BALLOT ACCESS NEWS

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FIRST HEARINGS HELD ON HOW US VIOLATES ACCORD

RUSSIA, UKRAINE, REQUEST TRANSCRIPT; OTHER REQUESTS LIKELY

On September 2-4, the Democracy Project took testimony from a dozen people on how the federal government, and the government of many states, violates an accord signed in 1990 by the United States to protect political rights. The testimony is being supplemented and transcribed, and then will be sent to the governments of Russia, the Ukraine, the U.S. Congressional Commission on the Accords, and the governments of Maryland and West Virginia, all governments which have requested a copy of the transcript.

Most of the testimony focused on discriminatory and harsh ballot access restrictions by various states. However, some of it dealt with policies of the federal government, particularly the 1974 campaign finance act which provides general election public funding of parties which polled at least 5% of the vote in the last presidential election, but which under no circumstances permits any equivalent funding for new parties during the election season, no matter how much support they may have. The Democratic and Republican Parties are the only political groups which have ever received general election public funding during a campaign (general election funds should not be confused with primary season matching funds).

The Document of the Copenhagen Meeting, signed by former President Bush for the United States, pledges the U.S. and all other signing nations to: (1) guarantee equal suffrage to adult citizens; (2) ensure that votes are counted and reported honestly with the official results made public; (3) respect the right of citizens to seek political office, individually or as representatives of political parties, without discrimination; (4) respect the right of individuals and groups to establish, in full freedom, their own political parties and provide such parties with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and the authorities.

For more information about the Democracy Project, contact Bob Waldrop at the address and phone number shown on page six. Waldrop is working to persuade additional foreign governments to request the transcript. If even one signing nation requests the United States to respond to the testimony, the United States is obliged to do so.

OREGON BALLOT ACCESS BILL SIGNED

On September 9, Oregon Governor Barbara Roberts signed HB 2276 into law. This is the bill which lowers the number of signatures needed for a new party to get on the ballot, from approximately 40,000 signatures, to 16,681.

Oregon thus becomes the sixth state this year to improve its ballot access laws (by legislative action) for new or small political parties. The others are Iowa, Missouri, Nevada, South Dakota and Virginia.

KANSAS DEADLINE DEFEAT

On August 31, U.S. District Judge Richard D. Rogers upheld the Kansas August 3 petition deadline for independent candidates. *Hagelin for President Committee v Graves*, no. 92-4201-R.

The decision was no surprise, since Judge Rogers had refused to issue an injunction against the deadline last year. The case was the only ballot access lawsuit being pursued by the Natural Law Party (the party's lawsuit against the California independent candidate deadline had been dropped on June 9). The party plans to appeal the Kansas case to the 10th circuit.

Judge Rogers upheld the decision because he said there is a state interest in letting voters have enough time to educate themselves about candidates on the ballot. He ignored the fact that Kansas law lets qualified parties name their presidential candidates as late as September.

BALLOT CASES TO SUPREME COURT

Two important ballot access cases were recently presented to the U.S. Supreme Court. The Court will probably say in November whether it will hear either or both of them.

1. *Libertarian Party of Maine v Diamond*, no. 92-299, over whether a state can make it impossible for a legally qualified, small political party to nominate candidates.

2. *LaRouche v Kezer*, no. 92-5-19, a challenge to a Connecticut presidential primary law which says that candidates mentioned in the media go on the ballot automatically, whereas others must complete a difficult petition. This case was accidentally filed in the Supreme Court two days late; the Court will rule on October 4 whether to overlook the error or not.

PATRIOT PARTY ON 1993 PA. BALLOT

The Patriot Party of Pennsylvania has successfully placed Robert Surrick, its candidate for Judge of the State Supreme Court ballot on the November 1993 ballot.

The party had earlier won a ruling in federal court, reducing the number of signatures from 56,641 to 29,172. The party then submitted enough signatures to meet the new, lower requirement. The state had not appealed the decision lowering the number of signatures. No one challenged the sufficiency of Surrick's petition.

But the Republican Party, intervening in the case after it was decided, did appeal. However, on August 17, Judge Edward Cahn ruled that the Republican Party filed too late. The Republican Party has filed an appeal of that, but it will not be heard until after the election.

FLORIDA SPONSOR FOUND

Senator Ander Crenshaw, a Republican, has tentatively agreed to introduce a bill next year easing Florida ballot access laws for independent and third party candidates.

OHIO, CALIFORNIA PRIMARY DATES

The Governors of California and Ohio are expected any day now to sign bills changing the date of the primary election, for all offices (not just president) in 1996. The bills are AB 2196 in California and SB 150 in Ohio. Both bills put the 1996 primaries in March.

Both states provide that all political parties which appear on the general election ballot, must nominate by primary. This means that the filing deadline for new parties to qualify for the 1996 ballot, will be in October 1995! Never before has any state required parties to qualify so early.

In 1983 the U.S. Supreme Court ruled in *Anderson v Celebrezze* that it is unconstitutional for states to require independent presidential candidates to qualify for the ballot before the summer of the election year. In 1974, the Court ruled in *Storer v Brown* that new party and independent candidate approaches to politics are entirely different, and that state election law must accommodate both types of political activity; it isn't sufficient for a state to expect new parties to use independent candidate procedures, and vice versa.

The Supreme Court has never directly ruled on the question of whether very early petition deadlines for new parties are unconstitutional or not. Any party which challenges either the Ohio, or the California, new party deadlines in 1995 will be setting an important precedent. Courts will have to determine if a state's policy of requiring all new parties to nominate solely by primary, overrides the right of voters to form new parties during an election year and get them on the ballot (in most states, new parties nominate by convention, so the deadlines need not be so early).

The Republican Party was formed on July 6, 1854, and went on to win a plurality in the U.S. House of Representatives in the fall 1854 elections. Nowadays, new parties in Great Britain and Canada can qualify their candidates for the ballot within less than a month of the election date, a striking contrast to Ohio and California.

HOSTILE SOUTH CAROLINA RULING

The South Carolina Election Board has ruled that a new party must submit its petitions by January 1, 1994, if it wishes to place candidates on the 1994 ballot. The ruling contradicts state law, which says the petition deadline is in early May. The Election Board points out that another section of state law requires all political parties to hold their state conventions in March.

The Board fails to acknowledge that a new party could hold its state convention before it has qualified. Furthermore, there is no good reason why a new party can't hold its state convention later in the year.

ARIZONA DEADLINE CHANGE

Ballot Access News recently learned that the 1992 session of the Arizona legislature changed the deadline for a new party to qualify, if it uses the registration method. The old deadline was June 1, 1994; the new deadline is November 1, 1993.

However, if a new party qualifies by petition, the deadline continues to be May 21, 1994.

The Arizona primary is in September, so it's difficult to understand why the deadline for a party to qualify by registration was changed. The change represents another depressing example in the trend to make it difficult or impossible for the voters to form a new party in an election year (see above articles on California, Ohio and South Carolina).

CALIFORNIA INDEPENDENTS SAVED

The last issue of *B.A.N.* reported that California was about to enact a bill, AB 1173, which would force independent candidates to pay filing fees, in addition to collecting tens of thousands or hundreds of thousands of signatures, in order to get on the ballot. The filing fees can be as high as $2,500.

Fortunately, the two California State Senators who are independents were able to get the bill amended at the last minute to delete the change for independents. The bill passed the legislature on September 10, but without any provision hurting independent candidates. Independents will continue to be exempt from paying filing fees. Also, the bill deletes the 1991 provision that independent candidates for the legislature must file a declaration of candidacy in February.

GEORGIA BILL REVIVED

HB 606 was heard by a Subcommittee of the Georgia Senate Government Operations Committee on August 26. This is the bill that reduces the number of signatures needed for statewide third party and independent candidates, but which requires all petitions to be circulated on post-card-sized forms (only one signature is permitted per sheet). Also, each voter would be required to list his or her birthday next to the name and address.

The Subcommittee came to a tentative agreement to set the number of signatures for statewide petitions at one-half of 1% of the number of registered voters. This would be a 50% cut in existing law. The Subcommittee will meet again on the bill in a month. For more information, contact the office of Senator Guy Middleton, (404) 656-5110.

CALIFORNIA PETITIONING VICTORY

On August 26, Superior Court Judge Robert O'Brien of California ruled that the U.S. Constitution protects the right of anyone to circulate an initiative petition, even if he or she is not a registered voter in the jurisdiction holding the election. *Browne v Russell,* no. BC086298. The Defendant city of Los Angeles plans to appeal.

POLITICAL SIGN BAN STRUCK DOWN

On July 1, 1993, the Washington State Supreme Court struck down a Tacoma city ordinance prohibiting political signs more than sixty days before an election, on the grassy strips between sidewalks and curbs, even if the property owner desires to place such signs. *Collier v City of Tacoma*, 854 P 2d 1046.

The candidate who brought the lawsuit was running for Congress in 1992. He had a small campaign budget and suffered from little name recognition, so he decided to concentrate on yard signs, starting in May (the primary was in September). However, Tacoma prohibited such signs except during the period starting 60 days before an election.

The State Supreme Court ruled that the time limit violated the First Amendment of the U.S. Constitution, as well as the free speech part of the state Constitution. It noted that the rule "inevitably favors certain groups of candidates over others. The incumbent, for example, has already acquired name familiarity and therefore benefits greatly from Tacoma's restriction on political signs."

NEW JERSEY PETITION DECISION

On July 7, 1993, the New Jersey Supreme Court issued an opinion construing state law. The Court said that voters who are registered "Independent" may sign a petition to place a Democrat or a Republican on the primary ballot. *Lesniak v Budzash*, 626 A 2d 1073. The act of signing such a petition will now automatically make the signer a registered member of the party, according to the Court.

New Jersey requires 1,000 signatures for a statewide candidate to gain a place on a major party primary ballot. The Court dismissed the fear that independent voters might be hostile to a major political party and might place candidates on the primary ballot of a major party who were actually hostile to that major party. The Court dismissed this concept (called "raiding"), saying: "A raid on a political party by an unaffiliated voter is a curious concept only distantly related to one party's raid on another".

Neither the Democratic nor Republican Parties have any bylaws on the subject, nor did they intervene in the lawsuit, which was filed by several candidates whose petitions were challenged. If any party were to pass a bylaw against the practice, it is likely that the party wishes would prevail over state law, since the U.S. Supreme Court has given such authority to political parties.

JUDGE CANDIDATE WINS FREE SPEECH

On June 10, 1993, the 7th circuit ruled an Illinois law unconstitutional which forbids a candidate for Judge from "announcing his views on disputed legal or political issues". *Buckley v Illinois Judicial Inquiry Board*, 997 F 2d 224. One of the plaintiffs had been disciplined for stating in his campaign literature that he had "never written an opinion reversing a rape conviction". An almost identical Pennsylvania law was upheld by the 3rd circuit in 1991 in *Stretton v Disciplinary Bd*, 944 F 2d 137.

PETITIONS RULED INSUFFICIENT

State courts in two states recently refused to place candidates on the ballot, after elections officials had ruled that the candidates didn't have enough valid signatures.

1. Massachusetts: the Socialist Workers Party candidate for Mayor of Boston, Maceo Dixon, submitted 6,100 signatures to be on the ballot. 3,000 are required, but the City Election Commission ruled that only 1,740 of the signatures were valid. Dixon sued and presented evidence that the Election Commission records are not up-to-date and that thousands of valid signatures had been disqualified, but state Judge David Roseman of the Suffolk County Superior Court refused to examine evidence about specific signatures and would not disturb the finding of the Election Commission. *Dixon v Boston Election Commission*, no. 93-5077E.

2. New York: the New Alliance Party-backed candidate for City Council in a Bronx district, Rafael Mendez, was removed from the Democratic primary ballot because some of his petitioners did not sign and date the petition sheets immediately upon completing them, but waited until just before the signatures were submitted. The State Supreme Court upheld the removal of Mendez, and on September 10 Justice Clarence Thomas of the U.S. Supreme Court refused to intervene.

BALLOT PAMPHLET CASE DISMISSED

On September 1, the 9th circuit issued an order, ending the case *Geary v Renne II*, no. 89-15601, without settling most of the issues in the case. The *en banc* panel of eleven judges ruled that the case no longer relates to any actual controversy, and that therefore it would be improper to issue an opinion. The panel vacated the old opinion in the case, which had upheld the laws.

The case concerns whether a state may censor candidate statements, and statements either for or against initiatives, from the government-printed Voters Handbook.

The one issue which the judges did settle, is that it is unconstitutional for local elections officials to censor any mention of political party support, by a candidate for nonpartisan office. The basis for the ruling is simply that the law provides no method for judicial intervention if the candidate disputes the deletion.

NAP v FBI HEARING DATE SET

The trial in *New Alliance Party v FBI*, no. 93-3490, will begin in federal court in New York on November 5. The party seeks a judgment that the FBI violates its own guidelines, and the Constitution, when it investigates political parties in the absence of evidence of criminal activity.

MICHIGAN GREENS PLAN LAWSUIT

The Green Party plans to sue over the constitutionality of Michigan law which does not permit a party to get on the ballot anywhere in the state, unless its gets on statewide.

RHODE ISLAND BALLOT ORDER VICTORY

On July 19, federal Judge Raymond Pettine of Rhode Island ruled that it is unconstitutional for a state to structure its ballot, to suggest that third party or independent candidates are associated with each other, when they really aren't. *Devine v State*, no. 92-0580-P.

The case arose in 1992 when the candidates for Governor, Secretary of State, and Attorney General, of the Reform '92 Party, were placed in the same voting machine column with independent presidential candidate Lyndon LaRouche. The sample ballot carried a label in large letters over the column "Independents for LaRouche". The labels "Reform '92", next to the names of the candidates of the Reform '92 Party, were in much smaller type.

The Reform '92 Party, which brought the lawsuit, did not have a presidential candidate of its own. The party is non-ideological and was concerned with fighting corruption in state government. Ballot access is fairly easy in Rhode Island, so that there were eight presidential candidates on the ballot, and no room on the mechanical voting machines to give the Reform '92 Party its own column.

Rhode Island defines a party as a group which polled at least 5% of the vote for governor in the last election. No third party has held "party" status in Rhode Island since 1914. Reform '92 was confident that it was going to poll at least 5% of the vote for Governor and thus attain that status; polls before the election showed it at 8%. The party actually polled 14,511 votes for Governor, only 3.4%, not enough to qualify. The party feels certain that it would have polled 5% if its candidates had not been placed in a column headed "Independents for LaRouche" but Judge Pettine refused to order a new election.

The party had obtained a court order just before the election, covering over the large labels at the top of the columns, but the sample ballots had already been sent out with the objectionable format. New sample ballots were printed and were supposed to be distributed at the polls, but in practice they weren't distributed.

INCOME TAX CHECKOFF NOW $3

On August 10, President Clinton signed the Omnibus Budget Reconciliation Act, which (among many other things) increases the checkoff amount on federal income tax returns from $1 to $3, for presidential campaigns.

ARIZONA LAWSUIT RULED MOOT

On August 5, a federal court in Arizona ruled that the lawsuit *Hancock v Symington*, no. 91-1081, is moot. The suit had been brought in 1991 by an independent candidate, to challenge state law which required independent candidates to collect their signatures in just ten days, from the ranks of voters who hadn't voted in the primary. Early this year, the legislature ended these restrictions, so Judge Carl Muecke dismissed the lawsuit. Ernest Hancock, the plaintiff, doesn't agree that the suit is moot, and has appealed the ruling to the 9th circuit.

INDIANA REPUBLICANS LOSE PUBLIC $

Indiana provides that revenue from the sale of personalized automobile license plates is used to subsidize political parties which polled at least 5% of the vote for Governor. No parties other than the Democratic or Republican Parties have ever benefitted from this subsidy.

In 1989, the Indiana Republican Party refused its annual subsidy, of $147,705, returning it to the State, and declaring that the Republicans in the legislature intended to repeal the subsidy. But in 1991 the party changed its mind and tried to regain the money. At the same time, a few individuals who had purchased personalized license plates sued for a return of their $30. Both sides lost in court. On June 8, 1993, the State Court of Appeals ruled that the money belongs to the State. *Indiana Republican State Committee v Slaymaker*, 614 NE 2d 981.

N.H. GOVERNOR BOOSTS LIBERTARIAN

On August 25, New Hampshire Governor Stephen Merrill appointed 1992 Libertarian gubernatorial candidate Miriam Luce to one of three spots on the Liquor Commission. New Hampshire forbids private liquor stores; all such stores are owned by the state, so the commission is a powerful, highly visible agency. Luce hopes the Governor will support her in her wish to privatize liquor sales, a plank in the state Libertarian platform.

The appointment puts the Libertarian Party in a dilemma. State law defines "party" as a group which polled 3% of the vote for Governor. The state elects its governor every two years. The party cannot run Luce again, assuming she is serving on the Commission next year; and the party, grateful for the appointment, will be less motivated to oppose Governor Merrill in the 1994 campaign. But under the law, it must run for Governor, or lose its status as a "party". The four Libertarian legislators hope to pass a bill early in 1994, defining "party" less restrictively.

MINNESOTA GIVES UP

In 1990, Minnesota passed a law regulating campaign finance for ccongressional candidates. Candidates who voluntarily limited their spending, were to receive public funding. However, both the U.S. District Court and the Eighth Circuit (on June 17, 1993) ruled that states cannot legislate on campaign finance for candidates for federal office, and Minnesota decided not to appeal to the U.S. Supreme Court. *Weber v Heaney*, 995 F 2d 872.

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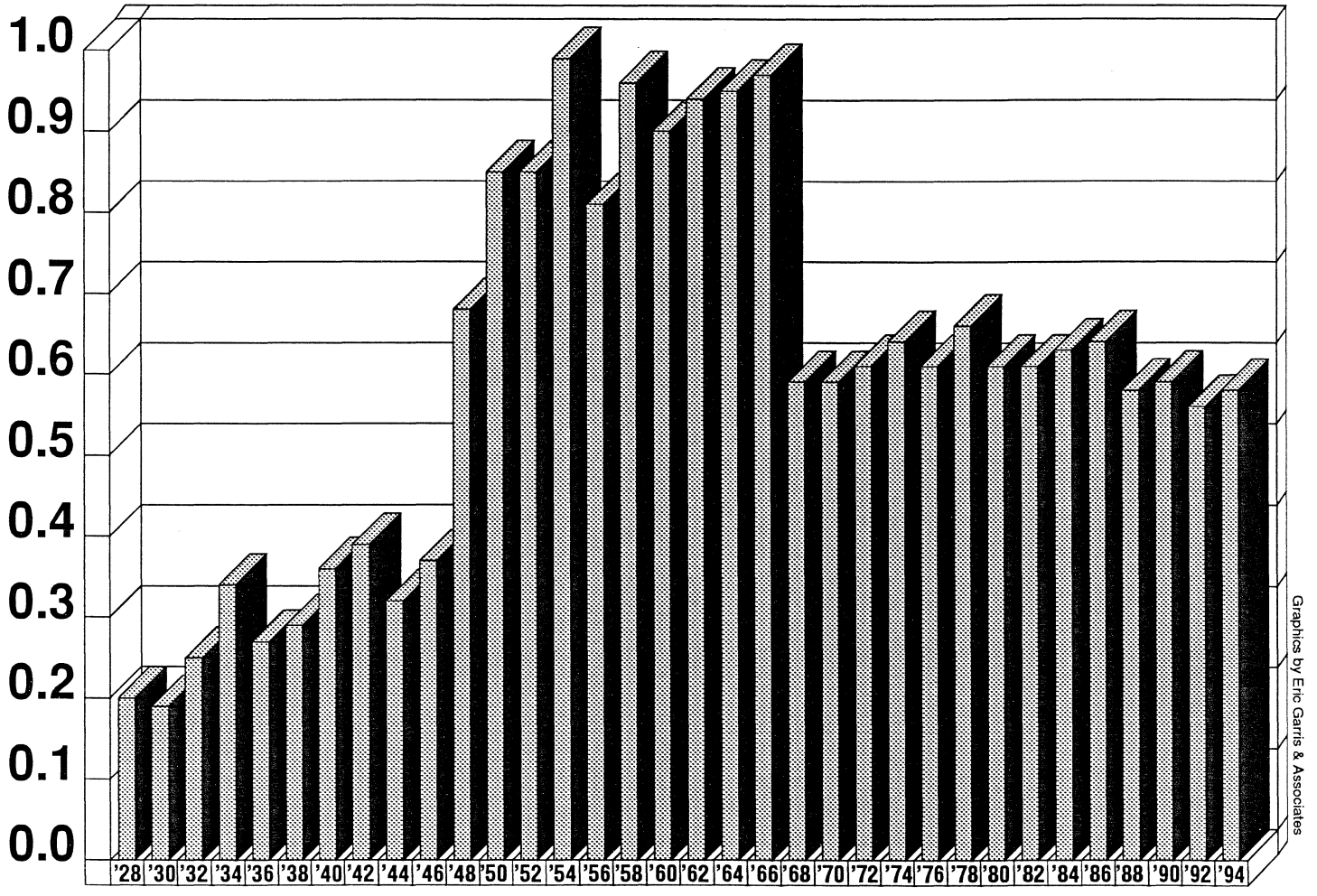
Number of Signatures to Get a New Party on the Ballot, 1928-1994

(expressed as percentage of voting age poplution)



This chart shows how many signatures have been required to put a new party on the ballot with the party label, for all election years 1928 thru 1994, for U.S. Senate. The number is expressed as a share of the voting age population. Although U.S. Senate is voted on in only two-thirds of the states in any one year, the chart includes the requirements of all states, for all years.

Although ballot access laws have improved somewhat since 1988, the requirements are as tough in 1994 as they were in 1988, mostly because the 1992 voter turnout was higher than normal. High turnouts cause the requirements to rise, since so many states determine the number of signatures as a percentage of the last vote cast.

COMMUNISTS WIN PROPERTY CASE

On August 18, the Communist Party won a lawsuit to recover its northern California property, bank account and records. *Communist Party of the U.S. v Alexander,* no. 944264, Superior Court, San Francisco. No appeal of the decision was made.

For over fifty years, the Communist Party has placed ownership of its property in the hands of corporations with neutral-sounding names, out of a fear that otherwise, someday, the government might seize such property. Another motivation was to give privacy to people who donated assets to the party. Trusted members of the party were always named as officers of these corporations.

In early 1992, when a substantial minority of the party's members left the party, it turned out that the corporations owning the party's property in northern California were controlled by the dissenters. They refused to return the property, so on January 22, 1993, the party sued them. The value of the property was over $1,000,000, and included real property in San Francisco and San Jose.

The moral case made by the dissenters, was that the people who donated the money to the party, would have supported their side in the split (most of the donors are no longer alive to speak). However, in court, they did not raise this defense, but used legalistic, formal grounds. Judge Ollie Marie-Victorie ruled that the corporations are "mere shells through which the Party carried on its operations" and that their assets really belong to the party.

The judge's opinion says she sympathizes with the reasons the dissenters quit. It also says the party's membership went from 2,500 to 1,200 after the split.

BALLOT ACCESS GROUPS

1. **ACLU**, American Civil Liberties Union, has been for fair ballot access since 1940, when it recommended that requirements be no greater than of one-tenth of 1%. 132 W. 43rd St., New York NY 10036, tel. (212) 944-9800.

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

2. **CENTER FOR A NEW DEMOCRACY** works to permit different parties to nominate the same candidate. 1324 Drake St, Madison Wi 53715, tel. (608) 256-1968.

3. **CENTER FOR VOTING AND DEMOCRACY**, for proportional representation. 6905 5th St., NW #200, Washington DC 20012, (202) 882-7378.

4. **COFOE**, Coalition for Free and Open Elections. Dues of $11 entitles one to membership with no expiration date; includes a year subscription to *B.A.N.* (or renewal).

5. **COALITION TO END THE PERMANENT CONGRESS**, favors more competitive elections; has a platform which includes easier ballot access. Bx 7309, N. Kansas City, Mo. 64116, tel. (800) 737-0014.

6. **COMMITTEE FOR PARTY RENEWAL**, scholars and party activists who believe that strong parties are needed for popular control of government. $10 per year. Write Dr. Paul Herrnson, Dept. of Gov't. & Politics, Univ. of Maryland, College Park, Md 20742, tel. (301) 405-4123.

7. **THE DEMOCRACY PROJECT**, is gathering documentation that the U.S. is in violation of an international agreement it signed in 1990, pledging not to discriminate for or against political parties. The Project will then disseminate this information to the governments of other nations which signed the agreement. Bx 526175, Salt Lake City Ut 84152, (801) 582-3318.

8. **FOUNDATION FOR FREE CAMPAIGNS & ELECTIONS**, Funds lawsuits which attack bad ballot access laws. Donations to it are tax-deductible. 7404 Estaban Dr., Springfield VA 22151, tel. (703) 569-6782.

9. **ROSS-GREEN ASSOCIATES**, organized in 1985, initiated the Penny ballot access bill (HR 1755) and the Penny debates bill (HR 1753) and has a lobbying office at 1010 Vermont, #811, Washington, DC 20036, (202) 638-4858.

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