

BALLOT ACCESS NEWS

San Francisco, California

September 21, 1987

Volume 3 Number 3

BORK HEARINGS

Robert Bork has only been a judge since 1982, when President Reagan appointed him to the U. S. Court of appeals, D. C. Circuit. He has never had a ballot access case or a voting rights case. This year he did uphold FCC regulations which required a Sacramento television station to give "equal time" to candidates opposing a candidate who was a newscaster on that station. However, there is nothing in the decision about the right of candidacy in general.

However, Bork has written about voting rights. In *Fortune* Magazine, Dec. 1968, he opposed the Supreme Court's "one man, one vote" decisions. When the Senate held confirmation hearings in 1973 on his appointment to be Solicitor General, Bork told Senator Tunney that he still opposed the reapportionment decisions, and further that he disagreed with Supreme Court decisions *Harper v Virginia State Board of Elections*, 383 US 663 (1966) (which outlawed poll taxes) and *Katzenbach v Morgan*, 384 US 641 (1966) (which upheld the power of Congress to ban literacy tests for voters). At the time he stated that he agreed that the pre-clearance provisions of the voting rights act were constitutional.

Bork hasn't changed any of those opinions. During the hearings this month, he reiterated his opposition to "one man, one vote" decisions, stating that if the people want "one man, one vote", let them vote for legislators who would implement it; but that judges should not impose equal population districts on society. In general, Bork wants to limit the instances in which judges invalidate laws on constitutional grounds. However, at the hearings, he again supported the preclearance provisions of the voting rights act, under which certain states (mostly Southern) may not change any voting law or practice without getting preclearance from the U. S. Justice Department or from a federal court).

The ACLU, Common Cause, the Committee for Free & Open Elections, and the Libertarian Party, all of which normally take no position on the confirmation of federal judges, all oppose Robert Bork for the Supreme Court. But even if Bork is defeated, it is highly likely that Reagan will then nominate someone who is also hostile to the rights of political parties and voters.

The attention to Bork should not obscure the fact that almost all federal judges appointed by President Reagan have been hostile to the right of voters to form new political parties, and to vote for the candidates of their choice. In the period January 1, 1984 to the present, there have been 29 instances in which a U. S. Court of Appeals judge had occasion to vote on the rights of political parties. As the chart shows, Reagan appointees on the U. S. Courts of Appeals are overwhelmingly unfavorable; the judges appointed by other presidents have been generally favorable:

	GOOD VOTES	BAD VOTES
<u>JFK judges:</u>		
Kaufman, 2nd	1	0
Browning, 9th	1	0
<u>LBJ judges:</u>		
Goodwin, 9th	1	0
<u>Nixon judges:</u>		
Doyle, 10th	1	0
Oakes, 2nd	1	0
Roney, 11th	1	0
Ross, 8th	0	1
Russell, 4th	0	1
Wood, 7th	0	1
Wright, 9th	2	0
<u>Ford judges</u>		
Bauer, 7th	0	1
Hill, 11th	1	0
<u>Carter judge</u>		
Logan, 10th	1	0
McKay, 10th	2	0
Norris, 9th	2	0
Reinhart, 9th	1	0
Seymour, 10th	2	0
Skopil, 9th	2	0
Sprouse, 4th	0	1
<u>Reagan judges</u>		
Cardamone, 2nd	1	0
Coffey, 7th	0	1
Easterbrook, 7th	0	1
J. Gibson, 8th	0	1
Posner, 7th	0	1
TOTAL		
REAGAN JUDGES	1	4
OTHER JUDGES	19	5

The only instance in which a Reagan appointee to a U. S. Court of Appeals voted in favor of the rights of a political party, was the Connecticut case in which the plaintiff was the Republican Party. There has been no instance in which a Reagan appointee to a U. S. Court of Appeals has ever voted in favor of a political party other than the Republican Party.

The U. S. Supreme Court shows the same pattern. Neither Reagan appointee, Antonin Scalia nor Sandra Day O'Connor, has ever voted in favor of the rights of any political party, or in favor of ballot access for independent candidates or third parties, or in favor of the right of candidacy. There have been four such cases in the Supreme Court for full review since Reagan has been president: *Clements v Fashing*, *Anderson v Celebrezze*, *Tashjian v Republican Party of Connecticut*, and *Munro v Socialist Workers Party*.

OREGON

The Supreme Court of Oregon has announced that it will hear the Libertarian Party's case against the Oregon 5% petition to get a new party on the ballot. The hearing will be on October 8. The court also issued a set of questions for both sides. The justices want to know what other state supreme courts have said about ballot access for new parties (based on state constitutions). They want to know whether political parties in Oregon are permitted to nominate anyone they choose, or whether they can only nominate their own members. They want to know whether candidates who qualify under the independent candidate procedures can use party labels on the ballot or not (they can't). And they want to know the history of the Oregon constitutional provision that "Elections shall be free and equal."

LIBERTARIAN CONVENTION

On Saturday, September 5, the Libertarian Party presidential convention in Seattle chose former Congressman Ron Paul of Texas for president, and former Libertarian state legislator Andre Marrou of Alaska for vice-president. Paul was a Republican while he was in Congress, but even then he campaigned at times for Libertarian Party candidates, and he also served as a character witness for Libertarian anti-draft activist Paul Jacob, at Jacob's trial for refusing to register for the draft.

Paul endorsed HR 2320 back in 1985 (HR 2320 was the bill in the last session of congress to set a ceiling on the number of signatures needed to get on the ballot), and he has endorsed the same bill, now HR 1582.

Russell Means polled about one-third of the vote for president at the convention. He then declined to run for vice-president, but is mulling over running for Congress as a Libertarian in the 4th district of Arizona, in 1988. He also intends to work for HR 1582.

MAJOR PARTIES FAIL TO NOMINATE

In November 1986, one or the other of the two major parties failed to run any candidate for 38.1% of the openings for state legislative seats. This was similar to 1984, when the figure was 38.3%.

PETITIONING

The Socialist Party has 300 signatures on its Iowa petition and is not now petitioning for president in any other state (the Nebraska petition mentioned in the last issue of *Ballot Access News* only applies to Congress).

The American Party has 150 signatures on its Utah petition and an unknown number on its Wyoming petition.

The Populist Party is circulating a petition in North Carolina, but doesn't know how many signatures have been obtained. The Populist Party will also begin petitioning in Michigan on October 1, 1987.

The chart below shows the progress of Libertarian and New Alliance Party petitioning. These two parties are the only two who have hopes of being on the ballot in all states in 1988.

STATE	SIGNATURES		
	REQUIRED	COLLECTED	
		NAP	LIBT
Alabama	5,000	0	already on
Alaska	2,068	already on	0
Arizona	17,340	already on	already on
Arkansas	0	no need	no need
California	128,340	can't start	already on
Colorado	5,000	0	0
Connecticut	14,910	can't start	can't start
Delaware	(reg.) 145	53	already on
Dist of Columbia	3,000	can't start	can't start
Florida	56,318	0	0
Georgia	25,759	13,350	100
Hawaii	3,493	1,600	already on
Idaho	8,224	0	100
Illinois	25,000	can't start	can't start
Indiana	30,950	0	200
Iowa	1,000	0	0
Kansas	2,500	3,500	0
Kentucky	5,000	0	0
Louisiana	0	no need	no need
Maine	4,000	can't start	can't start
Maryland	10,000	4,500	already on
Massachusetts	33,682	can't start	can't start
Michigan	16,313	135	already on
Minnesota	2,000	can't start	can't start
Mississippi	1,000	400	already on
Missouri	21,083	0	0
Montana	13,329	already on	already on
Nebraska	5,635	5,600	6,600
Nevada	7,717	7,500	already on
New Hampshire	3,000	600	0
New Jersey	800	400	0
New Mexico (reg.)	500	already on	already on
New York	20,000	can't start	can't start
North Carolina	44,535	14,500	700
North Dakota	4,000	0	3,500
Ohio	5,000	50	0
Oklahoma	37,671	0	0
Oregon	51,578	0	7,600
Pennsylvania	35,000	can't start	can't start
Rhode Island	1,000	can't start	can't start
South Carolina	10,000	already on	already on
South Dakota	2,945	0	0
Tennessee	25	0	0
Texas	34,424	can't start	already on
Utah	300	already on	already on
Vermont	1,000	proceeding	already on
Virginia	14,000	can't start	can't start
Washington	188	can't start	can't start
West Virginia	7,358	0	0
Wisconsin	2,000	can't start	can't start
Wyoming	8,000	10,650	3,600

note: the signatures listed in the "Required" column refer to the method for getting on the ballot (either Independent or New Party) that is most commonly used in each state. It doesn't necessarily follow in every case that this is the method used by either of the two parties listed.

In the last 30 days, the New Alliance Party has collected 20,500 signatures around the nation, and the Libertarian Party collected 11,000. **The Libertarian Party still needs to collect another 470,000 valid signatures in order for Ron Paul to appear on all ballots. The New Alliance Party still needs to collect 595,000 valid signatures, but if the ballot-qualified Peace & Freedom Party of California nominates the New Alliance Party presidential candidate, then the New Alliance Party only needs another 467,000 valid signatures to have its presidential candidate on all ballots. Since there are only eleven months remaining to collect signatures, it is obvious that each party will drastically need to step up the pace.**

POPULIST PARTY

On Sunday, September 6, the Populist Party presidential convention in St. Louis nominated former Congressman George Hansen of Idaho for president, and Tennessee businessman Hubert Patty for vice-president. Hansen is expected to be released from federal prison near the beginning of October 1987. Patty reportedly is a millionaire who has pledged to contribute substantially to the campaign.

The delegates believed that Hansen might accept the nomination. However, Hansen had told a reporter for the *Idaho State Journal* on August 31, 1987, that he would not accept the nomination. He said, "I'm a Republican. There are only two ways to gain the presidency, and that's through one of the two major parties. There's no honor in leading some kind of abortive effort, like tilting at windmills." Hansen did indicate that he might run again for Congress, as a Republican.

The Populist convention did approve a procedure for the party's national executive committee to fill any vacancies in the national ticket. There were delegates from 25 states.

There is another faction of the Populist Party, headed by Wisconsin businessman John Couture, and this faction of the Populist Party includes the ballot-qualified American Independent Party of California. However, this faction has not announced any plans for the 1988 presidential race. It is possible that this faction will change its national name to the American Independent Party.

CONNECTICUT

The June 1987 issue of *Ballot Access News* reported that a bill to lower the number of signatures in Connecticut had been defeated on the floor of the lower house of the legislature by a vote of 110-32. I just obtained the roll call. All votes in favor of the bill, H 6658, were cast by Democrats, except that one Republican also voted for it.

HR 1582

Congressman John Conyers has tried and failed so far to persuade Congressman Al Swift to hold hearings on HR 1582. 25,000 more signatures in support of the bill were recently presented to Congress, including 300 gathered at the Libertarian national convention. The bill was recently endorsed by International Nuclear Freeze, and former Congresswoman Shirley Chisholm's group, the National Congress of Black Women.

OKLAHOMA

U. S. District Court judge Ralph G. Thompson issued a very bad opinion on August 25, 1987, upholding: (1) Oklahoma's insistence that no voter can register as anything other than Democrat, Republican or Independent; (2) Oklahoma's May 31 deadline for turning in petitions to establish a new party, for office other than president; (3) Oklahoma's 5% petition requirement to establish a new party, for office other than president.

Similar laws were held unconstitutional in Oklahoma in 1984. The state's only response to the 1984 decision was to expand the petitioning period for the party petition from 90 days, to a full year; and to provide a special 3% petition for parties which only want to appear on the presidential part of the ballot, with a July 15 deadline.

Jim Linger, attorney for the plaintiffs, is about to file an appeal to the U. S. Court of Appeals, 10th circuit. He also plans to ask for an expedited hearing. The state is opposing this.

The 10th circuit already ruled, in a 1984 Colorado case, that it is unconstitutional for a state to require all voters to register either as Democrat, Republican or Independent. Judge Thompson tried to distinguish Oklahoma law from the controlling precedent, by saying that most Oklahoma counties don't have computerized voter registration lists, and it would be too much trouble for those counties to keep track of registration in other parties. However, the plaintiffs weren't asking the government to keep track of their registrants, just to let voters register into other parties if they wish to. Furthermore, the Supreme Court has said that constitutional rights cannot be curtailed for reasons of administrative ease and convenience.

Judge Thompson upheld the May 31 deadline and never even mentioned the U. S. Supreme Court decision on the subject of early deadlines, *Anderson v Celebrezze*, 460 US 780 (1983). Instead, Thompson referred to *Jenness v Fortson*, 403 US 431 (1971), which upheld Georgia law. Georgia law at that time had a mid-June deadline, but the deadline wasn't an issue in that case.

The case is *Rainbow Coalition v Oklahoma State Election Board*, C-86-0364-T. Judge Thompson had never before had a ballot access case. He was appointed by President Ford. The Rainbow Coalition was dismissed from the case for lack of standing. This should not affect the appeal; the Libertarian Party and Populist Parties remain as co-plaintiffs.

INTERNATIONALIST WORKERS PARTY

The Internationalist Workers Party has become the first Marxist political party to announce a presidential candidate. The candidate is Herbert Lewin, of Pittsburgh, Pa. Lewin joined the Socialist Party in the early 1930's, and then became a founding member of the Socialist Workers Party in 1938. He was the first SWP candidate for Governor of Pennsylvania, in 1950. Later he left the SWP and joined the IWP.

The Internationalist Workers Party publishes *Working Class Opposition*, a monthly. The address is 3309 1/2 Mission St., Suite 135, San Francisco Ca 94110. The IWP has never before run its own presidential candidate in the general election. No vice-presidential candidate has yet been chosen, and no petitioning will begin until the choice has been made.

KANSAS

The Libertarian Party of Kansas expects to file its lawsuit in federal court on Wednesday, September 23, against restrictions on the independent candidate procedure and the law which forbids voters from registering other than Democrat, Republican, or Independent. One of the restrictions to be challenged, forbids anyone from circulating the petition outside his or her own precinct. Although the New Alliance Party has just about finished an independent candidate petition in Kansas, they did it by listing the sole petitioner as the vice-presidential candidate, since Kansas doesn't apply the restriction if a candidate circulates his or her own petition.

ARKANSAS

The U. S. Court of Appeals, 8th circuit, has dismissed the case *Populist Party v Secretary of State of Arkansas* without prejudice, because the pro se candidate-plaintiff, Ralph Forbes, missed some deadlines for filing various papers. This is unfortunate, since it was a strong case, challenging procedures for new parties to get on the Arkansas ballot for office other than president. Forbes suffered a family tragedy which made it impossible for him to continue to work on the case.

CALIFORNIA

March Fong Eu, defendant in the case *San Francisco County Democratic Central Committee*, has filed a petition for rehearing en banc with the 9th circuit court of appeals. There are no new arguments in the petition. The case concerns the right of political parties to organize themselves as they wish, and their right to endorse candidates in their own primaries.

RENEWALS

If your mailing label indicates that your subscription to *Ballot Access News* expires on October 1, 1987, there is 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, Roy Lieberman and Sam McNabb, for helping me obtain information about the Populist Party convention story. Also, **thank you**, Bert Blumert, Ed Jowett, Scott Rhodes, Mary Meehan, Todd Seabury-Kolod, for contributions beyond the subscription price.

REMEMBER, WRITE YOUR MEMBER OF CONGRESS, HOUSE OFFICE BLDGS., WASHINGTON DC 20515, and ask him or her to CO-SPONSOR HR 1582. Also write to Congressman Al Swift at the same address and ask him to hold hearings on the bill. Swift is probably going to run for the U. S. Senate in 1988, so it is especially important for Washington state residents to write him.

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