

BALLOT ACCESS NEWS

San Francisco, California

March 8, 1993

Volume 8 Number 13

BALLOT ACCESS BILLS PENDING IN 15 STATES

GOOD BILLS PASS IN SO. DAKOTA, VIRGINIA; OTHERS ADVANCE

There are probably more states considering changes in their ballot access laws now, than at any time since 1969. Most of the proposed changes are beneficial. Also, most of the proposals to make the laws more restrictive have been abandoned, and many of the good bills are advancing.

Alabama: SB 218, by Sen. Doug Ghee, changes the petition deadline for new parties and non-presidential independent candidates from April to August. It passed out of committee on February 10.

Florida: HB 2201, but by Rep. Jack Ascherl, is pending on the House floor. It would abolish filing fees for third party and independent candidates, as well as making many other election law changes which don't relate to ballot access.

Georgia: HB 606 passed the House on February 24 by a vote of 117-3. It reduces the number of signatures needed for a statewide third party or independent candidate from 1% of the number of registered voters (almost 30,000 signatures) to a flat 10,000 signatures.

Also, it lowers the number of signatures needed for the U.S. House of Representatives from 5% of the number of registered voters (over 12,000 signatures) to a flat 5,000.

Unfortunately, it also requires that all signatures be obtained on postcard-sized forms. Each form would have room for only one signature. The group circulating the petition must put these forms in alphabetical order (by the signers' names), for each county, before submitting them. Petitions would no longer need to be notarized, but the circulator would need to sign each form. Also, voters would be required to put their birthdays on the form (including the year), next to their signatures.

Hawaii: SB 1685 and SB 427 have been introduced. Each would legalize write-in voting.

Indiana: SB 290, the bill to abolish write-ins but to reduce the number of signatures needed for third party and independent candidates, has been abandoned by its author, Senator Richard Thompson. He feared that the state might get sued if it abolished write-in voting.

Maryland: There will be a hearing on March 17 on HB 1043, which reduces the number of signatures needed for a new or small party to place all its candidates on the ballot, to 10,000 signatures. The bill has several co-sponsors.

Massachusetts: The bill to make it easier for a party to remain on the ballot, by Rep. Byron Rushing, now has a number: HB 2782.

Missouri: SB 44, an election law bill which includes all the ballot access improvements vetoed last year, passed the Senate Elections Committee on February 15.

Nebraska: LB 428 and LB 76, which re-write all the state's election laws, do not make any substantive changes in the ballot access laws. It had been hoped that the bills at least repealed the ban on write-in votes for president, but they don't even do that.

Nevada: SB 250 has been introduced. It contains the Secretary of State's ideas for improving the election law, including lowering the number of signatures for a third party or an independent candidate, from 3% of the last vote cast, to 1%; and lowering the number of votes needed for a party to remain on the ballot, from 3% to 1%.

New Mexico: The Secretary of State has decided not to ask the legislature to increase the requirements for third party ballot access. This is good, because several months ago, she sent out a press release saying she would do this.

North Carolina: Rep. Joe Mavretic introduced HB 169 on Feb. 16. It lowers the number of signatures for statewide independents from 2%, to .5%, of the number of registered voters.

Oregon: HB 2754, which would have prevented minor parties from nominating anyone who had not been a member of that party for a year, was defeated on Committee on March 2.

South Dakota: HB 1154 was signed into law on February 22. It lowers the vote requirement for a party to remain on the ballot, from 10% for Governor, to 2.5%. It also makes it easier for individual candidates to get themselves on the primary ballot of a small or new party.

Texas: HB 1057 will have a hearing in mid-March. It lowers the number of signatures for a third party or statewide independent candidate from 1% of the last vote cast, to a flat 10,000 signatures; deletes the requirement that no one may sign who voted in the primary; and increase the petitioning period from 75 days to a year.

Utah: HB 352 passed the legislature on March 3. It moves the primary from September to June, and changes the filing date for non-presidential independents from April to March, not a good change.

Virginia: HB 1461 passed the legislature on February 18. It provides that a petition circulator can work not only in his or her home congressional district, but in an adjacent districts. It pertains to all statewide petitions except presidential petitions; a bill to make the same change for presidential petitions will be introduced next year.

West Virginia: bills to eliminate the law which bars people who sign a petition from voting in the primary, and to establish a write-in declaration of candidacy for write-in candidates, are about to be introduced.

CONGRESSIONAL BALLOT ACCESS BILL

Congressman Timothy Penny of Minnesota will introduce the ballot access bill on or about April 1. He has it in complete form, back from Legislative Counsel, ready to introduce. He hasn't introduced it yet because he is rounding up principal co-sponsors, whose names will be printed on the bill.

The bill is already getting support. Congressman Randy Cunningham, a Republican from San Diego, California, told a constituent that he almost certainly will co-sponsor the bill. The constituent, Gene Armistead, had arranged to see his member of Congress, for this purpose. This shows that it is possible for anyone to lobby his or her own member of Congress, now, even before the bill has a number. Anyone who persuades his member of Congress to co-sponsor the bill may receive a free one-year's subscription to *B.A.N.*, or a free one-year renewal. This offer is good at least thru May 31.

NORTH CAROLINA LAWSUIT FILED

On February 22, the Libertarian Party filed a lawsuit against the 10% vote requirement for a party to remain on the ballot. The party polled 4% for Governor in 1992, a good showing, but not enough to retain its spot on the ballot. *McLaughlin v N.C. Bd. of Elections*, no. 2:93-cv-100, US Dist. Court, Middle District.

The party immediately won an order (not opposed by the state) to prevent the elections board from changing the registration records of all the registered Libertarians in the state, to "independent" (North Carolina is one of the states that won't let voters register into non-qualified parties).

If this case can be won, it will be the first time that any federal court ruled that the U.S. Constitution protects a party's right not to be removed from the ballot, due to an overly-strict vote requirement for retention.

The lawsuit also challenges the law that won't let voters register into unqualified parties, and the law which says that a petition for a new party must carry language saying the signers themselves are organizing the new party. The lawsuit challenges the 5¢ fee charged for each petition signature submitted.

Under a new system in this federal district court, it isn't possible to know yet which judge will handle the case.

DEMOCRATS IN FREE SPEECH FIGHT

On February 24, the San Francisco County Democratic Committee added a bylaw, stating that the policy of the party is to endorse candidates in non-partisan elections. California is the only state which makes it illegal for a party to endorse any candidates for non-partisan office.

The party has written the City Attorney, asking if she intends to enforce the law (most counties of California, and the Attorney General, don't enforce it). If the City Attorney re-affirms that she still intends to enforce the law, the party plans to join the lawsuit *LaRiva v Wong*, now pending in State Superior Court.

VICTORY IN GEORGIA FILING FEE CASE

On March 1, the Georgia Attorney General signed a consent order, agreeing that Georgia will no longer discriminate against small political parties, in the matter of how filing fees are distributed. There was no need for the judge to rule, since the state gave up. *Libertarian Party of Georgia v Cleland*, no. 1:92-cv-2165, U.S. District Court, northern district.

Georgia law had provided that all candidates pay filing fees, but that 25% of the fee be refunded back to the Democratic or Republican Parties, for filing fees collected from Democratic and Republican candidates. However, if the candidate was a nominee of any other party, the state kept all of the fee! From now on, Georgia will rebate 25% of the filing fee back to all parties, not just the two major parties.

MAINE PUTS PARTY ON TAX FORM

Maine law provides that qualified parties should be listed on state income tax forms. Taxpayers may choose to make a donation to any of the listed parties. No party other than the Democrats or Republicans had ever been listed before, but the forms being mailed out this year (for tax year 1992) include the Libertarian Party, even though the party lost its status as a qualified party in November 1992 because it didn't poll 5% of the presidential vote.

The state refused to print the Libertarian Party on the 1991 tax form, even though the party became a qualified party in Maine that year. When the party sued, the state promised to include it on the 1992 forms.

FLORIDA DEADLINE HEARING

On March 1, a hearing was held in *U.S. Taxpayers Party v Smith*, no. TCA 92-40253, U.S. Dist. Court, Northern District, Florida. This is the case over the constitutionality of Florida's July 15 petition deadline for third party and independent presidential and congressional candidates. The judge, William Stafford, had refused to issue an injunction against the deadline last year, but the issue of the law's constitutionality is still open.

At the hearing, the state presented no evidence to show that the deadline is needed for any administrative reason. The judge seemed to look askance at this lack of evidence, and ruled that he would permit additional evidence to be entered, during the next 30 days.

BALLOT ACCESS NEWS (ISSN 10436898) is published by Richard Winger, Field Representative of the Coalition for Free and Open Elections, \$7 per year, thirteen times per year, every 4 weeks, at Bx 470296, San Francisco CA 94147. Second class postage paid at San Francisco CA. © 1993 by Richard Winger. Permission is freely granted for reprinting *Ballot Access News*, with attribution. PRODIGY address: BBJK79A.

POSTMASTER: Send address changes to *Ballot Access News* at Bx 470296, San Francisco Ca 94147-0296.

VOTE FOR LOWER HOUSE OF STATE LEGISLATURES

	NO. SEATS UP	Libt.	Indp.	Green	Taxpayer	New Al	Comm.	Populist	Other
Ala.	0	--	--	--	--	--	--	--	
Alaska	40		6,536	2,110					Ak Indp 11,905
Ariz.	60	68,054	40,315	13,994		4,205			Grassroot 4,660
Ark.	100		15,689						
Calif.	80	341,358		49,424	20,053				PFP 144,035
Colo.	65								In Pty(Ct) 3,502
Conn.	151	470	8,527				922		ACP 115,821
Del.	41	487							Con Cit(Ct) 956
Florida	120	31,290	20,219					2,756	
Georgia	180		3,873						
Hawaii	51	3,125		5,689					
Idaho	70	2,764	15,029						
Illinois	118	7,793					3,128		H Wash 10,082
Indiana	100	3,161	1,161						
Iowa	100		11,440						
Kansas	125	13,248	5,165						
Ky.	100	817							
La.	0	--	--	--	--	--	--	--	
Maine	150	635	12,593	216					
Md.	0	--	--	--	--	--	--	--	
Mass.	160	5,960	31,826		9,227				Prohibitn 1,331
Mich.	110	10,185	21,598		2,338				Wkr World 583
Minn.	134	593	1,387					253	
Miss.	122	83	24,832						
Mo.	163	13,052	6,994	1,363					
Mont.	100								
Neb.	0	--	--	--	--	--	--	--	
Nev.	42	15,634			9,245			804	
N.H.	400	37,494	4,070						
N.J.	0	--	--	--	--	--	--	--	
N.Mex.	70	6,987		3,703					Cn(NY) 349,433
N.Y.	150	523	15,373	1,297		4,489	575		RTL 95,803
No. C.	98	21,769	4,204						Lib(NY) 66,403
No. D.	49		1,382						
Ohio	99	7,209	23,211				2,081		
Okla.	101								
Ore.	60	9,201	6,361						
Penn.	203	4,781	8,039					72	
R.I.	100		28,365						
So. C.	124	4,644	12,095						
So. D.	70		6,157						Nat Law 350
Tenn.	99		26,291						
Texas	150	129,353							
Utah	75	10,871	398					309	Indp Pty 5,496
Vermont	150		10,959						Prog Coal 7,389
Virginia	0	--	--	--	--	--	--	--	
Wash.	98	15,056	10,054						Nat Law 2,759
W.Va.	117		1,148						
Wisc.	99	4,104	25,721	2,040					Labr-Frm 5,893
Wyo.	60	1,283	338						

TOTAL 4,854 771,984 411,350 79,836 40,863 8,694 6,706 4,194 826,216

New Al = New Alliance; Comm = Communist; Ak Indp = Alaska Indp; PFP = Peace & Freedom; H Wash = Harold Washington; ACP = A Ct Party; ConCit = Concerned Citizens; Cn = Conserv.; RTL = Right to Life; Lib = Liberal; Comm = Communist; In Pty = Indp. Party

PERCENTAGES OF THE VOTE FOR LOWER STATE LEGISLATIVE BODY

	<u>NO. SEATS UP</u>	<u>Libt.</u>	<u>Indp.</u>	<u>Green</u>	<u>Taxpayer</u>	<u>New Al</u>	<u>Comm.</u>	<u>Populist</u>	<u>Other</u>
Ala.	0	--	--	--	--	--	--	--	
Alaska	40		28.89	11.82					Ak Indp 12.14
Ariz.	60	12.76	15.43	14.14		14.69			Grassroots 9.81
Ark.	100		24.34						
Calif.	80	5.66		6.15	4.55				PFP 4.89
Colo.	65								In Pty(Ct) 5.88
Conn.	151	2.87	4.98				9.17		ACP 16.13
Del.	41	2.63							ConCit(Ct) 4.84
Florida	120	15.40	15.58					6.92	
Georgia	180		38.50						
Hawaii	51	13.99		17.07					
Idaho	70	11.70	30.19						
Illinois	118	4.61					8.49		Har Wash 14.90
Indiana	100	17.39	4.46						
Iowa	100		14.76						
Kansas	125	8.24	21.88						
Ky.	100	10.31							
La.	0	--	--	--	--	--	--	--	
Maine	150	6.28	20.78	5.64					
Md.	0	--	--	--	--	--	--	--	
Mass.	160	9.83	20.24		28.16				Prohibitn 15.87
Mich.	110	2.29	6.12		1.79				Wkrs World .83
Minn.	134	3.25	7.73					1.36	
Miss.	122	.85	31.37						
Mo.	163	5.42	15.91	10.49					
Mont.	100								
Neb.	0								
Nev.	42	14.13			13.37			2.64	
N.H.	400	19.10	20.25						
N.J.	0	--	--	--	--	--	--	--	
N.Mex.	70	20.46		39.20					Cn(NY) 7.00
N.Y.	150	2.04	18.96	2.35		1.51	2.31		RTL 4.13
No. C.	98	7.37	20.25						Lib(NY) 3.08
No. D.	49		11.58						
Ohio	99	4.84	9.11				6.53		
Okla.	101								
Ore.	60	8.62	9.22						
Penn.	203	2.74	5.17					.30	
R.I.	100		18.70						
So. C.	124	8.83	33.28						
So. D.	70		23.19						Nat Law 11.00
Tenn.	99		14.03						
Texas	150	11.59							
Utah	75	5.87	4.10					1.27	Indp Pty 8.11
Vermont	150		27.25						Prog Coal 45.48
Virginia	0	--	--	--	--	--	--	--	
Wash.	98	7.20	5.23						Nat Law 3.11
W.Va.	117		6.89						
Wisc.	99	6.09	12.14	9.26					Lbr-Farm 23.37
Wyo.	60	6.51	13.11						

See previous page for party abbreviations. Percentages above are the share of the vote that each party received, in the districts in which the party had candidates on the ballot, for the lower legislative body. The last B.A.N. had the State Senate results.

Parties not on this chart had no candidates on the ballot anywhere in the U.S., for the lower house of state legislatures.

CHARTS ON PAGES 3 & 4

The charts on pages 3 & 4 give the vote and percentage of the vote for third party and independent candidates for the lower house of state legislatures. They are companions to the State Senate charts in the last issue of *B.A.N.*

The percentage charts show the dramatic support received by independent candidates (and third party candidates) for state legislatures. On the average, independent candidates for the state legislature get even higher percentages of the vote than Ross Perot did, in Alaska, Arkansas, California, Georgia, Idaho, Mississippi, New York, North Carolina, South Carolina, South Dakota, Tennessee, and Vermont.

Independents, Third Party Candidates Elected

The November 6, 1992 *B.A.N.* stated that independent candidates were elected to the legislatures of Alaska, Arkansas, California, Massachusetts, Mississippi, New Hampshire, New York and South Carolina. That issue also stated that 5 members of the Vermont Progressive Coalition were elected to the Vermont legislature, 4 Libertarians were elected to the New Hampshire legislature, and one candidate of the Alaska Independence Party was elected to the Alaska legislature.

This was all accurate, except that only 3 members of the Vermont Progressive Coalition were elected; two independents were also elected to the Vermont legislature. Some Vermont Progressives use the label "Independent", and this made it difficult to know the difference between Progressive Coalitionists and true independent candidates.

VIRGINIA NIXES WRITE-INS AGAIN

On January 14, the Virginia Attorney General again ruled that the State Constitution does not protect the right to cast a write-in vote for president.

The Virginia Constitution says, "In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees". Virginia permits write-ins generally, but not for president, and Delegate Alan Mayer had asked the Attorney General whether the Constitution protects write-ins for president.

Deputy Attorney General Claire Guthrie said, "Because of the impracticability of providing for the writing-in of an entire slate of presidential electors and the inefficacy of any presidential ballot that does not include such electors", there is no such protection. She ignored the practice of other states, which provide that a write-in candidate for president may submit a list of presidential elector candidates beforehand. Then, a write-in vote for the presidential candidate is deemed to be for that slate of electors.

INITIATIVES

The last issue of *B.A.N.* stated that bills to add the initiative were pending in North and South Carolina. In addition, there are two such bills pending in New Hampshire, CACR 7 and CACR 12. Hearings were held on March 2, but no action has been taken yet.

MICHIGAN CONFUSION

No one knows yet how many qualified parties exist in Michigan. The election law says that, to determine whether a party received enough votes in the last election to remain qualified, one should check whatever the vote total is, of the party's candidate who was closest to the top of the ballot.

In Michigan, president is at the top of the ballot. Since no third party in Michigan received the needed 15,111 votes for president, it was first believed that none of the third parties survived (the sole exception was the Workers World Party, which didn't run a candidate for president in Michigan and therefore wasn't at risk; its top-most candidate ran for State Board of Education, an office for which any third party always polls enough votes to stay on).

But then someone discovered an Attorney General's Opinion dated Feb. 21, 1949, which says that president doesn't count in this determination. The Attorney General informed the Secretary of State, who in turn orally told the Tisch Independent Citizens Party that - surprise - it was still qualified! When asked to put this in writing, however, the Secretary of State asked the Attorney General to re-confirm his opinion. There is no final decision yet. If the 1949 opinion is still good, not only the Tisch Independent Citizens Party (which is affiliated with the U.S. Taxpayers Party), but the Libertarian and Natural Law Parties will be back on the ballot.

If the opinion is not upheld, the Libertarian Party may file a lawsuit in state court against the law. It isn't possible to sue in federal court, since a federal court already upheld the constitutionality of the law in 1974, and the U.S. Supreme Court summarily affirmed that decision.

LAWSUITS DROPPED

Two interesting lawsuits were recently dropped, before the merits of the case could be decided:

1. One filed in Georgia in 1991 by a Libertarian candidate for the legislature, who was accidentally left off the ballot in several precincts. *Sacandy v Bagwell*, no. 91-cv-234, U.S. Dist. Court, Northern Dist (Rome). The candidate-plaintiff had hoped at least to get a partial refund of her filing fee, but came to believe the case wasn't worth the work involved.
2. One filed in Mississippi to determine whether the state's "sore loser" law applies to presidential primaries. *LaRouche v Fordyce*, Mississippi Supreme Court, no. 92-TS-00994. The LaRouche organization didn't wish to run up any more legal bills for the case, since the election is over. The ACLU was considering whether to take the case, at no charge to the plaintiffs, but before it could act, the previous attorney dismissed the case.

CORRECTION: Previous issues of *B.A.N.* have listed states in which Ross Perot's vote created a new party, but have not mentioned Massachusetts. Massachusetts recognizes the "United We Stand" as a qualified party for the 1994 election, based on Perot's vote.

WASHINGTON STATE ELECTORS

Representative Velma Veloria of the Washington legislature has introduced HB 1594, to apportion the state's presidential electors according to the share of the vote received by each presidential candidate. Veloria is a member of the Board of Citizens for Proportional Representation. If the bill had been law in Washington state in 1992, Ross Perot would have received 3 electoral votes in the state.

RHODE ISLAND BALLOT ORDER

The ACLU is Rhode Island is about to file a lawsuit, arguing that Rhode Island's general election ballot format violates the 14th amendment. Rhode Island has a party column ballot. Qualified parties each get their own column. However, other groups do not have their own column, but are mixed together in the same column.

For example, the November 1992 ballot for Providence had a Democratic column, a Republican column, and then these columns:

1. A third column, labelled "Independents for LaRouche", contained Lyndon LaRouche for president, a congressional candidate labelled "Ross Perot Independent", and a gubernatorial independent candidate labelled "Reform '92".
2. A fourth column, labelled "Libertarian Party", contained the Libertarian candidate for president, an independent candidate for Congress, and a gubernatorial candidate labelled "Populist".
3. A fifth column, labelled "Natural Law Party", contained the Natural Law candidate for president, and an independent candidate for Governor.

This ballot order suggests that the candidates in the same column are associated with each other. Republican and Democratic candidates are not subject to the same treatment. Two other states, New Jersey and Colorado (in certain counties) also have ballots with this flaw.

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NEW REGISTRATION DATA

The February 8 *B.A.N.* carried a chart, showing the number of voters enrolled in each party, in each state which tallies such information. Since then, two states, Arizona and California, have released post-election figures. The new figures, for the third parties, contrasted with the old figures, are:

	Oct. 1992	Jan. 1993
<u>Arizona</u>		
Libertarian	4,784	5,438
Green	1,209	1,653
New Alliance	237	297
<u>California</u>		
Amer. Indp.	247,415	243,059
Green	98,724	93,497
Libertarian	71,148	68,520
Peace & Freedom	70,176	66,578

In Arizona, no third party got enough votes to stay qualified, but if a party can increase its registration to 13,328 (.67% of the number of registered voters) by next year, it will automatically be on the 1994 ballot.

In California, totals for the unqualified parties which are trying to qualify will be available soon. They are the Natural Law Party, and the California Party (which is affiliated with the Independence Party of Governor Lowell Weicker of Connecticut). A new party in California needs 78,922 registrants by December 31, 1993.

HIGH COURT NIXES PARTY RIGHTS CASE

On February 22, the U.S. Supreme Court refused to hear *Lightfoot v Eu*, the case over whether the First Amendment protects a political party's right to decide for itself whether to nominate by convention in certain circumstances, and also whether it may decide for itself how many write-in votes should be needed in order to nominate a candidate by write-ins in its own primary. The case had been filed by the California Libertarian Party in 1990.

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