

BALLOT ACCESS NEWS

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HR 1582

The chief elections officials of seven states have agreed to testify at any hearing held on HR 1582, the Conyers bill to require tolerant ballot access for third party and independent candidates for federal office.

The Secretary of State, or the head of the state elections division, of Iowa, Minnesota, North Dakota, Tennessee, Utah, Vermont and Wisconsin, are each willing to testify that easy ballot access procedures in their states have not hindered the administration of elections. All of these states have either easy procedures for independent candidates, or easy procedures for new parties, or both. The number of signatures required for statewide office and Congress in each of these states is below the ceiling imposed by HR 1582, for either parties or independent candidates (except for the North Dakota presidential requirement).

If you write to your member of Congress, or to Congressman Al Swift (chair of the Elections Subcommittee), you could mention this. The address for any member of Congress is simply House Office Buildings, Washington DC 20515.

SUPPORT FOR HR 1582

The Rainbow Lobby recently delivered 23,619 signatures on petitions in favor of HR 1582 to various members of Congress. Over 7,000 signatures came from the 17th district of Manhattan, and were directed at Congressman Ted Weiss, a veteran of reform movements who refuses so far to co-sponsor HR 1582.

Gene Armistead and Bernard Baltic have had excellent letters in support of HR 1582 published this month in major newspapers.

Former Congressman Ron Paul of Texas and Russell Means, the two leading contenders for the Libertarian presidential nomination, have each endorsed HR 1582. The Socialist Party recently endorsed it.

FIRST PRESIDENTIAL DEBATE

Apparently, the first 1988 presidential debate will take place on July 11, 1987, in Buena Park, Orange County, California, between former Congressman Ron Paul of Texas, and Russell Means, American Indian activist, the two leading candidates for the Libertarian presidential nomination. For more information, call (714) 994-3256.

SENATOR MITCHELL

U. S. Senator George Mitchell of Maine doesn't seem to know what the U. S. Constitution says. He has written a letter saying that HR 1582 would be unconstitutional because "The criteria for absentee voting residency and tax liability, voter registration, and qualification for office holders and candidates are absolutely basic to a state's ability to define itself as a political entity. The only direct federal limits on that state power take the form of Constitutional Amendments and are directed to protecting individual suffrage."

The *original* U. S. Constitution gives Congress the full power to pass any regulation concerning the election of members of Congress. See Article 1, section 4, and the enclosed sheet. HR 1582 only applies to elections for Congress and presidential electors.

OREGON LOSS

On May 20, 1987, the Oregon State Court of Appeals at Salem upheld the Oregon 5% petition for new party ballot access. Oregon is now the only state which requires a petition of 5%, before a new party's presidential candidate can appear on the ballot with the party label. The decision was short and thoughtless. It merely stated that since the U. S. Supreme Court had upheld a 5% petition requirement in 1971, the issue was closed. The case is *Libertarian Party of Oregon v Roberts*, #CA A40378.

Oregon's constitution states that elections shall be "free and equal". The Court of Appeals didn't see what relevance that provision had to the case. Alaska's similar state constitutional provision was used in 1982 to invalidate that state's old 3% petition requirement for third party and independent candidates, but the Oregon court didn't mention that. Neither did it mention the case *Bergland v Harris*, 767 F 2d 1551 (1985), which held that the 1971 U. S. Supreme Court precedent does not apply to presidential elections.

Only one third party statewide petition has succeeded in Oregon in the last 36 years. Oregon was one of only 4 states in 1984 which had a Reagan-Mondale ballot monopoly. Oregon procedures for independent candidates are somewhat less stringent than the third party requirements, but are also so difficult as to be seldom used.

The Libertarian Party of Oregon will ask the Oregon Supreme Court to review the decision.

DAVID DUKE

On June 9, 1987, David Duke, head of the National Association for the Advancement of White People, and a former leader of one of the Ku Klux Klans, announced his candidacy for the Democratic Party's presidential nomination.

Democratic National Chairman Paul Kirk responded by sending a letter to all Democratic state parties, "alerting them to abuse of the party's nominating process." Kirk sent similar letters to state Democratic Parties in 1986, and some Democratic state parties then barred Lyndon LaRouche-backed candidates from appearing on Democratic Party primary ballots. Federal court decisions in 1986 from Alabamas, Georgia and Massachusetts upheld the constitutional right of any political party to bar candidates from that party's primary ballots if the party believes the candidates are not genuine members of the party. It seems clear that attempts will be made by the Democratic Party in 1988 to keep Duke off Democratic presidential primary ballots.

CIVIL DISOBEDIENCE

On election day, November 1984, Michael Andrews of Bloomington, Indiana, conducted a sit-in in a voting booth, to protest Indiana's recent ban on write-in voting. He occupied the booth for 45 minutes, and was then arrested. He was sentenced to jail and served time. Recently the Indiana Court of Appeals affirmed his conviction, but took pains to note that the issue of the constitutionality of a ban on write-in votes was not being decided.

Ballot Access News commends Mr. Andrews for his activism and sacrifice in bringing this voting rights issue to public attention. If more of us were as dedicated to saving the right of voters to vote freely as he is, we'd make faster progress. The Indiana Libertarian Party is about to decide whether to challenge the Indiana write-in ban.

KENOYER, EHRENREICH NOMINATED

The Socialist Party's presidential convention nominated Willa Kenoyer for president and Ron Ehrenreich for vice-president, on May 25 in Chicago. The *New York Times* carried an article about the convention. In 1980, the last time the Socialist Party nominated candidates for president and vice-president, the *Times* did not mention the party's national convention (although it carried news items about the party's campaign later in the year).

Both Kenoyer and Ehrenreich are former activists in the Citizens Party, which no longer exists. Kenoyer has long lived in Michigan, but has moved to southern California for the duration of the campaign. Ehrenreich lives in Syracuse, New York.

The Socialist Party is not a qualified party in any state. The party's first petition drive for ballot access will be in Iowa, and will start this month. Since the Socialist Party now knows the names of its candidates, it is able to legally be petitioning in 37 states at this time. For more information on the Socialist campaign, write to 7109 N. Glenwood Ave., Chicago IL 60626-2627.

FLORIDA

On June 2, 1987, the U. S. Court of Appeals, 11th circuit, remanded a Socialist Workers Party disclosure case back to the U. S. District Court. At issue is whether or not the Socialist Workers Party candidate for Mayor of Miami in the 1985 election, Harvey McArthur, need report the names of people who donated to his campaign. The SWP won a full, unanimous U. S. Supreme Court decision in December 1982, that its candidates need not report the names of their campaign contributors, since evidence was overwhelming that people publicly identified as supporters of the SWP were likely to suffer serious harassment from both government agencies and private individuals.

In the Miami case, the city had still insisted that McArthur reveal the names of his campaign contributors. The city argued that the 1982 U. S. Supreme Court decision doesn't apply to non-partisan elections. The U. S. District Court had dismissed the SWP lawsuit without even giving the SWP a chance to present evidence, and even though McArthur was being prosecuted. Now McArthur will be able to re-instate his case and present evidence.

Ballot access laws can be affected by court decisions protecting the privacy of unpopular political parties. If the SWP continues to win on the privacy issue, the precedents can be used against ballot access laws which require new, unpopular political parties to publicly reveal the names of their supporters. Specifically, it is likely that no state will be able to require a certain number of registrants, as a condition of ballot access. Both federal and state courts in Pennsylvania have already ruled that ballot access cannot be conditioned on the number of registrants a party has, since registration into political parties is a public record.

REP, DEM DEBATE HITS SNAG

Last year, the national Republican and Democratic Parties decided they would rather run the general election presidential debates themselves. In the past, the League of Women Voters has handled them. On February 17, 1987, national leaders of the two major parties chartered a non-partisan, tax-exempt "Joint Commission on Presidential Debates", which is to handle the general election presidential debates.

The hitch is that the Joint Commission on Presidential Debates is an IRS 501(c)(3) organization, which means that it must remain non-partisan. A commission which sponsored debates which exclude all parties except the Democratic and Republican Parties could not be considered "non-partisan". Officers of the new Joint Commission have responded by saying that any questions on this issue are premature, since the Joint Commission has not yet officially determined its own guidelines and goals. However, press releases from the Joint Commission make it very clear that the Commission's intentions are to produce debates featuring only the Democratic and Republican nominees.

PETITIONING

Petition drives which have begun since the last issue of *Ballot Access News* are a Populist Party drive in North Carolina and a New Alliance Party drive in Montana. About to begin are a Libertarian drive in Kansas and a Socialist Party drive in Iowa. A full report on the number of signatures collected in all ongoing drives will be in the next issue.

STATE LEGISLATURES

California: SB 1196, which would disqualify any independent candidate from the ballot, if that independent candidate had filed as a write-in candidate for any party's nomination and failed to gain it, almost passed the State Senate on June 11. At the last possible moment, Independent Senator Quentin Kopp had the bill removed from the "consent calendar". A bill on the consent calendar cannot be debated and is automatically passed in conjunction with all the other bills on the calendar. The Secretary of State, who proposed the bill, was reported to be "furious". The bill is discriminatory, since California law does not penalize the candidates of political parties who decide to try to obtain the nomination of additional parties by filing as write-in candidates in other party primaries.

Please write both your Senator and your Assemblyman, State Capitol, Sacramento Ca 95814, and oppose SB 1196, if you are a Californian.

AB 2570, the bill to permit ballot-qualified parties (other than Democratic or Republican) to nominate by convention instead of by primary, if they wish, passed the Assembly Ways and Means Committee on June 3.

Colorado: SB 101, which would require third parties to submit a separate petition for each of its statewide candidates, as of June 11 had still not passed completely thru the legislature. The House has approved the conference committee report, but the Senate has not.

Connecticut: Bill 6658, to lower the number of signatures for third party and independent candidates from 1% of the last vote cast, to one-half of 1% of the last voter cast, was approved by the House Government Administration and Elections Committee. However, it lost on the full House floor, 110 to 30.

Proponents are eager to try again next year.

Illinois: SB 10, to permit qualified parties to merge with each other, passed the House on June 3, 67-48. The vote was on party lines, with Democrats supporting it and Republicans opposing. Republican Governor James Thompson has until August 9 to either sign or veto the bill. The purpose of the bill is to make it possible for Adlai Stevenson and other leading Democrats to erase the legal existence of the Illinois Solidarity Party, which is the first third party fully qualified statewide in the state since 1924. /

Massachusetts: H 1290 and H 923, two excellent bills, have both passed out of the House Elections Committee and will be taken up by the full House in several months, after the budget has been passed and after legislators take a vacation. H 1290 would lower the independent candidate and third party petitions from 2% of the last gubernatorial vote, to 1% of the last gubernatorial vote. H 923 would improve petition deadlines to conform to a winning lawsuit.

Michigan: HB 4090, which passed the House back on March 5, still has no hearing date set in the State Senate. It would increase the number of signatures needed for a third party from 16,312 to 23,866. It would also set up procedures for independent candidate ballot access. Michigan is the only state which lacks such procedures.

Minnesota: HF 1128, which would have changed the deadline for third party and independent presidential candidates from September to June, failed to pass before the legislature adjourned.

Nebraska: On May 29, 1987, LB 652 was signed into law. It permits independent voters to vote in political party primaries.

Nevada: On June 9, the Senate passed AB 184, which lowers all third party and independent candidate petitions from 5% of the last vote cast, to 3% of the last vote cast.

New Jersey: The ACLU of New Jersey has said it will lobby the legislature this month, to solve two election law problems: (1) New Jersey law requires all voters to enroll either as "Democrat", "Republican", or "Independent". No one can enroll in any other party; (2) The New Jersey petition deadline for third party and independent candidates of April was declared unconstitutional in 1984, but the legislature still has not enacted a later deadline.

New York: A 5869, which would eliminate some hyper-technical petition requirements, is likely to pass the Assembly during the week of June 15. However, the bill faces rough sledding in the State Senate, which is controlled by Republicans. According to the bill's author (a Democrat), Republicans enjoy the status quo, because the victims of New York's extraordinarily fussy petition requirements are usually Democrats in New York City. If the legislature fails to amend the law, it is possible that the Democratic Party of New York could pass rules on petitions which contradict state election law, and then sue to get its rules enforced.

North Carolina: HB 127 has passed the House. It would provide procedures for a write-in candidate to file as a write-in candidate for general elections, thus alerting election authorities to count and canvass his or her write-in total. The concept is good, but the specific provisions are unnecessarily restrictive. The bill sets a deadline of 90 days before the general election to file as a write-in candidate, which defeats the purpose of many write-in campaigns (which are often caused by last-minute events). Also, the bill requires a petition signed by 300 to 500 voters just to file as a write-in candidate. There can be no compelling state interest in requiring a candidate to submit a petition just to be a write-in candidate, since a multiplicity of write-in candidates cannot cause an overcrowded ballot.

WEST VIRGINIA

West Virginia has long provided that all third party and independent candidate petitions are due on the day before the state's May primary, and further has required that no one who signs a third party or independent petition, can vote in the following primary. However, because of the 1983 U. S. Supreme Court decision *Anderson v Celebrezze*, last year's West Virginia legislature changed the petition deadline for presidential petitions to August 1. The legislature also added a provision stating that anyone who circulates a petition must orally tell any prospective signer that if he or she signs, the signer cannot vote in the next primary.

The law is absurd on its face, since a presidential petition may be in circulation after the May primary, but prior to the new August 1 deadline. If the law were to be taken literally, a petitioner in June 1988 would need to tell signers that they were giving up their right to vote in the 1992 presidential primary!

West Virginia Secretary of State Ken Hechler has orally stated that he will not enforce the portion of the law which requires the oral message, in the case of presidential petitions being circulated after the primary. But he has also said that he will invalidate the signature of anyone who signs the petition, after having voted in the primary.

There is no West Virginia law authorizing such invalidation of signatures. In 1984, then Secretary of State James Manchin accepted petitions circulated after the primary, for presidential candidates, and made no attempt to invalidate the signatures of anyone who had voted in the primary. The recent Hechler decision has no authority to support it and will likely be overruled in court, if he sticks to it.

RENEWALS

If your mailing label indicates that your subscription to *Ballot Access News* expires on July 1, 1987, there should be an envelope enclosed to make it easier for you to renew your subscription. Remember, you can get a free 3-month extension if you send me a copy of a 1987 letter from a member of Congress, commenting on HR 1582.

THANK YOU, Jesse Yoder, Scott Kolhaus, Joe Dehn, Margaret Kroghdahl, and David Grappo, for contributions beyond the subscription price.

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