BALLOT ACCESS NEWS

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MISSOURI BALLOT ACCESS BILL PASSES LEGISLATURE

ALSO, IOWA BILL SIGNED INTO LAW

On May 11, the Missouri legislature passed SB 31 and sent it to the Governor. The bill contains all the ballot access reform provisions that had been in HB 512. The bill contains many other unrelated election law changes. It does not provide for a presidential primary, however.

The same ballot access provisions were contained in omnibus election law bills which passed but which were vetoed, in both 1991 and 1992. This time, there is nothing controversial in the bills, and Missouri has a new Governor, so activists are not unduly worried about the Governor's reaction to the bill. SB 31 passed 145-8 in the House and 30-2 in the Senate. The Governor has until July 14 to act on the bill.

The Missouri bill make these improvements:

1. A new party can circulate its petition, before it has chosen its candidates.

2. The number of signatures for statewide independents, and for new statewide parties, is a flat 10,000 signatures. The old requirement, 1% of the last gubernatorial vote, required over 20,000 valid signatures.

3. The number of signatures for an independent candidate running for district or county office is reduced from 5% of the last vote cast, to 2% (the petition requirement for new party candidates for district or county office is already 2%).

4. There is no longer any requirement that a statewide petition include any particular number of signatures from various congressional districts. The old law provided that the statewide petition must include the signatures of 2% of the last vote cast in 5 congressional districts, or 1% of the last vote cast in all 9 districts.

IOWA: HF 652 was signed into law on May 19. It raises the number of signatures for a statewide third party or independent candidate from 1,000 signatures, to 1,500.

However, it lowers the number of signatures for a third party or independent candidate for U.S. House of Representatives from 2% of the last vote cast, to only 300 signatures. The old 2% requirement had been held unconstitutional last year. 2% in a Congressional election in Iowa is typically over 5,000 signatures, so the reduction to 300 signatures is a substantial improvement.

HEARING ON DEBATES BILL POSTPONED

The May 3 *B.A.N.* stated that the House Elections Subcommittee would hold a hearing on the "Democracy in Debates" bill on May 20. The hearing was not held on that day; it was postponed to June 17, to accommodate the schedules of the Commission on Presidential Debates. New co-sponsors of the Debates bill are Louis Stokes of Ohio, Jim Slattery of Ks and Harry Johnston of Florida.

MICHIGAN DISQUALIFIES PARTIES

On May 21, the Michigan Secretary of State disqualified the Libertarian, Natural Law and Taxpayer Parties. In 1992, these parties did not poll as much as 1% of the winning candidate for Secretary of State's vote total, for president. However, they did poll that number of votes for State Board of Education, the next office on the ballot.

The election law says that a party's status should be decided by its vote for the candidate closest to the top of the ballot. In January 1993, the Secretary of State had decided to follow a 1949 Attorney General's Opinion which said that president doesn't count, for this purpose. The Secretary of State changed his mind after he learned that in 1949, presidential candidates were on a separate ballot from other candidates; the ballot changed in 1954.

REGISTRATION BILL HELPS HR 1755

On May 20, President Clinton signed the Voter Registration bill into law. The bill's introduction says, "The right of citizens of the United States to vote is a fundamental right; it is the duty of the Federal, State, and local governments to promote the exercise of that right...".

The fact that the federal government will now set the standards for registration procedures (in federal elections), vastly enhances the case for HR 1755, the ballot access bill. The chief objection to the bill has been that the federal government should not dictate election procedures to the states, but that argument is weakened by the federal government's role in voter registration.

Jack Gargan, founder of THRO ("Throw the Hypocritical Rascals Out"), will publicize HR 1755 to his huge mailing list.

The May 3 *B.A.N.* inadvertently omitted the Natural Law Party, in the list of parties which had speakers at the press conference to launch HR 1755.

A new co-sponsor of HR 1755 is Jim Slattery of Kansas.

CANADA TOUGHENS BALLOT ACCESS

On May 6, the Canadian government gave final approval to Bill C-114, which makes ballot access for parliamentary elections more difficult.

The old law required every candidate to pay a $200 deposit, which was returned to candidates who polled 15%. The new deposit is $1,000. All candidates who report their campaign contributors will receive $500 back. The other $500 will only be refunded if the candidate received at least 15% of the vote. Canada has 295 parliamentary districts.

LEGISLATIVE NEWS

1. Alabama (1): SB 638, which would have lowered the vote requirement for a party to remain qualified from 20% to 2%, passed the Senate Constitution & Elections Committee on May 4. Unfortunately, the legislature adjourned on May 17 before the Senate ever voted on it. However, the legislature may be called into a new session, and the bill could be re-introduced. The bill had been introduced by Senator Hank Sanders, a Democrat from Selma.

Alabama (2): SB 218, which would have conformed petition deadlines to those already in effect (due to the state having lost a ballot access lawsuit over the April deadline), also failed to pass before the legislature adjourned.

2. California: AB 817, which would provide that small qualified parties nominate by convention instead of by primary, will not be heard in the Assembly Elections Committee until January 1994. It may receive interim study in October 1993.

California (2): SB 246 will not receive a vote in the Senate for at least a month. This is the bill to end special elections to fill legislative vacancies, and to provide that the party of the vacated legislator would fill the seat (with some input by a statewide elected official of that party).

SCA 27, which would change the state Constitution to make SB 246 permissible, passed the Senate Elections Committee on May 19. SCA 27 and SB 246 will be brought up simultaneously in the Senate, perhaps at the end of June. If they pass, the issue will go to the voters.

The bills were introduced to save election administration costs. If they pass, a consequence will a great increase in the power of California party organizations.

3. Connecticut: HB 7002, which provides that Democrats and Republicans could run for office in primaries, even with no support at conventions of their own parties, passed the House on May 11 and is now pending in the Senate.

4. Indiana: HB 1708 was signed into law on May 12. It makes many election law changes, including these: (1) declared write-in candidates must file 74 days before the election (the old deadline was 30 days); (2) any party which has run any candidate in the last five days, or which has held a convention, is entitled to obtain a list of registered voters (the old law only permitted qualified major parties to obtain the list, but that law was held unconstitutional); (3) permits independent candidates, as well as parties, to appoint polling place watchers; (4) makes legal distinctions in the law between new parties and independent candidates (formerly, the law lumped them together as though they were the same phenomenon).

5. Maine: On May 4, LD 1432 was introduced by Rep. John M. Michael. It would let a small qualified party nominate candidates by convention, instead of primary. On May 19 it passed out of the House Legal Affairs Committee. Given the First Circuit ruling on small party primaries, this is a very useful and important bill.

6. Louisiana: HB 1394, which would make it much easier for a party to appear on the ballot (for office other than president), has still not received a hearing from the House Elections Committee. Representative C. E. "Pepe" Bruneau, an influential New Orleans Republican and a member of that Committee, is believed to be the force against the bill.

7. Nevada: SB 250, which eases ballot access and makes many other unrelated changes, still hasn't reached the Senate floor.

8. New Hampshire: HB 531, which would make it impossible for anyone to be nominated by two parties, has been referred back to Committee by the full Senate. However, it could still pass next year.

9. New York: SB 4006, which would make it legal to cast a write-in vote by means of a rubber stamp, will be voted on in the Senate any day now. Its companion bill has already passed the Assembly.

10. Ohio: The Secretary of State still hasn't unveiled his proposed bill to permit labels for independent candidates.

11. Oregon: see page 4 for an account of SB 932.

12. Texas: HB 1057, which eases ballot access, passed the House Elections Committee on May 12 but cannot proceed any further because the legislature is almost ready to adjourn.

13. West Virginia: SB 315, which provides that write-in candidates who wish their write-ins counted must file a declaration of candidacy one week before the election, was signed into law on May 5.

Unfortunately, it turns out that the bill requires write-in candidates to pay the same large filing fee, which candidates on the ballot must pay ($2000 for president, for example). In 1989, a Maryland law that required write-in candidates to pay a $150 fee was held unconstitutional by the 4th circuit. West Virginia is also in the 4th circuit, so a lawsuit against the new mandatory filing fees for write-in candidates would probably win.

POSTAL SIDEWALK PETITIONING

The U.S. Supreme Court still has not decided whether to hear *Longo v U.S. Postal Service,* no. 92-1610, the case over whether the post office can bar all petitioners for parties and candidates from its sidewalks. A decision is likely in June.

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SEVERE MAINE LOSS

On April 30, the First Circuit upheld Maine law which makes it impossible for a small qualified party to nominate candidates in its own primary (the law doesn't permit a qualified party to nominate candidates other than by primary). *Libertarian Party of Maine v Diamond*, no. 92-2026. The decision was written by Judge Conrad Cyr (a Bush appointee), and signed by Hugh Bownes (a Carter appointee), and Juan Torruella (a Reagan appointee).

The Maine Libertarian Party was a qualified party last year but it only had 1,048 registrants. The law says that a statewide candidate, trying to get on the primary ballot of any party, must obtain 2,000 signatures of party members. The law is foolish because it doesn't take into account the party's size. An identical law in Pennsylvania was declared unconstitutional in 1986, in a case brought by the Consumer Party, another party which was qualified for the primary but which had few registrants.

The decision is another in the depressing string of decisions which deny third political parties any control over their internal affairs or nomination procedures. Although the U.S. Supreme Court has ruled three times that the First Amendment protects political parties from state interference in their affairs, the lower courts consistently refuse to apply these principles to any political parties, other than the Democratic and Republican Parties.

In this case, the party, unable to nominate candidates any other way, had nominated by convention, but the court wouldn't recognize the validity of the procedure, even though it was in accord with party by-laws.

The judges justified the law by theorizing that the Maine Libertarian Party doesn't really have substantial support, and therefore there is a state interest in requiring its individual candidates to show substantial support.

Maine provides three means for a party to obtain "party" status: (1) a petition signed by voters equal to 5% of the last vote cast; (2) a vote of 5% for Governor or President; or (3) if any independent candidate polls 5% for president or Governor, that independent may "award" his votes to an unqualified party, so that it becomes qualified.

The Libertarian Party became fully-qualified through the third method, after an independent candidate for Governor in 1990 (who polled 9%), "awarded" his votes to the party. The judges deduced that this method of becoming a qualified party doesn't really indicate that the party has genuine support. Their decision implied that if a party ever became qualified in Maine through one of the other two methods, the law under challenge might be unconstitutional as to such a party.

The judges also stated that if the Libertarian Party doesn't like its situation, it can always "commit suicide" and voluntarily cease to be a qualified party. If the party weren't qualified, it could place its candidates on the ballot using the Independent candidate petition procedures, which do permit a party label (the party label can't be the name of any qualified party, so this method won't work unless the party gives up qualified status).

However, if a party ceased to be qualified, it would be legally impossible for anyone to register as a member of the party; and the party would no longer be on the state income tax form, which entitles taxpayers to easily make a small donation to the taxpayer's party of choice.

The judges did say that the Libertarian Party is still qualified. The law is ambiguous as to whether qualified status lasts for 2 years or 4 years. However, on May 25, the Secretary of State said that the judges are wrong, and that the Libertarian Party lost its qualified status for failing to get 5% of the vote for President in 1992. The Libertarian Party may file a lawsuit over the Secretary of State's interpretation; the party might also decide to appeal the First Circuit's decision to the U.S. Supreme Court.

PENNSYLVANIA HEARING

On May 21, a hearing was held in federal court in *Patriot Party v Mitchell*, no. 93-cv-2257. The Patriot Party is the party created by Ross Perot's vote in Pennsylvania. The lawsuit challenges Pennsylvania law, which says that qualified parties with less than 15% of the registration, are treated as though they weren't qualified. Therefore, even though the Patriot Party is a qualified party (because it polled over 2% of the 1992 winner's vote), it must submit petitions to get any of its nominees on the ballot.

The party is especially eager to get its candidate for Justice of the Supreme Court on the November 1993 ballot. He is Robert Surrick, who has a reputation as a fighter for integrity in the troubled state court system. The law requires him to collect 56,641 valid signatures. The party argues that it has already demonstrated that it enjoys public support, and that therefore there is no logical reason for it to submit that many petition signatures.

Judge Edward Cahn, a Ford appointee, heard the case. In 1991 he ruled in *Trinsey v Pennsylvania* that the petition requirements for third party and independent candidates are constitutional. However, he is known for independence and willingness to listen, so anything can happen.

CONNECTICUT REHEARING REFUSED

On May 21, the Second Circuit refused to rehear *LaRouche v Kezer*, no. 92-7263, the case over ballot access for the Connecticut presidential primary. Connecticut, like many states, provides that candidates prominently discussed in the news media should be placed on the ballot automatically, whereas all others must submit a difficult petition. The Second Circuit had upheld the law on March 31. The ACLU hasn't yet decided whether to appeal to the U.S. Supreme Court.

PARTY RIGHTS HEARING SET

There will be a hearing in the U.S. Court of Appeals, D.C. Circuit, on November 10, 1993, in *Freedom Republicans v FEC*, no. 92-5214. This is the case over whether the FEC should withhold federal subsidies for the Republican Party, unless the Republican Party institutes an affirmative action program to increase the number of racial minority delegates to its national conventions.

OREGON SCARE

A bill which would have made it virtually impossible for a third party to remain qualified for the Oregon ballot, SB 932, was introduced on March 19. After vigorous opposition at the Senate Elections Committee hearing on May 13, it seems likely that the bill will be amended so that it no longer harms third parties.

The bill was introduced by Senator Neil R. Bryant, a Republican. Originally, the bill had the good purpose of deregulating the Democratic and Republican Parties (current law tells them how to organize, and under a 1989 Supreme Court decision, such laws are unconstitutional).

Harmful amendments to the bill were added later. They would have changed the vote test for a party to remain qualified, from a vote test, to a registration test. Existing law says that a party which polled 20% in the last election should nominate by primary, and a party which polled less than 20%, but more than 1%, nominates by convention, with no need for petitions.

The amendments would have re-defined primary parties as those which had at least 5% of the registration; and minor parties (which nominate by convention) as those with 1% of the registration.

1% of the registration may sound lenient, but it is not. Even the most popular third parties almost always have few registered members. For example, the New York Conservative Party elected a U.S. Senator, James Buckley, in 1970, when it only had 1.5% of the registration. No third party has held as much as 5% of any state's registration since the 1910's decade. Voters don't wish to register as members of third parties, even when they wish to vote for those parties, because registration is public, and public membership in a third parties is often hazardous to one's career.

Under existing Oregon law, there are three "major" parties, which nominate by primary: Democratic, Republican, and American. The American Party was created by the vote for Ross Perot, which was 24.3% in Oregon. The name was originally the Independent Initiative Party, but the party changed its name to the American Party a few months ago. The American Party's position on SB 932 is that it doesn't mind nominating by convention instead of by primary. However, it wishes to guard its status as a qualified party. Under SB 932, it would even lose that, since it only has about 2,000 registered members, and 1% of the Oregon registration is 18,000. The bill would also have caused the Libertarian and New Alliance Parties to lose their status as qualified convention parties.

N.J. GUBERNATORIAL BALLOT CROWDED

New Jersey elects a Governor on Nov. 2, 1993. There are 19 candidates on the general election ballot, the most candidates on the ballot in U.S. history for a statewide, partisan, regularly-scheduled election. The candidates are Democratic, Republican, Libertarian, Populist, Socialist Workers, and Conservative Party nominees, and 13 independents. 800 signatures are required.

CINCINNATI REJECTS NEW VOTE SYSTEM

On May 4, voters of Cincinnati rejected a proposal to elect its city council by cumulative voting, by a margin of 21-79.

INDEPENDENCE PARTY NOMINATES

The Independence Party plans to nominate candidates for city and county office in New York and Minnesota this year. This is a nationally-organized party whose titular leader is Governor Lowell Weicker of Connecticut.

FLORIDA HEARING COULD BE ANY DAY

The National Association of Secretaries of State, and the Harwood Group, have held three hearings already around the country, to seek public input on how U.S. elections could be improved. The next hearing will probably be in Tallahassee, Florida.

Since Florida has the nation's worst ballot access laws, it would be appropriate for the issue of ballot access to be brought up there. The date and location of the hearing are still undetermined. Call Susie Fox or John Creighton at the Harwood Group, 301-656-3669, to learn more about the hearing. It is possible that the hearing will never be held, because financing for it is in doubt.

TEXAS U.S. SENATE RESULTS

Texas held a special election for U.S. Senate on May 1. The only two third party candidates were Rick Draheim, Libertarian, who polled 5,677 votes (.28%) and Rose Floyd, Socialist Workers, who polled 2,301 votes (.11%).

PENNSYLVANIA REGISTRATION DATA

Pennsylvania just released this registration data for the May 1993 primary: Democrats 3,010,606; Republicans 2,515,836; Libertarians 2,159; Patriot 1,139; independents and other parties, 372,261.

A few large counties reported "zero" Libertarian and Patriot registrants, yet those parties know that they have some registrants there. Consequently, the official figures are somewhat inaccurate.

CORRECTIONS: (1) The last *B.A.N.* said that the hearing in the 9th circuit in *Geary v Renne* will be on June 25. Actually, it will be June 24. (2) The February 8 and March 8 *B.A.N.* gave the 1992 legislative election returns for third parties, but they omitted the Green Party vote in Rhode Island legislative races. The R.I. Green Party polled 1,117 votes for State Senate (7.63% of the vote cast in the races it entered), and 959 votes for State House (13.71% of the vote in those races).

PAGE SIX contains an editorial in support of Congressman Tim Penny's federal Ballot Access bill, from the largest newspaper in Virginia. This is believed to be the first editorial in support of a federal ballot access bill in a major newspaper. Congressman Conyers introduced a similar bill in 1985, 1987 and 1989, but the bill never received such newspaper support.

1994 PETITIONING

STATE	REQUIREMENTS		SIGNATURES COLLECTED				DEADLINES	
	FULL PARTY	CAND.	LIBT	PEROT	GREEN	NEW AL	PARTY	CAND.
Alabama	12,157	12,157	*700	0	0	0	Sep 9	Sep 9
Alaska	no procedure	2,586	0	0	already on	0	–	Aug 22
Ariz.	(est) (reg) 13,500	(es) 7,000	*5,298	0	*1,764	*276	May 21	Jun 30
Arkansas	20,890	10,000	0	already on	0	0	Jan 4	May 1
California	(reg) 78,992	151,015	already on	100	already on	0	Jan 4	Aug 12
Colorado	no procedure	1,000	can't start	can't start	can't start	can't start	–	Aug 2
Connecticut	no procedure	15,008	can't start	already on	can't start	can't start	–	Aug 12
Delaware	(reg.) 150	(es) 3,000	already on	already on	0	already on	Aug 20	Jul 15
D.C.	no procedure	(es) 2,600	can't start	can't start	can't start	can't start	–	Aug 31
Florida	196,255	196,255	can't start	(reg.) 200	can't start	can't start	Jul 19	Jul 19
Georgia	31,771	31,771	already on	0	0	0	Jul 12	Jul 12
Hawaii	4,645	unpredictable	already on	0	already on	0	Apr 20	Jul 19
Idaho	9,643	1,000	already on	0	350	0	Aug 31	Jun 24
Illinois	no procedure	25,000	can't start	can't start	can't start	can't start	–	Aug 8
Indiana	no procedure	29,909	*8,000	0	0	*15,000	–	Jul 15
Iowa	no procedure	*1,500	0	0	0	0	–	Aug 19
Kansas	15,661	5,000	already on	0	0	0	Apr 11	Aug 2
Kentucky	no procedure	5,000	0	0	0	0	–	Sep 1
Louisiana	(reg) 110,000	0	approx 150	already on	38	0	Jun 30	Jul 29
Maine	26,139	4,000	*uncertain	can't start	can't start	can't start	Dec 15,91	Jun 7
Maryland	(es) 76,000	(es) 66,000	*1,300	6,000	0	0	Aug 1	Aug 1
Massachsts.	(reg) 33,000	10,000	can't start	already on	can't start	can't start	Jul 1	Aug 2
Michigan	25,646	25,646	*0	0	0	0	Jul 21	Jul 21
Minnesota	117,790	2,000	can't start	can't start	can't start	can't start	ap. May 1	Jul 19
Mississippi	just be org.	1,000	already on	0	0	0	ap. Apr 1	Apr 8
Missouri	no procedure	20,860	already on	0	0	0	–	Aug 1
Montana	9,473	9,473	already on	0	0	0	Mar 17	Jun 6
Nebraska	5,834	2,000	0	0	0	0	Aug 1	Aug 30
Nevada	14,759	15,402	0	0	1,200	0	unknown	unknown
New Hamp.	no procedure	3,000	already on	0	0	0	–	Aug 10
New Jersey	no procedure	800	0	0	0	0	–	Apr 14
New Mexico	2,850	17,100	*800	0	already on	0	Jul 12	Jul 12
New York	no procedure	15,000	can't start	can't start	can't start	can't start	–	Aug 23
North Carolina	51,904	(es) 70,000	lawsuit	0	0	6,000	Jul 14	Jun 24
North Dakota	7,000	1,000	0	0	0	0	Apr 15	Sep 9
Ohio	49,399	5,000	0	0	0	0	Jan 6	May 3
Oklahoma	69,518	0	0	0	0	0	May 31	Jul 13
Oregon	(es) 37,000	(att.) 1,000	already on	already on	15,000	already on	Aug 30	Aug 30
Penn.	no procedure	(es) 28,000	already on	already on	can't start	can't start	–	Aug 1
Rhode Isl.	no procedure	1,000	can't start	can't start	can't start	can't start	–	Jul 21
South Carolina	10,000	10,000	already on	0	0	already on	May 8	Aug 1
South Dakota	6,419	2,568	already on	0	0	0	Apr 5	Aug 2
Tennessee	19,759	25	0	0	1,000	0	ap. May 1	May 19
Texas	38,900	38,900	already on	can't start	can't start	can't start	May 22	May 12
Utah	500	300	already on	0	0	0	Mar 15	Mar 17
Vermont	just be org.	1,000	already on	0	0	already on	Sep 22	Sep 22
Virginia	no procedure	(es) 15,500	can't start	can't start	can't start	can't start	–	Jun 14
Washington	no procedure	unpredictable	can't start	can't start	can't start	can't start	–	Jul 23
West Va.	no procedure	4,044	0	0	0	0	–	May 9
Wisconsin	10,000	2,000	already on	can't start	can't start	can't start	Jun 1	Jul 12
Wyoming	8,000	9,849	0	0	0	0	May 1	Aug 29

LIBT = Libertarian; NEW AL = New Alliance; PEROT = a party created by his campaign. Other qual. national parties: Natural Law in N.M. & Vt, Populist in Utah, U.S. Taxpayers in Cal., Miss., N.M. & S.C, and Wkrs. World in Mich. "FULL PARTY REQ." means a procedure by which a new party can qualify before it nominates its candidates; not every state has such a procedure. *Populist Party has 1,000 signatures in Ga. Grassroots Party has 200 signatures in Az. * means entry has changed since last issue. Although the Patriot & Libertarian Parties are "qualified" in Pennsylvania, they must still petition. Az. data is as of April.

A10 *SATURDAY, APRIL 24, 1993* • • •

Richmond Times-Dispatch

VIRGINIA'S NEWS LEADER

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Liberate the Ballot

Federal law wisely guarantees citizens access to the voting booth. But if states cannot erect unreasonable barriers to voting by individuals, many make it difficult for parties other than the Democrats and the Republicans to list candidates on the ballot.

Last year Ross Perot managed to place his name on the ballots of all 50 states. Candidates and parties without Perot's money face Herculean tasks trying to make the ballot. They must devote time and cash not to formal campaigning but to circulating petitions — and, sometimes, to defending themselves in court from challenges mounted by institutionalized parties jealous of their turf.

There is no reason established (albeit tiny) parties such as the Libertarians and the Socialist Workers should endure ballot fights election after election after election. Although political parties are inevitable in a democracy (and generally play positive roles), the Constitution does not mention them. Many of the Founders feared parties. They did not grant the informal parties existing at the nation's birth the power to set election rules.

Congress is considering legislation to ease access to the ballot. The Fair Elections Act of 1993 would simplify the qualifications for gaining a ballot line in an election for federal office. The bill is in its initial stages; bills at final debate seldom resemble bills at introduction. Judgment on the specifics of the Fair Elections Act remains reserved. Nevertheless, an effort to open ballots to third parties may be overdue.

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