



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Chair Ann M. Ravel and Commissioner Ellen L. Weintraub
on MUR 6869 (Commission on Presidential Debates)
and REG 2014-06 (Amendment of 11 C.F.R. § 110.13(c))**

The Commission recently considered both an enforcement matter and a rulemaking petition concerning the criteria that a nonprofit corporation may use to select candidates for debates. Leveling the Playing Field ("LTPF"), a nonprofit organization that "seeks to break the two major parties' stranglehold on the democratic process,"¹ filed a complaint against the Commission on Presidential Debates ("CPD") alleging that CPD used impermissible criteria to exclude independent and third-party candidates from its debates. LTPF also filed a rulemaking petition asking the Commission to revise its rules to prohibit the use of criteria that prevent independent and third-party candidates from participating in debates.²

Although the Commission voted unanimously to find no reason to believe that CPD violated the current rules,³ we voted in favor of opening a rulemaking to consider whether the existing rules are adequate to ensure that debates are conducted fairly and without a bias against non-major-party candidates.⁴

Commission regulations require debate staging organizations like CPD to "use pre-established objective criteria to determine which candidates may participate in a debate."⁵ Nomination by a political party may not be the sole objective criterion.⁶ Since 2000, CPD has used the same criteria for each of its debates: (1) evidence of the candidate's constitutional eligibility to serve; (2) evidence of ballot access on enough state ballots to have at least a

¹ Complaint in MUR 6869 (Commission on Presidential Debates), dated Sept. 10, 2014, at 6 ("LTPF Complaint").

² See Commencing Document in REG 2014-06 Amendment of 11 C.F.R. 110.13(c), dated Sept. 11, 2014, *available at* <http://sers.fec.gov/fosers/showpdf.htm?docid=312656>.

³ Certification in MUR 6869 (Commission on Presidential Debates), dated July 13, 2015.

⁴ See Certification for Level the Playing Field Petition for Rulemaking, dated July 16, 2015, *available at* <http://sers.fec.gov/fosers/> (under REG 2014-06). Our fellow Commissioners opposed opening a rulemaking, and therefore there were not the four votes required to proceed. See 52 U.S.C. § 30106(c) (formerly 2 U.S.C. § 437c(c)) (requiring "the affirmative vote of 4 members of the Commission" in order to engage in rulemaking).

⁵ 11 C.F.R. § 110.13(c).

⁶ *Id.*

mathematical chance of winning in the general election; and (3) at least 15 percent support across five national polls.⁷ These criteria satisfy the requirements of section 110.13(c).


However, as Level the Playing Field has pointed out, the effect of the 15-percent polling threshold has been that, since its adoption, only the two major party candidates have appeared in the debates.⁸ The Commission's regulations require that nomination by a major party may not be the sole objective criterion to determine who may participate in a debate. However, the criteria established by CPD seem to have accomplished the same result by different means. This problem has not gone unnoticed: the Commission received more than 1200 comments urging it to open a rulemaking, with CPD as the sole commenter opposing the petition.

The FEC has an important role to play in ensuring broad participation in our political process, including in our public dialogue. At a time when an increasing number of Americans identify as independents,⁹ we should not be satisfied with regulations that may be preventing their points of view from being represented in public debate. At a minimum, we ought to engage with the public on this issue. It has been over twenty years since the Commission has taken a serious look at its rules on candidate debates. Such a re-examination is long overdue.

7/29/15
Date


Ann M. Ravel
Chair

7/29/15
Date


Ellen L. Weintraub
Commissioner

⁷ First General Counsel's Report in MUR 6869 (Commission on Presidential Debates), dated June 17, 2015, at 4-5.

⁸ LTPF Complaint at 32; see generally *id.* at 20-25, 32-48.

⁹ Based on data from 2014, only 55 percent of Americans identify as a Democrat or a Republican, down from 63 percent in 2004. See *A Deep Dive Into Party Affiliation*, PEW RESEARCH CENTER (Apr. 7, 2015), <http://www.people-press.org/2015/04/07/a-deep-dive-into-party-affiliation/>. In 1965 (50 years ago), 75 percent of Americans affiliated with one of the two major parties. See *id.*