The original documents are located in Box 30, folder "Legal Questions - Equal Time Rule" of the Michael Raoul-Duval Papers at the Gerald R. Ford Presidential Library.

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CITE _____

FROM: JACK MARSH

TO: DICK CHENEY
JIM CAVANAUGH

~~INFO:~~

DTG: ~~1976 AUG~~ 27 00 10

RELEASED BY:

TOR:

SPECIAL INSTRUCTIONS:

VAIL

Duval done -
handle
Dick

WHCA FORM 8, 22 FEB 74

To: Cheney
Cavanaugh

THE WHITE HOUSE

WASHINGTON

August 26, 1976

From: MARSH

MEMORANDUM FOR: JACK MARSH

FROM: JIM CANNON

SUBJECT: Inquiry by House Republicans Concerning the Administration's Position on Proposed Legislation to Eliminate the FCC's Equal Time Rule in Respect to Presidential Debates

Issue

Ron Coleman, a minority counsel of the House Subcommittee on Communications, recently contacted Lynn May of my staff on behalf of Louis Frey, ranking Minority Members of that Subcommittee. Coleman stated that Chairman Van Deerlin is preparing legislation, promoted by CBS, to suspend the equal-time provision of Section 315 of FCC regulations. He requested the position of the White House on this matter.

Coleman indicated that Van Deerlin would probably not introduce legislation unless Frey concurs. On his part Frey does not want to alter Section 315 at this time but is looking for White House guidance before notifying Van Deerlin of his position. Coleman also indicated that Frey will have to let Van Deerlin know his position in the next few days.

Senator Pastore, Chairman of the Senate Subcommittee on Communications, however, has made public his opposition to a suspension of Section 315 in favor of debates sponsored by the League of Women Voters.

Background

A previous ruling of the FCC exempts political debates from the equal-time provision if they are sponsored by third parties (e.g. League of Women Voters). There are several obstacles, including the Federal Election Commission's concerns and a pending Supreme Court case challenging the FCC's exemption of debates arranged by third parties.

Comments

From a purely communications policy aspect, the Office of Telecommunications Policy and the Domestic Council staff would recommend against legislation revising Section 315 under pressure of the Presidential debates issue. While concurring that the equal-time question merits review, we believe that it warrants rational analysis and debate.

Possible Alternatives

Debates could occur between the Republican and Democratic candidates, without including others, if a joint Congressional resolution were passed exempting the debates from Section 315 on a one-time basis as occurred in 1960. Again on a purely substantive policy basis, this would be preferable to legislation altering the equal-time rule. If legislation is the vehicle chosen by the Congress to deal with this issue, however, appropriate language could be developed to restrict its application to this year's campaign, allowing for a more comprehensive review later.

Requested Action

I would appreciate your guidance on the nature of the Domestic Council's reply to Congressman Frey's inquiry.

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

August 26, 1976

DIRECTOR

MEMORANDUM FOR F. LYNN MAY

FROM: THOMAS J. HOUSER TJH

SUBJECT: Effect of Section 315 of the Communications Act on Media Coverage of Presidential Candidate Debates

Section 315 of the Communications Act of 1934, as amended, provides that any licensee who permits "a legally qualified candidate for any public office to use a broadcasting station... shall afford equal opportunities to all other such candidates for that office ....." 1/ Although Section 315 was amended in 1959 to exempt from this general requirement "on-the-spot coverage of bona fide news events" involving candidates for public office, 2/ the Commission subsequently ruled in Goodwill Station, Inc., 3/ and National Broadcasting Co., Inc. (Wyckoff), 4/ that broadcast coverage of a debate between candidates for public office was not a "bona fide news event" within the meaning of Section 315(a)(4), because the appearance of the candidates was the event itself and not merely "incidental" to some other news event. Thus, until recently, the broadcast of a debate between major party candidates for the Office of President was held to be encompassed within the Section 315 equal time requirement, and broadcasters who would permit their facilities to be so used would be subject to a corresponding obligation to provide equal time to all other qualified candidates for the same office.

On September 25, 1975, the Commission reversed these decisions as an erroneous interpretation of Section 315(a)(4) and its

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1/ 47 U.S.C. §315.

2/ 47 U.S.C. §315(a)(4).

3/ 40 FCC 362 (1962).

4/ 40 FCC 366 and 370 (1962).

legislative history. The Commission stated that it would henceforth "... interpret §315(a)(4), so as to exempt from the equal time requirements of Section 315 debates between candidates as 'on-the-spot coverage of bona fide news events' in situations presenting the same factual contexts in Goodwill Station and Wyckoff." 5/ The factual patterns established therein and as interpreted in Aspen suggest that:

(1) The program be initiated and debaters invited to participate by an independent sponsor, and that the participants take no part in establishing the format of the debate; 6/

5/ Aspen Institute Program on Communications, 55 FCC 2d 697 at 703 (1975). The Commission's decision in Aspen was upheld by the Circuit Court of Appeals for the District of Columbia Circuit on April 12, 1976 (Case No. 75-1951) and petitions for a writ of certiorari before the Supreme Court were filed by the Media Access Project on behalf of the National Organization for Women (NOW) and Shirley Chisolm and by the Democractic National Committee (DNC). The Supreme Court has yet to act on these petitions. Applications for stay of the Commission order pending judicial review have been denied by the Commission and the Court of Appeals. No such request has yet been made of the Supreme Court. The Commission's decision in Aspen is thus the controlling law at the present time.

6/ The Commission in construing the circumstances of Goodwill Station, stated in Aspen that, "Neither [of the participants] had any part in establishing the format of the debate." This provision should be considered in light of a second holding in Aspen, however, which exempts presidential news conferences from Section 315 equal time requirements. In that the format of a press conference would obviously be subject to presidential control (location, timing, length, etc.), it is doubtful that the Commission intended the question of participant control of format to be considered an operative criterion respecting debates. This conclusion is further supported by the fact the Aspen statement is but a gloss on the Goodwill Station fact pattern, and a similar statement was not explicitly included in that earlier case. Nevertheless, a request for equal time by a candidate could be supported on the argument that the participants in a presidential debate had participated in establishing the format of the proceeding, thus presenting the broadcaster with the choice of a court fight of submission to the request.

Moreover, the "format" of a debate has never been formally defin by the Commission, but when it has been discussed, "format" has been used to describe only the order of appearance of speakers or the time to be allotted to the different speakers; etc. See, e.g., Arthur N. Kruger, Modern Debate, Its Logic and Strategy, at 87, 387 (1960).

(2) The broadcast media cover the debate "live"; make none of the arrangements respecting the conduct of the debate and exercise no control over the program content; and

(3) The debates or joint appearance not be held in a broadcast studio.

While the Commission did not specifically preclude application of the on-the-spot coverage of a news event exemption to debate contexts, other than as specified in Aspen, Goodwill Stations and Wyckoff, deviation from the criteria developed therein could nullify the exemption and cause legitimate concern among broadcasters that carriage of such debates will invoke claims for equal time by other candidates. Thus, if the President should prefer that the debates be organized by a network or take place in a broadcast studio, or, possibly, if he considers it necessary and appropriate to organize or otherwise participate in the preparation of the "format" of the proposed debates, demands on the networks for equal time might be sustained. If it is not feasible to meet the Aspen criteria, and if the networks decline to risk exposure to the equal time requirements, the only alternative would be to seek enactment of a joint congressional resolution, similar to that enacted in 1960 by which the Nixon-Kennedy debates were exempted from the Section 315 requirement. A suggested draft of such legislation is attached as Tab A.

If on the other hand, the proposed debates were to be sponsored by an independent organization, and otherwise satisfy the Wyckoff, Goodwill Station and Aspen criteria, (and assuming the Supreme Court upholds the Court of Appeals affirmation of the FCC's Aspen ruling,) the debates would be exempt from the equal time requirements of Section 315.

Attachment

RICHARD A. MOORE
2021 L STREET, N. W.
WASHINGTON, D. C. 20036
(202) 293-7800

Debates—Legal Qs

September 1, 1976

Hon. Michael Duval
The White House
1600 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Dear Mike:

Despite the decision by the Federal Election Commission, I am convinced that there is a real possibility that McCarthy or Maddox will tie up the League debates in court, in which case final relief could come too late for the debates to take place.

If such a law suit is filed, I think the President should consider issuing an immediate statement to the following effect:

The public wants debates by the two major candidates and is entitled to have them. In view of the possibility that the League debates might be delayed or blocked by court action, the President urges that Congress either pass, or be prepared to pass immediately, a bill suspending Section 315 with reference to Presidential and Vice Presidential candidates.

This statement would accomplish two things: (1) The President would retain the initiative and affirm his sincerity on the matter of debates; (2) If the debates are blocked it would be Congress' fault, not the President's.

The statement should make it clear that the President is not trying to take the debates away from the League of Women Voters. Indeed, if it turns out that

the debates can only be held pursuant to suspension of 315, the League could still have a role in the preparation or presentation.

Yours,

Dick

P. S. The enclosed CBS material contains a good discussion of the whole problem.

/mrg

CBS

CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 975-5152
Arthur R. Taylor, President

Dear Mr. Chairman: August 26, 1976

Most regrettably, the impression has grown in recent weeks that the networks are somehow engaged in a last minute attempt to take the Presidential debates away from the League of Women Voters.

This is a wholly distorted impression. It does not reflect an understanding of our consistent efforts through the years to secure repeal of Section 315. It misses entirely our present motives.

For us, it is not a question of who does the debates in that narrow sense but rather how the individual candidates and the electorate in this complex election year can best be served. To that end, we have prepared and enclosed a brief statement of the case as we see it together with a legal opinion which may be of special interest to you. (I am forwarding these documents to the House Subcommittee on Communications also.)

We hope that you can once more lend your singular strengths to this cause for it is a cause still worthy of your skills and the principles of your long career.

With best wishes.

Sincerely,

The Honorable John O. Pastore
Chairman, Subcommittee on Communications
3215 Dirksen Senate Office Building
Washington, D. C. 20510

cc The Honorable Howard H. Baker, Jr.

CBS

CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 975-5152
Arthur R. Taylor, President

Dear Mr. Chairman: August 26, 1976

Most regrettably, the impression has grown in recent weeks that the networks are somehow engaged in a last minute attempt to take the Presidential debates away from the League of Women Voters.

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The answers to the particular questions which you sent to us will be in your hands by this coming Monday, August 30. In the meantime, we trust these documents will be helpful to your deliberations.

With best wishes.

Sincerely,

The Honorable Lionel Van Deerlin
Chairman, Subcommittee on Communications
2427 Rayburn House Office Building
Washington, D. C. 20515

cc The Honorable Lou Frey, Jr.

CBS MEMORANDUM

BACKGROUND

For almost two decades, we at CBS have urged repeal of Section 315. We are as eager now as ever to press that case. This is a critical juncture in the development of Presidential debates. No less important, we want to dispel misconceptions which surround the present situation.

Although our ultimate goal remains full and permanent repeal of Section 315, we recognize the pressing deadlines which face us all. Therefore, we confine ourselves to issues surrounding the suspension of Section 315 as it applies to the Presidential and Vice Presidential Candidates during this election year.

Based on exceptions to Section 315 under an FCC ruling, the League of Women Voters moved with imagination and energy to fill a void in the Presidential primary process and now propose to play a role in the election. We admire their initiative and their devotion to public service. In fairness however, it should not be forgotten that it was a void which broadcasters were not allowed to enter.

At this stage, it is of critical importance to understand that this is not in any way a competition between the networks and the League of Women Voters. There is no prize to be gained here for one group or another. Nor should there be.

What is vitally at stake, however, is how best to serve the interests of the American electorate; how best to present the characters and capacities of the candidates for the highest offices in the nation through television, the most significant single medium of communication in the political process. Given the long, productive and sensitive public record of the League of Women Voters, we can only believe that they share this assessment.

We are convinced that only through the suspension of Section 315 (and the freedom to perform thus given broadcasters) can the full programming potentials and public service opportunities of this election year be realized.

PHYSICAL PRODUCTION OF THE DEBATES

Arranging presidential debates, setting a format and producing such broadcasts combine to offer subtle and difficult problems. The record of problems encountered in the Nixon/Kennedy Debates bears hard witness as to how subtle and difficult the entire process is.

Yet, if the League does have responsibility for such debates, all of broadcasting's hard won experience in 1960 and since then with format and production techniques will be of no effect for we are precluded by the FCC ruling from any role whatsoever in the preparation or production logistics of these historic encounters. There can be no television studio originations. At best, we can only broadcast what has been arranged elsewhere under physical circumstances involving no counsel from us.

Under present circumstances, there is a major issue which cannot be avoided. Who is best equipped to produce these immensely important political events? There are questions which very much need to be faced:

1. Should such debates, and the setting in which they occur, be designed for a particular and special live audience of hundreds of voters or should such events be designed from the very start with the millions upon millions in the television audience in mind as a primary and not a secondary consideration?

2. Will the physical production problems of sound, lighting and camera positions (factors which can in part literally affect the outcome of any such debate) be more easily controlled in a modern television studio or in a remote auditorium or ballroom situation?

3. Is there a substantial danger that a live audience in an informal setting (however well intentioned and how non-partisan in theory that audience might be) could provide distractions from the substance of the debate or give supporting or negative emphasis to one participant or another?

4. Will not the special personal security problems of the candidates occasioned by their appearance together be significantly reduced in a television studio?

5. Given the rigors of the campaign, will the studio atmosphere represent less of a personal physical and psychic drain on each of the candidates than would the circumstances arising from a general audience facility which is likely to change for each debate?

The answers to those questions must be weighed very carefully for nothing less than the integrity and effectiveness of the debate process is involved.

PROGRAM FLEXIBILITY

Suspension of Section 315 would allow added program flexibility for all broadcasters. The long standing offer of CBS to devote eight hours on the CBS Television and Radio Networks to the presentation of views by the major Presidential and Vice Presidential candidates without cost to them between Labor Day and Election Day would at last be translated into actual programming.

These would be wide ranging broadcasts which would illuminate both the candidates and issues; eight programming hours of a type which the American public simply did not and could not have available to them in the election of 1972.

The eight hours could be used as follows:

A. Opening Hour and Closing Hour of the Total of Eight

We suggest that these hours be used by the candidates themselves to introduce and close their case to the American people. They could present their overall views either individually or in joint appearances or through other program formats as in their wisdom they decide.

B. Intervening Six Hours

These would be devoted to various formats. Some broadcasts would be joint appearances or back-to-back interviews so that the public could have the fullest opportunity to compare the nominees and their positions. It is our current thinking that four of such hours might take the form of Oregon Debates.

In any event, the choice of such debate formats would involve discussion, negotiation and a meeting of the minds between the candidates and the networks.

We further intend to provide time in some suitable format for significant minority party candidates in keeping with our judgment of their newsworthiness.

In total, the program objective would be to broaden the base of the political dialogue and to stimulate interest in the issues by bringing into play a wider range of informational approaches. Under the present FCC exceptions, only a limited portion of such programming activity is possible.

LEGAL COMPLICATIONS

The potential for serious legal challenge in matters involving the FCC exceptions should be of immediate concern.

The FCC ruling is now being appealed to the Supreme Court and could be heard by the Court during October. Any adverse ruling by the Court could throw all of the League of Women Voters' plans into disarray scant days before a scheduled debate.

There are the further questions raised under the Federal Election Campaign Act. Even if the Federal Election Commission decides that sponsorship by the League does not violate campaign funding rules, there still remains the strong likelihood that several minority parties will contest such action. (See attached legal opinion analyzing this particular situation.)

What an incongruous loss it would be if after the two Presidential candidates (and one of them an incumbent President at that) have agreed to reinstate the debates after a lapse of 16 years that such debates were aborted because of a legal contest. The remedy is clear. It lies with the Congress to suspend Section 315 and thereby eliminate all legal impediments.

CONCLUSION

Although not much time remains, we must still urge action. All published indications are that the public wants these debates. Having emerged from a difficult period of government crisis and a lack of personal trust in government officials, American citizens want to see their candidates in a variety of situations and to watch them present their case under demanding but fair circumstances.

To assure the best physical presentation of such debates, to accompany those debates with other programming which expands the electoral horizon and to forestall zero hour legal barriers, Section 315 should be temporarily suspended.

The benefits of such a timely action for the present and the long term will not be lost on the American public as the political calendar unfolds in the next few months.

August 26, 1976

WILMER, CUTLER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

August 26, 1976

CBS Inc.
51 West 52 Street
New York, New York 10019

Dear Sirs:

This is in response to your request for our views as to certain legal aspects of the conduct and broadcast of the proposed debates between the Democratic and Republican presidential nominees within the legal framework established by the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and Section 315 of the Federal Communications Act.

I.

It has been proposed that the debates be conducted by a nonpartisan entity unrelated to any broadcaster or network, specifically, the League of Women Voters of the United States. Broadcasters would then cover the debates in the same manner as any bona fide news event, as permitted under the federal election laws (see 2 U.S.C. § 431(f)(4)(A); 26 U.S.C. § 9012(f)(2)(A)) and the Communications Act (see Aspen Institute Program on Communications, 55 FCC 2d 697, 703-08 (1975), aff'd sub nom. Chisholm v. FCC, D.C. Cir. Nos. 75-1951, 75-1994 (April 12, 1976), petition for cert. filed, 45 U.S.L.W. 3145 (August 11, 1976) (No. 76-205)).

The estimated $150,000 costs to be incurred in conducting the debates and the possibility of defraying them by a public fundraising present questions under the federal election laws, which prohibit "contributions" or "expenditures" in such amounts. To decide whether these provisions bar the proposed activity, it would be necessary to determine whether the costs will be incurred "for the purposes of . . . influencing the . . . election . . . of any person to Federal office . . ." (2 U.S.C. § 431(e)(1)(A), (f)(1)(A)) or "to further" such election (26 U.S.C. §§ 9012(a), (b), f(1), 9002(9), (11)).

The General Counsel of the Federal Election Commission has drafted a proposed Commission policy statement to the effect that the costs incurred by the League in connection with the debates would be neither contributions nor expenditures within the meaning of these provisions, but that the funds must come from a source other than a corporation or labor organization or government contractor. See 2 U.S.C. §§ 441b, 441c, formerly 18 U.S.C. §§ 610, 611. At its meeting today, the Commission discussed and appeared to concur in substance with the draft policy statement. The General Counsel has been directed to prepare a revised draft of the statement by tomorrow morning, for consideration by the full Commission at a meeting scheduled for 11:00 a.m. August 30.

Although the Election Commission is empowered "to formulate general policy with respect to the administration of" this legislation, (2 U.S.C. § 437d(a)(9)), and the proposed policy statement may come within that authority, statutory protection against "any sanction provided by" the federal election laws is available only for a person relying in good faith on an "advisory opinion" of the Commission (id. § 437f (b)(1)). Advisory opinions may be issued only upon the "written request" of a federal officeholder, candidate, or political or national committee. Id. § 437f(a). We know of no such request to the Commission concerning the proposed debates. Upon receipt of such a request, the Commission must make the request public and "provide any interested party with an opportunity to transmit written comments" (id. § 437f(c)); and the Commission must articulate the decision it reaches.

Any policy statement or advisory opinion favorable to the lawfulness of the debate proposal is likely to be attacked in the courts as an incorrect interpretation of the legislation. We understand that former Senator McCarthy has already threatened such a challenge. It is also reasonable to assume that some of the petitioners who have attacked (and are still attacking) the FCC's Aspen Institute decision on candidate debates would challenge a favorable action of the Federal Election Commission.

II.

The problems discussed above might be obviated if the costs of conducting the debates could be defrayed by one or more of the broadcast networks. The Federal Election Campaign Act expressly exempts from the definition

of "expenditure" any "news story, commentary, or editorial distributed through the facilities of any broadcasting station . . . ." 2 U.S.C. § 431(f)(4)(A). The Presidential Election Campaign Fund Act has a comparable exemption for "expenditures by a broadcaster regulated by the Federal Communications Commission . . . in reporting the news or in taking editorial positions . . . ." 26 U.S.C. § 9012(f)(2)(A). And in the absence of express statutory language, the District of Columbia Circuit has held that "[s]ince a news story, commentary, or editorial is not within the control of the candidate or his agents, it is not a contribution . . . ." Buckley v. Valeo, 519 F.2d 821, 858 (1975) (en banc), not addressed on review, 424 U.S. 1, 143 n.178 (1976). Indeed, "[t]he plain and simple reality is that Congress had no intention of controlling an independent press by this statute." 519 F.2d at 858. "The Act exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties." 424 U.S. at 51 n.56. This exemption clearly extends to the use of corporate funds in broadcasting news stories and editorials. And we believe the federal election laws do not preclude a network from financing and conducting -- as well as broadcasting -- the proposed debates.

This means of obviating election law difficulties, however, raises problems under the Communications Act as currently construed by the Federal Communications Commission. The FCC has ruled that broadcasters may cover debates as "bona fide news events" exempt from the equal time requirement under Section 315 only if the broadcasters do not participate in the arrangements for the debate. Aspen Institute Program on Communications, supra, 55 FCC 2d at 699-700, 707, 712. There is no reason to believe that the FCC will alter this position in the immediate future. Aspen Institute was decided less than a year ago, and it is based upon the agency's interpretation of the 1959 amendments to Section 315, rather than on any independent rulemaking or policy making action thereunder. See 55 FCC 2d at 703-08. Moreover, the decision is still subject to possible review in the Supreme Court.

The difficulty could be resolved by simple legislation suspending, repealing, or amending Section 315 to eliminate any bar, including the creation of equal time obligations, to full participation by broadcast networks in the financing and other arrangements for the proposed debates. We recognize, of course, that such legislation could also

be attacked in the courts. However, such review presumably would be limited to the straightforward issue whether the legislation was constitutional, a question almost certain to be answered in the affirmative. See Buckley v. Valeo, supra, 424 U.S. at 85-108 (upholding federal financing for major and minor party candidates in substantially different amounts against freedom of expression and equal protection challenges). For these reasons, we believe that legislation addressed directly to Section 315 may offer a desirable approach to achieve a prompt and conclusive resolution of the legal uncertainties surrounding the proposed debates.

Wilmer, Cutler & Pickering

THE WHITE HOUSE

WASHINGTON

September 3, 1976

MEMORANDUM FOR: JIM CANNON

FROM: MIKE DUVAL

SUBJECT: DEBATES

Attached is a Joint Senate-House Resolution to suspend for the 1976 Presidential and Vice Presidential campaign the equal opportunity requirements of Section 315, with respect to debates. It was drafted by OTP and (according to my understanding) is the same as the one used in 1960.

As I mentioned to you yesterday, I think it's important that we have a fully staffed position on the need for legislation to suspend 315. I do not think we should move off at this time and do anything, but we should be prepared to act immediately in the eventuality that court action, or other events which we do not anticipate, block the efforts of the League of Women Voters to hold the debates.

If something should come up at the last minute, blocking the proposed League debates, I would recommend that Senator Baker and Congressman Devine be urged to immediately submit legislation suspending 315. I believe that the initiative should be in the Congress, and that the President should then immediately endorse the move.

I suggest that we very quietly staff the attached Resolution and that you work with Jack and Max to set the ground work to contact Baker and Devine, if it becomes necessary.

bcc: Cheney
Marsh

TAB A

S. J. Res. _____

Joint Resolution to suspend for the 1976 Presidential and Vice Presidential campaigns the equal opportunity requirements of Section 315(a) with respect to debates between nominees for the office of President and Vice President of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1. That that part of section 315(a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1976 presidential and vice presidential campaigns with respect to the nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest.

Section 2. The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1977, with respect to the effect of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act of 1934 as a result of experience under the provisions of this joint resolution.

Approved: (date)

THE WHITE HOUSE
WASHINGTON

Date 9/10/76

TO: Mike DuVal

FROM: BARRY ROTH BR

ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

_____ For Your Information

REMARKS:

① hearing before Judge Robinson is on Friday, Sept. 17.

② there is a meeting of all the defendant's counsel at Arent, Fox on Monday, 9/13. Visser or Ryan will attend for the PFC. They are having other PFC lawyers assist and will talk to Burch, but they plan to handle this themselves.

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE District of Columbia

76- 1672

CIVIL ACTION FILE NO. _____

TOM ANDERSON, ET AL

Plaintiffs

v.

GERALD FORD , ET AL

Defendants

SUMMONS

To the above named Defendant : Robert Dole

You are hereby summoned and required to serve upon David M. Basker

plaintiff's attorney , whose address Room 1024
1346 Connecticut Avenue,N.W.
P.O.Box 19331
Washington, D.C. 20036

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY
Clerk of Court.

Evelyn W. Gaines
Deputy Clerk.

Date: SEP 8 1976

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON
Route 2
Gatinburg, Tennessee

-and-

RUFUS SHACKELFORD
104 Englis Way
Wachula, Florida 33873

-and-

THE AMERICAN PARTY
Pigeon Forge
Tennessee

Plaintiffs,

-VS-

GERALD R. FORD
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

-and-

ROBERT DOLE
700 New Hampshire Avenue, N.W.
Washington, D.C.

-and-

VERNON W. THOMSON, Chairman
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

-and-

THOMAS E. HARRIS, Vice Chairman
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

-and-

JOAN D. AIKENS
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

-and-

WILLIAM L. SPRINGER
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

-and-

NEIL STAEBLER
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

75-1672

CIVIL ACTION NO. _____

ROBERT O. TIERNAN
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

-and-

EDMUND L. HENSHAW, JR., Ex Officio
FEDERAL ELECTION COMMISSION
Clerk of the House of Representatives
1325 K Street, N.W.
Washington, D.C. 20463

-and-

FRANCIS R. VALEO, Ex Officio
FEDERAL ELECTION COMMISSION
Secretary of the Senate.
1325 K Street, N.W.
Washington, D.C. 20463

-and-

LEAGUE OF WOMEN VOTERS EDUCATIONAL FUND
1730 M Street, N.W.
Washington, D.C. 20036
Serve: Peggy Lample

-and-

JIMMY CARTER
1800 M Street, N.W.
M North Lobby 6th Floor
Washington, D.C. 20036

-and-

WALTER R. MONDALE
Room 443 Russell Senate Office Bldg.
Washington, D.C. 20510

Defendants,

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND FOR DECLARATORY JUDGMENT HOLDING PROPOSED PRESIDENTIAL "DEBATES" ILLEGAL

C O M P L A I N T

COME NOW the Plaintiffs TOM ANDERSON, Presidential candidate and RUFUS SHACKELFORD, Vice-presidential candidate for THE AMERICAN PARTY, not to be confused with the American Independent[1] or American Nazi Parties or ax-handle racism, who by counsel the undersigned, pray for an Order of this Court for a preliminary injunction to enjoin the Defendants from promoting or participating in any so-called "debate", as is envisioned by FEC ruling of August 30, 1976, and a hearing and to issue a declaratory judgment that:

1. Irrespective of the label "debate", the form and substance are a panel discussion, which was specifically excluded[2] from the 1959 amendment to the FCC Act which by 47 USC 315 (a)(4) created exemptions from the equal-time requirements of the FCC Act, and in clear contravention to the legislative history where panel discussions were deleted by name from the draft bill which ultimately became 47 USC 315 (a)(4).

2. The so-called "debates" are a political event staged for the media and are not bona fide news events, eligible for exemption from the equal time requirements of the FCC Act.

3. Sponsorship of the so-called "debates" by the Defendant League of Women Voters Educational Fund(LOWV) amounts to an illegal campaign expenditure and contribution to the two so-called major candidates, which are made for the purpose of influencing a Federal election in violation of the FEC Act, because the so-called"debates"have the definite impact of advancing the chances of the two participating candidates' election all to the detriment of and in discrimination against THE AMERICAN PARTY as well as constituting denial of the equal protection of the laws and due process of law to THE AMERICAN PARTY and other legally qualified candidates,and denial of equal privileges under the law.

4. The LOWV in sponsoring the so-called debates will be acting ultra vires of their by-laws by excluding other legally qualified candidates, so as to compromise it's non-partisan character.

- -

f.n.1 TOM ANDERSON was THE AMERICAN PARTY candidate for vice-pres. in 1972 with Cong. John Schmitz for Pres. In 1973 "Wallace elements" splintered-off and formed the Amer. Ind. Pty. Prior to the 1972 campaign THE AMERICAN PARTY had dropped "Independent" from its name in 1969. Therefore THE AMERICAN PARTY as presently comprised has fielded candidates for three successive presidential elections.

f.n.2 Pages 7-10, Dissent of Hon. Cir. J. Wright in Chisolm, et al v. FCC (No. 75-1951) & D.N.C. V. FCC (No. 75-1994) U.S. App. D.C. 4/12/76

5. Gerald Ford is sued in his capacity as a nominee for federal office of a political party. This suit does not seek to enjoin any official act of the President of the United States acting in any official capacity as the President.

6. Likewise, Sens. Mondale and Dole are sued in their capacity as nominees only, and as similar to Mr. Carter.

7. The Commissioners of the Federal Election Commission are all sued in their official capacity for promulgating an arbitrary, capricious and illegal ruling respecting the debates complained of.

8. The LOWV is sued as a charitable trust fund which seeks to act in furtherance of an illegal F.E.C. ruling permitting the sponsorship of the so-called "debates", complained of here. Defendants have conspired to deprive Plaintiffs of their constitutional rights as protected under the 1st and 5th Amendments and Article III Section 2 of the Constitution of the United States.

9. Jurisdiction is also founded upon 28 USC §1331(a), 1332(a)(1) & (d), 1343 2201, 2202, 5 USC § 702, 703, 704, 705, 706, 42 USC 1985 & Article III Section 2 and the 1st and 5th Amendments of the Constitution of the United States.

10. Jurisdiction is founded upon equity principles whereby irreparable injury and injustice will be done to Plaintiffs if the relief sought is not granted because there is no adequate remedy at law, and to require the exhaustion of administrative remedies would be to compel Plaintiffs to do a useless act, given the exigencies of time, so that Plaintiff's cause of action is a controversy ripe for judicial resolution. Plaintiffs have a personal stake in the outcome of the controversy.

11. Plaintiff Tom Anderson is a citizen and resident of the State of Tennessee, Rufus Shackelford is a citizen and resident of the State of Florida and THE AMERICAN PARTY have their national headquarters in the State of Tennessee.

12. Defendants Ford, Mondale and Dole are citizens of the States of Michigan, Minnisota, and Kansas respectively and Mr. Carter is a citizen and resident of the State of Georgia.

WHEREFORE, premises considered, Plaintiffs pray for an Order and judgment of this honorable Court as follows:

1. That defendants be enjoined from participating or promoting the so-called "debates as currently scheduled to be produced on September 23, 1976 and/or following thereafter as presently envisioned and announced whereby other legally qualified candidates are excluded. And;

2. That the so-called "debates"be determined and labeled correctly as a panel discussion and enjoined as not to be excepted from the equal time provisions of the FCC Act. And;

3. That the so-called "debates"as presently envisioned and announced are determined to be a political event staged for the media and not bona fide news events and therefore not eligible for exemption from the equal time requirements of the FCC Act. And;

4. Sponsorship of the so-called "debates" by the Defendant League of Womens Voters Educational Fund amounts to and is determined to be an illegal campaign expenditure and contribution to defendants Ford,Carter,Dole and Mondale and will be made for the purpose of influencing a Federal election in violation of the FEC Act. And;

5. The so-called "debates" have the definite impact of advancing the chances of the two participating candidates' election to the detriment of Plaintiffs and in discrimination against THE AMERICAN PARTY , as well as a denial of the equal protection of and equal privileges under the law to your Plaintiffs, THE AMERICAN PARTY and all other legally qualified candidates. And;

6. The League of Women Voters Educational Fund in sponsoring the So-called "debates" will be acting ultra vires of their by-laws by excluding other legally qualified candidates and thereby would compromise its non-partisan character. And;

7. For such other and further relief as to the Court may seem just and proper.

Respectfully Submitted,

TOM ANDERSON, Plaintiff

RUFUS SHACKELFORD, Plaintiff

THE AMERICAN PARTY, Plaintiff
by: George Melton

Attorney for Plaintiffs:

David M. Basker #140855
Rm: 1024
1346 Connecticutt Avenue, N.W.
P.O. Box 19331
Washington, D.C. 20036
(202) 296 : 1984

NOTARY PUBLIC, SS:
District of Columbia

I, _____ the undersigned notary public for the District of Columbia do hereby attest, affirm and verify that Tom Anderson, Rufus Shackelford and George Melton known to me personally appeared and after having read the foregoing Complaint by them subscribed in my presence under oath did acknowledge the truth of all matters therein contained to the best of their information, knowledge and belief.

NOTARY PUBLIC, WASHINGTON, D.C.

My Commission expires _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, :
Plaintiffs,
-vs.- : Civil Action No.
GERALD FORD, ET AL :
Defendants, : 76-1672
:

ORDER FOR HEARING ON PRELIMINARY INJUNCTION

On presentation and consideration of the verified complaint and affidavit in support thereof,

IT IS ORDERED, that the application for a preliminary injunction prayed for in the complaint be and the same is hereby set for hearing before the undersigned in Ctrm Pen 4 on the 17th day of September, 1976 at 2 o'clock P M., in the United States District Court Room in Washington, D.C.; and that a copy of this order be served immediately with the summons and complaint upon each of the defendants and due return made according to law.

Done and Ordered at Washington, D.C. on this 8 day of September, 1976.

A. Robinson Jr.
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, Plaintiffs, :
-vs.- : Civil Action No.
GERALD FORD, ET AL Defendants, : 76-1672

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs move this honorable Court for a preliminary injunction enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action from promoting, participating or furthering the proposed so-called "debates" as between the Democratic and Republican nominees for the Presidency of the United States of America as to be sponsored by the League of Women Voters Educational Fund, on the grounds that;

1. Unless restrained by this Court defendants will perform the acts referred to;

2. Such action by the defendants will result in irreparable injury, loss, and damage to the plaintiff, as more particularly appears in the verified Complaint and the Affidavits of the Plaintiffs hereto;

3. The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendant but will prevent irreparable injury to plaintiff.

Counsel for Plaintiffs
David M. Basker
1346 Connecticutt Ave., N.W.
(Room 1024)
P.O. Box 19331
Washington, D.C. 20036
(202) 296: 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, :
Plaintiffs, :
-vs.- : Civil Action No.
GERALD FORD, ET AL : 76-1672
Defendants, :

POINTS & AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

1. FEC Commissioners ruling of August 30, 1976 (Exhibit A hereto) WITH CODE SECTIONS THEREIN.
2. Federal Communications Act and at 47 USC 315 (a) (4)
3. 28 USC §1331(a), 1332(a)(1) & (d), 2201, 2202.
4. Administrative Procedure Act and at 5 USC § 702,703,704,705 &706.
5. Civil Rights Act at 42 USC 1985.
6. United States Constitution Article III Section 2 and the 1st. and 5th. Amendments thereto.
7. The equity jurisdiction of this Honorable Court.
8. Plaintiffs pray to be able to further augment their Points and Authorities including briefing all the points of law and to respond to Defendant's briefs with reply brief or as the Court may direct.

Wherefore, for premises considered Plaintiffs pray for Order and Judgment as more fully set out in the Complaint and Affidavits and incorporated herein by reference.

Respectfully Submitted,

Counsel for Plaintiffs
David M. Basker # 140855
Room 1024
1346 Connecticutt Ave.,N.W.
P.O.Box 19331
Washington, D.C. 20036
(202) 296:1984

POLICY STATEMENT

PRESIDENTIAL DEBATES

The League of Women Voters' Educational Fund proposes to sponsor several debates between the 1976 Republican and Democratic presidential nominees. It is the Commission's view that, in the limited circumstances of presidential debates, the costs incident thereto which will be incurred by the Fund are neither contributions nor expenditures under 2 U.S.C. §§441a and 431 of the Federal Election Campaign Act of 1971, as amended.

There are a number of factors which have brought the Commission to this conclusion. The League has a history of approximately 50 years of non-partisan educational activity in the electoral process, and is, indeed, forbidden by its by-laws to endorse candidates or to otherwise appear in a partisan light. The activity proposed to be undertaken here is in keeping with that tradition. Unlike sponsorship of an appearance by a single candidate, the unavoidable impact of which is to advance the chances of that candidate's election, the debate described in the League proposal does not involve that kind of advocacy or assistance to a campaign to which the Act's contribution limits are directed. In short, it is the Commission's view that the disbursements by the

League, or by any other comparable or similarly qualified organization, through a charitable trust fund are not made for the purpose of influencing a Federal election and are therefore not contributions as defined in 2 U.S.C. §431(e) or 26 U.S.C. §§9003(b)(2) and 9012(b). The League may raise funds specifically earmarked for sponsorship of the debates from private individuals. Since these funds are outside the scope of the definition of contribution under 2 U.S.C. §431, they may be made without limit and would not need to be disclosed. However, the Commission believes that the League could further the spirit of campaign finance reform by disclosing the amounts and sources of those donations.

The disbursements by the League's Education Fund are nonetheless disbursements "in connection with" a Federal election and accordingly may not be made with funds from corporate or labor organization treasuries, see 2 U.S.C. §441b, or made by other persons forbidden to participate in the Federal election process by the Act, see inter alia, 2 U.S.C. §441c.

The Commission is further of the opinion that a separate segregated fund established by a corporation or labor organization may donate funds, without regard to amount, to the League of Women Voter's Education Fund.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, Plaintiffs, :
-vs.- : Civil Action No.
GERALD FORD, ET AL Defendants, : 76-1672

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

DISTRICT OF COLUMBIA, SS.:

TOM ANDERSON being duly sworn, deposes and says:

1. I am the plaintiff in the above-styled cause of action.

2. This is an action to redress the deprivation of my constitutional rights as a legally qualified candidate for the office of President of the United States of America by THE AMERICAN PARTY. Defendants Ford, Carter, Dole, Mondale and the League of Women Voters Educational Fund (here-in-after the League) and / or their agents, officers or representatives and divers other persons to me unknown have conspired together with the commissioners of the Federal Election Commission (here-in-after the FEC) to obtain a ruling which will allow the League to sponsor several panel discussions as so-called "debates" between the Republican and Democratic nominees to the exclusion of THE AMERICAN PARTY's candidates and nominees.

3. The proposed "debates" are in reality only political events staged for the media and are not bonafide news events such that sponsorship by the afore-mentioned League amounts to an illegal campaign expenditure and contribution to the Democratic and Republican nominees and have the definite impact of advancing the chances of those nominees and to the detriment and in discrimination against myself and THE AMERICAN PARTY and other legally qualified nominees.

4. The panel discussion "debates" are scheduled to begin

September 23, 1976 and there is not time sufficient to persue administrative remedies.

5. The afore-mentioned League's sponsorship of the so-called "debates" will be an act ultra vires of their by-laws by excluding me and THE AMERICAN PARTY and other legally qualified candidates and will compromise its non-partisan character.

6. The so-called "debates" will constitute an abridgement of my freedom of speech and to equal tome of broadcast facilities.

7. Jimmy Carter has announced that he is instructing the Democratic National Committee to drop their challange to the majority opinion announced by The United States Court of Appeals for the District of Columbia Circuit in Chisolm, et al v. FCC (No. 75-1951) & Democratic National Committee v. FCC (No.75-1994), whereby that Court upheld the FCC ruling allowing debates to be exempt from the equal time provisions of the FCC Act as amended. Also, the Supreme Court is not scheduled to reconvene until October 4, 1976.

8. The Federal Election Commission ruling of August 30,1976 taken together with the afore-mentioned League's plan to persue and promote the panel discussion and so-called "debate" denies to me and THE AMERICAN PARTY the equal protection of the law.

9. Panel discussions were specifically excluded from the 1959 amendments to the FCC Act which by 47 USC 315(a)(4) created exemptions from the equal time requirements of the FCC Act. (SEE Dissenting Opinion of Hon. J. Wright in Chisolm and DNC case cited above in paragraph 7., pages 7-10 therein.)

10. Injunction is necessary and proper in the circumstances of this case. Deponent respectfully requests that the Motion for Preliminary Injunction annexed hereto and containing an Order for Hearing on Preliminary Injunction enjoining and restraining defendants pending a-hearing for preliminary injunction be granted by the Court and that a date for the hearing be set.

11. No other provisional remedy has been secured or sought

in this action and no prior application has been made for the same or similar relief as is sought herein.

12. I am a citizen and resident of the state of Tennessee.

I have read the foregoing affidavit by me subscribed and swear that it is true to the best of my knowledge, information and belief, further your Affiant sayeth not.

_____
Tom Anderson, Plaintiff

NOTARY PUBLIC, WASHINGTON, D.C.

I, _____ a notary public for the District of Columbia hereby acknowledge, attest and verify that Tom Anderson personally appeared and having been sworn, acknowledged before me that he has read the fore-foing affidavit by him subscribed in my presence and that it is true to the best of his information, knowledge and belief.

_____
Notary Public, Kistrict of Columbia

My Commission expires: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, :
Plaintiffs, :
-vs.- : Civil Action No.
GERALD FORD, ET AL : 16-1672
Defendants, :
:

AFFIDAVIT IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

DISTRICT OF COLUMBIA, SS.:

RUFUS SHACKELFORD being duly sworn , deposes and says:

1. I am the plaintiff in the above-styled cause of action.

2. This is an action to redress the deprivation of my Constitutional rights as a legally qualified candidate for the office of Vice-President of the United States of America by THE AMERICAN PARTY. Defendants Ford, Carter, Dole , Mondale and the League of Women Voters Educational Fund and / or their agents, officers or representatives and divers other persons to me unknown have conspired together with the Commissioners of the Federal Election Commission to obtain a ruling which will allow for the League of Women Voters Educational Fund to sponsor several panel discussions as so-called "debates" between the Republican and Democratic presidential nominees to the exclusion of all other legally qualified candidates.

3. The proposed 'debates' are in reality only political events staged for the media and are not bonafide news events such that sponsorship by the afore-mentioned League Fund amounts to an illegal campaign expenditure and contribution to the Democratic and Republican nominees and have the definite impact of advancing the chances of those nominees and to the detriment and in discrimination against myself and THE AMERICAN PARTY and other legally qualified nominees.

4. The panel discussion "debates" are scheduled to begin September 23, 1976 and there is not time sufficient to persue administrative remedies.

5. The afore-mentioned League Fund's sponsorship of the so-called "debates" will be an act ultra vires of their by-laws by excluding me and THE AMERICAN PARTY and other legally qualified candidates and will compromise its non-partisan character.

6. The so-called "debates" will constitute an abridgement of my freedom of speech and to equal time of broadcast facilities.

7. Jimmy Carter has announced that he is instructing the Democratic National Committee to drop their challange to the majority opinion announced by The United States Court of Appeals for the District of Columbia Circuit in Chisolm, et al v. FCC (No. 75-1951) & Democratic National Committee v. FCC (no. 75-1994), whereby that Court upheld the FCC ruling allowing debates to be exempt from the equal time provisions of the FCC Act as amended. Also, the Supreme Court is not scheduled to reconvene until October 4,1976.

8. The Federal Election Commission ruling of August 30,1976 taken together with the afore-mentioned League Fund's plan to persue and promote the panel discussion and so-called "debate" denies to me and THE AMERICAN PARTY the equal protection of the law.

9. Panel discussions were specifically excluded from the 1959 amendments to the FCC Act which by 47 USC 315(a)(4) created exemptions from the equal time requirements of the FCC Act. (See Dissenting Opinion of Hon. J. Wright in Chisolm and DNC case cited above in paragraph 7., pages 7-10 therein.

10. Injunction is necessary and proper in the circumstances of this case. Deponent respectfully requests that the Motion for Preliminary Injunction annexed hereto and containing an Order for Hearing on Preliminary Injunction enjoining and restraining defendants pending a hearing for preliminary injunction be granted by the Court and that a date for the hearing be set. Otherwise, deponent will be denied the equal privileges under the law.

11. No other provisional remedy has been secured or sought in this action and no prior application has been made for the same or similar relief as is sought herein. I am a citizen and resident of the state of Florida.

I have read the foregoing affidavit by me subscribed and swear that it is true to the best of my knowledge, information and belief, further your Affiant sayeth not.

_____
RUFUS SHACKELFORD, Plaintiff

NOTARY PUBLIC, Washington, D.C.

I, _____ a notary public for the District of Columbia hereby acknowledge, attest and verify that Rufus Shackelford personally appeared and having been sworn , acknowledged before me that he has read the fore-going affidavit by him subscribed in my presence and that it is true to the best of his information, knowledge and belief.

_____
Notary Public, District of Columbia

My Commission expires: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM ANDERSON, ET AL, :
Plaintiffs, .
-vs.- : Civil Action No.
GERALD FORD, ET AL : 76-1672
Defendants, :
:

AFFIDAVIT IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

DISTRICT OF COLUMBIA, SS.:

GEORGE MELTON being duly sworn, deposes and says:

1. I am the National Director and Chairman of the ANDERSON - SHACKELFORD Campaign for THE AMERICAN PARTY for the office of President and Vice-President of the United States of America. Defendants Ford, Carter, Mondale, Dole and the League of Women Voters Educational Fund (here-in-after the League) and / or their agents, officers or representatives and divers other persons to me unknown have conspired together with the Commissioners of the Federal Election Commission (here-in-after the FEC) to obtain a ruling which will allow the League to sponsor several panel discussions as so-called "debates" between the Republican and Democratic nominees to the exclusion of THE AMERICAN PARTY's candidates and nominees.

2 I am the proper person duly authorized to represent the interests of THE AMERICAN PARTY with respect to this litigation as the plaintiff herein.

3. The proposed "debates are in reality only political events staged for the media and are not bonafide news events such that sponsorship by the League amounts to an illegal campaign expenditure and contribution to the Democratic and Republican nominees for President and Vice-President .

4. The panel discussion "debates" are scheduled to begin September 23, 1976 and there is not time sufficient to persue administrative remedies.

5. The League's sponsorship of the so-called "debates" will be an act ultra vires of their by-laws by excluding THE AMERICAN PARTY and other legally qualified Parties with candidates, such that they will compromise their non-partisan character.

6. The so-called "debates"will constitute an abridgement of THE AMERICAN PARTY's freedom of speech and to equal time of broadcast facilities, and the equal privileges under the law.

7. Jimmy Carter has announced that he is instructing the Democratic National Committee to drop their challange to the majority opinion announced by the U.S.Court of Appeals for the D.C.Circuit in Chisolm v. FCC,et al (No. 75-1951) & Democratic National Committee v. FCC (no.75-1994) whereby that Court upheld the recent FCC ruling allowing debates to be exempt from the equal time provisions of the FCC Act as amended. Also, the Supreme Court is not scheduled to reconvene until October 4,1976.

8. The FEC ruling of August 30,1976 taken together with the League's plan to persue and promote the panel discussion and so-called "debate" denies to THE AMERICAN PARTY the equal protection of the law.

9. Panel discussions were specifically excluded from the 1959 amendments to the FCC Act which by 47 USC 315(a)(4) created exemptions from the equal time requirements of the FCC Act. (See Dissenting Opinion of Hon. J. Wright in Chisolm and DNC case cited above in paragraph 7.,pages 7-10 therein.

10. Injunction is necessary and proper in the circumstances of this case. Deponent respectfully request that the Motion for Preliminary Injunction annexed hereto and containing an Order for Hearing on Preliminary Injunction enjoining and restraining defendants pending a hearing for preliminary injunction be granted by the Court and that a date for hearing be set.

11. No other provisional remedy has been secured or sought in this action and no prior application has been made for the same or similar relief as is sought herein.

12. I am a citizen and resident of the State of Virginia and THE AMERICAN PARTY national headquarters are in the State of Tennessee.

I have read the foregoing affidavit by me subscribed on behalf of the plaintiff THE AMERICAN PARTY and swear that it is true to the best of my knowledge , information and belief, further your affiant sayeth not.

_____

THE AMERICAN PARTY by:
George Melton

NOTARY PUBLIC, Washington, D.C.

I,_____ a notary public for the District of Columbia hereby acknowledge, attest and verify that George Melton personally appeared and having been sworn, acknowledged before me that he has read the foregoing affidavit by him subscribed in my presence and that it is true to the best of his information , knowledge and belief.

_____

Notary Public, District of Columbia

My Commission expires: _____

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

District of Columbia

4/26

CORCORAN, J.

76- 1697

CIVIL ACTION FILE NO. _____

Eugene McCarthy, et al

Plaintiff

v.

James Carter, et al

Defendant

SUMMONS

To the above named Defendant : Gerald R. Ford

You are hereby summoned and required to serve upon Craig T. Lawyer and John C. Armor

plaintiff's attorney s whose address es are respectively 1066 National Press Bldg, Washington DC 2004 + Suite 425, 711 W. 40th St., Baltimore, Md 21211

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Greg Stiggins

Deputy Clerk.

Date: SEP 10 1976

[Seal of Court]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

rec'd 3:35 pm 9/10/76

MARSHAL'S FEES

Travel ____ $ _____

Service _____

United States Marshal.

By _____

Deputy United States Marshal.

Subscribed and sworn to before me, a this

day of 19

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

To the above named Defendant :

No. _____

United States District Court
FOR THE

Plaintiff

v.

Defendant

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

SUMMONS

Attorney for Plaintiff

FPI-MI—8-6-75-300M-4211

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUGENE McCARTHY
C/O 1440 N Street, N.W.
Washington, D.C. 20005

DR. THOMAS R. McCANNE
Rural Route #2, Box 505
Genoa, Ill. 61035

MRS. ANNIE LAURIE K. LYON
2515 Stoney Brook
Houston, Texas 77063

ROBERT M. BLOOM
320 Garrison Way
Gulph Mills
Upper Merion Township, Pa. 19428

SUZANNAH B. HATT
RFD #1
Littleton, New Hampshire 03561

MRS. MARY MARGARET MERRILL
77 E. Pacemont
Columbus, Ohio 43202

JUDITH A. DELPHIA
636 Edgemere Drive
Olathe, Kansas 66041

WILLIAM F. NERIN
19 Northwest 16th Street
Oklahoma City, Oklahoma 73103

Plaintiffs

v.

JAMES CARTER
Plains, Georgia

GERALD R. FORD
1600 Pennsylvania Avenue
Washington, D.C.

1976 DEMOCRATIC PRESIDENTIAL CAMPAIGN COMMITTEE, INC.
P.O. Box 1976
Atlanta, Georgia 30301
Serve on: 1625 Massachusetts Ave., N.W.
Washington, D.C. 20036

PRESIDENT FORD COMMITTEE
1828 L Street, N.W.
Washington, D.C.
Serve on: James Baker, Chairman

CORCORAN, J.

Case No. 76-1697

JCA:SBK:MKS
9-9-76

LAW OFFICES OF
JOHN C. ARMOR, P.A.
SUITE 425
711 W. 40TH STREET
BALTIMORE, MD. 21211
(301) 235-6175

LEAGUE OF WOMEN VOTERS EDUCATION FUND *
1730 M Street, N.W.
Washington, D.C. 20036 *
Serve on: Peggy Lampl, Executive Director
*

AMERICAN BROADCASTING COMPANIES, INC.
1124 Connecticut Avenue, N.W. *
Washington, D.C. 20036
*

COLUMBIA BROADCASTING SYSTEM, INC.
2220 M Street, N.W. *
Washington, D.C. 20036
*

NATIONAL BROADCASTING SYSTEM, INC.
4001 Nebraska Avenue, N.W. *
Washington, D.C. 20016
*

FEDERAL COMMUNICATIONS COMMISSION
1979 M Street, N.W. *
Washington, D.C. 20036
*

Defendants

* *

COMPLAINT

I. Nature of Case

1. This action is for mandatory, injunctive and declaratory relief to prevent the Defendants from causing irreparable harm to the Plaintiffs, through violation of the laws and Constitution of the United States in the holding, financing and news media coverage of the debates now scheduled to begin between the Defendants Carter and Ford, on 23 September, 1976, excluding the Plaintiff McCarthy.

II. Jurisdiction

2. Jurisdiction is based on 26 USC 9002 and 9004; 28 USC 2281 and 2284; 42 USC 1983 and 1985, in that the Plaintiffs assert the unlawful deprevation of and infringement of rights secured to them by Article II, Section 1, Clauses 2 and 4, and Article VI, Clause 2 of the United States Constitution and the First, Twelfth and Fourteenth Amendments thereto.

III. Plaintiffs

3. Plaintiff Eugene McCarthy (McCarthy) is a native of the United States over the age of 35, and a candidate for President.

4. Plaintiff Dr. Thomas R. McCanne is registered in Illinois, currently undecided on a Presidential candidate.

5. Plaintiff Mrs. Annie Laurie K. Lyon is registered in Texas, currently intending to vote for Defendant Ford.

6. Plaintiff Robert M. Bloom is registered in Pennsylvania, currently intending to vote for Defendant Carter.

7. Plaintiff Suzannah B. Hatt is registered in New Hampshire, currently intending to vote for Plaintiff McCarthy.

8. Plaintiff Mrs. Mary Margaret Merrill is registered in Ohio and does not presently intend to vote at all for President

of the United States in November, 1976.

9. Plaintiff Judith A. Delphia is a presidential elector, on the ballot in the state of Kansas, pledged to Plaintiff McCarthy.

10. Plaintiff William F. Nerin is a presidential elector, on the ballot in the state of Oklahoma, pledged to Plaintiff McCarthy.

IV. Defendants

11. Defendant James Carter (Carter) is a citizen of the United States over the age of 35, and a candidate for President.

12. Defendant Gerald Ford (Ford) is a citizen of the United States over the age of 35, and a candidate for President.

13. Defendant 1976 Democratic Presidential Campaign Committee, Inc. (DPC) is Georgia corporation which exists to bring about the election of Defendant Carter as President.

14. Defendant President Ford Committee (PFC) is an unincorporated organization which exists to bring about the election of Defendant Ford as President.

15. Defendant League of Women Voters Education Fund (League) is a charitable Trust, barred by its constitution and by-laws from any partisan activity, but seeking to educate voters generally about candidates and elections.

16. Defendant American Broadcasting Companies, Inc., (ABC) is a corporation whose function is to produce and disseminate nationwide television programs to affiliated stations.

17. Defendant Columbia Broadcasting System, Inc. (CBS) is a corporation whose function is to produce and disseminate nationwide television programs to affiliated stations.

18. Defendant National Broadcasting Company (NBC) is a corporation whose function is to produce and disseminate nationwide television programs to affiliated stations.

19. Defendant Federal Communications Commission (FCC) is a regulatory agency supervising the activities of stations affiliated with or owned by Defendants ABC, CBS, and NBC, among others.

V. Facts of the Case

20. On or about 1 June, 1976, officers of the League decided to sponsor, if possible, debates between candidates for President of the United States.

21. About 15 June, 1976 the League formed a committee, headed by Newton Minow, former FCC Chairman, to organize the debates.

22. Just prior to the Democratic National Convention, the League contacted representatives of Carter, and were informed that he might be willing to participate, but only if the participants were he and Ford, and no others.

23. At the time of ¶22, above, the Harris Poll showed McCarthy drawing 10% support nationally, and drawing 87% of that support from Carter.

24. Just before the Republican National Convention, the League contacted both Ford and Ronald Reagan (then a candidate for the Republican nomination) about possible debates, and were informed that both Ford and Reagan would be willing to debate, if nominated, but only if the only opponent was Carter.

25. After the committee was formed, ¶21, above, the League contacted ABC, NBC, and CBS, and was informed that all three might be willing to cover the debates, but only if Ford and Carter both appeared.

26. ABC, CBS and NBC all informed the League that they would carry Carter-Ford debates, live and in full on prime time, rearranging their Fall program of new shows at substantial time and expense, but said the League would have to bear the costs of the telecasts locally.

27. The League contacted both the DPC and the PFC and were informed that neither would pay for any of the costs of the debates.

28. At the time of ¶25 and ¶26, above, ABC, CBS and NBC were aware that both the DPC and the PFC were receiving about $21.8 million each, to be spent on behalf of Carter and Ford, respectively, and were negotiating with the DPC and the PFC to sell more than $10 million each in advertising time, on behalf of Carter and Ford.

29. At about the time of the Republican National Convention, the League contacted the Federal Election Commission (FEC), requesting a ruling that would permit donations to the League to pay expenses, which ruling was made on 30 August, 1976.

30. The FCC had previously issued a Memorandum and Order that the "Equal Time" provisions of 47 USC 315(a) did not apply to Presidential debates.

31. Said FCC Order was challenged in the U.S. Court of Appeals for the District of Columbia Circuit, Chisholm, et al v. FCC, et al, No. 75-1951 consolidated with 75-1994 now on appeal in the Supreme Court, with requests for expedited consideration pending by Appellants Shirley Chisholm and the Democratic National Committee.

32. As part of his participation in the above negotiations, Carter demanded that the Democratic National Committee withdraw its request for expedited hearing.

False

33. Having received notice through a press leak that Carter would challenge him to debate, Ford challenged Carter to debate in his acceptance speech. Carter accepted the next morning.

34. McCarthy immediately requested from the League verbally, and in writing shortly afterwards, participation in the debates.

35. The League never responded to the request directly, but issued a statement to a New York Times reporter about 2 September 1976 that McCarthy would not be invited.

36. All of the Defendants were aware, through news media coverage, of the interest of and request of McCarthy that he be included.

37. Plaintiffs described in paragraphs 4 through 7, above, all allege that they would watch Presidential debates, if held, and that their present intentions as to how they would vote would be materially affected by the relative skills, knowledge and apparent sincerity of the candidates displayed in the debates, and that comparative analysis by them of McCarthy is readily possible in this format, but not in any other.

38. On information and belief, all of the Plaintiffs allege that most of the voters in the United States intend to watch the Presidential debates, and will have their opinions of the candidates, and their ultimate votes, affected by what they see in the debates.

39. The Kennedy-Nixon debates in 1968 were the only prior televised debates in the history of the United States, and the relative performances of the two candidates were a major reason why President John F. Kennedy was able to overcome a

reluctance of voters to support him (shown by the early polls), be perceived by the voters as an acceptable candidate, and ultimately to be elected President.

40. The Kennedy-Nixon debates took place due to a repeal of 47 USC 315(a) for that election only.

41. The Kennedy-Nixon debates began with a close-up of the Presidential seal, and the announcer then said he was presenting "the next President of the United States". The camera then backed up to show both Kennedy and Nixon.

42. From the mere fact of their existence, to their format and their content, the Kennedy-Nixon debates, both deliberately and unconsciously, gave the impression to all voters and potential voters who saw them that the only candidates who could possibly be elected were the two who appeared in the debates.

43. All of the candidates, and network officials, involved in the Kennedy-Nixon debates, expected this impression that the President would have to be one of the two, to be made on the voters. In fact, there were other candidates for President in 1968, but none were qualified for the ballot in 10 states, nor in enough states to have a mathematical possibility of a majority in the electoral college, nor drew 5% or more in any polls, at any time after Nixon and Kennedy were nominated.

44. The proposed Carter-Ford debates, if held, will produce the same impression that only one of these two can possibly be elected President, that resulted from the Kennedy-Nixon debates.

45. All of the Defendants are well aware of the effect in ¶44, above, and Carter, Ford the DPC and the PFC are counting

on this effect.

46. McCarthy has completed the requirements to be on the ballot as an independent in 30 states as of this filing, and reasonably expects such ballot position in at least 40 states, having at least 82% of the electoral votes.

47. McCarthy, as of this filing, draws 12% of the vote, against 41% for Carter, 37% for Ford, and 10% undecided. (Time magazine, Yankelovich Poll, 6 September 1976, conducted 20 August to 24 August.)

48. Ford has, as of this filing, completed the requirements to appear on the ballot in some 30 states, and can reasonably expect to appear on the ballot in all 50 states, plus D.C.

49. Carter has, as of this filing, completed the requirements to appear on the ballot in some 30 states, and can reasonably expect to be on the ballot in all 50 states, plus D.C.

50. As of this filing, more than half of the potential voters do not intend to vote in the November election for the first time in 52 years, due to their general dissatisfaction with the Democrats and the Republicans, and with Ford and Carter specifically. (Peter Hart survey for Committee for the Study of the American Electorate, Baltimore Sunday Sun, 5 September 1976.)

51. Plaintiff Merrill is one of those voters not presently intending to vote, who would watch the Presidential debates, and who would vote for one of the candidates shown, if any of them appeared to be honest, dedicated and worthy of trust.

52. On information and belief, all the Plaintiffs allege that there are millions of potential voters in the

United States who feel like Plaintiff Merrill, and for whom McCarthy's appearance in the debates may be determinative.

53. The League is now soliciting, or has already received, the funds to pay for its costs for conducting the debates.

54. The League would not have continued its attempts to conduct the debates beyond the most preliminary stages, without an indication from Carter and Ford that they would participate.

55. ABC, CBS and NBC would not have given any indications of coverage, much less agreed to cover in prime time, live and in full, a political meeting of the League in Philadelphia or anywhere else, unless Ford and Carter both appeared.

56. Neither Ford nor Carter would have appeared at a debate, anywhere in the country, unless they could expect coverage in full by the networks.

57. Carter would not have agreed to appear, if the League had invited McCarthy to appear.

58. Voters perceptions of candidates tend to be self-reinforcing in that they listen to and approve of media statements by candidates they tend to support, and to avoid or turn off statements by candidates they tend to oppose.

59. A debate is the only format in which a voter who supports one candidate, and opposes others, is exposed to his candidate's opponents, in trying to listen to his own, and is to some extent compelled to evaluate the opponents.

60. In view of ¶58 and ¶59, above, a debate format is a unique opportunity in any election campaign, but especially in a Presidential campaign where the voters must be reached primarily by media contacts, for exposure to the maximum

number of voters at the same time, and for voters to change their minds due to the apparent comparisons.

61. All of the Defendants have acted as they have acted in setting up the Carter-Ford debates, and excluding McCarthy, with full knowledge of the intended actions of all the others, and in full reliance that the others would act as they have acted, and that the debates would not now be planned to take place without this complete reliance of each on the others.

62. ABC, CBS and NBC have devoted an average of less than 4 minutes each per night in 1976 to coverage of each of Carter or Ford as Presidential candidates on their nightly national news programs.

63. In 1976, ABC, CBS and NBC have devoted an average of less than 5 seconds each per night to coverage of McCarthy as a Presidential candidate.

64. The Plaintiffs described in paragraphs 9 and 10, above, both depend for their election as Presidential Electors on support for, and votes for, McCarthy. On information and belief, many voters in Oklahoma and Kansas will not even consider voting for McCarthy on the belief that he cannot possibly win, if he is excluded from the debates. Also many voters of these states are undecided but may vote for McCarthy, depending on the debates. In either case, diminution of support for McCarthy equally diminishes the chances of these Plaintiffs for election.

COUNT I.

65. Paragraphs 1 through 64 are realleged herein, with full force and effect.

66. That at all times since the first contacts of the League with ABC, CBS and NBC, the League has acted in concert with the networks, and has been agent for the networks in arranging the debates.

67. The networks in covering the Carter-Ford debates will therefore be in violation of the Equal Time provisions of 47 USC 315(a).

COUNT II.

68. Paragraphs 1 through 64 are realleged herein, with full force and effect.

69. ABC, CBS, and NBC have known at all times during the contacts described above that the Carter-Ford debates would take place if, and only if, one or more of them agreed to cover the debates in full, in prime time, and would not otherwise take place.

70. The debates are not, therefore, "bona fide news events" within the meaning of the FCC exclusion contained in its Order, 55 FCC 2d 697 (1975), having been created by the actions of the networks themselves.

71. The networks in covering the Carter-Ford debates will therefore be in violation of the Equal Time provision of 47 USC 315(a).

COUNT III.

72. Paragraphs 1 through 64 are realleged herein with full force and effect.

73. At all times, and with respect to all of the actions described above, all of the Defendants were aware that the holding of the debates would favor the candidacies of Carter and Ford over that of McCarthy.

74. All of the Defendants are aware that McCarthy is a qualified candidate, showing more than 5% in the polls, being on the ballot in more than 10 states, and being on the ballot in sufficient states to win a majority in the electoral college.

75. The holding of the debates as planned, therefore, would amount to favoritism by the networks, outside the terms of FCC Order at 55 FCC 2d 697 (1975) and in violation of 47 USC 315(a).

COUNT IV.

76. Paragraphs 1 through 64 are realleged herein with full force and effect.

77. All of the Defendants have been aware, at all times during the events described above, that the holding of the debates as planned amounts to a massive accusation that McCarthy is not a legitimate candidate for President, and cannot possibly win, an accusation which cannot possibly be answered in any other format than the debates themselves.

78. The holding of the debates as planned, therefore, would amount to a violation of the Fairness doctrine.

Relief Sought

Wherefore, the Plaintiffs pray the following relief:

A. A declaration that the actions of the League and the other Defendants, as set forth above, are bi-partisan (in that they favor neither Democrats nor Republicans), but that they are not non-partisan (in that they favor Carter and Ford over McCarthy) and that funding of the debates as approved by the FEC on 30 August 1976, would violate 2 USC 431(e), and 26 USC 9903(b)(2) and 9012(b).

B. A declaration that the holding of the debates as planned would violate the Order of the FCC, 55 FCC 2d 697 (1975) in that they were initiated by the networks (acting through others), that they are not bona fide news events (being created by the networks), or that they show broadcaster favoritism for the Republicans and the Democrats.

C. A declaration that the holding of the debates as planned violates 47 USC 315(a), Equal Time provision.

D. A declaration that the holding of the debates as planned violates the "Fairness Doctrine."

E. A finding that under either the Equal Time provisions or the "Fairness Doctrine" that no provision of reply time after the fact can make up for the harm done by the violation, that separate in this matter is inherently unequal, and that the only possible remedy to the violation is the inclusion of McCarthy in the debates.

F. A finding that irreparable harm will result to McCarthy, to his electors, to his supporters, and to the entire American electorate, if the debates are allowed to proceed with him excluded.

G. An order that all of the Defendants cease all contacts with each other with respect to the debates, subject to the further order of this Court.

H. An order that ABC, CBS, and NBC may not carry more than 4 minutes each for Ford and Carter on their networks on the night the debates are held, if held without McCarthy.

I. An order that the League spend no funds for the debates, in violation of A, above.

J. A finding that if the debates are held, and include all candidates who are on the ballot in 10 states and have 5% or more in the polls, or in the alternative include all candidates who are on the ballot in sufficient states to win a majority in the electoral college (including consideration for states where petitions are not validated, or court challenges undecided), that such debates would not violate either 47 USC 315(a), or the Fairness Doctrine, or FCC order 55 FCC 2d 697 (1975).

Respectfully submitted,

Craig T. Sawyer
National Press Building
14th & F Streets, N.W.
Washington, D.C. 20004

John C. Armor
425 The Rotunda
711 W. 40th Street
Baltimore, Maryland 21211
(301) 235-6175

AFFIDAVIT OF EUGENE J. McCARTHY

1. I am a native-born citizen of the United States, a life-long resident of the United States, and over 35 years of age.

2. I am a registered voter in the State of Minnesota, without party affiliation.

3. I am an announced, independent candidate for President of the United States.

4. More than twenty-five years' experience in American politics has led me to question the value of the political parties in this country. Believing that parties have been responsible for serious failures in economic and foreign policies, I have had occasion to recall George Washington's Farewell Address, in which he warned "in the most solemn manner against the baneful effects of the Spirit of Party generally." The party spirit, he said, "serves always to distract the public councils and enfeeble the public administration..."

I have become increasingly concerned about the way in which political parties monopolize debate on issues and seek to limit voters' options to their own candidates. I believe that an independent presidential challenge is necessary to provide voters an alternative choice on substantive issues and also to open the political process to independent voters and to others who are disillusioned with political parties.

5. My independent campaign for the presidency is a serious effort. My political record includes winning five terms in the U.S. House of Representatives and two terms in the U.S. Senate. I have never lost a general election.

6. In 1968, when I challenged President Lyndon B. Johnson (and later Vice President Hubert H. Humphrey) for the Democratic presidential nomination over the issue of the war in Vietnam, I obtained over three million votes in thirteen presidential primaries. I won the primary elections of Massachusetts, Oregon, Pennsylvania, Wisconsin and New York and placed a close second in New Hampshire and California. I received the second-highest number of delegate votes at the Democratic national convention in 1968.

7. The attached list, current as of the date shown at the end of it, shows that I have already complied with petition or other requirements in twenty-four states, and that it is reasonable to expect that my campaign will be equally successful in gaining ballot status in most other states.

8. Early in 1976, twelve states had one or more provisions of state law which appeared to forbid an independent candidacy for President of the United States. On June 17, 1976, the State of Kansas entered into a Consent Decree in Federal Court declaring unconstitutional such a prohibition in Kansas law, and allowing me to appear on the ballot in that state. On July 23, 1976, the Supreme Court of the State of Oklahoma in a 7-2 decision issued a writ of mandamus directing placement on the ballot of the names of independent presidential elector candidates who are pledged to my candidacy. On August 27, 1976, a Federal Court found unconstitutional a Michigan law which excluded independent candidates for President. On the same day, due to our legal challenge of an administrative decision in Illinois barring independents, the State of Illinois reversed its position and certified my name

for the ballot. And on September 1, 1976, a Federal Court found unconstitutional a Nebraska law which excluded independent presidential candidates.

In the other seven states, in some cases state law is subject to interpretation, and my representatives are negotiating or will negotiate with state officials to see whether they will interpret their laws to permit my candidacy. In others, the law is quite clear, or clear negative interpretations have been rendered, and legal action is proceeding.

In another twelve states, we are challenging laws which provide unconstitutionally early filing deadlines or other unreasonable requirements.

9. According to the Christian Science Monitor of July 15, 1976, pollster Louis Harris conducted two polls on a three-way race among Gerald Ford, James Earl Carter, Jr., and myself. His polls showed a 10% share (which translates into about eight million potential votes) for my candidacy--despite the fact that there had been almost no national press coverage of my campaign, as opposed to the extensive coverage of the other two candidates. This 10% showing in the first national polls to list my name was above the level of support (7%) shown for Edmund G. Brown, Jr., in Maryland in a poll taken April 8-11, 1976 and reported in the Baltimore Sun of May 17, 1976. After substantial campaigning and press coverage, Governor Brown won the Maryland presidential preference primary with nearly 50% of the vote.

Mr. Harris conducted a third poll immediately after the Democratic national convention. As would be expected, that poll showed a maximum of support for the Democratic nominee,

Mr. Carter, and a minimum of support for Mr. Ford and myself. A more recent poll by Yankelovich, Skelly and White, Inc., reported in Time Magazine of September 6, 1976, indicates that I would have received at least 12% of the popular vote if the presidential election had been held between August 20 and August 24, 1976.

10. I expect to be on the ballot in between 40 and 45 states, including all states which I reasonably hope to carry. Given the present status of my campaign, and the projection of results to date into the future, I believe that the election in the fall of 1976 will be a vigorous three-way race.

11. My independent campaign is neither a protest movement nor an educational campaign. It is a serious effort to win the presidency of the United States.

Eugene J. McCarthy

Subscribed and sworn to before me this 7th day of October, 1976.

Notary Public

My commission expires Feb. 1, 1978

Eugene McCarthy is an independent candidate for President of the United States. He is not the candidate of a political party; and he is not organizing a political party. McCarthy is not a candidate in party primaries, caucuses, or conventions. He goes directly to the people for his nomination to the presidency. Voters place the name of Eugene McCarthy on their state ballots by signing petitions to nominate him and the presidential electors who are pledged to vote for him. The petition form and the number of signatures required vary from state to state.

PETITION CAMPAIGNS COMPLETED

STATE	FILING DEADLINE	NUMBER OF SIGNATURES REQUIRED	NUMBER OF SIGNATURES FILED	SIGN. REQ. AS % OF REG. VOTERS
✓OHIO	3/25/76	5,000	8,000	.11%
✓KENTUCKY	3/31/76	1,000	1,700	.07
✓NEW JERSEY	4/29/76	800	1,300	.02
✓MICHIGAN	5/3/76	17,686	27,000	.37
UTAH	5/10/76	300	400 (in court)	.05
✓MAINE	6/8/76	10,918	12,000	1.73
✓KANSAS	6/21/76	2,500	4,000	.22
✓MASSACHUSETTS	6/29/76	37,096	51,000	1.27
✓OKLAHOMA	7/7/76	Filing Fees		
MARYLAND	7/13/76?	51,155	63,000 (in court)	2.94
✓WISCONSIN	7/13/76	3,000	3,600	.21
MISSOURI	7/31/76?	18,657	25,000 (in court)	.86
✓ILLINOIS	8/2/76	25,000	34,800	.42
✓ALASKA	8/4/76	2,958	3,200	1.74
RHODE ISLAND	8/12/76?	1,000	1,700 (in court)	.20

PETITION CAMPAIGNS COMPLETED (CONTINUED)

STATE	FILING DEADLINE	NUMBER OF SIGNATURES REQUIRED	NUMBER OF SIGNATURES FILED	SIGN. REQ. AS % OF REG. VOTERS
DISTRICT OF COLUMBIA	8/17/76?	2,361	2,450 (in court)	1.10
✓PENNSYLVANIA	8/23/76	30,584	38,450	.55
✓NEBRASKA	8/24/76	2,000	3,000	.25
✓OREGON	8/24/76	Convention		
✓IOWA	8/27/76	1,000	6,000	.10
✗SOUTH DAKOTA	8/30/76	2,782	1,700	.69
✗ALABAMA	8/31/76	5,000	-----	.28
✓TENNESSEE	9/2/76	250	500	.01
✗HAWAII	9/3/76	3,000	-----	.87
✗VIRGINIA	9/3/76	9,022	6,000	.44

PETITION CAMPAIGNS IN PROGRESS

FILING DEADLINE	STATE	NUMBER OF SIGNATURES REQUIRED	NUMBER OF SIGNATURES COLLECTED	SIGN. REQ. AS % OF REG. VOTERS
8/4/76?	MONTANA	15,938	1,200 (in court)	4.26
8/30/76?	CONNECTICUT	14,093	7,000 (in court)	.90
9/1/76?	INDIANA	8,406	5,500 (in court)	.29
9/3/76?	CALIFORNIA	99,284	85,000 (in court)	1.00
9/7/76	COLORADO	5,000	6,000	.41
9/7/76	NEW MEXICO	3,287	3,200	.65
9/13/76	NEW YORK	20,000	6,000	.24
✓9/14/76	MINNESOTA	2,000	2,300	.10
9/17/76	ARIZONA	5,521	5,000	.62
9/17/76	WYOMING	6,347	1,200	3.43
9/20/76	NEW HAMPSHIRE	1,000	400	.24
✓9/23/76	NORTH DAKOTA	300	500	.07

PETITION CAMPAIGN SCHEDULED

FILING DEADLINE	STATE	NUMBER OF SIGNATURES REQUIRED	SIGN. REQ. AS % OF REG. VOTERS
9/15/76	VERMONT	1,409	.53
9/18/76	SOUTH CAROLINA	10,000	1.00
9/21/76	WASHINGTON	100	.01
9/23/76	MISSISSIPPI	1,000	.09
9/26/76	LOUISIANA	1,000	.06

IN OTHER STATES, UNREASONABLE AND CLEARLY UNCONSTITUTIONAL LAWS DEVISED TO KEEP AN INDEPENDENT PRESIDENTIAL CANDIDATE OFF THE BALLOT REQUIRE CHALLENGES IN COURT. CHALLENGES TO SUCH LAWS ARE UNDER WAY IN: DELAWARE, FLORIDA, IDAHO, NEVADA, NEW MEXICO, TEXAS, AND UTAH. CHALLENGES TO SUCH LAWS HAVE BEEN WON IN ILLINOIS, KANSAS, MICHIGAN, NEBRASKA, AND OKLAHOMA.

LEGAL EFFORTS AGAINST UNREASONABLY EARLY DEADLINES OR OTHER BARRIERS ARE, OR WILL BE, UNDER WAY IN: ARKANSAS, CALIFORNIA, CONNECTICUT, DISTRICT OF COLUMBIA, GEORGIA, INDIANA, MARYLAND, MISSOURI, MONTANA, NORTH CAROLINA, RHODE ISLAND, AND WEST VIRGINIA.

NOTE: States in the "Petition Campaigns Completed" section are listed in the order in which our supporters filed.

In the last column, "Signature Requirement as % of Registered Voters," 1974 voter registration figures are used.

Paid for by McCARTHY '76, 1440 N Street, NW, Washington, DC 20005;
phone: 202/737-4900. Mary Meehan, Treasurer 9-5-76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUGENE McCARTHY, et al *

Plaintiffs * Case No. _____

v. *

JAMES CARTER, et al *

Defendants *

* *

ORDER

For good cause shown, it is hereby ORDERED this _____ day of September, 1976, that the time for anwering this complaint is shortened to four days, or 14 September, 1976, and that counsel for all Defendants are hereby notified that hearing will be held on the 15th, 16th or 17th day of September, 1976, on the Motion for Preliminary Injunction, at the convenience of counsel, provided conformed copies of this Order are served on responsible officials in the offices of all the Defendants on 10 September, 1976.

_____
Judge

JCA:MKS:SBK
9-9-76

LAW OFFICES OF
JOHN C. ARMOR, P.A.
SUITE 425
714 W. 40TH STREET
BALTIMORE, MD. 21211
(301) 235-6175

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUGENE McCARTHY, et al *

Plaintiffs * Case No. _____

v. *

JAMES CARTER, et al *

Defendants *

* *

MOTION FOR ORDER FOR PROMPT HEARING AND FOR PRELIMINARY INJUNCTION

NOW COMES Eugene McCarthy, et al, Plaintiffs, by his attorneys Craig Sawyer and John C. Armor, and says:

1. In accord with the allegations of the attached Complaint, the Plaintiffs will suffer irreparable harm, unless the Defendants are enjoined from proceeding with their present intent to hold debates excluding McCarthy.

2. The debates are now scheduled to begin on 23 September, 1976.

3. The Plaintiffs have acted as quickly as possible after they received notice through the press that the League would exclude McCarthy.

4. Prompt action by the Court will be necessary to prevent harm.

WHEREFORE: The Plaintiffs respectfully request this Court to shorten the time for answering this complaint to four days, or until 14 September, 1976, on assurance by counsel for Plaintiffs that they will personally serve responsible officials at all of the Defendants offices, and requests this Court to Order a hearing on the Motion for Preliminary Injunction on the 15th, 16th or 17th of September, at the best convenience

JCA:SBK:MKS
9-9-76

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of all counsel to all parties.

Respectfully submitted,

_____
Craig T. Sawyer

_____
John C. Armor

I HEREBY SWEAR that the facts set forth in the attached Complaint are true and correct to the best of my knowledge. In further support of the Complaint I attach a prior affidavit of 5 September, 1976.

_____
Eugene J. McCarthy

Subscribed and sworn to before me this 10th day of September, 1976, in Washington, D.C.

_____
Notary Public

My Commission Expires:

_____

Points and Authorities:

Brown v. Board of Education (1954) 347 US 483, 98 L.Ed. 873, overruling Plessy v. Ferguson, (1896) 163 US 537, 41 L.Ed. 256, see especially pp. 493-495, and 880-881.

Chisholm v. FCC (1976), United States Court of Appeals, case no. 75-1951 and 75-1994, especially slip opinion, page 9, footnote 7, and page 21.

Red Lion Broadcasting Co. v. FCC (1967), 127 U.S. App. D.C. 129, 381 F.2d 908

Storer v. Brown (1974) 415 U.S. 724, 39 L.Ed.2d 714

2 USC 431(e)

26 USC 9002(2)(A), 9004(a)(3) and 9903(b)(2) and 9012(b)

47 USC 315(a)

Public Law 94-283

FCC Memorandum and Order, 55 FCC2d 697 (1975)

Fairness Primer (1964) 29 Fed.Plg. 10415

Opinion of Federal Election Commission, 30 August 1976