

FILED

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CLERK OF DISTRICT COURT
COSTA MESA, CALIFORNIA
BY _____

10 **United States District Court**
11 **Central District of California**

13 GARY E. JOHNSON; JAMES P. GRAY)
14 and GARY JOHNSON 2012, INC.,)
15 Plaintiff)

Civil Action # **SACV12-01600 PSG (ANx)**
COMPLAINT

16 vs.

17 COMMISSION ON PRESIDENTIAL)
18 DEBATES, a corporation;)
19 REPUBLICAN NATIONAL)
20 COMMITTEE; DEMOCRATIC)
21 NATIONAL COMMITTEE,)
22 Defendants.)

23 **PRELIMINARY STATEMENT**

24 1. This is an action for injunctive relief against the two national political parties and
25 an organization created by them, to enjoin them under the Sherman Anti-Trust
26 Act, 15 U.S.C. §§1, *et seq.*, from violating the anti-trust laws of the United States

1 by conspiring in restraint of trade to exclude the presidential and vice presidential
2 nominees of a third party from participating in the only nationally televised
3 presidential, and vice-presidential, debates next month. Plaintiffs thus bring this
4 action to prevent injury to themselves and to the American electorate and to foster
5 competition in the marketplace of both ideas and of those seeking to provide
6 services to the nation in the two highest offices of the land.

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8 **JURISDICTION AND VENUE**

- 9 2. This Court has jurisdiction over this case, brought under Section 1 of the Sherman
10 Act, 15 U.S.C. §1, pursuant to Section 16 of the Clayton Act, 15 U.S.C. §25,
11 which provides that “The several district courts of the United States are invested
12 with jurisdiction to prevent and restrain violations of this Act...” Jurisdiction is
13 also conveyed by 28 U.S. C. §1331.
- 14 3. Venue is proper in this Court because all defendants “transact business” in this
15 district, and defendant Commission on Presidential Debates is a corporation. 15
16 U.S.C. §22. The Plaintiffs are “entitled to sue for and have injunctive relief, in
17 any court of the United States having jurisdiction over the parties”, and Plaintiffs
18 have elected to sue. James P. Gray is a resident of Newport Beach, California, and
19 thus of this district.

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21 **PARTIES**

- 22 5. Defendant Commission on Presidential Debates is a nonstock, nonprofit (under
23 26 U.S.C. §501 (c) (3)) District of Columbia corporation, with its principal office
24 in the District of Columbia at 1200 New Hampshire Avenue North West, Suite
25 445.

- 1 6. Defendants Republican National Committee and Democratic National Committee
2 are associations organized under Federal Election Law 14 U.S.C. §§431 *et seq.*,
3 and are the umbrella organizations of the two major political parties in the United
4 States. They each have their principal offices in the District of Columbia at 310
5 First Street, South East and 430 South Capitol Street, South East, respectively..
- 6 7. Plaintiff Gary E. Johnson is the former Governor of the State of New Mexico, a
7 resident of that state, and the nominee of the Libertarian Party for the office of
8 President of the United States. Plaintiff James P. Gray is a retired judge of the
9 Superior Court of the State of California for the County of Orange, and is the
10 nominee of the Libertarian Party for Vice President of the United States. Their
11 campaign committee is Plaintiff Gary Johnson 2012, Inc, and it is based in Salt
12 Lake City, Utah. The individual plaintiffs' names will appear on the ballot in
13 every state of the union for election to these offices.

14 FACTS

- 15 8. Presidential candidates have engaged in debates since the early years of television.
16 In 1960, the three major broadcast television networks sponsored debates between
17 Vice President Nixon and Senator Kennedy. In 1976, out of a desire for greater
18 independence and to remove the networks from control of the format, the League
19 of Women Voters began sponsoring presidential, and vice-presidential, debates.
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- 21 9. From 1976 forward, there have been debates leading up to every presidential
22 election, because the candidates have unanimously conceded the importance of
23 debates to the election process, and victory. The view that presidential debates are
24 critical to the outcome of the election is now universally held. From that premise,
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1 it follows that participation by a candidate in the nationally-televised debates is
2 equally critical to his or her candidacy.

3 10. On October 3, 1988, the League of Women Voters withdrew its sponsorship of the
4 presidential debate scheduled to be held in Los Angeles on October 18, 1988. In
5 so doing, the head of the League, Nancy M. Neuman stated, “[T]he League of
6 Women Voters is withdrawing its sponsorship of the presidential debate scheduled
7 for mid-October because the demands of the two campaign organizations would
8 perpetrate a fraud on the American voter...The League has no intention of
9 becoming an accessory to the hoodwinking of the American people.” At that time
10 the present conspiracy was born. The two major parties, acting through their
11 national committees (defendants Republican National Committee and Democratic
12 National Committee) got together and quickly organized the defendant
13 Commission on Presidential Debates for the purpose of hosting the debate later
14 that month.

15 11. The Defendants, and each of them, to this day continue to secretly meet, and have
16 secretly met, in Washington, D.C., and in other places throughout the country, to
17 devise rules for the presidential and vice presidential debates. This conspiracy has
18 worked, as predicted by the League of Women Voters as set forth above, to
19 “hoodwink the American people”. Ms. Neuman went on to correctly note that
20 “Americans deserve to see and hear the men who would be president face each
21 other in a debate on the hard and complex issues critical to our progress into the
22 next century.” The agreement establishing the Commission on Presidential
23 debates “is a closed-door masterpiece”, in the words of Ms Neuman.

24 12. Earlier in 2012, the defendants, acting in concert and agreement one with the
25 other, established rules for the forthcoming debates that will exclude the plaintiffs
26 from participation in these debates. Specifically, these rules limit participation in
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1 the debates not to candidates like the plaintiffs who will be on the ballot in every
2 state, but who are above a particular threshold in certain national polls, and the
3 selection of which polls and the timing thereof are secret. Specifically, the rule
4 provides, that participants “have a level of support of at least 15% (fifteen percent)
5 of the national electorate as determined by five selected national public opinion
6 polling organizations, using the average of those organizations’ most recently
7 publicly-reported results at the time of the determination.” In agreeing to these
8 rules to exclude the plaintiffs from participating in the debates, the defendants are
9 conspiring and contracting to restrain the plaintiffs from participating in the
10 electoral process.

11 13. The office of president, to which Governor Johnson aspires, pays a salary of
12 \$400,000 per year. 3 U.S.C. §102. The office of vice president, to which Judge
13 Gray aspires, pays a salary of \$230,000 per year. 3 U.S.C. §104. The services to
14 be rendered by the candidates elected to these offices, for money, is “commerce”
15 within the reach of the Sherman Act, 15 U.S.C. §1, and actions to conspire or
16 contract to prevent plaintiffs from election by excluding them from the debates is
17 actionable “restraint of trade” under the rule of *Goldfarb v. Virginia State Bar*, 95
18 S.Ct. 2004, 421 U.S. 773, 44 L.Ed.2d 572 (1975) and *American Medical Ass’n v.*
19 *U.S.*, 130 F.2d 233 (1942). Furthermore, the powers of the presidency both
20 directly and indirectly most profoundly impact interstate commerce. For example,
21 the President, with advice and consent of the Senate, appoints the Secretary of
22 Commerce. While Congress has the power to regulate all aspects of interstate
23 commerce, it is the President who has the power to veto such Acts of Congress,
24 or alternatively, to sign them into law.

1 13. The Sherman Act was enacted in 1890 to prevent conspiracies such as the one
2 alleged herein between the defendants, and applies to each of the defendants, who
3 are “persons” under the law.

4 **COUNT ONE**

5 **SHERMAN ACT §1**

6 *Illegal Conspiracy or Contract in Restraint of Trade*

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8 14. Plaintiffs incorporate and restate the allegations in Paragraphs 1 through 13 above.

9 15. The defendants have scheduled presidential debates as follows: October 3, 2012;
10 October 16, 2012 and October 22, 2012. The defendants have scheduled a vice
11 presidential debate for October 11, 2012.

12 15. The acts of the defendants, as alleged above, to conspire and contract between and
13 amongst themselves to monopolize the field in the race for president and vice
14 president harm the American electorate generally, and plaintiffs, particularly.
15 These acts will, if not enjoined, directly and proximately cause immediate and
16 irreparable injury to plaintiffs, the value of which is both immeasurable, priceless
17 and impossible to calculate, and include but far exceed the salaries payable to
18 plaintiffs if they are elected. These injuries are of the type the antitrust laws are
19 intended to prohibit and thus constitute antitrust injury, and unless enjoined,
20 plaintiffs are without an adequate remedy at law.

21 **RELIEF REQUESTED**

22 WHEREFORE, plaintiffs pray for injunctive relief by temporary restraining order,
23 preliminary and permanent injunction, which is sufficient to prevent antitrust injury to
24 plaintiffs and to restore competition and a level and honest playing field amongst those
25 persons seeking the presidency, by enjoining defendants, and each of them, from
26 conducting presidential debates unless all constitutionally-eligible candidates are
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1 included whose names will appear on the ballots in states whose cumulative total of
2 electoral college votes is 270 or more. Further, plaintiffs pray for their costs of suit, and
3 for such other and further relief as the Court may deem just and equitable.

4 Respectfully submitted,

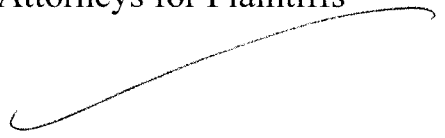
5 September 21, 2012

JENSEN & ASSOCIATES, APC

Trial Lawyers

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8 By: 

PAUL ROLF JENSEN

Attorneys for Plaintiffs


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