

A capricious deadline

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The divided government that came out from our last general election has become a nightmare. Immersed in recession, overwhelmed by an alarming crime rate, and having lost hope that divided government can steer us out of this malaise, many are already looking forward to the next election.

But we are in for a surprise. The field of new candidates will be limited because our electoral law imposes a capricious deadline on filing for the primaries through which we will nominate our candidates to all elective offices for the next general election. That is, our candidates to the governorship, to the commissionership, to the Commonwealth Legislature, to the mayoralities and to the municipal legislatures.

Our electoral law's filing deadline is drawn to favor the incumbents. It places a heavy burden on new blood trying to come into elective positions. It is drawn against change...change is made most difficult.

The incumbents went about this, by requiring filing for the primaries by the first of August of this year. But the primaries will not be held this year. No, they are set for late in March 2008. No state of the union, no democratic country that I know of has such a protracted span for campaign time between filing candidacies and voting for the candidates.

Incumbents are clearly favored by this. They are in office, which makes it much easier to raise funds, they enjoy the limelight, they get paid their salaries while campaigning, they have cars and gasoline paid by government, cellphones, they can grant favors while their opponents have to struggle to finance their campaigns, earn their living and find time to go out to meet the people and drum up support.

Incumbents always have had these advantages. Yes, this is so, but the longer the time between the filing date and the date for voting, the greater the weight the advantages have in favor of the incumbent. Worse than that, a campaign period for the primaries lasting eight months is a dissuasive factor for many public-spirited citizens wishing to serve. The time, aggravation and expenses involved in campaigning for such a protracted period of time will turn away many who would like to help Puerto Rico get out from the present morass. The voter will suffer a devaluation of his/her right to suffrage as a result.

The powers that be that bequeathed this booby trap on Puerto Rican democracy were skating on thin constitutional ice. The right to vote is a fundamental political right. It is the right preservative of all rights. Through the exercise of this right we can straighten things out in Puerto Rico and we can get this country moving again. Legislative actions restricting the right to vote are subject to strict judicial scrutiny by both the commonwealth and federal judiciaries. Before the right to vote can be restricted, the purpose of the

restriction, and the interests served by the restriction, must meet close constitutional scrutiny. The eight months before voting filing deadline does not pass constitutional muster.

The Supreme Court of the United States has recognized that “the rights of voters and the rights of candidates do not lend themselves to neat separation. Laws that affect candidates always have at least some theoretical effect on voters.” *Bullock v. Carter*, 405 U.S. 134, 143. When scrutinizing laws that affect candidates, the court has been primarily concerned with the way ballot-access restrictions limit the field of candidates from which the voters might choose. In approaching candidate restrictions, it is essential to examine the extent and the nature of the infringement upon voters’ rights.

The capricious filing deadline for the primaries set by our Electoral Law burdens our right of association through political parties to advance our political beliefs and our right to cast our votes effectively. Voters can assert their preferences only through candidates or parties or both. The right to vote in late March 2008 is heavily burdened by the August 2007 deadline because it excludes, during an unreasonably long period of time, other candidates who may aspire to a place on the ballot. The voters’ freedom of association is also burdened because candidates in primaries are rallying points for the views of like-minded citizens and their capricious exclusion from the primaries by the August 2007 deadline impinges upon the voters’ freedom to assert their views, aspirations and preferences through candidates who support these views.

Eight months is a very long time in politics. Lots of things can happen in Puerto Rico during the months extending from August 2007 to late March 2008. The present recession can deepen, inflation may become intolerable and budget deficits can bring government to a halt. Such events could prompt able-bodied Puerto Ricans to take a step forward to serve in elective office. These candidates should not be denied ballot access by a filing deadline except for compelling state interests.

The first predominant interest that the Commonwealth may have in fixing a filing deadline is an interest in clean and fair elections. This is an administrative interest in properly processing the petitions for the necessary showing of support to place the candidates on the ballot, printing the ballots, distributing them to the polls and setting up the local and central organization for election day. The second such interest is that the voters may be adequately informed as to the issues so that they may make an intelligent choice on election day.

These interests are indeed compelling. There is no doubt a filing deadline is necessary. But there is no need for a filing deadline of eight months before the election date. With today’s technology, four months is more than enough time for the administrative process required to hold the primaries and for voters to be adequately informed about the candidates and the issues.

This is not speculation on my part. It just so happens that the law on primaries previously provided for such a time period and primaries were held under that time frame without any problems. But the voting

date—not the filing date—was changed the last time the law was amended. This is the first time that we will have been faced with an eight-month time span between filing and voting time.

This comes at a time when our democratic processes must optimize the opportunities for new candidates so we may vote effectively to provide for our uncertain future. The Legislature should reschedule the primaries in 2008 with a shorter time period between filing and voting dates. If it does not, the matter may be raised through the courts, which isn't a good alternative because of the uncertainties this will bring to the electoral process.

