BALLOT ACCESS NEWS

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LIBERTARIANS REVISE PRESIDENTIAL CHOICE DATE

PARTY NOW MUST CHANGE BALLOT ACCESS LAWS IN 6 STATES

On December 12, 1992, the Libertarian Party national committee made a historic decision which may affect all third parties. The party decided to choose its next presidential candidate in June 1996, rather than in September of the year before the presidential election.

Ever since the advent of harsh ballot access laws in the 1930's, third parties which hope to place their presidential candidates on the ballot of all, or even most, states, have had to choose their presidential candidate months before the major parties choose theirs. This is because ballot access laws in some states do not permit a new party to qualify for the ballot, until *after* it has chosen its nominees. It is also because of states which have had early petition deadlines.

The Libertarian Party's decision not to choose its presidential candidate so early means that the party will have more flexibility in its choice of a nominee. It means that the party can make use of its own presidential primaries.

However, the party will have to fight to change the laws of Florida, Kentucky, Maine, Oklahoma, Virginia and West Virginia, because otherwise there won't be time between the convention and the petition deadline, to complete the petitioning, and petitioning before the party has chosen its nominee in these states isn't permitted.

If the party wins its fights to change the laws in these states, all new and small political parties will benefit.

There is a precedent for a coordinated effort to improve such laws: in 1953, the Democratic and Republican Parties successfully teamed up to reform state laws which prevented qualified parties from holding their presidential conventions as late as August. Between 1920 and 1952 the Republicans and Democrats had always been forced to hold their national conventions no later than July. But in 1953 the two parties decided they would rather nominate in August, and persuaded state legislatures all across the country to make the needed legal changes.

In 1956, for the first time, both major parties nominated presidential candidates in August, because the laws of all states had been revised during the period 1953-1955 to permit them to do so. The latest major party convention was the Democratic convention of 1964, which didn't adjourn til August 27. Nowadays, however, the custom is that the major party which does not hold the presidency meets in July, and the other major party meets in August.

Libertarians in Virginia and Florida have already started searching for a legislator who will introduce a bill to make the necessary election law changes. In Kentucky, the legislature won't meet in regular session until 1994, so there is no rush. No progress has been made yet in Maine, Oklahoma or West Virginia.

There is also a lawsuit pending in Florida over the presidential petition deadline which may help the problem in that state (if the case wins), and a lawsuit pending in West Virginia over non-presidential petition deadlines which may also force the legislature to revise the law generally.

Why Aren't There More Problem States?

Colorado, Connecticut, Illinois, Indiana and Pennsylvania force third parties to choose their nominees before petitioning can begin, but these states let the candidate named on the petition resign; if that happens, the group may choose a new one. Therefore, these states aren't a problem for a party which chooses its nominee late, since the party can start petitioning early with a stand-in candidate.

Minnesota, New York, Wisconsin and D.C. don't permit petitions to begin circulating until June anyway, so they aren't a problem either. Other states generally permit a party to circulate a petition without the names of its nominees. Florida, Oklahoma and Maine have such procedures, but they are on the "problem states" list anyway, because these procedures require so many more signatures than the candidate petition procedures which the Libertarian Party and other third parties customarily use.

If lobbying doesn't work, it is likely that lawsuits can be won. In 1983, the U.S. Supreme Court ruled in *Anderson v Celebrezze* that the U.S. Constitution forbids state laws which force third parties to choose their nominees, long before the major parties choose theirs.

FULANI WINS DEBATE RULING

On January 5, federal judge Robert Sweet ruled that the League of Women Voters must apply objective criteria to determine whom to invite into its debates. If the League, and other organizations which hold debates, do not do so, they will lose tax-exempt status. *Fulani v Brady,* no. 92-civ-0998-RWS, U.S. District Court, southern district of New York. The ruling is 44 pages.

Judge Sweet also ruled that someone in Fulani's position does have standing to bring such a lawsuit. The case arose in January 1992 when the League of Women Voters sponsored a debate for all the candidates in the New Hampshire Democratic primary who had qualified for federal matching funds, except for Fulani (Fulani ran in the Democratic presidential primary in New Hampshire).

The ruling is declaratory only; Judge Sweet didn't issue an injunction to force the IRS to remove the League's tax-exempt status because he said he didn't have the authority to do so. It's unclear how the decision will impact on future elections, but it marks the first time any court has ruled against the League of Women Voters in a debate case.

CONGRESSIONAL BALLOT ACCESS BILL

Congressman Timothy Penny plans to introduce a bill outlawing restrictive ballot access laws, for federal office, the last week of January. It's still not certain whether the bill will be combined with his "Democracy in Debates" bill, or whether there will be separate bills. Penny is confident that Congressman Al Swift, chairman of the House Elections Subcommittee, will hold hearings on the ballot access bill this year.

A similar bill was introduced by Congressman John Conyers in 1985, 1987 and 1989, but hearings were never held. The bill will permit states to write their own ballot access laws, but if the states provide for petitions, the number of signatures may not exceed one-tenth of 1% of the last vote cast, or 1,000 signatures, whichever is more. If the bill were enacted, it would have its biggest impact on congressional elections. State ballot access laws are far worse for Congress than they are for President. For instance, no third party candidate for U.S. House of Representatives has appeared on the ballot in Georgia since 1942, and only one third party candidate for U.S. Senate in Florida has been on the ballot since 1920!

HAROLD WASHINGTON PARTY WINS LAST LEG OF ITS 1990 BALLOT CASE

On December 4, 1992, the Illinois Supreme Court issued the final ruling in *Norman v Reed,* no. 70833, the 1990 case over whether the Harold Washington Party should have been on the ballot for Cook County offices. The Illinois Supreme Court ruled that Illinois' "full slate" law doesn't cover candidates for judge.

The U.S. Supreme Court ruled on all the other points in this case a year ago, but had remanded this one issue back to the Illinois Supreme Court, since the Illinois court had failed to rule on it in 1990, the first time the case was before them.

Illinois is the only state which says that a new party must run a full slate of candidates. The law is widely considered to be unconstitutional (what business is it of the state, whether a party runs a full slate of candidates are not?), and one justice of the Illinois Supreme Court wrote separately to say that the law is unconstitutional. However, the majority were content simply to restrict it.

LIBERTARIAN MISSOURI CASE

Three judges of the Missouri State Court of Appeals in Kansas City felt that the issues in the Missouri Libertarian lawsuit were so significant, that the full court of nine judges should hear the case, so the case will be re-argued before all the judges.

The issues are whether a party can substitute a new nominee, when the original nominee listed on the petition dies; and whether the statewide petition can carry the names of candidates for district office, even when no signatures are collected from that particular district. *Garcia v Blunt.*

BALLOT PAMPHLET LIMITS UPHELD

On December 24, 1992, the California Supreme Court upheld a California law which says that candidates for Judge may not comment on their opponents, in the Voters Handbook. *Clark v Burleigh,* no. S020854. The vote was unanimous.

The decision applied "public forum" analysis to the Voters Handbook, which is printed and distributed by the government. Since the court felt the Voters Handbook is not a public forum, and since the restriction is rational and not discriminatory, there was no constitutional basis to upset the limit on candidate speech in the booklet.

A companion case, which is more difficult, has been accepted by the court but the court has not set a date for oral argument. *Drexel v Mann,* no. S020662, deals with the California law which says that candidate statements for all office, not just judgeships, can be censored from the Handbook to delete "false and misleading" material. The same issue is pending in the U.S. Court of Appeals, 9th circuit, in a case called *Geary v Renne II,* but the federal case is stayed until the California Supreme Court settles the *Drexel* case.

LEAGUE CHALLENGES TERM LIMITS

The League of Women Voters of Arkansas filed a lawsuit last month to overturn that state's new term limits law, passed by the voters on November 3, 1992. *Hill v Tucker,* no. 92-6171, Circuit Court, Pulaski County.

The Arkansas term limits apply to both Congress and the state legislature, but permit members of Congress to circumvent the limit by becoming write-in candidates.

Term limits supporters decided not to appeal last year's decision of the Nevada Supreme Court that congressional term limits violate the U.S. Constitution. The only possible appeal would have been to the U.S. Supreme Court, and proponents of term limits felt the Nevada case wasn't the best vehicle to get to the nation's highest court.

NEW YORK VICTORY

On September 21, 1992, federal Judge Whitman Knapp ordered New York to place an independent candidate for Congress on the November ballot, even though the candidate, Abraham Hirschfeld, had failed to file a certificate of candidacy with his petition. *Hirschfeld v Board of Elections,* 799 F Supp 394.

It is extremely rare for a federal court, especially one in New York, to order a candidate placed on the ballot, even though New York petition procedures are so hyper-technical that candidates are forever being tossed off the ballot for miniscule reasons. Judge Knapp is an 83-year-old semi-retired Nixon appointee. He ruled that New York elections officials violated due process when they received Hirschfeld's petitions, because Hirschfeld asked if he had to do anything else to be on the ballot, and they said "No", instead of telling him he also had to sign a certificate of acceptance.

NOMINATIONS ISSUE TO HIGH COURT

On December 23, the California Libertarian Party asked the U.S. Supreme Court to decide whether a party has a First Amendment right to exercise control over how it nominates candidates. *Lightfoot v Eu,* no. 92-1133.

California law requires all nominees of a party to be chosen by primary (unless a party nominee dies after the primary). During the 1980's, the Supreme Court issued three decisions supporting a party's right to control its own affairs: the Democratic Party was permitted to ignore the Wisconsin presidential primary and seat delegates chosen by caucus; the Connecticut Republican Party was permitted to ignore state law and let independent voters vote in its primary, and parties in California were permitted to structure themselves as they wished.

Nevertheless, the lower courts in the *Lightfoot* case refused to let the party implement two bylaws: one makes it easier for the party to nominate candidates by write-in at its own primary; the other lets the party nominate by convention when no one wins the party's primary.

The Court may say whether it will hear the case in February or March.

OHIO LOSS

On October 21, 1992, the Ohio Supreme Court refused to put independent presidential candidate John Yiamouyiannis on the ballot, even though he presented evidence that he really did have enough valid signatures. The Court issued an opinion, explaining its refusal, on December 9. *Yiamouyiannis v Taft,* 602 NE 2d 644.

Yiamouyiannis needed 5,000 signatures. He submitted 7,978 but was told only 4,435 were valid. He then checked 45 rejected signatures, and found 23 of them valid. He didn't have time to check any more, but asked elections officials to extrapolate from his findings; if half the so-called invalid signatures were really valid, he would have had enough. When the state refused, Yiamouyiannis sued, but to no avail.

The Ohio Court didn't agree that one can extrapolate for this purpose, and also quibbled with his claim that 23 of the 45 signatures were valid. The Court rejected one signature because the date next to the signature was either July 25 or 28 (either date would have been O.K., but the signature was invalid because the date wasn't clear). The Court rejected 4 signatures because they were printed instead of written. The Court felt one signature was too faint to be read, and another one was deemed illegible.

Yiamouyiannis pointed out that the petitions filed for Lenora Fulani and Bo Gritz were also rejected initially; after re-checking, those petitions were found O.K. The Court was not moved by this indirect evidence either.

The Court did not mention due process precedents from Georgia *(Anderson v Poythress)* and Massachusetts *(McCarthy v Secretary of Commonwealth)*, which hold that when a petition is ruled insufficient, the candidate must have a chance to rebut that ruling.

MAINE HEARING GOES WELL

On January 4, the case concerning access to the Maine primary ballot was argued in the First Circuit. Maine makes it almost impossible for a small, qualified party to nominate candidates. The Libertarian Party, which was a fully-qualified party in Maine between 1990 and 1992, challenged the law, but lost in the U.S. District Court. *Libertarian Party of Maine v Diamond,* no. 92-2026.

The three judges were Conrad Cyr of Maine, a Reagan appointee, Hugh Bownes of New Hampshire, a Carter appointee, and Juan Torruella of Puerto Rico, a Reagan appointee. Both Bownes and Cyr seemed skeptical that there is any legitimate reason for Maine to insist that 2,000 enrolled members of a party must sign a petition to get someone on the primary ballot of a party, if the party has a small membership. No one except members of the party may sign the petition, and all nominations must be made by primary. Write-in nominees in a primary need to receive the same number of write-ins, as they would have needed signatures.

RAINBOW LOBBY RE-ORGANIZES

The Rainbow Lobby, which initiated Congressional bills on ballot access and debates, has changed its name. It is now Ross & Green, at 1010 Vermont Ave., NW, #811, Washington DC 20005, (202) 638-4858.

LABOR CANDIDATES IN NEW JERSEY?

New Jersey's major labor unions are again considering sponsoring a slate of independent candidates for the legislature. New Jersey elects legislators in odd years. In 1991, a slate of labor independents was filed, but then withdrawn, after the state government made some concessions on labor issues.

CHART ON PAGES 4 & 5

The chart on page 4 shows the recent vote for third party and independent candidates for the U.S. House of Representatives. 3.7% of the total vote for the House went to third parties and independents. This is even higher than the estimate of 3.2% in the December 10, 1992 *B.A.N.*, and is believed to be the highest percentage for third parties and independents for the House since 1936.

The Libertarian vote total (but not the percentage) for the House is the highest for any third party since 1912.

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HOUSE OF REPRESENTATIVES VOTE

	NO. SEATS	Libt.	Indp.	Nat L.	Soc Wkr	Green	Taxpyr	New Al	Other
Ala.	7	30,891	31,204		1,165				
Alaska	1					9,529			Ak Indp 15,049
Ariz.	6	26,724	38,600	21,228					
Ark.	4		6,329						
Calif.	52	330,083	29,375	13	39	77,110	10,840		PFP 267,827
Colo.	6	7,481	18,101						Populist 4,202
Conn.	6		3,338	2,323	2				ACP 208,238
Del.	1	5,661							CC (Ct) 20,211
Florida	23		137,607		15	9,320			
Georgia	11				2				
Hawaii	2	16,000							
Idaho	0		19,546						
Illinois	20	8,469	45,332	2,416	w				
Indiana	10	2,001	10,919					1,849	
Iowa	5			12,608	w				Grassrts 4,116
Kansas	4	44,817							
Ky.	6	w	962						
La.	7		20,542						
Maine	2	w				27,526			
Md.	8	w	6,990	w					WW (Mi) 4,270
Mass.	10		196,919	4,130	w		15,711		Com 7,162
Mich.	16	54,439	20,781	16,468	2,704		10,706		Wk Lg 6,137
Minn.	8		119,748	11,501	3,298			5,927	Grassrts 20,368
Miss.	5		12,062					10,523	
Mo.	9	18,576		6,110	0	10,565			
Mont.	1	10,454							
Neb.	3								
Nev.	2	16,545					13,285		Populist 2,850
N.H.	2	11,610	3,537	2,654					Com (NJ) 1,525
N.J.	13	27,378	90,891		3,324				Populist 10,561
N.Mex.	3	4,798							Cn(NY) 326,192
N.Y.	31		49,388	2,946				4,349	RTL 146,133
No. C.	12	45,082							Lib(NY) 77,548
No. D.	1		11,183						
Ohio	19	23,896	200,329		29				
Okla.	6		7,314						
Ore.	5	11,413							Com (Pa) 3,650
Penn.	21	20,134	57,150	4,012	2,966				Wk Lg 794
R.I.	2		19,980						
So. C.	6	25,102					2,608		
So. D.	1	3,931	6,743	2,780					
Tenn.	9	12,882	78,679	9,853				3,507	
Texas	30	110,832	15,385	94					
Utah	3	1,797	2,068		1,034				Indp Pty 28,543
Vermont	1		164,773	3,549					Lib Unon 3,660
Virginia	11		75,255						
Wash.	9	7,597	55,982	10,857					
W.Va.	3								
Wisc.	9	4,369	17,689						
Wyo.	1	5,677							
TOTAL	435	900,249	1,574,701	113,542	14,549	134,050	53,150	26,155	1,153,766

Nat L = Natural Law; New Al = New Alliance; PFP = Peace & Freedom; CC = Concern Citizens; ACP = A Ct Party; Cn = Consrv.; RTL = Right to Life; Lib = Liberal; Com = Communist; WW = Workers World; Wk Lg = Workers League

HOUSE OF REPRESENTATIVES PERCENTAGES

	NO. SEATS	Libt.	Indp.	Nat L.	Soc Wkr	Green	Taxpyr	New Al	Other
Ala.	7	1.93	4.36		.56				
Alaska	1					3.99			Ak Indpce 6.30
Ariz.	6	4.04	7.74	4.14					
Ark.	4		2.54						
Calif.	52	4.39	6.12			4.49	2.57		PFP 4.48
Colo.	6	4.09	6.67						Populist 2.10
Conn.	6		.70	.51					ACP 17.42
Del.	1	2.05							CC (Ct.) 2.79
Florida	23		10.18			4.08			
Georgia	11								
Hawaii	2	4.46							
Idaho	0		4.13						
Illinois	20	3.64	4.84	1.07					
Indiana	10	.84	2.33					1.01	
Iowa	5			2.45					Grassroots .78
Kansas	4	3.98							
Ky.	6		.45						
La.	7		5.65 (Oct.)						
Maine	2					8.84			
Md.	8		3.25						WW (Mi) 1.74
Mass.	10		9.55	1.58			2.74		Com 2.73
Mich.	16	2.16	3.92	.83	1.46		1.45		Wk Lg .65
Minn.	8		8.47	1.34	.59			2.14	Grassrts 2.34
Miss.	5		3.13					5.41	
Mo.	9	2.21		2.39		4.04			
Mont.	1	2.59							
Neb.	3								
Nev.	2	3.36					4.91		Populist 1.05
N.H.	2	2.27	1.38	.52					Com (NJ) 1.05
N.J.	13	.92	3.20		.46				Populist .41
N.Mex.	3	2.63							Cn NY 5.94
N.Y.	31		2.57	.86				.99	RTL 3.80
No. C.	12	2.46							Lib NY 2.67
No. D.	1		3.75						
Ohio	19	5.00	20.86						
Okla.	6		3.43						
Ore.	5	4.23							Com (Pa) 1.44
Penn.	21	9.61	6.16	.82	.67				Wk Lg .35
R.I.	2		5.01						
So. C.	6	6.82					1.41		
So. D.	1	1.18	2.03	.84					
Tenn.	9	3.43	6.02	1.66				1.87	
Texas	30	4.75	3.33						
Utah	3	.78	.90		.21				In Pty 3.92
Vermont	1		58.61	1.26					Lib Union 1.30
Virginia	11		6.33						
Wash.	9	1.68	3.68	2.06					
W.Va.	3								
Wisc.	9	.81	1.31						
Wyo.	1	2.88							

See previous page for party abbreviations. All figures are official except Colorado. Percentages above are the share of the U.S. House of Representatives vote that each party received, in the districts in which the party had candidates on the ballot.

LEGISLATIVE NEWS

1. Alabama: Jimmy Blake, state chairman of the Libertarian Party, has been appointed to an advisory committee on election code revision. His biggest goal is to get the vote retention requirement reduced. At 20%, it is the most severe in the nation.

2. Georgia: legislative leaders have decided not to try to repeal the law requiring a run-off for statewide office, whenever no one in the general election gets at least 50% of the vote. Plans to attach ballot access reform to the run-off bill are therefore no longer possible.

However, the Secretary of State still plans to get a bill introduced on ballot access, to lower the number of signatures but to provide that petition sheets contain only a single signature and that they must be submitted in alphabetical order.

3. Maine: Representative John Michael, a Democrat, plans to introduce a bill letting small qualified parties nominate by convention.

4. Massachusetts: Representative Byron Rushing has introduced a bill to change the definition of "Political party", from one which polled 3% in the last election, to one which polled 3% in *either* of the last two elections.

5. Missouri: the ballot access reform bill has again been introduced by Senator Frank Flotron. It is SB 44. It is expected to pass.

6. Nebraska: Ralph Englert, Deputy Secretary of State, has said he will try to get a bill introduced to legalize write-in votes for president. Nebraska is one of 4 states which permits write-ins, yet bans them for president.

7. North Carolina: when the legislature convenes on January 27, Representative Joseph Mavretic plans to introduce a bill to ease ballot access for independent candidates.

8. Ohio: Secretary of State Robert Taft is said to be leaning toward asking the legislature to let independent candidates choose any partisan label they wish (as long as the label doesn't resemble the name of a qualified political party). The label would appear on the petition and on the November ballot. Ohio is one of only three states in which no names of parties (other than the Democratic and Republican Parties) appeared on the 1992 ballot (the others were North Dakota and Tennessee).

9. Pennsylvania, South Dakota: Libertarians are searching for a legislator who will introduce a bill to let small qualified parties nominate candidates by convention.

10. Texas: New Alliance Party activist Linda Curtis is heading up a committee which plans an active campaign to persuade the state legislature to ease ballot access.

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NEVADA VOTE DISPUTE

Tamara Clark, Libertarian candidate for the State Senate from Las Vegas, plans to present evidence to the legislature that she was actually elected on November 3, 1992. The legislature convenes January 18. Official vote tallies show her losing by a 56-44 margin to a Democrat, but Clark has evidence that the count was fraudulent. The Nevada Constitution requires that such challenges be heard by the legislature rather than by any court.

CALIFORNIA GREENS OPEN PRIMARY

The California Green Party has had a bylaw which forbids any rank-and-file member of the party from filing to run for public office in the party's primary, unless the party decides to open the primary for that particular office.

On November 14, the party scrapped the rule. Therefore, in 1994, any registered member of the party will be free to run for any partisan office in the state, in the party's primary.

The party has also tentatively decided to sponsor an initiative to get "None of the above" on all California general election ballots.

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