

BALLOT ACCESS NEWS

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ELECTION NIGHT TV

The National Election Service (NES) has announced that it will not collect any vote returns on election night, except votes cast for Dukakis and Bush. NES is owned by television networks and wire services; it exists only to collect election returns on election night (however, the networks also obtain results by their polls of voters leaving the voting booth). In the past, NES has collected returns for all candidates. Although the networks haven't usually broadcast returns for third parties, at least the percentages shown for the Democratic and Republican candidates has been the percentage of the *total* vote. Thus, a viewer could add the Republican and Democratic percentages, and subtract that from 100%, and know that other candidates lumped together were polling, for example, 2%, in a particular state. This will be impossible this time, since the Bush and Dukakis percentages on TV will always add up to 100%, regardless of the other vote.

This policy has been criticized by the Denver Election Commission, the *Denver Post*, the Utah Lieutenant Governor and the Oregon Secretary of State. If you wish to add your voice to theirs, write NES, 22 Cortlandt St., New York NY 10007, (212) 693-6001.

INDIANA, MISSOURI ELECTORS

The last issue told the story of the Democrats and Republicans in Indiana who didn't file their list of presidential elector candidates on time, and of the Libertarians in Missouri who also didn't file their elector candidates in time. The story continues:

In Indiana, Lenora Fulani (the only third party candidate on the ballot there) sued the Indiana Secretary of State in U.S. District Court to force him to follow the law, and to keep Bush and Dukakis off the ballot. Judge James Noland, a Johnson appointee, ruled on October 24 that plaintiffs failed to state a cause of action, i.e., that there is no jurisdiction in federal court for such a case. *Fulani v Bayh*, IP 88-1230-C. Fulani is appealing.

In Missouri, the 8th circuit had already ruled on September 22 that the Missouri Secretary of State did not violate the Constitution when he removed Ron Paul from the ballot for being late with his electors. Jim Linger, Paul's attorney, asked for a rehearing before the entire panel of the ten 8th circuit judges, citing the Indiana situation. On October 17, a vote was announced: 5 judges in favor of a rehearing (all non-Reagan appointees except one); 4 judges against (all Reagan appointees), and one judge, John R. Gibson, not voting because he was out of the USA. Six votes are needed. On October 18, that vote was vacated and the court announced that a new vote would be taken when Judge Gibson returned. The court also asked the Secretary of State to report on how far along the ballot-printing operation had gone. Judge Gibson returned to this country on October 20 but he still hasn't voted. On October 27 the court announced that "interim relief" (putting Paul on the ballot) was denied and that a vote on the rehearing will be announced after the election.

WEST VIRGINIA

The last issue stated that the Socialist Workers Party had tentatively decided not to appeal *SWP v Hechler*. Happily, on the last day, the party changed its mind. Attorney Bob Bastress, who won the 1980 case *Libertarian Party v Manchin* (which knocked out the old requirement that no one could circulate a petition outside his or her home magisterial district), has agreed to take the appeal.

MARYLAND LOSS

On October 27, the U.S. Court of Appeals, 4th circuit, upheld Maryland law on ballot access for third party candidates (other than president). *Ahmad v Maryland State Adm. Board of Election Laws*, no. 88-2605. The judges were Emory Widener (a Nixon appointee) Robert Chapman (Reagan appointee), and Kenneth Hall (Ford appointee). Maryland law requires one petition of 10,000 names for a new party to gain recognition. However, after the party is recognized, it is still treated as though it weren't a recognized party, and must submit candidate petitions, for office other than president. Candidate petitions are only waived if the party has 10% of the registration. This year, 62,088 signatures are required on statewide candidate petitions (3% of the number of registered voters). This statutory scheme has existed since 1971. In all the years 1971 to the present, there have been no third party candidates, with the party label, on the ballot for state legislature; there have been none for statewide office (other than president, for which the requirements are different), and only one for Congress. Furthermore, even the Democrats and Republicans, who need submit no petitions whatsoever, frequently fail to nominate. In 1986, the average Maryland state legislative race had 1.6 candidates on the ballot.

The Court of Appeals merely cited *Jenness v Fortson*, the U.S. Supreme Court 1971 decision which upheld Georgia's then-requirement of a petition of 5% of the number of registered voters. The 4th circuit didn't really rebut the argument that a much newer U.S. Supreme Court opinion, *Tashjian v Republican Party of Connecticut*, gives a qualified political party the right to nominate without asking non-members of the party to give their approval. Plaintiffs plan to appeal to the U.S. Supreme Court.

CONGRESS

The 100th Congress adjourned without passing any election-related legislation. Even the bill to set uniform poll-closing hours in presidential elections failed to pass. This means that, once again, voters in the West will still be voting, after the winner will be known (unless the race is extraordinarily close). It's an advantage for a voter to vote after the outcome is known; it helps one to vote rationally. If one's favorite major party candidate has already won, or lost, one may then feel safe in voting for a preferred minor party candidate, without the dilemma of worrying about who the victor will be.

PRESIDENTIAL WRITE-IN STATUS

21 states provide that a write-in presidential candidate must file to be a write-in candidate, to have his or her votes tabulated. The following third party presidential candidates have filed for this status in these states: Ron Paul, Missouri and North Carolina; James Warren, Texas; Ed Winn, Connecticut, New York; David Duke, Arizona, California, Colorado, Florida, Michigan, Missouri, Oregon, Utah; Larry Holmes, California, Connecticut, Ohio; Eugene McCarthy, Arizona, California; Willa Kenoyer, Florida, Massachusetts, New York, Texas; William Marra, Connecticut; Earl Dodge, Massachusetts, Michigan; Herb Lewin, California; and Delmar Dennis, Arizona, Missouri.

THIRD PARTY SENATE CANDIDATES

Libertarian Party has candidates on the ballot for U.S. Senate in Arizona, California, Connecticut, Hawaii, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Dakota, Pennsylvania and Texas; has write-in candidates in Indiana, Maryland and Virginia; total 17 candidates (33 states have U.S. Senate elections this year). The only years in which the party had more U.S. Senate candidates were 1982 and 1984, when it had 18. This is the first year the party has had a U.S. Senate candidate in Maryland, Missouri or Virginia. There are still 10 states in which the party has never had a candidate for U.S. Senate: Arkansas, Georgia, Louisiana, Maine, Mississippi, Nebraska, Rhode Island, South Dakota, West Virginia and Wyoming.

Socialist Workers Party has candidates on the ballot for U.S. Senate in Michigan, Minnesota, New Jersey, New York, Utah and Wisconsin; has write-in candidates in Arizona, California, Maryland, Massachusetts, Missouri, Nebraska, Ohio, Pennsylvania, Texas, Washington, West Virginia. Total: 17. The only years in which the SWP had more U.S. Senate candidates were 1980, when it had 20, and 1986, when it had 18. This is the first year the party has had a U.S. Senate candidate in Nebraska.

New Alliance Party has candidates on the ballot for U.S. Senate in Arizona, California (label "Peace & Freedom"), Connecticut, Massachusetts, Nebraska and Pennsylvania. This is the first year the party has ever had any candidates for the U.S. Senate, except that in 1986 it had one, Fred Newman, in New York.

The only other nationally-organized third parties which have any U.S. Senate candidates, have only one Senate candidate: American Party, Utah; Communist Party, New York; Consumer Party, Pennsylvania; Populist Party, Pennsylvania; Socialist Party, Texas (write-in), and Workers World Party, New York. Parties organized in only a single state have U.S. Senate candidates as follows: American Independent, California; Peace & Freedom, California (also counted under New Alliance); Workers Against Cutbacks, Michigan; Grassroots, Minnesota; Conservative, New York (merely endorsed the Republican candidate for U.S. Senate); Liberal, New York (merely endorsed the Democratic candidate); Right to Life, New York; Liberty Union, Vermont.

CONGRESSIONAL CANDIDATES

Libertarian Party: 90 candidates on the ballot: Alabama 7, Arizona 1, California 31, Hawaii 2, Idaho 1, Massachusetts 1, Michigan 11, Missouri 5, Nevada 2, New Jersey 7, New Mexico 1, North Dakota 1, Pennsylvania 1, South Carolina 2, Texas 14, Utah 1, Vermont 1, Wyoming 1. Also, 10 write-in candidates in Virginia. Years in which the party had more congressional candidates on the ballot were 1980 (116), 1982 (154), and 1984 (97). This is the first year the party has had any congressional candidates in Idaho or North Dakota.

Internationalist Workers Party: 9 candidates on the ballot, all California with the label "Peace & Freedom".

New Alliance Party: 7 on the ballot: California 1 (label "Peace & Freedom"), Illinois 1 (label "Illinois Solidarity"), Mississippi 1, New York 3, Wyoming 1. In 1986, the party ran its first 5 candidates for Congress.

Socialist Workers Party: 6 on the ballot: Iowa 1, Minnesota 2, New Jersey 2, Utah 1. Also 13 write-in candidates. Years in which the SWP had more were all years 1972-1984; the highest number was in 1974, when there were 28 on the ballot plus 22 write-in candidates.

Populist Party: 5 on the ballot: New York 1 (label "Conservative"), Pennsylvania 4. In 1986 the party had 4 on the ballot plus 4 write-in candidates.

Communist Party: 4 on the ballot: California 1 (label "Peace & Freedom"), Illinois 1, New Jersey 1, New York 1. This is the most candidates for congress the party has had since 1974, when it had 6. The party had more candidates for congress in all years 1922-1946, and 1972. In 1934, there were 118 Communist candidates for congress on the ballot.

Workers World Party: 1 on the ballot in New York, 1 write-in candidate in Washington. The party has never run more than 2 in any one election year.

American Party: 1 on the ballot, in Utah. In 1976 the party had 49 congressional candidates on the ballot.

Socialist Party: 1 write-in candidate in Florida. In 1912 the Socialist Party had 358 candidates on the ballot for the 437 seats, a 20th century record for third parties.

One-state parties have these numbers of congressional candidates: California, Peace & Freedom 16, American Independent 3; Michigan, Workers Against Cutbacks 7; New York, Conservative, 26 (18 of them are also Republican candidates); Liberal, 19 (15 of them are also Democratic candidates); Right to Life, 17 (6 of them are also Republican candidates); Liberty Union, 1 in Vermont; Statehood, 1 in the Dist. of Columbia.

NORTH DAKOTA LOSS

On October 25, federal judge Patrick Conmy, a Reagan appointee, upheld North Dakota law which says the only partisan label that can be used by independents on the ballot (except for president) is "Independent". *McLain v Meier*, 88-230. The case is being appealed.

WASHINGTON PRIMARY

On September 20, Washington state held its primary. Third party and independent candidates for office other than president must poll 1% of the primary vote, or they cannot appear on the November ballot. The system always works the same way: third party candidates for important statewide office (Governor and U.S. Senator) *never* poll the needed 1%; third party candidates for the state legislature and for unimportant statewide office *always* poll the 1%; third party Congressional candidates sometimes qualify and sometimes don't.

This year, the only third party candidates were a Communist Party candidate for Governor, a Socialist Workers Party candidate for U.S. Senator, a Workers World Party candidate for Congress, New Alliance Party candidates for Land commissioner and for state legislature, and 6 Libertarian candidates for the state legislature. The candidates for Land Commissioner and state legislature all polled the needed 1%; none of the others did. Third party activists in Washington ought to persuade the state legislature to lower the primary vote requirement for candidates for U.S. Senator and Governor. Even the Washington Attorney General admitted that the legislature never intended to eliminate *all* third party candidates for these offices.

POLITICAL PARTY PRIVACY

On September 29, the Washington State Court of Appeals heard arguments in *Snedigar v Hodderson*, over whether a political party must make its minutes public to determine whether or not that political party defrauded one of its members.

DEMS. REPS FAIL TO NOMINATE (SEE CHART)

Once more, the "dogs in the manger" argument is available to advocates of easier ballot access for third parties. Democrats and Republicans in many states keep third parties off the ballot, especially for Congress and State Legislative elections, but then they fail to use their own ballot spots for the same posts! In the 1988 general election, either the Democrats, or the Republicans, failed to run any candidates for Congress in one-sixth of the districts; and either the Democrats, or the Republicans, have failed to run any candidate in *three-eighths* of the state legislative contests! The chart in the next column shows the number of legislative seats up this year, and the number of legislative seats for which each major party failed to contest. For Congress, of the 435 districts, there is no Democrat in 19, and no Republican in 56. States missing Democrats for Congress, and the number of vacancies in such state, are: Alabama 1, Arizona 1, Florida 4, Kansas 1, Kentucky 1, Louisiana 2, New Mexico 1, New York 2, Ohio 1, Pennsylvania 2, Texas 1, Virginia 2. States missing Republicans for Congress are: Alabama 2, Arkansas 1, California 3, Florida 4, Georgia 2, Hawaii 1, Illinois 1, Kentucky 1, Louisiana 5, Maryland 1, Massachusetts 5, Michigan 1, New Jersey 1, New York 7, North Carolina 2, Oklahoma 2, Oregon 1, Pennsylvania 3, Tennessee 2, Texas 10, Virginia 1.

STATE LEGISLATURES

STATE	NO. SEATS UP	DEM.	REP.
Alaska	51	7	10
Arizona	90	24	14
Arkansas	119	9	97
California	100	0	8
Colorado	84	15	11
Connecticut	187	9	11
Delaware	51	13	12
Florida	140	36	46
Georgia	236	21	148
Hawaii	66	2	24
Idaho	126	27	24
Illinois	216	16	20
Indiana	125	17	16
Iowa	125	11	13
Kansas	165	8	23
Kentucky	119	14	69
Maine	186	11	26
Massachusetts	200	20	113
Michigan	110	1	5
Minnesota	134	4	6
Missouri	180	30	65
Montana	125	14	16
Nevada	52	5	6
New Hampshire	424	99	66
New Mexico	112	17	34
New York	211	35	28
North Carolina	170	10	51
North Dakota	131	5	3
Ohio	115	3	31
Oklahoma	125	17	41
Oregon	77	8	10
Pennsylvania	228	30	45
Rhode Island	150	11	80
South Carolina	170	21	88
South Dakota	105	8	11
Tennessee	115	15	58
Texas	165	29	70
Utah	89	11	6
Vermont	180	19	22
Washington	123	6	8
West Virginia	117	1	34
Wisconsin	115	9	25
Wyoming	80	19	8
TOTAL	5,989	687	1,502

Six states do not elect legislators in 1988 and are omitted. Also, Nebraska's legislature is non-partisan, so Nebraska is omitted.

FULANI MATCHING FUNDS

On October 28, Lenora Fulani received another disbursement from the Federal Elections Commission. Her total received to date is \$905,744.

1988 VOTE AFFECTS ONGOING BALLOT STATUS

In 26 states and the District of Columbia, 1988 election returns will determine whether third parties can qualify automatically for the ballot in 1990, as follows: Alaska, 3% for president gives status for president in 1992; Arizona, 5% for president qualifies a party for the 1990 ballot; Arkansas, 3% for president qualifies a party for 1990; Connecticut, 1% for either president or U.S. Senate qualifies a party for 1992 for that office only; D.C., 7,500 votes for any district-wide office qualifies a party for 1990; Georgia, approximately 29,000 votes for president or Public Service Commissioner qualifies a party for statewide 1990 office; Illinois, 5% for president or trustees of the University qualifies a party for 1990 statewide office; Iowa, 2% for president; Kentucky, 2% for president; Louisiana, 5% for president; Maine, 5% for president; Maryland, 6% for president (however, qualified status is almost worthless); Michigan, 16,313 votes for president; Minnesota, 5% for president or U.S. Senator; Missouri, 2% for any statewide race; Montana, first learn who was elected Governor, then calculate 5% of his vote, then see if any third party polled that many votes for any statewide office; Nebraska, 5% for president or U.S. Senator; Nevada, first calculate 5% of the total vote cast in the state for Congress, then determine if any third party received that number of votes for any office; New Hampshire, 3% for president or Governor; Oregon, 5% for any statewide race; Pennsylvania, first determine which major party candidate for statewide office received the greatest number of votes of any statewide candidate, then calculate 2% of that person's vote, then determine if any statewide third party candidate for any office received that number of votes; Tennessee, 5% for president; Texas, 5% for any statewide race; Utah, 2% for any statewide office; Vermont, 5% for any statewide office; Washington, 5% for any statewide office; Wisconsin, 1% for president or U.S. Senate.

To determine if any particular third party qualified, obtain a copy of the newspaper *USA TODAY* for both November 9 and 10. One of these issues is almost certain to show preliminary vote totals for all third party candidates for statewide office, and Congress. There won't be another issue of *Ballot Access News* until about January 1, 1989 (I will be on vacation Nov. 22-Dec. 17). *USA TODAY* should satisfy any need for third party vote results for federal and statewide state office.

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

THANK YOU! Bob Auerbach, Douglas Merritt, and Karl Peterjohn, for contributions.

ALASKA

Alaska is appealing the lower court decision in *Sigler v McAlpine*, that the state's June 1 deadline for third party and independent candidates to submit petitions (for office other than president) is unconstitutionally early. The State Supreme Court heard the appeal on October 20. The state has printed the names of the plaintiff-candidates (running for state legislature) on the ballot, but if the State Supreme Court reverses the lower court before the election, the state will program its vote-counting computers not to count votes cast for the candidates, and will also post notices in polling places that the plaintiff-candidates are not "eligible" candidates. This is rather silly, since they are eligible under the Alaska Constitution to hold the office, and anyone could still write them in.

WRITE-INS

The October 12 *New York Times* reported that a write-in candidate for the Armenian legislature received 78% of the vote, defeating the candidate whose name was printed on the ballot. According to the article, the credentials committee of the Armenian legislature accepted this result, but the Communist Party overruled it, and a new election will be held.

There will be a hearing in the Hawaii Supreme Court in January on whether or not Hawaiians can cast write-in votes. If the court says that the existing law (which doesn't mention write-in voting) does not permit write-ins, the case will be returned to the U.S. Court of Appeals, 9th circuit, to decide if such a ban violates the U.S. Constitution. *Burdick v Takushi*, no. 13157 in the Hawaii Supreme Court, no. 86-2703 in the 9th circuit.

COFOE

The Coalition for Free and Open Elections works for fair election laws. Write: PO Box 355, Old Chelsea Sta., New York NY 10011. Dues are \$10 per year. Individuals who joins receive minutes of board meetings, the brochure, press releases, information about HR 1582, and a free subscription to this newsletter (or free renewal).

Note: previous issues said that the Workers World Party is on the ballot in the District of Columbia, for president. This is incorrect. The party did not try to qualify there.

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