UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DAN LA BOTZ 3503 Middleton Avenue Cincinnati, OH 45220, Plaintiff, VS. FEDERAL ELECTION COMMISSION 999 E Street, NW Washington, DC, 20463, Defendant.	)	No._____

COMPLAINT

INTRODUCTION

1. This action is brought by Plaintiff, Dan La Botz, against Defendant, the Federal Election Commission (FEC or Commission), to remedy the Commission's wrongful dismissal of Plaintiff's administrative complaint (MUR 6383) against the Ohio News Organization (ONO), its corporate members, the senatorial campaign of Robert Portman, and the senatorial campaign of Lee Fisher.

2. The ONO is a for-profit, unincorporated business association consisting of the eight largest newspapers in Ohio, which are all for-profit corporations organized under the laws of Ohio: The Toledo Blade, the (Canton) Repository, the (Cleveland) Plain Dealer, the Columbus Dispatch, the Cincinnati Enquirer, the Dayton Daily News, the Akron Beacon Journal, and the (Youngstown) Vindicator.

3. Lee Fisher was the ballot-qualified, 2010 Democratic candidate for U.S. Senate in Ohio.

4. Rob Portman was the ballot-qualified, 2010 Republican candidate for U.S. Senate in Ohio.

5. Plaintiff filed his administrative complaint with the Commission on or about September 21, 2010, alleging that ONO and its corporate members had scheduled a series of televised debates between Portman, the Republican candidate for U.S. Senate in Ohio, and Fisher, the Democratic candidate for the same U.S. Senate seat in Ohio, in violation of the Federal Election Campaign Act (FECA), 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13(c), to wit, ONO and its corporate members made illegal campaign contributions to the Fisher and Portman campaigns by financing and organizing a series of televised debates including only those two major-party candidates without establishing and announcing permissible "pre-established objective criteria to determine which candidates may participate in the debate," 11 C.F.R. § 110.13(c), and by categorically limiting the debates to these two major-party candidates.

6. Acting on advice of its General Counsel, the Commission dismissed Plaintiff's administrative complaint on May 19, 2011.

7. The General Counsel's conclusion, which was accepted by the Commission, was that ONO's and its corporate members' categorical inclusion of only the "top-two," "frontrunner," Republican and Democratic candidates, and categorical exclusion of all other ballot-qualified candidates (including Plaintiff) for Ohio's 2010 U.S. Senate election from its debates as a matter of law satisfied the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13(c).

8. The General Counsel's report, which was accepted by the Commission, failed to address Plaintiff's claim that ONO's and its corporate members' alleged criteria for selecting candidates to be included in the debates were unlawfully kept secret from Plaintiff and all other minor-party candidates.

9. The General Counsel's report, which was accepted by the Commission, failed to address Plaintiff's claim that Plaintiff was never afforded an opportunity by ONO and its corporate members, prior to its selection of only the two major-party candidates, to present evidence or argument showing that Plaintiff should be included in the debates or otherwise satisfied ONO's secret standards.

10. The Commission's dismissal of Plaintiff's administrative complaint is contrary to law, an abuse of discretion, and arbitrary and capricious. Section 441b(a) of the FECA prohibits corporations from making contributions or expenditures "in connection with" any federal election. "Contribution or expenditure" is defined to include "any direct or indirect payment, or any services, or anything of value, or gift .., to any candidate, campaign committee, or political party or organization." 2 U.S.C. § 441b(b)(2). A corporation or collection of corporations, like ONO, that finances and stages debates involving candidates for federal office must comply with FEC regulations to avoid § 441b(a)'s prohibition on corporate contributions. Among these regulations, 11 C.F.R. § 110.13(c) states that corporate staging organizations, like ONO and its members, must use "pre-established objective criteria to determine which candidates may participate in the debate." Section 110.13(c) further demands that corporate staging organizations "not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." 11 C.F.R. § 110.13(c). As observed by this Court in *Buchanan v. Federal Election Commission,* 112 F. Supp.2d 58, 74 (D.D.C. 2000), moreover, "[s]taging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants." (Quoting FEC statement supporting 11 C.F.R. § 110.13(c)). A collection of corporations that selects the Republican and Democratic candidates for televised debates, and

categorically excludes all other ballot-qualified candidates, thus makes illegal contributions to those two major-party candidates, in violation of the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13(c). This Court in *Buchanan v. Federal Election Commission,* 112 F. Supp.2d 58, 74 (D.D.C. 2000), made this clear: "[t]aken together, these statements by the regulation's drafters strongly suggest that the objectivity requirement [of 11 C.F.R. § 110.13(c)] precludes debate sponsors from selecting a level of support so high that only the Democratic and Republican nominees could reasonably achieve it."

PARTIES

11. Plaintiff was the ballot-qualified, 2010 Socialist Party candidate for U.S. Senate in Ohio.

12. The FEC is an independent agency within the federal government charged with enforcing the Federal Election Campaign Act, which regulates federal elections, including elections for the U.S. Senate.

JURISDICTION AND VENUE

13. This action arises under the FECA, 2 U.S.C. § 431, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201. Jurisdiction of this Court is conferred by 2 U.S.C. § 437g(8)(A) and 28 U.S.C. § 1331. The action is commenced against the Commission within 60 days of the Commission's alleged unlawful dismissal of Plaintiff's administrative complaint. *See* 2 U.S.C. § 437g(8)(B).

14. Venue is proper in the District of Columbia under the FECA, 2 U.S.C. § 431g(8)(A).

ALLEGATIONS

15. Plaintiff qualified for Ohio's 2010 United States Senate ballot in May 2010 by winning the Socialist Party of Ohio's (a ballot-qualified party in Ohio) political primary.

16. Portman and Fisher likewise qualified in May 2010 for the United States Senate election by winning the Republican and Democratic Parties' political primaries in Ohio, respectively.

17. On September 1, 2010, ONO and its corporate members publicly announced that they were sponsoring a series of debates between Fisher, the Democratic Party's candidate for Ohio's United States Senate seat, and Portman, the Republican Party's candidate for Ohio's United States Senate seat.

18. The three debates were financed and otherwise sponsored by ONO and its corporate members, and all were televised by either independent broadcasters or broadcasters owned by or affiliated with ONO's corporate members.

19. ONO, its corporate members, and the Fisher and Portman campaigns commenced negotiations surrounding the formats of the debates and which candidates were to be included (and excluded) in June 2010.

20. The debates negotiated by ONO, its corporate members and the Fisher and Portman campaigns were scheduled to be held (and in fact were held) in Cleveland, Toledo and Columbus during the month of October 2010.

21. All three of ONO's debates between Portman and Fisher were broadcast live on local television, either through independent broadcasters or broadcasters affiliated with ONO's corporate members.

22. A panel of four newspaper reporters drawn from the eight corporate members of ONO was used to question the two candidates at all three debates. The moderators were journalists affiliated with one of the eight newspapers' partnering broadcast stations. ONO's corporate members fully financed all aspects of the televised debates.

23. The Socialist Party USA, of which the Socialist Party of Ohio is a member, is a direct descendant of Eugene Debs' Socialist Party of America. Eugene Debs ran for President five times from 1900 to 1920. *See* RAY GINGER, THE BENDING CROSS: A BIOGRAPHY OF EUGENE VICTOR DEBS (1949) (recounting Debs' presidential campaigns). In 1912, Debs won 6% of the popular vote—more than 900,000 votes all told. *See* JAMES CHACE, 1912: WILSON, TAFT & DEBS—THE ELECTION THAT CHANGED THE COUNTRY (2004) (describing the 1912 presidential election).

24. Historically, the Socialist Party of America has performed better in Ohio than in other states. In 1912, for example, Debs won 8.69% of the vote (90,144 votes) in Ohio's presidential election. *See* 1912 Presidential General Election Results—Ohio (http://uselectionatlas.org/RESULTS/). In 1920, while serving time in federal prison for protesting what later came to be known as the First World War, Debs won 57,147 votes in Ohio, or 2.83% of those cast for President. *See* 1920 Presidential Election Results—Ohio (http://uselectionatlas.org/RESULTS/). In 1932, Norman Thomas, running on the Socialist Party ticket, continued what Debs started by winning 64,094 votes (2.46%) in Ohio. *See* 1932 Presidential Election Results—Ohio (http://uselectionatlas.org/RESULTS/).

25. A significant percentage of Americans, and a large percentage of Americans living in Ohio, favor the ideas expressed by Socialist Party candidates. A Gallup Poll from February of 2010 reports that "socialism" is viewed favorably by 36% of Americans. *See* Gallup, *Socialism Viewed Positively by 36% of Americans* (February 4, 2010), available at

http://www.gallup.com/poll/125645/socialism-viewed-positively-americans.aspx; Pew and Rasmussen polls have produced similar results. *See* Pew Research Center for the People and the Press, *"Socialism" Not So Negative, "Capitalism" Not So Positive* (May 4, 2010), available at http://pewresearch.org/pubs/1583/political-rhetoric-capitalism-socialism-militia-family-values-states-rights; Rasmussen Reports, *Just 53% Say Capitalism Better Than Socialism* (April 9, 2009), available at http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_53_say_capitalism_better_than_socialism.

26. Because of unconstitutional ballot access restrictions existing in Ohio before the 2008 election cycle, *see Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006); *Libertarian Party of Ohio v. Brunner*, 567 F. Supp.2d 1006 (S.D. Ohio 2008), minor-party candidates, including those running as Socialists, have been routinely and unconstitutionally prevented from running for office in Ohio since the late 1940s. *See*, *e.g.*, *Anderson v. Celebrezze,* 460 U.S. 780 (1983) (describing Ohio's unconstitutional exclusion of John Anderson from 1980 presidential election); *Williams v. Rhodes*, 393 U.S. 23 (1968) (describing Ohio's unconstitutional exclusion of Socialist Labor Party from 1968 presidential election).

27. Ohio's unconstitutional exclusion of minor-party candidates for sixty-plus years from its ballots has led Ohio's primary news outlets, including the eight corporate members of ONO, to habitually and presumptively focus exclusively on the two major parties. Ohio news organizations, especially those corporations that have joined to form the ONO, regularly ignore candidates who are not affiliated with either the Democratic or Republican Parties.

28. The first poll that mentioned Plaintiff by name was not released until September 5, 2010, several months after polls focusing exclusively on Fisher and Portman were conducted by ONO's corporate members.

29. The poll described in ¶ 28 was conducted by mail between August 25, 2010 and September 3, 2010, which was long after ONO and its corporate members had invited Portman and Fisher and decided to exclude Plaintiff from the scheduled debates.

30. ONO's and its corporate members' sponsorship of the debates was negotiated exclusively with the campaigns of Portman and Fisher. Plaintiff was never contacted about his availability; was never notified of ONO's negotiations with the Fisher and Portman campaigns, was never asked by ONO, its members, or the Fisher and Portman campaigns, about his desire to be included in the debates; was never invited to submit polling data or financial information; was never informed of any criteria used for deciding who would be in the debates; and was never afforded an opportunity to demonstrate that he satisfied any criteria for inclusion in the debates.

31. Plaintiff only learned of the negotiations surrounding the debates because he read a news article in the July 20, 2010 issue of the COLUMBUS DISPATCH reporting that negotiations were under way between ONO, its corporate members, and the Portman and Fisher campaigns.

32. On September 5, 2010, following the ONO's and its corporate members' first public announcement that Portman and Fisher had agreed to three debates, Plaintiff sent a letter to each of ONO's corporate members requesting that he "be included in the debates which your organization is helping to organize." None of the recipients responded to any of Plaintiff's efforts.

33. On September 6, 2010, Plaintiff personally phoned Mr. Tom Callinan, editor of the CINCINNATI ENQUIRER, and left a message protesting his exclusion from the debates. Callinan never returned the call.

34. On September 7, 2010, Plaintiff's campaign launched an online petition targeting the editors of the eight newspapers comprising the ONO and demanding an explanation for Plaintiff's exclusion from the debates.

35. Following this online petition effort, Plaintiff received on September 8, 2010, a response from Mr. Bruce Winges, editor and vice-president of the AKRON BEACON JOURNAL, one of the eight corporate members of ONO, describing ONO's criteria for inclusion in the debates:

> The Ohio News Organization generally follows the structure used by the Commission on Presidential Debates, which allows for only the major-party candidates to debate. The logic is sound: In a television debate format, when time constraints limit the number of questions and answers to be heard, it is of the utmost importance that voters hear from the two candidates who are clearly the front-runners for the office. While we have and will continue to write about third-party candidates when warranted, including them in debates limits Ohioans' ability to hear answers from the top candidates on issues critical to the state's future.

36. Contrary to Winges' assertion, the Commission on Presidential Debates has never, and does not now, automatically preclude minor candidates from participating in its debates. It does not select, and never has selected, only the "top two," "frontrunners," who everyone knows are going to be major-party candidates. Instead, the Commission on Presidential Debates today follows "pre-existing objective criteria," that is, whether a candidate objectively polls 15% of the popular vote prior to the structuring of the debate and has qualified in enough states to supply a mathematical chance of winning in the Electoral College. *See Becker v. Federal Election Commission*, 230 F.3d 381, 386 (1st Cir. 2000).

37. ONO's "top two," "frontrunner" formula is nothing like that ever used by the Commission on Presidential Debates. The Commission on Presidential Debates, which was

formed in 1988, during the 1992 and 1996 presidential elections invited the two major candidates to debate as well as candidates who had "a 'realistic chance' of success in the general election." Eric B. Hull, Note, *Independent Candidates' Battle Against Exclusionary Practices of the Commission on Presidential Debates*, 90 IOWA L. REV. 313, 320 (2004). Using this formula, non-major candidates (like Ross Perot in 1992) "would be invited based on ... signs of a national organization, national newsworthiness, and other indicators of public enthusiasm." *Id.* at 320-21. Following the Supreme Court's decision in *Arkansas Educational Television v. Forbes,* 523 U.S. 666 (1998), and a serious risk that its "two major parties plus others with a realistic chance" formula would prove illegal under the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. 110.13(c), *see* Hull, *supra,* at 322, the Commission on Presidential Debates announced its new criteria, which requires that a candidate reach 15% in opinion polls and have a mathematical chance at winning in the Electoral College. *Id.*

38. On September 10, 2010, Plaintiff, through legal counsel (Mark Brown), sent via United States Mail a letter to each of ONO's corporate members advising them that the ONO's exclusive structuring of the debates violated the FECA and demanding that Plaintiff be included in the debates.

39. On September 14, 2010, ONO and its corporate members responded via an electronically transmitted letter (through counsel) to Brown, stating that "the ONO considered front-runner status based on then-existing Quinnipiac and party polling, fundraising reports, in addition to party affiliation."

40. ONO's response to Brown did not identify nor explain what thresholds a qualified candidate needed to meet, nor did it cite to any documents or information that established any

pre-existing objective criteria before exclusive invitations were handed out based on party affiliation, that is, affiliation with the Republican and Democratic Parties.

41. ONO's top-two formula, which admittedly considered party affiliation, was never publicly disseminated nor made known to Plaintiff or anyone else outside the small circle of eight ONO corporate members and the Portman and Fisher campaigns before September 8, 2010 —long after the debates had been finalized and Plaintiff excluded.

42. Via an electronically-submitted letter to Brown dated September 16, 2010, ONO made clear to Brown that there was absolutely no showing Plaintiff could ever make to gain an invitation to ONO's debates. The debates were confined to the top-two, frontrunning candidates, that is, the Republican and the Democratic candidates for Ohio's U.S. Senate seat.

43. On September 10, 2010, Plaintiff, through counsel, sent to the Portman and Fisher campaigns letters (via U.S. Mail) advising them that their participation in the debates organized by the ONO and its corporate members violated the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13(c).

44. Plaintiff on or about September 21, 2010 filed an administrative complaint with the Commission claiming that ONO, its corporate members, and the Fisher and Portman campaigns, under the events described above, violated the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13(c).

45. The debates described above between the Republican candidate, Portman, and the Democratic candidate, Fisher, were held as planned without Plaintiff's or any other candidate's participation.

46. Portman won Ohio's 2010 senatorial election.

47. Plaintiff, notwithstanding his exclusion from ONO's debates and a virtual media blackout imposed by ONO's eight corporate members, won over 25,000 votes in Ohio's 2010 senatorial election.

48. On May 10, 2011, the Commission's General Counsel recommended dismissal of Plaintiff's administrative complaint.

49. The General Counsel concluded that ONO and its corporate members qualify as debate "staging organizations" within the meaning of the FECA, 2 U.S.C. § 441b(a), and its implementing regulations, and are therefore governed by the limitations found in 11 C.F.R. § 110.13(a).

50. The General Counsel concluded that the ONO, "given the limited time available to hold the debates and the anticipated large field of candidates ... decided to extend invitations only to the two frontrunners ...."

51. The General Counsel found that ONO relied on polling data that named Fisher, the Democratic candidate, and Portman, the Republican candidate, but simply lumped all other candidates together as "someone else," to determine that the Democratic and Republican candidates were the two frontrunners to be included in ONO's debates.

52. The General Counsel concluded that ONO's "debate selection criteria were pre-existing and objective, *see* 11 C.F.R. § 110.13(c), and consistent with a number of different criteria the Commission has previously found to have been acceptably 'objective,' including percentage of votes by a candidate received in a previous election; the level of campaign activity by the candidate; his or her fundraising ability and/or standing in the polls; and eligibility for ballot access."

53. The General Counsel further concluded that "the senatorial debates sponsored by [ONO] complied with 11 C.F.R. § 110.13 and, therefore, this Office recommends that the Commission find no reason to believe that the [ONO, Fisher and Portman] ... violated 2 U.S.C. § 441b(a)."

54. The Commission on May 19, 2011, "voted affirmatively for the decision" and dismissed Plaintiff's administrative complaint.

VIOLATIONS

55. The Federal Election Campaign Act (FECA) prohibits corporations from making contributions or expenditures "in connection with" any federal election. 2 U.S.C. § 441b(a).

56. The FECA defines "contribution or expenditure" to include "any direct or indirect payment, or any services, or anything of value, or gift ... to any candidate, campaign committee, or political party or organization." *Id.* § 441b(b)(2).

57. The general prohibition described in ¶ 55 is subject to three exceptions, which permit corporate funds to be used for limited purposes, including: (1) internal corporate communications; (2) nonpartisan registration and get-out-the-vote campaigns by a corporation directed to its stockholders and executive and administrative personnel and their families; and (3) the establishment of a separate segregated fund used for political purposes. *Id.* § 441b(b)(2)(A)-(C).

58. The FECA's general definition section defines the term "expenditure" to include any payments made "for the purpose of influencing any election for Federal office," *id.* § 431(9)(A)(i), but not to include "nonpartisan activity designed to encourage individuals to vote or to register to vote." *Id.* § 431(9)(B)(ii).

59. Under the Commission's regulatory scheme, corporate contributions and expenditures may be used to defray the costs of conducting candidate debates where those debates are held by nonpartisan staging organizations, but only so long as those staging organizations and the structure of the debate meet the criteria described in 11 C.F.R. § 110.13.

60. 11 C.F.R. § 110.13 delineates the requirements for debate staging organizations, debate structure, and criteria for candidate selection necessary to qualify for exemption from the contribution and expenditure restrictions found in the FECA.

61. Under 11 C.F.R. § 110.13(a), debate staging organizations must either be nonprofit organizations that "do not endorse, support, or oppose political candidates or political parties," or news organizations that are "not owned or controlled by a political party, political committee or candidate."

62. ONO and its corporate members are news organizations and broadcasters within the meaning of 11 C.F.R. § 110.13(a).

63. The only permissible mechanism for ONO and its corporate members to stage debates involving federal candidates is for ONO and its corporate members to comply with the terms of 11 C.F.R. § 110.13.

64. Under 11 C.F.R. § 110.13(b), candidate debates staged by appropriate staging organizations must include at least two candidates and not be structured "to promote or advance one candidate over another." 11 C.F.R. § 110.13(b).

65. Under 11 C.F.R. § 110.13(c), debate staging organizations are required to use "pre-established objective criteria to determine which candidates may participate in a debate," and "shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

66. In explaining the intent behind 11 C.F.R. § 110.13, the Commission has formally stated that "[s]taging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants." *See Buchanan v. Federal Election Commission,* 112 F. Supp.2d 58, 74 (D.D.C. 2000) (quoting FEC statement).

67. This Court in *Buchanan v. Federal Election Commission,* 112 F. Supp.2d at 74, stated that "[t]aken together, these statements by the regulation's drafters strongly suggest that the objectivity requirement precludes debate sponsors from selecting a level of support so high that only the Democratic and Republican nominees could reasonably achieve it."

COUNT ONE

68. Paragraphs 1 through 67 are incorporated into Count One.

69. The Commission's conclusion that a staging organization's decision to exclude all qualified candidates for a particular federal office other than the "top-two" "frontrunners" from a series of debates is permissible, in a state that had until that very election unconstitutionally excluded all parties other than the Democratic and Republican Parties, violates the FECA's ban on corporate contributions. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 110.13.

70. The Commission below endorsed a formula that not only set the "level of support so high that only the Democratic and Republican nominees could *reasonably* achieve it," *Buchanan v. Federal Election Commission,* 112 F. Supp.2d at 74 (emphasis added), but which also *expressly* limited corporate-sponsored debates to the two major-party candidates who had been identified months in advance by the staging organization.

71. The Commission's conclusion is contrary to law, arbitrary and capricious and an abuse of discretion.

COUNT TWO

72. Paragraphs 1 through 67 are incorporated into Count Two.

73. ONO and its corporate members knew to an absolute certainty in May 2010 that the Republican and Democratic candidates for the 2010 U.S. Senate seat in Ohio would constitute the "two frontrunners" who would be allowed to debate by ONO and its corporate members.

74. ONO's and its corporate members' reliance on their "top two" formula necessarily constituted criteria "designed to result in the selection of certain pre-chosen participants." *See Buchanan v. Federal Election Commission*, 112 F. Supp.2d 58, 74 (D.D.C. 2000) (quoting FEC statement).

75. ONO and its corporate members violated 11 C.F.R. 110.13(c) by knowingly using political party affiliation to select pre-chosen participants for the debates.

76. The Commission's conclusion that ONO's and its corporate members' use of their alleged "top-two" formula was proper and permissible in Ohio, where minor parties and candidates had been unconstitutionally excluded from ballots until the eve of the date when the debates were being organized, is contrary to law, arbitrary and capricious and an abuse of discretion.

COUNT THREE

77. Paragraphs 1 through 67 are incorporated into Count Three.

78. ONO and its corporate members kept their intent to limit their debates to the Republican and Democratic candidates secret from Plaintiff and the public for several months until the eve of the debates, when only after repeated requests and public demands by Plaintiff was their "top two" "frontrunning" explanation revealed.

79. ONO's and its corporate members' secrecy and refusal to publicly disclose any criteria for their debates beyond the Republican and Democratic candidates violates 11 C.F.R. § 110.13.

80. The Commission's conclusion that secret criteria and negotiations can legally be used to select candidates for senatorial debates and otherwise satisfies 11 C.F.R. § 110.13 is contrary to law, an abuse of discretion, and arbitrary and capricious.

COUNT FOUR

81. Paragraphs 1 through 67 are incorporated into Count Four.

82. The FECA prohibits "any candidate" from "knowingly … accept[ing] or receiv[ing] any contribution prohibited by this section." 2 U.S.C. § 441b(a).

83. The Fisher and Portman campaigns violated the FECA's ban on corporate contributions by participating in the debates with full knowledge of the debates' illegality.

84. The Fisher and Portman campaigns knowingly conspired with ONO and its corporate members to construct exclusive debates that prohibited any candidates other than a Republican and Democrat from participating in violation of the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13.

85. The Commission's conclusion that the Fisher and Portman campaigns did not violate the FECA, 2 U.S.C. § 441b(a), and 11 C.F.R. § 110.13 is contrary to law, an abuse of discretion and arbitrary and capricious.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

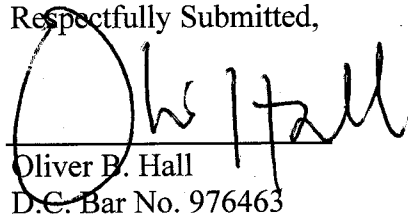
1) declare that the Commission's dismissal of Plaintiff's administrative complaint was contrary to law, an abuse of discretion and arbitrary and capricious;

2) remand the matter to the Commission with an order to conform to the declaration within 30 days; and

3) grant such other and further relief as may be appropriate, including an award of attorneys' fees and litigation expenses pursuant to 28 U.S.C. § 2412(d)(1)(A).

Dated: July 8, 2011

Respectfully Submitted,



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