

BALLOT ACCESS NEWS

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ALABAMA VICTORY

On September 14, federal district judge Truman Hobbs of Alabama declared unconstitutional Alabama's April deadline for a new political party to qualify for the ballot. *New Alliance Party of Alabama v Hand*, no. 90-H-711-N. Unfortunately, the state has already announced that it will appeal the decision to the U.S. Court of Appeals, 11th circuit. In the meantime, the state did put New Alliance Party candidates for congress and county office in Birmingham, Alabama, on this year's ballot. The party had submitted petitions for those offices in June.

Judge Hobbs, an African-American Carter appointee, said that Alabama has no reason to require the petitions as early as April. In Alabama, new parties nominate by convention. Generally, petition deadlines in the first half of the year for new political parties to qualify for the ballot are unconstitutional, except when a state requires new political parties to nominate by primary. When a state requires new parties to nominate their candidates in a primary, the deadline must be much earlier, so that elections officials have time to prepare for that new party's primary.

Other states whose deadlines for new parties to get on the ballot are probably unconstitutional (either for president, or for other office, or both), are Kansas, Kentucky, Maine, Mississippi, Montana, New Jersey, North Carolina, South Carolina, Texas and Virginia.

Early deadlines hurt third political parties because they make it impossible for them to qualify for the ballot during the time when there is the most interest in them. The Republican Party was founded on July 6, 1854, and went on to win more seats in the U.S. House of Representatives in the fall 1854 than any other party. Back in 1854, there were no ballot access barriers. If a new party were formed on July 6 of an election year nowadays, it would be impossible for it to get on the ballot in states with early petition deadlines.

MASSACHUSETTS INITIATIVE

A *Boston Globe* poll taken in late September, after the Massachusetts primary, shows that Question 4 is still leading, but by a smaller margin than in August. Question 4 is the initiative which would improve Massachusetts ballot access laws. The poll showed it leading 42%-36%, with 22% undecided. On October 9, *TAB*, a weekly newspaper with a circulation of 250,000, endorsed Question 4.

HR 1582 GAINS NEW CO-SPONSOR

On October 2, Congressman Robert A. Roe, a Democrat representing Paterson, New Jersey, became a co-sponsor of HR 1582, the Conyers' ballot access bill. Roe is one of the senior members from New Jersey, and became a co-sponsor after the Rainbow Lobby organized a contingent of his constituents to see him about the bill.

McCORD SETS RECORD

On September 18, Washington state held its primary. Bill McCord, Libertarian candidate against Congressman Al Swift, polled a higher percentage of the vote than any third party congressional candidate has ever received in a Washington open primary. He polled 3.4%, even though there were 3 Democrats and a Republican in the race also. The previous record for a third party congressional candidate in a Washington primary was 3.3%, in 1980. Third party candidates have only participated in the Washington state open primary since 1977. In November, McCord will only have two opponents, Swift and a Republican, so he will probably do better than he did in the primary.

The Washington state primary system permits any voter to vote for any candidate, regardless of party. No candidate can qualify for the November ballot unless he or she polls at least 1% in the primary. The only other third party congressional candidate in the state, Robbie Scherr, 7th district Socialist Workers Party, also qualified with 1.6%.

McCord's showing may be due to his TV advertising. His race should be of interest to all supporters of better ballot access laws, since his incumbent opponent, Al Swift, chair of the House Elections Subcommittee, has throttled the Conyers' ballot access bills (currently HR 1582) for five years. On October 8, McCord started airing TV ads about HR 1582. To contribute to the campaign, write McCord for Congress, Box 4144, Bellingham Wa 98227.

THIRD PARTY TO GOVERN ONTARIO

On September 6, Ontario (Canada's most populous province) held an election for parliament. The results were that a third party, the New Democratic Party (a labor party) won 74 of Ontario's 130 provincial parliament seats and will control the provincial government. Although the New Democratic Party has won control of other provinces before, it had never even placed second in Ontario. Before the election, it had only 19 seats.

60 of the 74 winners are described as "political novices", who are employed in such jobs as truck driver, plumber, social worker, according to *In These Times*. In national elections, the New Democratic Party has always been a "third party", never even placing second. Canada's election system is similar to the system used in the U. S.: there is no proportional representation. The difference between Canada and the U. S. is that Canada has no harsh ballot access laws and no regulation of political parties. Parties nominate candidates by party meeting, and all candidates get on the ballot by paying a fee. Canadian laws do not discriminate for or against various political parties.

Tom Bethell, editor of *American Spectator*, wrote in the *Cleveland Plain Dealer* of October 3, "Canadians fed up with indistinguishable centrist politicians recently voted for the outsider New Democratic Party. It's time to send our politicians a message--let's start voting for outsiders."

POLITICAL PARTY FREE SPEECH DEFEAT

On September 14, a 3-judge panel of the 9th circuit upheld a California law which makes it impermissible for a candidate for non-partisan office to mention his or her party affiliation in the county government-printed Voter's Handbook. The case arose in San Francisco, and is called *Geary v Renne*, no. 89-15601. It should not be confused with the other case called *Geary v Renne*, which is about whether it is illegal or not for political parties to endorse candidates in non-partisan elections.

The handbook contains 250-word statements written by candidates on behalf of their own candidacy. The judges stated that the government has an interest in suppressing any mention of a candidate's political party, in the handbook, since the government has determined that it wants the election to be non-partisan. The three judges were Joseph Sneed, Jerome Farris and Ferdinand Fernandez. Judges Sneed and Fernandez had been in the minority in the case of whether California could make it illegal for political parties to endorse or oppose candidates for non-partisan office, and had voted that such a prohibition is constitutional. Therefore, it isn't surprising that they voted to ban a candidate from mentioning his or her party affiliation in the candidate's statement. (Judge Farris hadn't participated in the case dealing with the ban on party endorsements). The candidates who brought the lawsuit have asked for a rehearing *en banc*.

The decision hurts the parties which are not qualified to participate in partisan elections, such as the Socialist Workers Party, the Humanist Party, the Workers World Party, and Socialist Action. Since these parties can't get on the ballot in state and federal elections in California, due to the severity of state ballot access laws, they usually put most of their energy into running for city and county office. Ballot access restrictions for city and county office, and other non-partisan office, are not severe. The campaigns of these parties are usually heavily dependent on the Voters Handbook statement. The ruling hurts them as well as candidates affiliated with the fully qualified political parties, since generally the purpose of their campaigns is to increase voter awareness of their own party, and now the candidates cannot mention the names of those parties in the Handbook statement.

COLORADO LOSS

On September 11, state court judge Ralph Coyte upheld a Colorado law which does not permit small political parties to nominate candidates who have been registered as Republicans or Democrats at any time during the preceding year. *Colorado Libertarian Party v Meyer*, Denver District Court, case no. 90-CV-9486. Judge Coyte didn't mention the U.S. Supreme Court statement in *Tashjian v Republican Party of Connecticut* that such a law would be unconstitutional. Nor did he give any reason for the restriction. He simply said it is constitutional. The Libertarian Party is appealing the decision. In the meantime, it exercised its right to substitute another gubernatorial candidate in place of the original candidate, so that the party will still appear on the statewide ballot.

ELECTION CASE ARGUES THEOLOGY

On September 21, a hearing was held in federal court in South Carolina in *Silverman v Campbell*, the case over whether it violates the U.S. Constitution for South Carolina to bar people who don't believe in a Supreme Being from being Governor. Judge David Norton, who was just sworn in as a federal judge in July, listened to the state's procedural arguments, and finally asked the Assistant Attorney General if he wished to defend the substance of the South Carolina law. The Assistant Attorney General responded by saying that yes, the state does defend the law, on the grounds that "Supreme Being" does not mean "God". The other side countered by producing excerpts from the minutes of the 1868 South Carolina Constitutional Convention which show clearly that the framers of the South Carolina Constitution thought that "Supreme Being" means the same as "God", when they wrote the provision.

A decision may be several months away. Existing precedents from the U.S. Supreme Court make it clear that states may not apply a religious test to prevent anyone from holding public office.

FLORIDA HEARING

1. On September 11 there was a hearing in U.S. District Court in Tampa, Florida, over the constitutionality of Florida election law which requires petitioning third party candidates to pay for the cost of checking their signatures (10¢ per signature). The case is before a judge, William T. Hodges, whose record and demeanor during the hearing makes it likely that he will uphold the law. However, it is very difficult to justify the law. Florida does not require independent, Democratic or Republican candidates to pay the signature-checking fees if they cannot afford it; Florida doesn't even require initiative petition sponsors to pay such fees, if they cannot afford it. Only third party candidates must pay them. The Supreme Court has twice unanimously ruled that mandatory fees for getting on the ballot are unconstitutional. If Judge Hodges upholds the law, as he probably will, he will probably be overruled on appeal. *Fulani v Krivanek*, 88-671-cv-T-10B.

LIBERTARIAN SUES PUBLIC TV

On October 4, there was a hearing in *Chandler v Georgia Public Telecommunications Commission*, no. 1:90-CV-2040, before federal judge Marvin Shoob, in Atlanta. The case was filed by Walker Chandler, Libertarian candidate for Lieutenant Governor of Georgia, to prevent public television stations from sponsoring a debate between the Democratic and Republican Party candidates for Lieutenant Governor, unless Chandler is invited into the debate as well. There are only three candidates for Lieutenant Governor this November. A decision is expected before October 14. Although FCC rules would permit a privately owned television station to broadcast a debate which excludes some candidates, it isn't clear whether a government-owned station can do this. In 1980 a federal court in West Virginia ordered a public television station to include a third party candidate in the gubernatorial debate.

NAP SUES OVER BALLOT DESIGN

On September 27, the New Alliance Party filed a lawsuit in federal court challenging the constitutionality of a New York state procedure which determines the order in which parties are placed on the November ballot. New York says that the qualified parties (those which polled at least 50,000 votes for Governor in the last election) are listed on the ballot according to how many votes for Governor they received in the last election, i.e., the party which placed first gets the top line, the party which placed second gets the next line, etc. However, the order in which the unqualified parties are placed on the ballot is set by a lottery. The New Alliance Party argues that the principle of placing parties on the ballot according to how many votes they received for Governor in the last election is a good one, and it should be applied to all parties, not just the qualified ones.

NAP brought the lawsuit, *New Alliance Party v New York State Board of Elections*, no. 90-civ-6226, southern district, after it lost the lottery conducted on September 18. The Socialist Workers Party won the lottery and was awarded the sixth line, the best possible line that an unqualified party can have (there are five qualified parties occupying the first five lines). NAP got the 7th line and the Libertarian Party got the 8th and last line. However, the New Alliance Party got almost 25,000 votes for Governor in 1986, more than any other unqualified party, so if the principle which is applied to the qualified parties were also applied to the unqualified parties, NAP would receive the sixth line this year. The case was assigned to federal judge Robert J. Ward, a Nixon appointee with a good record in election cases.

At the hearing on October 5, SWP attorneys, who intervened in the case, argued that the only fair method is to hold a lottery to determine the order for all parties, no matter what their size. This is, of course, an even better position. A decision is likely any day now.

1990 BALLOT STATUS SUMMARIZED

In the November, 1990 election, the following nationally-organized political parties are on the ballot before this proportion of the voters: (compared with 1986)

	1990	1986
LIBERTARIAN	42.4%	36.0%
SOCIALIST WORKERS	15.2%	23.5%
NEW ALLIANCE	12.4%	8.0%
POPULIST	5.6%	3.3%
WORKERS WORLD	4.0%	0%
GRASS ROOTS	3.6%	2.2%
AMERICAN	1.6%	4.2%
PROHIBITION	1.5%	1.7%

The tabulation above includes all of a party's candidates for partisan office if they are on the ballot with the party label or running as "Independent". It also includes New Alliance Party candidates running under the Illinois Solidarity label, since the Illinois Solidarity Party functions as the Illinois branch of the New Alliance Party.

OTHER LAWSUIT NEWS

1. On September 21, the 9th circuit refused to stay its own decision which said that political parties may endorse candidates for non-partisan office. Consequently, county committees of several California parties endorsed candidates for city office, the first such endorsements since they were made illegal in 1986. Meanwhile, defendants asked the U.S. Supreme Court to stay the decision. On October 6, Justice Sandra O'Connor refused to do this.

2. There will be a hearing on October 15 in U.S. District Court in San Francisco, in the Libertarian Party lawsuit against California law which makes it impossible for small qualified political parties to nominate candidates by convention, or to nominate write-in candidates in their own primary. *Lightfoot v Eu*, no. 90-1750-TEH.

3. There will be a hearing in the 9th circuit in Honolulu, Hawaii, on November 5, over Hawaii's ban on write-in voting. *Burdick v Takushi*, no. 90-15873.

4. The Republican Party of Oconto County, Wisconsin, filed an appeal with the U.S. Supreme Court on September 25, over whether it is constitutional for Wisconsin to limit the amount of money a political party can give to the campaign of its own candidates. The Wisconsin Supreme Court had upheld the restriction. *Gard v Wisconsin State Board of Elections*, no. 90-536.

5. On August 7, the ACLU of Colorado filed a request for a rehearing in *Thournir v Meyer*, the case over whether an independent candidate must have been registered in the state an entire year as an independent, before running. The request was denied on August 22, so the case is over.

6. There will be a hearing in the U.S. Court of Appeals, D.C. circuit, on January 18, 1991 in *Fulani v Brady*, the case over whether the Commission on Presidential Debates should lose its tax-exempt status because it sponsors debates which exclude all candidates other than the Democratic and Republican general election nominees.

7. No level of South Carolina state court was willing to order any candidates off the ballot as a result of the lawsuit filed by the American Party in August, *Clarkson v Ellisor*. The American Party had charged that the major parties had not followed state law concerning legal notices, but the courts stated that there was no necessary connection between this issue and the issue of whether the candidates should be on the ballot.

8. As of October 9, the Illinois Supreme Court still hadn't decided whether the Harold Washington Party should be on the ballot for county office. *Reed v Kusper*, no. 70833. The question is whether Illinois law requires 25,000 signatures for a Cook County Party, or 50,000.

MAINE

Representative Dick Gould has already pre-filed a bill which would make it easier for a new political party to qualify for the ballot in Maine. The specifics aren't yet written, but in Maine it is possible to pre-file a bill before the bill has been drafted.

COMMON CAUSE

Archibald Cox, Chairman of Common Cause, said in a letter of August 29, 1990, that Common Cause has not paid as much attention to ballot access problems as it should have, and that he will try to spark some interest within the organization about the issue. Common Cause, a volunteer "good government" organization, has hundreds of thousands of members.

1992 PETITIONING

The Libertarian Party has 22,200 signatures on its 1992 petition in Kansas, 900 in Maine, and 100 in Nebraska, and is about to start in Alabama and South Dakota. The North Carolina petition will start in December. The New Alliance Party has 2,700 signatures in Alabama.

TERM LIMITATIONS

On September 18, by a vote of 2-1, Oklahoma voters passed an initiative to amend the state constitution, to limit state legislators to twelve years. Oklahoma is the first state to limit legislators to any particular number of terms. The result was well-publicized nationwide.

California and Colorado will vote on similar measures on November 6. The Colorado initiative also applies to members of Congress. If the Colorado measure passes, the portion relating to members of Congress will undoubtedly be challenged in court. There are many court decisions, some dating back to the turn of the century, which hold that state governments do not have the authority to add to the qualifications mentioned in the U.S. Constitution for an individual to serve in Congress (age, citizenship, residency). However, in 1974 the U.S. Supreme Court seemed to disparage that old understanding. The issue is still murky but if the Colorado term limitation passes, it should be settled clearly one way or the other, probably by the U.S. Supreme Court itself.

If the Supreme Court agrees that states cannot add to the qualifications mentioned in the U.S. Constitution for an individual to become a member of Congress, there could be favorable implications for ballot access.

NOW COMMISSION SETS MEETINGS

NOW (National Organization for Women) has announced dates for some regional meetings of its Commission for Responsive Democracy, the Commission set up to explore whether to form a new party or not. They are:

1. Nov. 30-Dec. 1, 1990, New York city
2. Jan. 18-19, 1991, Atlanta, Ga.
3. Feb. 1-2, 1991, Los Angeles, Ca.
4. Mar. 1-2, 1991, Houston, Tx.
5. Mar. 16-17, 1991, Seattle, Wa.
6. Mar. 23-24, 1991, Chicago, Il.
7. Apr. 26-27, 1991, Tampa, Fl.
8. May 24-25, 1991, Washington, D.C.

For more information, write to the Commission for Responsive Democracy, N.O.W., # 700, 1000 16th St., Washington, D.C. 20036, telephone (202) 331-0066.

MAJOR PARTIES INVADED AGAIN

In states with restrictive ballot access laws, third party candidates are again "invading" Democratic and Republican primaries, in order to get their candidates on the ballot:

1. In Maryland, four Libertarian Party candidates (Tomas Estrada-Palma, Jack Jones, Larry Monohan, and Peggy Monohan) entered and won the Republican primary for state legislature. They are letting the voters know that they are really Libertarians. In Maryland, the ballot laws are so severe that there have been no third party candidates for the legislature on the ballot, under their own party label, in the 19 years since the existing laws were created.

2. In New York, where the law gives major party officials certain powers over election administration, the New Alliance Party ran two candidates for Democratic Party district leader and elected them both. They are Pedro Espada and Sandra Love, who now head the Democratic Party organization in the 74th Assembly district in the Bronx. They now have the power to appoint some of the precinct officials who serve at the polls on election day.

3. The Lyndon LaRouche organization won a contested Democratic congressional primary on August 7 in Michigan. The LaRouche supporter is Joan Dennison of the 10th district, a rural district which last elected a Democrat to Congress in 1982.

4. In Wyoming, two members of third parties entered the Democratic Party primary for U.S. Senator and placed second and third in a 6-person field. Howard O'Connor, who formerly was head of the state American Party, polled 21%; Al Hamburg of the New Alliance Party polled 19%. The winner of the primary only polled 35%.

SANDERS STILL NECK-AND-NECK

A poll taken by the *Rutland Herald* on Sept. 28 for the Vermont House seat shows Smith (Republican) 37%, Sanders (Independent) 37%, Sandoval (Democrat) 4%, undecided and other 22%. If Sanders wins, he will be the first non-major party candidate elected to the House of Representatives since 1972.

NEW VOTING MACHINES AID WRITE-INS

On October 2, New York city tentatively decided to purchase new voting machines from Sequoia Pacific company. The machines let voters cast a write-in vote by operating a keyboard to designate the write-in candidate. This will end the problem of illegible write-ins, and will make it much easier for the city to tabulate write-in votes.

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DEMS, REPS FAIL TO NOMINATE

Once more, either the Democrats or the Republicans have failed to run candidates in over one-third of state legislative races. The chart shows the number of seats for which one of the major parties skipped the race. There are also 83 seats in the U.S. House, and 4 seats in the U.S. Senate (Arkansas, Georgia, Mississippi and Virginia), in which one of the major parties isn't running anyone.

<u>STATE</u>	<u>NO. SEATS UP</u>	<u>DEM.</u>	<u>REP.</u>
Alabama	140	15	59
Alaska	50	5	5
Arizona	90	23	15
Arkansas	117	8	85
California	100	5	9
Colorado	82	12	10
Connecticut	187	16	21
Delaware	52	11	14
Florida	140	23	42
Georgia	236	19	140
Hawaii	63	0	33
Idaho	126	27	14
Illinois	138	25	31
Indiana	125	23	15
Iowa	125	18	22
Kansas	125	10	14
Kentucky	119	19	31
Maine	186	9	32
Maryland	188	4	69
Massachusetts	200	15	73
Michigan	148	1	18
Minnesota	102	7	18
Missouri	180	31	67
Montana	125	8	22
Nevada	53	5	0
New Hampshire	424	99	66
New Mexico	70	10	30
New York	211	23	25
North Carolina	173	13	41
North Dakota	133	4	6
Ohio	116	2	0
Oklahoma	125	9	46
Oregon	75	1	8
Pennsylvania	228	30	32
Rhode Island	150	3	70
South Carolina	124	23	57
South Dakota	105	28	13
Tennessee	116	28	41
Texas	166	32	67
Utah	85	22	7
Vermont	182	29	10
Washington	122	5	16
West Virginia	117	3	29
Wisconsin	116	24	18
Wyoming	79	17	8
TOTAL	6,114	744	1,449

Five states do not elect partisan legislators in 1990 and are omitted. Special elections are also omitted. Figures for Massachusetts and New Hampshire are tentative.

CANDIDATE OFF TEXAS BALLOT

The September 11 issue of *Ballot Access News* reported that a Texas independent candidate, Lourdes Perez, had won a lawsuit against Texas law which requires independent candidates to file a declaration of candidacy in January of the election law; but that the candidate was being kept off the ballot anyway because she didn't show voter registration affidavit numbers for all the signers of her petition. The latter problem was a surprise, since in 1988 the U.S. Court of Appeals, 5th circuit, ruled that it is unconstitutional to keep third parties off the ballot because their petitions didn't contain the voter registration affidavit numbers of the signers. Unfortunately, on September 7, the same judge who had declared the January declaration unconstitutional, refused to grant an order saving Perez from the voter registration affidavit number problem. Judge Scott McCown said he wasn't convinced that the 5th circuit decision (which applies to new parties) applies to independent candidates, and refused to put Perez on the ballot. The portion of the case involving voter registration affidavit numbers will have another hearing October 19.

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BIG WRITE-IN VOTE IN SEATTLE

On September 18, over 20% of all voters in Seattle, Washington cast a write-in vote for Judith Hightower, for Municipal Court Judge. Seattle election officials said that the 14,500 write-ins are a record in that city. There was only one candidate whose name was printed on the ballot, John Vercimak. His wife, the incumbent judge, withdrew at the last minute, and her husband (Vercimak), having advance knowledge of her withdrawal, had been the only other candidate to file for a spot on the ballot. Voter irritation at his maneuver found an outlet when Hightower launched her write-in campaign. State law provides that if a write-in candidate for a non-partisan office polls at least 5% of the total vote in a primary, and places either first or second, the write-in candidate's name will be printed on the ballot in a run-off. Therefore, Hightower's name will be printed on the November ballot against Vercimak.

COFOE

The Coalition for Free and Open Elections (COFOE) is composed of political parties, other organizations, and individuals. Dues of \$10 entitles an individual to membership with no expiration date; this 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.

The national COFOE Board still has not decided whether to admit the Populist Party to membership. Some board members feel the Populist Party has planks in its platform which contradict COFOE's Statement of Principles. However, leaders of the party state that the party does agree with the Statement of Principles, and also point out that the party has supported HR 1582 and has always cooperated with other third parties. If you are a member of COFOE, you should let COFOE know how you feel.

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NO CANDIDATE ON BALLOT IN R.I.RACE

No candidate is on the November ballot for Rhode Island House of Representatives, district 69. The only candidate, Democrat Mark Daly, failed to obtain 50 signatures and was omitted from the primary ballot. No Republican filed. Daly couldn't win the primary by write-in votes because Rhode Island omits an office from the primary ballot when there are fewer than two candidates. Daly is conducting a write-in campaign in the general election.

VOTER REGISTRATION BILL

On September 26, Senate Republicans defeated a move by the Senate to vote on S. 874, the Senate voter registration bill. Although the vote was not on the merits of the bill, it had the effect of killing the bill for this session of Congress. The only Republicans who voted to consider the bill were the two Senators from Oregon, Mark Hatfield and Bob Packwood. The Secretaries of State of Kansas and Wyoming fought the bill. Opponents of the bill argue that each state is different and should retain the freedom to set its own procedures for registering voters.

ARKANSAS VERSUS CUBA

Cuban provinces will elect officials during the next few months. Cuba promises a secret ballot and says there will be about 1.25 candidates on the ballot for each opening. In elections for the Arkansas legislature next month, there will be 1.23 candidates on the ballot for each opening.

HR 1582 SPONSORS LISTED

Cal: Bates, Dellums, Dixon, Dymally, Hawkins, Pelosi, Roybal, Stark. Ct: Morrison. DC: Fauntroy. Fl: Bennett. Ga: Lewis. Ill: Collins, Hayes, Savage, Yates. Ks: Slattery. Md: Mfume. Mass: Kennedy, Markey. Mich: Conyers, Crockett. Minn: Penny. N. J.: Dwyer, Payne, Roe. N. Y.: Flake, Owens, Rangel, Towns. Ohio: Stokes. Tenn.: Ford. Utah: Nielson, Owens. Wis: Kastenmeier, Moody.

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