Arthur DiBianca
619 Friar Tuck Lane
Austin, TX 78704

IRS EO Classification
Mail Code 4910DAL
1100 Commerce St.
Dallas, TX 75242-1198

October 12, 2008

Submitted by e-mail to eoclass@irs.gov

To Whom It May Concern:

I hereby make a complaint (referral) against Commission on Presidential Debates. Form 13909 is attached, along with 6 pages of supporting documentation.

Please send me an acknowledgement of your receipt of this complaint (referral).

Sincerely,

Arthur DiBianca

Form **13909**
(August 2007)

Department of the Treasury — Internal Revenue Service

Tax-Exempt Organization Complaint (Referral) Form

1. NAME OF REFERRED ORGANIZATION: Commission on Presidential Debates

   Street Address: 1200 New Hampshire Ave NW #445

   City/State/Zip Code: Washington, DC 20036

   Date of Referral: October 12, 2008

2. ORGANIZATION'S EMPLOYER IDENTIFICATION NUMBER (EIN): unknown

3. NATURE OF VIOLATION:

- ☐ Directors/officers/persons are using income/assets for personal gain
- ☐ Organization is engaged in commercial, for-profit business activities
- ☐ Income/assets are being used to support illegal or terrorist activities
- ☒ Organization is involved in a political campaign
- ☐ Organization is engaged in excessive lobbying activities
- ☐ Organization refused to disclose or provide a copy of Form 990
- ☐ Organization failed to report employment, income, or excise tax liability properly
- ☐ Organization failed to file required federal tax returns and forms
- ☐ Organization engaged in deceptive or improper fundraising practices
- ☐ Other (describe):

4. DETAILS OF VIOLATION:

   Name(s) of Person(s) Involved: Frank J. Fahrenkopf, Jr.; Paul G. Kirk, Jr.; Janet Brown; and others

   Organizational Title(s): Fahrenkopf: Co-Chairman; Kirk: Co-Chairman; Brown: Executive Director

   Date(s): October 7, 2008

   Dollar Amount(s) (if known): unknown

   Description of activities: Exclusive political candidate forum. Please see attached pages.

5. SUBMITTER INFORMATION:

   Name: Arthur DiBianca

   Occupation or Business:

   Street Address: 619 Friar Tuck Lane

   City/State/Zip Code: Austin TX 78704

   Telephone: 512-707-2809

   ☐ I am concerned that I might face retaliation or retribution if my identity is disclosed.

6. SUBMISSION AND DOCUMENTATION: The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to eoclass@irs.gov.

TAX EXEMPT ORGANIZATION COMPLAINT (REFERRAL) INSTRUCTIONS

General Information

The information provided on this form will help the Internal Revenue Service (IRS) determine if there has been a violation of federal tax law. Submission of this form is voluntary.

Upon receipt of this form, the IRS will send you a letter acknowledging receipt of the information you submitted. If at a later date you wish to submit additional information regarding the organization, please attach a copy of the form initially submitted, and send it to the address shown above.

Specific Instructions

1. **ORGANIZATION NAME AND ADDRESS:** Provide the current name and address of the organization. If the organization has used prior or multiple name(s) or address(es), also provide that information.

2. **EMPLOYER IDENTIFICATION NUMBER:** Provide the organization's employer identification number (EIN). The EIN is a nine-digit number, issued by the IRS, that the organization uses for tax purposes (like a Social Security Number (SSN) for an individual). If the EIN is unavailable, include a state nonprofit corporation registration number, if available.

3. **NATURE OF VIOLATION:** Mark the description that describes the organization's alleged violation. More than one line may apply. If none of the descriptions appear to apply, briefly state the issue on the Other line.

4. **DETAILS OF THE VIOLATION:** Provide specific details of the alleged violation including names, actions, places, amounts, dates, and the nature of any evidence or documentation (who, what, where, when, how). Include the names of other organizations, entities, or persons that may be involved with the organization, providing EINs or SSNs, if available.

5. **YOUR INFORMATION:** Provide your name, address, and business or occupation. Include your daytime telephone number, in case we wish to contact you. The acknowledgement letter will be sent to the address you provide.

   If you are concerned that you may face retribution if your identity is disclosed, check the appropriate box. You may enter "Anonymous" for Submitter's Name if you do not want to be identified.

6. **SUBMISSION AND DOCUMENTATION:** Mail the completed form, including any supporting documentation that you would like for us to review, to the address provided on the form. You may also fax or email the completed form and any supporting documentation to the fax number and email address provided on the form. Include a cover letter describing the documentation or evidence you are providing. If you have already received an acknowledgment letter, include a copy of that letter. If possible, please try to submit all documentation at the same time.

   If your referral relates to a church please be aware that Congress has imposed special limitations, found in IRC section 7611, on how and when the IRS may conduct civil tax inquiries and examinations of churches. You can find out more about these special limitations in Pub. 1828, Tax Guide for Churches and Religious Organizations, in the section on Special Rules Limiting IRS Authority to Audit a Church.

7. **CLAIM FOR REWARD:** To claim a reward for providing this information to the IRS, file Form 211, Application for Reward for Original Information.

8. **NOTE:** Federal law prohibits the IRS from providing you with status updates or information about specific actions taken in response to the information you submit.

1. INTRODUCTION

The **Commission on Presidential Debates** ("CPD") sponsored an exclusive televised presidential candidate forum in Nashville, Tennessee on October 7, 2008.

The forum included John McCain, the Republican Party candidate, and Barack Obama, the Democratic Party candidate. CPD refused to allow any other candidates to participate in the forum.

This complaint will demonstrate that CPD's sponsorship of this forum was a major intervention in the 2008 presidential campaign, and therefore that CPD does not qualify as a 501(c)(3) tax-exempt organization.

2. BACKGROUND

CPD currently claims 501(c)(3) tax-exempt status.

CPD has sponsored presidential candidate forums during the last several presidential election years. In 1992, CPD's forums included three presidential candidates: George Bush, Bill Clinton, and Ross Perot. Between 1992 and 1996, CPD adopted a new inclusion criterion, that all candidates must score at least 15 percent in multiple public opinion polls. Since then, in 1996, 2000, 2004, and now 2008, CPD's candidate forums have been limited to two candidates.

3. LIST OF CRITERIA

CPD's website (http://debates.org) lists the following three criteria as requirements for inclusion in its forums:

> 2008 Nonpartisan Selection Criteria
>
> The CPD's nonpartisan criteria for selecting candidates to participate in the 2008 general election presidential debates are:
>
> 1. Evidence of Constitutional Eligibility
>
> The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:
>
> a. is at least 35 years of age;
> b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
> c. is otherwise eligible under the Constitution.
>
> 2. Evidence of Ballot Access

> The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2008 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College, at least 270 votes, is elected President regardless of the popular vote.
>
> 3. Indicators of Electoral Support
>
> The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

I will refer to the first criterion as the "eligibility criterion", the second criterion as the "ballot criterion", and the third criterion as the "poll criterion".

4. ELIGIBILITY CRITERION

This criterion is reasonable and objective, and obviously does not have the effect of excluding any legally qualified candidates.

5. BALLOT CRITERION

According to the **Federal Election Commission** ("FEC"), approximately 140 persons have filed as presidential candidates during the 2007-2008 election cycle. It is likely that other individuals have declared themselves presidential candidates, and may appear on the ballot in at least one state, though they may not file with the FEC.

Most of these candidates appear on the ballot in only a few states, perhaps in one or zero states. Because of their limited ballot qualification, it is not possible for them to receive the 270 electoral votes necessary to be elected president.

There are six candidates who will appear on the ballot in enough states to have the opportunity to receive at least 270 electoral votes in the 2008 presidential election. In alphabetical order, those candidates are **Chuck Baldwin** (Constitution Party), **Bob Barr** (Libertarian Party), **John McCain** (Republican Party), **Cynthia McKinney** (Green Party), **Ralph Nader** (independent), and **Barack Obama** (Democratic Party).

It is not reasonable for CPD to host a televised forum involving over 140 candidates. The logistics would probably present unprecedented difficulties, and in a two-hour forum, each candidate would have less than one minute to present his or her positions. It is unlikely that there has been a candidate forum in American history involving over 140 candidates for a single office. It is reasonable to claim that the result would be confusing, rather than educational, to most voters. Therefore, the ballot criterion is a reasonable criterion for limiting the candidates to a manageable number.

The contents of state ballots are generally public information, well-publicized for months before the election. Therefore, the ballot criterion is an objective criterion.

6. POLL CRITERION - NOT OBJECTIVE

The poll criterion is not objective.

The poll criterion requires a 15 percent result in the polls of "five selected national public opinion polling organizations."

Most national public polling organizations make a subjective decision to exclude most candidates from their presidential polls. This subjective decision by the polling organizations makes it impossible for most candidates to demonstrate a 15 percent level of support (or any other level, for that matter).

SurveyUSA, an often-cited national polling organization, in some cases asked its presidential preference question as follows:

"If the election for President were today, would you vote for ... (choices rotated) Republican John McCain? Democrat Barack Obama? Or one of the other candidates?"

In other cases, SurveyUSA asked the question as follows:

"If the election for President were today, would you vote for ... (choices rotated) Republican John McCain? Or, Democrat Barack Obama?"

SurveyUSA then reported results for "McCain", "Obama", and "Other".

SurveyUSA's polling methodology and reporting format make it impossible for any candidate other than John McCain and Barack Obama to demonstrate any particular level of support.

Additionally, I believe it is well accepted among polling organizations that the failure to include a candidate's name in a polling question will depress the results for that candidate, even if respondents are permitted to "volunteer" the candidate's name.

I request that you obtain information from other polling organizations, which I believe will confirm that most, if not all, national polling organizations exclude most non-Democratic, non-Republican candidates from their polling questions, and fail to report results for them.

Most polling organizations decide for themselves which candidates "matter" and which candidates "don't matter". However, this is a subjective decision by each polling organization. CPD cannot claim objectivity just because it refers to "poll results". On the contrary, the poll criterion only shifts the subjectivity to the polling organizations.

In order for the poll criterion to be objective, it would need to consider only polls whose presidential preference questions offer the names of all candidates who satisfy the ballot criterion. I believe that none of the polls considered by CPD have used such questions.

7. POLL CRITERION - NOT REASONABLE

Irrespective of its objectivity, the poll criterion is not reasonable.

A. Poll criterion is unnecessary

I mentioned earlier that the ballot criterion limits the number of qualifying candidates to six. There are many examples of forums (including televised forums) that have included at least six candidates for a single office. As an example, during the 2007-2008 presidential primary season, television news networks held televised forums that included as many as eight candidates seeking the Democratic Party nomination, and as many as ten candidates seeking the Republican Party nomination.

Additionally, it is possible for six candidates to achieve simultaneous poll results of at least 15 percent. Therefore, CPD concedes that a six-candidate forum is feasible.

Because the ballot criterion already limits the number of candidates to an easily manageable number, the poll criterion is unnecessary.

B. Poll criterion works against educational goals

CPD claims that its forums are intended to "provide the best possible information to viewers and listeners."

This is a difficult claim to sustain when CPD's poll criterion excludes four of the six electable candidates from its forum. Most news organizations, which are free to use their subjectivity in determining which candidates to report about, give nearly all of their attention to the Republican Party and Democratic Party candidates. Since voters will probably see little or nothing of the other four candidates in news reports, it would be more consistent with CPD's purported educational goals for CPD to include the other four candidates in its forums.

C. Poll criterion opposes voters' wishes

A Zogby International poll, released on August 15, 2008, reported that a majority of American voters felt that Bob Barr should "be included in presidential debates." It also reported that a plurality of American voters felt that Ralph Nader should "be included in presidential debates." Cynthia McKinney and Chuck Baldwin were apparently not included in this poll.

This Zogby poll is strong evidence that voters want to see more than two candidates in the CPD forums. The poll criterion therefore acts in direct opposition to voters' wishes.

8. POLL CRITERION - PROMOTES REPUBLICANS AND DEMOCRATS

I believe that the poll criterion has the intent and effect of promoting Republican and Democratic presidential candidates, while opposing all other presidential candidates.

The current poll criterion has been used in 1996, 2000, 2004, and now 2008. In each of those years, only two candidates satisfied the poll criterion: the Republican and Democratic Party candidates. Many other candidates have wished to participate, but have been denied participation by CPD.

There can be no doubt that the CPD forums have had the effect of increasing the exposure of the Republican and Democratic candidates, while preventing or limiting the exposure of all other candidates.

The fact that there is no exception to this pattern, as well as CPD's organizational structure and history, strongly suggest that this result is also CPD's intent. I request that you seek records from CPD to determine if there is evidence that CPD's intent is to ensure that only Republican and Democratic candidates are able to participate in CPD forums.

This effect (possibly with intent) is further evidence that CPD's forum was an intervention in the 2008 presidential campaign.

9. OTHER CANDIDATES WISHED TO PARTICIPATE

I believe that the four presidential candidates who satisfy the ballot criterion, but were not invited to CPD's October 7 forum, all wished to participate in the forum. I believe that CPD refused to allow them to participate. Some of the candidates issued press releases and other public statements expressing their desire to participate in the forum. I request that you seek information from those candidates, as necessary, to confirm that they wished to participate in the forum.

10. TECHNICAL ADVICE MEMORANDUM 9635003

IRS Technical Advice Memorandum 9635003 ("TAM") indicated that an exclusive candidate forum may or may not be an intervention in a campaign, depending on the facts and circumstances.

The TAM stated that the following factors should be considered:

> (1) Whether inviting all legally qualified candidates is impractical;
>
> (2) Whether the organization adopted reasonable, objective criteria for determining which candidates to invite;

(3) Whether the criteria were applied consistently and non-arbitrarily to all candidates; and

(4) Whether other factors, such as those discussed in Rev. Rul. 85-95, supra, indicate that the debate was conducted in a neutral, nonpartisan manner.

CPD's October 7 forum failed to meet these standards.

11. FORUM WAS A MAJOR INTERVENTION

Nielsen Media Research estimates that 63 million television viewers watched CPD's October 7 forum.

Because the forum's reach was so large, it was a serious and major intervention in the 2008 presidential campaign.

12. CONCLUSION

CPD's October 7, 2008 presidential candidate forum was a major intervention in the 2008 presidential campaign.

As a private organization, CPD may intervene in the presidential campaign, and promote or oppose candidates if it wishes to. It may not, however, claim tax-exempt 501(c)(3) status.

I request that you revoke CPD's 501(c)(3) classification, and require CPD to pay appropriate back taxes.