD, Fahrenkopf and Kirk could simply reject the committee's recommendations. The Advisory Committee was merely an advisory committee. In sum, the candidate selection process employed in 1988, 1992 and 1996 consisted of Democrats and Republicans selected by the party chairmen using materials prepared by a bipartisan commission to interpret subjective criteria, and if they came up with the "wrong" conclusion, Fahrenkopf and Kirk would just reject it.

In 1988, four candidates were on enough state ballots to win an Electoral College majority: Vice President George Bush of the Republican Party, Governor Michael Dukakis of the Democratic Party, Dr. Lenora Fulani of the New Alliance Party, and Ron Paul (who is now a Congressman) of the Libertarian Party. On October 1, the Bush and Dukakis campaigns submitted a 16-page Memorandum of Understanding to the CPD, which only invited Bush and Dukakis to the debates, after the Advisory Committee delivered a recommendation to exclude all third-party challengers.

1992

The CPD touts independent candidate Ross Perot's inclusion in the 1992 presidential debates as a reflection of its neutrality. However, Perot only participated in the presidential debates because the major party candidates wanted him there.

On July 16, then at 20 percent in the polls, Ross Perot stunned his supporters and quit the race. Seven weeks later, the CPD's Advisory Committee concluded that no non-major party candidate then seeking election had a realistic chance of victory. But on October 1, Ross Perot reentered the race, and he immediately polled 7 percent nationally.

The Bush campaign was delighted with Perot's return. They no longer believed that Bush could win a plurality of votes, and they wanted Perot in the presidential debates to tip the election in their favor. When Perot had quit the race, Clinton had shot up 14 points whereas Bush had only climbed three points. If Perot was allowed to debate, the Bush campaign reasoned, he could steal more of Clinton's votes again. So, the Bush campaign made President Bush's participation in the presidential debates conditional on Perot's inclusion. Bobby Burchfield, debate negotiator for the Bush campaign, explained, "We, the Bush campaign, made it a precondition for the debates that Mr. Perot and Admiral Stockdale be included in the debates."^{xxvi}

On October 3, Perot received a take-it-or-leave-it invitation from the major party candidates to participate in the presidential debates. Twenty-four hours later, the major-party negotiators submitted a secret 37-page Memorandum of Understanding – which specified that Perot would be included in all three debates – to the CPD.

The CPD, however, did not want Perot invited to the debates. "The commission was worried about the precedent of third-party candidates always being included," said Mickey Kantor, chairman of Clinton's campaign. On October 5, the CPD offered to invite Perot only to the first debate, with his inclusion in the second and third debates subject to further review. But, the Bush and Clinton campaigns rejected the CPD's proposal, and the CPD capitulated to their demands, agreeing to include Perot in all three debates.

Perot was widely deemed the winner of two presidential debates, and he rapidly climbed from seven percent in pre-debate polls to 19 percent on Election Day -- the largest gain for any candidate in the history of presidential debates. Seventy million Americans watched the final 1992 presidential debate, the largest debate audience since 1980.

Janet Brown, executive director of the CPD, said, "We wouldn't have included Perot in if we weren't serious and nonpartisan."^{xxvii} But, Perot participated in the 1992 debates only because President Bush wanted him there. "If not for the candidate's agreement that Perot

be included in 1992, he wouldn't have been included," said Bobby Burchfield.^{xxviii} Would the CPD have accepted a proposal to exclude Perot? "Sure," said Bob Teeter, Bush's campaign manager, said. "If the candidates agree on a proposal, they would accept it."^{xxix}

1996

In 1996, Ross Perot was one of four third-party candidates on enough state ballots to win an Electoral College majority, and many pundits and newspapers supported his inclusion in the presidential debates. He had "won" two of the three debates four years earlier, had captured a remarkable 19 percent of the popular vote on his first presidential run, had received \$29 million of federal funds for his 1996 campaign, and was polling at virtually the same level as he had in 1992 pre-debate polls. Three-quarters of eligible voters wanted him included in the 1996 debates.

But, the real decision-makers -- Dole and Clinton -- wanted Perot out of the debates. Clinton opposed Perot's inclusion in the debates because he was winning by 20 points; he didn't need a wealthy wildcard changing the dynamic of the race. Dole desperately wanted Perot out of the debates because it appeared that Perot would take more votes away from him. Scott Reed, Dole's campaign manager, said, "We didn't want Perot in the debates. Nothing else really mattered. ... We made sure Perot wasn't going to be in the debates."^{xxx}

On September 17, 1996, the CPD's Advisory Committee unanimously recommended inviting only Dole and Clinton to the presidential debates, and the board of the CPD unanimously approved the Advisory Committee's recommendation.

The CPD's ruling, however, did not terminate discussion about Perot. Four days later, major party negotiators met to draft a Memorandum of Understanding. During those debate negotiations, Perot's potential inclusion was actually used as a bargaining chip.

Despite the CPD's ruling, Clinton proposed that Perot be included in the first debate. In response, Dole offered Clinton the right to dictate the terms of the debates (schedule, format, etc.) as long as he would agree to exclude Perot. George Stephanopolous, senior advisor to President Clinton, explained, "[The Dole campaign] didn't have leverage going into negotiations. They were behind. They needed to make sure Perot wasn't in. As long as we would agree to Perot not being in it, we could get everything else we wanted going in. We got our time frame, we got our length, we got our moderator."^{xxxi}

Unfortunately, to protect his lead, Clinton desired the smallest possible audience for the debates. He cancelled one debate, and scheduled the remaining two debates opposite the baseball World Series, attracting the smallest audience in presidential debate history.

2000

The CPD received a barrage of criticism due to Perot's exclusion, and Fahrenkopf and Kirk decided to change the criteria to a more objective threshold. Hoping to neutralize accusations of partisanship while still ensuring third-party exclusion, on January 6, 2000, the CPD announced that third-party candidates would have to reach 15 percent in pre-debate polls to receive an invitation to the debates.

The advantage of the 2000 criterion is that it forces some transparency - third party participation is less subject to the backdoor manipulations of Republicans and Democrats. But exclusion had merely been shifted from behind-the-scenes negotiation to an overt numerical obstacle.

In 2000, five third-party candidates were on enough state ballots to win an Electoral College majority. Ralph Nader and Pat Buchanan attracted more media coverage and popular support than the other third-party challengers, and a majority of voters wanted them in the debates. The 15 percent threshold, however, meant that the major party candidates, Al Gore and George W. Bush, did not even have to negotiate the issue. Buchanan and Nader were de facto excluded.

2004

The CPD has announced that it will use the 15 percent threshold again to determine the participants of the 2004 presidential debates. The entirely arbitrary criterion – relevant only to publicly justify the private decision of the major party candidates to exclude third-party challengers – fails to serve the American people for several reasons:

The criterion directly contravenes the wishes of the majority of American voters. The CPD is relying on polling data to exclude third party candidates although polling data show that a substantial majority of Americans want to see particular third-party candidates included in the debates.

The criterion disregards the allocation of taxpayer funds. Under the Federal Election Campaign Act, a party that receives five percent of the popular vote qualifies for federal matching funds for the next election. Setting the criteria at 15 percent in pre-debate polls therefore raises the question: How is it that taxpayers can finance a candidate's campaign, and yet not be able to see or hear him?

The criterion marginalizes the contributions of losing third-party candidates. Most third parties crumble. But, third-party candidates have introduced groundbreaking issues that were eventually co-opted by the major parties, such as: the abolition of slavery, women's suffrage, unemployment insurance, social security, child labor laws, public schools, public power, paid vacation, the 40-hour work week, and the formation of labor unions. Excluded third-party candidates can't break the bipartisan conspiracy of silence on issues where the major parties are at odds with most of the American people.

The criterion ignores the structural barriers that confront third party candidates. Non-major party candidates face the most discriminatory ballot access laws of any democracy in the world, a winner-take-all system, corporate and union contributions to the major parties, and scant media coverage. In fact, so formidable are the barriers to third party voices, a three percent criterion applied to all previous presidential debates would have included only three third-party candidates: John B. Anderson in 1980, Ross Perot in 1992 and 1996, and Ralph Nader in 2000.

The Seattle Times editorialized, "The 15 percent threshold suits the two parties. It unduly restricts the American people."^{xxxii}

Issue Exclusion

The presidential debates could force candidates to address important national issues. Unfortunately, because the major party candidates control the debate process, they often do not. Issues that are important to the American people are frequently excluded from the presidential debates.

Under CPD sponsorship, fewer and fewer issues have dominated debate conversation. In 1976, the majority of debate discourse focused on eight issues, but in 2000, the majority of discourse focused on only five issues.

And what are these dominant issues? With the exception of the 1992 debates, which included Perot, presidential debate content has increasingly consisted of issues targeted toward specific voting populations in swing states.

The Poverty of the 2000 Debates

Below are cumulative mentions of specific words or phrases by either George W. Bush or Al Gore during the three events staged by the Commission on Presidential Debates in 2000.

Middle Class 15
Working Class 0
Prosperity 16
Homeless(ness) 0
Poverty 1
Crime (street) 23
Crime (corporate or white collar) 0
Prison (s) 0
WTO 0
NAFTA 0
Corporation(s) 0
Labor 1
Free Trade 0
Immigration 0
Population Growth 0
Gun Rights (or Control) 0
Transportation or Traffic 0
Slobodan Milosevic 17
Death Penalty 9
Taxes 144
Social Security 67
Seniors 64
Medicare 58
Drug(s) (prescription) 60
Drug War 0

In 2000, during the first and third presidential debates, only five topics constituted the majority of conversation: education, tax cuts, leadership experience, prescription drugs under Medicare, and social security reform. Almost 20 percent of the two debates were devoted to prescription drugs under Medicare and social security - topics that resonate primarily with seniors. Ten percent of the debates was spent describing, in considerable detail, exactly how each candidate would provide cheaper prescription drugs to senior citizens. With less to argue over, the candidates spoke to senior citizens in Florida who could make an electoral difference.

What about campaign finance reform? What about corporate crime? What about government waste? What about media concentration? What about military spending? What about the environment? What about child poverty? What about innovative industry? What about unemployment? What about globalization? What about family farms? What about urban renewal? What about immigration? What about civil liberties? In 2000, these topics were either ignored or discussed less frequently than in

the past, subordinated to battles over five issues. Jeff Milchen, Executive Director of Reclaim

Democracy, wrote:

In a country where corporations are the dominant political and economic force, why did three debates pass without the word "corporation" being spoken? The World Trade Organization, "free trade," and labor also were omitted. How can so many issues of vital interest to Americans freely be ignored while Slobodan Milosevic is cited 17 times? Answer: because the two dominant parties own and operate the debates.^{xxxiii}

Moreover, candidates have increasingly agreed about the few issues they discuss. The rate of agreement between the candidates during the debates has skyrocketed from 11.54 percent in 1988 to 37.30 percent in 2000.

The CPD cannot be held principally responsible for the narrowing of debate discourse. The Republican and Democratic parties have increasingly focused on winning over centrist voters, and the parties' funding sources have increasingly overlapped.

The CPD, however, is directly responsible for two issue-excluding procedures: 1) excluding popular third party candidates and 2) awarding major party candidates absolute control over format.

Third-party candidates let on stage have significantly enhanced debate quality at no cost. In 1992, for example, Perot created disagreement over almost every topic. He pushed discussion of the federal deficit, the hazardous influence of special interests, and the loss of manufacturing jobs due to trade agreements onto center stage.

Challenging formats force candidates to deviate from their scripts and discuss difficult issues. Diverse moderators, follow-up questions, longer response times, candidate-to-candidate questioning, and authentic town-hall formats would produce more substantive debates that address more issues of concern to the American people.

Corporate Sponsorship

Frank Fahrenkopf and Paul Kirk – the co-chairs of the CPD – are registered lobbyists for multinational corporations. Kirk has lobbied on behalf of the pharmaceutical industry, and Fahrenkopf is the nation's leading gambling lobbyist. As president of the American Gaming Association (AGA), Fahrenkopf directs enormous financial contributions to major party candidates and saturates the media and academic world with "expert" testimony extolling gambling's "many benefits." "We're not going to apologize for trying to influence political elections," said Fahrenkopf.^{xxxiv}

What is troubling about Kirk and Fahrenkopf's roles as corporate lobbyists has little to do with ideological incentives to exclude third-party candidates disparaging of corporate power. "They're not really interested in stifling us because of the issues we're raising, but simply because we're a threat to the two parties at all," said Ron Crickenberger, former political director of the Libertarian Party.^{xxxv}

A real concern is what Kirk and Fahrenkopf's lobbying practices reveal about their civic priorities and conceptions of democracy. Their lobbying suggests a willingness to protect corporate profits at the expense of voters' wishes. It should not be surprising, therefore, that the co-chairs of the CPD protect major party interests at the expense of voters' wishes.

More importantly, the CPD's intimate relationship with corporate boardrooms seems to have directly impacted the financing and character of the presidential debates. The debates are now primarily funded through corporate contributions. The tobacco giant Phillip Morris was a sponsor in 1992 and 1996. Anheuser-Busch sponsored debates in its hometown of St. Louis in 1992 and 2000.

Under the auspices of the CPD, debate sites have become corporate carnivals, where sponsoring corporations market their products and propaganda to journalists and politicians. In 1992, after providing \$250,000 in contributions to the CPD, cigarette manufacturer Philip Morris won the right to hang a large banner that was visible during post-debate interviews. For the third 2000 presidential debate, Anheuser-Busch, which contributed \$550,000 to the CPD, set up several information booths to distribute glossy pamphlets touting the benefits of consuming beer and denouncing "unfair" beer taxes.^{xxxvi} *Washington Post* reporter Dana Milbank described his experience at the first 2000 presidential debate:

The whole campus is closed -- (ostensibly) to thwart terrorists, more likely to thwart Nader and Buchanan. Nader gets kicked out of the debate audience, even though he got himself a ticket from a student. He's threatening lawsuits. But I'm not worried about such things. I am inside the debate area, and I am delighted to find an Anheuser Busch refreshment tent, where there is beer flowing, snacks, Budweiser girls in red sweaters, the baseball playoffs on television, ping pong and futbol.^{xxxvii}

Corporate giving to presidential debate sponsors is not new. The League of Women Voters raised corporate contributions to help pay for some of its debates. But donations to the nonpartisan League were primarily considered civic charity. By contrast, corporations perceive donations to the bipartisan CPD to be bipartisan political contributions. Nancy Neuman, former president of the League of Women Voters, explained:

One of the big differences between us and the commission was that the commission could easily raise hundreds of thousands of dollars in contributions. They did it very quickly in 1988. Even though I would go to some corporations, I would be lucky to get \$5,000. Why? Because under the commission's sponsorship, this is another soft-money deal. It is a way to show your support for the parties because, of course, it is a bipartisan commission and a bipartisan contribution.^{xxxviii}

Many corporations relish the opportunity to shower Republican and Democratic candidates with financial support, and there are several distinct advantages, from the corporate viewpoint, to giving money to the CPD. Unlike PAC and “soft money” contributions, donations to the CPD are tax-deductible (which means taxpayers are subsidizing the exclusion of popular candidates, challenging formats, and important issues from the presidential debates). Unlike contributions to political parties and conventions, which must be disclosed to the public, donations to the CPD can be kept private. Unlike contributions to a candidate or her party, a single donation to the CPD hits two birds with one stone. Stephen K. Lambright, vice president of Anheuser-Busch, said spending money to sponsor the debates “is a good way to do it because we don’t have to choose sides.”^{xxxix}

Corporate contributions to the CPD are one-of-a-kind; no other corporate donations simultaneously strengthen both major-party candidates, directly prevent ideas from entering the collective voter consciousness, improve the public image of the donor corporations, and result in tax subsidies for donor corporations. When Fahrenkopf was asked if there was anything wrong with beer and tobacco companies sponsoring the presidential debates, he said, “Boy, you are talking to really the wrong guy. I’m a guy who represents the gambling industry.”^{xl}

Legal Challenges

By implementing Memoranda of Understanding drafted by the major party campaigns at the expense of third-party challengers, the CPD violates federal regulations established by the Federal Election Commission (FEC) and the Internal Revenue Service (IRS).

IRS

Section 501(c)(3) of the Internal Revenue Code explicitly prohibits organizations exempt under that provision from “participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.”^{xli} This prohibition is absolute. The IRS has stated, “For purposes of section 501(c)(3), intervention in a political campaign may be subtle or blatant. It may seem to be justified by the press of events. It may even be inadvertent. The law prohibits all forms of participation or intervention in ‘any’ political campaign.”^{xlii}

A section 501(c)(3) organization may conduct a candidate debate, but only pursuant to strict restrictions of neutrality. The IRS explained, “[I]f the forum is operated to show a bias for or against any candidate, then the forum would be a prohibited activity as it would constitute an intervention or participation in a political campaign.”

Violating Section 501(c)(3) of the Internal Revenue Code, the CPD “participates” and “intervenes,” directly and indirectly, “on behalf of” the Republican and Democratic candidates and “in opposition to” third-party and independent candidates, by secretly executing Memoranda of Understanding drafted by the Republican and Democratic candidates. The Memoranda of Understanding stipulate precisely which candidates will participate in the presidential debates, and the CPD invites only those candidates to the debates and excludes all other candidates. The “Memoranda of Understanding” stipulate precisely how the debate formats will be structured, and the CPD sets up the presidential debates in perfect compliance with those format instructions. The CPD uses its tax-exempt status to shield the major party candidates from public criticism and public accountability. Such debates demonstrate a clear “preference for” the Republican and Democratic nominees, and “preference against” independent and third-party candidates, and therefore the hosting of such debates is a prohibited activity.

The civic group Open Debates filed an IRS complaint against the CPD on April 12, 2004.

FEC

Under the Federal Election Campaign Act of 1971, corporations are prohibited from making contributions in connection with federal elections. In 1979, pursuant to statutory authority, the FEC promulgated regulations that allow corporations to donate funds to a debate sponsor as long as that sponsor meets the requirements of 11 C.F.R. §110.13.

With respect to the nature of acceptable sponsors, 11 C.F.R. §110.13(a) provides: “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 CFR 114.4(f).”

With respect to candidate selection criteria, 11 C.F.R §110.13(c) provides: “For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.” When promulgating 11 C.F.R. §110.13(c), the FEC explained: “Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants.”

If a debate sponsor failed to stage a debate among candidates for federal office in accordance with the requirements of 11 C.F.R. §110.13, then the corporate donations used to defray the costs incurred by the sponsor would constitute illegal contributions to the participating candidates.

The CPD implements contracts jointly drafted by the Republican and Democratic campaigns, which dictate the debate participants and the debate formats, often resulting in the exclusion of third-party challengers. In doing so, the CPD clearly “support[s]” the Republican and Democratic candidates, clearly “oppose[s]” third-party and independent candidates, and fails to “use pre-established objective criteria,” in violation of 11 C.F.R §110.13(a).

Consequently, the debates staged by the CPD constitute illegal corporate contributions to the participating candidates.

A number of civic groups and third-party candidates have filed FEC complaints claiming that the CPD is a partisan organization and, therefore, ineligible under federal election law to sponsor presidential debates. On August 12, 2004, after plaintiffs sued the FEC for dismissing their complaint, a District Court ordered the FEC to open a full investigation into whether the CPD acted in a “partisan manner” when sponsoring the 2000 presidential debates. The U.S. District Court for the District of Columbia, Judge Henry H. Kennedy, Jr., found that the FEC acted “contrary to law” in dismissing the complaint.

The District Court’s ruling – which will produce an FEC investigation of the CPD – is an important victory in the campaign for transparent and nonpartisan presidential debates, particularly in light of the Court’s limited judicial review. The District Court explained: “A FEC dismissal is contrary to law only if it was arbitrary, capricious, or an abuse of discretion. ... An agency’s interpretation of its own rules control unless ‘plainly erroneous’ or ‘inconsistent with the regulation.’” Still, the District Court found the evidence of partisanship sufficient to conclude that the FEC’s dismissal of the complaint had indeed been “contrary to law.”

Solution: Citizens' Debate Commission

It's time to fix the presidential debate process. The CPD deprives voters of an accurate choice and robust debate. Under CPD sponsorship, debate viewership and voter turnout have substantially declined.

An entirely new non-partisan organization is required to reform the presidential debates because the CPD is incorrigible by design, and attempts to reform the debates through legal and legislative means have proven unsuccessful.

Several members of Congress have proposed various forms of legislation to rectify the flaws in the presidential debate process. In 1991, Congressman Ed Markey and Senator Bob Graham proposed a National Presidential Debates Act that would require recipients of public funds to participate in three presidential debates employing confrontational formats. In 2000, Rep. Jesse Jackson Jr. proposed lowering the criteria for third-party inclusion from 15 to five percent in the polls. But these and similar pieces of legislation have been overwhelmingly defeated.

In 1998, Larry Noble, the General Counsel of the FEC, released a powerful 37 page report claiming that there was "reason to believe" that corporate donations to the CPD were illegal contributions to major party candidates. Noble contended that the CPD's criteria for third-party inclusion were subjective, rather than "pre-established objective" as required by FEC regulations, and he questioned whether the criteria were even applied at all. Noble proposed a thorough investigation to determine exactly what took place between Clinton, Dole and the CPD that resulted in Perot's exclusion from the 1996 presidential debates. However, when Noble submitted his report, the six FEC commissioners – three Democrats and three Republicans – predictably voted to override his recommendation.

The only viable and lasting solution is to replace the CPD with a truly nonpartisan sponsor committed to maximizing voter education. "It is not a bi- or tripartisan commission that is needed, but a neutral commission," said Marvin Kalb, former moderator of "Meet the Press."^{xliii}

A truly nonpartisan sponsor – the Citizens' Debate Commission – was formed in January 2004 to replace the CPD, and it would restore voter education and transparency to the presidential debate process if successful.

The Citizens' Debate Commission consists of seventeen national civic leaders from the left, center and right of the political spectrum who are committed to maximizing voter education, including Chellie Pingree of Common Cause, Alan Keyes, Tom Gerety of the Brennan Center for Justice, Heritage Foundation co-founder Paul Weyrich, former FEC General Counsel Larry Noble, John B. Anderson, TransAfrica Forum founder Randall Robinson, Tony Perkins of the Family Research Council, Norman Dean of Friends of the Earth, Bay Buchanan, and Jehmu Greene of Rock the Vote. Over sixty civic organizations serve on the Advisory Board of the Citizens' Debate Commission, and dozens of major newspapers have endorsed the Citizens' Debate Commission, including the *Los Angeles Times*, *The Seattle Times*, *Chicago Sun-Times*, *The Oregonian*, *The*

Tennessean, St. Paul Pioneer Press, Christian Science Monitor, and Fort Lauderdale Sun-Sentinel.

Following in the footsteps of the League of Women Voters, the Citizens' Debate Commission aims to host presidential debates that serve American voters, not political parties, first. The Citizens' Debate Commission has proposed innovative and engaging formats, aspires to include the candidates that a majority of eligible voters want to see, promises to operate with full transparency and hopes to reverse the decline in debate viewership. Vigorously nonpartisan, the Citizens' Debate Commission would likely criticize the candidates if they attempted to manipulate critical elements of the debates at the expense of voter education.

For the 2004 general election, the Citizens' Debate Commission has announced sites and dates for five presidential debates and one vice-presidential debate to be held in colleges and universities around the country. The major party nominees should accept the invitation to participate in debates hosted by the Citizens' Debate Commission.

Conclusion

The general election presidential debates are the most important events in the process of selecting a President. They have traditionally given the American people an opportunity to see the popular candidates discuss important issues in an unscripted manner.

Presidential debates were run by the civic-minded and nonpartisan League of Women Voters until 1988, when the national Republican and Democratic parties seized control of the debates by establishing the bipartisan, corporate-funded Commission on Presidential Debates (CPD). Posing as an institution committed to voter education, the CPD deceptively runs the debates in the interest of the national Republican and Democratic parties, not the American people. Negotiators for the Republican and Democratic nominees draft secret debate contracts called Memoranda of Understanding that dictate precisely how the debates will be structured; the CPD merely implements and conceals the contracts, shielding the major party candidates from public criticism and public accountability.

Such deceptive major party control severely harms our democracy. Candidates that voters want to see are often excluded; issues the American people want to hear about are often ignored; the debates have been turned into a series of glorified bipartisan news conferences, in which the candidates exchange memorized soundbites; and debate viewership has plummeted, with twenty-five million *fewer* people watching the 2000 presidential debates than watching the 1992 presidential debates.

A Citizens' Debate Commission comprised of seventeen national civic leaders has been formed to improve the presidential debates. The major party candidates should accept the invitations to participate in the legally sound, transparent and informative debates proposed by the Citizens' Debate Commission.

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- ^{iv} Rev. Rul. 86-95, August 1986.
- ^v League of Women Voters, Press Release, 3 October 1998.
- ^{vi} Howell Raines, “Two Party Chairmen Weigh Plan to Assume Debates’ Sponsorship,” *New York Times*, 16 May 1984.
- ^{vii} House Committee on House Administration, *Presidential Debates: Hearing Before the Subcommittee on Elections of the House Committee on House Administration*, 103d Cong., first session, 17 June 1993, Washington, 90.
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- ^x Scott Reed, interview by George Farah (executive director of Open Debates and author of *No Debate*), 2 April 2001.
- ^{xi} Frank Fahrenkopf, interview by George Farah, 27 March 2001.
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- ^{xiii} Frank Donatelli, interview by George Farah, 12 October 2001.
- ^{xiv} David Von Drehle, “The Debates: Defining Moments,” *Washington Post*, 22 October 2000.
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- ^{xix} Committee for a Unified Independent Party, press conference, Washington, D.C., 8 May 2000.
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- ^{xxviii} Bobby Burchfield, interview by George Farah, 5 April 2001.
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