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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

11:33

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

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DATE OF NOTIFICATION: 11/17/03,  
12/11/03, 12/23/03  
DATE ACTIVATED: 4/5/04  
  
EXPIRATION OF SOL: 5/4/08

**COMPLAINANTS:**

Jacqueline Salit  
Lenora B. Fulani  
Committee for a Unified Independent Party

**RESPONDENTS:**

Dow Jones  
Fox News Channel, L.L.C.  
MSNBC News  
C-SPAN  
WHO-TV  
WMUR-TV  
ABC TV, Inc.  
CNN  
Congressional Black Caucus Political Education  
Leadership Institute

**RELEVANT STATUTES:**

2 U.S.C. § 431(8)(A)  
2 U.S.C. § 431(9)(A) & (B)(i)  
2 U.S.C. § 441b  
11 C.F.R. § 100.73  
11 C.F.R. § 100.92  
11 C.F.R. § 100.132  
11 C.F.R. § 100.154  
11 C.F.R. § 110.13

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

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1 **I. INTRODUCTION**

2 Complainants make claims in connection with the candidate selection process in a series  
3 of eight debates involving Democratic party candidates for the 2004 presidential nomination.  
4 According to the complaint, Dow Jones (Wall Street Journal), Fox News Channel ("FOX"),  
5 MSNBC, ABC TV, Inc. ("ABC"), CNN, and the Congressional Black Caucus Political  
6 Education Leadership Institute ("CBCT") "are corporations who have sponsored and staged  
7 presidential debates among candidates for the 2004 Democratic Party Nomination." Complaint  
8 at 2. The complaint alleges that "objective criteria" to determine who could participate in these  
9 debates is "difficult to discern." *Id.* at 3-4. The complaint also states that all of the debate  
10 staging organizations appear to be working closely with the Democratic National Committee  
11 ("DNC") "in a manner that supports its efforts to achieve a Democratic Party victory in the  
12 upcoming presidential election ...." *Id.* at 4. The debate process, according to the complaint,  
13 violates the debate regulation in 11 C.F.R. § 110.13 and the prohibition against corporate  
14 contributions in 2 U.S.C. § 441b. *Id.* at 5.

15 In a supplement to the complaint, complainants make allegations concerning the  
16 treatment of Senator Joe Lieberman, who apparently was interviewed on MSNBC after the  
17 November 24, 2003, debate. According to the supplemental complaint, Lieberman did not travel  
18 to Iowa due to a congressional vote, nor did Senator John Edwards or Senator John Kerry, but  
19 Edwards and Kerry were included in the debate via satellite hookup from outside the Senate  
20 chambers. Lieberman allegedly tried to be included when he learned of the arrangements, but  
21 received a phone call from Terry McAuliffe, Chair of the DNC, stating that he was not going to

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1 be included.<sup>1</sup> The supplemental complaint alleges that the Democratic party is determining who  
2 participates, not the staging organizations on the basis of pre-established criteria, in violation of  
3 11 C.F.R. § 110.13(c).

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 The complaint addresses whether a number of 2004 presidential primary debates either  
6 staged by or covered by press entities and a nonprofit corporation complied with the candidate  
7 debate regulations. These debates appear to have been open only to Democratic presidential  
8 candidates. Debates held prior to a primary election or caucus may be limited to candidates  
9 seeking the nomination of one party. 11 C.F.R. § 110.13(c). Due to the large number of debates,  
10 the Democratic presidential candidates apparently asked the DNC to help organize and restore  
11 order to the debate process. Jim Rutenberg, *Debates Lose Allure for Some in Democratic Field*,  
12 The New York Times, Oct. 25, 2003. This series of "DNC-sanctioned" debates are the subject of  
13 the complaint. Complaint at 3-5. The complaint, as supplemented, references the following  
14 debates:

<u>Date</u>	<u>Entity Sponsoring/Staging/Broadcasting Debate</u>	<u>Location</u>
5/3/03	ABC (broadcast and staged) <sup>2</sup>	U. of South Carolina
9/4/03	PBS (broadcast); Cong. Hispanic Caucus (staged) <sup>3</sup>	U. of New Mexico

<sup>1</sup> Lieberman originally was invited but declined an invitation to participate in the debate Associated Press, *The Nation; Senators to Join Debate via Satellite*, Los Angeles Times, November 24, 2003.

<sup>2</sup> The complaint states that the debate occurred on May 4, 2003; however, according to ABC, the debate occurred on May 3, 2003. Complaint at 3; ABC Response at 1.

<sup>3</sup> Neither PBS nor the Congressional Hispanic Caucus is referred to as a "respondent" in the complaint, nor does the complaint appear to make any specific allegations as to them. These two entities were not notified of the complaint because they were not captioned in the complaint and the complainants did not contact either of these entities as to their candidate selection criteria as they did with the captioned respondents. Additionally, the complaint referenced the alleged violations against corporations, both for-profit and nonprofit. The Congressional Hispanic Caucus is not a corporation (although there is a Congressional Hispanic Caucus Institute, Inc )

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9/9/03	CBCI (staged); FOX (broadcast)	Morgan St. U. (Baltimore)
9/25/03	Dow Jones (staged); CNBC (broadcast)	NY, NY
10/9/03	CNN (broadcast and staged)	Phoenix, AZ
10/26/03	CBCI (staged); Fox News Channel (broadcast)	Detroit, MI
11/24/03	MSNBC (broadcast and staged); WHO-TV (broadcast) <sup>4</sup>	Des Moines, IA
12/9/03	WMUR-TV(broadcast and staged); ABC-TV (broadcast and staged); C-SPAN (broadcast)	New Hampshire

1  
2           The respondents are press entities and one nonprofit organization that staged and/or  
3 covered the debates via television broadcast. Three respondents stated that they simply broadcast  
4 a debate or debates. The remaining respondents appear to have participated to varying degrees in  
5 staging debates. One of the respondents staging debates is a nonprofit organization. The other  
6 respondents staging debates are press entities and are corporations, except FOX, which is a  
7 Limited Liability Company (“LLC”). This report examines the press entities covering or carrying  
8 the debates, and each of the press entities and the nonprofit organization staging debates, for  
9 compliance with the candidate debate regulations.

10           **A. Covering or Carrying (Broadcasting) Debates**

11           C-SPAN and WHO-TV were named in the complaint, but only covered or carried  
12 debates, and did not participate in the staging of the debates. C-SPAN Response at 1-2;  
13 WHO-TV Response at 1. Additionally, FOX received exclusive telecast rights to the debates  
14 organized and staged by the CBCI, a nonprofit organization. CBCI Response at 2; FOX  
15 Response at 1-2. In other words, C-SPAN, WHO-TV and FOX do not appear to have been  
16 staging organizations; instead, they appear merely to have covered or carried debates staged by

<sup>4</sup> The information pertaining to the debates held on November 24, 2003 in Des Moines, Iowa and December 9, 2003 in New Hampshire originated from correspondence from the complainants received on November 21, 2003.

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1 others. Thus, the only question is whether the “press exemption” of 2 U.S.C. § 431(9)(B)(i)  
2 applies to these entities’ coverage of the debates. Three criteria must be met for the application  
3 of this press exemption:<sup>5</sup> (1) the entity must be a press entity; (2) the press entity cannot be  
4 owned by a candidate or political party (with exceptions not relevant here); and (3) the press  
5 entity must be acting as a press entity. See MURs 4956, 4962 and 4963 (LaRouche); AOs 1996-  
6 16, 1996-41, and 1982-44 (citing *Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215  
7 (S.D.N.Y. 1981)).

8 C-SPAN, WHO-TV and FOX are broadcasting stations and therefore each qualify as a  
9 press entity. None of these respondents appear to be owned or controlled by a candidate or  
10 political party. By broadcasting the relevant debates as part of their *bona fide* news coverage,  
11 these respondents were acting as press entities pursuant to the Act and Commission Regulations.  
12 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132. The costs incurred by C-SPAN, WHO-  
13 TV and FOX, therefore, are not “contributions” or “expenditures” pursuant to the Federal  
14 Election Campaign Act of 1971, as amended (the “Act”). *Id.* Accordingly, this Office  
15 recommends that the Commission find no reason to believe that C-SPAN, WHO-TV or FOX  
16 violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 as it pertains to coverage of the 2004  
17 Democratic primary presidential debates.

### 18 **B. Staging Debates**

19 The following entities named by the complainants appear to have participated to some  
20 degree in staging one or more of the debates: CNN, WMUR-TV, MSNBC, ABC, CBCI and

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<sup>5</sup> According to the legislative history, Congress intended the “press exemption” to preserve the role of the press and related First Amendment rights. “[I]t is not the intent of Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus, [the press exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns ” H R. Rep. No. 93-1239, 93d Cong., 2d Sess at 4 (1974).

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1 Dow Jones. All of the entities except CBCI are press entities. CBCI is a District of Columbia  
2 nonprofit organization and has filed for tax-exempt status pursuant to Section 501(c)(4) of the  
3 Internal Revenue Code. Commission Regulations exclude costs incurred by press entities and  
4 certain nonprofit organizations staging candidate debates, provided that they meet certain  
5 requirements discussed below. 11 C.F.R. §§ 100.92, 100.154 and 110.13. None of the press  
6 entities appear to have been owned or controlled by any candidate, political party or political  
7 committee and therefore may stage candidate debates, provided that they comply with debate  
8 regulations. 11 C.F.R. § 110.13(a)(2). CBCI, a nonprofit organization described in  
9 26 U.S.C. § 501(c)(4), does not appear to endorse, support or oppose political candidates or  
10 political parties and therefore may stage candidates debates, provided that CBCI complies with  
11 debate regulations. 11 C.F.R. § 110.13(a)(1), *see infra* below. These regulations address the  
12 structure of the debates, candidate selection criteria and funding of the debates.

13 11 C.F.R. § 110.13(b) & (c). The complaint focuses on candidate selection criteria, along with  
14 allegations that the DNC worked closely with the staging organizations in staging the debates.  
15 The complainants, however, identified only a single candidate whom they allege was excluded  
16 from a single debate. This report will address the merits of these allegations in the complaint.

17 In support of the complainants' position that the entities staging debates violated the Act,  
18 the complaint states that the respondents have not used objective criteria because there appear to  
19 be no "minimal fund raising or other objective benchmarks of campaign activity" by the  
20 candidates that the sponsoring organizations deemed necessary to merit inclusion in the debates.  
21 Complaint at 4. However, Commission precedents for measuring objectivity, "do not require  
22 rigid definitions or required percentages." *See* MURs 4956, 4962 and 4963 (Gore 2000), First  
23 General Counsel's Report ("GCR #1") at 19. "Objective" does not mean that the candidate

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1 selection criteria must be stripped of all subjectivity or be judged only in terms of tangible,  
2 arithmetical cut-offs. Rather, it appears they must be free of ‘content bias,’ and not geared to the  
3 ‘selection of certain pre-chosen participants.’” *Id.* at 23. *Cf. Arkansas Educational Television v.*  
4 *Forbes* 523 U.S. 666, 683 (1998) (in a case involving a First Amendment challenge to state-  
5 owned television network’s decision on a candidate’s exclusion from a televised debate, the  
6 Supreme Court observed that “objectivity” is based on a “reasonable, viewpoint neutral exercise  
7 of journalistic discretion.”). Thus, the respondents will have met the “objectivity” requirement if  
8 they can show that the selection of candidates were not based on “content bias” or favoritism  
9 among the Democratic candidates.

10 1. CNN

11 In its response, CNN addresses its candidate selection criteria, which are the same criteria  
12 examined and allowed by the Commission in a previous matter pertaining to the 2000  
13 presidential primary debates.<sup>6</sup> *See* MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 30-36,  
14 40. CNN stated it based its candidate selection on pre-existing criteria, as supplied to the  
15 complainants: whether the candidate was actively campaigning; the candidate’s ability to  
16 fundraise or level of financial support; whether the candidate won 10% of the votes in a caucus  
17 or primary (when applicable); and the candidate’s standing in the public opinion polls. *Id.*;  
18 Complaint at Exhibit B. In MURs 4956, 4962 and 4963, there was no evidence indicating that  
19 CNN’s pre-established criteria were “geared to selecting pre-chosen participants” and therefore  
20 “appear to have been sufficiently ‘objective’ for the purposes of the statute and regulations.” *Id.*  
21 at 32. Rather, the criteria appeared to be geared towards examining the levels of public interest

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<sup>6</sup> In GCR #1 for MURs 4956, 4962 and 4963, we also analyzed and applied these criteria to Lyndon LaRouche, a Democratic presidential candidate and complainant. Mr. LaRouche did not meet CNN’s candidate selection criteria.

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1 and organization of the candidate's campaign. *Id.* Likewise, in this matter there is no evidence  
2 indicating that CNN's identical pre-existing candidate selection criteria violate the candidate  
3 debate regulations. Accordingly, we recommend that the Commission find no reason to believe  
4 that CNN violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 in this matter.

5 **2. WMUR-TV**

6 WMUR-TV, in its response, challenged the validity of the complaint by stating that the  
7 complaint failed to allege any specific violations. It also addressed the candidate selection  
8 criteria. WMUR-TV Response. Like CNN, WMUR-TV was also a respondent in MURs 4956,  
9 4962 and 4963 (Gore 2000). In its response to the 2000 complaint, WMUR-TV provided  
10 selection criteria similar to its response in this matter. In both matters, WMUR-TV asserted that  
11 its criteria required the candidates to be recognized as active candidates on a national level as  
12 evidenced by the candidates' standing in public opinion polls and their ability to attract national  
13 news coverage, or "newsworthiness."<sup>7</sup> WMUR-TV Response at 3, note 1; MURs 4956, 4962  
14 and 4963 (Gore 2000), GCR #1 at 30. These criteria are "objective" in that they do not appear to  
15 be geared towards selecting pre-chosen participants, nor do they appear to exclude candidates  
16 based on content bias. *See* MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 23, 30-32, 36-  
17 37. Accordingly, we recommend that the Commission find no reason to believe that WMUR-TV  
18 violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 in this matter.

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<sup>7</sup> In MURs 4956, 4962 and 4963 (Gore 2000), WMUR-TV's criteria analyzed candidates on the national and state (New Hampshire) level. In this matter, WMUR-TV apparently only analyzed candidates based on national criteria. Also in the former matter, WMUR-TV included an additional criterion of whether the candidate had an organized campaign structure both in New Hampshire and nationally.

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1                   **3. MSNBC and Dow Jones.**

2                   The National Broadcasting Company, Inc. (“NBC”), which responded on behalf of  
3                   MSNBC, CNBC,<sup>8</sup> and Dow Jones, asserts that candidate selection “was based on sound editorial  
4                   judgment, and included candidates considered to be the major candidates for the Democratic  
5                   Party nomination.” *Id.* at 1-2. Factors included:

6                   whether the candidates were actively campaigning on a national basis for the Democratic  
7                   Presidential nomination, whether they had national reputations as significant candidates  
8                   among objective political and journalistic organizations across the country, whether the  
9                   candidates had demonstrated the potential to fundraise successfully, and how the  
10                  candidates stood in public opinion polls.

11  
12                  NBC Response at 1-2.

13                  Again, these criteria are consistent with those of the other respondents, discussed above,  
14                  in that they appear to be directed towards examining public interest and the level of  
15                  competitiveness of the candidate’s campaign. These criteria are “objective” in that they do not  
16                  appear to be geared towards selecting pre-chosen participants, nor do they appear to exclude  
17                  candidates based on content bias. *See* MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 23,  
18                  30-32, 36-37.

19                  Unlike other respondents, NBC admits that it consulted with the DNC about its  
20                  candidate selection for the debate. According to a newspaper article cited in the complaint, due  
21                  to the large number of requests for debates from interest groups and networks, the candidates  
22                  asked the Democratic Party to help bring order to the process. Jim Rutenberg, *supra*. In another  
23                  AP article, the DNC admits to what appears to be a larger role in communicating with the  
24                  candidates about the debates. Associated Press, *The Nation; Senators to Join Debate Via*  
25                  *Satellite*, Los Angeles Times, Nov. 24, 2003. The DNC’s role does not affect MSNBC and Dow

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<sup>8</sup> CNBC, which co-sponsored with Dow Jones the September 25, 2003 debate. is not a respondent in this matter

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1 Jones’ eligibility under 11 C.F.R. § 110.13(a)(2) because neither respondent is owned or  
2 controlled by the DNC. Additionally, nothing was alleged in the complaint about the DNC  
3 incurring any costs of the debate or making contributions to respondents for the debates. The  
4 Commission’s debate regulations do not prohibit a staging organization that meets the  
5 requirements of 11 C.F.R. § 110.13(a) from discussing its debate preparations with others,  
6 including political parties, provided that the results of those discussions do not contravene the  
7 debate structure requirements of 11 C.F.R. § 110.13(b) or the candidate selection criteria  
8 requirements of 11 C.F.R. § 110.13(c). In a supplemental correspondence to the complaint,  
9 complainants allege that participation was determined by the Democratic party and “not by the  
10 staging organizations on the basis of pre-objective criteria.” Supplement to Complaint, Dec. 3,  
11 2003. NBC maintains that it consulted with the DNC; however, there is no information  
12 contravening NBC’s assertion that invitations to the debate were made according to criteria  
13 described in its response. If NBC’s assertions are true, the DNC did not determine who was  
14 invited and there is no evidence that they did. Therefore, there appears to be no indication that  
15 MSNBC or Dow Jones violated 11 C.F.R. § 110.13(c). Additionally, even if Joe Lieberman was  
16 not included in a live satellite hook-up from a remote location after declining an invitation to  
17 participate in person, declining the invitation suggests that he met the candidate-selection  
18 qualifications established by NBC. The structure of the debate “is left to the discretion of the  
19 staging organization(s)” provided that objective criteria are used in candidate selection.  
20 11 C.F.R. § 110.13(b).

21 Accordingly, we recommend that the Commission find no reason to believe that MSNBC  
22 or Dow Jones violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 in this matter.

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1                   **4. ABC**

2                   In its response, ABC stated that the candidate selection criteria for the debate it sponsored  
3 on May 3, 2003, were “reasonable, appropriate and journalistically sound criteria.” ABC  
4 Response at 1. ABC also stated that the debate included nine candidates and “did not reflect any  
5 partisan desire to favor any particular candidate.” *Id.* ABC does not provide any further  
6 information or evidence concerning the pre-existing criteria, though the debate on December 9,  
7 2003, appears to have been staged with WMUR-TV, addressed above. The Explanation and  
8 Justification (“E&J”) to the debate regulations states that while “those staging debates would be  
9 well-advised to reduce their objective criteria to writing and to make the criteria available to all  
10 candidates before the debate ... [the regulation does] not require staging organizations to do so  
11 ....” E&J, 60 Fed. Reg. 64,261-64,262 (Dec. 14, 1995). In MURs 4956, 4962 and 4963 (Gore  
12 2000), one of the staging organizations, the New England Cable News, simply submitted a  
13 response to the Commission that “the sponsors did use pre-established criteria for the selection of  
14 candidates.” MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 24. Even though the  
15 respondents had not provided evidence in support of their statements, they asserted that they had  
16 pre-established objective criteria. *Id.* at 25-26. The Commission found no basis to conclude that  
17 the staging organizations failed to meet the regulatory requirement for pre-established candidate  
18 selection criteria. Certification for MURs 4956, 4962 and 4963 (Gore 2000), Nov. 29, 2000. In  
19 certain situations where the media exemption might apply, general statements by press entities  
20 that they complied with the Act, with only minimal descriptions of the criteria may be acceptable.  
21 While such “undocumented affirmative statements ... may not suffice in other contexts,” in the  
22 context of the media exemption, “such statements should be accepted as sufficient . . . so long as

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1 the evidence shows that the criteria cited were used in a manner consistent with the media  
2 organizations' affirmative statements." MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 26.

3 According to the E&J, "[t]he choice of which objective criteria to use is largely left to the  
4 discretion of the staging organization. The suggestion that the criteria be 'reasonable' is not  
5 needed because reasonableness is implied." E&J, 60 Fed. Reg. 64,261-64,262 (Dec. 14, 1995).  
6 Essentially, by stating that it had "reasonable, appropriate and journalistically sound criteria,"  
7 ABC met the minimal evidentiary standard for pre-existing objective criteria. There is no  
8 evidence that such criteria failed to be used in a manner consistent with ABC's affirmative  
9 statement. Accordingly, we recommend that the Commission find no reason to believe that ABC  
10 violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 in this matter.

11 5. CBCI

12 Unlike the previous respondents, CBCI is a District of Columbia nonprofit organization  
13 that has filed an application for status as a tax-exempt social welfare organization, pursuant to  
14 Section 501(c)(4) of the Internal Revenue Code. CBCI Response at 1; *see also Congressional*  
15 *Black Caucus Political Education & Leadership Institute, About the Institute*, available at  
16 <http://www.cbcinstitute.org/about.htm>. If other requirements discussed below are met, nonprofit  
17 organizations described in 26 U.S.C. § 501(c)(4) may "stage debates even if they have not  
18 received official confirmation from the Internal Revenue Service of their status as nonprofit  
19 organizations." E&J, 60 Fed. Reg. 64261 (Dec. 14, 1995). CBCI, therefore, qualifies as a  
20 nonprofit organization described in 26 U.S.C. § 501(c)(4) for the purposes of the Act and  
21 Commission regulations even though CBCI is awaiting official confirmation from the Internal  
22 Revenue Service of its status as a nonprofit organization.

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1 Debate regulations allow nonprofit organizations described in 26 U.S.C. §§ 501(c)(4) to  
2 stage candidate debates provided that they “do not endorse, support, or oppose political  
3 candidates or political parties,” and they comply with Commission regulations on debate  
4 structure and candidate selection criteria. 11 C.F.R. § 110.13(a). CBCI maintains that it is a  
5 nonpartisan, nonprofit organization that “does not make contributions or expenditure[s] in  
6 support of any candidate for Federal, state, or local public office, to any political parties, to any  
7 political party committee or agent thereof, nor to any political committees that support any such  
8 candidates or political party.” CBCI Response at 1-2. CBCI also states that “[a]ll of [CBCI’s]  
9 programs and activities are conducted in a nonpartisan manner.” *Id.* at 2.

10 In order to comply with the Commission’s regulations as to the debate structure and  
11 criteria for the selection of candidates, CBCI established a task force to organize and stage the  
12 debates. CBCI Response at 2-3. According to FOX, which possessed exclusive telecast rights to  
13 the debates, nine candidates participated in each of the debates. Also according to FOX, it  
14 “entered into a written agreement with the CBCI and was reasonably assured by the CBCI that  
15 appropriate, ‘pre-established criteria’ as referenced in 11 C.F.R. [§] 110.13 was in place and  
16 followed.” FOX response at 2.

17 CBCI produced a document, “Written Consent in Lieu of a Special Meeting of the Board  
18 of Directors of Congressional Black Caucus Political and Educational Leadership Institute, Inc.,”  
19 which became effective March 1, 2003, more than six months prior to the first of the two debates  
20 staged by CBCI. CBCI Response at 3. The document appears to contain pre-existing selection  
21 criteria for the debates. *Id.* The selection criteria required “formal declaration of candidacy by  
22 filing statement of candidacy with FEC,” and either “support of at least one percent (1%) of the  
23 Democratic electorate as evidenced by a recent public opinion poll reasonably selected by the

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1 Task Force,” or “have previously served in statewide elected office at state or federal level.” *Id.*  
2 These criteria appear consistent with the objective criteria required by a staging organization in  
3 selecting candidates to appear for a debate. First, the candidate must have filed as a candidate.  
4 Additionally, CBCI appears to have established a requirement that the candidate demonstrate  
5 some level of recognition as a serious candidate, by requiring either a set percentage in a political  
6 poll, or by prior service in a statewide office. These criteria are “objective” in that they do not  
7 appear to be geared towards selecting pre-chosen participants, nor do they appear to exclude  
8 candidates based on content bias. MURs 4956, 4962 and 4963 (Gore 2000), GCR #1 at 23, 30-  
9 32, 36-37. Thus, CBCI appears to be qualified to stage debates as a nonprofit organization  
10 within the meaning of 11 C.F.R. § 110.13(a), and also appears to have complied with debate  
11 structure requirements and the candidate selection criteria pursuant to the Commission’s  
12 regulations. 11 C.F.R. § 110.13(b) and (c). Accordingly, we recommend that the Commission  
13 find no reason to believe that CBCI violated 2 U.S.C. § 441b and 11 C.F.R. § 110.13 in this  
14 matter.

15

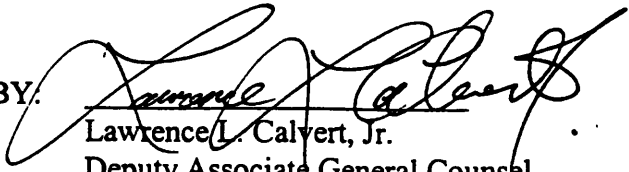
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1 **III. RECOMMENDATIONS**

- 2 1. Find no reason to believe that C-SPAN, WHO-TV, Fox News Channel, L.L.C.,  
3 CNN, WMUR-TV, MSNBC News, Dow Jones, ABC TV, Inc. or the  
4 Congressional Black Caucus Political Leadership Institute violated  
5 2 U.S.C. § 441b and 11 C.F.R. § 110.13.  
6  
7 2. Approve the appropriate letters.  
8  
9 3. Close the file.

10  
11  
12 Lawrence H. Norton  
13 General Counsel

14  
15  
16  
17 1/13/05  
18 Date

19 BY:   
20 Lawrence L. Calvert, Jr.  
21 Deputy Associate General Counsel  
22 for Enforcement

23 Cynthia E. Tompkins  
24 Cynthia E. Tompkins  
25 Assistant General Counsel

26  
27  
28 Margaret J. Toalson  
29 Margaret J. Toalson  
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32 Other Staff Assigned:  
33 Deborah Rice

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