

BALLOT ACCESS NEWS

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S. 377 CLEARS SENATE COMMITTEE

On May 17, the U. S. Senate Rules Committee approved S. 377, which would have a strong impact on ballot access in presidential elections. The bill would provide for a lottery, to be held the first week of December in the year before presidential elections. The lottery would determine the date on which all presidential primaries and caucuses would be held in the following year. State law and party rules would no longer set the dates of such events. There would be only eight possible Tuesdays on which presidential primaries or caucuses could be held, ranging from March through June, every other week.

Since the bill does not exclude *any* political parties, and since it would apply to all political parties that are qualified in any state, it would prevent any such political party from choosing its presidential candidate earlier than the end of June of the presidential election year. It would be illegal for any political party which was qualified in any particular state, to choose delegates to a presidential nominating convention other than on the date set by the lottery.

Although any political party, particularly a "third" party, could probably win an exemption by asking that the law be declared unconstitutional (since the First Amendment gives a political party the right to decide such things for itself), it would be more advantageous for "third parties" to accept the provisions of S. 377, if it passes, and then to sue any state which provides no means for a third party to get on the ballot, before it knows who its candidates are. Over one-third of the states require a new party to print the names of its candidates on the petition, and these states, in effect, force third parties to choose their presidential candidates far earlier than the Democrats and Republicans choose their presidential candidates. If S. 377 becomes law, third parties can force these states to amend their procedures, using the argument that *federal* law doesn't permit them to choose their presidential candidate until June, and that therefore there is no time in which to petition, unless the requirement to print the candidates' names on the petition is abolished.

If every state provided a means for a new party to qualify for the ballot before it has chosen its candidates, it would be possible for a third party to qualify for the ballot in every state and *then* to hold its presidential convention. In such circumstances, the party's nomination would obviously be very valuable, and the party would probably have a greater choice of candidates to choose from. Also, the party's convention would probably get considerable press coverage.

S. 377 has received the formal support of these Senators so far: Adams (Washington), Boren (Oklahoma), Breaux (Louisiana), Bumpers (Arkansas), DeConcini (Arizona), Dixon (Illinois), Ford (Kentucky), Garn (Utah), Gore (Tennessee), Hatfield (Oregon), Inouye (Hawaii), McClure (Idaho), Moynihan (New York), Packwood (Oregon),

Sanford (North Carolina), and Stevens (Alaska). Either these Senators are co-sponsoring the bill, or they voted for it in Committee. Also, Senators Nunn and Robb have stated they support it. The only Senators who have formally opposed it so far are Dole (Kansas), McConnell (Kentucky), and Helms (North Carolina). Of course, the Senators from Iowa and New Hampshire will do everything they can to stop the bill. Senator Alan Dixon of Illinois, the bill's chief sponsor, hopes to get the bill amended into another bill on the Senate floor, and to have it through the Senate before recess on August 7.

OREGON BILL GAINS

The May 12 *Ballot Access News* reported that House Bill 3230 in Oregon, which improves ballot access, was stalled in the Senate Government Operations & Elections Committee. Since then, Senator Glenn Otto, chairman of that committee, agreed to give the bill a hearing. The hearing was held on June 9 and the provisions of HB 3230 were amended into HB 2880, an omnibus election law bill which is considered to be non-controversial. This is a very good outcome, although now the bill will need to be sent back to the House (assuming it passes the Senate, which is very likely).

VOTER REGISTRATION BILL STALLED

The floor vote on HR 2190, the voter registration bill in the U.S. House of Representatives, has been stalled, due to leadership changes in the House. The vote cannot occur before June 15. It is difficult to gain support for HR 1582 (the ballot access bill sponsored by Congressman John Conyers) until after the vote on HR 2190. If HR 2190 passes the House, Conyers will then begin soliciting co-sponsors for HR 1582. In the meantime, though, please continue to ask your own member of Congress to become a co-sponsor of HR 1582. Anyone who produces a 1989 letter from his or her member of Congress, commenting on HR 1582, can obtain a free 3-month renewal of the subscription to *Ballot Access News*.

OTHER CONGRESSIONAL NEWS

On June 8, the Senate Rules Committee approved a voter registration bill, S. 874. The Senate voter registration bill is very different from the House bill, and if the Senate passes S. 874 and the House passes HR 2190, a conference committee will be needed.

On May 17, the Senate Rules Committee approved a version of the uniform hour poll-closing bill which is different from the version that has already passed the House. The Senate version would require states in the eastern time zone to keep their polls open until 10 p.m.

STATE LEGISLATIVE NEWS

California: The Assembly Ways & Means Committee has postponed voting on AB 368 (which changes the date of the presidential primary from June to March) until July.

On May 17, the Assembly Elections Committee passed AB 633, which expands the period for an independent presidential candidate to circulate the petition, from 60 days, to 105 days. The bill only exists because a lawsuit last year declared the old 60-day period unconstitutional. The committee heard testimony in favor of amending the bill to also reduce the number of signatures. (in 1990, a statewide independent candidate will need 140,005 valid signatures), but the committee was not willing to support such an amendment.

Illinois: on June 7, the House Elections Committee killed Senate Bill 1000, which would have moved the Illinois primary (for office other than president) from March, to September. One indirect consequence of moving the primary would have been to liberalize the non-presidential independent candidate filing deadline, from December of the year before the election, to June of the election year. Another bill to move the primary from March to September, SB 24, was sent to interim study. It could conceivably be revived in July.

Indiana: the Libertarian Party of Indiana has organized a committee to lobby for improvements in the ballot access laws in the 1990 session of the legislature. If you wish to help, contact Nadine Dillon, 3601 N. Pennsylvania, Indianapolis, In 46205, tel. (317) 923-9395.

Montana: On March 30, the Governor signed HB 171, which provides that write-in candidates who file a declaration of candidacy, will receive a state tally of how many write-in votes they received. Also, the Secretary of State has revised his opinion and now states that the Libertarian Party must poll approximately 3% of the vote in 1990 for U.S. Senate in order to retain its status.

New York: Senate Bill 2780, the Attorney General's proposal to let candidates qualify for the ballot without any petition, if the candidate has received enough campaign contributions, still has no hearing date in the Senate Elections Committee. This may indicate that the Republican leadership opposes the bill (the New York State Senate has a Republican majority).

North Carolina: Although the major ballot access reform bill, HB 1199, remains stalled, a lesser bill is progressing. It is HB 1198, by Rep. Art Pope, which lowers the number of signatures needed for an independent candidate for city office from 15% of the last vote cast, to 10%. The old 15% requirement had been held unconstitutional in 1983, but the legislature had never bothered to revise it. It is likely that the new 10% requirement (assuming HB 1198 passes) will still be unconstitutionally high, should anyone challenge it in court.

Ohio: A second hearing was held on SB 137, which would permit independent candidates to choose a partisan label (not similar to the name of a qualified party) to be

printed on the ballot next to the candidate's name. Again, all the testimony was favorable. The Committee chairman supports the bill, but as yet a majority of members of the committee do not. The Cleveland *Plain Dealer* ran an editorial in favor of the bill, which is on page five of this month's *Ballot Access News*. Ohio activists are trying to get additional newspaper editorials in support of the bill.

POLITICAL PRIVACY

1. On June 2, the San Francisco District Attorney agreed that Socialist Action Party candidates for non-partisan city office need not disclose the names of their campaign contributors. Last year, the city had threatened to prosecute the candidates and their campaign treasurer if the names weren't revealed. Although the U.S. Supreme Court had ruled in 1982 that small political parties with unpopular ideas, need not disclose the names of their contributors, the city had not been willing to waive the reporting requirements for Socialist Action candidates. Socialist Action then filed a lawsuit in federal court to enjoin enforcement of the law. That suit is now moot and will be dismissed.

2. On June 8, the Freedom Socialist Party asked the Washington State Supreme Court to hear its appeal in *Snedigar v Hodderson*, the case over when a political party must reveal the contents of its business meeting minutes. The State Court of Appeals had ruled that the First Amendment usually protects the privacy of such minutes, but that in this particular case, the party must still reveal the contents of the minutes. The case was filed by Richard Snedigar, a disgruntled ex-member of the party who alleges that the party defrauded him of \$22,000, and that he can only prove his allegations by obtaining a copy of the minutes. The party had asked the State Court of Appeals for reconsideration, but this had been denied on May 9.

FREE BOOK

The Clerk of the U.S. House of Representatives has published *Statistics of the Presidential and Congressional Election of November 8, 1988*. Anyone can obtain a free copy by requesting a copy from the Clerk of the U.S. House of Representatives, Washington D.C. 20515. It gives the total vote cast for all candidates who were on the ballot in November 1988 for federal office.

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FLORIDA

On June 6, Florida Governor Bob Martinez announced dates for a special primary and a special election to fill the vacant Congressional seat in the 18th district. The vacancy occurred because Congressman Claude Pepper died last month. The primary will be August 1. If a run-off primary is needed, it will be held August 15; and the special general election will be August 29. Florida election laws provide no means for a new party to get on the ballot in a special election, and provide that an independent candidate must submit 5,525 valid signatures by June 12. The Florida Secretary of State has decided that it is unreasonable to expect anyone to collect this many valid signatures in only 6 days (with no advance notice), so he has extended the deadline to June 19, even though there is no legal basis for the extension. The ACLU of Florida has tentatively agreed to sponsor a lawsuit on behalf of the Libertarian Party, which plans to nominate a candidate. It is likely that even a 13-day petitioning period is unconstitutional, given the lack of any advance information. Furthermore, there is no provision whatsoever for a new party to qualify; and any independent who successfully obtains the 5,525 valid signatures before June 19 is *also* required to pay a filing fee of approximately \$2,700, unless the candidate is a pauper. There is no rational reason for the state to require a filing fee and a difficult petition, since the only legitimate purpose of a filing fee is to keep the ballot from being cluttered with too many candidates, and the signature requirement already handles that problem.

SUPREME COURT ACCEPTS CAMPAIGN
FINANCE LAWSUIT

On May 1, 1989, the Supreme Court announced it would hear the state of Michigan's appeal in *Michigan State Chamber of Commerce v Austin*, 856 F 2d 783 (1988). The issue is whether a nonprofit corporation organized partly for political purposes, can make indirect expenditures to a candidate. Michigan law doesn't permit any corporations to make independent expenditures to help a candidate's campaign, but the 6th circuit had ruled the ban unconstitutional for certain types of corporations.

NEVADA LAWSUIT

On May 16, federal judge Lloyd D. George upheld the Nevada two-tier political party scheme, whereby parties which polled more than 10% of the vote, or which have more than 10% of the registration, are entitled to a primary, and smaller qualified parties nominate by convention. *Libertarian Party of Nevada v Del Papa*, CV-LV-88-621-LDG. The decision wasn't surprising, since the U.S. Supreme Court unanimously upheld a similar approach in a 1974 Texas case. Judge George didn't discuss the Libertarian Party complaint that government literature and signs encourage people to register as either Republicans or Democrats, and don't mention other parties.

PETITIONING LOCATIONS

1. On April 14, the U.S. Court of Appeals, 4th circuit, denied the federal government's request for a rehearing in *USA v Kokinda*, the case over whether post office sidewalks can be used for First Amendment activity. The Justice Department has asked the U.S. Solicitor General to prepare a brief to the U.S. Supreme Court, asking the Court to overturn the decision. This is a sign that the executive branch of the U.S. government is making an all-out effort to keep petitioning and other First Amendment activity off post office sidewalks. The Supreme Court will almost certainly take the case, since there is a split in the circuits. Unfortunately, the defense of First Amendment activity on post office sidewalks is in the hands of the Lyndon LaRouche legal team, and that legal team is preoccupied these days with the criminal appeals of LaRouche and his associates. It will be important for civil libertarians to assist the defense of the 4th circuit ruling in the *Kokinda* case.

2. On April 10, 1989, Georgia Governor Joe Frank Harris signed HB 403 into law. It revises the old law which made it illegal to petition within 250 feet of a polling place on an election day. The state was afraid that the old law would be held unconstitutional; an injunction had been issued against the law in *Committee for Sandy Springs v Cleland*, 708 F Supp 1289 (1988). The new law forbids petitioning within 50 feet of a polling place, and if there is a line of voters waiting to vote outside the 50 foot zone, the new law also forbids petitioning within 25 feet of anyone waiting in line. The new law may also be unconstitutional.

REVERSE DISCRIMINATION?

On February 21, the Supreme Court refused to hear *Houde v Starkweather*, a case challenging discrimination against Democrats and Republicans who try to get on primary ballots, versus independent candidates! New York state law requires Democrats and Republicans in counties with a population greater than 250,000 (excluding New York city) to collect 2,000 signatures to run for countywide office, whereas independent candidates in the same counties, running for the same office, only need 1,500 signatures. Ardith Houde, who desired to run in the Democratic primary for Family Court Judge in Monroe County in September 1988, failed to collect 2,000 signatures, so she sued, claiming that constitutionally she could not be required to submit more than 1,500. However, the New York state courts refused to strike the requirement, and the U.S. Supreme Court refused to hear her appeal. If the Democratic Party had intervened on behalf of Houde, Houde might have won the case, since recent Supreme Court decisions have supported the idea that political parties themselves may determine the details of how they nominate candidates.

ACLU TO ASSIST IN MISSOURI

The Missouri ACLU has agreed to sponsor the Libertarian Party's appeal in *Manifold v Blunt* to the U.S. Supreme Court. This is the case over whether it is constitutional for a state to require a new party to name its presidential electors in early August, when old parties need not name them until mid-October. The ACLU has already received an extension of time from the U.S. Supreme Court; the ACLU brief is now due in mid-August. The Missouri Libertarian Party heartily thanks everyone who donated toward the costs of the Supreme Court appeal, and asks that any more donations be sent to the ACLU, 4557 Laclede, St. Louis Mo 63108.

1990 PETITIONING

The Maryland Libertarian Party has about 5,500 signatures on its petition to qualify the party (10,000 are required). The Utah Libertarian Party has completed its petition, and has been certified for the 1990 ballot (500 valid signatures were required). The New Alliance Party has about 500 signatures on its party petition in North Carolina (about 43,000 are required). No Libertarian Party petitioning has begun in North Carolina yet, because Project 51-'92 still hasn't raised enough money to sign a contract with a professional signature-gathering firm. However, the petitions have been printed.

POLITICAL PARTY RIGHTS

On May 31, the Democratic Party of California asked a federal court to declare unconstitutional a California law which prohibits political parties from contributing more than \$5,000 per fiscal year to any particular candidate. The party did not file its own lawsuit, but asked to intervene in a case which had already been filed, *Service Employees International Union v Fair Political Practices Commission*, case no. CV 89-0433-LKK-JFM (eastern district of California). The case generally challenges provisions in Proposition 73, a campaign reform measure passed by the voters in June 1988. There are no previous precedents on whether the First Amendment protects a political party's right to contribute as much money as it wishes to its own candidates.

THANK YOU!

Thank you, John McGovern and Bruce Smith, for contributions to *Ballot Access News* beyond the subscription price. Also, thank you, Tim Brace and Craig Franklin, with help involving access to a computer for the newsletter. *Ballot Access News* appreciates the support it has enjoyed from readers, starting in 1985. Please continue to send in news. From now on, if you are able to contribute financially, please send contributions to COFOE, which could do far more for better ballot access if it were better funded. Now that *Ballot Access News* has a Second Class mailing permit, it only costs about 12 cents to mail each copy, and this eases the financial burden.

COFOE

Readers are urged to join COFOE, which works on ballot access problems. Dues of \$10 entitles one to membership with no expiration date; it also includes a one-year subscription to *Ballot Access News* (or a one-year renewal). Organizations which are members of COFOE include the Libertarian, New Alliance, Communist, Socialist and Prohibition Parties, the Green Party of New York, the Peace & Freedom Party of California, Liberty Union Party of Vermont; also the Long Island Progressive Coalition. The Populist Party has also decided to join COFOE. Address: Box 355, Old Chelsea Sta., New York NY 10011. Membership applications can also be sent to 3201 Baker St., San Francisco Ca 94123.

CONSUMER PARTY TO SUE

In November 1988, the Consumer Party of Pennsylvania polled enough votes to meet the definition of "political party", but the state still refused to recognize the Consumer Party because it didn't meet a second requirement, that the party also poll a certain percentage in at least ten counties. The second requirement, relating to ten counties, is almost certainly unconstitutional under a 1969 U.S. Supreme Court precedent, *Moore v Ogilvie*, since counties do not have equal populations. Such requirements discriminate against the voters of populous counties.

The Consumer Party originally was not going to bring a lawsuit because it felt that, even if the case won, having status as "political party" was barely worthwhile. In Pennsylvania, a "political party" is treated as though it were not a qualified party in most aspects, unless it holds registration equal to 15% of the state total. However, the party changed its mind because there are some advantages to being a "political party". For instance, a "political party" can nominate anyone, whereas an unqualified political organization cannot nominate someone who has been registered as a Republican or a Democrat in the three months before the filing period.

COMMUNIST PARTY MAY SUE

The Communist Party would like to be able to place candidates on the ballot in California under the party name, but California election law provides no method for the party to do so, unless it (1) submits a petition signed by approximately 760,000 valid signatures; or (2) it persuades 76,000 Californians to publicly affiliate with the party, on voter registration forms. Since the U.S. Supreme Court ruled in 1982 that unpopular political parties enjoy special privacy rights and cannot be forced to reveal the names of their campaign supporters, it is likely that alternative (2) above is unconstitutional, when applied to a party like the Communist Party. Voter registration records in California, as in most states, are completely open to the public. Alternative (1) is also probably unconstitutional, due to the excessive number of signatures required. The party is thinking of bringing a lawsuit against the California requirements.

—THE PLAIN DEALER, SATURDAY, JUNE 3, 1989

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THE PLAIN DEALER*Our 148th Year*THOMAS VAIL
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Independent identification

When they looked at their presidential ballots last fall, some Ohio voters faced a dilemma: Who, they asked themselves, were all these people? Most voters recognized at least a couple of the names—after all, George Bush and Michael Dukakis had spent a considerable amount of money to purchase that familiarity—but others on the list had to be confusing. Who were Ron Paul and Lenora B. Fulani, Edward Winn and Lyndon H. LaRouche, anyway?

Well, Paul, Fulani, Winn and LaRouche were candidates of minority political parties, which for the most part are unrecognized under Ohio law. The political philosophies of each were roughly as divergent as the points on a compass, spanning the gamut from the free-market individualism of Paul's Libertarians to the collectivist-socialism of Winn's Workers League to the paranoid fascist ramblings of LaRouche, the world-conspiracy theorist. Almost no common ground exists among them—except for the label that the State of Ohio attached to their names on the ballot: Independent.

That label is gross oversimplification, and it's

wrong. A measure now resting in the Ohio Senate's State and Local Government Committee would correct this shortcoming. Senate Bill 137, cosponsored by Gary Suhadolnik and Grace Drake, among others, would amend Ohio law to allow independents to be identified by their political affiliation, both on the necessary nominating petitions and on the ballot.

This piece of housekeeping legislation would serve petition signatories and voters by immediately identifying the philosophies that the candidates espouse. It might even prevent Ohio's major parties from suffering the embarrassment that has occurred elsewhere, when people of radical views, who otherwise might have run as minor-party candidates, have instead taken the much easier course of declaring themselves Democrats or Republicans.

Such truth-in-labeling legislation would carry no cost for taxpayers, nor would it mean the breaking of new ground; 27 states already allow minor candidates to carry their party identification. It's time for Ohio legislators to overcome their inordinate fear of the fringe parties and allow them their proper public identification.

LIBERAL PARTY PRIMARY

The Liberal Party of New York state has formally asked the State Board of Elections to let all independent voters vote in its primary. The state has not yet responded. In 1986, the U. S. Supreme Court ruled in *Tashjian v Republican Party of Connecticut* that any political party may decide for itself whether to let independent voters vote in its primary, regardless of state law. New York state law does not permit independent voters to vote in any party primary. The Liberal Party is the first third party to exercise its *Tashjian* rights.

WRITE-INS

1. There will be a hearing on June 26 in the Hawaii Supreme Court in *Burdick v Takushi*, the case over whether Hawaii must provide write-in space on ballots.
2. On May 11, Bill Shakalis of the Socialist Party, and Richard Whitney of the Prohibition Party, testified before the Boston City Council about the failure of Boston elections officials to tally any write-in votes for president in November 1988, even for the declared write-in presidential candidates. On May 15, Benjamin F. Thompson, chairman of the Boston Election Commissioners, apologized for the error and promised in writing that it won't happen in 1992.
3. The Indiana Attorney General finally submitted a brief in *Paul v State Board of Elections*, the case over whether Indiana must permit write-in space on ballots. The brief is rather short and doesn't give the appearance that the state is fighting very hard to retain its write-in ban. A hearing in the case is likely in late summer 1989.

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ELECTION RETURNS

1. On May 16, 1989, a special election was held in the 60th representative district of Pennsylvania to fill a vacancy. The vote was:

Democratic	Pesci	7,670	48.6%
Republican	Scahill	6,933	43.9%
Populist	Smolik	1,190	7.5%

The Populist candidate's showing was easily the most impressive showing in a state or federal election ever by a modern-day Populist Party candidate who was labelled "Populist" on the ballot (there was also a Populist Party in the United States between 1891 and 1908, but it was a separate party with out continuity to the present-day Populist Party and it used a different ballot label, "People's Party").

The Populist Party also ran a candidate in the 60th district in 1986, but that candidate only received 5.2% of the vote even though he had only one opponent, a Democrat.

2. On May 9, the Socialist Workers Party candidate for city council, 6th ward, in Morgantown, West Virginia, Dick McBride, received 19.2% of the vote ion a two-person race. The election was officially non-partisan. It was the best showing by an SWP candidate since 1983.

3. The Populist Party ran two candidates for the New Jersey Assembly in the Republican primary on June 6. Two seats were up, and the only opponents of the Populists, were the two regular Republicans. Charles W. Williams, one of the Populists, received 2,057 votes, or 15.6%; the other Populist, Hank Schau, received 1,099 votes, or 8.3%. Schau is chairman of the New Jersey Populist Party and the lead plaintiff in the pending lawsuit against NES (News Election Service), the case over whether election night television reporting can alter vote percentages to always show that Democrats and Republicans received 100% of the vote cast.

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