

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-3645

Jay B. Marcus; Marcus for Congress,	*	
a political committee; The Natural Law	*	
Party of Iowa, a political committee;	*	
Edward T. Rusk, of the Working Class	*	
Party; Michael Cuddehe; Michael	*	
Dimick; Rogers Badgett; Peter	*	
Lamoureux; Fred Gratzon; Susan	*	
Marcus,	*	
	*	
Appellants,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	Southern District of Iowa.
Iowa Public Television, a state agency;	*	
Daniel K. Miller, in official capacity,	*	
	*	
Appellees.	*	

ORDER

Filed: July 30, 1998

Before BOWMAN, Chief Judge, McMILLIAN, RICHARD S. ARNOLD, FAGG,
WOLLMAN, MAGILL, BEAM, LOKEN, HANSEN, MORRIS SHEPPARD
ARNOLD, and MURPHY, Circuit Judges, en banc.

MAGILL, Circuit Judge.

In the autumn of 1996, Iowa Public Television (IPTV), a government-owned public television broadcaster, scheduled a series of joint appearances between Democratic and Republican candidates for seats in the U.S. House of Representatives. IPTV did not allow various third-party candidates for those seats to appear with the major-party candidates because it did not consider them to be newsworthy. The third-party candidates brought this suit seeking declaratory and injunctive relief allowing their appearance on the IPTV broadcasts, and the district court¹ denied relief. See Marcus v. Iowa Pub. Television, No. 4-96-CV-80690, 1996 WL 764143, at *4 (S.D. Iowa Oct. 9, 1996). The third-party candidates appealed, and in the interim sought an emergency injunction from this Court. We denied interim relief, see Marcus v. Iowa Pub. Television, 97 F.3d 1137, 1138 (8th Cir. 1996), and now affirm the district court.

This case is controlled by the Supreme Court's decision in Arkansas Educational Television Commission v. Forbes, 118 S. Ct. 1633 (1998). 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, see id. at 1643, and that the broadcaster could therefore limit participation in such a debate program where the limitation was viewpoint neutral and reasonable. See id. In this case, the district court did not clearly err in finding that the third-party candidates were not excluded on the basis of viewpoint, see Marcus, 1996 WL 764143, at *2, and we conclude that their exclusion was otherwise reasonable.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Charles R. Wolle, United States District Judge for the Southern District of Iowa.