

May 20, 2024

By Certified Mail to:

Sir Mark Thompson
Chairman, CEO and Editor-in-Chief
CNN Worldwide
10 Columbus Circle
New York, NY 10019

Ms. Jennifer O'Malley Dillon
Campaign Chair
Ms. Julie Chávez Rodriguez
Campaign Manager
Biden for President, Inc.
P.O. Box 438
Wilmington, DE 19899

Mr. Chris LaCivita
Ms. Susie Wiles
Co-Campaign Managers
Donald J. Trump for
President 2024, Inc.
P.O. Box 509
Arlington, VA 22216

By Email to:

Trump@redcurve.com
Treasurer@joebiden.com
Fec@joebiden.com
Steve.Kiehl@turner.com
Emily.Kuhn@turner.com

Re: Criteria for Inclusion in CNN's June 27, 2024 Presidential Debate

Dear Mr. Thompson, Ms. Chávez Rodriguez, Ms. O'Malley Dillon, Mr. LaCivita and Ms. Wiles:

The Center for Competitive Democracy is writing in the interest of independent and minor party candidates and American voters nationwide, the More Voter Choice Fund and American Values 2024 in regard to CNN's announcement that it will host a presidential debate in its Atlanta, Georgia studios on June 27, 2024, and that President Joe Biden and former President Donald Trump "have both accepted an invitation from CNN" to participate.¹ CNN has reported that Mr. Biden and Mr. Trump "are all but certain to qualify" under CNN's criteria for inclusion, "but it's unclear if third-party candidates like Cornel West or Robert F. Kennedy Jr." will do so.² In fact, however, it is all but certain that Mr. Biden and Mr. Trump will not qualify under CNN's criteria, which calls into question the propriety – and legality – of CNN's invitation to these candidates and the candidates' acceptance of that invitation.

The Federal Election Campaign Act ("FECA") and related regulations prescribe the conditions under which a broadcaster may lawfully stage candidate debates.³ Specifically, a debate-staging organization "must use pre-established objective criteria to determine which

¹ See Betsy Klein, Michael Williams and Kristen Holmes, *Biden and Trump Agree to 2 Presidential Debates, With First Set for June 27 on CNN*, CNN.com (May 15, 2024), available at <https://www.cnn.com/2024/05/15/politics/joe-biden-debate/index.html> (accessed May 17, 2024).

² See *id.*

³ See 52 U.S.C. § 30101 et seq.

candidates may participate in a debate.”⁴ Where the debate-staging organization is a corporation, like CNN, its failure to establish such criteria, or to adhere to them, would render its expenditures in connection with the debate unlawful.⁵ The value of the broadcast likewise would be an unlawful corporate contribution to the participating candidates.⁶ The candidates’ acceptance of such a contribution also would be unlawful.⁷

On May 15, 2024 – the same day CNN reported that Mr. Biden and Mr. Trump had accepted its invitation – CNN announced that candidates will qualify to participate in its June 27, 2024 debate if they comply with the following criteria:

- (1) fulfill the requirements outlined in Article II, Section 1 of the Constitution of the United States;
- (2) file a Statement of Candidacy with the Federal Election Commission;
- (3) appear on a sufficient number of state ballots to reach the 270 electoral vote threshold to win the presidency prior to the eligibility deadline;
- (4) agree to accept the rules and format of the debate; and
- (5) receive at least 15% in four separate national polls of registered or likely voters that meet CNN’s standards for reporting.⁸

Mr. Biden and Mr. Trump are all but certain not to qualify under the foregoing criteria because neither one will appear on *any* state ballot as of June 20, 2024, the date CNN identifies as the last day to determine a candidate’s eligibility to participate.⁹ Neither Mr. Biden nor Mr. Trump has won his party’s nomination yet, but assuming they do, it will not happen for Mr. Biden until the Democratic National Convention is held on August 19-22, 2024, and it will not happen for Mr. Trump until the Republican National Convention is held on July 15-18, 2024. Until these candidates win their parties’ nominations – again, assuming they do – their names will not appear on any state ballot. Therefore neither candidate will comply with criterion (3) above, which provides that a candidate’s name “must appear” on enough state ballots to win 270 Electoral College votes “prior to the eligibility deadline.”

Given the near-certainty that Mr. Biden and Mr. Trump will fail to comply with CNN’s stated criteria, CNN’s decision to invite their participation – and the candidates’ acceptance of that

⁴ 11. C.F.R. § 110.13(c).

⁵ See 52 U.S.C. § 30118(a) (“It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office....”); 11 C.F.R. § 114.2(a).

⁶ See *id.*

⁷ See *id.*

⁸ CNN Communications Press Releases, *CNN to Host 2024 Election Presidential Debate Between President Joe Biden and Former President Donald J. Trump on June 27*, May 15, 2024, available at <https://cnnpressroom.blogs.cnn.com/2024/05/15/cnn-to-host-2024-election-presidential-debate-between-president-joe-biden-and-former-president-donald-j-trump-on-june-27/> (accessed May 17, 2024).

⁹ See *id.*

invitation – raises serious questions regarding the lawfulness of the scheduled debate. Does CNN intend to waive criterion (3) as it applies to Mr. Biden and Mr. Trump? If not, how does CNN justify inviting them to participate, when neither candidate’s name will appear on any state ballot as of the June 20, 2024 deadline for determining their eligibility?

These questions are especially troubling in light of CNN’s own reporting that the early date selected for its debate “might help weed out third-party candidates that could cause problems for both Trump and Biden.”¹⁰ The deadline for such candidates to qualify for the ballot in many states extends far beyond the June 20, 2024 deadline to qualify for CNN’s debate, thus placing them at a significant disadvantage with respect to their ability to comply with criterion (3). It therefore appears, based on CNN’s own reporting, that CNN intentionally structured its debate to exclude every candidate except the presumptive nominees of the Democratic and Republican parties – notwithstanding the presumptive nominees’ own failure to comply with criterion (3). If so, CNN would be in violation of the prohibition on using “nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.”¹¹

It has been widely reported that CNN gave assurances to the Biden and Trump campaigns that no other candidates would participate in its debate. For example, in a phone call on May 15, 2024, a CNN producer reportedly promised a Trump campaign official – after describing CNN’s criteria for debate participation – that “RFK will not be on the stage.”¹² That same day, the *Washington Post* reported that “Biden advisers said that they had told CNN the president would only participate in debates that were one-on-one with Trump....”¹³ Mr. Biden’s campaign chair reiterated the point in a public statement: “President Biden made his terms clear for two one-on-one debates, and Donald Trump accepted those terms.”¹⁴ A Biden adviser meanwhile told *Axios*, “Our criteria for a 1:1 debate was made clear publicly, it was made clear to CNN and they understood our position when we accepted their offer.”¹⁵ CNN nonetheless told *Axios* that “candidates just need to meet the qualifications laid out in the release,” and that at present, “only Biden and Trump have qualified.”¹⁶ But when asked about the Biden adviser’s comment, “CNN declined to respond.”¹⁷

CNN’s failure to dispute these facts – several days after they were reported – together with its apparent intention to enforce criterion (3) against independent and minor party candidates while waiving it for the presumptive Democratic and Republican nominees, suggests that CNN’s stated criteria are not criteria at all, but a mere sham perpetrated upon the public at the behest of Mr. Biden’s and Mr. Trump’s campaigns. Such a scheme would be in clear violation of the FECA. Furthermore, it would result in millions of dollars in unlawful contributions and expenditures by

¹⁰ See *supra* n.1.

¹¹ See *supra* n.4.

¹² Michael Scherer and Josh Dawsey, *Biden and Trump Agree to CNN Debate in June, ABC Faceoff in September*, WASHINGTON POST (May 15, 2024), available at <https://www.washingtonpost.com/politics/2024/05/15/biden-trump-presidential-debates> (accessed May 17, 2024).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Justin Green and Alex Thompson, *RFK Jr. Becomes Presidential Debate X Factor*, AXIOS (May 15, 2024), available at <https://www.axios.com/2024/05/15/trump-biden-debate-rfk-jr-cnn> (accessed May 17, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

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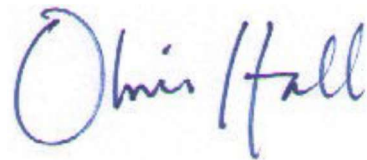
CNN, and commensurate violations by Mr. Biden and Mr. Trump for knowingly accepting CNN's unlawful contributions.

To ensure that CNN stages a lawful debate, CNN must, at a minimum, apply its criteria equally to all candidates, regardless of their partisan affiliation. Accordingly, we request that CNN: (1) confirm that it will do so; or (2) confirm that it will waive criterion (3) not only for Mr. Biden and Mr. Trump, but as applied to all candidates.

Additionally, CNN has adopted the same 15 percent polling threshold that the Commission on Presidential Debates employed to exclude all non-major party candidates from the debates it hosted since 1996. As a news organization and broadcaster with a duty to inform the public and protect voters' interest in hearing from a range of candidates representing a diversity of views, CNN should adopt a more reasonable and inclusive polling requirement, such as the 5 percent threshold that enables candidates to qualify for public funding under the Presidential Election Campaign Fund Act.¹⁸

In view of the shortness of time until CNN's debate, which is scheduled to take place in approximately six weeks, we request a response to this letter from CNN, Biden for President, Inc. and Donald J. Trump for President 2024, Inc., by May 27, 2024. You may reach me by email at oliverhall@competitivedemocracy.org or by telephone at 202-248-9294. Thank you for your attention to this matter.

Sincerely,



Oliver B. Hall
Founder and Legal Counsel
Center for Competitive Democracy

¹⁸ See 26 U.S.C. § 95 *et seq.*