

BALLOT ACCESS NEWS

San Francisco, California

June 15, 1988

Volume 3 Number 12

SUPREME COURT VICTORY ON PETITIONING

On June 6, 1988, the U. S. Supreme Court released its unanimous decision in *Meyer v Grant*, and stated that Colorado may not ban the practice of paying people to circulate initiative petitions. Justice John Paul Stevens (who also wrote *Anderson v Celebrezze*) wrote the opinion. No other justice filed a concurring opinion, so Stevens truly can be said to have spoken for the entire Court.

The Colorado Attorney General had tried to persuade the court that someone who petitions is virtually a government official, similar to a notary public or a polling place official. The Court utterly disregarded that concept, and did not even bother to rebut it. Instead, the Court held that the act of petitioning IS political speech. Stevens equated the petitioning process with the act of publicly discussing the contents of the petition. Having done that, it followed easily and obviously that the state has no right to interfere with the petitioning process, absent a compelling need to do so. Petitioning is now afforded the same First Amendment protection that any political speech or writing has. *Meyer v Grant* gives the same freedom from police harassment to a petitioner that it gives to someone who is merely standing on a sidewalk and talking. The decision can be used against arbitrary attempts by policemen to prevent people from petitioning on public property. If a petitioner is on public property, in an area that is open to the public, and if the petitioner is not blocking traffic, a policeman will have no more right to interfere than he would against a person who is merely talking in the same place.

Anyone can obtain a free copy of the decision by sending a postcard to the Clerk, Supreme Court, Washington D.C. 20543, and asking for a copy of *Meyer v Grant*, no. 87-920.

OHIO

Every state has procedures for independent candidates to get on the ballot. Ohio is the only state which refuses to print any partisan label on the ballot for independent candidates, such as "Independent" or "Unaffiliated" (except that Louisiana won't print a partisan label for independent candidates unless they are running for president, and Virginia doesn't print any partisan labels for any candidates whatsoever, even Republicans or Democrats, unless they are running for president).

The Cleveland ACLU has agreed to sue on behalf of Russ Rosen, an independent candidate for the state legislature. Rosen wants the word "independent" to be printed on the ballot next to his name. He argues that for the state to label his Democratic and Republican opponents with their party on the ballot, but to refuse any label whatsoever for him, denigrates the appearance of his name on the ballot and denies him equal protection of the laws. The ACLU is awaiting a response from the Ohio Attorney General. Unless he rules that the state should print the word "independent", the proposed lawsuit will be filed. A similar lawsuit won in Maine in 1986 and resulted in independent candidates being able to choose any partisan label they wished, except the name of a qualified political party.

INDIANA SHOCKER ON FILING DEADLINE

Ballot Access News recently learned that the 1988 session of the Indiana legislature changed the filing deadline for third party and independent candidates. Public law 10, formerly Senate Bill 94, was signed into law on March 5, 1988, and took effect April 1, 1988. It changes the deadline from August 1 to July 15.

The new deadline is probably unconstitutional, and almost certainly unconstitutional as applied during 1988 (see the article on Michigan). Although the Indiana ballot access law was upheld in federal court in 1984, the deadline that year was September 1. The legislature set the deadline at July 1 in 1985, then changed it to August 1, and now has changed it for the third time since the 1984 election.

The New Alliance Party plans to meet the July 15 deadline. The Libertarian Party probably does not have enough money to collect the number of signatures needed in Indiana anyway, regardless of the deadline, but may sue for a write-in space on the Indiana ballot and may also sue against the new deadline, just in case more money is raised. The Libertarian Party has also tentatively decided that it cannot afford to petition in West Virginia and in North Carolina, and will aim for 47 states and the District of Columbia. Although the California Libertarian Party had earlier offered to help fund ballot drives, the California party now says all it can do is lend \$1,000, which is not enough to launch a West Virginia drive.

MASSACHUSETTS

The Committee for Fair Ballot Access, a Massachusetts coalition formed to improve that state's ballot access laws, is making a major push to build support for H. 4988, which would reduce the number of signatures needed for third party and independent candidates, from 2%, to 1%, of the last gubernatorial vote. The Coalition is also working hard for H. 4991, which would let petitioning groups submit petitions to the Secretary of State rather than to hundreds of separate town clerks. H 4988 has cleared the House Committee on Election Laws. If you live in Massachusetts, please contact the Committee at P.O. Box 2557, Boston 02208, or telephone Bill Shakalis at (617) 661-1143 or Cathy Stewart at (617) 445-0005. If you don't live in Massachusetts, but you know someone in Massachusetts who might be interested in helping, please let that person know.

Senate Bill 281, sponsored by the Massachusetts Secretary of State, has not made any progress in the last 30 days. It is the bill which would conform filing deadlines to those ordered by a state court in 1985.

Richard Whitney, chair of the Massachusetts Prohibition Party, has succeeded in getting the Boston Election Commission to agree to count all valid write-in votes in the future. In the past, Boston arbitrarily refused to make any record of the vote for any write-in candidate, even if he or she had officially filed as a write-in candidate, unless the candidate polled at least 50 write-ins in Boston.

LEAGUE OF WOMEN VOTERS DEBATE

Ron Paul plans to meet with League of Women Voters officials on July 18, to make the case for being included in any general election presidential debates sponsored by the League. The League's sponsorship of debates is not assured, however, since it is quite possible that Michael Dukakis and George Bush (assuming they are nominated for president) will not be willing to participate in debates sponsored by the League. They may instead opt to debate under the sponsorship of a group organized by the Democratic and Republican Parties.

The League has been fighting a public relations battle to preserve its role in holding general election presidential debates. A recent mailing by the League to community leaders states, "Consider, for a moment, what *would* happen *if* in this election year a significant third-party candidate *were* present to challenge either of the two parties, would an independent challenger even have an opportunity to be heard?" (emphasis added). The League's message is that the League would be more likely to invite "significant" third party and independent candidates than the rival debate sponsor. However, it also sounds as though it's not going to be easy to persuade the League that there already are such candidates.

If the criteria were simply that any candidate capable of winning a majority of votes in the electoral college (exclusive of write-in votes) should be invited, it seems likely that the debates would include Dukakis, Bush, Paul and Lenora Fulani, but probably no others. Although Eugene McCarthy, Consumer Party candidate, is well-known, he has little hope of appearing on the ballot in California, New York, Texas, or Florida, and without these big states, he probably will not be on the ballot in states containing a majority of electoral votes.

TEXAS LAWSUITS

Since the New Alliance Party petition in Texas was not challenged, and since the party is therefore certified for the ballot, the lawsuit *Fulani v Rains* (which challenged the May deadline for a new party to qualify for the Texas ballot) was ruled moot.

There will be a hearing in New Orleans on July 7 in *Pilcher v Rains*, the case over whether Texas may constitutionally require petitions to carry the voter registration affidavit of every signer. The Texas Attorney General will try to persuade the U.S. Court of Appeals to overturn the ruling of the U.S. District Court judge. The U.S. District Court Judge had ruled that the state may not require the affidavit number.

RON PAUL PRIMARY SHOWING

Although Ron Paul did not run in Libertarian Party presidential primaries generally, he did run in the North Dakota Libertarian Party presidential primary on June 14, 1988, since North Dakota has an open primary which permits a voter to vote in any political party column (although the voter must confine himself or herself to voting only in one party's column). Semi-official returns indicate that about two-thirds of 1% of the voters chose to vote in the Libertarian Party primary and to vote for Paul and the remainder of the Libertarian slate. Although this sounds low, it is a higher percentage than the percentage of registered Libertarians in any state.

CONGRESSMAN RESPONDS ON HR 1582

Congressman Ron Packard of northern San Diego County, California, has finally responded that he will not co-sponsor HR 1582, the bill to require the states to provide fairly easy ballot access for third party and independent candidates in federal elections. Packard writes, in a letter of May 31 to a Libertarian constituent, "Although your Libertarian views are based on logical reasoning, there are other groups seeking office in this country that openly advocate physical violence, hatred and the illegal means to obtain political power." Therefore, "I do not agree that HR 1582 would improve our current election system."

Congressman Packard is the first member of Congress to state in writing that he wants third parties kept off the ballot because of their political views. If only a state would argue in court that this is the reason for a particular unfair ballot access law that was being challenged, courts would swiftly strike down the ballot access law. It violates the First and Fourteenth Amendments to deprive people of voting rights, based on the content of their ideas.

Simon Gerson and Stacy Blatt, both officials of the Coalition for Free and Open Elections, appeared on a major New York city radio talk show during May and advocated that HR 1582 be passed.

REAGAN REMARKS IN SOVIET UNION

On June 1, President Reagan addressed students at Moscow State University, and bragged about free elections in the United States. He said, "We Americans make no secret of our belief in freedom. In fact, it's something of a national pastime. Every four years, the American people choose a new President, and 1988 is one of those years. At one point, there were 13 major candidates running in the two major parties, not to mention all the others, including the Socialist and Libertarian candidates, all trying to get my job."

There was not much coverage of this remark in the United States. Although it was reported on broadcast media, most major newspapers did not mention it.

Reagan also passionately defended the right of voters to vote for anyone they wish to vote for, in an attack on the 22nd amendment to the U. S. Constitution. That amendment makes it impossible for voters to choose someone for president who has already served two terms.

THANK YOU!

Chris Hrivnak, Kay Lawson, Erik Saara, and Scott Kohlhaus, for contributions beyond the subscription price.

PARTIES NOT ON THE CHART

The Socialist Workers Party is certified in New Jersey and Utah, is done in Ohio, and is working in Iowa, Nebraska and Alabama. 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 American Party has been certified in Utah. The Prohibition Party is petitioning in Colorado and Kansas.

PETITIONING

STATE	REQUIRED	SIGNATURES COLLECTED						DEADLINE
		NAP	LIBT	WKRS LGE	POPULIST	CONSUMER	SOCIALIST	
Alabama	5,000	finished	already on	finished	200	0	0	Aug 31
Alaska	2,068	already on	already on	0	130	300	0	Aug 10
Arizona	8,670	already on	already on	0	0	0	0	Sep 23
Arkansas	0	no need	finished	no need	no need	no need	no need	Sep 1
California	128,340	500	already on	0	0	0	nom	Aug 12
Colorado	5,000	2,400	1,800	0	500	500	0	Aug 2
Connecticut	14,910	9,910	4,200	100	0	0	0	Aug 12
Delaware	(reg.) 142	finished	131	0	0	12	0	Aug 20
D.C.	(est.) 3,000	can't start	can't start	can't start	can't start	can't start	can't start	Aug 16
Florida	56,318	32,220	45,000	0	2,500	0	0	Jly 15
Georgia	25,759	60,704	26,000	0	1,700	0	0	Aug 2
Hawaii	3,493	finished	already on	0	0	0	0	Sep 9
Idaho	8,224	0	2,000	0	0	0	0	Aug 30
Illinois	25,000	no need	5,000	2,000	200	0	0	Aug 8
Indiana	30,950	17,600	2,500	0	0	0	0	Jly 15
Iowa	1,000	300	finished	75	200	300	750	Sep 2
Kansas	2,500	already on	2,750	0	1,000	0	0	Aug 2
Kentucky	5,000	already on	1,500	100	0	0	0	Aug 30
Louisiana	0	no need	no need	no need	no need	no need	no need	Sep 6
Maine	4,000	already on	already on	too late	too late	too late	too late	Jun 7
Maryland	10,000	already on	already on	0	500	0	500	Aug 1
Massachusetts	33,682	31,633	7,500	0	0	0	100	Aug 2
Michigan	16,313	see note	already on	already on	7,000	0	500	Jly 20
Minnesota	2,000	can't start	can't start	can't start	can't start	can't start	can't start	Sep 13
Mississippi	1,000	finished	already on	0	100	0	0	Sep 9
Missouri	21,083	8,166	9,000	0	0	0	0	Aug 1
Montana	13,329	already on	already on	0	0	0	0	Aug 3
Nebraska	2,500	already on	900	0	0	0	0	Aug 30
Nevada	7,717	finished	already on	0	0	0	0	Sep 1
New Hampshire	3,000	finished	2,700	0	100	0	0	Aug 10
New Jersey	800	already on	already on	already on	1,100	finished	finished	Aug 1
New Mexico	(reg.) 500	already on	already on	0	50	0	0	Sep 13
New York	20,000	can't start	can't start	can't start	can't start	can't start	can't start	Aug 23
North Carolina	44,535	63,334	1,400	0	5,000	0	0	Jly 12
North Dakota	4,000	156	already on	0	0	0	0	Sep 14
Ohio	5,000	3,125	2,200	6,500	0	100	0	Aug 25
Oklahoma	37,671	42,945	33,000	0	0	0	0	Jul 15
Oregon	51,578	0	40,000	0	0	0	0	Aug 30
Pennsylvania	25,568	31,277	8,500	23,000	5,000	7,000	0	Aug 1
Rhode Island	1,000	can't start	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	nom	0	0	Aug 1
South Dakota	2,945	105	100	0	50	0	0	Aug 2
Tennessee	275	finished	200	0	150	100	0	Sep 1
Texas	34,424	already on	already on	too late	too late	too late	too late	May 23
Utah	300	already on	already on	0	50	0	already on	Sep 1
Vermont	1,000	already on	already on	0	100	500	already on	Sep 22
Virginia	12,963	2,885	4,000	0	400	0	0	Aug 26
Washington	188	can't start	can't start	can't start	can't start	can't start	can't start	Jly 23
West Virginia	7,358	3,970	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	can't start	Sep 6
Wyoming	8,000	already on	already on	0	0	0	0	Aug 30

NAP is New Alliance Party; LIBT is Libertarian; WKRS LG is Workers League; "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.

PEACE & FREEDOM PARTY PRIMARY TOTALS

On June 7, registered members of the Peace & Freedom Party voted for president, with these results (with 99.7% of the vote counted): Lenora Fulani 1,968 votes, 35.4%; Shirley Isaacson, 1,173 votes, 21.1%; Larry Holmes, 1,012 votes, 18.2%; Herb Lewin, 693 votes, 12.4%; Willa Kenoyer, 379 votes, 6.8%; Al Hamburg, 342 votes, 6.1%.

Results have no bearing on whom the party chooses for president. The decision will be made at the state convention in Oakland, California, on August 13-14. Delegates to the state convention (also known as members of the County Central Committees) were also elected on June 7, but the write-in candidates' showings are still not completely known. Based on the results that are known now, it seems likely that no one faction holds a majority of the seats, but if any group has a majority, it is the supporters of Herb Lewin, presidential candidate of the Internationalist Workers Party.

LAROCHE SHOWINGS DROP SHARPLY

The 1988 presidential primaries are now over. Lyndon LaRouche did far worse in 1988 than he did in previous Democratic primary contests. In 1980, he was on the ballot in 15 Democratic primaries, polled 191,065 votes, and polled a median percentage in the 15 contests of 2.08%. In 1984, he polled 123,649 votes in the 13 Democratic presidential primaries that he entered, and his median percentage was 1.77%. In 1988, he entered 21 Democratic primaries but only polled 73,052 votes, and the median percentage was only .29%. A few of the 1988 results are not official, so the exact number will change slightly. Write to *Ballot Access News* and enclose a stamped, self-addressed envelope if you would like a state-by-state list of his showings for all three election years.

Despite LaRouche's dropping vote-getting ability, another LaRouche supporter won a Democratic congressional nomination since the last issue, in the California 39th district, in Orange County. No regular Democrat ran against the LaRouche supporter. This makes four Democratic congressional nominations won so far in 1988 by LaRouche supporters.

POLITICAL PARTY RIGHTS CASES

On June 7, federal judge Alfonso J. Zirpoli refused to reconsider his ruling in *Geary v Renne*, the California case over whether a political party may endorse candidates in non-partisan elections. Zirpoli had ruled on April 15 that it violates the First Amendment to tell political parties that they may not endorse candidates in non-partisan elections. The case will probably be appealed to the U.S. Court of Appeals.

The U.S. Supreme Court hearing in *San Francisco County Democratic Central Committee v Eu* will probably be in November 1988. This is the case concerning whether political parties may structure themselves as they wish, and whether they may endorse candidates in their own primaries. Chief Justice William Rehnquist has already indicated that he will not participate in the case, probably since the attorney for one side in the case testified against Rehnquist when Rehnquist's nomination to be Chief Justice was in the U.S. Senate Judiciary Committee.

ARKANSAS LAWSUIT

The 1986 session of the Arkansas legislature changed the filing deadline for independent candidates (other than president) from March of the election year, to January of the election year. On April 28, 1988, an independent candidate for the Arkansas legislature, Jim Lendall, filed a lawsuit in federal court against the early deadline. Lendall filed his signatures the same day. The case is *Lendall v McKuen*, no. LRC-88-311, and has been assigned to Judge Stephen M Reasoner, a Reagan appointee who has never before had a ballot access case.

Jim Lendall won cases against the April filing deadline for independent candidates in both 1974 and 1976, and the 1976 opinion was even affirmed by the U.S. Supreme Court, without a hearing. In response, the Arkansas legislature changed to deadline to May, but in 1981 forgot why it had made that change, and moved it back to March, and then back to January a few years later.

MICHIGAN VICTORY

On June 13, federal Judge Robert E. Demascio ruled that it is unconstitutional for Michigan to apply its new petitioning requirements for independent candidates for this election year. The procedure did not exist until May, and the deadline is July 20. Judge Demascio ordered the state to print Lenora Fulani's name on the ballot as an independent candidate with no further petitioning. The case is *Fulani v Austin*, no. 87-CV-72331-DT.

The Secretary of State plans to appeal the ruling very quickly to the U.S. Court of Appeals. In 1984, Judge Demascio had ruled against ballot access for Lyndon LaRouche as an independent candidate, and against ballot access for the Socialist Workers Party, but both of his unfavorable decisions were then reversed by the U.S. Court of Appeals. Neither of the 1984 decisions were reported.

It is not clear whether other independent candidates will be able to take advantage of the ruling. It may be necessary for each independent candidate to file his or her own separate lawsuit, and it may be necessary to persuade judges in such lawsuits that the candidate has substantial support.

ARIZONA

The May 23 *Ballot Access News* reported that the Arizona Director of Elections had orally stated that new parties would be permitted to choose their presidential elector candidates by convention. Unfortunately, Margaret Stears, Arizona Elections Director, now states that only the Arizona Attorney General can settle the question, and the Attorney General's office is being very slow to decide it. The election law doesn't specify how new parties should choose candidates for presidential elector, although it says that old parties may choose them by convention. If new parties are forced to choose them by primary, it will be difficult for the individual candidates for elector to circulate their individual petitions to get a place on the primary ballot in time to meet the deadline. The parties affected by the ambiguity are the Libertarian and New Alliance Parties.