

BALLOT ACCESS NEWS

San Francisco, California

February 24, 1988

Volume 3 Number 8

HR 1582

Several Black state legislators recently endorsed HR 1582, the bill in Congress to require the states to provide fairly easy ballot access in federal elections for third party and independent candidates. One of the new endorsers is Mickey Michaux, a North Carolina state representative; another is David P. Richardson, a Pennsylvania state representative and the president of the National Black Caucus of State Legislators.

Congressman Connie Mack of Florida recently wrote James A. Tucker, "I understand the importance of opening the ballot access process for both individual and political parties in order to insure the blessings of a democratic government." But he has not become a co-sponsor.

FULANI MATCHING FUNDS

On January 28, 1988, the Federal Election Commission approved \$205,565 in federal matching funds for Lenora Fulani, an activist in the New Alliance Party and the strong favorite to get the party's nomination at its August 1988 national convention. On February 11 the FEC granted an additional \$57,111, and on February 25 it may grant some more.

Under the federal law and regulations, any presidential candidate who raises at least \$5,000 in contributions of under \$250 per person, from each of 20 states, and who is seeking a party's nomination in at least two states, can have these contributions matched. This portion of the federal law does not discriminate against minor or new political parties.

The other portion of the act, public funds for political parties, does discriminate. Funds to political parties can only go to parties which polled at least 5% of the vote in the previous presidential election. Funds to political parties are released after an eligible political party has nominated its candidates.

Although new or minor parties cannot receive party funds, there has never been any barrier to such a party postponing its national convention to a late date, and having the candidate likely to be nominated qualify for candidate funds before the convention. The first group to think of this strategy was the U. S. Labor Party. It set its 1976 national convention in October, and Lyndon LaRouche attempted to receive matching candidate funds. his request was disallowed because an audit showed that he really hadn't raised as much as \$5,000 in at least 20 states. The Citizens Party succeeded in using the strategy in 1984, and Sonia Johnson received \$193,735 in July, just before she was formally nominated. The New Alliance Party didn't try to have its candidate get matching funds in 1984, but it learned from the Sonia Johnson success, and embarked on an ambitious fundraising cam-

aign last year for its likely nominee, Lenora Fulani, which is now paying off. 10,328 people donated to Fulani's campaign prior to the first submission, mostly through door-to-door solicitations, but some by mail and some by buying benefit concert tickets.

The FEC had the Fulani request on its agenda on January 21, 1988, but it refused to grant the funds on that day. Although some of the six commissioners were ready to vote for it, other commissioners raised these objections: (1) there was nothing in the record to show that Fulani was actively seeking the nomination of any party; (2) the name of her principal campaign committee was "Lenora B. Fulani's Committee for Fair Elections" and there was fear that people who donated to this committee didn't realize they were contributing to a presidential campaign fund; (3) there was confusion in the minds of some commissioners between her committee and the Commission for Fair Elections, a proposed lobbying group which the New Alliance Party has been trying to create; (4) it wasn't clear that people who bought tickets to the benefit concerts knew they were contributing to a presidential campaign. These objections were resolved on January 28. Documentation was provided to show that Fulani was actively seeking the nomination of several parties. The FEC staff reminded the commissioners that there is no regulation requiring a presidential candidate's primary committee to include the word "President" in its name, and previous campaigns have sometimes not included the word. The FEC staff also pointed out that the concert tickets included the statement, "Ticket purchase price represents a contribution to Lenora B. Fulani's Committee for Fair Elections." Finally, the staff mentioned that it had learned that there is no connection between the Commission on Fair Elections, and Fulani's Committee on Fair Elections. Although this information satisfied 5 of the 6 commissioners, Commissioner Joan Aikens abstained on the vote and expressed fear that if funds are given to candidates who aren't running in major party primaries, these candidates will have an unfair advantage. Commissioner Aikens is a Republican whose term on the Commission expires in April 1989.

TEXAS

On February 11, a hearing was held before U. S. District Judge James R. Nowlin in *Pilcher v Rains*, no. A-86-CA-430. The issue is whether it is constitutional for the state to require that petitions for new parties be submitted bearing the voter registration affidavit number of every signer. It is almost as much work for petitioners to obtain this number (from county election records) as it is to circulate the petition. Judge Nowlin is a Reagan appointee who has never before had a ballot access case. He promised a decision before March 8, when the Texas petitioning period begins.

PEACE & FREEDOM PRIMARY

There will be five candidates on the presidential primary ballot of the California Peace & Freedom Party on June 7. Four of them are actual national presidential candidates, and one, Shirley Isaacson of Los Angeles, is a Peace & Freedom Party member who is not running in any other state. The four others who will be on the ballot are Lenora Fulani of New Alliance, Larry Holmes of Workers World, Willa Kenoyer of the Socialist Party, and Herb Lewin of Internationalist Workers.

The primary is not binding. The decision as to whom the party will choose for president is made at the state convention in August. The exact date and site for the state convention will be determined at a state central committee meeting on March 19.

LIBERTARIAN PETITIONING

The fundraising letter for ballot access for Libertarian Party petition drives has already raised \$65,000. Although this is more than was expected, and more is still coming in, the Ron Paul campaign still does not feel that it can afford to commit the \$50,000 it would take to get him on the North Carolina ballot. The campaign has made a value judgment, which has been unspoken, that it is more important to be on the ballot in *most* states and still have a significant amount of money for campaign advertising, than it is to be on the ballot in *all* states and have no money left for advertising. This is perfectly reasonable, but there is a problem because the Ron Paul campaign has not been open about its attitudes.

An alternate idea to help get the party on the ballot in all states would be for the strong Libertarian Parties (those already on the ballot) to help raise money and supply volunteers for other Libertarian Parties which are unable to get on the ballot by themselves. The idea began at the California Libertarian Party state convention on February 12-15. All three candidates for state chair committed themselves to the idea. It is reported that the California Libertarian Party alone has over \$30,000 in the bank, but it is not clear whether the California Libertarian Party, and other state parties which are already on the ballot, will be willing to spend heavily on helping other state parties get on the ballot.

VIRGINIA

On January 25, 1988, a hearing was held in state circuit court in Richmond in *Paul v Virginia Board of Elections*, no. N-5652-4. The issue is whether Virginia must permit write-in votes for president. The hearing went well. Further briefs are being submitted to the court. The Virginia Constitution explicitly protects the right of voters to cast write-in votes in general elections, but the State Board of Elections has refused to permit write-ins for president.

NORTH CAROLINA

The Assistant Attorney General who advises the North Carolina Board of Elections is willing to negotiate a later filing deadline for new party petitions, which are due May 17 (the date shown on the chart is for independent candidates), if he is satisfied that case law would cause a judge to rule the deadline unconstitutional. David Belmont, in charge of ballot access for the New Alliance Party, is sending him a list of court decisions which support the idea that the North Carolina deadline is invalid. In North Carolina, new parties nominate by convention, not by primary, so there is no practical reason for the deadline to be so early.

NORTH DAKOTA

On February 11, 1988, the U. S. Court of Appeals, 8th circuit, heard arguments in *McLain v Meier* and *Perry v Meier*, no. 86-5290ND and 86-5386ND. The case involves a challenge to North Dakota's petition for a fully-qualified party to become qualified, a petition signed by 7,000 voters, due April 20. The law has existed since 1981 and has never been successfully used, although the Libertarian Party is currently trying to qualify. The U. S. District Court had refused to rule on the case back in April 1986 because the plaintiffs weren't old enough to qualify for the office for which each was running (president and U. S. Senator). The 8th circuit panel consisted of Judges Richard Arnold, Donald Lay and Theodore McMillen. Lay and McMillen were also on the panel when McLain challenged the old North Dakota party requirement. The old panel ruled the old law unconstitutional in 1980. The old requirement had been 15,000 signatures, due on June 1.

ILLINOIS VICTORY

On February 8, Jessie Fields won her case in the Cook County Circuit Court in Illinois against the State Board of Elections, which had ruled that a candidate for Congress in the Illinois Solidarity Party needs twice as many signatures as Democrats or Republicans need to get on their primary ballots. Judge Marjan P. Staniec merely ruled that Fields had more than enough signatures, but he didn't say what the requirement should be. Illinois election law has no provision to determine how many signatures are needed for a candidate for Congress to get on the primary ballot, if the party is new. *Fields v Kusper*, no. 88-CO-031.

POPULIST PARTY

The party's national executive committee meeting, to decide whether or not to choose a presidential candidate, will be March 11-13, not March 5-6 as was stated in last month's issue.

CONGRESS

No committee in either house of Congress has yet set a date for a hearing on the voter registration bills, but it is likely that there will be hearings in late March in both houses. No hearing date has been set in the Senate Rules & Administration Committee for the poll-closing bill yet either, although it will probably also be heard in late March.

LEGISLATURES

Kansas: On February 8, the State Senate passed SB 501, the bill to make it easier for independent candidates to get on the ballot, and to let voters register into unqualified parties as well as qualified ones. On February 11, the State Senate Committee which handles election law bills passed SB 46, the bill to lower the number of signatures needed for a new party from 2% of the last vote cast, to 1%.

Massachusetts: H 1305 was introduced last month. It sets the filing date for third party and independent candidates in August, to conform the law to the 1985 court decision *Serrette v Connolly*. The bill to lower the number of signatures has also been re-introduced, but it doesn't have a bill number yet.

Michigan: On February 24, 1988, the Senate Government Operations Committee passed H 4090, the bill to establish procedures for independent candidates, and to increase the number of signatures needed for new political parties. The deadline for all independent candidates will be July 10; the deadline for party petitions will be July 10 (currently the party deadline is in early May).

New Jersey: The Attorney General is sponsoring a bill, not yet numbered, to replace the old unconstitutional New Jersey deadline for third party and independent presidential candidates. The bill sets an August 1 deadline. Candidates for office other than president would still need to submit their petitions by April 10.

AMERICAN INDEPENDENT PARTY

The American Independent Party of California, another ballot-qualified party which has no ties to any nationally-organized party, will only have one candidate on its presidential primary ballot, Lt. Col. James "Bo" Gritz, retired. Gritz can be reached at Bx 472 HCR-70, Sandy Valley Nv 89019. He is a former Green Beret who led several searches for American prisoners of war in Laos. He is an elder in the Mormon Church and was once commander of special operations in Vietnam. Although two other presidential candidates were suggested for the AIP primary by party leaders, the other two candidates are withdrawing. Gritz has no immediate plans to get on the ballot in any other state than California.

DEMOCRATIC OUTSIDERS

DUKE: David Duke, a founder of the National Association for the Advancement of White People, polled 264 votes, or .21%, in the New Hampshire Democratic presidential primary on February 16. The only state has qualified to appear on the Democratic presidential primary in the last month has been West Virginia. The states he had already qualified in, besides New Hampshire, are Arkansas, Louisiana, Missouri, Oklahoma and Texas.

LaROUCHE: Lyndon LaRouche polled 188 votes, or .15%, in the New Hampshire Democratic primary. The only other time he ever ran in the New Hampshire Democratic primary was in 1980, when he polled 2,326 votes, or 2.08%.

The January 1988 issue of *Ballot Access News* reported that LaRouche had qualified for eleven presidential primaries, at least, in the first 20 primaries. Two states were in doubt at that time, Maryland and Illinois, but LaRouche has qualified in both of them as well. Additionally, the deadlines which had not passed at the time of the last issue, but which have now passed, are Puerto Rico, Pennsylvania, West Virginia, Connecticut and Wisconsin. LaRouche will appear in the first three of these but not the last two.

INITIATIVES

On January 19, 1988, the U. S. Supreme Court announced that it will hear Colorado's appeal in *Grant v Meyer*, no. 87-920, the case over whether a state may ban the practice of paying people to circulate initiative petitions.

In the past, the Supreme Court has struck down contribution limits to initiative campaigns, on the theory that the First Amendment protects spending money to spread political speech. However, the Supreme Court has never heard a case involving procedures for getting an initiative on the ballot. It is clear that there is nothing in the U. S. Constitution guaranteeing the people the right to vote directly on legislation. However, if a state decides to use the initiative process, it cannot establish procedures which violate any part of the U. S. Constitution. If the Court votes to strike down the ban on paid circulators, the decision may strengthen the right to petition generally, and it may be easier to eliminate bans on circulating petitions on post office sidewalks, at state fairgrounds, and other restricted public places.

On the other hand, if the Court upholds the ban, the initiative process will be severely curtailed, since it's virtually impossible to get enough unpaid volunteers to circulate an initiative petition. A decision unfavorable to the plaintiff might even be worded in such a way that it would be possible for states to ban the practice of paying circulators to get a new party or an independent candidate on the ballot. The case will be argued in April 1988.

PETITIONING

STATE	REQUIRED	SIGNATURES COLLECTED					DEADLINE
		NAP	LIBT	SOC	IWP	WkL	
Alabama	5,000	finished	already on	0	0	4,500	Aug 31
Alaska	2,068	already on	already on	0	0	0	Aug 10
Arizona	17,340	already on	already on	0	0	0	Sep 23
Arkansas	0	no need	no need	no need	no need	no need	Sep 1
California	128,340	nom	already on	nom	nom	can't start	Aug 12
Colorado	5,000	0	0	0	0	0	Aug 2
Connecticut	14,910	5,500	0	0	0	0	Aug 12
Delaware	(reg.) 142	already on	117	0	0	0	Aug 20
Dist of Col.	(est.) 3,000	can't start	can't start	can't start	can't start	can't start	Aug 16
Florida	56,318	760	5,000	0	0	0	Jly 15
Georgia	25,759	30,000	14,000	0	0	0	Aug 2
Hawaii	3,493	finished	already on	0	0	0	Sep 9
Idaho	8,224	0	1,400	0	0	0	Aug 30
Illinois	25,000	nom	can't start	can't start	can't start	can't start	Aug 8
Indiana	30,950	0	200	0	0	0	Aug 1
Iowa	1,000	50	650	200	0	0	Sep 2
Kansas	2,500	already on	0	0	0	0	Aug 2
Kentucky	5,000	already on	200	0	0	0	Aug 30
Louisiana	0	no need	no need	no need	no need	no need	Sep 6
Maine	4,000	0	0	0	0	0	May 14
Maryland	10,000	finished	already on	500	0	0	Aug 1
Massachusetts	33,682	463	0	0	0	0	Aug 2
Michigan	16,313	135	already on	0	0	finished	Jly 20
Minnesota	2,000	can't start	can't start	can't start	can't start	can't start	Sep 13
Mississippi	1,000	finished	already on	0	0	0	Sep 9
Missouri	21,083	0	3,500	0	0	0	Aug 1
Montana	13,329	already on	already on	0	0	0	Aug 3
Nebraska	5,635	already on	finished	400	0	0	Aug 30
Nevada	7,717	7,500	already on	0	0	0	Sep 1
New Hampshire	3,000	finished	1,300	0	0	0	Aug 10
New Jersey	800	finished	0	100	finished	0	Aug 1
New Mexico	(reg.) 500	already on	already on	0	nom	0	Sep 13
New York	20,000	can't start	can't start	can't start	can't start	can't start	Aug 23
North Carolina	44,535	31,600	700	0	0	0	Jun 22
North Dakota	4,000	0	4,000	0	0	0	Sep 14
Ohio	5,000	3,125	100	0	0	1,700	Aug 25
Oklahoma	37,671	523	0	0	0	0	Jul 15
Oregon	51,578	0	14,000	0	0	0	Aug 30
Pennsylvania	25,568	200	500	0	0	0	Aug 1
Rhode Island	1,000	can't start	can't start	can't start	can't start	can't start	Sep 3
South Carolina	10,000	already on	already on	0	0	0	Aug 1
South Dakota	2,945	0	0	0	0	0	Aug 2
Tennessee	275	finished	0	0	0	0	Sep 1
Texas	34,424	can't start	already on	can't start	can't start	can't start	May 23
Utah	300	already on	already on	finished	0	0	Sep 1
Vermont	1,000	finished	already on	nom	nom	0	Sep 22
Virginia	12,963	0	50	0	0	0	Aug 26
Washington	188	can't start	can't start	can't start	can't start	can't start	Jly 23
West Virginia	7,358	0	0	0	0	0	Aug 1
Wisconsin	2,000	can't start	can't start	can't start	can't start	can't start	Sep 6
Wyoming	8,000	already on	valid 7,977	0	0	0	Aug 30

NAP is New Alliance Party; LIBT is Libertarian; SOC is Socialist; IWP is Internationalist Workers; WkL is Workers League. "Nom" means that the presidential candidate is seeking the nomination of a one-state party which is already qualified for the ballot in that state. "Already on" means the state acknowledges that the party or the candidate is on the November 1988 ballot. "Finished" means that the signatures have been collected, but that they haven't been certified yet. DEADLINE refers to the *latest* procedure available for qualifying a third party or independent presidential candidate.

SOCIALIST WORKERS PARTY

The Socialist Workers Party will probably announce its presidential and vice-presidential candidates shortly after March 1, 1988.

NOW

The National Organization for Women, NOW, recently mailed a questionnaire to its members which included the question, "What are your thoughts on an Independent Party?" Discussion for this question stated, "Many people believe that neither political party will do much about women's rights and therefore an Independent Party or Movement should be formed. Should NOW explore formation of an independent Equal Rights Party?" The results of the poll have not been released by NOW.

MICHIGAN

On January 4, 1988, the U. S. Court of Appeals, 6th circuit, dismissed the case *Jones v Verbiest*, no. 86-2188, on the grounds that the issues belong in state court. The case had been filed by Libertarian activist Thomas W. Jones, challenging Michigan election laws which (1) force new parties to choose their candidates several months before the major parties must choose their candidates; (2) provide no procedures for a new party to qualify in just part of the state. It was absurd of the court to declare that the case must be argued in state courts; federal courts have been handling these issues for twenty years now. Nevertheless, the Michigan Libertarian Party, or any other third party in Michigan, is free to refile the case in state court.

POLITICAL PARTY RIGHTS

California: The California Attorney General submitted a brief to the U. S. Supreme Court on January 27, 1988, in *San Francisco County Democratic Central Committee v Eu*. He is trying to persuade the Supreme Court to take the case, which involves whether the First Amendment protects a party's right to structure itself as it wishes, and whether it may endorse candidates in its own primaries. Probably by late March, the Supreme Court will have announced whether it will hear the case or not.

Also in California, on January 28, 1988, the State Senate passed AB 1206, the Democratic Party of California's revised plan for its own presidential primary, after learning that if the bill were not passed in the form desired by the party, the Democratic national convention would likely refuse to seat the California delegation. Democratic Party state legislators don't like the plan because it makes it more difficult than they would like for state legislators to become Democratic delegates.

Michigan: On January 28, 1988, the Republican Party State Central Committee of Michigan lost its case in federal court against Michigan election laws which determine how delegates to county and state conventions are chosen. *Heitmanis v Austin*, no. 87-4465. Federal district court judge George Woods based his decision on the fact that the *national* Republican Party rules instruct the state Republican Parties to follow state law, in matters pertaining to delegate selection.

PETITIONING AT POLLING PLACES

In several states, petitioners will be stationed outside polling places on presidential primary day. Although most states require that any petitioners stay a specified distance from the polling place itself, this can still be an excellent technique for collecting signatures, since everyone in reach is a registered voter. The only states which do not permit primary voters to sign a petition to get a new party on the ballot are Texas and West Virginia.

On February 2, 1988, the U. S. Court of Appeals, 9th circuit, ruled that Washington state law prohibiting certain kinds of speech (including circulating petitions) within 300 feet of a polling place is unconstitutional. The court said that the area is a public forum, meaning that the First Amendment applies there. *Daily Herald Co. v Munro*, no. 86-3641. Washington state has not yet decided whether to appeal to the Supreme Court.

SORE LOSER LAWS

There has been occasional random speculation that Pat Robertson might run for president as an independent this year, particularly if George Bush wins the Republican nomination. There are only two states which bar people who ran for president in that state's primary, from getting on the ballot as an independent in November, North Carolina and Texas. The North Carolina law also applies to new political parties that might be formed by the candidate, but the Texas law doesn't.

In 1980, John B. Anderson was on all ballots in November even though he had run in many Republican presidential primaries. The Texas "sore loser" law didn't exist in 1980, and the North Carolina law was held by a federal court not to apply to Anderson because he hadn't actually campaigned in the North Carolina Republican primary (even though his name was on the primary ballot).

NOTE ON THE CHART

The petitioning chart on page 4 did not have room for these parties which have also started some petitioning: the Populist Party has 5,000 signatures on its Michigan petition and also on its North Carolina petition; the American Party has 400 signatures on its Utah petition; the Prohibition Party has 500 signatures on its Colorado petition.

CORRECTION: The Jan. 1988 issue of *Ballot Access News* stated that Republican major presidential candidates only need 20,500 signatures to get on all Republican presidential primary ballots. This was incorrect, because it omitted the New York Republican requirement of 1,250 signatures per congressional district (or 5% of the number of Republican registrants, if that is a lesser amount). There are 34 congressional districts in New York. This is a severe requirement, and George Bush is the only Republican presidential candidate who was able to qualify in every district in New York.

COFOE

The Coalition for Free and Open Elections is an organization devoted to working for fair election laws. Individuals are encouraged to join. Your ideas for building the Coalition are welcome. The Coalition address is Box 1885, Annapolis Md 21404. Dues are \$10 per year.

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. .

RENEWALS

If your mailing label indicates that your subscription to *Ballot Access News* expires on March 1, 1988, 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 1988 letter from a member of Congress, commenting on HR 1582.

THANK YOU!

Socialist Party of Washington state, Frank Dunbaugh, Carol Jones, Maureen Smith, Wayne Bartling, Clyde Kuhn, Rick Arnold, Roger C. Menner, Daniel Grossberg, Richard A. Cohen, Libertarian Party of California region 66, Mark Ginter, David Saum, for contributions beyond the subscription price. Also, thank you, everyone who sends me clippings.

BALLOT ACCESS NEWS is published by Richard Winger, Field Representative of the Coalition for Free and Open Elections. © 1988 by Richard L. Winger. Permission is freely granted for reprinting *Ballot Access News*, in whole or in part.

The subscription price to *Ballot Access News* is \$6 per year. *Ballot Access News* is published at least eleven times per year.

Send subscription orders to:

Ballot Access News
3201 Baker St.
San Francisco CA 94123
(415) 922-9779

YES! I want to receive *BALLOT ACCESS NEWS*. I enclose \$6.00 for 1 year_____.

I want to make an additional contribution. Enclosed is \$_____.

Name_____Address_____

City_____State_____Zip_____Phone_____