

THE RUTHERFORD INSTITUTE

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“The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote ... it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.”¹

September 22, 2010

Mr. Bob Gibson, Executive Director
Sorensen Institute for Political Leadership
The University of Virginia
P.O. Box 400206
Charlottesville, VA 22904-4206

Re: October 21st Candidates' Debate

Dear Bob:

The Sorensen Institute is to be commended for its efforts to serve as a training ground for future political leaders who embody the Jeffersonian qualities of trust, civility and respect. As you rightly recognize, good leaders make good government, which ultimately strengthens the democratic process. However, even the best leaders must be held accountable to the rule of law—our Constitution—which is why it is so vitally important that Sorensen not only model the aforementioned virtues but hold fast in its commitment to abiding by the *spirit* as well as the law of the Constitution.

The candidates' debate scheduled for October 21, 2010, presents Sorensen with a perfect opportunity to put into practice its founding principles, two of which are to not “endorse, support or oppose any candidate for office” and to not “mediate disputes between or among candidates or political parties.”² Unfortunately, by actively excluding independent candidate Jeffrey Clark from the debate and limiting it to the two so-called establishment party candidates, Sorensen not only appears to favor Mr. Hurt and Mr. Perriello over Mr. Clark, but also appears to tacitly support Mr. Hurt's boycott of any debates including Mr. Clark.

¹ *Terminello v. Chicago*, 337 U.S. 1, 4 (1949) (internal citations omitted).

² See “Principles” as stated on The Sorensen Institute for Political Leadership's “About Us” web page, <http://www.sorenseninstitute.org/aboutus>. Accessed on Sept. 21, 2010.

Moreover, by failing to extend an invitation to the candidates' debate to Mr. Clark, who is a legitimate candidate in all regards, Sorensen indirectly endorses the Republican and Democratic contenders for the office of U.S. Representative for the Fifth District, thereby casting doubt on another of its principle commitments to nondiscriminatory and nonpartisan behavior.³ Finally, given that Mr. Hurt, who has vociferously refused to participate in any debates at which Mr. Clark is present, is also a former Sorensen graduate who presently serves on Sorensen's Advisory Board, the Institute's actions also appear to prioritize Mr. Hurt's political ambitions over the voters' more paramount need to observe the various candidates seeking election.

The repercussions of Sorensen being party to, even in a tacit way, such discriminatory and partisan behavior places it in the untenable and undesirable position of violating its stated core principles "which inform its mission at all times."⁴ As a friend and fellow crusader in the quest for better government, I do not wish to see Sorensen fall into this trap. Indeed, while legal arguments can be made on both sides to justify Mr. Clark's exclusion or challenge it⁵, inviting such a process will only prove tedious and contentious, and will besmirch the noble work on which the Sorensen Institute prides itself.

I am aware that Sorensen is neither the first nor the only organization to succumb to this exclusive mindset by limiting its forum only to Mr. Hurt and Mr. Perriello. I am also aware that there are other factors at play, namely Mr. Hurt's intent to boycott any debates in which Mr. Clark is a participant and the local media's alleged primary interest in broadcasting a debate between Mr. Hurt and Mr. Perriello. However, neither of these self-serving interests should be allowed to trump the interests of Virginia voters and the transcendent value of the free marketplace of ideas. Doing so will only serve to impede the democratic process and undermine the free marketplace of ideas.

A candidates' debate presents a unique and powerful opportunity for the education of voters. It would be tragic for one candidate's political snobbery to prevail over the people's interests in making the most informed decisions possible. As the United States Supreme Court has made clear:

³ *Ibid.*

⁴ *Ibid.*

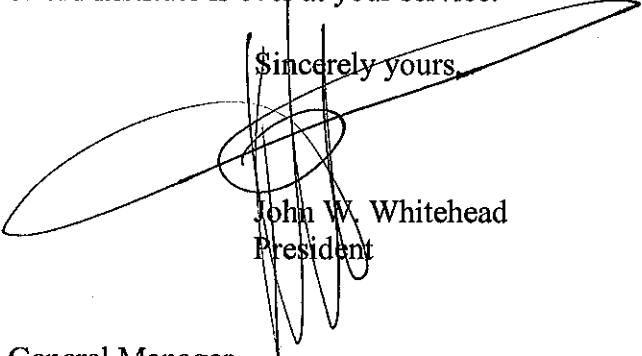
⁵ Your stated justification for excluding Mr. Clark is his failure to meet the requirement that "any candidate must demonstrate at least 10 percent support in two scientifically sound public opinion polls independent of all campaigns prior to September 1." While this requirement may appear legitimate at first blush, an awareness of context exposes the condition as spurious. As Mr. Clark immediately informed you, no polls that would meet this definition were conducted between the date of your communication (July 15, 2010) and September 1, 2010. Thus, due to factors beyond Mr. Clark's control or influence, factors having no relation to the strength of his candidacy, it simply would not be possible for Mr. Clark to meet your stated condition. Indeed, it would not be possible for *any* of the three candidates to meet the condition under the circumstances. However, you informed Mr. Clark that the Institute would simply "assume" that the Republican and Democratic candidates "would have met" the condition. Thus, in addition to its patent unreasonableness, we submit that this asserted rationale for excluding Mr. Clark is, in fact, a form of viewpoint discrimination that is absolutely impermissible under the First Amendment. The imposition of this fantastic polling requirement upon Mr. Clark alone appears to serve no real purpose other than to exclude him from a critical debate.

“[C]andidate debates are of exceptional significance in the electoral process. ... Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates.”⁶

Thus, having long admired Sorensen’s work and in the hopes of ensuring that it can continue to proudly hold firm to its core principles, I urge you to carefully reconsider your decision to exclude Mr. Clark from this debate. Concurrent with this letter voicing my concerns to Sorensen, which is being copied to other local sponsoring organizations, I also intend to call on Mr. Hurt and members of the local media to renounce their part in this political collusion.

Should you have any questions about the aforementioned or need any assistance in ensuring that the Sorensen Institute can continue to stand by its commitment to such transcendent values as respect for freedom of speech and the marketplace of ideas, openness and transparency in government, and the subordination of personal interests to the public need, The Rutherford Institute is ever at your service.

Sincerely yours,



John W. Whitehead
President

cc: Mr. Warren Fiihr, General Manager
WSLS-TV

Ms. Loren Intolubbe-Chmil, President
League of Women Voters of Charlottesville/Albemarle

Mr. Rex Hammond, President
Lynchburg Regional Chamber of Commerce

Ms. Amanda Witt, President
Martinsville-Henry Co. Chamber of Commerce

⁶ *Arkansas Educational Television Commission v. Forbes*. 523 U.S. 666, 675-6 (1998).