BALLOT ACCESS NEWS

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SUPREME COURT WON'T HEAR ELECTION CASES

RECORD OF LAST 20 YEARS SHOWS SUPREME COURT BIAS

Frequently, a minor political party sues a state government, alleging that a ballot access law or other election law which harms it, is unconstitutional. Whichever side loses in the lower courts, may ask the U.S. Supreme Court to hear its appeal. Since 1974, the Supreme Court has agreed to hear 67% of such cases appealed by state governments to that Court. By contrast, the Court has only agreed to hear 4% of such cases when a non-major political party has asked for review.

Logically, the only reason why the percentages should be different is that the Court is biased against minor parties. As a result, when a minor party wins in lower court, it faces a likelihood that the Supreme Court will jeopardize that victory, should the State appeal. But when the state wins in lower court, it is very likely that the state's victory will not be in jeopardy, since there is virtually no chance that the Court will ever take an appeal brought by a minor party.

Since January 1974, the Court has accepted only one election law appeal brought by a minor party or a new political party. That was *Norman v Reed*, the 1990 Illinois case brought by the Harold Washington Party.

On October 11, this pattern continued. The Court refused to hear *Libertarian Party of Maine v Diamond*, no. 83-299, despite the fact that there is a split between the First and Third Circuits on the issue, and despite the fact that the lower court decision in the Maine case contradicts a 1974 Supreme Court precedent, *Storer v Brown*.

Maine law makes it impossible for a fully qualified party to nominate any candidates, if the party has a small membership. Maine requires a candidate for statewide office to obtain 2,000 signatures of party members, in order to get on the candidate's own primary ballot. This is so, regardless of how many registered voters the party has. It's fairly easy for a Republican or a Democrat to get 2,000 signatures of party members, since each of those parties has hundreds of thousands of members. But if the party has only a few thousand registered members, the petition cannot be completed. Maine law explicitly forbids a primary petition to be signed by independent voters, even if the party permits independents to vote in its primary. Yet lower courts upheld the law, and the Court refused it.

Also, on October 4, the Court refused to hear a challenge to the Connecticut presidential primary law, LaRouche v Kezer, no. 93-5-19. The law says that presidential candidates should be on the primary ballot automatically if they are discussed in the news media. Others must complete a difficult petition in just three weeks.

The lower court upheld the Connecticut law, despite its vagueness, and the Supreme Court refused the appeal.

For a list of all the election law cases brought to the U.S. Supreme Court by states and also by non-major parties, during the last twenty years, and the outcomes, send a self-addressed stamped envelope to *Ballot Access News*.

PENNSYLVANIA PATRIOTS WIN AGAIN

On October 14, the U.S. Court of Appeals, 3rd circuit, refused to disturb the ballot access victory won by the Patriot Party of Pennsylvania in June. The District Court decision had reduced the number of signatures required for third party candidates for Justice of the State Supreme Court elections, from 56,641 signatures, to 29,172.

After the decision, the state of Pennsylvania had decided not to appeal. At that point, the Republican Party of Pennsylvania tried to intervene in the case and appeal the decision. The U.S. District Court had ruled that the Republican Party had intervened too late. The Republican Party had then appealed that decision, and had persuaded the 3rd circuit to expedite the case.

A hearing was held in the 3rd circuit on October 4, and the decision came out only ten days later. The panel agreed with the lower court that the Republican Party was too late with its intervention, and that therefore the lower court decision would stand. *Patriot Party v Mitchell*, no. 93-1765. The panel was composed of Judges William Hutchinson, Robert Cowen, and Richard Nygaard, all Reagan appointees.

The decision means that Robert Surrick, the Patriot Party candidate for Judge of the Pennsylvania Supreme Court (a partisan election in that state) will be on the November 2, 1993 ballot. He is the first third party candidate for that office to be on the ballot in an odd year, in over 20 years.

ARIZONA VICTORY

On September 21, the Arizona Court of Appeals ruled that the number of signatures needed by a candidate to get on a primary ballot should be 5% of the number of registered voters in that party, not 5% of the votes it polled at the last general election. This helpful decision, of course, is in complete contrast to the unfavorable Maine decision described above. *Smalley v Detrick*, no. 2 CA-cv 93-0161. The case had also been won in the lower court.

The Court ruled that Libertarian candidate Ken Smalley, running for the Tucson city council (a partisan race) only needs 5 signatures, not 103 signatures. There are only 275 registered Libertarians in that city council district in Tucson. The Court stated "It makes no sense to say that a Democrat must be supported by 1.5% of the registered Democrats but a Libertarian must be supported by 37.5% of the registered Libertarians."

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VAST "NO-POLITICS" ZONE UPHELD

On September 17, the 5th circuit upheld a Louisiana law which forbids all political campaigning, even the wearing of buttons or T-shirts, within 600 feet of the entrance to any polling place on election day, or within 600 feet of any building where absentee voting is proceeding. 600 feet is over one-tenth of a mile. Schirmer v Edwards, no. 92-3900. The decision was written by Judge Reynaldo Garza, a Carter appointee, and co-signed by Judge Henry Politz, another Carter appointee, and E. Grady Jolly, a Reagan appointee. The plaintiff had been arrested for voting while wearing a shirt which advocated recalling the Governor. It is not known whether the case will be appealed to the U.S. Supreme Court.

BANS ON ANONYMOUS LEAFLETS

Two state Supreme Courts recently upheld laws which make it a crime to disseminate anonymous campaign leaflets. In Ohio, the case was McIntyre v Ohio Elections Commission, 618 NE 2d 152, issued September 22, 1993; in North Carolina, it was State v Petersilie, 432 SE 2d 832, issued July 30, 1993. There were vigorous dissents in both cases, with dissenters noting that even The Federalist Papers, written by several prominent founding fathers, were published anonymously.

Most courts in the past have struck down similar bans, when the issue arose. It is unknown whether either case is being appealed to the U.S. Supreme Court.

U.S. Courts are less willing to protect free expression in elections, than they were a decade ago. Although ballot access laws have improved in the 1990's, this is only because of skillful and persistent lobbying in state legislatures, not because of the courts. Fewer constitutional ballot access cases were won in 1992 than in any previous presidential election year since 1972. The courts have been less protective of the right to vote for the candidate of one's choice, and less protective of the right to campaign freely, during the 1990's. The right to petition on government-owned property has significantly eroded since 1990. The mainstream media never seem to bring these issues into public view.

EARLY PRIMARY BILLS SIGNED

The Governors of California and Ohio each recently signed bills, moving those states' primary elections to March, for 1996. The date change means that the identity of the major party presidential candidates will almost surely be known by mid-April. Since the national conventions of the major parties are not held until July and August, there will be an odd hiatus in the middle of the 1996 presidential campaign.

OTHER STATE LEGISLATIVE NEWS

1. <u>California</u>: On October 11, Governor Pete Wilson vetoed AB 1173, which would have helped independent candidates by repealing a 1991 law which requires them to file a declaration of intent to run (if they are running for state office) in February of an election year.

Wilson vetoed the bill because, he wrote, he believes independent candidates should be forced to announce their intentions near the beginning of the year, even though their petitions aren't due until August. His veto message didn't mention that the legislative counsel's office had ruled that the existing law is probably unconstitutional.

AB 1173 had many other technical provisions, not related to independent candidates. One such provision, desired by the County Clerks, would have forced candidates seeking a place on a party primary ballot, to complete two separate petitions. Under existing law, the petition to gain a place on the primary ballot can be merged with the petition in lieu of a filing fee. Because of the Governor's veto, the existing law will continue, at least for 1994. The County Clerks will probably get the bill re-introduced next year without the part that helps independent candidates.

- 2. Florida: B.A.N. recently learned that in early 1993 the Senate Elections Committee introduced a bill, SB 1990, to improve ballot access, but the bill died when the same Committee which had introduced it, decided not to pass it. The bill was SB 1990. Staffers for the elections committees of both houses say that in 1994 their committees will be busy trying to deal with the federal Voter Registration Act, so it won't be too easy to get their attention for ballot access reform.
- 3. <u>Illinois</u>: the Libertarian Party is about to launch a campaign to persuade the legislature to improve ballot access, especially for the U.S. House of Representatives. Congressman Philip M. Crane has promised to help. Illinois requires a third party or independent candidate for the U.S. House of Representatives to obtain signatures equal to 5% of the last vote cast. In the average district in 1994, this is over 12,000 valid signatures.
- 3. New Hampshire: the Libertarian delegation in the legislature has submitted a bill, to be heard next year, which would permit a party to remain qualified if it polled 3% for any statewide office, or for U.S. House of Representatives, or for Governor's Council, during the last six years. If enacted, it would be much easier for a party to remain qualified. Currently, a party may only remain qualified as long as it continues to poll 3% for Governor. New Hampshire elects its Governor every two years (every other state, except Vermont, has a 4-year Governor's term). The bill doesn't have a number yet.
- 4. Ohio: Secretary of State Robert Taft is preparing an omnibus bill to make many changes in the election laws. Included will be a provision permitting the use of the word "Independent" on the November ballot, for independent candidates (current law says they may have no partisan label whatsoever). However, the bill won't include the right to use any other partisan label, such as "Green" or "Socialist". Half the states permit an independent candidate to choose any short partisan label, as long as it does not resemble the name of any fully-qualified party. The issue is important in Ohio, because it is very difficult to qualify a new party for the ballot, whereas it is fairly easy to qualify as an independent candidate. The bill will be introduced early next year.

MICHIGAN WIN, MICHIGAN LOSS

Ballot Access News recently learned about challenges to two Michigan ballot access laws last year. One succeeded; the other did not.

- 1. In September 1992, a Wayne Circuit Court upheld a Michigan election law which says that no write-in candidate in a partisan primary can be considered nominated unless he or she polls a number of write-ins equal to 15% of the number of people who vote. Gillis v Wayne County Clerk, no. 92-225457. The plaintiff was a Democrat running for the State House of Representatives. He polled 97 write-ins, more than any other candidate for the Democratic nomination, but short of the 15% threshold. The State Court of Appeals refused to hear the case on October 1, 1992, and the State Supreme court also refused to hear it on October 8, 1992.
- 2. On September 25, 1992, a Washtenaw Circuit Court ruled that there is no prohibition in Michigan election law against someone running for party office in the primary, and then running for public office as an independent candidate. Dolgon v Haines, no. 92-43736. The plaintiff wished to run for County Commissioner in November 1992 as an independent candidate supported by the Green Party, but elections officials tried to keep him off the ballot because he had earlier in the year run for precinct delegate to the Democratic Party county convention. The court construed the law favorably to the candidate and ordered him put on the ballot.

INITIATIVE NEWSLETTER LAUNCHED

Charles Roda has begun a newsletter, called "Initiative and Referendum Update", which covers news about the struggle to persuade more states to adopt an initiative. He can be reached at 670 N. Terrace Ave., #4-B, Mt. Vernon, NY 10552. Currently, 23 states have provision for the initiative for statewide laws or constitutional amendments. Also, Congressman Peter Hoekstra of Michigan has introduced proposed U.S. Constitutional amendments to have an initiative for federal laws and federal constitutional changes. They are HJR 180 and HJR 181.

NEW ADDRESS FOR COFOE

The Coalition for Free & Open Elections, COFOE, has a new mailing address: Bx 20263, New York NY 10011. COFOE is a coalition of many of the nation's nationally-organized third parties. COFOE can also be reached at Bx 470296, San Francisco Ca 94147.

COFOE is currently suing Oklahoma over that state's refusal to permit write-in votes, for president or any other office. The lawsuit alleges that, since it is so difficult to get on the ballot for president in Oklahoma (over 41,000 signatures will be required in 1996), and so difficult for a party to remain qualified in Oklahoma (10% vote for President or Governor), that U.S. Constitutional protection for voting requires that the state permit write-ins, at least for president. COFOE urgently needs donations to help fund the lawsuit, which is currently pending in the 10th circuit.

COALITION AGAINST PERMANENT CONGRESS MEETS

On October 24-25, the Coalition to End the Permanent Congress holds a national meeting in Washington, DC. On Monday, October 25, the group will be addressed by Congressman Peter Hockstra of Michigan and David Minge of Minnesota, two freshmen members of Congress who support the group's goals. The meeting on October 25 is in room 708 of the Hart Senate Office Building; on October 24 it is at the Quality Inn on Capitol Hall. For more information, contact Lionel Kunst at (800) 737-0014

CALIFORNIA REGISTRATION TALLY

In California, the most commonly used method for a new party to get on the ballot is to persuade a number of voters equal to 1% of the last gubernatorial vote, to register into the new party. The Secretary of State recently released a registration tally for all the groups which have announced that they are trying to qualify by this method. None of them, as of September 3, had as many as 600 members. The Puritan Party, which has received considerable publicity, only had 12 registrants; the Patriot Party (California affiliate of the Independence Party) only had 26 registrants. There will be a more upto-date tally next month.

LABOR PARTY MAY BE FOUNDED

On October 9, Labor Party Advocates held a meeting in Chicago and voted to call a convention in early 1995 to found a Labor Party. Invitations will be sent out to 65,000 labor union locals. Labor Party Advocates was founded in 1989 by Tony Mazzocchi and others, to work toward the goal of a Labor Party.

HATCH ACT REFORM WILL HELP PARTIES

On October 6, President Clinton signed the Hatch Act reform bill into law. It is Public Act 103-94; it takes effect on February 3, 1994. For the first time since 1939, it will be legal for most federal employees, and many state employees, to hold office in a political party and to help out in campaigns for partisan office.

Third parties have always been hurt by the old Hatch Act, because it makes it illegal for their members who work for the government, to help out with petitioning.

1994 PETITIONING

The chart which usually appears on page five, giving the petition requirements for each state and the progress of all petitions to qualify parties for the 1994 ballot, will reappear in the next issue. The only petition drives which have made substantial progress in the last two months are the New Alliance Party petition in Indiana, which is 70% done; the Libertarian Party petition in Michigan, which is 88% done; and the Libertarian petition in New Mexico, which is 40% done. The Southern National Party has abandoned its Arkansas petition.

FEC PONDERS REGISTRATION FORM

by Andrew Spark

The Federal Election Commission is struggling with the design for the national voter registration form. Under a federal law passed this year, the Commission must furnish the states with a postcard registration form. The states are free to use it if they wish, or design their own forms.

One of the most difficult problems is how to ask the voter which political party he or she wishes to join. This is a problem for the 29 states which ask this question, because if the form lists some parties, and a new party comes into existence, or an old party ceases to exist, the forms are obsolete and must be reprinted.

Some states have solved this problem by not naming any political parties on the form, but just showing a blank line. The voter in these cases is free to write in the name of any party he or she wishes.

However, some states are stubborn, and won't let voters register as members of unqualified parties. Leaving a blank line on the form, gives "too much freedom" to voters, so some states name the qualified parties, and don't show a space for a voter to join an unqualified party.

The FEC must design a registration form which can handle the concerns of all the states, something that is probably impossible. The FEC is holding hearings around the country on the form, and may make a decision soon.

Below are the policies followed by each state and the District of Columbia:

States in which the voter registration form doesn't ask the voter which party he or she is joining: Alabama, Arkansas, Georgia, Hawaii, Idaho, Illinois, Indiana, Minnesota, Mississippi, Missouri, Montana, North Dakota, Ohio, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin (21).

States in which the voter registration form names qualified parties, and contains a blank line so that a voter can join an unqualified party: Alaska, California, Colorado, Delaware, District of Columbia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Nevada, Oregon, Pennsylvania, Rhode Island, West Virginia (15).

States in which the voter registration form names qualified parties, but gives no blank line for other parties: Iowa, Michigan, New Hampshire, New Jersey, New York, North Carolina, Oklahoma (7).

States which simply provide a blank line, and don't name any party: Arizona, Connecticut, Kentucky, Nebraska, New Mexico, South Dakota, Wyoming.

State with county option: Florida (some counties just leave a blank line; others name the Democratic and Republican Parties and provide a blank line).

Andrew Spark is an attorney in Tampa, Florida. He has been working to persuade each Florida county to omit the names of any political party on the registration form.

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HR 1755 GAINS TWO CO-SPONSORS

HR 1755 is the bill by Congressman Timothy Penny to set up lenient federal procedures for third party and independent candidates to qualify for the ballot (for federal office only). During the last month, two new members of the House have become co-sponsors: Collin Peterson of Minnesota, and Nancy Pelosi of California. The bill now has 17 co-sponsors. Peterson also became a co-sponsor of HR 1753, the Democracy in Debates Bill, also by Penny.

COMING IN THE NEXT ISSUE: book reviews of Sixteen Weeks with European Greens, with 674 pages, by Mike Feinstein; and Election Data Book 1992, with 1,044 pages, by the Election Data Center.

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COPENHAGEN VIOLATION OF THE MONTH

The last issue of B.A.N. reported that the first hearings were being held in the United States, to establish that the United States is in violation of an international accord it signed in 1990, the Copenhagen Document, part of the Conference on Security and Cooperation in Europe (the "Helsinki Accords"). The Copenhagen Document pledges all the signing nations not to discriminate for or against any political party or any candidate, to guarantee equal suffrage rights to all citizens, and to ensure that votes are counted and reported honestly.

Each issue of B.A.N., starting with this issue, will carry an example of a state or federal law or policy which obviously violates the Copenhagen Meeting accord. This issue's example concerns the Louisiana voter registration form and the Louisiana definition of "political party". Below is reproduced a Louisiana voter registration form. This the actual size of the form.

Notice block 4 of the form, "Party Affiliation". The form names the Democratic and Republican Parties and makes it easy for a new voter to affiliate with either of those parties, by circling the name of either party. If a voter wishes to affiliate with any other party, he or she must write in the name of that party, in an impossibly small space.

The difficulty of registering into a party other than the Democratic or Republican Parties is especially serious, because Louisiana defines "political party" to be one which either (1) persuaded 5% of all the voters to affiliate with it on a voter registration form; or (2) polled at least 5% of the presidential vote at the last election. A new party cannot appear on the ballot for any office (except president) unless it has fulfilled one of those two conditions. Since one of those conditions is to persuade over 110,000 people to write in the name of that new party on a voter registration form, the form itself is a serious impediment to a new party's ability to get on the ballot.

But even more shocking is the fact that, for almost a year, there has been a third qualified party in Louisiana, the Prudence, Results, Action Party. This party qualified as a party by polling over 5% of the presidential vote last year (its candidate was Ross Perot). Despite the existence of this legally recognized third party, the state still has not reprinted its voter registration forms to list the party, as the Democrats and Republicans are listed. The State Commissioner of Elections, Jerry Fowler, who has jurisdiction over the form, will not change the form until the Attorney General advises him to do so...yet he has not yet asked the Attorney General for advice! He says he will do so next month.

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THIRD PARTIES DO WELL IN BIG CITIES

Four third party candidates did well in City Council races in large cities recently:

- 1. On September 14, Independence Party candidate Steve Minn received 36.0%, placing first in a 4-way race for city council in the 13th district of Minneapolis, Minnesota.
- 2. Also on September 14, Grassroots Party candidate Oliver Steinberg received 23.0% for St. Paul, Minnesota, school board, in a 7-person race with 3 to be elected.
- 3. On September 28, Communist Party candidate Rick Nagin received 19.3% in a 4-way race for city council in the 14th ward of Cleveland, Ohio.
- 4. On October 12, Libertarian Party candidate Jimmy Blake received 35.1% in a 5-way race for city council in Birmingham, Alabama, placing first.

Minn, Steinberg and Blake are in run-offs on November 2. All the elections above are non-partisan, but the partisan affiliation of each third party candidate was well known.

WEICKER AND HICKEL

Governor Lowell Weicker, one of the nation's two Governors who was elected in 1990 on a third party ticket, said recently that he will not run for re-election in 1994. On October 5, the Lieutenant Governor of Connecticut, Eunice Groark, who is also a member of A Connecticut Party, announced that she will run for Governor next year. She must get 20% of the vote in 1994 in order to preserve her party's status as a major party. A Connecticut Party is affiliated with the Independence Party.

The nation's other third party Governor, Walter Hickel, will probably run for re-election in 1994, but since he is feuding with the party which elected him (the Alaska Independence Party), he may create his own new party. Meanwhile, the Alaska Independence Party is mourning the disappearance and presumed death of its founder, 80-year-old Joe Vogler, who was last seen alive on May 31.

RENEWALS: If this block is marked, your subscription is about to expire. Please renew. Sorry, no envelope is enclosed. Use the coupon below.

NATIONALLY-ORGANIZED PARTIES

These are the nationally-organized political parties in the U.S. which have run candidates in either 1993, or 1992 (other than just for presidential and vice-president):

- 1. American, Bx 25940, Richmond Va 23260
- 2. Communist, 239 W. 23rd St., New York NY 10011
- 3. Democratic, 430 S. Capitol, SE, Wash. DC 20003
- 4. Grassroots, Bx 8011, St. Paul Mn 55108
- 5. Green, Bx 30208, Kansas City Mo 64112
- 6. Independence, 135 Corporate Woods, Rochester NY 14623 (this party may soon change its name to Patriot)
- 7. Libertarian, 1528 Pa. Ave. SE, Wash DC 20003
- 8. Natural Law, 51 W. Washington St, Fairfield Ia 52556
- 9. New, 227 W. 40th St, #1303, New York NY 10018
- 10. New Alliance, 200 W 72 St, #35, NY, NY 10027
- 11. Populist, Bx 15499, Pittsburgh Pa 15237
- 12. Prohibition, Bx 2635, Denver Co 80201
- 13. Republican, 310 First St SE, Washington DC 20003
- 14. Socialist, 516 W. 25 St., #404, New York NY 10001
- 15. Socialist Workers, 410 West St., NY, NY 10014
- 16. US Taxpayers, 450 Maple Ave E, Vienna Va 22180
- 17. Workers League, Bx 33023, Detroit Mi 48216
- 18. Workers World, 55 W. 17 St, New York NY 10011

NATURAL LAW PARTY IN CANADA

Canada elects its Parliament on October 25. The Natural Law Party of Canada has 231 candidates on the ballot, out of 295 districts. Only the Progressive Conservative, Liberal, and New Democratic Parties, have more.

The U.S. Natural Law Party has put most of its attention into helping its Canadian sister party this season, and has had no candidates of its own for any office this year.

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