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Batt, Andrew <andrewb@iowapbs.org>

Request for clarification

rick <rick@rickstewart.com> Mon, Sep 26, 2022 at 12:54 PM
Reply-To: rick <rick@rickstewart.com>
To: "Batt, Andrew" <andrewb@iowapbs.org>

Andrew -

In addition to the copy below, I have attached a file of the same document.

Rick Stewart
Libertarian candidate for Iowa Governor

September 24, 2022

Reply to Iowa PBS re: debates

In the hopes of initiating an honest and open conversation surrounding the Iowa PBS criteria for inclusion in a Gubernatorial debate I submit the following observations.

1) When I could find no criteria for inclusion in a gubernatorial debate on the Iowa PBS website, I wrote to the email address listed on the page titled General Election Candidate Criteria. The reply I received was, “The General Election criteria listed on the Iowa PBS website below also apply to the Governor of Iowa debate on Iowa PBS.”

This is actually impossible, since one criterion states, “The candidate has accepted at least $50,000 in cash contributions for the current election, as filed with and documented by the appropriate agency for campaign finance disclosure information for candidates for federal office.” The appropriate agency in this case is the Federal Election Commission (FEC), which will not allow a gubernatorial candidate to use their system.

When I pointed out this impossibility to Iowa PBS I was ignored. Instead Iowa PBS implied to me the criterion did not refer to the FEC, but rather to the Iowa Ethics & Campaign Disclosure Board (IECDB). It does not, therefore one can assume Iowa PBS has in fact changed the criterion, but has failed to publish it for the general public. As of 9:49 PM on September 25, 2022, the Iowa PBS website page announcing criteria for candidates for federal (not state) office remains unchanged, and I am unable to find a new page announcing criteria for state office.

2) In my initial response to Iowa PBS I pointed out criterion 2(1) requiring a candidate to be a member of either the Republican or Democrat party was invalid, and cited why. In reply Iowa PBS claimed this criterion was based on “established case law and the exercise of its good faith editorial and journalistic judgment.”

This is not true. There is no established case law permitting Iowa PBS to discriminate against every candidate who is not a Republican or a Democrat.

Furthermore “good faith editorial and journalistic judgment” will never allow candidates to be discriminated against simply because they are not Republicans or Democrats.

Allow me to elaborate. By definition an Independent candidate for public office will neither be a Republican nor a Democrat, nor will the candidate ever be a member of any other political party. It is not a “good faith editorial and journalistic judgment” to automatically eliminate every Independent candidate for public office from an Iowa PBS debate, simply because they are not a member of a political party.

Even were an Independent candidate for public office forced to establish a political party in Iowa against their will, to meet this clearly discriminatory criterion, the candidate will be required to run for President of the United States two years prior to running for Iowa Governor. Under Iowa law there is no other way to meet this criterion. No judge, no jury, and no journalist will find it to be “good faith editorial and journalistic judgment” to require a candidate who wishes to run for Iowa Governor as an Independent to first run for President of the United States.

In short, criterion 2(1) is so egregiously discriminatory it cannot be justified and must be eliminated by Iowa PBS. Should you disagree, please advise me in writing, and please seek advice from an experienced communications counsel.

3) Criterion 2(5) requiring a candidate to receive 10% support in an independent poll also requires examination.

My colleague inquired to Iowa PBS as to the reasonableness of this criterion. He pointed out polling in Iowa is increasingly infrequent, and the only publicly released poll including my name in a question or possible response was conducted from July 10-13, 2022, more than two months ago and more than three months from the scheduled date of the Iowa PBS debate of October 17, 2022.

He also pointed out the Iowa PBS polling threshold was 5% with respect to the gubernatorial race in 2018, but sometime between then and now was raised to 10%, with Iowa PBS providing neither any explanation, nor any justification, nor any notice to the public of this dramatic and draconian change.

The Iowa PBS reply was this criterion represented “good faith editorial and journalistic judgment” and was supported by their legal counsel. One can reasonably be suspect of any claim of “good faith judgment” by a government owned entity when legal counsel is required to justify it.

Iowa PBS further stated they “cannot and will not waive or modify the criteria”.

This is demonstrably untrue. Iowa PBS can certainly waive or modify the criteria, as demonstrated by the fact they have already done so, both by changing FEC reporting to Iowa IECDB reporting last week and by changing the polling threshold from 5% to 10% at some unknown time and date in the recent past.

Even ignoring this clear example of Iowa PBS already modifying the criteria, Iowa PBS can modify or waive the criteria so long as the change does not exclude one or more candidates who would otherwise qualify. The law does not allow retroactively excluding a participant, it does allow prospectively including a participant.

With respect to “good faith editorial and journalistic judgment” Iowa PBS actions do not pass the sniff test. Where is the good faith in arbitrarily and capriciously doubling the requirement from 5% to 10%?

For this reason I respectfully request Iowa PBS provide answers to the following questions. When was this change made? By whom was this change made? Why was it made? What arguments were used to justify the change? When and how was it communicated to the general public and to the candidates for whom it will be applicable?

Toward the end of answering these questions please provide me copies of all electronic and written communications regarding this change, including appropriate parts of minutes from all meetings involving Iowa PBS employees or board members during which the change was discussed or a decision made, all electronic and written correspondence documenting discussion about this decision, and any other evidence documenting the process of making this change and communicating it to the general public and to the affected candidates. Electronic communication shall include, but not be limited to, emails, instant messaging conversations, social media posts, website pages, and similar communications.

Iowa PBS further claimed complaints as to how the polls referred to in criterion 2(5) were conducted should be addressed to the entities that are conducting these polls. This skirts the question as to why “good faith editorial and journalistic judgment” would allow

the polls to be used in the first place, and why Iowa PBS continues to rely on them when they no longer serve the purpose for which they were originally intended.

Essentially Iowa PBS has both arbitrarily and capriciously doubled their own polling requirement and refused to acknowledge the polls they rely on to exercise their own “good faith editorial and journalistic judgment” are no longer sufficient to allow them to do so. Neither of these actions qualifies as “good faith.”

Iowa PBS additionally says it does not control or influence polls in any manner, yet asks my campaign to do exactly that, all while forbidding my campaign from commissioning or paying for a poll which would in fact provide the information Iowa PBS is looking for. This is a clear double standard and thus ethically dubious.

In its argument supporting the use of both polls in general and its new threshold of 10% Iowa PBS points toward the 15% polling requirement of the Commission on Presidential Debates (CPD). Iowa PBS knows or should know the CPD, by their own admission, is a private bi-partisan organization with a history of deceiving the general public as to the actual source of its funds. It is not a government entity, as is Iowa PBS. For years the CPD claimed it was supported by its “National Sponsors,” however in 2012 this was proven, by an examination of their Federal Forms 990, to be untrue. As a result three of their ten sponsors withdrew their “sponsorships,” the CPD's “National Sponsors” were reduced to six in 2016, and in 2020 they had none.

For Iowa PBS to use the CPD as their guidepost for “good faith editorial and journalistic judgment” is to suggest Iowa PBS is either not operating in good faith, or does not exercise good journalistic judgment, or both.

4) Iowa PBS has repeatedly referred to two court cases justifying their criteria. It will be worthwhile to examine these court cases carefully to determine if they do indeed support the Iowa PBS criteria.

The key sentence in Arkansas Ed. Television Comm'n v. Forbes, 523 U.S. 666 (1998) is this,”The record demonstrates beyond dispute that Forbes was excluded not because of his viewpoint, but because he had not generated appreciable public interest.”

Let us examine some facts of the case.

AETC [Arkansas Educational Television Commission] Executive Director Susan Howarth testified Forbes [the candidate] was excluded because -

(1) "the Arkansas voters did not consider him a serious candidate"

Were Iowa PBS to ask Iowa voters, when told my name was on the ballot as the Libertarian candidate for Iowa Governor, whether or not I was a “serious” candidate, the vast majority of them would reply “yes.”

This is adequately proven by the fact I received 26,815 votes in 2014 when I was a “serious” candidate for United States Senator, 38,965 votes in 2018 when I was a “serious” candidate for Iowa Secretary of Agriculture, and 36,961 votes in 2020 when I was a “serious” candidate for United States Senator. Those are a sufficiently high numbers to demonstrate that many, if not all, Iowa voters thought I was a “serious” candidate in the past, and they do so today as well.

(2) "the news organizations also did not consider him a serious candidate";

The news organizations in Iowa all consider me a “serious” candidate, including Iowa PBS itself, as demonstrated by my recent appearance on the Iowa PBS program Iowa Press, where I discussed my candidacy with three of Iowa's most respected political journalists.

(3) "the Associated Press and a national election result reporting service did not plan to run his name in results on election night";

The Forbes case concerns a national election. My campaign concerns a state election. There is no reason to expect a national election result reporting service to report the results of a state election.

The Des Moines Register, Iowa's newspaper of record, regularly refers to me as the Libertarian Candidate for Iowa Governor and will most certainly run my name in the election results on election night, just as it reported my name in the results of the last Iowa Poll. The nationally respected FiveThirtyEight organization already includes me in their website when it reports the results of the last Iowa Poll.

USA Today reported election results in the 2018 gubernatorial race and included Jake Porter, the Libertarian candidate for Iowa Governor. The Wall Street Journal reported election results in the 2018 gubernatorial race and included Jake Porter. Bloomberg reported election results in the 2018 gubernatorial race and included Jake Porter.

There is no reason to believe the Associated Press and other national reporting services will not run my name in results on election night, other than the fact this is a state, not a federal, election.

(4) Forbes "apparently had little, if any, financial support, failing to report campaign finances to the Secretary of State's office or to the Federal Election Commission";

As you know I have extensive financial support, even if not on par with Kim Reynolds and Deidre DeJear, and in fact have surpassed the Iowa PBS criterion in this category. As you also know, I report my campaign finances to the IECDB.

(5) "there [was] no 'Forbes for Congress' campaign headquarters other than his house."

It's not 1998 any more - it's a virtual world. Would anyone in 2022 claim a candidate or a business was not “serious” because it was 100% virtual? No. My daughter, in fact, is a co-founder and co-owner of a business with a $50 million market valuation today. There are no offices. There are only people working from home, occasionally I imagine from a coffee shop. It is real. It is serious. So am I.

(6) Forbes himself described his campaign organization as "bedlam" and the media coverage of his campaign as "zilch."

My campaign organization is hectic, but not “bedlam,” and the media coverage of my campaign is not “zilch,” but extensive.

(7) It is, in short, beyond dispute that Forbes was excluded not because of his viewpoint but because he had generated no appreciable public interest.

A quick count shows my candidacy does not remotely resemble the Forbes candidacy in any of the seven areas of concern used to justify the decision in the Forbes case. In short, the resemblance to Forbes is zilch.

It cannot be reasonably claimed I have no appreciable public interest in Iowa. If this were even remotely true, why would I have been invited to the Iowa PBS half hour show Iowa Press?

One is forced to conclude the Forbes case is in no way similar to my own, establishes no useful precedent, and is not controlling.

Note: Iowa PBS also claimed the Forbes case found the use of polling criteria was a reasonable factor for the public broadcaster's selection of candidates for the debate. This is untrue – a search of the Forbes opinion reveals no instances of either “poll” or “polling.”

5) The key sentence in Marcus v. Iowa Pub TV, 150 F.3d 924 (1998) is this, “In Forbes, the Supreme Court held that a political candidate debate program produced by a government-owned public television broadcaster was a non-public forum, and that the broadcaster could therefore limit participation in such a debate program where the limitation was viewpoint neutral and reasonable.”

In my reply to Iowa PBS I pointed out a requirement that a candidate must be a member of either the Republican or Democrat party is neither viewpoint neutral nor reasonable. Iowa PBS has provided me absolutely no rebuttal of that observation, therefore I will assume you accept my argument as valid.

If not I shall repeat my statement and request that Iowa PBS either acknowledge the elimination of that criterion or provide me with an explanation as to why Iowa PBS believes excluding any candidates who are not Republicans or Democrats is both viewpoint neutral and reasonable.

6) Iowa PBS also says the deadline for candidates to demonstrate they meet the Iowa PBS criteria for a debate or forum is 4:00 PM CT on that day that is twenty-one (21) calendar days prior to the day of the scheduled debate or forum.

This is an arbitrary and capricious limitation, serving no compelling governmental interest, for a debate which Iowa PBS already knows will either have only two candidates, or three. Adding one additional podium to the Iowa Press debate stage will not not require any new equipment purchases, as Iowa Press has already staged a debate with three candidates as recently as May 19, 2022. Adding one additional candidate to the debate will likewise not require hiring and training any new personnel, for the same reason. Iowa PBS is an experienced TV broadcaster with years of experience covering breaking news and they can do the same for a candidate debate.

In addition to being logistically unnecessary the 21 day requirement is arbitrary and capricious in that it greatly reduces the opportunity for candidates to meet the criteria for inclusion. During this wasted time the results of an independent poll of voters' preferences may be released, additional campaign contributions may be received, media coverage broadened, or perhaps a website built.

Please provide any additional information I may be unaware of which might justify Iowa PBS requiring anything more than two hours advance notification that a candidate has met the criteria for inclusion in an Iowa PBS debate, numerous of which have been successfully broadcast by Iowa PBS on previous occasions.

7) A malevolent or politically motivated actor may claim it is irrelevant that one criterion is impossible to meet for an Independent candidate, since the candidate only has to meet four of the five criteria anyway. I will invite such a creature to play a round of high hand high stakes poker, where I am dealt five cards and my opponent is only dealt four, and see if the offer is accepted.

8) It has been suggested Kim Reynolds will withdraw from her agreement to debate Deidre DeJear on Iowa PBS if I am allowed to participate. Apparently this was the case in 2018 after Jake Porter qualified to participate in the IPTV debate? If Iowa PBS has any written documentation supporting either of these possibilities please send me hard copies, including board meeting notes and minutes, emails, and other electronic correspondence.

9) As a publicly owned television station, which you are, rather than trying to throttle democracy with arbitrary and capricious criteria for inclusion in an Iowa PBS political debate, let me suggest an alternative – ask your viewers what they want. Perhaps with a poll?

Should you discover they only want to see Republicans and Democrats in your debates, so be it.

Should you discover they want to see all the candidates who will be on their ballots (my prediction), but there are too many candidates for a particular office to all fit on your debate stage, have an American Idol type process in which candidates are excluded from the stage one by one, based on your viewers' opinions of their performance. You could even use the Eurovision model of charging viewers for their votes, and raise a substantial amount of money for Iowa PBS in the process.

I think you will discover greatly increased viewership for your debates if you reorient your goal from pleasing your political paymasters to pleasing your viewers. Americans are profoundly unhappy with the current results of their political system, and with the media's coverage of the political process. You could break the mold of boring, stuffy old-fashioned debates, and provide yet another reason why Iowa is the best state in the nation for college graduates.

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2022 Governor reply to Iowa PBS.odt
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