BALLOT ACCESS NEWS

San Francisco, California September 26, 1989 Volume 5 Number 5

FIRST REPUBLICAN CO-SPONSOR

HR 1582, the Conyers' ballot access bill, has gained its first Republican co-sponsor ever. On September 19, Congressman Howard Nielson of Utah notified Bob Waldrop that he will co-sponsor the bill. Bob Waldrop is a Utah Libertarian who has been actively seeking support for the bill among all of Utah's congressional delegation. Congressman Nielson has been a member of Congress since 1982. He represents Provo and eastern Utah.

Congressman Robert J. Mrazek, a New York Democrat, has written that he will vote for HR 1582 if it reaches the House floor. However, he is not willing to co-sponsor.

Congressman John Conyers, the chief author of HR 1582, has finally begun work on a "Dear Colleague" letter to all other members of the House of Representatives. Previously, he had only sought co-sponsorship this year from members of Congress who had co-sponsored it in past years. It will be easier to increase the number of co-sponsors, once Conyers' letter has been released.

Congressman Al Swift, chair of the Elections Subcommittee, now says that there is no time available during the remainder of 1989 to hold hearings on HR 1582, but he holds out hope for hearings in 1990.

YOUR HELP NEEDED

The Massachusetts Committee for Fair Ballot Access has launched its initiative drive to reform the state's ballot access procedures. The initiative would lower the number of signatures needed to qualify a third party or independent candidate to one-fourth of the existing level, from 2% of the last gubernatorial vote, to one-half of 1% (i.e., from about 40,000 signatures, to about 10,000). The initiative would make other changes to ease the petitioning process and would also make it easier for a party to remain qualified. Petitioners report that it's very easy to get people to sign the initiative. The Committee needs about 50,000 valid signatures by November 20. The number of signatures needed for an initiative in Massachusetts is based on the gubernatorial vote, and the turnout in Massachusetts in 1986 was so low, the requirement for an initiative is the lowest it has been since 1943 to 1946. Furthermore, it is easier to get an initiative on the ballot in Massachusetts, than in any other state. The issue of ballot access has never been presented to the voters of any state. If the initiative qualifies for the ballot, the Committee believes it will win at the polls, since Massachusetts voters are very unhappy with Governor Dukakis, and are also very conscious that Massachusetts is a one-party state. Most legislators in Massachusetts have no opponents on the ballot, year after year.

Therefore, this year's attempt to qualify the Massachusetts initiative is a golden opportunity which must not be wasted. Please send donations or loans to the Committee for Fair Ballot Access, Box 2557, Boston Ma 02208.

PARTIAL DEBATE VICTORY

On August 2, the U.S. Court of Appeals, 2nd circuit, ruled 2-1 that Lenora Fulani does have standing to challenge the tax-exempt status of the League of Women Voters Educational Fund. *Fulani v League of Women Voters Educational Fund,* no. 88-6243. The two judges who agreed that she has standing are Lawrence Pierce, a Reagan appointee, and Ellsworth Van Graafeiland, a Ford appointee. Richard Cardamone, another Reagan appointee, disagreed. The IRS code provides tax-exempt status for certain "non-partisan" organizations. Fulani had charged that the League is not truly non-partisan, because it invited all the Democratic and Republican presidential candidates who had qualified for federal matching funds (as of February 1988) to debate, yet had refused to invite the only non-Democratic, non-Republican presidential candidate who had qualified for federal matching funds at that time, Fulani herself. Consequently, Fulani had argued, the League actively assists Democrats and Republicans against their third party and independent opponents, and is not genuinely non-partisan. Therefore, Fulani stated, the League's Educational Fund (which sponsored the primary season debates) should lose its tax-exempt status.

The judges ruled that the League did act in a non-partisan manner during 1988, since it only conducted primary season debates. League debates matched the 7 Republican presidential candidates against each other; and other League debates matched the 8 Democratic presidential candidates against each other. Since Fulani was campaigning for the nomination of the New Alliance Party and certain other political parties during the primary season, the Court excused the League from failing to invite Fulani into a debate, since she had no opponent (who was seeking the New Alliance Party nomination) who had qualified for matching funds. Therefore, Fulani lost the case. But she really won it, since the court ruled that someone in her position does have standing to challenge an IRS ruling about tax-exempt status. The federal government had argued that an IRS decision of this type could not be challenged in court.

The majority wrote, "In this era of modern telecommunications, who could doubt the powerful beneficial effect that mass media exposure can have today on the candidacy of a significant aspirant seeking national political office." Also, "Campaigns serve other purposes besides electing particular candidates to office. They are also used to educate the public, to advance unpopular ideas, and to protest the political order, even if the particular candidate has little hope of election."

The case is expected to bolster Fulani's other debate lawsuit, now pending in the D.C. Circuit. The other debate lawsuit challenges the tax-exempt status of the Commission on Presidential Debates, which sponsored the general election season debates during 1988 and which also enjoys tax-exempt status.

HAWAII

On September 21, 1989, the 9th Circuit refused to grant a rehearing in *Erum v Cayetano,* no. 87-15156, the case over ballot access procedures for independent candidates (for office other than president). Hawaii requires an independent candidate to poll 10% of the vote in the primary, as a condition of being put on the ballot in the general election. This requirement has existed since 1969 and has never been used successfully. A voter who votes for an independent candidate in the primary, is forbidden to vote for any partisan candidates in the primary. There is a loophole in the law, which states that an independent can get on the general election ballot even if he or she doesn't poll 10%, if the independent outpolls one of the nominated partisan nominees. Generally, an independent candidate can qualify in Hawaii if there is a Libertarian running for the same office, since so few voters choose to vote on a Libertarian Party primary ballot.

No other state has a level of support requirement for independent candidates, above 5%, except that independent candidates for city office, and legislative office (if the district is contained entirely within one county) in North Carolina, must submit a 10% petition.

Theodorico Erum, plaintiff in the Hawaii case, plans to ask the U.S. Supreme Court to hear his appeal. His brief is due December 20. Any *amici* briefs on his behalf are also due December 20. Every organization interested in ballot access ought to file such a brief. The *Erum* decision is the most damaging ballot access opinion ever issued by a U.S. Court of Appeals. In dicta, it states that a 10% petition requirement to qualify a new political party or an independent candidate for the ballot is constitutional. In the past, all other federal courts which have evaluated petition requirements greater than 5% have found them unconstitutional.

STATE LEGISLATIVE NEWS

Arizona: State Senator Wayne Stump, a Republican of Phoenix, has said he agrees that it should be easier for a new party to get on the ballot in Arizona, and that he may introduce legislation in 1990 to lower the requirements.

California: AB 368, the bill to move the primary from June to March in presidential election years, was defeated on the Senate floor on September 14 by a vote of 17 "Ayes" to 13 "Noes". A bill needs 21 votes in order to pass. The Senate later voted to reconsider the vote in 1990. The bill lost because the Senate Majority Leader, Democrat David Roberti, felt that a March primary for legislators would leave too little time for legislative candidates to raise money. Proposition 73, which received a majority of "Yes" votes at the November 1988 election, bans fund-raising in the year before an election year. The validity of Prop. 73 is still undetermined, and is pending before the State Supreme Court. If Prop. 73 is upheld, and if the primary were held in March, there would be very little time in which candidate could raise funds.

On September 21, Governor George Deukmejian signed AB 633. The bill expands the petitioning period for independent presidential candidates from 60 days, to 105 days. This is the sixth bill to pass this year which improves ballot access procedures. Other 1989 improvements have been the extension of the independent presidential petition deadline in New Jersey, general improvements for third parties in Oregon, a deletion of the New Mexico registration requirement for qualifying a new party for the ballot, procedures to make it possible for independent and third party candidates to qualify in special elections in Indiana, and a reduction in the number of signatures needed in North Carolina for municipal independent candidates.

Indiana: Libertarians are meeting with several state legislators during the week of September 25-29, hoping to find a sponsor for a bill which would ease ballot access.

Louisiana: Representative David Duke has agreed to introduce a bill to ease requirements for new political parties to appear on the ballot. Although it's very easy for new party presidential candidates to appear on the ballot, new parties cannot appear on the ballot for other office, unless they persuade 5% of the voters to register as members of the party. The next session of the Louisiana legislature is in the summer of 1990.

CALIFORNIA

1. On September 12, a special election was held to fill the vacant seat of Congressman Tony Coelho, in the 15th district. The only third party candidate in the race was Libertarian Roy Shimp, who polled 775 votes, or .9%. At the regular election in 1988, the Libertarian congressional candidate in this district had polled 2.1%, but that was a 3-candidate race and this was an 8-candidate race.

2. On July 7, the California Secretary of State issued a ruling interpreting sec. 6430(b) of the Election Code. California election law provides that a political party may remain qualified if it polls 2% of the vote for any statewide race, during a gubernatorial election year. The law also provides that a new party may qualify if it persuades a number of voters, equal to 1% of the last gubernatorial vote, to register into the party. The question presented was how an already-qualified party could retain its position on the ballot, if it fails to poll 2% in 1990. The Secretary of State replied that if a party holds registration equal to the 1% threshold at any time after January 1990 (but no later than January 1992), then it will automatically be qualified for the 1992 ballot, even if it fails to poll 2% in 1990. This was good news for the American Independent Party, which holds registration of almost 2% of the last gubernatorial vote cast. The other two ballot-qualified parties in California, Libertarian and Peace & Freedom, each need another 30,000 registrants in order to safeguard their positions on the ballot, although if either or both polls 2% in 1990, the registration data won't matter.

POLITICAL PRIVACY

1. On September 6, the Washington State Supreme Court agreed to hear the Freedom Socialist Party's appeal in *Snedigar v Hodderson,* the case over whether the party must reveal the contents of its meeting minutes. Richard Snedigar, who is suing the party, claims that he was defrauded out of $22,000, and that he cannot prove his claim unless the minutes are submitted as evidence. The Washington State Court of Appeals had ruled that even though political organizations normally enjoy First Amendment rights of privacy, nevertheless in this case the party must expose its minutes. The decision of the State Supreme Court to hear the case is a considerable victory for the Freedom Socialist Party. The party's newspaper states that 4,000 individuals sent postcards or letters to the State Supreme Court, asking it to hear the case.

2. On June 27, 1989, federal judge Thomas J. McAvoy, a Reagan appointee, declared a New York state election law which requires certain political party officials to disclose information about their personal finances, to be unconstitutional. *Igneri v Moore,* no. 89-CV-517, Northern District of New York. The state is appealing the decision to the U.S. Court of Appeals. Laws requiring elected public officials to reveal information about their personal finances have long been upheld, but Judge McAvoy differentiated between public officials and party officials. The New York law only applies to fully-qualified political parties. The case was brought by several officials of the Republican and Conservative Parties.

3. On August 15, U.S. District Court Judge Mariana Pfelzer released Findings of Fact and Conclusions of Law in *Gelfand v Smith,* no. 79-2710-MRP, ruling that political parties have a First Amendment right to expel members, if the explusion does not violate party rules. Back in 1979, the Socialist Workers Party expelled Alan Gelfand after it learned that he was collaborating with a rival Trotskyist political organization which was very hostile to the Socialist Workers Party. Gelfand, an attorney, had also filed an *amicus* brief in the SWP's lawsuit against the FBI. Gelfand's brief alleged that certain top leaders of the SWP had been agents for both Joseph Stalin and the FBI, and the SWP considered this *amicus* brief to be injurious. After Gelfand was expelled from the SWP, he sued it, claiming that since the SWP was controlled by agents of the federal government, his expulsion was an act of the federal government and that his First Amendment rights had been violated. Judge Pfelzer ruled that Gelfand had not proved his allegations and that his expulsion did not violate party rules. Gelfand has filed a motion asking Judge Pfelzer to alter her findings of fact.

CONGRESS

HR 2190, the voter registration bill, still has not been voted on in the House of Representatives. No other election bill has made any headway recently either.

TEXAS

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, will be October 4 and 5. The case was filed last year by the New Alliance Party. If the case wins, Maine will be the only state with an deadline earlier than mid-July, for an independent presidential candidate to get on the ballot.

Post Office regulations require most Second Class publications to publish a Statement of Ownership, Management and Circulation once every year, in October or November. Here is *Ballot Access News'* annual statement: Title of Publication: Ballot Access News. Publication No: 10436898. Date of Filing: Sept. 25, 1989. Frequency of Issue: Every 4 weeks. No. of issues Published Annually: 13. Annual Subscription Price: $6.00. Complete Mailing Address of Known Office of Publication: 3201 Baker St., San Francisco Ca 94123-1806. Complete Mailing Address of the Headquarters of General Business Offices of the Publisher: 3201 Baker St., San Francisco Ca 94123-1806. Full names and Complete Mailing Address of Publisher, Editor and Managing Editor: Publisher Richard Winger, 3201 Baker St., San Francisco Ca 94123-1806. Editor: same. Managing Editor: same. Owner: same. Known Bondholders, Mortgagees and Other Security Holders Owning or Holding 1 percent or More of Total Amount of Bonds, Mortgages or Other Securities: none. Extent and Nature of Circulation: (First column is Average No. Copies Each Issue During Preceding 12 Months; Second column is Actual No. Copies of Single Issue Published Nearest to Filing Date):

A. Total No. Copies Run	367	400
B.Paid and/or Requested Circulation		
1. Sales thru dealers & carriers	0	0
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C.Total Paid and/or Requested Circulation	317	328
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G.TOTAL (sum of E,F1 & 2)	367	400

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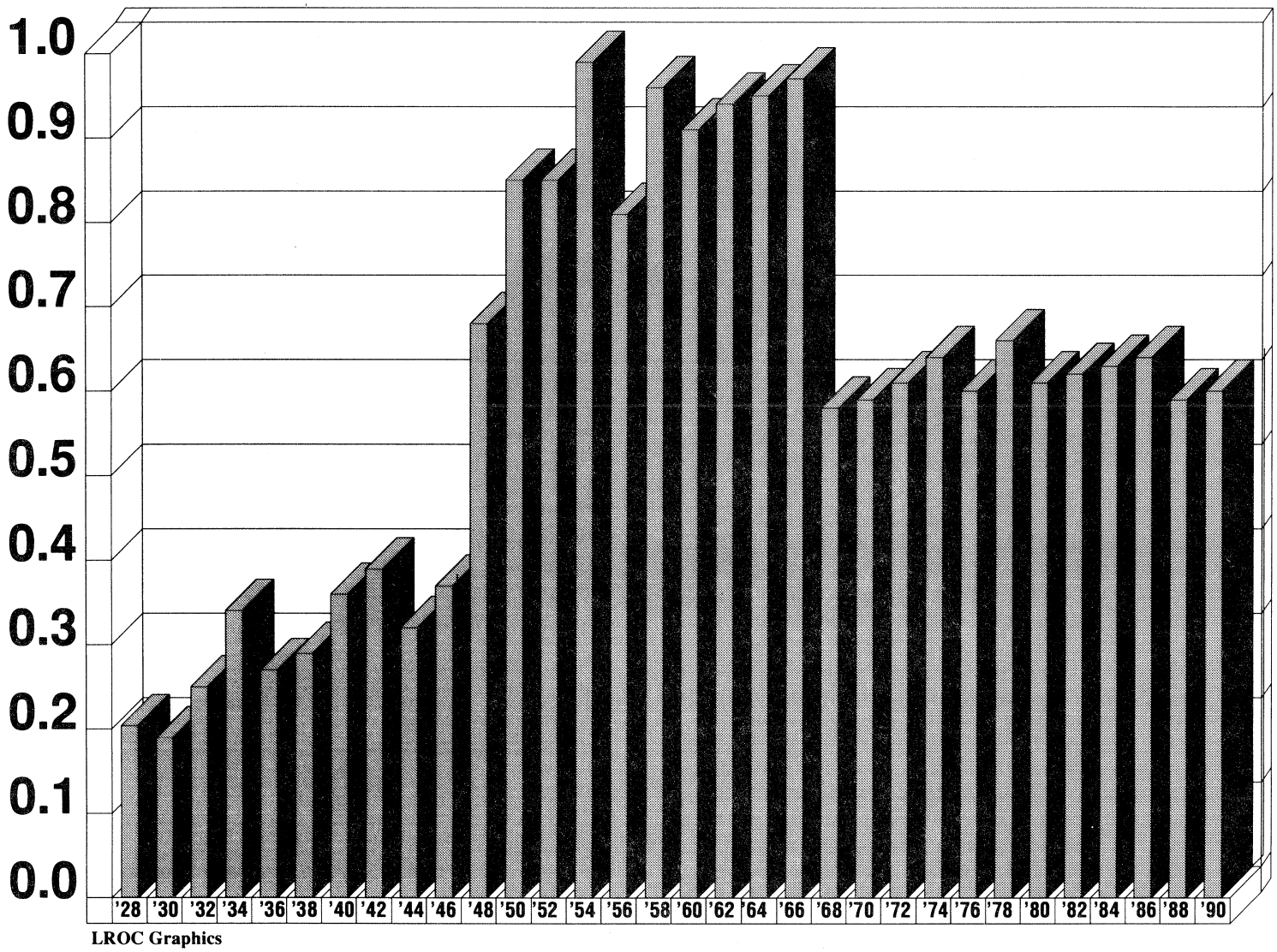
BALLOT ACCESS NEWS (ISSN 10436898) is published by Richard Winger, Field Representative of the Coalition for Free and Open Elections, $6 per year, thirteen times per year, every 4 weeks, at 3201 Baker St., San Francisco CA 94123. Second class postage paid at San Francisco CA. © 1989 by Richard Winger. 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.

Number of Signatures to Get a New Party on the Ballot, 1928-1990

(expressed as percentage of voting age population)



LROC Graphics

This chart shows the number of signatures (or registrations or convention attendees or previous votes) needed to get a new party on the ballot in all states for statewide office other than President, for the period 1928 to 1990. The numbers are expressed as a percentage of the voting age population.

During the period 1948 through 1966, Ohio required a petition signed by 15% of the voters. This explains why the requirements were so high during that period. The chart also shows that current requirements are substantially higher than they were before 1948, even accounting for population growth.

For more detailed information, send a SASE to Ballot Access News.

1990 DEADLINES

Deadlines for qualifying a new political party for the 1990 ballot, and whether a state will be electing a Governor and/or a U.S. Senator in 1990:

STATE	DATE	GOV?	SEN?
Alabama	April 6	Yes	Yes
Alaska	June 1	Yes	Yes
Arizona	May 19	Yes	No
Arkansas	May 1	Yes	Yes
California	January 2	Yes	No
Colorado	August 7	Yes	Yes
Connecticut	August 10	Yes	No
Delaware	August 18	No	Yes
Florida	July 17	Yes	No
Georgia	August 7	Yes	Yes
Hawaii	April 25	Yes	No
Idaho	August 30	Yes	Yes
Illinois	August 6	Yes	Yes
Indiana	July 15	No	No
Iowa	August 17	Yes	Yes
Kansas	April 12	Yes	Yes
Kentucky	January 29	No	Yes
Louisiana	June 30	No	Yes
Maine	June 5	Yes	Yes
Maryland	August 6	Yes	No
Massachusetts	July 31	Yes	Yes
Michigan	July 19	Yes	Yes
Minnesota	July 17	Yes	Yes
Mississippi	ap. April 1	No	Yes
Missouri	August 6	No	No
Montana	April 16	No	Yes
Nebraska	August 1	Yes	Yes
Nevada	August 14	Yes	No
New Hampshire	August 8	Yes	Yes
New Jersey	April 12	No	Yes
New Mexico	July 10	Yes	Yes
New York	August 21	Yes	No
North Carolina	June 1	No	Yes
North Dakota	April 13	No	No
Ohio	January 8	Yes	No
Oklahoma	May 31	Yes	Yes
Oregon	August 28	Yes	Yes
Pennsylvania	August 1	Yes	No
Rhode Island	July 19	Yes	Yes
South Carolina	May 6	Yes	Yes
South Dakota	April 3	Yes	Yes
Tennessee	May 1	Yes	Yes
Texas	May 27	Yes	Yes
Utah	March 15	No	No
Vermont	Sept. 20	Yes	No
Virginia	June 12	No	Yes
Washington	July 28	No	No
West Virginia	May 7	No	Yes
Wisconsin	July 3	Yes	No
Wyoming	May 1	Yes	Yes

There are a few states in which there are two different types of procedure to qualify a new party. In these states, the chart shows the method which is used more often.

1990 PETITIONING

The Libertarian Party of Nevada has 4,800 signatures on its petition; 10,326 are required. The New Alliance Party has about 3,000 signatures on its party petition in North Carolina; 43,601 are required. The New Alliance Party has about 3,000 signatures on its Georgia petition; 29,414 are required. The Workers World Party has about 4,000 signatures on its Michigan petition; 23,953 are required. The Libertarian Party of Arizona has about 500 signatures on its petition; 23,438 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, is about to file a lawsuit in federal court to overturn the board's decision.

FEC VOTE RETURNS

The Summer 1989 issue of *The FEC Journal of Election Administration* includes extensive election data from the 1988 election, including final tallies for all presidential candidates. The issue can be obtained free by writing to the FEC, 999 E St NW, Washington DC 20463.

NEW YORK

1. The *New York Times* of September 11 carried an editorial lambasting New York state ballot access procedures, and blaming both the state legislature and state courts for the problem. In New York, ballot access is a problem for candidates seeking a place on the primary ballot as well as a problem for third party and independent candidates seeking a place on the general election ballot. The number of signatures is frequently quite high, and in addition, the tiniest deficiency in the petitions can be used to remove candidates from the ballot.

2. On September 5, federal judge Robert W. Sweet dismissed the lawsuit *Coalition for a Progressive New York v Colon,* no. 89-CIV-5811. The issue was whether Pedro Espada should be on the Democratic primary ballot as a candidate for the city council from the Bronx. The Board of Elections removed him from the ballot, even though he submitted about 10,000 signatures to meet a 3,000-signature requirement, because two witnesses testified that Espada's petitioners committed fraud. Espada charges that the witnesses against him were bribed, and that their fraud charges are entirely false, but Judge Sweet considered these allegations unproven and kept Espada on the ballot.

ERRATA: The September 5, 1989 *B.A.N.* stated that the California initiative to apply proportional representation to elections for the lower house of the California legislature would begin circulating in January 1990. Actually, it begins October 1, 1989.

PRESIDENTIAL DEBATE BILLS

There are four bills pending in the House of Representatives which would link participation in presidential debates to general election federal campaign funding. The bills all require anyone whose campaign is receiving public financing, to participate in debates. The bills are HR 511 by Charles Bennett of Florida, HR 1283 by Lee Hamilton of Indiana, HR 95 by Barbara Boxer of California, and HR 1733 by Edward Markey of Massachusetts. None of the bills has received a hearing yet in the Elections Subcommittee. The object of the bills is to guarantee that Democratic and Republican nominees for president engage in debates. The Bennett and Hamilton bills would permit the debates to be controlled by the Democratic and Republican Parties, whereas the Boxer and Markey bills would require that the debates be conducted by an organization not controlled by any political party. The League of Women Voters would be the most likely beneficiary of the latter two bills.

None of the bills would help third party or independent presidential candidates to get into debates, since the link between debates and public funding would only relate to general election campaign funding. General election public funds are only distributed to political parties which polled at least 5% of the vote in the prior presidential election. Congressman Markey is somewhat interested in expanding his bill to provide a set of guidelines to determine when third party and independent presidential candidates should be invited into the debates. If you have an opinion about this subject, write to Congressman Markey, or write a letter to the editor of *Ballot Access News*. The editor of *Ballot Access News* is opposed to any criteria which is based on ballot access in a certain number of states, since if there were a link between being invited into the debates and being on the ballot in a certain number of states, this would provide yet another motivation for state legislatures to make ballot access more difficult. What is your opinion?

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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). Address: Box 355, Old Chelsea Sta., New York NY 10011. Membership applications can also be sent to 3201 Baker St., San Francisco Ca 94123.

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 also expects to begin lobbying in certain state capitols.

3. **FOUNDATION FOR FREE CAMPAIGNS & ELECTIONS**, 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. 7404 Estaban Dr., 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. National ACLU headquarters is at 132 W. 43rd St., New York NY 10036, tel. (212) 382-0557.

RAINBOW LOBBY IN CALIF., ILLINOIS

The Rainbow Lobby has decided to lobby for ballot access reform in the California and Illinois legislatures. In California, the Lobby will seek a sponsor for a bill to lower the number of signatures needed for an independent candidate. A statewide candidate needs 140,149 signatures. No independent candidate has ever met a signature requirement greater than 101,297 signatures, in any state. In Illinois, the Lobby hasn't decided what reforms to seek.

Richard Winger will be on vacation Sep. 28-Oct. 19.

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