

BALLOT ACCESS NEWS

San Francisco, California

September 5, 1989

Volume 5 Number 4

HR 1582 GAINS MORE CO-SPONSORS

HR 1582 has gained four more co-sponsors since the August 4, 1989 issue of *B.A.N.* HR 1582 is the Conyers' ballot access bill. The new co-sponsors are: Kweisi Mfume of Maryland, Julian Dixon of California, Cardiss Collins of Illinois, and George Crockett of Illinois. All were obtained by efforts of the Rainbow Lobby. Tragically, Mickey Leland of Texas was killed in Ethiopia last month. He also had become a co-sponsor since the last issue.

Polls for the Detroit mayoral election now indicate that Congressman Conyers is not likely to win his race to become Mayor of Detroit. Incumbent Mayor Coleman Young is leading by a substantial margin. While *B.A.N.* wishes Conyers well, he is much more useful to the fair ballot access movement as a member of Congress! If he were to resign from Congress, it might be difficult to find another member of Congress willing to become the prime sponsor of HR 1582.

During the last week of August, David Belmont of the New Alliance Party, Donna Waks of the Rainbow Lobby, and Richard Winger of the Libertarian Party, visited congressional offices and met with staff members for these members of Congress: Martin Sabo of Minnesota, Bruce Morrison of Connecticut, Wayne Owens of Utah, Philip Crane of Illinois, Pete Stark, Tom Campbell and Nancy Pelosi of California, and Nita Lowey and Louise Slaughter of New York.

Also, the group met with an assistant to Roman P. Buhler. Buhler is the Minority Counsel (i.e., counsel to the Republicans) on the House Subcommittee on Elections. He is a Californian and a longtime Republican Party activist, particularly on election law issues. Those supporters of HR 1582 who are willing to try new approaches, ought to write to Buhler and urge him to use his influence to assist the bill. His address is 330A The Capitol, Washington DC 20515. Tell him that the Republican Party was founded on July 6, 1854, and that it went on to win a plurality in the autumn 1854 congressional elections (plurality means that the party had less than a majority, but it had more seats than any other party). It is fitting that the Republican Party, which itself rose to power by displacing one of the older major parties, should appreciate the importance of keeping the doors unlocked for new parties in our own time. Also mention that during this decade, Republicans in the California, North Carolina and Florida legislatures have been much more favorable to fair ballot access than most Democratic legislators in those states. Remind him that the Republican Party holds itself out as a defender of free competition. If Republicans on the Elections Subcommittee are willing to be open-minded, the chances of getting hearings would be greatly enhanced. There has never yet been a Republican co-sponsor for HR 1582.

FLORIDA VICTORY

On August 7, federal judge Maurice Paul, a Reagan appointee, declared Florida petition procedures for third party and independent candidates unconstitutional, as applied to special congressional elections. He also ruled that any independent candidate for the special election held on August 29 (to fill Congressman Claude Pepper's vacant seat) could get on the ballot, with a petition signed by 1% of the number of registered voters in the district, due August 16. *Migala v Martinez*, 89-40168-MMP.

Florida law requires an independent candidate in the special election to submit petitions of 3% of the number of registered voters, with only a 6-day petitioning period. The Florida Secretary of State had already acknowledged that this requirement was hopelessly restrictive, and had expanded the period to 13 days, without any statutory authority. Consequently, it was somewhat difficult for the Secretary of State to defend the law in court. Nevertheless, the decision was a great victory, since generally, federal courts in Florida have been more hostile to third party and independent candidate ballot access rights than federal courts in any other state. In 1975, a 3-judge federal court had upheld a Florida statute that required an indigent candidate in major party primaries to submit a petition signed by 5% of the number of registered voters in his own party, with only a 21-day petitioning period. *Bush v Sebesta*, no. 72-296-Civ-T-K. Also, an indigent Democrat in the same 1989 special congressional election had filed a lawsuit for more time in which to petition to get on the special Democratic primary, and she had failed to gain injunctive relief (see *B.A.N.* of July 7, 1989).

The only third party or independent candidate who tried to take advantage of the decision was Libertarian Marlon Migala. He submitted 3,131 signatures; 1,842 were required. Unfortunately, 1,118 signatures had addresses outside of the 18th congressional district, leaving only 2,013 signatures to be checked. Not surprisingly, there weren't enough valid signatures. Migala was not even able to run a write-in campaign, since the deadline for filing as a write-in candidate had long passed (it was in July!). It is difficult to petition in just a single congressional district, as opposed to petitioning within a state, since polls show that 80% of Americans don't know who their member of Congress is. It's even more difficult in urban areas, where congressional district boundaries frequently split cities, towns, and even neighborhoods.

Judge Paul's order did not specifically order that a party name be printed on the ballot, for any third party candidate who qualified. However, elections officials were willing to print a party label; Migala was asked how he wanted "Libertarian" to be abbreviated on the ballot next to his name, a few days before it became apparent that his petition would not succeed. Florida election law does not contain any provision for a new political party to appear on the ballot in a special election.

HAWAII LOSS (I)

On July 21, 1989, the Hawaii Supreme Court ruled that Hawaii, in fact, does not permit write-in voting, and that this restriction does not violate the Hawaii Constitution. The Hawaii Supreme Court thus became the first state supreme court since 1910 to rule that its state's constitution does not protect the right of voters to vote for whomever they wish. By contrast, the State Supreme Courts of California, Colorado, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon and Pennsylvania have all ruled that their state constitutions protect this right (although the Nevada Supreme Court did rule in 1910 that voters must be permitted to cast write-in votes, existing Nevada law bans write-in voting).

The Hawaii State Supreme Court has generally been contemptuous of voting rights. In *Nachtwey v Doi*, 583 P 2d 955, it ruled that a petition requirement (in lieu of a filing fee) could be enforced for the 1976 primary, even though the legislature had not created the petition procedure until two months before the petition had to be submitted. In 1978, in *Hustace v Doi*, 588 P 2d 915, the same Court upheld an independent candidate procedure that had been so difficult it had almost never been used.

In 1985, it outdid even these actions. Two Honolulu city councilmembers had changed their party affiliation from Democratic to Republican, and as a consequence had been recalled by bare majorities. The Republican Party then nominated them to run in the special election to succeed themselves, but a City Charter provision barred anyone who had been recalled, from running for office within two years of the recall. The two ex-city councilmembers filed a lawsuit against the City Charter restriction in federal court, and the 9th circuit struck down the two-year restriction (Judge Anthony Kennedy, now on the U.S. Supreme Court, signed this decision). After the two former councilmen had won their constitutional case, the Hawaii Supreme Court still kept them off the ballot on the technicality that the Hawaii election law for special elections uses the term "successor", and since some dictionary definitions of "successor" imply that no one can be his or her own "successor", therefore the two ex-councilmen still couldn't run! *Mink v Pua*, 711 P 2d 723. And in 1986, the Hawaii Supreme Court refused to hear a challenge to Hawaii's early deadline for new political parties to get on the ballot. The Libertarian Party, which had brought the case, then went to federal court and won an injunction against the deadline. Since Hawaii became a state in 1959, the Hawaii Supreme Court has *never* ruled in favor of voting rights.

The decision upholding the ban on write-in voting was very short and cited no precedents nor even any reasons. The only reason the case was even in the State Supreme Court was because the 9th circuit had remanded it there. It now returns to the U.S. District Court, where Judge Harold Fong will probably rule that the U.S. Constitution protects the right to cast a write-in vote. *Burdick v Takushi*, no. 13157 in the Hawaii Supreme Court.

HAWAII LOSS (II)

On August 2, 1989, the 9th Circuit upheld Hawaii procedures for independent candidates (for office other than president) by a vote of 3-0. The judges were Diarmuid O'Scannlain, Stephen S. Trott, and Alan C. Kay, all Reagan appointees. *Erum v Cayetano*, no. 87-15156.

Independent candidates (for office other than president) in Hawaii must poll 10% of the vote in the primary election, or they cannot run in the general election. No independent candidate has ever fulfilled this requirement. Primary voters in Hawaii are handed a Democratic primary ballot, a Republican primary ballot, a Libertarian primary ballot and a non-partisan primary ballot (although no non-partisan primary ballot is printed if no independent candidate has filed to run for any office). The voter must decide which ballot he or she wishes to use, and vote on that ballot only; the others are thrown away. The vast majority of voters choose to vote in the Democratic primary, since the others rarely have contests. In the race which triggered the lawsuit, for Kauai County Commission, there were seven seats to fill, but only one Republican filed, and he only received 1.2% of the primary vote. The Republican still was permitted to be on the general election ballot, since the 10% vote requirement only applies to independent candidates, not party candidates.

The law contains a loophole, which states that an independent can also appear on the general election ballot if he or she polls more votes than one of the candidates nominated by a political party. The 9th circuit seized on this provision of the law to point out that there have been Independent candidates on the ballot in five election races in the history of the law. However, in all five instances, the independent was only able to appear because he or she received more votes in the primary than the Libertarian candidate received in the Libertarian primary. What this means in practice is that an independent candidate can appear on the general election ballot in Hawaii, only if a Libertarian happens to be running for the same office. This is irrational and should have been used as an argument to criticize the law, not to uphold it.

Judge O'Scannlain, who wrote the decision, has been chairman of the Oregon Republican Party, counsel to the Republican National Committee, a candidate for Congress, a 3-time delegate to Republican national conventions, and a member of President Reagan's transition team. Judge Trott, who also signed the opinion, is the same judge who wrote in July that political parties have no right to endorse candidates in non-partisan elections.

The plaintiff, has asked for a rehearing *en banc*, and an *amicus* brief on his behalf has been submitted by the New Alliance Party. It points out that in 1974 the Supreme Court refused to approve a California independent candidate restriction which combined a 5% showing of support, with a restriction on the independent candidate's supporters voting in partisan primaries. Consequently, how can a 10% requirement, combined with the restriction on voting in partisan primaries, be constitutional?

CONGRESS

HR 2190, the voter registration bill, has a fifty-fifty chance of being voted on during September, on the House floor, according to Congressional staffers. It is important for HR 1582 that the vote occur, because Congressman Conyers has always been reluctant to work energetically for HR 1582, until the House has fully dealt with the voter registration bill. Conyers cites the danger of confusion between the two bills. Conyers has sent a "Dear Colleague" letter asking for co-sponsorship of HR 1582, only to those members of Congress who co-sponsored it in the past. He says he will send a similar letter to *all* House members once the voter registration bill has received a vote on the House floor.

STATE LEGISLATIVE NEWS

California: The Senate passed AB 633 on September 1, and the Assembly concurred in Senate amendments on September 5. The bill expands the petitioning period for independent presidential candidates from 60 days, to 105 days. The bill also makes other unrelated changes in various election procedures.

AB 368, the bill to move the presidential primary from June to March, will probably receive a vote on the Senate floor during the first half of September.

Florida: Paula Zimmer, 1560 Silver St., Jacksonville FL 32206, state chairman of the Libertarian Party, is raising money to hire a professional lobbyist to work for a bill to improve ballot access. Since the Florida legislature must amend the requirements for ballot access in special elections (since the existing law has been thrown out), chances are better than they have been in the past. Zimmer hopes to raise \$7,000, which may be sufficient, if a professional lobbyist who is already working in Tallahassee, such as a lobbyist for the ACLU or Common Cause will agree to do the lobbying.

Massachusetts: HB 3211 would lower the number of signatures for third party and independent candidates from 2%, to 1%, of the last vote cast. Because the bill has made so little progress, Massachusetts activists had planned to qualify an initiative for the ballot, to lower the number of signatures to one-half of 1% of the last gubernatorial vote. A final decision will be made on September 10. Another bill, HB 1544, which would change the filing deadlines for third party and independent candidates to conform to a court decision, has not made any progress since May either.

Montana: State Senator Tom Beck has agreed to introduce a bill in the next session of the legislature which would make it easier for a political party to remain qualified.

North Carolina: House Bill 1028 would provide that voters in each congressional district would elect their own presidential elector, rather than the normal procedure by which presidential electors are elected as a statewide slate. The bill has not made any progress but remains technically alive, and could be considered in 1990.

POLITICAL PARTY RIGHTS

1. On August 9, the California Attorney General stipulated that California election laws which require all political advertising for partisan primary candidates to carry the message, "The endorsement hereon is by an unofficial political group. Official organizations of the (name) Party are prohibited by law from endorsing candidates in primary elections" are unconstitutional. The stipulation was obtained due to a lawsuit filed in federal court, *United Democrats of San Francisco, et al v Eu*, no. C 89-2071-RHS, Northern District. The specific California election laws invalidated by this stipulation are sections 11703, 11704, 11705, and 29413. Since the U.S. Supreme Court had already ruled earlier this year that it is unconstitutional to tell political parties that they can't endorse candidates in partisan primaries, there was no longer any rationale for laws mandating that an untrue message be printed on campaign literature.

2. On August 7, 1989, the Democratic and Libertarian Parties of California filed an amicus brief, to support the request for a rehearing in the 9th circuit in *Geary v Renne*, no. 88-2875. The issue is whether political parties may endorse or oppose candidates in non-partisan elections. It will probably be several months before the Court indicates whether a rehearing will be granted.

3. The Committee for Party Renewal, a non-partisan group of political scientists and political party activists, is trying to initiate a lawsuit which would challenge federal election law which inhibits how much money a political party can contribute to its own candidates. Unfortunately, no attorney has been found who is willing to do the proposed case for free (the lawsuit *Eu v San Francisco County Democratic Central Committee*, initiated by the Committee for Party Renewal in 1983, was done at no expense to the plaintiffs by a San Francisco law firm). The new proposed lawsuit will require that the plaintiffs contribute \$75,000. The Libertarian Party was interested in this proposed case, until it learned that it would need to contribute \$25,000. The only plaintiffs likely to afford the case are various units of the Republican Party and/or Democratic Party.

PAGES 4 AND 5 CONSIST OF OP-ED PIECES WHICH WERE CARRIED BY TWO OF OHIO'S BIGGEST NEWSPAPERS LAST MONTH.

BALLOT ACCESS NEWS (ISSN 10436898) is published by Richard Winger, Field Representative of the Coalition for Free and Open Elections, \$6 per year, thirteen times per year, every 4 weeks, at 3201 Baker St., San Francisco CA 94123. Second class postage paid at San Francisco CA. © 1989 by Richard Winger. Permission is freely granted for reprinting *Ballot Access News*, in whole or in part.

POSTMASTER: Send address changes to *Ballot Access News* at 3201 Baker St, San Francisco Ca 94123.

THE PLAIN DEALER, MONDAY, AUGUST 7, 1989

5-B

FORUM/ESSAY & COMMENT

Ohio must open itself to third parties

By DAVID P. BERGLAND

On June 3, The Plain Dealer editorialized in favor of a proposed change in Ohio's election laws that would allow "third party" presidential candidates to identify themselves by party label on the ballot, arguing that this "would serve petition signatories and voters by immediately identifying the philosophies that the candidates espouse."

On July 25, the PD did an apparent about-face. That editorial scolded the National Organization for Women for considering the formation of a third party even though neither the Democrats nor Republicans show any promise of responding to the desires of the many women — and men — who support the NOW agenda.

The editorial accurately observed how difficult it is for third parties to succeed, but failed to give accurate reasons for this. It also flopped miserably by characterizing today's most substantial, and growing, political alternative, the Libertarian Party, as an "eccentric remnant."

Anyone who complains about what the government is or isn't doing should be

working to open up the system for new parties — to break up the two-party monopoly that is boring the electorate to death. The effect of that monopoly can be seen in the fact that 98% of congressional incumbents were re-elected in 1988.

Political scientists who have studied political parties invariably agree that the system cannot operate if the voters are denied an opportunity to form new parties, when the old ones both fail to represent them. If it's impossible for the voters to organize new parties, then the two major parties tend to become increasingly alike — each striving to occupy the bland middle ground and fearful of bold new proposals.

The great value of third parties is their willingness to advocate radical reforms, such as the abolition of slavery before the Civil War. The establishment parties must then deal with the new proposals or lose support themselves. Third parties are a leading force for change, the voice of minority views that sometimes become majority views.

Indeed, American politics is considerably more "libertarian" today than when the Libertarian Party was formed in 1971.

The device most state legislatures use to frustrate new political groups is to pass arbitrary and punitive election laws making it physically and economically burdensome to qualify a new party or its candidates.

Third parties are a leading force for change.

For example, in Florida, new parties are required to register more than 350,000 voters to gain ballot status. A political party cannot keep ballot status in Alabama until it polls more than 20% of the vote for president.

In Ohio, for a new party to qualify to put its candidates on the ballot in 1990 will require nearly 50,000 petition signatures. To qualify a new party in every state would require more than 1.5 million signatures or voter registrations.

Democrats and Republicans exclude themselves from such requirements.

The Libertarian Party, and other alternative parties, have filed hundreds of law-

suits challenging arbitrary election laws and activities of police and election officials as unconstitutional. Most often the challenges have been successful. Sadly, state legislatures frequently respond with new unconstitutional laws to replace those knocked down by the courts, so the battle must be fought again.

The alternative parties are also lobbying steadily to convince legislators that open access to the political process for all views and candidates is the only fair and democratic way. Those efforts are having increasing success.

One result of limited ballot access for alternative parties is that people like the ex-Marxist, now fascist, Lyndon LaRouche runs as a Democrat and ex-Ku Klux Klan leader David Duke runs as a Republican. It is amusing to hear Democrats and Republicans whining that "those people" should start their own parties. They would if the establishment politicians made it legally practicable by repealing their unfair ballot access laws.

Political scientists estimate that the American electorate is roughly equally divided among four clearly different politi-

cal points of view: left-liberal, right-conservative, libertarian and socialist-authoritarian. The two old parties have elements of all in them, but tend to be basically wimp-centrist, concerned only with staying in power. No wonder most eligible voters stay home on election day.

Just as competition is the greatest benefit to consumers in the economic marketplace, competition is the greatest benefit to consumers (voters) in the marketplace of political ideas. A variety of political parties would provide that healthy competition.

Although I personally think the generally socialist/statist agenda of NOW is wrong-headed, I hope NOW does form a new political party to advance its causes. The more parties, such as the Libertarians, take fearless positions based upon clearly stated political ideas, the more the American voters will have the opportunity to support candidates and parties with whom they agree.

Bergland, of Costa Mesa, Calif., is a former presidential candidate and former national chairman of the Libertarian Party.

For free elections in America

BY MARJORIE C. DAVIES

Guest Columnist

In his July 16 column, "Keeping the Two-Party System," Thomas Gephardt mentions Milton Norris' challenge to Ohio's "political duopoly" but doesn't describe his tactics. Gephardt allows how Democrats and Republicans have effectively locked out competing political parties by enacting restrictive ballot-access laws. He reminisces about our two-party system and frets over Israel's fragile government. In the end, he defends ballot-access restrictions because of their supposed promotion of stability. Let's examine his arguments.

The United States has been dominated by two parties from the beginning — first the Federalists and Anti-Federalists, later the Democratic-Republicans and Whigs, and recently the Democrats and Republicans. Much of this is due to our plurality elections: congressmen elected by district, with the seat going to the largest vote-getter. Those out of power then gather support to displace them. Other perpetuating factors are tradition and sufficient social harmony to avoid fragmentation.

The parties decide

In Israel's proportional-representation system, voters elect parties, not individual candidates. Parties win seats in proportion to vote totals; they, not the voters, choose individuals to fill those seats. Minor parties can thus win seats without a plurality in any geographic area, which encourages multiple party formation. Other factors in Israel are the absence of a constitution and a lack of political traditions. Israelis hold strongly divergent opinions on government form, legitimate geographic boundaries, and economic policy, and this has had a fragmentary effect.

Great Britain, with considerable stability, has multiple parties. Since 1975, the Conservative, Labor and Liberal/Social Democratic Alliance parties have polled about 45%, 30% and 20%, respectively, of votes cast. Smaller parties pull the remaining 5%.

Have they always had such competition? Hardly. From 1945 to 1970, Britain was a two-party state, with Labor and Conservative drawing 90%-95%. The duopoly wasn't broken until the mid-1970s. Now voter turnout is 80% compared to America's low 55%. Britain achieved competitive elections with a plurality sys-

“ If stability were the prime issue, we could just have one party. ”

tem much like our own.

Israel's inability to "form a government" is common in parliamentary regimes. Unlike the United States with its separation of powers, Israel's Knesset appoints the governing Cabinet; when legislative coalitions fail, the executive branch loses legitimacy. Britain, however, with strong political traditions, adapted well to a parliamentary system.

Despite Gephardt's insinuation, Israel's instability has little to do with competitive elections and everything to do with government structure and social factors. Because of profound differences between Israeli and American government and society, Gephardt's comparison was inappropriate. Britain closely resembles the United States and is thriving under a multi-party system.

But what if we *could* guarantee stability by restricting electoral choices? Would that justify denying voters their opinions? Benjamin Franklin said that we sacrifice our liberty to get security, and end up with neither. If stability were the prime issue, we could just have one party. Totalitarian governments are remarkably stable.

Freedom fighters in China, Poland and the Baltic states could assure stability by accepting the status quo. Instead, they risk their lives for more electoral freedom.

The purpose of ballots is to facilitate the wishes of voters, not to control whom they vote for. If voters want to vote for someone whose name is not on the ballot, then the ballot isn't serving its function.

Gephardt submits that "Ohioans remain content with election laws that effectively preclude anyone but Democrats and Republicans from winning places on the ballot." On the contrary, few Ohioans are aware of the laws. Last summer while petitioning, I spoke with thousands of registered voters. Not one of them realized that independents must petition heavily. Their typical shocked response was, "This is America! Of course they should be able to run for office!"

Milt Norris is supporting Senate Bill

137, a ballot-labeling law requiring independents to be identified on the ballot with their group or party affiliation. A sort of truth-in-labeling law. Democrats and Republicans are already so identified; other qualifying candidates are listed with their names only, leaving the baffled voter to wonder about the candidates' affiliation.

One can appreciate the possible historical appropriateness of a natural two-party system and still challenge a legally enforced duopoly. SB137 is a small first step in assuring free elections.

Party affiliation of U.S. voters has declined dramatically over the last 25 years. A plurality (35%) now consider themselves independent, neither Democrat nor Republican. The rise of single-issue groups makes coalition-building for the major parties difficult, and the prospects for minor parties attractive. What better way to assure themselves of continued rule in the face of declining support than for those in power to keep the competition off the ballot?

Attuned to greed

Gephardt sees politicians "attuned to the aspirations and concerns of the great majority of their constituents." With each day's news bringing more tales of corruption, many Americans see their representatives more attuned to greedy interests who would feed at the public trough. Their knack of "responding to crises" amounts to little more than ineffectual jabs at symptoms that are themselves the side effects of their own shortsighted policies.

If further protected from competition, Democrats and Republicans will continue "moving toward the middle," and only keen-eyed observers will detect substantive differences between them. Voters will continue to tune out.

A century ago, established parties failing to tackle difficult issues were replaced by new parties with the courage to take bold stands. Thus was the Republican Party formed to end slavery. With the problems facing America today, the last thing we should do is close the door on new ideas.

Marjorie C. Davies devotes her full time to volunteer work. She recently completed a year as chairman of the Libertarian Party of Ohio.

FRUSTRATION RELIEF

Most readers of *B.A.N.* are aware that Congressman Al Swift, Democrat of Washington state, has always been chairman of the House Elections Subcommittee since the Subcommittee was created, and that he has refused to hold any hearings on the Conyers' ballot access bills, ever since 1985. He has met with constituents who wanted him to hold hearings on the bill, he has been the recipient of tens of thousands of petition signatures, all to no avail.

Dean Brittain, a constituent of Swift's, has announced that he will run for Congress against Swift in 1990, and that he will make Swift's refusal to hold hearings his number one campaign issue. Brittain is a Libertarian. Once his campaign committee is organized, *B.A.N.* will print his campaign address for anyone who wishes to contribute to his campaign. In 1988, Al Swift had no opponents whatsoever on the November ballot, or the primary ballot, running against him.

Of course, it is still possible that Swift will hold hearings on HR 1582 before the 1990 election. He has always claimed that he would hold hearings as soon as the Elections Subcommittee has time for them.

MISSOURI BRIEF FILED

On August 11, the ACLU of Missouri submitted its petition to the U.S. Supreme Court, asking that Court to hear the Missouri Libertarian Party's appeal in *Manifold v Blunt*, the case over whether it is constitutional for Missouri to require new parties to choose their presidential electors two months before old parties must choose theirs. The Court will decide whether or not to hear the case sometime after October 2, 1989. No. 89-310.

NEW YORK

On September 5, a hearing was held in federal court in the Southern District of New York in *Coalition for a Progressive New York v Colon*, no. 89-CIV-5811 (RWS) before Judge Robert W. Sweet. The issue is whether Pedro Espada should be on the Democratic primary ballot as a candidate for the city council from the south Bronx. The Board of Elections removed him from the ballot, even though he submitted approximately 10,000 signatures to meet a 3,000-signature requirement. He was removed because two surprise witnesses at the hearing testified that Espada's petitioners committed fraud. Espada charges that the witnesses against him were bribed, and that their fraud charges are entirely false. A decision is expected in a day or so. If Espada is unable to get on the ballot, incumbent councilman Rafael Colon will face no opponents in the primary. The case is important because the plaintiff is trying to prove what many observers have long believed to be true, that the entire ballot access procedure in New York city is permeated in corruption.

CHECKING PETITION SIGNATURES

Several counties in Florida and California are now using a technically sophisticated method for checking petition signatures, according to *Election Administration Reports*. New technology makes it possible to replicate a voter's signature and to call it up on a computer screen. Thus, an employee of the county elections office can be seated in front of a computer terminal with a petition which needs to be checked. Without leaving his or her chair, the employee can compare a signature on a petition, with a replication of the voter's signature on the screen as it looked when the voter registered to vote.

There are problems inherent in checking signatures which the new technology cannot overcome. The appearance of some people's signature changes over time. Of course, this particular new technology doesn't make this problem any greater than it already was. The new technology does make it possible for elections officials to check petitions much faster than in the past.

TEXAS

1. The hearing in *Ybarra v Rains*, the long-delayed lawsuit over the constitutionality of Texas' May deadline for submitting petitions to get a new party on the ballot, has been delayed again. The Assistant Attorney General defending the law initially agreed to an October 2 date, but now he has asked for a further delay. The case was filed last year by the New Alliance Party.

2. On August 12, Texas held a non-partisan election to fill the vacancy in Congress created when Speaker Jim Wright resigned. Although no party labels were on the ballot, one of the eight candidates, Robert Buckingham, was a Libertarian. All of the other candidates were Republicans or Democrats. Buckingham received .85%. In 1982, the last time a Libertarian ran in the 12th district, the candidate received .65%.

1990 PETITIONING

The Libertarian Party of Nevada has 4,000 signatures on its petition; 10,326 are required. The New Alliance Party has about 2,000 signatures on its party petition in North Carolina; 43,601 are required. The New Alliance Party has about 1,000 signatures on its Georgia petition; 29,414 are required. No Libertarian Party petitioning has begun in North Carolina yet, because the North Carolina Board of Elections has ruled that it is illegal for a PAC to give more than \$4,000 to a political party. Project 51-'92, the independent Libertarian PAC which had hoped to handle the North Carolina petition, has hired an attorney to overturn the board's decision, since the North Carolina law does not contain any restriction on PAC donations to political parties; the law only restricts donations to candidates, and the North Carolina party petition does not bear the names of any candidates. If the decision cannot be reversed, Project 51-'92 will turn the money it has raised over to the national Libertarian Party, and the national Libertarian Party will pay for the petitioning.

PROPORTIONAL REPRESENTATION

Here is the text of the California initiative which would provide for proportional representation to elect the lower house of the state legislature:

ARTICLE IV, Section 2 shall be amended as follows:

(a-d, no change)

(e) When a vacancy occurs in the Assembly, the Secretary of State shall immediately designate a person to fill the vacancy in accord with the following procedures: (i) By designating a person from the list of nominees for Assembly at the most recent general election in the district and of the same qualified political party as the vacating member. Nominees of the party shall be designated to fill vacancies in the same order as their names appeared on the general election ballot. (ii) If the vacating member was not affiliated with a qualified political party, or if the party with which the vacating member was affiliated has no nominees eligible to fill the vacancy, by designating a person to fill the vacancy selected in the order provided in Article IV, Section 6(c).

ARTICLE IV, Section 6 shall be amended to read as follows:

For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 8 Assembly districts to be called Senatorial and Assembly Districts. Each Senatorial district shall choose ten members of the Assembly. Each Assembly district shall be formed by joining five entire Senatorial districts, so selected that each Assembly district shall form a contiguous whole.

In the direct primary election in each Assembly district, the electors of each qualified political party may select a number of nominees, not to exceed ten, to represent the party in the general election. The order in which the names of the candidates of each party shall be placed on the primary ballot shall be determined by the randomized alphabet method, as prescribed by the Elections Code.

Each qualified political party shall designate by resolution, filed with the Secretary of State at least 180 days before each direct primary election, the system of voting and tabulation of votes to be used by the party in the primary in determining the nominees of the party for members of the Assembly.

Independent candidates may qualify for the general election ballot by petition in the manner prescribed by the Elections Code.

In the general election, the name of each qualified party and each independent candidate shall be placed on the ballot under the heading, "For Member of the Assembly." The order in which the names of the qualified political parties and independent candidates are placed on the general election ballot shall be determined by the randomized alphabet method as prescribed by the Elections Code.

Each elector of the Assembly district shall be entitled, in the general election, to cast one vote for the Assembly, which vote may be cast either for a qualified political party, or one independent candidate for the Assembly.

For information purposes, the names of the nominees of each political party for member of the Assembly shall be placed on the ballot, under the name of the party, in the order of the number of votes received by each candidate in the primary, with the nominee receiving the most votes in the primary listed first.

In the general election: (a) An independent candidate receiving at least ten percent of the total vote cast in the district for member of the Assembly shall be allocated a seat in the Assembly. (b) For each ten percent of the total vote cast for member of the Assembly in the district received by a qualified political party, a nominee of that party shall be allocated a seat in the Assembly. (c) If, after allocation of the district's Assembly seats as provided in subsections a and b, there remain additional seats to be allocated, these seats shall be allocated in descending order to the qualified parties or independent candidates receiving the remainder votes most nearly approaching ten percent of the total vote cast in the district for member of Assembly until all ten seats have been filled. (d) If a qualified party or independent candidate receives sufficient votes to be awarded a seat for which it does not have a nominee, the seat shall be allocated to another qualified party or independent candidate as provided in subsection c. (e) Seats in the Assembly allocated to a qualified political party shall be awarded to the party's nominees in the order in which the names of the nominees appear on the general election ballot.

(ARTICLE XXI, Section 1, is to be amended to delete the requirement that Assembly seats elect only a single member).

The initiative is sponsored by VOTERS (Volunteers Organizing Toward Electoral Reforms). VOTERS hopes to begin petitioning in January 1990, and can be reached at 9616 Caminito Tizona, San Diego CA 92126, (619) 530-0454. The initiative, if adopted, would permit any party to win a seat in the lower house of the California legislature, if it could poll 10% in any one of eight districts (the state would be divided into eight Assembly districts of equal population). This particular form of proportional representation is used in many European countries, but has never been tried in the United States.

ERRATA: The July 7, 1989 *B.A.N.* stated that Maryland was the only state with a filing fee for write-in candidates. Ohio also has one, of \$50.

NONPARTISAN BALLOT ACCESS GROUPS

1. COFOE, the Coalition for Free and Open Elections. Dues of \$10 entitles one to membership with no expiration date; this 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.

COFOE's strength is that it works exclusively on voting rights issues, with the greatest emphasis on ballot access. Also, it is supported by such a varied group of organizations, there is no likelihood of prejudice against the organization because of the partisan feelings of any observer.

2. **RAINBOW LOBBY**, organized in 1985, initiated the Conyers ballot access bill in Congress and maintains a lobbying office at 1660 L St., N.W., Suite 204, Washington, D.C. 20036, tel. (202) 457-0700. The Lobby supports itself by door-to-door solicitation carried out in seven major metropolitan areas. Dues are \$25 per year and entitle the members to a quarterly report. The Lobby works on other issues besides ballot access, but virtually all of its activity is in support of free elections, whether in the United States or elsewhere. The Lobby has vigorously worked to expose human rights abuses and undemocratic practices in Zaire and in the Western Sahara. Anyone who wishes to lobby for HR 1582 directly at the Capitol is welcome at the Lobby's headquarters. The Lobby hopes to begin lobbying soon for fairer ballot access laws in state legislatures of 6 or 7 states.

3. **FOUNDATION FOR FREE CAMPAIGNS & ELECTIONS**, also organized in 1985, has non-profit status from the IRS. Consequently, it cannot lobby, but deductions to it are tax-deductible. The Foundation was organized to fund lawsuits which attack restrictive ballot access laws. The address is 7404 Estaban, Springfield VA 22151, tel. (703) 569-6782.

4. **ACLU**, American Civil Liberties Union, has been fighting for fairer ballot access ever since 1940, when it published recommendations for a model ballot access law, including petition requirements of one-tenth of 1% of the number of voters. The ACLU has won lawsuits against restrictive ballot access laws in California, Colorado, Illinois, Indiana, Iowa, Michigan, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Pennsylvania, South Dakota, and West Virginia. ACLU lobbyists in state capitols have helped persuade state legislatures to improve ballot access laws. The national ACLU headquarters is at 132 W. 43rd St., New York NY 10036, tel. (212) 382-0557.

1989 ELECTIONS

The three most important elections in November, 1989, are for Governor of New Jersey, Governor of Virginia, and Mayor of New York city. In New Jersey, the only third party candidates are the Libertarian and Socialist Workers candidates; there are also 3 independent candidates on the ballot. In Virginia there are no statewide third party or independent candidates on the ballot. In New York city, the New Alliance, Libertarian, Socialist Workers, and Workers League petitioned to place citywide candidates for the ballot. Also, the established "third" parties of New York state will also appear: Conservative, Liberal and Right to Life.

The most impressive third party showing in November 1989 is likely to be in Philadelphia, where some polls show that Consumer Party candidate Max Weiner is running ahead of his Democratic and Republican opponents for City Controller. Two years ago, Weiner won 35.7% for Philadelphia city council-at-large.

FEC BALLOT ACCESS STUDY

The Federal Election Commission is now printing its ballot access study. It will probably be available for sale by the end of the year. It promises to be far more accurate and also clearer than the last such FEC ballot access study, published over ten years ago.

BUSH REAPPOINTS AIKENS

Last month, President Bush re-appointed Joan Aikens to the Federal Election Commission to a new six-year term. Aikens, a Republican, was the only FEC Commissioner who didn't vote to accept Lenora Fulani's application for matching funds last year. Bush also reappointed FEC Commissioner John McGarry, a Democrat whose term was up also.

RENEWALS: If this block is marked, your subscription is about to expire. Please renew. Post office rules do not permit inserts in second class publications, so no envelope is enclosed. Use the coupon below.

SECOND CLASS PAID AT SAN FRANCISCO CA

 I want to receive **BALLOT ACCESS NEWS**.
 I enclose \$6.00 for 1 year (overseas: \$10)
 Make check out to "Ballot Access News".

I want to join COFOE. Enclosed is \$_____
 (includes one-year subscription to this newsletter, or one-year renewal).
 Make check out to "COFOE". Minimum dues are \$10.

Name _____
 Address _____
 City _____ State _____ Zip _____