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LIBERTY PLEDGE
NEWSLETTER

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Supreme Court continues record of hostility to minor parties and independent candidates

Excerpted from *The Hill*
by Richard Winger
Published on Oct. 16, 2015

Among the 50 most populous countries, the United States and Nigeria are the only nations in the world with exactly two political parties represented in the national legislative body. Election laws and debate practices in the United States make it extremely difficult, almost impossible, for the voters to launch a new major party. Consequently, in election after election, there is no realistic chance for a new party to displace either the Republican or Democratic Parties. This state of affairs is partly because the U.S. Supreme Court, for the last 23 years, has fostered the status quo and upheld laws that protect the two major parties from competition.

Starting in June 1992, the U.S. Supreme Court has refused to hear every case filed by minor party or independent candidates against restrictive laws that bar them from the ballot or debates or otherwise injure them, with only a single exception: a case from Georgia in which Libertarian Party candidates challenged the state law requiring all candidates for state office to be tested for illegal drugs.

Setting aside that exception, there are now 54 examples when minor parties and independent candidates asked for help from the court, and were refused, during the period from 1992 to the present.

> The presidential debates are, in practice, limited to the Republican and Democratic nominees.

But during the same period, when minor parties or independent candidates won in the lower court, and the state that lost the case asked the Supreme Court to hear an appeal, almost half the time, the U.S. Supreme Court took the case and reversed the decision, to the detriment of voters who support alternatives to the major parties.

To be fair, since 1992, I must mention there are two instances when the Supreme Court heard cases that minor parties had brought after losing in the court below, but in both those instances, the two major parties were also in the case on the same side as the minor parties. But when minor parties or independent candidates are alone in bringing the case, and don't have the Democratic or Republican Parties as co-plaintiffs, since June 1992, they have always lost in the U.S. Supreme Court.

On Oct. 13, 2015, the court did it again. It refused to hear a California case that, in practice, bars virtually all candidates who are not Democrats or Republicans from the November ballot. The case, *Rubin v. Padilla*, brought by the Peace & Freedom, Libertarian, and Green Parties, challenges

> The U.S. Supreme Court bears a major share of the responsibility for this state of affairs.

the law that went into effect in 2011 and which states that all candidates run in June, and then only the two candidates who place first and second may appear on the general election ballot. This system, known as a

continued on page 2

Libertarians suing cops charged with killing six-year-old

Excerpted from *People Magazine**
By Christine Pelisek
Published on Nov. 10, 2015

The two marshals charged with murder after allegedly fatally shooting a six-year-old Louisiana autistic boy as they pursued his father's car were accused in a civil rights lawsuit earlier this year of using excessive force on a man at an Independence Day event, court personnel confirm to PEOPLE.

In July, a man named Ian Fridge filed a lawsuit in U.S. District Court for the Western District of Louisiana against the marshals, Norris Greenhouse, Jr. and Derrick Stafford, along with the city of Marksville and its police chief, among other parties. Fridge was arrested at an Independence Day festival for carrying a visible, holstered gun, and also for resisting arrest and assaulting Stafford,WAFB reports.

But in his suit, Fridge claims he did not resist officers and was within the state's open-carry law. He also claims he was passing out information about the Libertarian Party when officers allegedly wrestled him to the ground and tased him while in handcuffs.

Last week, Greenhouse and Stafford allegedly opened fire on Chris Few's vehicle following a car chase in Marksville, Louisiana. Few remains hospitalized, missing the family's funeral Monday for 6-year-old Jeremy Mardis, who was shot five times in the head and neck and died from his injuries.•

** Original headline: "Louisiana Officers Charged with Fatally Shooting 6-Year-Old Are Subject of an Unrelated Civil Rights Lawsuit"*

Supreme Court continues hostility

continued from page 1

top-two system, has also been in effect in Washington state since 2008. The record in these two states shows that if two or more members of the major parties run for an office, no minor party candidate ever places first or second in the primary and thus can never campaign or run in the general election. California even prohibits write-in candidates in the general election for the offices covered by the top-two system—congressional and state seats—but not the presidency.

Canada holds a national parliamentary election on Oct. 19, 2015. Canadians have the luxury of choosing among three major parties: the incumbent Conservative Party, the Liberal Party (which is now the centrist party for Canada), and the New Democratic Party (which represents the left). Polls show a very competitive election, and any one of these three parties may win. The Green Party is also on the ballot in over 99 percent of the districts, and the Bloc Québécois is on the ballot throughout Quebec. Various other parties are on the ballot in some of the districts. All of the Canadian debates between party leaders in this election season have included at least three parties, and some of them have included the leaders of four or five parties.

> Dissatisfaction with both parties is very high. Yet we don't see the rise of a major new party...because ballot access laws are severe.

Canadians have this freedom because Canada has easy and equal ballot access for all candidates for the House of Commons. Each one needs 100 signatures and a filing fee of $1,000; the filing deadline is only three weeks before the election. By contrast, in the United States, ballot access for minor party and independent candidates is extremely difficult.

Georgia's petition requirements for minor party and independent candidates for U.S. House—they must collect approximately 20,000 valid signatures, notarize each petition sheet, and pay a filing fee of over $5,000—is so severe that no candidate has been able to surmount the requirement since 1964. Arkansas requires independent candidates for the U.S. Senate to submit a petition of 10,000 valid names by November 2015 in order to be on the ballot a year later, and minor parties must submit such a petition by September 2015, 14 months before the election. North Carolina requires a minor party or independent presidential candidate to submit approximately 90,000 signatures, which are due in May 2016 for minor parties and June 2016 for independent candidates.

Dissatisfaction with both major parties, according to polls, is very high. Yet we don't see the rise of a major new party that enjoys popular support because the ballot access laws are severe, and also because the general election presidential debates are, in practice, limited to the Republican and Democratic nominees. The U.S. Supreme Court bears a major share of the responsibility for this state of affairs.•

Richard Winger is editor of Ballot Access News.

New and renewing Liberty Pledgers

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Glenn Workman
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Collier commissioner hopes colleagues will reconsider doing away with taxi driver rules

Excerpted from *The Daily Caller*
By Greg Stanley
Published on Nov. 9, 2015

Collier County [Florida] Commissioner Penny Taylor will ask her fellow commissioners to think again before throwing out all of the county's rules governing taxi drivers and vehicles-for-hire.

But it's unclear how much, if any, support she'll get Tuesday.

Taylor cast the lone vote last month to keep the county's vehicle-for-hire regulations intact in response to the growing popularity of Uber and other ride-sharing companies, which make it easier for drivers to shirk the rules. The regulations include criminal background checks on drivers, proof-of-commercial insurance requirements, and vehicle inspections.

> "We want to get government out of the way...so they all can flourish and consumers can have more choices."
> —Jared Grifoni of the Libertarian Party

Rather than try to fight the growing ride-sharing phenomenon, the majority of commissioners decided to nix the county's rules entirely, saying it would free up both Uber and existing taxi and limo companies to compete on level grounds.

Collier code enforcers have fined Uber drivers more than $100,000 for breaking local taxi rules since the company became active here this year.

Collier County will become the second in the state, behind Sarasota, to deregulate the vehicle-for-hire industry. Once the

continued on page 4

Could antitrust law expand presidential debates?

Excerpted from *The Orange County Register*
By Tom Campbell
Published on Oct. 24, 2015

The Libertarian Party, the Green Party, and their 2012 presidential and vice presidential candidates—including retired Orange County Judge Jim Gray—sued the Commission on Presidential Debates ("the Commission") in September under federal antitrust laws. The commission is a not-for-profit organization created by the Democratic and Republican parties.

The smaller parties want to participate in the 2016 general election debates between the major party nominees. This has happened before. In 1992, Ross Perot was permitted to take part in the debates with George H.W. Bush and Bill Clinton. In 2000, by contrast, Ralph Nader was not allowed in the debate between Al Gore and George W. Bush. Both decisions were made by the commission.

> As the creature of the two major parties, the commission has excluded any candidate with less than 15 percent in national polling.

Ross Perot received 18.9 percent of the popular vote in 1992, in an election where Bill Clinton beat George H.W. Bush by 5.5 percentage points. Ralph Nader received 2.7 percent of the vote in 2000, which, strategically allocated, might have elected Al Gore over George W. Bush, who actually lost the popular vote to Gore by half a point.

Even without these numerical effects, Perot in 1992 and Nader in 2000 shifted each presidential campaign's focus, to responsible budgeting and the environment, respectively. Their adherents were sincere and deeply committed to making America better as they saw it; and the same is true with today's smaller parties.

The two major parties hate smaller parties, which they believe take votes from them. As the creature of the two major parties, the commission has, since 2000, excluded any candidate with less than 15 percent in national polling.

By what right do they do so?

The commission is a private entity. As such, it is not prohibited by the Constitution from favoring one party over another. Indeed, the commission is entitled to First Amendment protection as to who it invites to debate at a particular venue, just as a private university could choose to invite only leftist or rightist candidates to its campus debate.

However, by the same logic, since the commission is not part of the government, federal antitrust laws apply to its actions. Suppose that Chrysler and Ford considered invitations to car shows around the country, and agreed to go only to those car shows that excluded GM. As an agreement between competitors to boycott another competitor, this would be struck down under the most severe antitrust rule: a "per se" violation of the 1890 Sherman Act, which prohibits "agreements in restraint of trade."

There are, however, more lenient standards of review for other situations in antitrust. For example, sports leagues are made up of competitors who agree about who can compete. The league escapes antitrust condemnation because it creates something that could not exist otherwise (professional sports contests between roughly equal teams).

Under this more lenient standard, however, the exclusion of third-party candidates by the two major parties would still be illegal. Ross Perot in 1992 demonstrated that meaningful presidential debates could, indeed, exist with a third-party candidate present.

Even if, contrary to the foregoing, the commission escapes antitrust liability by reason of the sports league analogy, broadcasters might not. The broadcasters are analogous to retailers; the candidates are suppliers; and the commission is a joint venture between two of the suppliers. An agreement between retail competitors to boycott a supplier is per se illegal, under Supreme Court precedent

continued on page 4

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Irwin Schiff, Fervent Opponent of Federal Income Taxes, Dies at 87

Excerpted from *The New York Times*
By Dennis Heves
Published on Oct. 19, 2015

Editor's note: Irwin Schiff ran for the Libertarian Party's nomination for president in 1996.

Irwin A. Schiff, who built a national following by arguing that income taxes are unconstitutional and spent more than 10 years in prison for evading them and for helping thousands of others to do the same, died on Friday at a hospital affiliated with a federal prison in Fort Worth. He was 87.

> "He acted on his beliefs and stood for tax honesty. It's very hard to speak to power, but he did, and he paid a very heavy price." —Robert L. Schulz

At his death, Mr. Schiff was an inmate at the Federal Correctional Institution, where he was serving his third prison term, a 14-year sentence handed down in 2005.

Mr. Schiff sold more than 250,000 copies of six self-published books, including *How Anyone Can Stop Paying Income Taxes* (1980), *The Great Income Tax Hoax* (1985), and *The Federal Mafia: How the Federal Government Illegally Imposes and Unlawfully Collects Federal Income Taxes* (1992).

His writings became widely cited in the literature of the so-called tax-honesty movement (tax deniers, to opponents) and of right-wing organizations challenging the legitimacy of the federal government.

Over the years, Mr. Schiff pressed his cause on national television shows like "Larry King Live" and "The Tomorrow Show" with Tom Snyder. And when he wasn't barnstorming the country conducting seminars and selling videotapes, he worked out of a storefront office in Las Vegas. There, behind a large sign that read, "Why Pay Income Taxes When No Law Says You Have To?," he offered counseling, for fees.

His bottom-line advice: Declare "zero income."

The late Irwin Schiff debating at the 1996 LP presidential nominating convention in D.C., covered live by C-SPAN.

His most recent [prison term] was for personally evading taxes, as well as advising more than 3,600 others to follow his example by withholding about $56 million in revenue from the federal government.

To Robert L. Schulz, chairman of the We the People Foundation for Constitutional Education, which scrutinizes the constitutionality of government activity, Mr. Schiff was something of a hero.

"He acted on his beliefs and stood for tax honesty," Mr. Schulz said in 2012. [In 1994, Schulz was the Libertarian candidate for Governor of New York.]

"It's very hard to speak to power, but he did," Mr. Schulz added, "and he paid a very heavy price."•

LP supports doing away with taxi rules

continued from page 2

rules are officially taken off the books in December, anyone with a driver license will be able drive a taxi.

Both taxi drivers, who support keeping regulations in place, and the Libertarian Party of Collier County, which campaigned to remove them, have been circulating petitions for their sides.

> Collier code enforcers have fined Uber drivers more than $100,000 for breaking local taxi rules

Jared Grifoni of the Libertarian Party praised the commissioners' decision last month and said he doesn't expect efforts to regulate to gain much traction.

"It isn't even about taxis versus Uber," Grifoni said. "We want to get government out of the way of (the taxi) business and Uber's business, too, so they all can flourish and consumers can have more choices. The vehicle-for-hire ordinance was simply outdated, archaic, and unnecessary."•

Anti-trust law in presidential debates

continued from page 3

dating from 1959.

Suppose that Fox and CNN did not explicitly agree that each would exclude third-party candidates if the other did. Nevertheless, under Supreme Court case law settled since 1939, an agreement between Fox and CNN could be inferred from the fact that each knew the other followed the same approach, and agreed because of that fact.

CNN might consider it too risky to exclude a dynamic third-party candidate, for instance, unless it was sure Fox also would exclude that candidate, lest it be upstaged.

The key to understanding this part of antitrust law is the presence of an agreement. A debate sponsor independent of the two major parties, and a broadcaster acting without the agreement of other broadcasters, might design debates as each wishes. But for competing participants, or competing broadcasters, to set the terms by agreement is illegal.

Could reasonable limits on the number of debate participants still apply? Yes, if those limits are set unilaterally by the broadcaster. There were 11 candidates in the GOP debate on CNN. Choosing the nominees of the top four parties for the final debate would not be unwieldy.•