

Most Americans express dissatisfaction with the two dominant political parties, yet rarely elect candidates not endorsed by one of them. A CBS News poll taken the week after the most recent election found unfavorable ratings for the Democratic and Republican parties of 46% and 48%, respectively, despite the Republicans having just enjoyed their biggest electoral gains in the House of Representatives in over 70 years. Further, only two US Senators and no House members are officially Independent. What can be done to help to rectify this disparity? Can we level the playing field for all candidates to compete without infringing on the rights and freedoms of others?

As a basic premise, government should have very limited powers in the areas of political discourse, election outcomes, and party dominance if we are to ensure our political freedom. The government has a legitimate role in ensuring a level playing field and open debate; a “free marketplace of ideas” as posited by Oliver Wendell Holmes, but should not have the power to regulate political speech nor to compel its unlimited coverage.

This “free marketplace of ideas” enables an array of thoughts and opinions to be debated and refined until the strongest ones are accepted by a majority or plurality of people. A bedrock principle of our democracy enshrined in the Bill of Rights is freedom of the press, but responsibility comes with freedom. Because electronic media plays a dominant role in modern political campaigns, both in news coverage and paid advertising, some form of compulsion to provide equal access to all candidates seems reasonable.

An approach which balances these concerns is a Threshold-Based Equal Access Requirement (“TBEAR”) mandating equal coverage for candidates until a designated time (e.g., six weeks prior to Election Day). This requirement would extend beyond the designated time only to those candidates achieving some threshold level of support (e.g., ten-percent of registered

voters as measured by an independent polling body). The TBEAR should pass constitutional muster since the government has an established authority to regulate the use of public airways.

This proposal could increase the number of candidates and diversity of ideas being presented. Even if a third-party candidate does not win, his or her ideas may affect the debate and be adopted by other candidates as was seen with the adoption by many Republicans of positions put forth by Tea Party candidates in the 2010 elections, or in the focus on the federal deficit by many candidates in 1992 after Ross Perot made it a theme of his presidential campaign. Also, the media may focus more on the substance of each candidate's ideas and less on the "horse race" regarding money raised or current polling support. By requiring candidates to establish some threshold of support to ensure continued coverage, the TBEAR could help to reduce the number of "fringe" candidates near the end of the campaign season.

The TBEAR would force candidates to organize early in order to gain the threshold of support by the deadline. This could make it more difficult for a candidate to enjoy a late surge in support, as was seen with Christine O'Donnell in the US Senate race in Delaware in 2010. Further, this proposal could encourage "fringe" candidates to enter a race merely to gain free media coverage, such as Jimmy McMillan of the Rent is Too Damn High party in the 2010 New York Gubernatorial race.

While no proposal can address all possible concerns when money and political power are at stake, the TBEAR seeks to balance legitimate concerns in a practical, effective and Constitutional manner.