BALLOT ACCESS NEWS

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SUPREME COURT WRITE-IN RULING IS UNPRECEDENTED

NEVER BEFORE HAD COURT LIMITED VOTER'S RIGHT OF CHOICE

On June 8, the U.S. Supreme Court issued a ruling in *Burdick v Takushi*, the Hawaii case over whether states must permit write-in votes. The 6-3 opinion, written by Justice Byron White, upholds the ban on write-in voting; and undermines previous favorable Supreme Court ballot access rulings. Justices Kennedy, Stevens and Blackmun dissented. See page 8 for the heart of White's text.

Never before had the Supreme Court upheld any law which permits an election for an office, yet which tells the voter that he may not vote for someone who meets the constitutional requirements to hold the office. Although the Court has upheld laws in some states which keep certain candidates off the ballot, all of the states in the Court's ballot access cases permitted write-in voting.

Voters in the Past had Freedom of Choice

The decision doesn't acknowledge that from 1776 until 1888, there were absolutely no restrictions on whom a voter could vote for. This was because there were no government-printed ballots. Voting in the 18th century was by voice. Later, paper ballots were used, but the voters made their own ballots at home and then cast them at the polls. Still later, parties began printing ballots for the voters who wanted them, but such voters kept the right to scratch out names of candidates they didn't wish to vote for, and to write in others.

Thus, the government had no ability to prevent people from voting for anyone they wished. The first government-printed ballot was used in 1888 in Massachusetts. South Carolina didn't start using them until 1950.

State courts generally ruled that the new government-printed ballots must leave a blank space on the ballot, in case the voter wanted to vote for someone not on the ballot.

The underlying logic of White's opinion is that the voters cannot be trusted, that their choices must be channelled, to avoid "unrestrained factionalism". There is no need for the government to control voter choices; if there were, it would have been apparent in the history of private ballots (which, as mentioned above, extends to the year 1950 in the case of South Carolina). White could not answer the historical argument, so he ignored history. He also ignored 24 precedents striking down write-in bans.

Decision Ignores Ninth Amendment

The 9th amendment states "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people". Since the right to vote for any candidate existed in 1791, when the 9th amendment was ratified, this portion of the Constitution ought to protect that freedom today.

Decision Ignores Third Party Voters

White's decision made no reference to the plight of voters who wish to vote for candidates of parties which aren't able to get on the ballot. This was so, even though there were three *amicus* briefs (one asking that the court accept the case, and two on the merits), mentioning that voters who support candidates of small political parties have a special need to cast a write-in vote, since inevitably some third party candidates fail to get on the ballot. White's decision mentions nothing about write-ins in presidential elections or about the Hawaii procedures for qualifying for the presidential ballot (which are different than Hawaii procedures for other office).

Decision Hurts Ballot Access Rights

White has long been a foe of voting rights for third party and independent voters. In 1968 he voted to keep George Wallace off the ballot in Ohio in *Williams v Rhodes*. In 1974 he wrote the opinion in *Storer v Brown*, upholding a law that no one could be an independent candidate who had been a registered member of a party during the 17 months before an election. In 1983 he voted in *Anderson v Celebrezze* that John Anderson should not have been on the ballot in states with early petition deadlines.

White used his *Burdick* decision to say that very early filing deadlines for new parties are constitutional, if the deadline for independent candidates is later. He said that ballot access hurdles of up to 10% are constitutional, even when the supporters of the independent candidate are not permitted to vote in partisan primaries. He also undermined the idea that restrictions on ballot access are unconstitutional unless they are needed for a compelling state interest, saying that this is true only for "severe" restrictions. He provided no guidance as to what is a "severe" restriction.

Decision Ignores Article I of the Constitution

White's decision ignores Article I of the Constitution, which sets forth the requirements to be a member of Congress (age, citizenship, residency). The Supreme Court ruled in *Powell v McCormack* in 1969 that Congress may not add to these requirements. Presumably, the states may not either (dozens of courts, going back to 1918, have said that they may not).

However, if a state is free to abolish write-in voting, then no one in such states may be elected to Congress who does not comply with state ballot access laws, including "sore loser" laws. Write-in voting, at least for Congress, is a logical corollary if Article I is to retain its vitality. Four members of Congress since 1954 have been elected by write-in votes; one of them was a "sore loser".

For a copy of the decision, send $1 to *B.A.N.*

HIGH COURT UPHOLDS POLL ZONE

On May 26, the U.S. Supreme Court upheld Tennessee law which makes it illegal to display any campaign literature for a candidate on the ballot, on election day, within 100 feet of the entrance of a polling place. *Burson v Freeman*, no. 90-1056. The vote was 5-3. The dissenters were Justices John Stevens, Sandra O'Connor and David Souter. Justice Clarence Thomas didn't vote.

It is very unusual for the Court to uphold any law which criminalizes certain kinds of speech, but not other kinds. Furthermore, at the trial in the lower courts, the state was unable to produce any evidence that the 100 foot zone was necessary. Everyone acknowledges that campaign literature can be kept out of the polling place, but the law involves an area outside the polling place which (according to the dissent) covers 30,000 square feet.

The majority opinion, by Harry Blackmun, justifies the law by history. It describes confusion and intimidation around polling places during the 18th and 19th centuries, and points out that 34 of the 45 states passed "no-politics zone" laws by 1900. The opinion also says that even the First Amendment may be abridged, in order to protect the right to vote.

The irony is that this opinion, which relies so much on history and which elevates the right to vote to such heights, was completely ignored in the Hawaii write-in decision which appeared a week later (see page one). The Hawaii decision ignores history, ignores the fact that the vast majority of states have always permitted write-in voting, and denigrates the right to vote for the candidate of one's choice as of "slight" importance. On all three points, the two decisions stand in sharp contrast.

WASHINGTON STATE LOSS

On May 26, 1992, U.S. District Court Judge William L. Dwyer upheld Washington state ballot access laws which force third parties to choose their candidates before Democrats and Republicans have even declared their candidacy for the primary. *Libertarian Party of Washington v Munro*, no. C92-5076(T)WD. Dwyer is a Reagan appointee.

The Libertarian Party has asked Dwyer to reconsider. Dwyer said there is no reason to think the disparity in filing deadlines disadvantages minor parties. The party has submitted new evidence to contradict his assumption.

Meanwhile, the Washington House Elections Committee held a hearing on June 11 and took testimony from Libertarians on how the state ballot access laws could be improved. It is fairly likely that a bill will be introduced next year to alleviate the disparity in filing deadlines, and perhaps to ease ballot access for third party and independent candidates for Governor and U.S. Senator as well. Since the existing state ballot access laws were passed in 1977, no third party candidates for Governor or U.S. Senator have been able to get on the November ballot.

FREE POSTAGE LAWSUIT FILED

On June 1, the Coalition to End the Permanent Congress filed a lawsuit to stop incumbent congressmen from getting free postage, for mail to voters outside their existing districts. *Coalition to End Permanent Congress v Runyon*, no. CA 92-1172-SSH, in federal district court, Washington, D.C.

The Coalition does not contest the right of members of Congress to send free mail to their constituents. The lawsuit instead challenges the law which also gives free postage to members of Congress, to mail outside their existing district. Members of Congress use this provision to send material to voters who live in the new district that the member hopes to represent, in elections after reapportionment. The Coalition charges that there is no compelling governmental interest in this practice, and that it discriminates against non-incumbent candidates.

ALASKA REPUBLICANS SUE STATE

On May 27, 1992, the Republican Party filed its second lawsuit to force the state to give it a closed primary. *Zawacki v State of Alaska*, no. A-92-414, federal court, Anchorage.

Alaska election law provides that all qualified parties must choose their candidates in an open primary. Although Alaska provides that voters register into particular parties, all voters get the same primary ballot. Thus, under the law, Democratic voters can choose to vote in the Republican primary. No one can tell which party's primary any particular voter voted in.

The Alaska Republican Party is not willing to accept this type of primary. In 1990 the party filed a lawsuit to demand that only registered Republicans and registered Independents be allowed to vote in its primary. Nothing happened that year because the demand wasn't made in time, but the state agreed that the party had the right to the type of primary it desires.

The new lawsuit was filed because the state still hasn't established procedures for the primary, and the Republican Party is afraid that again its wishes will be thwarted by delays.

CALIFORNIA LOSS

On June 1, Superior Court Judge James Morris of Sacramento upheld the 3% petition requirement for independent candidates for Congress and Legislature. *Cross v Eu*, no. 370105. The plaintiff, Nancy J. Cross, plans to appeal.

SOLIDARITY RULING IMMINENT

Federal District Judge George Lindberg has promised to release an opinion on June 16 in *Illinois Solidarity Party v Neal*, no. 92-C-1655, Northern dist., the case over whether the party's 8% showing in November 1990 for Trustee of the University is sufficient to make it a ballot-qualified for statewide office.

NEW BALLOT ACCESS LAWSUITS

These ballot access lawsuits are about to be filed:

1. Alabama: Gwen Patton, an independent candidate for U.S. Senate, plans to file a lawsuit against Alabama laws which require an independent candidate (for non-presidential office) to file more than twice as many signatures as a new political party needs.

2. Florida (1): the Libertarian Party is about to file a lawsuit in state court against the 3% (of the number of registered voters) petition requirement for non-presidential third party candidates. This requirement for statewide office is now 180,936 valid signatures.

Although this requirement has been upheld many times in federal court, no one has ever tried to attack it using the Florida State Constitution. In 1970 the Florida Supreme Court threw out the old ballot access laws for new parties; in 1974 the same court threw out the old Florida independent candidate requirements; in 1979 that court held the Florida ban on write-in votes unconstitutional. The Florida State Supreme Court has a good record on ballot access, so there is some hope for a successful attack on the existing 3% petition requirement.

3. Florida (2): the Socialist Workers Party is about to file its own lawsuit against the 10¢ charge per signature, which third parties must pay to have their petitions verified. The party won a lawsuit against this law in 1972 in 3-judge U.S. District Court, but the state has ignored that decision ever since, claiming it only applies to the Socialist Workers Party. This new lawsuit puts the state on the spot, since the SWP of today is the same party it was in 1972! The SWP has collected 8,000 signatures to place a candidate for U.S. House on the ballot from Miami.

In the meantime, the 11th circuit hearing on the New Alliance Party's lawsuit against the fee will be in Atlanta on June 29.

4. Florida (3): the U.S. Taxpayers Party plans to file a lawsuit against the July 15 petition deadline for presidential third party petitions, since the party probably can't finish until about August 1. Until 1983, the Florida petition deadline for presidential petitions was August 15.

5. Georgia: the Libertarian Party is about to file a lawsuit against state law which says that part of the filing fee for Republican and Democratic candidates gets rebated to those parties, whereas the identical fee charged Libertarian candidates is completely kept by the government.

6. Iowa: the Grassroots Party expects to file a lawsuit against Iowa law which says that third party and independent congressional candidates need approximately 2,500 signatures to get on the ballot, whereas statewide candidates only need 1,000 signatures.

7. Maine (1): the Natural Law Party is about to file against Maine's June 2 petition deadline for independent and third party presidential candidates, charging that it is too early (after Texas, it is the earliest in the nation).

8. Maine (2): the Libertarian Party, which is a fully qualified party in Maine (the first third party with that status in Maine since 1916), is about to file a lawsuit against a law which makes it virtually impossible for a small qualified party to place candidates on its own primary ballot, and another law which makes it impossible for it to nominate by write-in at its own primary.

9. Nevada: the Natural Law Party is about to file a lawsuit against the June 10 petition deadline for an independent or third party candidate to submit signatures. For president, it is the third earliest deadline in the nation. The Natural Law Party is a good plaintiff for this type of lawsuit, since it wasn't created until April 1992 and thus has a good reason for not having met the deadline earlier.

10. New York: the Perot Campaign will probably file a lawsuit to keep candidates for local office from appearing on the November ballot as though they were part of his campaign. John B. Anderson filed and won a similar lawsuit in Connecticut in 1980, *Curry v Kennelly.*

In both states, there is no differentiation between independent candidates and new parties. Each gets its own column on the mechanical voting machines. Furthermore, neither state will permit an independent candidate to be labelled simply "Independent"; some additional label is required. The petitioning period hasn't begun in New York yet, but whenever it begins, Perot will have to reveal his choice for a label. His campaign fears that when the label becomes known, unassociated candidates for other office will also petition using that label, and then elections officials would put such candidates in Perot's column, even though they might have no association with him.

MARYLAND RULING ON PARTY NAMES

On June 11, the Attorney General of Maryland ruled that a political party may have more than one word in its name, if there is a hyphen between the words. The Natural Law Party and Ron Daniels (who is forming a Maryland party called "Green-Unity") requested the ruling.

Sec. 16-5(d) of the election law says "A party name shall consist of one word only". This is a silly law which is probably unconstitutional; the Attorney General's ruling provides a way to satisfy the parties and still save face for the state. The opinion will also permit the New Alliance Party to be on the ballot as "New-Alliance".

HIGH COURT WISCONSIN ACTION

On June 19, the U.S. Supreme Court will consider whether to hear the case *Swamp v Kennedy,* no. 91-1589. This is the Wisconsin case over whether a political party has the right to nominate someone who is also the nominee of another political party.

The Court will probably announce its decision as to whether it will hear the case, on June 22. The 7th circuit had voted 7-3 to uphold the Wisconsin law. Since there were some 7th circuit judges on both sides of the issue, there is a fair chance that the U.S. Supreme Court will hear the case.

WASHINGTON POST MISLEADS READERS

The *Washington Post* of May 21 carries a story by E. J. Dionne which says, "It is easier than ever for third party presidential candidates to qualify for state ballots". This is a colossal error.

The number of signatures needed for a third party or independent presidential candidate to qualify in all states is the highest since 1964. Ballot access was far easier in the first half of this century; and it was no problem at all in the 19th century.

Below are the number of signatures needed to get a third party or independent presidential candidate on the ballot of all jurisdictions (using the easier method) and the percentage of the electorate that this total represents, since 1948. "Electorate" is defined as the number of people voting for president. Since the 1992 election hasn't been held yet, the base used for the 1992 percentage is the 1988 total number of votes cast.

Year	Total Signatures	Percentage
1992	697,974	.76
1988	611,028	.67
1984	673,507	.73
1980	596,884	.69
1976	673,332	.83
1972	687,968	.88
1968	547,828	.75
1964	922,455	1.31
1960	859,567	1.25
1956	735,741	1.18
1952	741,017	1.20
1948	252,068	.52

Dionne acknowledged over the telephone that he was mistaken, but the *Post* has not run a correction.

LaROUCHE WINS DAKOTA PRIMARY, WILL RUN AS AN INDEPENDENT

On June 9, the nation's last presidential primary was held in North Dakota. Three Democrats were on the ballot. With 94% of the ballots counted, Lyndon LaRouche had 7,075; Charles Woods had 6,688; Tom Shiekman had 4,908. There were also 5,866 write-ins for Ross Perot, 2,946 write-ins for Bill Clinton, 14 write-ins for Jerry Brown, and 6 write-ins for Paul Tsongas. Other write-ins weren't counted. Clinton, Brown and other mainstream Democratic candidates didn't file for a place on the ballot, since the primary is open and violates Democratic national rules. Delegates were chosen months ago by caucus.

Lyndon LaRouche plans to run for president as an independent candidate this November. He also ran for the Democratic nomination, and then as an independent, in 1984 and 1988. In 1980 he ran only for the Democratic nomination.

In the North Dakota Republican primary, there were two candidates on the ballot. President George Bush received 39,512 and Pat Paulsen received 4,113. There were 2,465 Republican write-ins for Perot.

PRESIDENTIAL DEBATES RULES

On June 11, the Commission on Presidential Debates announced its criteria for inclusion in general election debates. The Commission's co-chairmen are the recent past chairmen of the Republican and Democratic Parties.

Independent and third party candidates will be invited into the debates (to be held in September and October) if they have a "realistic chance of being elected". "The realistic chance need not be overwhelming, but it must be more than theoretical", the Commission says.

Specifically, the candidate must have a substantial organization, must be considered newsworthy, and must do well in the polls.

The candidate's organization will be measured by such indicators as whether he or she is on the ballot in states containing a majority of electoral votes, whether he or she has an organization in a majority of congressional districts in such states, and whether he or she has qualified for matching funds (this criteria makes little sense, since independent presidential candidates cannot qualify for primary season matching funds; nor can they qualify for general election public funds until after the election).

The candidate's newsworthiness is to be measured by "the professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks; and the opinions of a comparable group of professional campaign managers and pollsters not then employed by the two major party candidates; and the opinions of representative political scientists; and published views of prominent political commentators", and by the amount of column-inches on newspaper front pages and exposure on network television.

ALASKA RULING SOUGHT

The Alaska Division of Elections has asked the Attorney General to rule on whether the petition to qualify a third party or independent presidential candidate is due August 5 or August 24. The law says the deadline is August 5.

In 1990, a state court ruled that August 1 is unconstitutionally early for petitions for office other than president. The presidential deadline of August 5 was not dealt with in the lawsuit, but it is difficult to believe that it is valid, given the 1990 decision for other petition deadlines.

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PEROT PETITION GLITCHES

Petitions to get Ross Perot on the ballot in Missouri and Virginia had to start all over, because in each state the campaign decided to change the nominees for presidential elector. In North Carolina, the Perot campaign discovered a serious flaw in state law.

1. Virginia: Perot petitioners were forced to start over because two of the elector candidates didn't live in the congressional district they intended to represent. Virginia requires that candidates for elector must each live in a separate district (except for two at-large electors). However, the new petition already has enough signatures.

2. Missouri: the Perot committee became distrustful of two of the elector candidates, and started all over with a new slate, even though the original petition contained 100,000 signatures. One of the distrusted elector candidates had been making money selling Perot T-shirts and bumper stickers (the campaign doesn't want anyone making money off the campaign); the other one had failed to sign a declaration of candidacy.

3. North Carolina: Perot will be the first person ever to qualify as an independent candidate for statewide office in the history of that state's ballot access laws. Because he is the first, it was only recently that state officials noticed that the election code provides no means for an independent presidential candidate to name candidates for presidential elector.

It is very likely that the state legislature will pass an urgency bill, correcting the flaw in the law. If this does not happen, the Perot campaign will sue. Under many precedents set by Eugene McCarthy in 1976, including one in the U.S. Supreme Court, there is no doubt that the courts would rule that the state must let Perot name a slate of electors.

No one has ever qualified as an independent statewide candidate in the past in North Carolina, because it was always more difficult to get on as an independent, than to establish a new political party. In 1980 independent presidential candidate John B. Anderson established the "Independent Party" in this state.

ARIZONA RULING SOUGHT

The Arizona Secretary of State has asked the Attorney General to rule on whether independent presidential candidate petitions may be signed by any registered voter, or just registered voters who don't vote in the primary.

Although the law says the petitions can only be signed by voters who didn't vote in the primary, this makes no sense for independent presidential petitions. Arizona has no presidential primary! The only rationale for preventing primary voters from signing a petition is that they would be helping to nominate two different people for the same office, but that isn't true in Arizona for president.

This issue hasn't arisen before, since before 1988, presidential elector candidates were chosen in party primaries. Now they are chosen in state conventions.

START DATES CORRECTED

In six states and the District of Columbia, it is still too early to be petitioning to get an independent presidential candidate on the ballot. *Ballot Access News* of May 24 contained errors about these starting dates. The correct dates are:

Arizona	Sept. 9
Minnesota	July 7
New York	July 16
Rhode Island	June 30
Washington state	June 27
Wisconsin	August 1
District of Columbia	June 28

The New York and District of Columbia start dates changed recently. Governor Mario Cuomo signed AB 11784 on June 9, setting the 1992 petitioning period from July 16 to August 27. The D.C. Board of Elections revised a regulation recently, changing the start date from July to June.

VOTER REGISTRATION BILL

The House of Representatives is expected to pass H.R. 4366 any day now. This is the bill, authored by Congressman John Conyers, to force the states to substantially ease voter registration rules. A similar bill, S. 250, has already passed the Senate. No one knows if President Bush will sign it or veto it.

If the bill becomes law, it may be possible to get the congressional ballot access bill re-introduced. In the past, the biggest argument against the bill was that the federal government should not tell the states how to run their elections, even their elections for federal office. However, federal voter registration standards will be a big step away from that tradition.

CALIFORNIA REGISTRATION DATA

Shown below are registration tallies for February, April and May 1992 for each qualified California party.

Party	February	April	May
Demo.	6,279,559	6,404,443	6,581,888
Rep.	5,070,714	5,146,891	5,242,805
Amer Indp	156,321	165,676	184,176
Green	103,903	100,518	93,026
Peace & Fr	55,907	61,514	66,240
Libertar'n	53,228	56,330	60,972
other	1,239,674	624,450	1,340,141
Total	12,959,306	13,217,022	13,569,248

21st CENTURY PARTY

The party being formed by the National Organization for Women, the 21st Century Party, expects to name its first candidates during July. Probably there will be a few candidates for the U.S. House of Representatives, or for state legislatures, or both.

CALIFORNIA BILL DEFEATED

On June 9, the Assembly Elections Committee defeated SB 1460, by Senator Lucy Killea. It would have repealed two restrictions on independent candidates which were passed last year: (1) a requirement that all independent candidates file a declaration of intent to become candidates in February of an election year; (2) a requirement that independent presidential elector candidates not be registered members of any qualified party for the preceding year.

The Secretary of State and the Legislative Counsel both consider these two restrictions unconstitutional, and they are not being enforced.. Nevertheless, the Assembly Elections Committee was reluctant to do any favors for independent candidates. Assemblyman Johan Klehs, a Democrat, mentioned the previous day's U.S. Supreme Court ruling as a reason why the state might now have more authority to clamp down on independents, even though no one at the hearing had seen the decision.

CALIFORNIA LIBERTARIANS ELECTED

Two California Libertarian Party activists were elected to significant non-partisan office on June 2. Bonnie Flickinger was elected to the Moreno Valley city council, a city of almost 150,000 population.

Also, Tom Tryon was re-elected to his third term on the Calaveras County Board of Supervisors.

PEROT CANDIDACY HAS GOOD EFFECT ON STATE DISAFFILIATION LAWS

Seven states provide that an independent candidate may not appear on the ballot, if the candidate was a member of a qualified political party for some specified period in the past. The various periods range from one month to thirteen months before the filing deadlines. The states are California, Colorado, Delaware, Maine, Massachusetts, Oregon and Pennsylvania. Several other states provide that an independent candidate must not be registered as a member of a qualified party on the day he or she files.

Generally, these states are ruling that these laws do not apply to candidates for president or vice-president. Attorneys for the Ross Perot campaign are doing a good job of persuading the states that if they were to interpret them to apply to president and vice-president, they would be unconstitutional.

Perot himself is not affected by these laws, since he is registered to vote in Texas, a state which doesn't provide for voter registration into parties. However, Perot's vice-presidential candidate (yet to be chosen) may be, or may have been, a registered Democrat or Republican.

MATCHING FUNDS

On June 4, the Treasury mailed checks in the following amounts to these candidates: George Bush $1,329,418; Pat Buchanan $263,303; Bill Clinton $1,089,690; Paul Tsongas $935,972; Jerry Brown $1,669,741; Bob Kerrey $55,584; Tom Harkin $42,313; Lenora Fulani $134,724.

MISSISSIPPI RECORD BREAKER

The Mississippi Libertarian Party has named a candidate for the legislature, Donald Scott of New Albany. He is the first third party candidate for the state's legislature since 1919, when the Socialist Party had some candidates.

The party has been qualified since 1983, but this is the first time it has run any candidates, other than president.

FLA. POST OFFICES ALLOW PETITIONING

On May 18, the Postal Service, Miami Division, agreed that third party petitions may be circulated on post office sidewalks in southern Florida. Post offices elsewhere generally refuse to allow this type of petitioning.

CALIFORNIA PRES. PRIMARY

On June 2, three third parties held presidential primaries in California. The only contested primary was the Peace & Freedom Party primary:

Lenora Fulani	4,215	50.9%
Ron Daniels	2,690	32.5%
Alison Star-Martinez	1,384	16.7%

The primary is not binding. The party's presidential candidate will be chosen in August in San Diego. The choice will be made by county central committee members elected on June 2. So many candidates for this office were write-in candidates, and the write-in count is so slow, that no one knows at this point whether Fulani or Daniels has more delegates. Star-Martinez, who lives in southern California, is not an active candidate.

There were 8,289 valid votes cast in the PFP presidential primary, compared to 5,923 cast in it in 1988.

In the Libertarian presidential primary, Andre Marrou, who was the only candidate, received 14,388 votes.

In the American Independent presidential primary, Howard Phillips (presidential candidate of the Taxpayers Party), who was the only candidate, received 14,877 votes.

THIRD PARTIES POLL 19% IN CALIFORNIA

On June 2 at an election for State Senate, Democrat David Roberti got 39,736 votes (42.4%); Republican Carol Rowen got 36,288 (38.7%); Glenn Bailey, Green, got 7,730 (8.2%); John Vernon, Libertarian, got 6,640 (7.1%); Gary Kast, Peace & Freedom, got 3,339 (3.6%).

PETITIONS NOT ON PAGE 7 CHART: Greens are finished in NM and have 500 in Id and 8,000 in Mo (for party status in 1994, 4,000 in Nv & 2,500 in Tn). Pacific Party of Oregon has 13,000. Ron Daniels has 500 in Md, 6,000 in Mo, 500 in NJ, and 6,000 in Pa. Socialist Workers has 15,000 in Il, 5,000 in Oh and is finished in NJ. Socialist has 150 in Ia, 200 in NJ, and 300 in Ut. Prohibition has 700 in Co and is finished in Tn. Workers League has 32,000 in Mi and is finished in NJ. Grassroots is finished in Ia. American Political Party of Hawaii has 600. American has 100 in ND.

1992 PRESIDENTIAL PETITIONING

STATE	SIGNATURES COLLECTED							
	REQUIRED	PEROT	MARROU	FULANI	PHILLIPS	GRITZ	HEGELIN	DUE
Alabama	5,000	finished	already on	*3,000	0	500	200	Aug 31
Alaska	2,035	*already on	*finished	*1,750	*900	470	350	*in doubt
Arizona	10,555	can't start	already on	*finished	0	finished	can't start	Sep 18
Arkansas	0	*already on	0	already on	already on	0	already on	Sep 15
California	134,781	finished	already on	seek nom	seek nom	0	already on	Aug 7
Colorado	5,000	finished	2,000	*finished	1,000	1,700	0	Aug 4
Connecticut	14,620	*finished	*6,500	*4,600	0	*1,550	0	*Aug 12
Delaware	(reg.) 144	already on	already on	*108	80	*100	45	Jul 15
D.C.	(es) 3,100	can't start	can't start	can't start	can't start	can't start	can't start	Aug 18
Florida	60,312	*already on	*85,000	200	*20,000	*32,000	2,500	Jul 15
Georgia	26,955	finished	already on	0	0	*1,250	300	Jul 14
Hawaii	4,177	0	already on	*250	0	*1,500	250	Sep 4
Idaho	4,090	*already on	already on	0	500	already on	100	Aug 25
Illinois	25,000	*finished	*8,000	in court	*5,000	200	150	Aug 3
Indiana	29,919	finished	finished	*33,700	*2,000	*6,000	100	Jul 15
Iowa	1,000	*finished	*finished	*400	*100	finished	finished	Aug 14
Kansas	5,000	*finished	already on	0	*1,600	*100	0	*Aug 3
Kentucky	5,000	*already on	*already on	*100	*700	*1,600	0	Aug 27
Louisiana	0	*4,000	0	0	0	0	0	Sep 1
Maine	4,000	already on	already on	*finished	*finished	100	2,700	Jun 2
Maryland	10,000	finished	already on	*6,000	1,300	1,200	350	Aug 3
Massachsts.	10,000	finished	*6,000	*6,700	already on	0	200	Jul 28
Michigan	25,646	finished	already on	*200	seek nom	*2,300	1.300	Jul 16
Minnesota	2,000	can't start	can't start	can't start	can't start	can't start	can't start	Sep 15
Mississippi	1,000	finished	already on	*finished	already on	900	100	Sep 4
Missouri	20,860	*30,000	*8,500	0	*2,000	500	0	Aug 3
Montana	9,531	finished	already on	0	0	*4,600	150	Jul 29
Nebraska	2,500	*finished	already on	*200	0	*150	0	Aug 25
Nevada	9,392	finished	already on	*finished	*finished	*finished	2,000	June 10
New Hamp.	3,000	finished	already on	3,700	0	*250	0	Aug 5
New Jersey	800	*already on	*1,000	0	*700	*100	125	Jul 27
New Mexico	2,069	finished	already on	already on	0	50	250	Sep 8
New York	15,000	can't start	can't start	can't start	seek nom	can't start	can't start	*Aug 27
North Carolina	43,601	finished	already on	*3,300	2,000	0	0	Jun 26
North Dakota	4,000	finished	*100	0	0	0	200	Sep 4
Ohio	5,000	finished	*1,000	*1,200	*1,200	*1,400	3,000	Aug 20
Oklahoma	35,132	finished	*42,000	2,200	*6,000	0	750	July 15
Oregon	36,092	finished	already on	*11,800	0	2,500	0	Aug 25
Penn.	37,216	*finished	*12,500	*33,500	0	*50	0	Aug 1
Rhode Isl.	1,000	can't start	can't start	can't start	can't start	can't start	can't start	Sep 4
South Carolina	10,000	*finished	already on	already on	already on	0	0	Aug 1
South Dakota	2,568	finished	already on	*600	0	*100	250	Aug 4
Tennessee	25	already on	*finished	already on	*25	finished	finished	Aug 20
Texas	38,900	*already on	already on	too late	too late	too late	too late	May 11
Utah	300	already on	already on	already on	finished	already on	300	Sep 1
Vermont	1,000	finished	already on	already on	0	0	finished	Sep 17
Virginia	13,920	finished	*5,000	*4,500	0	0	0	Aug 21
Washington	200	can't start	can't start	can't start	can't start	can't start	can't start	Jul 25
West Va.	6,534	*7,000	finished	0	0	*2,200	0	Aug 1
Wisconsin	2,000	can't start	already on	can't start	can't start	can't start	already on	Sep 1
Wyoming	8,000	*already on	already on	0	0	*800	0	Aug 24

Other qual. nat. parties: Green in Ak, *Az, Cal, Hi; Amer in SC, Ut; Proh in NM; Soc Wkrs in NM; Wrks World in Mi., NM. * entry changed since last issue (the Hegelin Natural Law Party column is new). "Req" column shows the easier of the two methods, party or independent. "Due" column is the Indp. deadline. "Seek nom" means a qualified third party in that state may nominate the candidate. "Finished" doesn't necessarily mean the drive isn't still proceeding! See p. 6 for other petitions. La. requires $500 OR 5,000 signatures. N.C. New Alliance pet. is for 1994. Delaware Gritz is indp. petition method; 2,879 needed.

EXCERPTS FROM BURDICK RULING

"Although Hawaii makes no provision for write-in voting in its primary or general elections, the system outlined above provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary. Consequently, any burden on voters' freedom of choice and association is borne only by those who fail to identify their candidate of choice until days before the primary. But in *Storer v Brown*, we gave little weight to the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status. We think the same reasoning applies here and therefore conclude that any burden imposed by Hawaii's write-in vote prohibition is a very limited one. To conclude otherwise might sacrifice the political stability of the system of the State, with profound consequences for the entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot."

"The function of the election process is to winnow out and finally reject all but the chosen candidates, not to provide a means of giving vent to short-range political goals, pique, or personal quarrels. Attributing to elections a more generalized expressive function would undermine the ability of States to operate elections fairly and efficiently.

We have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls. Petitioner offers no persuasive reason to depart from these precedents. Reasonable regulation of elections does not require voters to espouse positions that they do not support; it *does* require them to act in a timely fashion if they wish to express their views in the voting booth. And there is nothing content based about a flat ban on all forms of write-in ballots."

"In light of the adequate ballot access afforded under Hawaii's election code, the State's ban on write-in voting imposes only a limited burden on voters' rights to make free choices and to associate politically through the vote.

"We turn next to the interests asserted by Hawaii to justify the burden imposed by its prohibition of write-in voting. Because the have already concluded that the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction.

The State's interests outweigh petitioner's limited interest in waiting until the 11th hour to choose his preferred candidate.

Hawaii's interest in avoiding the possibility of unrestrained factionalism at the general election (*Munro*) provides adequate justification for its ban on write-in voting in November. The primary election is an integral part of the entire election process, and the State is within its rights to reserve the general election ballot for major struggles and not a forum for continuing intraparty feuds. The prohibition on write-in voting is a legitimate means of averting divisive sore-loser candidacies. Hawaii further promotes the two-stage, primary-general election process of winnowing out candidates, by permitting the unopposed victors in certain primaries to be designated office holders. This focuses the attention of voters upon contested races in the general election. This would not be possible, absent the write-in voting ban.

Hawaii also asserts that its ban on write-in voting at the primary stage is necessary to guard again party raiding. Party raiding is generally defined as the organized switching of blocs of voters from one party to another in order to manipulate the outcome of the other party's primary election. Petitioner suggests that, because Hawaii conducts an open primary, this is not a cognizable interest. We disagree. While voters may vote on any ticket in Hawaii's primary, the State requires that party candidates be members of the party. Hawaii's system could easily be circumvented in a party primary election by mounting a write-in campaign for a person who had not filed in time or who had never intended to run for election. It could also be frustrated at the general election by permitting write-in votes for a loser in a party primary or for an independent who had failed to failed to get sufficient votes to make the general election ballot. The State has a legitimate interest in preventing these sorts of maneuvers, and the write-in voting ban is a reasonable way of accomplishing this goal.

Indeed, the foregoing leads us to conclude that when a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights-as do Hawaii's election laws-a prohibition on write-in voting will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme."

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