



The Center for  
Voting and Democracy

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December 15, 2014

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

Re: Petition for Rulemaking from Level the Playing Field to Revise and Amend 11 C.F.R. § 110.13(c)

Dear Mr. Knop:

FairVote: The Center for Voting and Democracy is a national, non-partisan organization that has studied the impact of election rules and proposed changes to promote participation and fair representation since 1992. Our Board of Directors includes former Republican Congressman and independent presidential candidate John B. Anderson, who strongly supports the recommendations in this letter.

We submit these comments to urge the Commission to initiate a rulemaking and to amend 11 C.F.R. § 110.13(c) (the “Regulation”) to afford independent and minor party candidates an alternative avenue by which to qualify for presidential and vice presidential debates. Since the Commission on Presidential Debates (“CPD”) adopted the current criteria for inclusion, which require that candidates have the support of at least 15% of the national electorate from the average of five public opinion polls, no independent or minor party candidate has participated in a presidential or vice presidential debate. The exclusionary effect of the CPD’s inclusion criteria runs counter to the objectives of the Federal Election Campaign Act and public opinion.

Affording independent and minor party candidates the opportunity to participate in the presidential debates serves the underlying educational goals of the Federal Election Campaign Act and better respects the preferences of American voters. Americans consistently support including more than two candidates in debates, have increasingly chosen to register to vote as unaffiliated or with a minor party, and have increasingly voted for minor party and third party candidates in recent elections.<sup>1</sup>

The Commission has stated that a primary purpose of candidate debates is voter education.<sup>2</sup> Inclusion of at least one additional candidate in presidential debates would broaden the substantive discussion within the debates.<sup>3</sup> For example, Ross Perot’s inclusion brought the national deficit to

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<sup>1</sup> In 2014, ten winning candidates or governors did not win a majority, which was the highest number in a century. Independents were elected to be governor in Alaska in 2014 and in Rhode Island in 2010.

<sup>2</sup> See *Funding and Sponsorship of Federal Candidate Debates*, 44 Fed. Reg. 76734, 76734 (Dec. 27, 1979).

<sup>3</sup> See *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (acknowledging that minor party candidates introduce new ideas to political debates).

the political forefront in 1992<sup>4</sup>, while John Anderson's 1980 presidential campaign drew support for its fiscal conservatism mixed with environmental protection and socially liberal positions.<sup>5</sup> As reflected by these examples, the inclusion of minor party candidates will broaden what is discussed in presidential debates and deepen their educational impact.

Opinion polling has clearly demonstrated that American voters support the inclusion of independent and minor party candidates in the debates. The proportion of Americans favoring the inclusion of minor party candidates has remained strong since the CPD first adopted the 15% threshold.<sup>6</sup> Including independent and minor party candidates in televised debates has also been directly linked to increased voter turnout in the general election.<sup>7</sup> As a result, the Commission should initiate a rulemaking and amend the Regulation to provide an alternative method for including candidates in the presidential and vice presidential debates.

We agree with Level the Playing Field's concerns about relying exclusively on polls as the standard for candidate inclusion. Level the Playing Field's proposed signature method should be adopted as a viable alternative means of candidate qualification. The signature method allows a particularly strong independent or minor party candidate to qualify for inclusion in presidential and vice presidential debates earlier in the year and with the same degree of certainty as a major party candidate. In addition, the signature method does not rely excessively on name recognition and the associated fundraising typically required to establish and maintain that name recognition.

The necessary infrastructure for the signature method is already well-established. In most states, presidential candidates are required to obtain signatures to gain access to the primary or general election ballot. This process may be safeguarded from potential fraud and partisan abuse by requiring candidates seeking inclusion in the debates to verify the signatures gathered for submission to the CPD using already-existing best practices for signature verification. Unverified signatures would not count toward the national total for that candidate.

Public scrutiny would also play a role in ensuring that only legitimate candidates entered the field. Once the new rules for participation became widely known, a petition attempt by a frivolous candidate would attract widespread attention. If one political party attempted to include an "attack dog" candidate to draw support away from another candidate, that attempt would surely backfire and be easily uncovered, resulting in public criticism of those who attempt it. Similar pressures

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<sup>4</sup> See Sandy Grady, *Without Ross Perot, There Would Be No Deficit Deal*, ORLANDO SENTINEL, Aug. 5, 1993, [http://articles.orlandosentinel.com/1993-08-05/news/9308050846\\_1\\_1ross-peront-clinton-media-trend](http://articles.orlandosentinel.com/1993-08-05/news/9308050846_1_1ross-peront-clinton-media-trend).

<sup>5</sup> See Walter Shapiro, *John Anderson: The Nice Guy Syndrome*, THE ATLANTIC, Feb. 1, 1980, available at <http://www.theatlantic.com/magazine/archive/1980/02/john-anderson-the-nice-guy-syndrome/306028/>.

<sup>6</sup> See *Debate Commission Excludes Perot*, CNN, Sept. 17, 1996, <http://cgi.cnn.com/ALLPOLITICS/1996/news/9609/17/debate.announce/> (stating that more than 60 percent of Americans favored Perot's inclusion in the 1996 debates); THOMAS E. PATTERSON ET AL., VANISHING VOTER PROJECT, 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) (finding that 56 percent of Americans think debates would be stronger with independent candidates); Frank Newport, *Americans Split on Need for Third Party*, GALLUP (Sept. 12, 2012), <http://www.gallup.com/poll/157427/americans-split-need-third-party.aspx/> (finding increasing support for the inclusion of independent candidates since 2003).

<sup>7</sup> See Patterson, *supra* 5 (noting sharp rise in voter turnout due to Perot's participation in 1992 debates).

could keep celebrity stunts from obtaining the necessary signatures to participate.

We would like to emphasize that the focus of our concern is with the use of a polling threshold as the *exclusive* means of gaining access to the presidential debates; we do not oppose the use of polling as a debate selection criterion so long as candidates have an alternative means of qualifying for inclusion, such as through the proposed signature method. Indeed, the Level the Playing Field petition proposes the signature-gathering standard as an additional alternative means to secure inclusion in the debate rather than a substitute means. As the Petition explains, Level the Playing Field does not “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.*”<sup>8</sup>

FairVote appreciates our opportunity to comment on this Petition and urges the Commission to initiate a rulemaking to revise and amend the Regulation as these comments suggest.

Respectfully Submitted,

Robert Richie  
Executive Director, FairVote

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<sup>8</sup> Petition at 23 (emphasis added).