

LAW OFFICE OF  
**HARRY KRESKY**

250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL: HARRYKRES@AOL.COM

November 6, 2003

BY FAX AND OVERNIGHT DELIVERY

Ms. Retha Dixon  
General Counsel  
Federal Election Commission  
999 E. Street, NW  
Washington, DC 20463

Re: *Fulani & CUIP v. Dow Jonex, et al.*

Dear Ms. Dixon:

Enclosed please find original and three copies of revised first page pursuant to our telephone conversation of today.

Sincerely yours,



Harry Kresky

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2003 NOV - 7 A 11: 55

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MUR # 5395

THE FEDERAL ELECTION COMMISSION

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LENORA B. FULANI and COMMITTEE  
FOR A UNIFIED INDEPENDENT PARTY,

Complainants,

-against-

DOW JONES & CO., FOX NEWS CHANNEL,  
MSNBC, ABC, INC., CNN, and CBC POLITICAL  
EDUCATION LEADERSHIP INSTITUTE

Respondents.  
-----X

**VERIFIED COMPLAINT**

2003 NOV - 7 A 11: 55

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

This complaint alleges what is believed to be a pattern and practice of violating the Federal Election Commission's ("FEC") debates regulation by respondents and others involved in staging and sponsoring a series of debates among candidates for the 2004 Democratic Party presidential nomination.

Complainants Lenora B. Fulani, residing at 560 W. 43 St., NY, NY 10036, and the Committee for a Unified Independent Party ("CUIP"), incorporated under the Not for Profit Corporation Law of the State of New York and exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code, whose principal place of business is at 225 Broadway, NY, NY 10007, are, respectively:

- A citizen of the State of New York who ran for President in 1988, when she appeared on the ballot as an independent candidate in all 50 states, and in 1992 when she received \$2,011,929.42 in primary matching funds. In 1992 Dr. Fulani initially sought the Democratic nomination, but abandoned this effort when she was barred from two debates among Democratic Party primary candidates in New Hampshire, despite having raised more funds and received more primary matching funds than all but one of the included candidates. Dr. Fulani is considering commencing

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another effort to seek the Democratic Party nomination, but recognizes that unless she is included in the televised debates her candidacy has little chance of succeeding.

- CUIP is a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation. CUIP is considering sponsoring a debate aimed at independent voters and believes that the legal standards to which it is subject should be applied in an even handed manner.

Respondents Dow Jones & Co., Fox News Channel, MSNBC, ABC, Inc., CNN, and the CBC Political Education Leadership Institute are, on information and belief, corporations who have sponsored and staged presidential debates among candidates for the 2004 Democratic Party nomination. Their addresses can be found in Exhibit A.

On October 21 and 23, 2003 counsel for the complainants wrote to respondents requesting the criteria each used or was using to determine eligibility for the inclusion of candidates in the debates and when the criteria were adopted. Copies of the letters are annexed hereto as Exhibit A. To date only CNN has responded. (See Exhibit B)

The criteria are essential for complainant Fulani to determine the viability of the campaign she is contemplating and, as well, how to plan and implement her campaign so as to qualify for inclusion in the debates. Further, pursuant to 11 CFR Sec. 110.13(c):

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

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Respondents have, on information and belief, sponsored six debates among candidates seeking the Democratic Party nomination for the office of President of the United States: May 4, 2003 at the University of South Carolina, broadcast on ABC; September 4, 2003 at the University of New Mexico, broadcast on PBS and sponsored by the Congressional Hispanic Caucus; September 9, 2003 at Morgan State University Baltimore, MD), co-sponsored by the Congressional Black Caucus Political Education Leadership Institute and Fox News Channel; September 25, 2003 at Pace University (NY, NY), sponsored by the Wall Street Journal and broadcast on CNBC; October 9, 2003 in Phoenix, AZ, broadcast in CNN; October 26, 2003, Detroit MI, co-sponsored by the Congressional Black Caucus Political Education Leadership Institute and Fox News Channel. On information and belief, others are planned.

On information and belief, the debates are being coordinated by the Democratic National Committee ("DNC") and participants include those the DNC selects.<sup>1</sup> It is

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<sup>1</sup>In a front page article in the October 25, 2003 *New York Times* it was reported that:

For all the criticism, Democratic Party Officials defended the debates, saying they provided increasing national exposure for Democrats while giving them a forum to go after their ultimate target, President Bush.

"It's been a powerful way of delivering a tough critique of Bush and his administration," said Jim Mulhall, a communications strategist for the Democratic National Committee which has helped organize and negotiate the party's sanctioned debates.

\* \* \*

The debates came on top of several candidate forums, many of then televised as well. Swamped by requests from interest groups and the networks, the candidates called upon the Democratic National Committee earlier this year to bring some order to the process.

The party settled on a series of a half-dozen sanctioned debates. But the number of unsanctioned events has continued to grow.

difficult to discern what the objective criteria for inclusion are.<sup>2</sup> It surely is not fund raising. On information and belief, the gap in fund raising between the candidate who has raised the most amount of funds (Howard Dean with \$25,286, 851) and the least (Alfred Sharpton with \$256,129) is enormous.

Nor do the criteria appear to be tied to showing in the polls. In the 2000 presidential election, the Commission on Presidential Debates used a criteria of a showing of 15 percent in the polls. Among the included Democratic Party candidates, on information and belief, Carol Mosely Braun, Dennis Kucinich and Rev. Alfred Sharpton are showing 3, 3, and 5 percent respectively. Not all of candidates have held public office. Moreover, Gen. Wesley Clark was included in a debate eight days after he announced and, on information and belief, without having accomplished minimal fund raising or other objective benchmarks of campaign activity.

11 CFR Sec. 110.13(a) states that non-profit organizations that stage debates cannot, "endorse, support or oppose political candidates or political parties." However, it appears that all of the debate staging organizations, some of whom are non-profit organizations such as universities or political institutes, are working closely with the DNC in a manner that supports its efforts to achieve a Democratic Party victory in the upcoming presidential election by assuring that an array of candidates representative of various ideological points of view, geographic regions, and racial and ethnic identities, and sanctioned by party leaders, is presented to the voters.

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<sup>2</sup>Indeed, the response of CNN (Exhibit B) contains criteria that are so vague as to allow almost unbridled discretion. Only one of them sets a specific numerical threshold, and that one has not yet gone into effect. Nor does CNN state when its "criteria" were adopted.

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While the Democratic Party's interest in a debate process such as that described above is understandable, it is the responsibility of the Federal Election Commission to insure that it is not permitted to circumvent statutes and regulations that were enacted to ensure fairness to all candidates and parties. It is likewise the responsibility of Federal Election Commission to enforce those statutes and regulations designed to prevent corporations from using their economic power to influence federal elections and broadcasters and cablecasters from being used as instruments to advance a party or candidate's agenda.

It is respectfully submitted that the above described debate process not only violates the debates regulation (11 CFR Sec. 110.13), but the prohibition against corporate contributions and expenditures in connection with federal elections set forth in 2 U.S.C. Sec. 441b. On information and belief all of the staging organizations are either non-profit or for-profit corporations.

Complainants request immediate attention to the concerns raised herein in light of the ongoing pattern of disregard for the spirit and letter of the applicable statutes and regulations which has occurred and is likely to continue..

Dated: New York, N Y  
November 3, 2003

Respectfully submitted,

Law Office of Harry Kresky  
Attorney for Complainants  
250 West 57<sup>th</sup> St (Ste. 2017)  
New York, NY 10107  
(212) 581-1516

  
\_\_\_\_\_  
by Harry Kresky

VERIFICATION

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

JACQUELINE SALIT, being duly sworn, deposes and says that deponent is the Vice President of the Committee for a Unified Independent Party, a complainant herein, that she has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters deponent believes it to be true.

  
JACQUELINE SALIT

Sworn to before me  
this November 3, 2003

  
HARRY KRESKY  
Notary Public, State of New York  
No. 02KR7366215  
Qualified in New York County  
Commission Expires Feb. 28, 2004

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LAW OFFICE OF  
**HARRY KRESKY**

250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL HARRYKRES@AOL.COM

October 17, 2003

Norman Petty, Esq.  
Legal Department  
Dow Jones & Co.  
P.O. Box 300  
Princeton, NJ 08543

Dear Mr. Petty:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

On September 25, 2003 the *Wall Street Journal* co-sponsored a presidential candidate debate at Pace University among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours.

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Harry Kresky

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Encl A

LAW OFFICE OF  
**HARRY KRESKY**

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250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE 212-581-1516 FAX: 212-581-1352 E-MAIL. HARRYKRES@AOL.COM

October 27, 2003

Office of General Counsel  
Fox News Channel  
1211 Avenue of the Americas  
NY, NY 10036

Dear Sir or Madam:

Enclosed please find letter inadvertently sent to the wrong address on October 17, 2003.

Very truly yours,



Harry Kresky

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LAW OFFICE OF  
HARRY KRESKY

250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL HARRYKRES@AOL.COM

October 17, 2003

Office of General Counsel  
Fox News Channel  
1121 Avenue of the Americas  
NY, NY 10036

Dear Sir or Madam:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

I understand that on October 26, 2003 Fox News Channel will be co-sponsoring a presidential candidate debate among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours.

Harry Kresky

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LAW OFFICE OF  
**HARRY KRESKY**

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250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE 212-581-1516 FAX 212-581-1352 E-MAIL HARRYKRES@AOL.COM

October 17, 2003

Office of General Counsel;  
MSNBC  
One Microsoft Way  
Redmond, WA 98052

Dear Sir or Madam:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

On September 25, 2003 CNBC co-sponsored a presidential candidate debate at Pace University among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours.

Harry Kresky

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LAW OFFICE OF  
**HARRY KRESKY**

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TELEPHONE 212-581-1516 FAX 212-581-1352 E-MAIL HARRYKRES@AOL.COM

October 23, 2003

Scott Fain, Esq.  
Legal Department  
ABC, Inc.  
77 W. 66<sup>th</sup> St.  
NY, NY 10023-6298

Dear Mr. Fain:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

On May 3, 2002 ABC sponsored a presidential candidate debate in South Carolina among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours

  
Harry Kresky

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LAW OFFICE OF  
**HARRY KRESKY**

250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL: HARRYKRES@AOL.COM

October 23, 2003

Louise Sams, Esq.  
CNN Legal Department  
1 CNN Center  
14 North - Legal  
Atlanta, GA 30303

Dear Ms. Sams:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

On October 9, 2003 CNN co-sponsored a presidential candidate debate in Arizona among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours,

Harry Kresky

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LAW OFFICE OF  
**HARRY KRESKY**

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250 WEST 57<sup>TH</sup> STREET, SUITE 2017, NEW YORK, NY 10107  
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL: HARRYKRES@AOL.COM

October 17, 2003

Hon. Elijah Cummings  
Chair, Congressional Black Caucus  
1720 Massachusetts Ave. NW  
Washington, DC

Dear Congressman Cummings:

I am counsel to the Committee for a Unified Independent Party, a national not-for-profit whose purpose is to expand political participation, open up the electoral process and promote fairness for all voters and candidates regardless of party affiliation or non-affiliation.

I understand that on October 26, 2003 the CBC Political Education Leadership Institute will be co-sponsoring a presidential candidate debate among Democratic primary contenders. I am interested in knowing the criteria used to select the participants.

The FEC's debates regulation requires:

For all debates, staging organizations must use pre-established objective criteria to determine which candidates may participate in a debate.

11 CFR Sec. 110.13(c).

Please furnish me with a copy of the criteria used in determining which candidates to include and please indicate when these criteria were adopted.

Very truly yours.

Harry Kresky

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ONE CNN CENTER, Atlanta, GA 30303-2762

**STACEY E. WOLF**  
Senior Counsel  
404 827 2396  
Fax. 404 878 4138  
stacey.wolf@turner.com

October 31, 2003

VIA OVERNIGHT MAIL

Mr. Harry Kresky  
Law Office of Harry Kresky  
250 West 57<sup>th</sup> Street  
Suite 2017  
New York, NY 10107  
Telephone: (212) 581-1516  
Facsimile: (212) 581-1352

Dear Mr. Kresky:

I write in response to your letter to Louise Sams dated October 23, 2003. The candidate criteria CNN uses for its debates are as follows:

- (a) is the candidate actively campaigning;
- (b) the candidate's ability to fundraise/level of financial support;
- (c) has the candidate won 10% of the votes in a caucus or primary (when applicable);
- (d) where did the candidate stand in the public opinion polls

Sincerely,

Stacey E. Wolf

SEW/vt