

BALLOT ACCESS NEWS

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KANSAS EMERGENCY

Two years ago, enough readers of *Ballot Access News* wrote to the Oregon Secretary of State and asked her to withdraw a bad ballot access bill, that she did indeed withdraw it. Now similar letters are needed to stop a bad bill in Kansas.

Kansas now requires 2,500 signatures for a statewide independent to get on the ballot. The Kansas Secretary of State, Republican Bill Graves, is asking the legislature to triple this, even though there is no problem with crowded ballots in Kansas. In 1988, there was no partisan race in Kansas with more than four candidates on the ballot. Nor has there ever been a statewide race in Kansas with more than two independents on the ballot.

The bill would require a statewide independent to submit a number of signatures equal to 1% of the last vote for Secretary of State, which would be 7,990 signatures in 1990 and probably a higher number thereafter. It is House Bill 2428, sponsored by the entire House Elections Committee.

Please write to Representative Kenneth R. King, 180 West State Capitol, Topeka Ks 66612, and ask him not to approve House Bill 2428 in its current form. Don't be shy about writing just because you don't live in Kansas. Every state's ballot access law impacts on all voters in the entire nation, particularly in the context of a presidential election. A hearing is being held on the bill on February 28, but no vote will be taken until mid-March, so there is time for you to write, if you write soon.

The enclosed chart on page 3 can be used as an enclosure in your letter to Representative King (that is why the other side of the page is so sparse). The Secretary of State has informed the House Committee that House Bill 2428 merely brings Kansas requirements up to the median requirement of the 50 states. The chart shows that the bill is more severe than that. The median requirement of the 50 states is .4% of the number of registered voters; the Kansas proposal would be .63% of the number of registered voters. Furthermore, it is more difficult to circulate a petition in Kansas than in other states, because Kansas is one of only two states which makes it illegal for anyone to obtain signatures of voters who do not live in the circulator's home county (the other is Nebraska). Also, all petitions in Kansas must be notarized; most states do not require this.

The Secretary of State says that the reason for the bill is that it is unconstitutional for a state to require more signatures for a district candidate, than for a statewide candidate, and existing Kansas laws on this point are unconstitutional and must be changed. This is correct. Existing Kansas law requires petitions signed by 5% of the last vote for district independent candidates, and sometimes 5% for a district independent candidate is a greater number than 2,500.

However, the sensible way to cure the problem is simply to provide that a district independent petition requirement cannot exceed 2,500 signatures, notwithstanding the percentage calculation. This is the approach that the Illinois legislature took when a U.S. Supreme Court opinion in 1979 forced that state to deal with this problem, and there is no reason Kansas shouldn't take this approach. Please write today to Representative King and ask him not to approve House Bill 2428 in its present form.

POST OFFICE ACCESS VICTORY

On January 31, the U.S. Court of Appeals, 4th circuit, ruled that federal postal regulations which forbid political activity on all post office sidewalks are unconstitutional. *USA v Kokinda*, no. 87-5107. The vote was 2-1. Judges James Harvie Wilkinson, a Reagan appointee, and Francis Murnaghan, a Carter appointee, voted to strike down the ban. Judge H. Emory Widener, a Nixon appointee, dissented.

Other U.S. Courts of Appeal have upheld the regulations. It is extremely likely that the federal government will ask for a rehearing *en banc*, and if that doesn't cause the decision to be overturned, the government will probably ask the U.S. Supreme Court to review the decision. Since there is a split in the circuits, the Supreme Court would accept the case for a hearing..

The government tried to justify the ban on political use of post office sidewalks by presenting witnesses who said that the card table used by defendants (who were supporters of Lyndon LaRouche) interfered with their ability to squeeze by, and also that they were offended by the contents of literature on the table. Judge Wilkinson, who wrote the majority opinion, logically stated that it is not reasonable to expect the public to know that city sidewalks are open for First Amendment activity, whereas post office sidewalks are not. City sidewalks have been open for First Amendment activity since a 1939 U.S. Supreme Court decision, *Hague v CIO*.

CONYERS TO INTRODUCE BALLOT BILL

Congressman John Conyers has made an absolute commitment to re-introduce HR 1582, his bill from last session which sets a ceiling on the number of signatures that states can require for third party and independent candidate ballot access, in federal elections. Conyers' staff is showing much more interest in the bill this year than they ever have before. The bill will be introduced at exactly the right time in March so that it is again numbered HR 1582. The Rainbow Lobby has been working very hard to bring the bill into existence again.

U.S. SUPREME COURT VICTORY

On February 22, the U.S. Supreme Court ruled unanimously that the First Amendment protects a political party's right to structure itself as it wishes, and to endorse candidates in its own primaries. *Eu v San Francisco County Democratic Central Committee, et al.* Plaintiffs included the statewide Libertarian Party, several Democratic county central committees, and one Republican county central committee.

The decision was by Justice Thurgood Marshall. He wrote that all election laws which burden First Amendment rights are invalid unless they are needed for a compelling state interest. Justice Stevens wrote a concurring opinion, disagreeing with the compelling interest test, but no other justice co-signed Stevens' opinion, so there are now 7 justices who are on record in support of the compelling interest test in election law cases. Chief Justice Rehnquist did not participate in the case because the attorney for the plaintiffs had testified against Rehnquist when Rehnquist's nomination for Chief Justice was before the U.S. Senate.

The decision was the first time that the Supreme Court has upheld the right of a state political party to structure itself as it wishes, regardless of state law. In the past, various dissident groups have been intimidated from trying to organize new political parties, or to qualify for the ballot as political parties, because they were afraid that the government would dictate the organization's structure. This decision should completely ease those fears.

DEBATES

On January 31, the U.S. Court of Appeals, 2nd circuit, heard arguments in *Fulani v League of Women Voters Educational Fund*, the lawsuit challenging the League's tax-exempt status. Tax-exempt groups are supposed to be non-partisan, and the suit charges that the League is not non-partisan because it sponsored debates for Republican and Democratic presidential candidates in last year's primary season, but did not provide any forum whatsoever for other presidential candidates. The judges who heard the case were Ellsworth Van Graffeland (appointed by President Ford), and Lawrence W. Pierce and Richard Cardamone (appointed by President Reagan).

The attorney for the federal government (which is being forced to defend its decision to let the League retain tax-exempt status) stated, "There are only two parties of any interest to the American people." A decision is probably several months away.

COFOE

The Coalition for Free and Open Elections has just issued its brochure. All readers of *Ballot Access News* are urged to join COFOE and to help it to grow so that it can become an effective voice for ballot law reform.

DUKE VICTORY

On February 18, David Duke was elected to the Louisiana legislature as a Republican. He had only been registered as a Republican since December 5, 1988. Since he had been the Populist Party candidate for president in November 1988, and since he had also run in Democratic presidential primaries earlier that year, the Republican Party does not consider Duke to be a *bona fide* Republican. When he ran for president in the Democratic primaries, his platform included: (1) stopping immigration from third world countries; (2) ending affirmative action; (3) conditioning welfare benefits on birth control; and (4) ending forced integration.

Although Duke insists that he is in favor of justice and equality for all Americans, he has not repudiated the platform he ran on earlier. This platform matches the Populist Party platform more closely than it matches the Republican Party platform. Yet Duke could not have run for the Louisiana legislature with the label "Populist" on the ballot, unless the Populist Party had been able to persuade 5% of all Louisiana voters to list themselves as members of that party, on their voter registration affidavits. The Louisiana ballot access law for new political parties (for office other than president) is so draconian that no reasonable person should be surprised that Duke chose to register into a major political party, in order to run for the legislature. Supporters of fair ballot access laws must get the idea out, via letters to the editor, radio talk shows, etc., that the major parties have only themselves to blame if candidates and other political activists "invade" the major parties. Election laws which restrict ballot access by alternative political parties are harmful to the Democratic and Republican Parties. They destroy the integrity of those parties by forcing *everyone* who wants to run for office to become a Democrat or a Republican, no matter what the candidate's views are.

CONGRESS

In February, Senator Alan Dixon of Illinois introduced S. 377, which would require a lottery to determine when each state would vote to select delegates to presidential nominating conventions. The bill would also provide that all such presidential primaries and caucuses must be held between March and June of presidential election years. The bill would apply to all qualified political parties within particular states, so it would implicitly require that such parties could not hold presidential conventions until mid-June of a presidential election year, at the earliest.

HOW TO USE THE CHART

Pages 3 and 4 are designed to be sent to Representative Kenneth R. King, chairman of the Elections Committee, 180 W. State Capitol, Topeka, Ks. 66612. Please write him a short note urging him to amend or defeat House Bill 2428 and enclose that sheet.

**NO. OF SIGNATURES. TO QUALIFY A NEW PARTY OR
INDEPENDENT. PRESIDENTIAL. CANDIDATE IN 1988**

	<u>STATE</u>	<u>LEGAL REQUIREMENT</u>	<u>ELECTION CODE REFERENCE</u>	<u>SIGS</u>	<u>%</u>
1	Arkansas	just hold meeting	Attorney General Op 79-102	0	.00
2	Louisiana	just pay \$500	Tit. 18, 465C	0	.00
3	Michigan	just file declaration of candidacy	<i>Fulani v Austin</i> court order	0	.00
4	Tennessee	flat number	Title 2, sec. 2-505	25	.00
5	Washington	.01% of 1984 presidential vote	29.24.030	194	.01
6	New Jersey	flat number	19:13-5	800	.02
7	Utah	flat number	20-3-38	300	.04
8	Delaware	.05% of December, 1987 registration	Title 15, sec. 3001	reg. 142	.05
9	Iowa	flat number	Title 4, sec. 45.1	1,000	.06
10	Mississippi	flat number	23-5-134	1,000	.06
11	Wisconsin	flat number	8.20(4)	2,000	.06
12	New Mexico	flat number	1-7-2, 1-15-3	500	.07
13	Minnesota	flat number	204B.08	2,000	.08
14	Ohio	flat number	3513.257	5,000	.08
15	Rhode Island	flat number	17-16-8	1,000	.18
16	KANSAS EXISTING LAW	flat number	25-303	2,500	.20
17	Alabama	flat number	17-19-2(a)	5,000	.21
18	New York	flat number	Chapter 17, sec. 6-142	20,000	.23
19	Colorado	flat number	1-4-801(b)	5,000	.25
20	Kentucky	flat number	Title 10, sec. 118.315(2)	5,000	.25
21	Nebraska	flat number	32-504(2)(c)	2,500	.28
22	Vermont	flat number	Title 17, sec. 2402(b)	1,000	.29
23	Illinois	flat number	Chapter 46, sec. 10-2	25,000	.39
24	Texas	1% of 1986 gubernatorial vote	Election code sec. 181.005	34,424	.42
25	Maryland	flat number	Attorney General Op. of Jan. 6, 1984	10,000	.43
26	Pennsylvania	2% of winner's vote, statewide judge, 1987	Title 25, sec. 2911	25,568	.44
27	Virginia	one-half of 1% of Jan. 1988 registration	24.1-159	12,963	.45
28	California	flat number	<i>Fulani v Eu</i> , stipulation in fed. court	65,000	.46
29	New Hampshire	flat number	Title 4, sec. 655:42	3,000	.46
30	Maine	flat number	Title 21, sec. 494.5	4,000	.47
31	Arizona	1% of 1986 gubernatorial vote	16.341 E	8,670	.48
32	KANSAS HB 2428	1% of 1986 secretary of state vote	PROPOSED LAW	7,990	.63
33	South Dakota	1% of 1986 gubernatorial vote	12-7-1	2,945	.67
34	South Carolina	flat number	7-9-10	10,000	.70
35	Alaska	1% of 1984 presidential vote	15.30.025	2,068	.71
36	Idaho	1% of 1984 presidential vote	34-708(A)	4,112	.72
37	West Virginia	1% of 1984 presidential vote	3-5-23	7,358	.76
38	Hawaii	1% of 1986 vote cast	Title 2, sec. 11-113b(2)(B)	3,493	.79
39	North Dakota	flat number	16.1-12-02	4,000	.81
40	Missouri	2% of 1984 gubernatorial vote in 5 cong. dist.	Title 9, sec. 115.315	24,002	.82
41	Connecticut	1% of 1984 vote cast	9-453(d)	14,910	.83
42	Florida	1% of 1986 registration	103.021(3)	56,318	.92
43	Georgia	1% of 1986 registration	21-2-180	25,759	.95
44	Massachusetts	2% of 1986 gubernatorial vote	Chapter 53, sec. 6	33,682	1.03
45	Indiana	2% of 1986 secretary of state vote	3-8-6	30,950	1.08
46	North Carolina	2% of 1984 gubernatorial vote	163-96(2)	44,535	1.30
47	Oklahoma	3% of 1984 presidential vote	Title 26, sec. 10-101.2	37,671	1.71
48	Nevada	3% of 1986 congressional vote	293.1715.2(c)	7,717	1.73
49	Oregon	3% of 1984 presidential vote	Title 23, sec. 249.740	36,695	2.40
50	Montana	5% of winner's vote, governor, 1984	13-10-601	13,329	2.64
50	Wyoming	flat number	22-4-201	8,000	3.54

NOTES ABOUT THIS CHART

This chart has been prepared to illustrate the fact that House Bill 2428 would give Kansas a ballot access requirement that is substantially more difficult than the median state requirement. Note that the median state requirement is .43%, whereas the proposed requirement contained in House Bill 2428 would be .63%. All percentages are obtained by dividing the number of signatures required, by the number of registered voters in each state as of late 1988.

Also note that Kansas is only of only two states in which no person can obtain signatures to the petition from voters who reside outside the circulator's home county, and Kansas is one of a minority of states which requires that all signatures be notarized.

Also, Kansas is one of only twelve states which does not permit write-in voting for president. If House Bill 2428 is passed in its current form, there will be Kansans who will be unable to vote for the presidential candidate of their choice.

STATE LEGISLATURES

Kansas: See the story on page one about House Bill 2428. Also, Senate Bill 59, the bill to make it easier for a new party to get on the ballot, had a hearing in the Senate on February 21. No vote has yet been taken on it. Many people testified in favor of the bill and no one testified against it. The bill would lower the petition to get a new party on the ballot, from 2% of the last gubernatorial vote, to a flat 1,000 signatures. No political party has ever qualified for the Kansas ballot by petition. A petition has been required for this purpose since 1965.

Massachusetts: Representative John Businger's bills to improve ballot access now have bill numbers. They are: (1) House Bill 3209 permits petitioners to submit petitions centrally to the state government, rather than to each town clerk; (2) House Bill 3210, lets voters sign more than one petition for the same office; (3) House Bill 3211 reduces the number of signatures from 2% of the last gubernatorial vote, to 1%; (4) House Bill 3212 changes the definition of political party from one which polled 3% for its candidate for Governor, to one which polled 2% of the vote for any statewide office. If you wish to help these bills, contact either Walter Ziobro, 39 Bridge St., #4, Watertown MA 02172, (617) 926-1082, or Bill Shakalis, Bx 774, Cambridge MA 02139, (617) 661-1143

Missouri: Two identical bills, one in each house of the legislature, were introduced in February. They are House Bill 632, by Rep. Sheila Lumpe, a Democrat, and Senate Bill 406, by Sen. Frank Flotron, a Republican. Senate Bill 406 received a hearing on February 21; House Bill 632 received one on February 22. No votes on the bills have been taken. At the Senate hearing, Senator Richard Webster, a Republican from Joplin, stated that, in his view, all third party activists are "fruits or kooks". Senator Webster later told lobbyists for the bill that he had been responsible for toughening the ballot access laws back in 1953 (he has been a legislator since 1948) and that he would and could prevent any easing of the requirements. Before 1953, Missouri required no petition for a new party to get on the ballot. Since 1953, the requirements have been so difficult that only in four elections has any statewide third party or independent candidate petition succeeded. Senator Webster said he believes that everyone should be a Republican or a Democrat. When asked about party platforms, he exclaimed, "No one reads them anyway!"

At the hearing for House Bill 632, Representative Jean Mathews, a Republican from St. Louis County, exclaimed to a witness, "Don't you know that we in this country have always had two official parties!" She also stated that if the requirements were eased, Missouri would face instability in government similar to problems in Italy and Israel. Senator Flotron, speaking for the bill as a witness, tried to explain that Italy and Israel have parliamentary systems, in which the executive is not independently elected by the voters. He was correct; in addition, Italy and Israel have proportional representation, so that (in Israel) if a party polls just 1% of the vote, it is

entitled to 1% of the membership in the national legislative body.

The Missouri bills have received editorial support and even a supporting editorial cartoon in a few newspapers. Also, television and radio coverage of the bills has been sympathetic.

Nevada: Assembly Bill 132, written by the Secretary of State's office, clarifies existing law so that the term "political party" clearly is meant to refer to parties which nominate by convention as well as to parties which nominate by primary. This will avoid the ambiguity which led elections officials to treat the Libertarian Party during 1988 as though it were not entitled to the rights of political parties generally. Libertarian Party activists in Nevada are hoping to amend the bill so that it will also ease the requirements for a party to remain qualified.

New Mexico: The Secretary is sponsoring House Bill 621, introduced by a large group of legislators, which would raise the number of signatures to qualify a new party from 500, to one-half of 1% of the number of registered voters. In 1990, this would be approximately 3,300 signatures. The bill deletes the requirement that the signers of the petition must be members of the party. The purpose of this change is to conform state law to the 1988 ruling in *Workers World Party v Vigil-Giron*.

The bill also makes it more difficult for an old party to remain qualified. Existing law merely requires that a party run at least one candidate, every four years. The bill would require it to poll one-half of 1% of the vote. The bill isn't worded clearly enough to specify whether any candidate who polls one-half of 1% in his or her own race (even if it is in only a single district) can retain status for his or her party, or whether it would need to be a statewide candidate. The vote test will not be applied until 1990. Qualified parties in New Mexico currently are Libertarian, New Alliance, Prohibition, Socialist Workers and Workers World. In 1988, only the Libertarian Party polled over one-half of 1% in New Mexico for a statewide race.

New York: A bill written by the Attorney General's staff is about to be introduced, which would permit any candidate to obtain a place on the ballot without a petition, if the candidate had received enough contributions. A statewide candidate would need at least 4,000 donations of each least \$10 apiece, from New York registered voters. For the purpose of ballot access, no voter could contribute to more than one candidate for any given office. The bill applies equally to candidates running in primaries, and independent candidates. The bill would not delete the existing petition alternative for ballot access, but would provide a supplemental means of getting on the ballot.

North Carolina: The State Board of Elections will meet on Thursday, March 9, to decide what election law changes it will recommend to the legislature. It is already known that the Board will ask the legislature to improve the filing deadline for new parties, and will also ask the legislature to delete the law which bans new parties from nominating candidates for county office. North Carolina residents who favor a reduction in the number of

signatures needed for new party ballot access ought to communicate with the Executive Director of the Board, Alex K. Brock, Box 1166, Raleigh N. C. 27602, (919) 733-7218. In 1988, North Carolina required the third highest number of signatures of any state, to qualify for president. Ask the Board to recommend a lower number of signatures. Stress the administrative advantages to the Board of a lower signature requirement: there would be fewer signatures to check, and fewer write-in votes to canvass.

Ohio: State Senator Gary Suhadolnik has introduced a bill to permit candidates nominated by petition to choose a partisan label, which would be printed on the petition and on the November ballot. The bill will be numbered within the next week. Ohio petition requirements for independent candidates are relatively moderate, whereas Ohio requirements for new parties are quite difficult. Consequently, third party candidates always qualify in Ohio as independent candidates, but the campaigns suffer because the candidates have no party labels printed on the November ballot. The bill would correct that problem. If you wish to help, contact Milt Norris at (216) 533-1210.

Oregon: Representative Al Young has introduced House Bill 3230, which would (1) reduce the petition for third party candidates from 5% of the last vote, to 2.5%; (2) reduce the vote requirement for a party to remain qualified from 5% to 1%; (3) provide that a party which meets the statewide vote requirement to remain qualified, shall be entitled for *all* partisan office in the state (existing law is interpreted to mean that even though a party is qualified statewide, it is not qualified within districts). To help, contact Martin Buchanan at (503) 640-4324.

LIBERTARIAN REPUBLICANS

The February 1, 1989 issue of *Ballot Access News* carried a story about Lyndon LaRouche supporters who captured Democratic Party nominations during 1988, and showed how well they had done in the general election, compared to how well ordinary Democratic nominees had done in the same districts in the preceding election.

During 1988, there were also nine instances in which members of the Libertarian Republican Organizing Committee captured Republican Party nominations. According to the Committee, known by its acronym "LROC", all of these candidates are "hard-core" Libertarians. The chart below shows how well each of these Libertarian Republicans fared in November 1988, compared to how well ordinary Republican nominees for the same offices did in the previous election for that office (which was always 1986, except for the California State Senate race which was last voted on in 1984):

	1988	1986
California, St. Sen., dist. 9	22%	23%
California, Assembly., dist 12	24%	24%
California, Assembly, dist. 13	20%	23%
Illinois, St. House, dist. 8	45%	39%
Michigan, St House, dist. 53	31%	34%
New York, Assembly, dist 61	17%	13%
North Carolina, St. House, dist. 61	53%	44%
Pennsylvania, Congress, dist 14	21%	none
Vermont, St. Sen., Caledonia Co.	60%	53%

Note that two LROC candidates were elected. They are Art Pope in North Carolina, and John McClaughry in Vermont..

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).

HUNGARY

On February 12, 1989, Hungary announced that it will permit opposition political parties to compete in Hungarian elections, and furthermore that the ruling party will step down, should it be defeated in such future elections.

POPULIST PARTY

The Populist Party national committee will meet in Chicago March 3-5. Among the speakers will be former Governor Ev Mecham of Arizona, a Republican, and also former California Republican U.S. Senate candidate Paul Gann.

RENEWALS: If your mailing label indicates that your subscription to *Ballot Access News* expires on March 1, 1989, there is an envelope enclosed to make it easier for you to renew your subscription.

THANK YOU! Gordon Mobley, Roy Keeley, Bill Earnest, Clyde Kuhn, Francis Bourne, Mark Ginter, and David Saum, for contributions.

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