

BALLOT ACCESS NEWS

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HR 1582

During September, a number of religious leaders visited several Democratic congressmen to lobby for HR 1582, the bill to protect ballot access for third party and independent candidates in federal elections. Rev. Tom Weise of the Mobile, Alabama Catholic archdiocese, Rev. Ted Williams of Shiloh Baptist Church, and Marc Lenders of the Interfaith Action for Economic Justice, from Belgium, participated. Congressman Al Swift told them that if third parties could get on the ballot, it would split the "progressive" vote. Nevertheless, he said HR 1582 is an important bill and he intends to hold hearings on its successor bill in the next Congress, "if he has time". Congressman Sam Gejdenson of Connecticut and Benjamin Cardin of Maryland said much the same.

Proponents of HR 1582 need to be aware of polling data, by Samuel Lubell, which shows that in the 1948 presidential election, Harry Truman actually benefitted from having a "left" political party in the race. In that year, the Progressive Party was formed, and it ran former vice-president Henry Wallace for president. The Communist Party supported Wallace and attacked Truman. The result? Although 1,100,000 voters cast their votes for Wallace, approximately 2,000,000 voters who had voted Republican in 1944 (because of strong anti-Communist beliefs), returned to the Democratic Party and voted for Truman. These voters would not have voted for Truman if the Progressive Party had not been formed and if the Communist Party had not attacked Truman. Without these voters, Truman would have lost the election.

The same phenomenon might be occurring this year if Jesse Jackson had formed his own party, or if he had accepted the nomination of the New Alliance Party. If Jackson were in the race, attacking Michael Dukakis, those voters who are afraid of the Jackson agenda would probably perceive Dukakis more favorably than they do now, and Dukakis might receive a net gain. There is evidence for this theory in this year's Nebraska Senate race, where Nebraska's only Black legislator, Ernie Chambers, is running as the New Alliance Party candidate. Although independent polls have showed Chambers receiving as much as 17% of the vote, the Democrat in the race is almost 20 percentage points ahead of the Republican, despite Nebraska being one of the most Republican states in the nation. Chambers' attacks on Bob Kerrey, the Democratic candidate, seem to help Kerrey gain more votes than the number of votes he loses to Chambers.

LaROUCHE VICTORIES

On September 13, 7 LaRouche supporters won Democratic Party primaries for the State House of Representatives in New Hampshire. This makes eight states in which LaRouche supporters have won Democratic primaries this year.

MISSOURI, INDIANA ELECTORS

On August 1, 1988, all new political parties in Missouri, and all political parties in Indiana, were required to certify the names of their presidential elector candidates to the Secretary of State. Political parties in both states made errors, and did not certify the names by the deadline. In Missouri, the Libertarian slate of electors was late; in Indiana, both the Republican and Democratic slate of electors were late (the Democrats were a week late, the Republicans were 2 days late).

The results show how the Fourteenth Amendment to the U.S. Constitution is not enforced. In Indiana, the Secretary of State decided to overlook the problem; in Missouri, the Secretary of State decided that the Libertarian presidential candidate could not appear on the ballot. The U.S. District Court judge who reviewed the matter agreed with the Missouri Secretary of State, as did the U.S. Court of Appeals, 8th circuit, although there the vote was 2-1. On September 28, Supreme Court Justice Harry Blackmun, who handles injunctions from the 8th circuit when the Supreme Court is not in session, refused to issue an injunction ordering Missouri to list Paul's name on the ballot. At the time, Jim Linger, attorney for the Missouri Libertarian Party, did not know about the Indiana incident and had to listen to the Missouri Attorney General arguing that the Democratic and Republican Parties never make such errors, and therefore it is rational to require new parties to submit their list by August 1, whereas Republicans and Democrats in Missouri need not submit their lists until October 18, long after the ballots have been printed. Neither state prints the names of presidential elector candidates on the ballot, so there is no need to force any political party to submit the lists much before election day.

Jim Linger is asking for a rehearing *en banc* in the case, *Manifold v Blunt*, in the 8th circuit, and in the meantime the New Alliance Party is about to file a lawsuit in Indiana, asking that the election law be strictly enforced and that Bush and Dukakis be kept off the Indiana ballot! Under Indiana law, certification deadlines for candidates are strictly enforced. In 1968 the Indiana State Supreme Court kept the Socialist Labor Party off the ballot because its amended anti-Communist oath was a few days late (the petitions and the original oath had been submitted in time, but the wording on the oath was slightly at variance with the statutory wording and a new oath had to be submitted).

VOICE OF AMERICA

The Voice of America radio carried a broadcast on September 14 about Ron Paul, Lenora Fulani, and Eugene McCarthy, based on an article about them in the September 3 *Congressional Quarterly*.

WEST VIRGINIA LOSS

On September 13, federal judge John T. Copenhaver upheld every aspect of the draconian West Virginia ballot access laws, in *Socialist Workers Party v Hechler*, no. 2:88-0499.

For office other than president, the petition can only be circulated before the May primary. It is a criminal offense if the circulator fails to tell each potential signer orally that the potential signer may not vote in the primary if he or she signs the petition. In addition, the petition states that the signer "pledges" to vote for the candidates named in the petition. In addition, filing fees in excess of \$1000 are required, and if the candidates are unwilling to pay these filing fees, they must circulate a completely separate petition.

West Virginia typically has the highest primary turnout of any state, since local offices are hard-fought and are usually settled in the primaries. This year, 55% of the registered voters voted in the primary. Most persons, when approached and told that they may not vote in the primary if they sign, will refuse to sign on that basis alone. If the petition could be circulated *after* the primary, it would be far easier to get signatures, even if primary voters were ineligible to sign. The law requiring oral warnings to the voters was passed in 1986, and since then, no third party or independent candidates have qualified (except that the New Alliance Party got its *presidential* candidate on the 1988 ballot, because this is the one petition in West Virginia which can be circulated *after* the primary, when it isn't necessary to warn voters; instead one merely asks them if they *did* vote in the primary).

There are 14 precedents which state that it is unconstitutional for a state to force third party and independent candidates (for office other than president) to file petitions before the major party primaries. Judge Copenhaver didn't mention any of these precedents. He also ignored 7 precedents which say that it is unconstitutional for the petition to carry language which binds the signer to vote for the candidate, or to say that he or she is a member of the party. The judge also upheld the absurd provision of the law which forces candidates to circulate duplicate petitions if they are unwilling to pay the filing fee.

Unfortunately, this ruling will stand, since the Socialist Workers Party has tentatively decided not to appeal.

PEACE & FREEDOM PARTY

On September 22, federal district judge John Vukasin refused to order the California Secretary of State to show the label "Peace & Freedom" after Lenora Fulani's name. Instead, "independent" will be printed. There will be no Peace & Freedom Party presidential candidate shown on the ballot because the Secretary of State, and Judge Vukasin, agreed that it isn't possible to know which faction's convention was legal. Judge Vukasin said he doubted that the party would have its "affairs in order" by November 1989, much less November 1988.

PRESIDENTIAL BALLOT STATUS

Addenda to the "Presidential Ballot Status" article in the September 16, 1988 *Ballot Access News*: every candidate attempting to qualify in Vermont did so, except that Eugene McCarthy did not. The Georgia Libertarian Party petition was found to have enough valid signatures. The U. S. Court of Appeals and Supreme Court Justice Harry Blackmun ruled that Ron Paul's name should not be on the Missouri ballot (see related article), so that Paul's name will be before 92.2% of the voters of the United States, rather than 94.5%. In Guam, which votes for president in November even though it has no electoral votes, the only candidates on the ballot are Bush, Dukakis, Paul, Fulani, and an independent who lives in Guam named Loomis Leslie. In Virginia, the September 16 *Ballot Access News* should have said that Lenora Fulani is on the ballot as an independent, not as the New Alliance Party candidate. Next month's *Ballot Access News* will tell which presidential candidates have filed for write-in status in the various states which provide for this, and also will also tell how many candidates each party is running for office other than president.

MARYLAND

As of October 12, there is still no ruling in *Ahmad v Maryland State Board of Elections*, no. 88-2605, from the U.S. Court of Appeals, 4th circuit. The issue is whether Maryland ballot access laws for office other than president are constitutional. Maryland requires qualified parties to submit 62,088 signatures in order to place a candidate for U.S. Senate on the ballot, unless such qualified party has registration of at least 10% of the state total. No third party in this century has ever held 10% of the registration in any state. Since the ballots have already been printed, the plaintiff-candidate, Dean Ahmad of the Libertarian Party, is now carrying on a write-in campaign.

ARIZONA

In the September 1988 primary elections, there were 4 parties, Democratic, Republican, Libertarian and New Alliance. In Maricopa County, the few New Alliance registrants who voted were accidentally given Libertarian Party punchcards instead of New Alliance Party punchcards. Although the New Alliance voters thought they were voting for the candidates for the party's nomination for state legislature whose names were printed in the ballot booklet, it was impossible for the computer to tally their votes. Consequently, the candidates all received no votes. The Maricopa County elections officials initially told the candidates, "Sorry; we know it's not your fault, but you weren't nominated because you didn't receive any votes." However, after the candidates filed a lawsuit, the county changed its position. The lawsuit was filed in state court. *Lowery v Harty*, CV-88-25407.

NORTH DAKOTA

On October 7, Harley McLain filed a lawsuit in federal court against a 1983 North Dakota law which eliminated the right of an independent candidate to choose a partisan label and to have that label printed on the ballot. About half the states permit independent candidates to choose any partisan label (except that the label can't be similar to the name of a fully-qualified party). The 1983 law exempts presidential candidates, so they can still choose a partisan label other than "independent". McLain is an independent candidate this year for Agriculture Commissioner and he wants the ballot label "\$11.71 Wheat". His attorney is presenting evidence that the law was so badly drafted that it has been misunderstood, and that it was never intended to eliminate partisan labels. *McLain v Meier*, no. A1-88-288.

U.S. MILITARY VOTER SERVICES

The Voting Information Center of the U.S. Department of Defense has agreed to include taped information on any presidential candidate who is on the ballot in states containing a majority of electoral college votes. Therefore, Ron Paul's tape-recording has been accepted, joining the taped messages of the Bush, Dukakis and Fulani campaigns. Anyone can hear the material by dialing (202) 504-4333 (with a touchtone telephone) or (703) 325-6100 (with a rotary phone). The service also accepts tape recordings from candidates for Governor or U.S. Senator who are on the ballot. Overseas military can hear the messages on toll-free telephones.

PROPORTIONAL REPRESENTATION

Cincinnati, Ohio voters will vote on November 8 whether to elect their city council by proportional representation. Specifically, the proposal asks voters if they wish to use the system now used by Cambridge, Massachusetts, and also in Australia, in which voters rank all candidates by order of preference.

CHART SHOWS TREND

The chart in the next column shows the number of signatures needed for a new political party to place a full slate of candidates for all federal office on the ballot, with the party name. Requirements are shown for 1928, 1984, and 1988. The population of the United States has almost exactly doubled since 1928 (the 1930 census showed 122,775,046; the Census Bureau's estimate for 1988 is 245,110,000). However, the ballot requirements are 7 times greater. Numbers shown in the chart refer to signatures on a petition, unless they are labelled differently: the label "reg" means that the party must have that number of registered voters. The label "att" means the party must attract that number of voters to its nominating meeting. The larger number for Washington state is the number of people who must vote for the party's candidates in the open primary; the smaller number is the number who must attend its meeting.

NUMBER OF SIGNATURES NEEDED

STATE	1928	1984	1988
Alabama	0	11,286	12,345
Alaska	1,000	5,611	3,894
Arizona	177	14,527	17,340
Arkansas	0	23,681	20,656
California	36,374	reg 80,644	reg 76,172
Colorado	700	7,600	8,000
Connecticut	4,004	24,942	24,709
Delaware	750	reg 136	reg 142
D.C.	7,487	5,700
Florida	1,675	145,971	168,936
Georgia	0	232,493	154,550
Hawaii	0	4,051	4,198
Idaho	att 250	13,123	8,224
Illinois	3,900	205,660	175,881
Indiana	10,450	70,080	61,588
Iowa	att 275	att 300	att 300
Kansas	0	15,266	16,813
Kentucky	1,200	7,800	7,800
Louisiana	2,600	reg 106,669	reg 107,344
Maine	2,000	23,012	12,000
Maryland	5,000	69,622	134,176
Massachusetts	2,600	82,012	67,364
Michigan	100	19,963	16,313
Minnesota	14,000	12,000	12,000
Mississippi	0	0	0
Missouri	0	20,381	21,083
Montana	0	9,979	13,329
Nebraska	att 750	5,480	5,635
Nevada	1,526	11,704	7,717
New Hampshire	1,000	3,000	3,000
New Jersey	2,000	2,200	2,200
New Mexico	0	2037 + 500	2,475
New York	76,500	139,000	139,000
North Carolina	10,000	36,949	44,535
North Dakota	900	7,000	7,000
Ohio	27,926	33,568	30,667
Oklahoma	5,000	44,157	45,497
Oregon	20,830	101,490	103,156
Pennsylvania	5,515	49,933	45,097
Rhode Island	1,750	3,000	3,000
South Carolina	0	10,000	10,000
South Dakota	5,514	6,965	7,362
Tennessee	0	30,974	30,259
Texas	0	31,909	34,424
Utah	500	500	500
Vermont	733	0	0
Virginia	1,000	34,284	38,889
Washington	25	8,465 + 175	8,775 + 188
West Virginia	5,837	12,844	11,319
Wisconsin	2,311	10,000	10,000
Wyoming	100	8,000	8,000

TOTALS: 1928: 254,472 signatures and 1,300 convention attendees. 1984: 1,611,541 signatures, 475 attendees, 187,949 registrants, and 8,465 primary voters. 1988: 1,556,631 signatures, 488 attendees, 183,658 registrants, and 8,775 primary voters.

PRESIDENTIAL DEBATES

Federal Judge George H. Revercomb of the D. C. federal court refused to interfere with the September 25 debate between George Bush and Michael Dukakis, on behalf of the Fulani campaign. Fulani v Commission on Presidential Debates, no. 88-2649. Nor did a 3-judge appeals panel overrule him (the panel consisted of Judges Patricia Wald, Harry Edwards, and James L. Buckley). However, the appeals judges did spend several hours in chambers, discussing the issue among themselves in private. The case will continue on the issue of whether the Commission must lose its tax-exempt status because it is not behaving in a non-partisan manner. Fulani argues that the commission is assisting the Democratic and Republican Parties, against other parties, and therefore cannot claim to be non-partisan.

The Fort Walton Beach, Florida Northwest Florida Daily News of September 15 editorialized that the League of Women Voters should include Paul and Fulani in its October 13 presidential debate. However, on October 4 the League dropped out of the presidential debate, so the Commission will sponsor the October 13 debate.

POLITICAL PARTY RIGHTS

The U.S. Supreme Court hearing in San Francisco County Democratic Central Committee v Eu will be December 5. The issues are whether a political party can structure itself as it wishes, and whether it can endorse candidates in its own primaries. Every judge in the lower courts who has heard this case, has ruled that the First Amendment protects political parties if they wish to take these actions, regardless of state law.

In a related case, Geary v Renne, no. 88-2875, over whether a political party may endorse candidates in non-partisan elections, the U.S. Court of Appeals heard arguments on September 21. The judges on the panel are Joseph Sneed, William Canby, and Stephen Trott. The judges stayed the lower court order, so that while the panel is considering its opinion, parties may not endorse in non-partisan elections. However, on September 28, the San Francisco County Democratic Party, not knowing about the stay, went ahead and endorsed candidates for non-partisan office.

THANK YOU!

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OHIO

Both the Socialist Workers Party and the Workers World Party presidential candidates were kept off the Ohio ballot because they allegedly submitted fewer than 5,000 valid signatures on petitions. Both sued in federal court, but in each case the judge refused to issue an order putting the candidate on the ballot. The main issue in both cases was whether a signature is valid if the signer is a registered voter, but has moved since last registering to vote. The SWP drew Judge George Smith, a Reagan appointee; the WWP drew Judge John Holschuh, a Carter appointee.

The Workers World case is still alive, and the party intends to press for a ruling on the constitutionality of disallowing such signatures. Workers World Party Presidential Campaign v Brown, no. C2-88-1019.

MICHIGAN INDEPENDENTS

The last Ballot Access News stated that Lyndon LaRouche and David Duke were kept off the Michigan ballot as independent candidates because they had run in presidential primaries in other states. This was not true; the court order only stated one reason for keeping them off the ballot: that they did not file declarations of candidacy by July 21, the statutory deadline. In a request for reconsideration, David Duke's attorney pointed out that the same federal judge, Robert DeMascio, had ordered Eugene McCarthy and Larry Holmes, and they hadn't signed a declaration of candidacy by July 21. However, Judge DeMascio denied the request for reconsideration, and Duke did not appeal.

COFOE

The Coalition for Free and Open Elections is devoted to working for fair election laws. The address is PO Box 355, Old Chelsea Sta., New York NY 10011. Dues are \$10 per year. Any individual who joins will receive minutes of board meetings, the brochure now being prepared, press releases, information about HR 1582, and a free subscription to this newsletter (or a free renewal).

RENEWALS: If your mailing label indicates that your subscription to Ballot Access News expires on Nov. 1, 1988, there is an envelope enclosed to make it easier for you to renew your subscription.

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