

STATEMENT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Racial Disparities in US Political Rights: The “Wealth Primary” and The Right to Participate in Elections

Under ICERD Article 5 (c), state parties undertake to prohibit and eliminate racial discrimination and to guarantee the rights of all persons “to participate in elections -- to vote and to stand for election -- . . . and to have equal access to public service”.

While the US presidential elections in 2000 shed light on disparities in voting technology and other practices that disproportionately harm the political rights of racial and ethnic minorities, state and federal electoral processes in the United States suffer from another pervasive discriminatory flaw: the dominant role that wealth plays in determining electoral outcomes. US elections have become contests in campaign fundraising and spending, wherein candidates for office must amass substantial wealth in order to mount meaningful campaigns against well-funded rivals. Candidates’ fundraising prospects have become more important than their policies or credentials. Access to wealth has thus become the primary qualification for almost all levels of public office. Because racial and ethnic minorities generally have less disposable income than their white counterparts, they are disproportionately harmed by the state sanction of “pay-to-play” elections.

The costs of mounting viable political campaigns in the US have grown steadily over the past thirty years. While the shocking costs of federal campaigns have garnered much public attention (with races for the US Senate costing many millions of dollars), the price of mounting a viable campaign for state legislatures has also generally risen well beyond the level that a candidate from a low-income community can possibly afford. For example, a recent study of the 2000 North Carolina state elections found that the average winning campaign in contests for the state Senate spent over \$134,000; the average cost of a House seat was \$69,000. In order to contemplate running for office, prospective candidates must be able to raise sufficient funds to compete with the rising tide of financial competition.

Just as the “white primaries” of the Jim Crow south excluded African Americans from full exercise of the franchise (even though all citizens were allowed vote in official state elections), US elections are now subject to a *de facto* “wealth primary” that prevents low-income candidates from standing for office. While all US citizens nominally enjoy the right to stand for elective office, exponential increases in the cost of running for office now ensure that low income citizens cannot mount campaigns on their own behalf, nor can they identify persons from their socioeconomic stratum on the ballot.

Numerous studies have documented the adverse impact of money-driven elections on minority citizens and candidates and the racial disparity in patterns of campaign fundraising. A 1997 survey found that over 90 percent of large contributors to federal campaigns were white. A comprehensive 1998 study which examined patterns of campaign contributions by zip code found that, in 1996, the 9.5 million persons in 483 US communities whose residents are more than 90 percent people of color gave a total of 5.5 million dollars to federal campaigns. By contrast, the roughly 107,000 people who live in one district of Manhattan, a district that is 91 percent white, contributed over \$9.3 million. This racial disparity of political contributions is mirrored in every state in the country, where the vast majority of campaign funding comes from white, wealthy communities. A study of elections in Georgia revealed that the average white candidate for the state senate raised \$45,772 compared to only \$22,199 for the average African American candidate. Researchers conducting a careful statistical study of campaign contributions in federal elections have found a pattern of racial discrimination in the allocation of individual campaign contributions, with black candidates receiving fewer campaign contributions from individual donors even when controlling for nonracial factors that might affect the level of campaign donations. In sum, members of racial and ethnic minorities do not, and can not, contribute money to political candidates at anywhere near the level of their white counterparts.

Citizens who cannot contribute to political campaigns are excluded from meaningful participation in US politics in two major ways. First, low income communities are not able to fund their candidates of choice. Second, incumbent lawmakers largely ignore those constituencies who cannot contribute because they hold no promise of financial support in future elections. These patterns reflect both the diminished influence of racial minorities with legislators and, more critically, the under-representation of racial and ethnic minorities in legislatures.

While the “wealth primary” is plainly inconsistent with the promise of Equal Protection of the Laws, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, the federal judiciary has yet to recognize this potent form of *de facto* discrimination sanctioned by the state. A vibrant grass-roots movement has nonetheless taken shape to force reform legislatively at the state level. Four of the fifty states have adopted meaningful, voluntary public financing systems to allow otherwise qualified candidates to receive a minimally adequate level of campaign funding. The critical aspects of public funding systems have been upheld by federal courts of appeal. While federal legislation has been proposed to provide for public funding of federal elections,

there is presently little optimism for reform coming from incumbent legislators who are direct beneficiaries of the present system.

Voluntary public funding systems are only the first steps towards drawing the United States into compliance with its obligations under the ICERD. The federal judiciary has thus far rebuffed all efforts to enforce reasonable spending limits on campaigns despite the growing evidence that such limits are necessary to achieve an electoral system that is free from corruption and open to all citizens. The United States, at both the federal and state level, must recognize that public elections should be publicly funded. They must also undertake measures to prevent political campaigns from devolving further into spending contests between champions of the monied classes, by allowing for reasonable expenditure limits and robust disclosure laws. The present system of privately financed campaigns undermines minority voting rights and casts doubt on the legitimacy of representative democracy in the United States. It is plainly inconsistent with the United States obligations under the ICERD.

The National Voting Rights Institute is a non-profit, non-partisan organization dedicated to challenging the constitutionality of the current campaign finance system at the federal and state levels. Through litigation and public education, the Institute aims to redefine the issue of private money in public elections as the nation's newest voting rights barrier, and to vindicate the constitutional rights of all citizens, regardless of their economic status, to participate in the electoral process on an equal and meaningful basis.