

## FEDERAL ELECTION COMMISSION

In the matter of:

OHIO NEWSPAPER ORGANIZATION;  
THE TOLEDO BLADE; THE (CANTON) REPOSITORY;  
THE (CLEVELAND) PLAIN DEALER; THE  
COLUMBUS DISPATCH; THE CINCINNATI  
ENQUIRER; THE DAYTON DAILY NEWS; THE  
AKRON BEACON JOURNAL; THE (YOUNGSTOWN)  
VINDICATOR; ROB PORTMAN; and LEE FISHER

MUR NO. \_\_\_\_\_

### COMPLAINT

1. Dan La Botz, the 2010 Socialist Party of Ohio candidate for the United States Senate in Ohio, brings this Complaint to the Federal Election Commission (hereinafter, FEC or “Commission”) against the Ohio Newspaper Organization (ONO), a for-profit association of eight for-profit corporations organized under the laws of the State of Ohio, Rob Portman, the Republican Party’s candidate for the United States Senate in Ohio, and Lee Fisher, the Democratic Party’s candidate for the United States Senate in Ohio, for violations of the Federal Election Campaign Act (FECA).

### COMPLAINANT

2. Dan La Botz is the Socialist Party of Ohio’s candidate for Ohio’s 2010 United States Senate seat. He is qualified under Ohio law for the 2010 general election ballot and will be formally listed on Ohio’s ballots throughout the state as the Socialist Party of Ohio’s candidate for United States Senate. He is running against Lee Fisher, the Democratic Party nominee, Rob Portman, the Republican Party nominee, Eric Deaton, the Constitution Party’s nominee, and Michael Pryce, an independent, for the United States Senate in Ohio. Mr. La Botz’s mailing address is: Dan La Botz, 3503 Middleton Avenue, Cincinnati, OH 45220.

### RESPONDENTS

3. The Ohio Newspaper Organization (ONO) is a for-profit, unincorporated business association consisting of the eight largest newspapers in Ohio. These eight newspapers are all for-profit corporations organized under the laws of Ohio, and all benefit financially from the operations of ONO. The ONO’s purpose is to share news stories between its eight members and jointly participate in reporting the news for the profit of its members. ONO’s members are all jointly financially vested in ONO’s decisions and actions, and all jointly profit from ONO’s decisions and actions. ONO’s and its eight members sponsorship of the senatorial debates

between Rob Portman, the Republican candidate, and Lee Fisher, the Democratic candidate, benefit ONO and its eight members financially by creating news and increasing readership.

4. 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 are the eight corporate members of ONO. All of these news organizations participate in ONO's decisions, all are financially benefitted by ONO's decisions, and all are individually and jointly responsible for ONO's actions. The mailing addresses of the eight corporate news organizations joined in a business association known as ONO are:

The Akron Beacon Journal  
44 East Exchange Street  
Akron, OH 44308

The Toledo Blade Company  
541 N. Superior Street  
Toledo, OH 43660

The (Canton) Repository  
500 Market Avenue South  
Canton, OH 44702

The (Cleveland) Plain Dealer  
Plain Dealer Plaza  
1801 Superior Avenue  
Cleveland, OH 44114-2198

The Columbus Dispatch  
34 South Third Street  
Columbus, OH 43215

The Cincinnati Enquirer  
312 Elm Street  
Cincinnati, OH 45202

The Dayton Daily News  
Cox Ohio Publishing Media Center  
1611 South Main Street  
Dayton, OH 45409

The (Youngstown) Vindicator  
107 Vindicator Square  
Youngstown, OH 44503

5. Rob Portman is the Republican Party's candidate for Ohio's 2010 United States Senate seat. His campaign's mailing address is: Portman for Senate, PO Box 39, Terrace Park, OH 45174.

6. Lee Fisher is the Democratic Party's candidate for Ohio's 2010 United States Senate seat. His campaign's mailing address is: Fisher for Ohio, PO Box 1418, Columbus, OH 43216.

#### FACTUAL ALLEGATIONS

7. On September 1, 2010, ONO and its corporate members announced that they were sponsoring a series of debates between Lee Fisher, the Democratic Party's candidate for Ohio's United States Senate seat, and Rob Portman, the Republican Party's candidate for Ohio's United States Senate seat. *See* U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The three debates are to be sponsored by ONO and its members, and all will be televised by either by independent broadcast operators or broadcast operators owned by or affiliated with ONO members. Negotiations between the major-party candidates for United States Senate in Ohio and ONO took place beginning in June 2010, *see* Letter from Marion H. Little, Jr. to Mark R. Brown, dated September 14, 2010 (Attachment 2) ("ONO began to put together its proposal for the instant debate in June 2010").

8. The debates negotiated by ONO, its corporate members and the Fisher and Portman campaigns have been formally scheduled to be held in Cleveland, Toledo and Columbus during the month of October 2010.

9. The first debate is scheduled to be held in Toledo, Ohio on October 4, 2010 at 7 PM at a local public high school. *See* Fisher and Portman spar on Oct 4 in Toledo on live television, The Toledo Blade, Sep. 8, 2010 (Attachment 3). The second debate is scheduled to be held in Cleveland on October 8, 2010, at noon at the City Club of Cleveland. *See* U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The third debate is scheduled to be held in Columbus on October 12, 2010 at 8 pm as a "studio debate," *see* U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1), with the precise location of the studio not yet announced. *See* Attachment 4.

10. All three debates are to be broadcast live on local television. The first and second debates in Toledo and Cleveland will be carried by ONN. *See* Attachment 4. The first debate in Toledo will also be carried by Toledo television station WTVG (Channel 13). *See* Fisher and Portman spar on Oct 4 in Toledo on live television, The Toledo Blade, Sep. 8, 2010 (Attachment 3). The third debate in Columbus will be carried by ONN and Columbus television station 10TV. *See* Attachment 4. According to the Columbus Dispatch, the two local television stations broadcasting the debates are "local TV partners of three of the eight newspapers sponsoring the

debates ....” See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1).

11. A panel of four newspaper reporters drawn from the eight members of ONO will question the two candidates at all three debates. See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The moderator will be a journalist affiliated with one of the eight newspapers’ partnering TV stations. *Id.*

12. Complainant, Dan La Botz, is duly qualified to appear on Ohio’s ballot as the Socialist Party of Ohio’s candidate for Ohio’s United States Senate seat for the 2010 general election.

13. The Socialist Party USA, of which the Socialist Party of Ohio is a member, is a direct descendant of Eugene Debs’s 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’s 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).

14. Historically, the Socialist Party of America has performed better in Ohio than in most 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 the Great 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/>).<sup>1</sup> 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/>).<sup>2</sup>

15. 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

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<sup>1</sup> Eugene Debs and the Socialist Party have a unique connection to the State of Ohio. Debs, after all, was arrested in Canton, Ohio for delivering a speech criticizing the war effort in 1918. See Ginger, *supra*, at 377. He was charged with espionage, lost in the Supreme Court, see *Debs v. United States*, 249 U.S. 211 (1919), and spent several years in prison. See GINGER, *supra*.

<sup>2</sup> It was largely because of Socialist successes that the Ohio legislature changed its ballot access laws to preclude minor parties. According to Richard Winger, editor of *Ballot Access News*, the Socialist Labor Party in 1946 surprisingly won 13,885 votes for a United States Senate seat and 11,203 votes for Governor. See Richard Winger, *Ballot Format: Must Candidates be Treated Equally?*, 45 CLEVE. ST. L. REV. 87, 90 (1997). This development, Winger reports, did not please Ohio’s legislators. *Id.* In an effort to keep Socialist candidates off the ballot and stop Henry Wallace’s “progressive” campaign for President in 1948, the Ohio legislature in 1947 erased party labels from minor candidates’ ballot-listings and attempted to prevent independent presidential candidates from using Ohio’s petition process. *Id.* at 90-91.

2010 reports that “socialism” is viewed favorably by 36% of Americans. Pew and Rasmussen polls have produced similar results. See <http://www.gallup.com/poll/125645/socialism-viewed-positively-americans.aspx>; [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/april\\_2009/just\\_53\\_say\\_capitalism\\_better\\_than\\_socialism](http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_53_say_capitalism_better_than_socialism); <http://pewresearch.org/pubs/1583/political-rhetoric-capitalism-socialism-militia-family-values-states-rights>.

16. Because of unconstitutional ballot access restrictions existing in Ohio before 2008, *see* *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6<sup>th</sup> Cir. 2006); *Libertarian Party of Ohio v. Brunner*, 567 F. Supp.2d 1006 (S.D. Ohio 2008), minor-party candidates, including Socialists, have been routinely and unconstitutionally prevented from running for office since the 1940s.

17. 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 coverage exclusively on the two major parties. Ohio news organizations, especially those who have joined to form the ONO, have made a habit of ignoring candidates who are not affiliated with either the Democratic or Republican Parties. The first poll that even mentioned Dan La Botz (conducted by the Columbus Dispatch), for example, was not released until September 5, 2010, *see* Darrel Rowland, More Ohioans plan to vote for Republicans in the election, and they are excited to do so. But a lot can happen before Nov. 2, The Columbus Dispatch, Sept. 5, 2010 (Attachment 5), several months after polls focusing exclusively on Fisher and Portman began being conducted. *See, e.g.,* [http://www.rasmussenreports.com/public\\_content/politics/elections/election\\_2010/election\\_2010\\_senate\\_elections/ohio/toplines/toplines\\_ohio\\_senate\\_march\\_4\\_2010](http://www.rasmussenreports.com/public_content/politics/elections/election_2010/election_2010_senate_elections/ohio/toplines/toplines_ohio_senate_march_4_2010) (Rasmussen Poll). *See generally* [http://www.realclearpolitics.com/epolls/2010/senate/oh/ohio\\_senate\\_portman\\_vs\\_fisher-1069.html#polls](http://www.realclearpolitics.com/epolls/2010/senate/oh/ohio_senate_portman_vs_fisher-1069.html#polls) (Real Clear Politics listing of all polls relevant to Ohio’s 2010 senatorial contest).

18. The Columbus Dispatch poll described in ¶ 17 was conducted by mail between August 25, 2010 and September 3, 2010, *see* Rowland, *supra*, which was after ONO and its members had already decided to exclude La Botz from its scheduled debates. It could therefore not have played a part in ONO’s and its members’ decision to exclude Complainant.

19. ONO’s and its membership’s sponsorship of the debates described in ¶¶ 7-11 was negotiated exclusively with the campaigns of Respondents, Rob Portman and Lee Fisher. Complainant’s campaign was never contacted about his availability. He was never notified of the negotiations with the Fisher and Portman campaigns. He was never asked by ONO, its members, or the Fisher and Portman campaigns, about his desire to be included in the debates described in ¶¶ 7-11. Notwithstanding that he is an official, recognized party candidate on the ballot in Ohio,

ONO's and its corporate members' scheduling of the debates between the Republican and Democratic candidates for United States Senate was accomplished without the Complainant's knowledge. Complainant was never invited, was never notified, was never informed of any criteria used for deciding who would be in the debates, and was never afforded any opportunity to demonstrate that he satisfied any "pre-existing objective criteria" justifying his inclusion in the debates.

20. Complainant learned of the negotiations surrounding the debates described in ¶¶ 7-11 only because he read a news article in the July 20, 2010 issue of the Columbus Dispatch reporting that negotiations were under way. *See* Jonathan Riskind, Debate details lie ahead for Fisher, Portman, The Columbus Dispatch, July 20, 2010 (Attachment 6). On July 25, 2010, La Botz published a letter in the Columbus Dispatch complaining about his exclusion from the discussions. *See* Attachment 7. During the six weeks that followed, Complainant was not contacted by any member of the ONO about the debates.

21. On August 23, 2010, Mr. La Botz's campaign created an online petition for open and inclusive political debates. The La Botz campaign directed the petition toward the attention of Ohio's Secretary of State and asked that the Secretary of State intervene. *See* [http://www.change.org/petitions/view/petition\\_for\\_inclusive\\_political\\_debates\\_in\\_ohio](http://www.change.org/petitions/view/petition_for_inclusive_political_debates_in_ohio). On September 5, 2010, following the ONO's announcement that only Portman and Fisher would be included in its debates, La Botz sent a letter to the eight newspapers that make up the ONO requesting that he "be included in the debates which your organization is helping to organize." None of the recipients responded. On September 6, 2010, Mr. La Botz personally phoned Mr. Tom Callinan, editor of the Cincinnati Enquirer, and left a message regarding his exclusion from the debates. Mr. Callinan never returned the call. That same day the campaign issued a press release calling for Mr. La Botz's inclusion in the debates. None of the ONO's members responded. On September 7, 2010, La Botz's campaign launched a new online petition, this time targeting the editors of the eight newspapers comprising the Ohio Newspaper Organization. *See* [http://www.change.org/petitions/view/petition\\_for\\_inclusive\\_senate\\_candidate\\_debates\\_in\\_ohio](http://www.change.org/petitions/view/petition_for_inclusive_senate_candidate_debates_in_ohio).

22. In response to this second online petition, Complainant received on September 8, 2010, a response from Mr. Bruce Wings, editor and vice-president of the Akron Beacon Journal, one of the eight corporate members of ONO. Mr. Wings admitted in an e-mail message (Attachment 8) that ONO used no pre-existing objective criteria to exclude La Botz:

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 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.

23. Contrary to Mr. Wings's assertion, the Commission on Presidential Debates does not automatically preclude minor candidates from participating in its debates. Instead, the Commission follows "pre-existing objective criteria," that is, whether a candidate objectively polls 15% of the popular vote prior to the structuring of the debate. *See Becker v. FEC*, 230 F.3d 381, 386 (1<sup>st</sup> Cir. 2000).

24. Mr. Wings erroneously concluded that the Commission on Presidential Debates "allows for only the major-party candidates to debate" and that this approach was lawful under the FECA. Mr. Wings and the ONO likewise erroneously concluded that the ONO and its corporate members could similarly and lawfully "allow for only the major-party candidates to debate."

25. On September 10, 2010, Complainant, through legal counsel (Mr. Mark R. Brown), sent via United States Mail a letter (Attachment 9) to each of ONO's corporate members advising that the ONO's exclusive structuring of the debates violated the FECA and demanding that he (Mr. La Botz) be included in the debates. On September 14, 2010, ONO and its members responded via an electronically transmitted letter to Brown. *See* Attachment 2. In this letter, ONO's legal counsel (Mr. Marion Little) asserted that "ONO considered a number of *objective* criteria in determining which candidates to invite. Specifically, the ONO considered front-runner status based on then-existing Quinnipiac and party polling, fundraising reports, in addition to party affiliation." (Emphasis original).

26. Mr. Little did not in his letter explain what thresholds a qualified candidate needed to meet nor cite to any documents or information that established these alleged criteria before invitations were handed out to Portman and Fisher.

27. The alleged criteria referred to by Mr. Little in his September 14, 2010 letter had never been made known to Complainant or anyone else outside the small circle of eight ONO members and the Portman and Fisher campaigns before September 14, 2010—long after the debates had been finalized and Complainant excluded. These alleged criteria have never been made generally and/or publicly known.

28. The alleged criteria alleged by Mr. Little are not criteria within the common meaning of the word. A "criterion," according to most dictionaries, is a "standard on which a judgment or decision may be based." *See, e.g.,* Merriam-Webster's Online Dictionary (<http://www.merriam-webster.com/dictionary/criteria>). Quinnipiac polls, party polling, and fundraising reports only constitute evidence used to satisfy whatever standard has been set. This evidence does not, and cannot, constitute the objective standard itself. The alleged evidence cannot be the criteria.

29. The evidence identified by Mr. Little is not even objective:

a. Quinnipiac polling from November 2009 through the present date has never mentioned or included the Complainant's, Mr. La Botz, name or party. See [http://www.realclearpolitics.com/epolls/2010/senate/oh/ohio\\_senate\\_portman\\_vs\\_fisher-1069.html#polls](http://www.realclearpolitics.com/epolls/2010/senate/oh/ohio_senate_portman_vs_fisher-1069.html#polls) (Real Clear Politics listing of all polls relevant to Ohio's 2010 senatorial contest including Quinnipiac polls). No objective observer would be able to come to any conclusion about Mr. La Botz's or the Socialist Party's popularity relative to Fisher's and Portman's by looking at these polls. The polls "push" the major candidates.

b. "Party polling" is by definition partisan and not objective.

c. "Fundraising report" is meaningless in the absence of greater specificity, including how much fundraising was required and how it weighed in the ONO's decisional calculus.

30. Complainant was never asked to supply his own party polling or fundraising reports to the ONO or any of its members. He was never invited to explain why the Quinnipiac polls were not truly objective indicators of his support. He was never contacted by the ONO or its members. He was never told what the ONO's criteria were.

31. The only arguable standards identified by Mr. Little in his September 14, 2010 letter to Mr. Brown were "front-runner" status and "party affiliation." "Front-runner" status, however, is too vague to constitute an objective criterion. "Party affiliation," likewise, is too amorphous to have any objective meaning. Moreover, the FEC has previously warned against using party affiliation as a criterion. Indeed, its sole use is impermissible under the FEC's rules.

32. On September 14, 2010, after receiving Mr. Little's electronically-transmitted letter, Mr. Brown e-mailed to Mr. Little (at his invitation) several additional questions in an effort to clarify the ONO's alleged criteria:

[Y]ou loosely cite "Quinnipiac and party polling, fundraising reports, in addition to party affiliation." Can you be more specific in terms of polling and fundraising reports?

...

Is it your position, on behalf of the ONO, that it was prepared to only invite two candidates to these debates?

...

What objective criteria did Mr. La Botz (or any other candidate) have to satisfy to be invited to the structuring of the senatorial debates or the debates themselves?

...

When were these criteria reported to the campaigns or otherwise made generally available so that qualified candidates might attempt to satisfy them?

*See* Attachments 11 and 12.

Mr. Brown concluded by stating that “your response does not fully resolve my client's concerns. We stand by our demand. We believe there is good cause to believe that the ONO is violating the FECA ....” *See* Attachment 11.

33. Mr. Little responded to Mr. Brown’s follow-up questions via an electronically-submitted letter on September 16, 2010. *See* Attachment 13. Mr. Little did not answer any of the questions posed, and made it clear that there was absolutely no showing Mr. La Botz could have made to gain an invitation to the debates. No other agent representing the ONO and its corporate members has responded to Mr. Brown’s questions.

34. On September 10, 2010, Complainant sent to Mr. Portman and Mr. Fisher letters via U.S. Mail advising them that their participations in the debates organized by the ONO and its corporate members violated the FECA. *See* Attachment 10.

35. ONO and its members relied on no pre-existing objective criteria to justify ignoring Complainant, not inviting him, and categorically excluding him from its scheduled debates. It provided Complainant with no notice, invitation, nor opportunity to meet whatever criteria it had in place. ONO and its members summarily decided that they would invite only the two major-party candidates to the staged debates because they were the two candidates of the Democratic and Republican Parties. The two major-party candidates, Portman and Fisher, knowingly and voluntarily participated in, constructed, and accepted ONO’s and its members’ standards. They bargained for and accepted ONO’s exclusive invitation because they anticipated political and financial gains that naturally are attached to major news organizations’ (print and broadcast) exclusive coverage of campaigns and debates.

### VIOLATIONS

36. 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). The FECA defines “contribution or expenditure” to include “any direct or indirect payment ... or gift ... to any candidate, campaign committee, or political party or organization.” *Id.* § 441b(b)(2).

37. The general prohibition described in ¶ 36 is subject to three exceptions, which permit corporate funds to be used (1) for internal corporate communications; (2) for 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) for the establishment of a separate segregated fund used for political purposes. *Id.* § 441b(b)(2)(A)-(C). In addition, the FECA's general definition section also addresses the term “expenditure,” defining it 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).

38. Under the FEC’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 organizations, at least so long as those organizations and the structure of the debate meet certain criteria. Two interrelated regulations produce this result. First, 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. Debate staging organizations must either be nonprofit organizations that “do not endorse, support, or oppose political candidates or political parties,” or broadcasters that are “not owned or controlled by a political party, political committee or candidate.” 11 C.F.R. § 110.13(a). Next, the candidate debate 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). Finally, debate staging organizations are required to use “pre-established objective criteria to determine which candidates may participate in the debate ....” 11 C.F.R. § 110.13(c). In particular, the FEC’s regulations clearly state: “For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.” *Id.*

39. The FEC has 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).

40. The court in *Buchanan v. Federal Election Commission*, 112 F. Supp.2d at 74, opined 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.”

41. ONO’s and its corporate members’ actions violate the FECA’s ban on corporate contributions and 11 C.F.R. § 110.13(c) for four independent reasons: (1) ONO and its corporate members had no “pre-established objective criteria to determine which candidates may participate in the debate;” (2) ONO and its corporate members used “nomination by a particular political party as the sole objective criterion to determine to include” Fisher and Portman in the

debates; (3) the ONO and its members structured whatever criteria they imposed “to result in the selection of certain pre-chosen participants;” that is, the criteria were designed so “that only the Democratic and Republican nominees could reasonably achieve it; and (4) ONO and its corporate members kept their criteria secret and failed to disclose them to anyone outside ONO, its members, and the Portman and Fisher campaigns, thus denying to qualified candidates (including La Botz) the opportunity to meet the alleged criteria.

42. ONO and its corporate members are “broadcasters” within the meaning of 11 C.F.R. § 110.13(a)(2). ONO’s members are all for-profit corporations. ONO and its corporate members benefit financially from sponsoring debates. 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(c). Because ONO and its corporate members have not complied with 11 C.F.R. § 110.13(a)(2), they are in violation of the FECA’s ban on corporate contributions. *See* 2 U.S.C. § 441b(a).

43. Because the FECA prohibits “any candidate” from “knowingly ... accept[ing] or receiv[ing] any contribution prohibited by this section,” 2 U.S.C. § 441b(a), Fisher and Portman are also in violation of the FECA’s ban on corporate contributions. Fisher and Portman knowingly conspired with ONO and its corporate members to construct exclusive debates in violation of 11 C.F.R. § 110.13(a)(2). Complainant notified the Fisher and Portman campaigns by United States Mail on September 10, 2010 that the debates sponsored by the ONO and its corporate members violated the FECA. Still, Fisher and Portman have chosen to participate in the debates and knowingly accept the unlawful corporate contribution.

#### DEMAND FOR RELIEF

WHEREFORE, Complainant, Dan La Botz, respectfully requests that the Commission investigate the allegations contained in this Complaint, declare that the Respondents are in violation of the Federal Election Campaign Act and applicable FEC regulations, and impose sanctions commensurate with these violations.

#### DEMAND FOR EXPEDITED PROCEEDINGS AND EMERGENCY RELIEF

Complainant further requests that the Commission take whatever action it may deem necessary and appropriate to expedite its proceedings and cause emergency relief to be entered to prevent the ONO’s planned debates from taking place without Complainant’s participation. This includes attempting immediate conciliation under 2 U.S.C. § 437g(4)(A), instituting emergency proceedings in the United States District Court for the Southern District of Ohio in order to obtain a temporary restraining order and/or preliminary injunction prohibiting Respondents from

violating the FECA, *see* 2 U.S.C. § 437g(6)(A), and/or referring the matter to the Attorney General of the United States for immediate prosecution. *See* 2 U.S.C. § 437g(5)(C).

I swear under penalty of perjury that the allegations contained in this Complaint are, upon information and belief, true and correct.

Sworn pursuant to 18 U.S.C. § 1001.

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Dan La Botz

Sworn to and subscribed before me this \_\_\_\_ day of September, 2010.

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Notary Public

My commission expires: \_\_\_\_\_

Respectfully submitted,

Mark R. Brown  
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