

# BALLOT ACCESS NEWS

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## NEW AMMUNITION FOR HR 1582

Results of recent Democratic primaries in Pennsylvania, Ohio and Indiana provide still more ammunition in support of HR 1582, the bill to provide for fairly easy ballot access for third party and independent candidates in federal elections. Supporters of Lyndon LaRouche won 3 Democratic congressional nominations and a legislative seat nomination.. In Pennsylvania, Donald Hadley beat the regular Democrat in the 5th district (Philadelphia suburbs), and George Elder was nominated without opposition in the 21st district, around Erie. In Ohio, Mark P. Brown won without opposition in the 12th district, in Columbus. And in Indiana, Georgia Irey won a State House of Representatives nomination without opposition in the 32nd district.

Democratic Party officials in Pennsylvania and Ohio are so upset by the LaRouche congressional results that they are planning to support "true" Democrats who qualified as independent candidates. The fact that some of the LaRouche candidates were unopposed does not mean that the Democratic Party didn't care. In each unopposed case, there had been an assumption that no Democrat was running, and the LaRouche supporters filed at the last minute, so that it was too late to recruit an opponent. In the case of the contested Pennsylvania race, there is no easy explanation for the results.

Although the 1986 LaRouche supporter victories in Illinois Democratic primaries made headlines, the *New York Times*, *Washington Post*, and network television news has not mentioned the 1988 results

These events are relevant to HR 1582. LaRouche organized a third party in 1973 called the U.S. Labor Party, but because it could never get on the ballot in more than half the states, he dissolved it and became a Democrat, in 1979. Ever since then, and particularly in 1986 and 1988, he has done far more harm to the Democratic Party, than he ever did during the 1970's as a third party leader. Please write your member of Congress and remind them that easy ballot access for third parties can be beneficial to the Democratic and Republican Parties, as well as to the voters in general, and to activists of smaller parties. When ballot access laws are unfair, people who do not belong in the Democratic and Republican Parties join them, just so they can run for office.

Also remind your member of Congress that there were absolutely no ballot access barriers in the 19th century, but the United States had orderly political parties in the 19th century, and much better voter turnout. A century ago, as many as 85% of all eligible voters voted in presidential elections. During this decade, the figure has been 53% In 1988 presidential primaries, turnout has ranged from 23% to 40%.

Don't let your member of Congress get away with a response which merely tells you the status of HR 1582. During the last month, Representatives Jack Buechner of

Missouri, Sam Gejdenson of Connecticut, and Nancy Pelosi of California, have written letters about HR 1582 which contain absolutely no mention of the member's own attitudes. If you can't get a meaningful letter, try to see your member of Congress. Ask that the member become a co-sponsor.

## LaROUCHE SHOWINGS

Even though LaRouche supporters have been winning primaries, Lyndon LaRouche himself has never received such low vote totals. Since the last issue, results of LaRouche showings in presidential primaries have become available in these states: New York 1,053, .07%; Pennsylvania 1,325, .08%; Ohio 6,351, .44%; Nebraska 424, .26%; Oregon 2,817, .74%. Results are not yet available from West Virginia. LaRouche failed to qualify for the Indiana ballot (he needed 500 signatures in each of 10 congressional districts, and failed in two districts), and did not try to qualify in the District of Columbia.. LaRouche has now received a 1988 total of \$635,917 in federal matching funds.

## EUGENE McCARTHY TO RUN

Former U. S. Senator Eugene McCarthy has been nominated for president by the Consumer Party, and he has said that he will accept. Petitions bearing his name now are circulating in New Jersey, Vermont and Pennsylvania. The Pennsylvania petition has 5,000 signatures. The vice-presidential candidate is Florence Rice, head of the Harlem Consumers Protection Union. McCarthy plans to hold a press conference on June 1 to announce. The Consumer Party supported Sonia Johnson in 1984. In the past it has only been on the ballot in Pennsylvania, but this year it hopes to qualify in 25 states.

McCarthy would be age 72 on Inauguration Day, 1989, one year younger than President Reagan was on his second Inauguration. day. McCarthy ran for president as a Democrat in 1968, and as an independent in 1976. He appeared on the ballot in 29 states in 1976 and polled 757,469 votes.

## FLORIDA

On May 13, the New Alliance Party filed a lawsuit against Florida law which requires third parties to submit 10 cents per signature submitted. Since the party will probably be filing 80,000 signatures in Florida, the fee will be about \$8,000. The 10 cent fee was held unconstitutional in federal court in 1972 for parties which cannot afford the fee, but the Florida Secretary of State claims that the 1972 precedent only applies to the Socialist Workers Party, which brought that case. This is an absurd position. The new case is *Fulani v Krivanek*, Middle District, Tampa Division., U. S. District Court, # 88-671-CIV-T-10B.

## U. S. SUPREME COURT HEARING

On April 25, the U. S. Supreme Court hearing in *Meyer v Grant* was held. The issue is whether Colorado can ban the practice of paying people to circulate an initiative petition. The Colorado Assistant Attorney General seemed unable to explain coherently why Colorado feels it must ban the payment of money. Justice Thurgood Marshall asked if the law permitted the payment of "lunch money", or "bus money". The answer was "No." Justice Antonin Scalia asked William Danks (attorney for the initiative supporters) whether the state could require that circulators be licensed. Danks replied "Yes", and also volunteered that perhaps the state could require petitioners to receive training. Scalia then criticized this response, seeming to say that the First Amendment would also ban these restrictions. Scalia also pointed out that requiring petitioners to be trained would increase the cost of petitioning. When Colorado's Assistant Attorney General said that Colorado wants to keep "special interests" from using the initiative process, Chief Justice Rehnquist broke in to say that, in this case, he perceived that special interests would be opposed to the initiative (the initiative was to de-regulate trucking, and Rehnquist wanted to make the point that some regulated industries enjoy their regulated status).

A decision will probably be released in June or July 1988. If the case is won, the language may be useful for overturning other types of restrictions on petitioning. This is the first case ever heard by the U. S. Supreme Court dealing specifically with restrictions on petitioning.

The same issue is also pending in the Nebraska Supreme Court. The case is *State of Nebraska v Monastero*, #87-387. Monastero is a Nebraska State Senator who was indicted on the criminal charge of having paid petitioners to circulate a petition.

## LIBERTARIAN PETITIONING

The Nebraska Libertarian Party is now a qualified party, but since the party didn't submit petitions in time to participate in the primary, it must submit 25 signatures from registered Libertarians to nominate candidates for office (other than president), and must submit 2,500 signatures from any voters to get Ron Paul and Andre Marrou on the November ballot. The party has not yet begun to circulate this petition. Starting with the next issue of *Ballot Access News*, the petitioning chart will feature the progress of this petition in the Libertarian Nebraska slot.

In late 1987, the Georgia Libertarian Party hired a Mississippi petitioning firm to collect signatures. The firm accepted a down payment of \$4,000 but never produced any signatures. The firm has now acknowledged that it never collected more than a handful of signatures, and will repay the money.

## CONGRESS

The Senate Rules Committee hearing mentioned in the April issue on S 1786 (the bill to regulate when parties can choose delegates to national conventions) was postponed from April 26 until June 7. The bill's sponsor, Senator Alan Dixon of Illinois, would like to force all parties to limit their delegate selection to the period March-June of presidential election years. However, he acknowledges that his bill only regulates the dates of presidential primaries, not the dates of caucuses. As such, it would not affect third parties very much.

Hearings on the Voter Registration bills, S. 2061 by Senator Alan Cranston and HR 3950 by Congressman John Conyers, continue to be held in committees of both houses. No action has been taken by either Committee. The bills would require the states to provide for postcard registration and election day registration. Testimony in favor of the bill criticized states which now require that people must visit government offices in order to register to vote. Dr. Arthur Flemming, a former Eisenhower cabinet officer and now with the Citizens Commission on Civil Rights, and Laughlin McDonald, southern Regional Director of the ACLU, detailed discriminatory practices which are meant to minimize the number of American Indians and rural Blacks who register. Representatives of the group Disabled but Able to Vote pointed out that hundreds of thousands of disabled people live in areas with no access to public transportation to places at which they could register. Some state elections officials testified for the bill; other state officials testified against it.

The Senate Rules Committee held a hearing on HR 435 on May 12. This is the bill which would cause polls to close simultaneously across the 48 continental states, in presidential election years. It has already passed the House. Even if the Senate passes it, it won't take effect until 1992. Testimony was taken from representatives of the television networks, who strongly support the bill.

## RON PAUL IN PRIMARY

Generally, the Libertarian Party does not use its own presidential primaries, because the party always chooses its nominee before the primaries are held. However, Ron Paul, the Libertarian nominee, has decided to enter his name in the Libertarian presidential primary in North Dakota, because North Dakota has an "open" primary, in which all voters get the same ballot and can choose to vote in any party's column. The only three columns will be Libertarian, Democratic and Republican. The primary is on June 14. No names will be entered in the Democratic primary because Democrats in North Dakota have already chosen their delegates, so the only names on the North Dakota presidential primary ballot will be Republicans George Bush and Mary Jane Rashner, and Libertarian Paul.

## WRITE-INS

**HAWAII:** On May 17, 1988, the U. S. Court of Appeals, 9th circuit, declared that it is unable to ascertain whether Hawaii election law forbids write-in voting or not. Therefore, it delayed the case *Burdick v Takushi*, no. 86-2703, until a state court can rule on whether Hawaii actually does ban write-ins or not. Election laws simply do not mention write-in voting. If the state courts rule that write-ins are banned, then the federal court will rule on whether the ban violates the U. S. Constitution. Attorney for the plaintiffs, Mary Blaine Johnston, hopes the State Supreme Court will quickly decide what the state policy on write-ins is. She still hopes that a final decision can come in time for this year's election.

**KENTUCKY:** On April 18, the U. S. Court of Appeals, 6th circuit, ruled that the lawsuit *Bumppo v State Board of Elections*, which involved a challenge to Kentucky's ban on write-in votes for president, as well as a challenge to the inability of children to vote, is a frivolous lawsuit, and dismissed it. The lower court had upheld the ban on write-ins for president on the grounds that there would be no candidates for presidential elector for a write-in candidate. Neither the plaintiffs nor the court seemed aware that many states simply provide that a write-in presidential candidate can file a list of candidates for elector pledged to him or her, in advance of an election. If a bona fide presidential candidate ever files a list of such candidates for elector, and demands that Kentucky then permit presidential write-in votes, the state of Kentucky will probably claim that the issue has already been litigated and that the ban was upheld, but it should be possible to show that the court never settled this issue.

**VIRGINIA:** Notice of appeal to the Virginia Supreme Court has been filed by Richard Gardiner, attorney for the Libertarian and American Parties in *Paul v State Board of Elections*, the case over Virginia's ban on write-in votes for president.

## TEXAS

Although the Texas Attorney General is appealing the lawsuit *Pilcher v Rains*, over whether petitions must bear the voter registration affidavit number of every signer, he is resisting efforts by the other side to expedite the appeal, so it seems clear that the ruling will remain in effect for the 1988 election. A ballot access lawsuit in Texas was filed by the New Alliance Party in early May, to seek a ruling that the Texas deadline of May 23 for new party petitions is unconstitutionally early. The case is *Ybarra v Rains*, no. 442729, Travis County District Court (a state court). However, the judge is reluctant to rule until he sees that the issue is not moot. Since the New Alliance Party has more than twice as many signatures as are required by the law already, chances are the party won't need more time.

## OKLAHOMA LOSS

On April 18, 1988, the U. S. Court of Appeals, 10th circuit, upheld Oklahoma election laws in *Libertarian Party v State Elections Board*, no. 87-2360. Judge Stephanie Seymour upheld the practice of forcing all voters to register "Democrat", "Republican", or "independent", even though in 1984 she had written the decision in a Colorado case, *Baer v Meyer*, striking down exactly the same practice. The only differentiation she made is that in Colorado, the voter registration records were entirely computerized, whereas in Oklahoma, at the time the case was filed in 1986, only three counties used computers. Another distinction, which she did not mention, is that Colorado has no procedure for a new party to come into existence until after it has polled 10% of the vote for its candidate for Governor, whereas Oklahoma has a petition procedure to create new parties.

The other part of the decision upheld those petition procedures to create a new party, a petition of 5% of the last vote cast, due May 31 (there are totally separate, somewhat easier, procedures for parties which are only trying to qualify their presidential candidates). Oklahoma cannot have a later petition because the State Constitution requires all parties to nominate by primary, and in order to prepare for a new party's own primary ballot, the petitions must be submitted by May 31. Judge Seymour ruled that the question of whether a new party can be required to nominate by primary was not properly before the court. Presumably, the Oklahoma Libertarian Party would first need to qualify, and only then would it have standing to challenge the requirement that it must nominate by primary. The recent decision may be appealed to the U. S. Supreme Court.

## FULANI MATCHING FUNDS

Lenora Fulani has now received a total of \$446,359 in federal matching funds. Although this is less than the amount received by anyone else who qualified for matching funds this year, it is more than twice as much as Sonia Johnson received in 1984. Johnson and Fulani are the only third party presidential candidates who have ever received *candidate* matching funds. Also, independent presidential candidate John B. Anderson received approximately \$5,000,000 in *party* matching funds immediately after the 1980 election, based on his having polled more than 5% of the vote.

## PEACE &amp; FREEDOM DEBATE

Five of the six presidential candidates who are seeking the nomination of the California Peace & Freedom Party debated each other in San Francisco on May 6. The debate will be televised on San Francisco's cable channel 25 on May 25 at 3 p.m.

PETITIONING

STATE	REQUIRED	SIGNATURES COLLECTED					DEADLINE
		NAP	LIBT	WkL	POP	SOC	
Alabama	5,000	finished	already on	finished	100	0	Aug 31
Alaska	2,068	already on	already on	0	130	0	Aug 10
Arizona	8,670	already on	already on	0	0	0	Sep 23
Arkansas	0	no need	finished	no need	no need	no need	Sep 1
California	128,340	nom	already on	can't start	can't start	nom	Aug 12
Colorado	5,000	4,500	800	0	200	0	Aug 2
Connecticut	14,910	11,200	4,100	100	0	0	Aug 12
Delaware	(reg.) 142	already on	131	0	0	0	Aug 20
Dist of Col.	(est.) 3,000	can't start	can't start	can't start	can't start	can't start	Aug 16
Florida	56,318	15,000	19,000	0	2,500	0	Jly 15
Georgia	25,759	50,000	33,000	0	1,100	0	Aug 2
Hawaii	3,493	finished	already on	0	0	0	Sep 9
Idaho	8,224	0	1,650	0	0	0	Aug 30
Illinois	25,000	no need	1,000	0	100	0	Aug 8
Indiana	30,950	5,700	1,500	0	0	0	Aug 1
Iowa	1,000	300	finished	75	100	600	Sep 2
Kansas	2,500	already on	2,000	0	700	0	Aug 2
Kentucky	5,000	already on	1,500	100	0	0	Aug 30
Louisiana	0	no need	no need	no need	no need	no need	Sep 6
Maine	4,000	4,300	4,575	0	0	0	Jun 7
Maryland	10,000	already on	already on	0	500	500	Aug 1
Massachusetts	33,682	20,350	2,444	0	0	100	Aug 2
Michigan	16,313	1,350	already on	already on	6,000	500	Jly 20
Minnesota	2,000	can't start	can't start	can't start	can't start	can't start	Sep 13
Mississippi	1,000	finished	already on	0	0	0	Sep 9
Missouri	21,083	50	4,500	0	0	0	Aug 1
Montana	13,329	already on	already on	0	0	0	Aug 3
Nebraska	2,500	already on	see note	0	0	0	Aug 30
Nevada	7,717	finished	already on	0	0	0	Sep 1
New Hampshire	3,000	finished	2,150	0	0	0	Aug 10
New Jersey	800	already on	already on	already on	900	finished	Aug 1
New Mexico	(reg.) 500	already on	already on	0	50	0	Sep 13
New York	20,000	can't start	can't start	can't start	can't start	can't start	Aug 23
North Carolina	44,535	52,000	1,400	0	5,000	0	Jly 12
North Dakota	4,000	50	already on	0	0	0	Sep 14
Ohio	5,000	3,125	800	6,500	0	0	Aug 25
Oklahoma	37,671	30,750	11,215	0	0	0	Jul 15
Oregon	51,578	0	34,500	0	0	0	Aug 30
Pennsylvania	25,568	15,750	4,700	17,500	4,000	0	Aug 1
Rhode Island	1,000	can't start	can't start	can't start	can't start	can't start	Jly 18
South Carolina	10,000	already on	already on	0	0	0	Aug 1
South Dakota	2,945	25	100	0	0	0	Aug 2
Tennessee	275	finished	10	0	30	0	Sep 1
Texas	34,424	76,000	already on	0	0	0	May 23
Utah	300	already on	already on	0	50	already on	Sep 1
Vermont	1,000	already on	already on	0	100	already on	Sep 22
Virginia	12,963	0	2,800	0	200	0	Aug 26
Washington	188	can't start	can't start	can't start	can't start	can't start	Jly 23
West Virginia	7,358	0	0	0	0	0	Aug 1
Wisconsin	2,000	can't start	can't start	can't start	can't start	can't start	Sep 6
Wyoming	8,000	already on	already on	0	0	0	Aug 30

NAP is New Alliance Party; LIBT is Libertarian; WkL is Workers League; POP is Populist; SOC is Socialist "Nom" means that the presidential candidate is seeking the nomination of a one-state party which is already qualified for the ballot in that state. "Already on" means the state acknowledges that the party or the candidate is on the November 1988 ballot. "Finished" means that the signatures have been collected, but that they haven't been certified yet. DEADLINE refers to the latest procedure available for qualifying a third party or independent presidential candidate.

## PARTIES NOT ON THE CHART

The Internationalist Workers Party has completed petitioning in New Jersey and Vermont, is petitioning in Utah, and is making a strong fight for the California Peace & Freedom nomination. The Workers World Party has completed petitioning in New Jersey. The Socialist Workers Party has completed petitioning in New Jersey and Utah and is petitioning in Ohio. The American Party has been certified in Utah. The Prohibition Party is petitioning in Colorado and Kansas.

## MICHIGAN PASSED HB 4090

The Michigan legislature passed HB 4090 on April 21, and the Governor signed it on May 1. The bill unfortunately raises the number of signatures needed for a new party, from 1% of the winning candidate for Secretary of State's vote, to 1% of the total vote cast for Governor. Other provisions in the bill are beneficial: (1) for the first time ever, Michigan now has statutory procedures for independent candidates. Independent candidate petitions are due 110 days before the general election, July 21 this year. Independent candidates for statewide office need the same 1% petitions that new parties need; independent candidates for county and district office need 2% petitions. (2) The deadline for filing new party petitions is changed from early May until July 21. (3) New parties no longer need nominate their candidates by early May; they can hold their state conventions as late as the day before primary day in August (4) petitions can now be circulated on a countywide basis. Formerly petitions from each township had to be kept separately.

All of the provisions relating to new parties will not take effect until next year. Provisions relating to independent candidates take effect immediately. The transition period will probably result in several lawsuits. The Populist Party plans to sue to get the July 21 deadline for new party petitions effective this year, and Lenora Fulani plans to sue to get the number of signatures needed for independent candidates reduced for this year only, since the procedure for independents permits six months for petitioning, yet by the time the bill became law, less than three months remained. For 1988, the law requires about 24,000 signatures for independent candidates.

## OTHER LEGISLATIVE NEWS

**MASSACHUSETTS:** Senate Bill 281, which would change the statutory deadline for third party and independent candidates for statewide office and congress from May to August, passed the State Senate on May 9. The bill's provisions are already in effect due to a court order.

**NEW JERSEY:** Assembly Bill 2885, to change the filing deadline for third party and independent candidates for president, passed the Assembly on May 9. The bill's provisions are already in effect due to a ruling of the Secretary of State and an earlier court opinion.

## WEST VIRGINIA

The lawsuit *Socialist Workers Party v Hechler*, filed in federal court in April, has been assigned to Judge John T. Copenhaver, a Ford appointee who ruled in favor of the Libertarian Party in 1980 in a case over access to a debate sponsored by a public television station. The new case challenges wording on the West Virginia petition that the signers will vote for the candidates named on the petition, and the May deadline for petitions for office other than president. No date has been set for a hearing yet.

## NEW BOOKS

Two new books are about to be published which may interest people who care about third party candidacies. One is a novel by John Armor titled *The Six O'Clock Man*. The title refers to television news, and the book also involves an independent candidate for president. Armor is an attorney who has been interested in ballot access law for almost twenty years. He supervised a team of lawyers who won virtually all of the ballot access lawsuits filed by Eugene McCarthy in 1976, including one from Texas which was won in the U. S. Supreme Court. He also worked to create a coalition to fight for fairer ballot access laws in 1977, and represented Sonia Johnson in 1984. His book can be purchased from the Southern University Press, 130 S. 19th St., Birmingham Al 35233, for \$12.95 (this includes postage and handling).

The other book is non-fiction, *Minor Presidential Candidates and Parties*, by Glenn Day of Arlington, Texas. It costs \$19.95 from McFarland & Co., Bx 611, Jefferson, N C 28640. It will be released in early June. The author sought out interviews with all of the people who have filed with the FEC as 1988 presidential candidates, and the book includes interviews with 67 of them. The book also contains interviews with officials of various political parties.

## ARIZONA

The Arizona Secretary of State's office has orally stated that newly certified political parties will be permitted to certify the names of their presidential elector candidates without petitions. In the past, Arizona was the only state in which presidential elector candidates were chosen in primaries, which meant that the candidates had to circulate petitions to place themselves on their party's primary ballot. The 1986 legislature had eliminated primary petitioning for presidential elector candidates of old parties, but the law had been unclear about newly-qualifying parties.

**CALIFORNIA**

On May 23, Federal Judge Marilyn Hall Patel refused to issue an injunction requiring California elections officials to permit Lenora Fulani begin petitioning immediately as an independent candidate. California law permits independent candidates generally to start in April, but presidential independents cannot start until June 13. The case is *Fulani v Eu*, no. C88-1427-MHP. Judge Patel suggested that if Fulani has trouble qualifying for the ballot, she might either extend the deadline or reduce the number of signatures later.

**KANSAS**

Although the 1988 legislature improved the filing deadline for independent candidates and also repealed all laws forbidding petitioners to circulate outside their home precinct, there are still other oppressive procedures in the Kansas election law relating to independent candidates. A new lawsuit, also titled *Merritt v Graves*, no. 88-4093-R, was filed on May 3, 1988, against laws which (1) require all petitions to be notarized; (2) require independent candidates for Congress and for county office in the most populous counties to get signatures equal to 5% of the last vote cast, even when this requires a higher number of signatures than are required for independent candidates for statewide office (who always need 2,500) Congressional independents need about 7,000 valid signatures in Kansas; (3) prohibit anyone from circulating a petition outside his or her home county. Point #2 of this case is virtually certain to win, since in 1979 the U. S. Supreme Court struck down identical Illinois law. Point #1 has almost never been litigated before. Fewer than half of the states require petitions to be notarized before they are submitted. Notarization requirements add expense and delay to the petitioning procedure, and have little practical value to the state, since the circulator's statement can always be signed under a perjury line, with no notary involvement needed. The U. S. Supreme Court refused to strike down Texas' notarization requirement in 1974, but stated that there was no evidence in the Texas case that the requirement was burdensome. In this case, evidence will be presented.

**COFOE**

The Coalition for Free and Open Elections is an organization devoted to working for fair election laws. Individuals are encouraged to join. Your ideas for building the Coalition are welcome. The Coalition address is Box 1885, Annapolis Md 21404. Dues are \$10 per year.

**THANK YOU!**

Bruce Smith, John Armor, and anonymous from North Carolina, for contributions beyond the subscription price. Also, thank you, everyone who sends me clippings.

**REMEMBER!**

WRITE YOUR MEMBER OF CONGRESS, HOUSE OFFICE BLDGS., WASHINGTON DC 20515, and ask him or her to CO-SPONSOR HR 1582. Also write to Congressman Al Swift at the same address and ask him to hold hearings on the bill.

**RENEWALS**

If your mailing label indicates that your subscription to *Ballot Access News* expires on May 1, 1988, there is an envelope enclosed to make it easier for you to renew your subscription. Remember, you can get a free 3-month extension if you send me a copy of a 1988 letter from a member of Congress, commenting on HR 1582.

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