

BALLOT ACCESS NEWS

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FCC SHRINKS EQUAL TIME RULE

On August 1, the Federal Communications Commission seriously diminished the Equal Time Rule. The rule, passed by Congress in 1934, originally required radio stations (and, later, TV stations) to provide equal amounts of free broadcast time to every candidate for a particular office. The rule was suspended in 1960 so that the networks could carry the Kennedy-Nixon television debates. It was re-interpreted in 1975 to except coverage of *bona fide* news events, which meant that broadcast stations could cover debates which excluded some candidates, as long as the debate had a live audience and was sponsored by an organization other than a TV or radio station.

But the Equal Time rule still prevented TV or radio stations from setting up their own interview programs with candidates, unless they offered the same amount of time to every candidate running for the same office. Sometimes broadcasters did offer equal amounts of time to all candidates. In 1976, for example, the Public Broadcasting Network broadcast a 30 minute interview with every general election presidential candidate who was on the ballot in at least one state.

But on August 1, the FCC ruled that a privately-owned television station may broadcast several hours of its own interviews with the Democratic and Republican presidential candidates, and not offer any time to other presidential candidates. The ruling had been requested by the King Broadcasting Company of Seattle, Washington, back in 1988. Originally the FCC had said "No". King Broadcasting had then sued the FCC. On November 1, 1988, the U.S. Court of Appeals, D.C. circuit, had ruled that the FCC should reconsider the matter. It took the FCC almost three years to reconsider the matter, and that reconsidered opinion is a complete policy reversal.

The only meaning the Equal Time Rule has anymore is to prevent a broadcast station from letting one of its on-camera employees continue to appear in his or her regular job, unless the station gives equal time to his or her opponents. For example, if a TV weathercaster is running for office, his or her station can't continue to let him or her appear unless it gives an equal amount of free time to the candidate's opponents. This narrow application of the law is a distortion of original Congressional intent.

The ruling will be issued formally on August 20. It has no effect on provisions of the law which require broadcast stations to sell time to all candidates which wish to buy time, if the station sells time to any candidate for the same office.

The issue of whether government-owned television stations must give equal amounts of free time is a separate issue, involving constitutional issues. The Libertarian Party of Georgia is trying to persuade the U.S. Supreme Court to decide whether debates sponsored and carried by public TV stations must include all candidates.

HIGH COURT ADVANCES BALLOT CASE

The U.S. Supreme Court has agreed to hear the ballot access case *Norman v Reed* on October 7, 1991, the first day the court meets, after its summer recess. Illinois officials persuaded the court to hear the case on the first day of the term. The reason for advancing the hearing is that the state needs to know as soon as possible what the outcome will be, so it can prepare for the March 1992 primary.

Norman v Reed is the first ballot access in the Supreme Court since 1986. The case will probably be a victory for ballot access; if so, it will have a major impact on other ballot access cases in lower courts.

Ballot Access News hereby thanks the law firm of Vorys, Sater, Seymour & Pease for making it possible for the Committee for Party Renewal to file an *amicus* brief with the Supreme Court in this case. The firm donated the services of one of its attorneys, Bradley Smith. This brief informs the Supreme Court of the startling lack of choices on U.S. ballots for many important offices, information that no one else had ever presented to the Court.

PENNSYLVANIA PARTY RIGHTS VICTORY

On August 6, the Third Circuit reversed the decision in *Trinsey v Commonwealth*. The Third Circuit said that there is nothing in the U.S. Constitution which requires political parties to hold a primary to choose a candidate for U.S. Senator. The lower Court had ruled in June that the 17th Amendment to the Constitution requires primaries.

The decision is a victory for the right of political parties to nominate candidates by their own preferred method. Pennsylvania Republicans and Democrats want to nominate candidates in special elections by party committee, and those parties had intervened in the case to fight for their choice.

The decision does not discuss the requirement for getting an independent or third party candidate on the ballot.

ARIZONA VICTORY

On July 22, an Arizona Superior Court ruled that it is unconstitutional for the state to provide free lists of registered voters to qualified political parties, but not to unqualified parties. *Goetzke v Boyd*, no. 280289, Pima County. The case had been brought by the Libertarian Party. Elections officials are not appealing.

DEBATE BILL GAINS CO-SPONSORS

HR 791, the "Democracy in Debates" Bill, gained five new co-sponsors in the last month, Pete Stark of California, Wayne Owens of Utah, William Hughes of New Jersey, Barney Frank of Massachusetts, and Harry Johnston of Florida. All are Democrats. The bill, if enacted, would give third party and independent presidential candidates a chance to debate the major party nominees.

MICHIGAN PARTY RIGHTS VICTORY

On July 22, the Michigan Court of Appeals in Lansing issued a decision upholding a Michigan law which says that no one can vote in the presidential primary of a party unless the voter has affiliated with that party. Both the Democratic and Republican Parties (the only parties now entitled to have a presidential primary in Michigan) had intervened in the case and said that they don't want unaffiliated voters to vote in their primary. Consequently, the decision is a victory for the right of political parties to control their own nomination process. *Ferency v Secretary of State, Republican Party and Democratic Party*, no. 129240. The case had been filed by a voter who didn't wish to join any party but who wanted to vote in the presidential primary.

The decision says "Although primary elections are run by the state and are regulated by the state election law, they nevertheless remain primarily party functions. The purpose of a primary election for a partisan elective office is not to narrow the field of candidates down to two candidates who then run off in the general election (as is the case in primary elections for nonpartisan office). Rather, the purpose of the primary election for partisan offices is to select each party's nominees for a particular office...the primary election remains principally a party function."

CALIFORNIA PRESIDENTIAL PRIMARY

The California legislature will decide the fate of AB 1820 during the first part of September. AB 1820 moves the primary from June to March. Although the bill now affects the primary for all office, the bill will be amended to provide that only the presidential primary will be in March; the primary for other office would remain in June.

NEW YORK REQUIREMENTS REDUCED

For this year only, ballot access requirements for New York City Council have been reduced to only one-fifth of the normal requirement. On July 25, the U.S. District Court in Brooklyn approved a settlement whereby City Council candidates running in primaries only need 180 signatures, instead of 900. Also, third party and independent candidates need only 540 signatures, rather than 2,700, to get on the general election ballot. *Puerto Rico Legal Defense & Education Fund v City of New York*, no. CV-91-2026.

The reason for the signature reduction is that the normal petitioning time in which to gather signatures is five weeks, but reapportionment took so long that, practically speaking, candidates only had one week in which to petition after the district boundaries were known.

The precedent established in this case will be useful to third party and independent candidates next year, since many states won't complete their reapportionment, until after the period for petitioning has begun. Therefore it should be possible to persuade courts to lower petitioning requirements, for 1992 only (for Congress and state legislature) in such circumstances.

ATHEIST CASE LOSES

On August 14, the U.S. Court of Appeals, 4th circuit, ruled that Herb Silverman's case against a South Carolina law which makes it illegal for an atheist to become Governor, is not "ripe". Therefore, even though the law violates Article 6, section 3 of the U.S. Constitution, the court will not declare it unconstitutional in this case. *Silverman v Ellis*, no. 91-1022. The court ruled that only if the voters were to elect an atheist, would the case be ready for resolution. The decision ignores the point that the South Carolina law harms the campaign of any such gubernatorial candidate, since it is more difficult to persuade the voters to vote for anyone whom, if elected, would be ineligible to hold the office. Silverman hasn't decided yet whether to appeal to the Supreme Court.

ALABAMA REFORMS RUN OUT OF TIME

The Alabama House passed H 822 on July 17. The bill lowers the vote requirement for a party to remain qualified, from 20% to 5%. Unfortunately, the legislature adjourned for the year on July 29, before the Senate could take up the bill. H 780, the bill to improve the deadline for a party to turn in its signatures, was never voted on by the full House, although it had passed all House Committees.

BALLOT ACCESS BILL

The Rainbow Lobby is actively seeking another sponsor for the Ballot Access bill. The bill would outlaw restrictive ballot access laws for federal office. Although Congressman John Conyers had introduced it in 1985, 1987 and 1989, he refused to introduce it this year, and has not said why. In May 1991, Congressman Major Owens of New York promised to introduce it, but he has not done so and the aide who was in charge of the bill, Jackie Ellis, refuses to communicate with anyone about it; nor will Owens respond to letters about the bill.

PARTY SPEECH BAN TO BE CHALLENGED

The June 24 issue of *B.A.N.* reported that the U.S. Supreme Court had refused to rule on the constitutionality of a California law, which makes it illegal for a political party to endorse, support or oppose a candidate for non-partisan office. The Court had ruled that the plaintiffs in that case, *Geary v Renne*, lacked standing. None of the plaintiffs in that case was a political party nor a candidate for non-partisan office.

It is very likely that a new lawsuit, challenging the same ban on political party speech, will be filed this month. The Peace & Freedom Party has endorsed Gloria LaRiva, a candidate for Mayor of San Francisco and the only member of that party who is running. LaRiva stated that she is endorsed by her party, in the statement she submitted for inclusion in the government-printed Voters Handbook. The Registrar of Voters censored this statement, so LaRiva and the Peace & Freedom Party will sue to get the speech ban declared unconstitutional and to enjoin the Voter's Handbook censorship.

NEW JERSEY LABOR SLATE WITHDRAWN

The last issue of *B.A.N.* reported that the Communication Workers of America had qualified a slate of independent candidates for the legislature. On August 7, the slate withdrew from the election, after the government dropped plans to cut benefits for state employees.

PRESIDENTIAL DEBATES LAWSUIT

Lenora Fulani has decided to ask the Supreme Court to hear her appeal in the lawsuit (*Fulani v Brady*) over whether a tax-exempt Commission may continue to sponsor presidential debates for just the Democratic and Republican nominees.

NEW FORUM PROPOSED FOR DEM & REP PRESIDENTIAL CANDIDATES

Professor James Fishkin, chairman of the Government Department at the University of Texas, has persuaded the Public Broadcasting TV network to televise a December 1991 meeting at which 600 randomly selected adult Americans will be flown free to Austin to meet with Democratic presidential candidates and representatives of the Bush administration. The 600 selectees will then divide into Democratic and Republican caucuses and vote for their preferred nominee. Independents in attendance will not be permitted to caucus separately but will be required to join one of the major party caucuses, and presidential candidates other than Democrats and Republicans will not be permitted to address the group. Anyone who wishes to protest this format may write Fishkin at the University of Texas, Dept. of Govt., Austin Tx 78712.

1992 PETITIONING

The full-page petitioning chart which normally runs in *Ballot Access News*, showing the progress of all 1992 third party petition drives, does not appear in this issue for space reasons, but it will re-appear next month.

The Libertarian Party is now finished with its North Carolina and Wyoming petitions and is 80% finished in Nebraska, 60% finished in Alaska, and half finished in Arizona. The Green Party of California needs 79,188 registrants by December 31, 1991, and had 33,738 as of August 1, according to an unofficial survey made by the California Secretary of State. The American Party of Utah started its petition earlier this month and is half done. No other third party petition now in circulation has made more than incremental gains during the last month.

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VOTE CHARTS EXPLAINED

Previous issues of *Ballot Access News* have included 1990 election returns for third parties for U.S. Senator, Governor and U.S. House of Representatives, but have not carried election returns for state legislative candidates. The charts on pages three and four of this issue show the vote received in November 1990 by candidates of third parties for state legislatures. The charts include all third parties which had candidates for the state legislatures in more than one state. Parties which had candidates for either branch of the legislature in only one state, and their votes, are:

STATE SENATES

Conservative of New York	322,813	9.92%
Peace & Freedom, Calif.	83,514	8.61%
Right to Life, New York	75,319	4.40%
Liberal, New York	49,023	3.08%
Liberty Union, Vermont	3,006	13.44%
Indp. Party of Connecticut	2,528	2.99%
Workers World, Michigan	2,321	3.53%
Green, Connecticut	2,222	6.76%
Indp. Party of Utah	2,090	5.50%
American, Utah	2,009	8.25%
Grassroots, Minnesota	1,797	7.88%

LOWER HOUSES

Conservative of N.Y.	315,375	10.51%
Right to Life, N.Y.	93,547	5.19%
Peace & Freedom, Cal.	85,233	4.99%
Liberal, New York	35,725	3.12%
American, Utah	7,228	7.99%
American Independent, Cal.	4,878	2.78%
Independent Party of Utah	3,668	13.81%
Independent Party of Connecticut	1,947	1.44%
Progressive Coalition, Vt.	1,490	57.68%
Workers World, Mich.	1,424	2.73%
Grassroots, Minn.	1,232	6.12%
Labor-Farm, Wisconsin	749	4.24%
Green, New Hampshire.	703	9.86%
Tisch Indp. Citizens, Mich.	621	2.54%
Alaska Independence, Alaska	177	4.53%
Liberty Union, Vt.	133	5.13%

Party abbreviations for the charts on pages 3 and 4 are: LIBT, Libertarian; NAP, New Alliance; SWP, Socialist Workers. The Socialist Workers Party had no candidates on the ballot for State Senate but had State Senate write-in candidates in Arizona, North Carolina, Utah, Washington and West Virginia. A dash means that the particular state held no regularly-scheduled elections for that house of its legislature in 1990. An asterisk on page 3, and "w-i" on page 4, means that the party had write-in candidates, but that their votes were not tallied. The percentages are the total vote cast for the party's candidates, divided by the number of votes cast for all candidates, in the districts in which the particular party ran candidates. In the case of multi-member districts, if a party ran more than one candidate, the vote for the candidate who got more votes is used.

1990 LEGISLATIVE VOTE

STATE	STATE SENATE		LOWER HOUSE				
	LIBT	NAP	LIBT	COMMUNIST	NAP	POPULIST	SWP
Alabama	*	0	0	0	0	0	0
Alaska	0	0	0	0	0	0	0
Arizona	7	0	1,703	2,476	0	0	0
Arkansas	0	0	0	0	0	0	0
California	98,467	0	233,852	0	0	0	0
Colorado	0	0	0	0	0	0	0
Connecticut	2,628	0	1,138	0	0	0	0
Delaware	602	0	69	0	0	0	0
Florida	0	0	0	0	0	0	0
Georgia	0	0	2,885	0	0	0	0
Hawaii	0	0	260	0	0	0	0
Idaho	232	0	6,730	0	0	0	0
Illinois	0	0	824	2,382	564	0	0
Indiana	0	0	11	0	*	0	0
Iowa	0	0	0	0	0	0	0
Kansas	----	----	0	0	0	0	0
Kentucky	0	0	0	0	0	0	0
Louisiana	----	----	----	----	----	----	----
Maine	0	0	1,170	0	0	0	0
Maryland	0	0	0	0	0	0	0
Massachusetts	0	1,349	0	2,605	0	0	0
Michigan	9,128	0	8,171	0	0	0	0
Minnesota	0	0	0	0	0	0	0
Mississippi	----	----	----	----	----	----	----
Missouri	0	0	1,729	0	0	0	0
Montana	0	0	161	0	0	0	0
Nebraska	0	0	----	----	----	----	----
Nevada	3,981	0	7,142	0	0	0	0
New Hampshire	0	0	1,510	0	0	0	0
New Jersey	----	----	----	----	----	----	----
New Mexico	----	----	3,806	0	0	0	0
New York	0	3,737	761	0	4,087	0	0
North Carolina	0	2,041	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0
Ohio	0	0	2,182	1,496	0	0	0
Oklahoma	0	0	0	0	0	0	0
Oregon	0	0	6,351	0	0	0	0
Pennsylvania	0	0	290	0	0	3,369	0
Rhode Island	0	0	0	0	0	573	0
South Carolina	----	----	1,269	0	0	0	0
South Dakota	0	0	0	0	0	0	0
Tennessee	0	2,279	0	0	684	0	0
Texas	3,297	0	28,201	0	*	0	0
Utah	7,421	0	8,287	0	0	0	*
Vermont	0	0	0	0	0	0	0
Virginia	----	----	----	----	----	----	----
Washington	2,007	3,015	13,326	0	1,436	0	*
West Virginia	0	0	0	0	0	0	13
Wisconsin	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0
TOTAL	127,770	12,421	331,828	8,959	6,771	3,942	13

1990 LEGISLATIVE PERCENTAGES

STATE	STATE SENATE		LOWER HOUSE				
	LIBT	NAP	LIBT	COMMUNIST	NAP	POPULIST	SWP
Alabama	0	0	w-i	0	0	0	0
Alaska	0	0	0	0	0	0	0
Arizona	w-i	0	12.01	18.96	0	0	0
Arkansas	0	0	0	0	0	0	0
California	6.50	0	6.89	0	0	0	0
Colorado	0	0	0	0	0	0	0
Connecticut	4.21	0	3.36	0	0	0	0
Delaware	11.50	0	1.74	0	0	0	0
Florida	0	0	0	0	0	0	0
Georgia	0	0	10.68	0	0	0	0
Hawaii	0	0	4.91	0	0	0	0
Idaho	2.29	0	11.34	0	0	0	0
Illinois	0	0	3.97	11.68	1.73	0	0
Indiana	0	0	w-i	0	w-i	0	0
Iowa	0	0	0	0	0	0	0
Kansas	----	----	w-i	0	0	0	0
Kentucky	0	0	0	0	0	0	0
Louisiana	----	----	----	----	----	----	----
Maine	0	0	14.91	0	0	0	0
Maryland	0	0	0	0	0	0	0
Massachusetts	0	4.25	0	10.09	0	0	0
Michigan	3.28	0	2.54	0	0	0	0
Minnesota	0	0	0	0	0	0	0
Mississippi	----	----	----	----	----	----	----
Missouri	0	0	12.56	0	0	0	0
Montana	0	0	7.47	0	0	0	0
Nebraska	0	0	----	----	----	----	----
Nevada	7.41	0	9.00	0	0	0	0
New Hampshire	0	0	26.01	0	0	0	0
New Jersey	----	----	----	----	----	----	----
New Mexico	----	----	14.28	0	0	0	0
New York	0	2.24	1.83	0	2.64	0	0
North Carolina	0	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0
Ohio	0	0	5.93	7.78	0	0	0
Oklahoma	0	0	0	0	0	0	0
Oregon	0	0	7.24	0	0	0	0
Pennsylvania	0	0	1.85	0	0	10.97	0
Rhode Island	0	0	0	0	0	26.21	0
South Carolina	----	----	4.59	0	0	0	0
South Dakota	0	0	0	0	0	0	0
Tennessee	0	12.19	0	0	4.42	0	0
Texas	2.83	0	7.58	0	w-i	0	0
Utah	9.61	0	9.30	0	0	0	w-i
Vermont	0	0	w-i	0	0	0	0
Virginia	----	----	----	----	----	----	----
Washington	6.51	14.10	18.26	0	8.69	0	w-i
West Virginia	0	0	0	0	0	0	w-i
Wisconsin	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0

U.S. TAXPAYERS PARTY

The U.S. Taxpayers Party, the only third party which is trying to qualify for the Pennsylvania special U.S. Senate election on November 5, 1991, has 8,000 signatures. 41,305 are needed by September 1. The party expects to name a presidential candidate no later than October 1991.

MATCHING FUNDS

In 1992, Lenora Fulani may again be the only third party presidential candidate to receive any federal matching funds (in 1988, she was the only one). She has now raised enough funds in 20 states to qualify (20 states are needed). She is seeking the nomination of the New Alliance Party.

Andre Marrou, a leading candidate for the presidential nomination of the Libertarian Party, had announced his intent to seek federal matching funds, but he has abandoned that goal. It proved impossible for him to overcome the barrier of the Libertarian Party's early national convention date. Under the federal election campaign act, third party presidential candidates can only qualify for matching funds before they are nominated by a political party which is on the ballot in at least two states. Since the Libertarian Party national convention is August 29-September 1, 1991, and since matching funds are not distributed until January 1992, no Libertarian presidential candidate can possibly qualify. In addition, there is a great deal of sentiment against matching funds in the Libertarian Party, and Marrou's acceptance of matching funds would probably split the party.

The founder of the U.S. Taxpayers Party, Howard Phillips, is also conscientiously opposed to matching funds, and no candidate of this party is likely to apply.

Ron Daniels of the Rainbow Coalition, who will probably be an independent presidential candidate next year, would like to apply for matching funds. However, he is stymied because independent candidates cannot qualify for primary matching funds.

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1991 LEGISLATIVE RACES

Four states hold their legislative elections this year. In Virginia and Mississippi, there are no third party candidates for the legislature on the ballot. In Louisiana, there is one Libertarian running for the State Senate. In New Jersey, there are ten Populist Party candidates, five Socialist Workers Party candidates, and three Libertarian candidates for the legislature.

CLARENCE THOMAS

Judge Clarence Thomas, President Bush's choice to fill Thurgood Marshall's seat on the Supreme Court, is said to have supported the Voting Rights Act in 1982, while he was working for the Reagan administration. At the time, senior officials in the administration were about to oppose the extension of the Act, and Thomas and others successfully persuaded Reagan to support it instead.

ZAPPA MAY RUN FOR PRESIDENT

Frank Zappa, well-known musician, says in an interview in the July 1991 issue of *Spin Magazine* that he may run for president in 1992 as an independent. He says he has already asked two consultants to research the problems he would face. His address is Barking Pumpkin Records, Bx 5265, North Hollywood CA 91616-5265, fax (818) 764-4972. He says if he runs, "It would be a real run". He also says he would abolish the federal income tax.

TERM LIMITATIONS

Voters of Washington state will vote on November 5, 1991, whether to limit tenure of state legislators and members of Congress to six years. It was placed on the ballot by initiative and is known as Question 553. Term limitations for state legislators passed last year in California, Colorado and Oklahoma.

A court challenge to the California limitations will be heard in the State Supreme Court sometime in fall, 1991. The case is *Legislature v Eu*, no. S-019660.

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