

- What is the Debate Commission?
  - The Commission on Presidential Debates (CPD) is a nonprofit corporation established in 1987 under joint sponsorship of the Democratic and Republican political parties. The CPD sponsors and produces debates for US presidential and vice-presidential candidates and undertakes research and educational activities relating to the debates. It has run all of the presidential debates held since 1988.<sup>1</sup>
  - Josh Israel of The Center for Public Integrity wrote:<sup>2</sup>
    - “[The CPD is] largely a secretive tax-exempt organization, created and run by former chairmen of the two major parties, funded by a small group of unidentified major donors, and designed, it seems, to exclude nearly all third-party candidates.”
  - The mission of the CPD according to their own website:<sup>3</sup>
    - “The Commission on Presidential Debates (CPD) was established in 1987 to ensure, for the benefit of the American electorate, that general election debates between or among the leading candidates for the offices of President and Vice President of the United States are a permanent part of the electoral process. CPD’s primary purpose is to sponsor and produce the quadrennial general election debates and to undertake research and educational activities relating to the debates. The organization, which is a nonprofit, nonpartisan, 501(c)(3) corporation, sponsored all of the presidential debates [since 1988].”
    - “To meet its ongoing goal of educating voters, the CPD is engaged in various activities beyond producing and sponsoring the presidential debates. Its staff prepares educational materials and conducts research to improve the quality of debates.”
    - “Further, the CPD provides technical assistance to emerging democracies and others interested in establishing debate traditions in their countries. In recent years, the staff worked with groups from Bosnia, Burundi, Colombia, Côte d’Ivoire, Ghana, Haiti, Jamaica, Lebanon, Niger, Nigeria, Peru, Romania, Trinidad and Tobago, Uganda, and the Ukraine, among others. Finally, the CPD coordinates post-debate symposia and research after many of its presidential forums.”
  - Commission Leadership<sup>4</sup>
    - Co-Chairs:
      - Frank J. Fahrenkopf, Jr.
      - Dorothy S. Ridings

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<sup>1</sup> Commission on Presidential Debates - Wikipedia  
[https://en.wikipedia.org/wiki/Commission\\_on\\_Presidential\\_Debates](https://en.wikipedia.org/wiki/Commission_on_Presidential_Debates)

<sup>2</sup> Two-Party Debates - The Center for Public Integrity  
<https://publicintegrity.org/2008/09/18/3057/two-party-debates>

<sup>3</sup> Our Mission - The Commission on Presidential Debates  
<https://www.debates.org/about-cpd/>

<sup>4</sup> Commission Leadership - The Commission on Presidential Debates  
<https://www.debates.org/about-cpd/commission-leadership/>

- Kenneth Wollack
- Honorary Co-Chairs:
  - Gerald R. Ford
  - Jimmy Carter
  - Ronald Regan
  - George W. Bush
  - Barack Obama
- Co-Chair Emeritus:
  - Paul G. Kirk, Jr.
- Board of Directors:
  - John C. Danforth
  - Charles Gibson
  - John Griffen
  - Yvonne Hao
  - Jane Harman
  - Antonia Hernandez
  - Reverend John I. Jenkins
  - Newton N. Minnow
  - Richard D. Parsons
  - Olympia Snowe
- Executive Director:
  - Janet H. Brown
- Notable Former Board Members:<sup>5</sup>
  - Howard G. Buffett (son of Warren Buffett)
  - Mitch Daniels
  - Caroline Kennedy (daughter of John F. Kennedy)
  - John Lewis
  - Leon Panetta
  - Mike McCurry
- Presidential Debates and the CPD<sup>67</sup>
  - The first debates between presidential candidates in a general election were held in 1960, when JFK and Nixon had four televised debates.
    - Also, for that year only, Congress suspended the equal time provision of the Communications Act of 1934, which stated that a broadcasting station permitting a candidate use of its facilities had to grant the same opportunity to all other candidates, minor ones included.

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<sup>5</sup> Former Board Members - The Commission on Presidential Debates  
<https://www.debates.org/about-cpd/former-board-members>

<sup>6</sup> The History of Presidential Debates: The Televised Years - PBS  
<https://www.pbs.org/now/politics/debatehistory2.html>

<sup>7</sup> Are the presidential debates rigged in favor of major party candidates? - ballotpedia  
[https://ballotpedia.org/Fact\\_check/Are\\_the\\_presidential\\_debates\\_rigged\\_in\\_favor\\_of\\_major\\_party\\_candidates](https://ballotpedia.org/Fact_check/Are_the_presidential_debates_rigged_in_favor_of_major_party_candidates)

- The next several elections went by without any presidential debates, in part because the 1934 Communications Act was still in effect, and networks were reluctant to turn over air time to minor candidates.
  - In 1970, Congress passed a repeal of the equal time provision, but Nixon vetoed the bill..
  - Two years later, the Senate again attempted to repeal the provision but was deterred by the House because the bill would have included congressional campaigns.
- In 1975, the FCC created a loophole so broadcast networks could get around the equal time provision. It ruled that as long as debates were “bona fide news events” sponsored by some organization other than the networks, they would be exempt from equal time requirements.
- The next general election debates occurred in 1976, when Jimmy Carter debated incumbent President Gerald Ford. Those debates were organized and sponsored by the League of Women Voters (LWV), a nonprofit and nonpartisan organization.
  - The LWV continued to organize and sponsor the debates in 1980 and 1984. In both years, the campaigns of the major party candidates objected to certain decisions by the LWV.
    - In 1980, President Carter refused to participate in a debate that included both Republican challenger Ronald Regan and independent John Anderson. The LWV insisted on Anderson’s inclusion and proceeded to hold a televised Reagan-Anderson debate without Carter.
    - In 1984, the three debates featured a moderator and three panelists who would ask both candidates the same questions. The Reagan and Mondale campaigns asked for an unprecedented degree of control over the debates - going as far as to veto nearly a hundred proposed panelists. The LWV blasted both campaigns publicly, and for the second debate that year, the candidates didn’t reject a single panelist.
- For the 1988 election, the two main political parties wanted more control over the debates while the LWV insisted on protecting what they considered to be the debates’ integrity.
  - The Democratic and Republican parties signed a secretly negotiated “memorandum of understanding” that dictated everything from selection of panelists, to the makeup of the audience, to banning follow-up questions.
  - Accusing the two major parties of perpetrating a “fraud on the American voter,” the LWV exposed the secret memo to the public. The LWV withdrew as sponsor of the general election debates, refusing to give its name to an event “controlled and scripted by the candidates’ campaign organizations”.

- On February 18, 1987, Paul Kirk, the national chairman of the Democratic Party, and Frank Fahrenkopf, the national chairman of the Republican Party, held a joint press conference to announce the creation of the CPD.
  - They announced that beginning with the 1988 presidential campaign, candidates from their parties would only participate in general election debates organized by the newly formed CPD.
  - At their news conference, both Kirk and Fahrenkopf acknowledged that third-party candidates were unlikely to be included in the CPD-sponsored debates. Neither considered this an important problem.
    - “The extremely competitive nature of the two parties will ensure that we will reach the best possible agreement for all concerned, most importantly for the voters of this nation,” Fahrenkopf said.
  - The CPD’s board of directors were selected by the two parties, with Kirk and Fahrenkopf serving as co-chairmen.
- When the CPD was created, Kirk and Fahrenkopf hired one full-time employee, a Republican former Senate staffer named Janet Brown, as its director.
- Corporate Sponsorship<sup>8</sup>
  - Brown’s annual salary (paid even in non-election years), the organization’s operating expenses, and debate production costs are paid by a small number of major donors.
    - In 2004, the Commission took in over \$4.1 million, more than 93% of which came from just six unknown contributors.
  - The organization’s website identifies 6 “national sponsors” of the 2016 debates, 7 for the 2012 debates, 8 for the 2008 debates, and 11 for the 2004 debates.<sup>9</sup>
    - The corporate sponsorships have drawn criticism from many. Groups, such as Open Debates, argue instead of serving the people, the CPD serves its corporate interests and sponsors.
    - In 1992, the CPD allowed its \$250,000 sponsor, Philip Morris, to hang a promotional banner in the area visible in post-debate interviews.
    - In 2000, for its \$550,000 contribution, Anheuser-Busch was permitted at the event to distribute pamphlets against taxes on beer.
- Criticisms of the CPD and Lawsuits Filed Against it.
  - The 15% Rule<sup>10</sup>
    - In 1992, the CPD allowed independent candidate Ross Perot to participate in all three presidential debates, even though his candidacy never received support from more than 7% of respondents in public opinion surveys prior to the debates. At the time, the CPD did not have a rule automatically excluding a candidate for low poll numbers.

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<sup>8</sup> Two-Party Debates - The Center for Public Integrity  
<https://publicintegrity.org/2008/09/18/3057/two-party-debates>

<sup>9</sup> National Debate Sponsors - The Commission on Presidential Debates  
<https://www.debates.org/about-cpd/national-debate-sponsors/>

<sup>10</sup> Are the presidential debates rigged in favor of major party candidates? - ballotpedia  
[https://ballotpedia.org/Fact\\_check/Are\\_the\\_presidential\\_debates\\_rigged\\_in\\_favor\\_of\\_major\\_party\\_candidates](https://ballotpedia.org/Fact_check/Are_the_presidential_debates_rigged_in_favor_of_major_party_candidates)

- The CPD refused to allow Perot to participate in the 1996 debates, despite the fact that he won 19% of the popular vote in the 1992 election.
- Subsequently, the CPD adopted new eligibility criteria for debate participants. In 2000, the CPD established three standards:
  - Candidates must meet the constitutional requirements to be president.
  - Candidates must be on the ballot in enough states to be able to win the 270 electoral votes necessary to be elected president.
  - Candidates must be supported by 15% of the electorate, as determined by the average of five national public opinion polls conducted by organizations selected by the CPD.
- “Under the 2020 criteria, in addition to being Constitutionally eligible, candidates must appear on a sufficient number of state ballots to have a mathematical chance of winning a majority vote in the Electoral College, and have a level of support of at least 15% of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations’ most recently publicly-reported results at the time of the determination. The polls to be relied upon will be selected based on the quality of the methodology employed, the reputation of the polling organizations and the frequency of the polling conducted...”<sup>11</sup>
- Co-Chairman Fahrenkopf defends the high threshold saying, “Our philosophy is, only the people who have already proven themselves to be contenders get to debate.”
  - Janet Brown also defends the threshold, noting that “upwards of 160 people” file each election for president and that, though “many of them believe, quite sincerely, that if they were included in a debate they would get the kind of support they need to have a realistic chance of winning the election,” the Commission must balance that against “the public’s desire to see and hear from the individuals who have a realistic chance of being elected...”
- When a Petition for Rulemaking was filed with the FEC and posted for public comment in December, 2014, all but one of the 1,252 public comments endorsed the request for a new rule. Only the CPD claimed there was no need for a change.<sup>12</sup>
  - The 17-member board of the CPD has refused to even meet with the four-dozen signers of a letter asking the commission to change the rule and open up the debates to an independent voice.

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<sup>11</sup> 2020 Nonpartisan Candidate Selection Criteria - The Commission on Presidential Debates  
<https://www.debates.org/2019/10/11/commission-on-presidential-debates-announces-sites-and-dates-for-2020-general-election-debates-and-2020-nonpartisan-candidate-selection-criteria/>

<sup>12</sup> Ending the Presidential-Debate Duopoly - The Atlantic  
<https://www.theatlantic.com/politics/archive/2015/05/ending-the-presidential-debate-duopoly/392480/>

- This letter was sent in January, 2015, and included prominent Republicans, Democrats, and independents - including current and former governors, members of congress, cabinet members, academics, and military leaders.
- In 2000, despite having a valid credential, Ralph Nader was denied entry to the debate facilities. He filed a suit charging that the CPD violated the law and his civil rights. The CPD gave him an apology and a \$25,000 cash settlement in 2002.
  - Nader also filed a complaint with the FEC, on the basis that corporate contributions to the CPD violate the Federal Election Campaign Act.
    - The FEC ruled that the CPD's funding sources did not violate the act, and in 2005 the D.C. Circuit Court declined to overrule the FEC.
- In 2015, Libertarian presidential candidate Gary Johnson filed an antitrust lawsuit against the CPD, the RNC, the DNC, Mitt Romney, and Barack Obama, charging violation of federal antitrust laws.
  - Their argument was: "The CPD, the political parties, and other defendants are accused of acting illegally to entrench the power of the two major political parties by exercising duopoly control over presidential and vice presidential debates in general election campaigns for the presidency of the United States."<sup>13</sup>
  - They further maintained that their plaintiffs are trying to illegally dominate what the suit called "cognizable 'presidential elections market' and cognizable 'political campaign market' for purposes of antitrust laws."
  - What did they want as a result of the suit?
    - "1. Treble damages based on their losses proximately caused by Defendants' violations of Sections 1 and 2 of the Sherman Act; equitable relief, including dissolution of the Commission, and an injunction against further barriers, boycotts or other agreements in restraint of trade, in violation of the First Amendment, or in violation of the laws of the District of Columbia between that cause the exclusion from presidential debates of presidential candidates who have obtained ballot access in a sufficient number of states to win an electoral-college majority."
  - The case was tossed by Judge Rosemary Collyer of US District Court in DC, in 2016.<sup>14</sup>
    - Part of Collyer's decision states:
      - "But calling political activity a "market place" does not make it so. Plaintiffs make no attempt to define what they mean by presidential debates, elections, and politics

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<sup>13</sup> The Libertarian Party's Arguments for Suing to Get Into Presidential Debates - Reason  
<https://reason.com/2015/09/28/the-libertarian-partys-arguments-for-sui/>

<sup>14</sup> Presidential Debate - Reason  
<https://reason.com/2016/08/05/gary-johnson-debate-lawsuit-lawyer-bruce/>

“markets.” Their vague reference to “markets” is insufficient to allege injury to competition in any particular market... As with holding political office, running for political office is not “commerce” under antitrust law... Because they have failed to assert an antitrust injury, Plaintiffs lack antitrust standing.”

- Bruce Fein, the lawyer for Gary Johnson said in an interview:<sup>15</sup>
  - “When you run for president you have commercial objectives,” giving examples of manipulating the minimum wage, permitting or not permitting pipelines, raising or cutting taxes. And they are trying to actuate those commercial objectives through government action. “If the objective has a commercial goal, then the process by which you get into government or get government to enact economic changes should be subject to antitrust law,”
- In Feb. 2017 the suits by Johnson, Stein et al were reheard and the judge ruled that the FEC had not provided sufficient justification for its decision not to engage in rulemaking, and ordered the Commission to either provide a more sufficient justification for its position, or to alter the commission’s rules.
- In Aug. 2017, Judge Janice Brown concluded in a decision from the DC Circuit Court of Appeals that an earlier decision from DC District Court Judge Rosemary Collyer to dismiss the lawsuit was correctly decided.<sup>16</sup>

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<sup>15</sup> The Commission on Presidential Debate’s 15 Percent Polling Criterion Must Go, Argues Lawsuit from Gary Johnson - Reason

<https://reason.com/2017/04/21/the-commission-on-presidential-debates-1/>

<sup>16</sup> Dismissal Upheld by DC Appeals Court - Reason

<https://reason.com/2017/08/29/dismissal-upheld-by-dc-appeals-court-in/>