San Francisco, California

HR 1582 GAINS 5 CO-SPONSORS

HR 1582, the Conyers' ballot access bill, has gained 5 more co-sponsors during the last month: Ed Markey of Massachusetts, Robert Garcia of New York, Harold Ford of Tennessee, Gus Savage of Illinois, and Ron Dellums of California. Savage and Dellums had been co-sponsors of the bill in the previous session of Congress, but the other three are sponsoring for the first time. All five are Democrats. HR 1582 now has 25 co-sponsors in addition to its chief sponsor, John Conyers. Pennsylvania is the only populous state with no co-sponsors.

The new sponsors were gained by lobbying efforts of the Rainbow Lobby. Congressman Conyers still hasn't sent his "Dear Colleague" letter to all members of the House of Representatives, but his letter will go out in the next week. Additional co-sponsors will undoubtably be obtained due to his letter.

MASSACHUSETTS INITIATIVE

The Massachusetts Committee for Fair Ballot Access has enough signatures on its initiative petition so that it feels confident that the initiative will qualify. The initiative would lower the number of signatures needed to qualify a third party or independent candidate to one-fourth of the existing level, from 2% of the last gubernatorial vote, to one-half of 1% (i.e., from about 40,000 signatures, to about 10,000). The initiative would make other changes to ease the petitioning process and would also make it easier for a party to remain qualified. The Committee needs about 50,000 valid signatures by November 20. Please send donations or loans to the Committee for Fair Ballot Access, Box 2557, Boston Ma 02208.

On October 2, the Massachusetts Senate passed House Bill 1544, which improves the deadline for submitting third party and independent candidate petitions for statewide office and congress, from May, to the end of July. The old deadline had been held unconstitutional in 1985, but since then the State Senate had twice refused to pass the Secretary of State's bill to conform the law to the court ruling. HB 1544 still must be passed by the House.

SOVIET UNION

On October 24, the Supreme Soviet of the U.S.S.R. voted to elect all members of the country's legislative bodies, and not to reserve any seats for the Communist Party, the Communist Youth League, or any other organizations. The proposal must still be voted on by the Congress of People's Deputies. Under the old system, only two-thirds of the seats were filled by popular vote. Also, on September 23, an official working group of the Supreme Soviet drafted a law which would allow the creation of alternative political parties and give them equal rights with the Communist Party. This proposal has not yet been voted on.

SUPREME COURT

The U.S. Supreme Court acted in a hostile manner on October 2, 1989, the first day of its new term. It refused to hear the only ballot access case pending before it, the Missouri case filed by the Libertarian Party. The issue was whether it is constitutional for a state to require a new party to submit its presidential elector candidates in August, whereas old established parties need not submit their elector candidates til October. *Manifold v Blunt*, no. 89-310.

In addition, the Court accepted another case, U.S. vKokinda, no. 88-2031, which had been decided favorably in the court below. The issue is whether it is constitutional for the U.S. Postal Service to bar First Amendment activity on post office sidewalks. The case originated at the Bowie, Maryland post office in 1986 when Lyndon LaRouche supporters were arrested and sentenced to jail for setting up a cardtable on a post office sidewalk. Although the U.S. District Court upheld the constitutionality of the ban on First Amendment activity on post office sidewalks, the 4th circuit reversed. Now the federal government hopes to persuade the Supreme Court to uphold the regulation. The issue is important for third parties because post office sidewalks are excellent places in which to petition.

Ever since 1977, the Supreme Court has been biased against third party and independent candidates, in the matter of deciding which cases to accept. Whenever a state government, or an agency of the federal government, has asked the Supreme Court to hear a case involving election law or First Amendment activity, the Court has always agreed to hear it. But whenever a political party or an independent candidate asks the Supreme Court to hear an appeal, the Court always says "No" (there is only one exception to this rule since 1977, Anderson v Celebrezze, John B. Anderson's appeal in 1982 of his Ohio petition deadline lawsuit). Since 1977, the Supreme Court has refused to hear ballot access cases brought by third party or independent candidates from California, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Missouri, New York, Oklahoma, Virginia and West Virginia. The only saving grace has been that generally, when a state government loses in a U.S. Court of Appeals, it also loses in the U.S. Supreme Court. The only exception since 1977 was in 1986, in a ballot access case which Washington state lost in the 9th circuit, but won in the Supreme Court.

HUNGARY

On October 23, Hungary formally proclaimed itself a republic. Elections are expected in the first half of 1990, in which all political parties will compete on an equal footing. The ruling party no longer enjoys any special status under the law.

POLITICAL PARTY RIGHTS

1. During the last week of September, the California Attorney General stated orally that he will stipulate that California laws which tell a political party when and where to hold its state convention, and laws which tell political parties that they cannot charge dues greater than \$24 per year to serve on the state central committee, are unconstitutional. These had been the only remaining unresolved issues in *Eu v San Francisco Democratic Central Committee, et al.* Since the U.S. Supreme Court had ruled earlier this year that political parties have a right to run their own affairs, it followed logically that states cannot dictate to parties on these particular points.

2. On October 13, the 9th circuit indicated that it is likely to grant reconsideration in *Geary v Renne*, the case over whether political parties have a right to endorse or oppose candidates in non-partisan elections. Although the court did not formally say it would grant reconsideration, it did ask the state to respond to the petition for rehearing which had been filed by the Democratic and Libertarian Parties. This is considered a strong indication that the court will grant reconsideration. A 3-judge panel had ruled in August that political parties have no free speech rights when non-partisan elections are involved, but the vote had been 2-1 and the decision was considered at variance with recent U.S. Supreme Court decisions.

POLITICAL PRIVACY

1. On October 23, the Washington State Supreme Court heard the Freedom Socialist Party's appeal in Snedigar v Hodderson, the case over whether the party must reveal the contents of its meeting minutes. Richard Snedigar, who is suing the party, claims that he was defrauded out of \$22,000, and that he cannot prove his claim unless the minutes are submitted as evidence. The Washington State Court of Appeals had ruled that even though political organizations normally enjoy First Amendment rights of privacy, nevertheless in this case the party must expose its minutes. The Freedom Socialist Party was able represented by noted civil liberties attorney Leonard Boudin at the Supreme Court hearing. Boudin emphasized that this particular court had already ruled that the First Amendment protects reporters from being forced to reveal their sources, and that privacy for political parties is even more important than it is for reporters. The hearing room was filled to capacity by party supporters. A decision probably won't be released for at least three months. Even if Snedigar loses on the issue of whether the party's minutes should be exposed, he is still free to pursue his case, based on other evidence.

2. Gelfand v Smith is the case described in the Sept. 26 issue of B.A.N., in which a member of the Socialist Workers Party, Alan Gelfand, sued the party because it expelled him. There will be a hearing on November 13 to consider Gelfand's motion for modification of the findings of fact. The findings of fact had ruled that Gelfand's expulsion did not violate party rules. Thus the case is further prolonged (it is already over ten years old, and if Gelfand cannot win a modification, he will appeal).

3. There will be a hearing in the 2nd circuit in late November in *Igneri v Moore*, no. 89-7730, the case over whether certain political party county chairmen in New York must reveal information about their assets. The U.S. District Court had ruled the law unconstitutional, and the state is appealing.

STATUS OF OTHER PENDING LAWSUITS

<u>Alaska</u>: There is still no decision from the State Supreme Court in *State v Sigler*, the case over the constitutionality of the early deadline for submitting petitions to get third party and independent candidates (for office other than president) on the ballot. The Court has had the case for over a year now. A decision could come at any time.

<u>Colorado</u>: In *Thournir v Meyer*, the case over whether a state may require a candidate for Congress to have lived in the state a full year before running, now pending in the 10th circuit, the state of Colorado has asked for more time to submit its brief. This case is now 9 years old.

<u>Florida</u>: In *Coonan v Smith*, the case over the deadline for filing a petition in lieu of filing fee in a special election, the Secretary of State of Florida tried to persuade the 11th circuit to dismiss the case, but the Court refused to dismiss it. Coonan is a Democrat who tried to run for Congress in the special election in August. The other case involving deadlines in special elections, *Migalla v Martinez*, is over, since the state didn't appeal.

A decision could come at any time in Fulani v Krivanek, the case over the constitutionality of Florida's 10¢ fee to check each signature on a ballot access petition. It is now pending in U.S. District Court in Tampa, before Judge William T. Hodges. Hodges refused to issue an injunction against the fee last year, but he may be hard pressed to write an opinion upholding the constitutionality of the fee, since in 1972 the U.S. Supreme Court ruled that very large mandatory filing fees are unconstitutional. Since the fee could amount to \$30,000, it is very difficult to justify it.

<u>Hawaii</u>: In *Erum v Cayetano*, the case over the constitutionality of Hawaii's 10% ballot access requirement for independent candidates (for office other than president), the national ACLU is considering whether to represent the plaintiff in filing a brief asking the U.S. Supreme Court to take his appeal.

Also in Hawaii, the case over the constitutionality of the ban on write-in votes, *Burdick v Takushi*, will be back in federal court in a few weeks.

Indiana: There is still no decision from the 7th circuit in Fulani v Bayh, the case over whether Indiana elections officials broke the law by putting George Bush and Michael Dukakis on the November 1988 ballot, even though neither of them handed in their presidential elector candidate list by the deadline.

Also, there is still no decision from the U.S. District Court in *Paul v State Election Board*, the case over whether Indiana may continue to ban all write-in voting. <u>Iowa</u>: The hearing before the 8th circuit in *Iowa Socialist Party v Nelson* will probably be held in December 1989. This case tests the constitutionality of Iowa law which forces all voters to register Republican, Democrat or Independent. Plaintiffs desire to register as "Socialist".

<u>Ohio</u>: in *Rosen v Brown*, the case over whether Ohio is constitutionally obliged to print the ballot label "Independent" on the ballot next to the name of independent candidates, the plaintiffs expect to submit their brief in the next few weeks.

Another pending Ohio case, Workers World Party v Brown, was voluntarily dismissed in August 1989. The case involved a dispute over whether there were enough valid signatures on the Workers World presidential candidate's petition in 1988.

<u>Texas</u>: the hearing in *Ybarra v Rains* was held on October 4, and it went well. This is the case over the constitutionality of Texas' May petition deadline for new parties.

<u>West Virginia</u>: there is still no decision in *Socialist Workers Party v Hechler*, from the 4th circuit. This is a general challenge to all of West Virginia's ballot access procedures. The hearing was held almost six months ago. A decision could come at any time.

<u>National cases</u>: A decision could come at any time in *Fulani v Commission on Presidential Debates*, now pending in the D.C. circuit.

In Schau v Flaherty, the case over whether News Election Service acted illegally by broadcasting false election data on election night in 1988, the plaintiffs still have not found an attorney to represent them, even though federal judge John C. Lifland urged them to do so over eight months ago.

For news of certain other lawsuits, see the articles in this issue on "Political party rights" and "Political privacy".

STATE LEGISLATIVE NEWS

In Arizona, California, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania and West Virginia, third party activists have carried on activity during the last month aimed at persuading state legislatures to improve ballot access laws. In virtually every state, legislatures are not now in session, and therefore it's easier to communicate with state legislators. The biggest problem is finding legislators who will agree to sponsor bills; this is particularly a problem in California, Florida and Maryland at this time.

The Florida Secretary of State will seek legislation to improve ballot access procedures in special elections. Specifically, the bill will provide that a petitioning candidate in a special election will need only 25% as many signatures as the candidate would have needed for the same office in a regularly-scheduled election. Also, the bill will give the Secretary of State authority to set petition deadlines for candidates in special elections.

MAX WEINER DIES

On October 23, Max Weiner, founder of the Consumer Party, died, just two weeks before election day. Weiner was the Consumer Party candidate for Philadelphia City Controller and polls had continued to show him winning. In 1987 he had polled 133,826 votes for Philadelphia City Councilman-at-large, ahead of Republican candidates. Weiner had been working on behalf of ordinary Philadelphians against various kinds of corrupt practices for decades, and he had gradually become very popular.

A court hearing on October 30 was held to determine if Weiner's name should remain on the November 7 ballot or not. If his name remains on the ballot, he will undoubtably poll enough votes to retain the Consumer Party's status as a qualified political party within Philadelphia; otherwise the party will lose that status. No decision had been announced as this issue went to press.

PAUL JACOB RESIGNS

Paul Jacob, full-time employee of the Libertarian Party National Ballot Access Committee, resigned in late September in order to take a job in Illinois. Jacob successfully headed up Libertarian Party petitioning from May 1988 until the date he resigned. All of the Libertarian petitioning completed during 1989 has been due to his efforts, except for a limited amount accomplished by state and local Libertarian groups.

Steven Givot, chairman of the Committee, is eager to continue the committee's petitioning work forward, but no further petitioning will be carried out until the Committee raises additional money. The Committee would like to complete the Nevada petition and then work with the Kansas Libertarian Party to restore the party's ballot status there. Both Nevada and Kansas laws for ballot retention are fairly easy, so that if the Libertarian Party could just get on the ballot in each state in 1990, chances are the party would poll enough votes to automatically qualify in 1992.

CONGRESS

HR 2190, the voter registration bill, still has not been voted on in the House of Representatives. No other election bill has made any headway recently either. The voter registration bill is stalled because there is still no consensus on exactly what should be in it.

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HOSTILE POLITICAL SCIENCE TEXTBOOK

Last year, Dr. Larry Sabato of the University of Virginia published a textbook, *The Party's Just Begun; Shaping Political Parties for American's Future*. The book is about our political party system. The book has some valuable insights, particularly its observation that the Democratic and Republican Parties have completely changed organizational character during the last century. In the past the local organizations of the two major parties were very strong, while their national committees were very weak. Today this is completely reversed; local Democratic and Republican Party organizations are weak, whereas their national committees are powerful.

Unfortunately, *The Party's Just Begun* contains some extraordinarily hostile ideas about political parties other than the Democratic and Republican Parties. Sabato loses no opportunity to express disdain for third parties:

1. On page 23 he states that "Multiparty systems" are characterized by volatility and divisive fragmentation, with transient, emotional issues and colorful personalities, but no competent, successful government. He gives no examples, and cites no authority, for this conclusion.

2. On page 62 he states the U.S. Supreme Court "damaged" the party system of the USA by issuing *Williams v Rhodes* and *Anderson v Celebrezze*. These are the two best opinions ever issued by the Supreme Court on the subject of ballot access. *Williams* stated that voting rights are violated when voters are unable to vote for third party candidates, and struck down Ohio ballot access laws which made it virtually impossible for third parties to get on the ballot. *Anderson* repeated the First Amendment analysis of *Williams*, and struck down early deadlines to qualify third party and independent presidential candidates for the ballot. Sabato doesn't explain why he disagrees with these two decisions.

3. On page 73, Sabato criticizes <u>any</u> public financing for third party or independent candidates. His footnote 17 states that such funding "damages" the "two-party system", but he doesn't explain why.

4. On page 179 he states that the two major parties deserve "what we might term 'most favored nation' status in our laws and political practices."

5. On page 194 he defends excluding John Anderson from the 1980 presidential debates for the sake of "stability". He fails to note that the only debate sponsor in the November 1980 election, the League of Women Voters, actually invited John Anderson to debate, and that Anderson did debate Ronald Reagan in a League debate.

6. On page 216 he recommends that public financing of congressional candidates be instituted, but that all such public financing be given directly to the Democratic and Republican national committees. He takes no cognizance of the fact that in recent times, independent and third party candidates have been elected to Congress. U.S. Senators Harry F. Byrd, Jr., and James Buckley, were both elected in 1970 as independent or third party candidates, for

example. Presumably, Sabato would have excluded them from public funds and provided funds to their opponents.

7. On page 218, Sabato recommends that the television networks be compelled to provide free time to the Democratic and Republican Parties. On page 221, he recommends that third party and independent candidates be excluded from free TV time so as to promote "stability and continuity".

8. On page 229, he recommends that "sore loser" laws be enacted to cover presidential candidates, so that someone like John Anderson (who ran in Republican presidential primaries in early 1980, and then ran as an independent) could never again run in primaries and a general election.

These recommendations are unprecedented in a work of political science. The official position of the American Political Science Association, expressed in 1950 in the Association's Toward a More Responsible Two-Party System, is that "third or minor parties are not undesirable or ineffectual within their limited orbit" (page 18). Generally, political science textbooks for the USA state that third parties are useful because they bring people into the party system who would otherwise remain excluded, and that they bring in new ideas. More recently, political scientists have recognized that it is necessary to allow third parties to function, to keep the major parties from being grab-bags or catch-alls, i.e., if third parties are suppressed, then all of their adherents will enter the two major parties, and the message of the two major parties will become muddled.

Since Sabato's policy recommendations are at variance with mainstream political science, one would expect him to justify his ideas. However, he does not do so. He does not even define "two-party system", although he takes pains to define many other terms at the beginning of the book (he even defines "political party"). If he did define "two-party system", he would be forced to state whether he believes a "two-party system" is one in which many parties exist but two are much bigger than all the others (the usual political science definition of "two-party system"), or whether a "two-party system" is one in which only two political parties are permitted to function.

Sabato deplores the rate at which members of Congress are re-elected today. He states that the "golden age" of political parties in the USA was the period 1870 thru 1920. He seems to have no awareness that his "golden age" was one in which there were no restrictive ballot access laws, and third parties were vigorous. For example, during the 1880's, 1890's, and 1910's, there were always at least a dozen third party members of Congress, and most state legislatures had third party members.

During the last six months, *Ballot Access News* has repeatedly tried to get Sabato to comment on these ideas. He refuses to make any comments, other than to say that his book speaks for itself. The book is published by Scott, Foresman & Co., Glenview, Ill. It is possible that Sabato's ideas are still in flux. Anyone who wishes to correspond with him can write to him at the University of Virginia, 232 Cabell Hall, Charlottesville Va 22901.

		1990 PETITIONING					DEADLINE
<u>STATE</u>	REQUIRED		SIGNATURES COLLECTED				
		LIBT	NAP	POP	<u>WWP</u>	<u>OTHER</u>	
Alabama	12,345	0	0	0	0		Apr 6
Alaska	2,032	0	0	0	0	AK IN	Jun 1
Arizona	23,438	1,100	0	0	0		May 19
Arkansas	24,833	can't start	can't start	can't start	can't start		May 1
California	(reg) 76,172	already on	0	263	0	PFP,AIP	Jan 2
Colorado	5,000	can't start	can't start	can't start	can't start		Aug 7
Connecticut	9,937	can't start	can't start	can't start	can't start		Aug 10
Delaware	(reg.) 145	already on	already on	0	0		Aug 18
Dist of Col.	(est.) 3,000	can't start	can't start	can't start	can't start	STATEH	Aug 15
Florida	181,421	can't start	can't start	can't start	can't start	-	Jul 17
Georgia	29,414	already on	3,600	500	0	~~~~	Aug 7
Hawaii	4,438	already on	0	0	0	We CIVEN	Apr 25
Idaho	8,180	already on	0	0	0		Aug 30
Illinois	25,000	can't start	already on	can't start	can't start	(0 Bel)	Aug 6
Indiana	30,950	100	0	0	0	ED BARN	Jul 15
Iowa	1,000	0	0	0	0		Aug 17
Kansas	16,813	0	0	0	0		Apr 12
Kentucky	5,000	0	0	0	0		Jan 29
Louisiana	(reg) 108,000	200	0	50	0	-00-00-00	Jun 30
Maine	4,000	can't start	can't start	can't start	can't start		Jun 12
Maryland	69,500	0	0	0	0		Aug 6
Massachuset	ts 33,682	can't start	can't start	can't start	can't start		Jul 31
Michigan	23,953	already on	0	800	11,000	TISCH	Jul 19
Minnesota	2,000	can't start	can't start	can't start	can't start		Jul 17
Mississippi	just be org.	already on	organizing	0	0		Apr 1
Missouri	20,860	0	0	0	0	40-000	Aug 6
Montana	9,531	already on	0	0	0		Apr 16
Nebraska	5,635	0	0	0	0	40-0040	Aug 1
Nevada	10,326	4,800	0	0	0		Aug 14
New Hampsh		0	0	0	0		Aug 8
New Jersey	800	0	0	0	0		Apr 12
New Mexico		already on	0	0	already on	SW,PRH	Jul 10
New York	20,000	can't start	can't start	can't start	can't start	L,C,RTL	Aug 21
North Carolin		0	3,400	0	0		May 17
North Dakota		0	0	0	0		Apr 13
Ohio	43,934	0	0	0	0		Jan 8
Oklahoma	58,552	0	0	0	0		May 31
Oregon	35,000	already on	0	0	0		Aug 30
Pennsylvania		can't start	can't start	can't start	can't start		Aug 1
Rhode Island	-,	can't start	can't start	can't start	can't start		Jly 19
South Caroli	,	already on	already on	0	0		May 6
South Dakot		can't start	can't start	can't start	can't start		Aug 7
Tennessee	30,259	0	0	0	0		May 1
Texas	34,424	already on	can't start	can't start	can't start		May 27
Utah	500	already on	0	0	0		Mar 15
Vermont	1,000	already on	already on	0	0	LUP	Sep 20
Virginia	14,000	can't start	can't start	can't start	can't start		Jun 12
Washington	200	can't start	can't start	can't start	can't start		Jul 28
West Virgini		0	0	0	0		May 7
Wisconsin	2,000	can't start	can't start	can't start	can't start	LFP	Jul 3
Wyoming	8,000	0	0	0	0		May 1

This chart shows the petitioning progress of various third parties for 1990 ballots. LIBT is Libertarian; NAP is New Alliance; POP is Populist; WWP is Workers World. The "Other" column lists any other third parties which are already qualified in any state. Although the Libertarian Party has completed a petition drive in Maryland, this petition will be used for 1992, not 1990.

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

FEC REPORT ON SOVIET UNION

The Federal Election Commission has released "Report on the Visit by the FEC to the Soviet Union, June 1989". The 72-page booklet can be obtained free by writing to the FEC, 999 E St NW, Washington DC 20463.

'51-92 SUES NORTH CAROLINA

On October 30, '51-92, a Libertarian PAC headed by former vice-presidential candidate Andre Marrou, filed a lawsuit to overturn a ruling of the North Carolina Board of Elections which bars the Committee from contributing money toward the proposed petition drive to get the Libertarian Party on the ballot. Spong v Brock, federal court, Raleigh.

PROPORTIONAL REPRESENTATION

The California initiative to provide for Proportional Representation for elections for thelower house of the state legislature has been modified slightly. The provision allowing a political party to choose its candidates any way it wishes has been altered, to force the California Legislative Analyst to retract an official position that the initiative would add millions of dollars to the cost of elections. Consequently, the kickoff date for the initiative has been changed, to mid-November 1989. Contact C.T. Weber, 9616 Caminito Tizona, San Diego Ca 92126, for further information.

ELECTION RESULTS

1. In the Democratic primary in New York city in September, the New Alliance Party ran several of its own members. Rafael Mendez, running for President of the City Council, polled 193,640 votes, almost 25%, in a two-person race. Mendez is running for the same post in the November 1989 election as a New Alliance Party candidate. The New Alliance Party didn't run anyone for Mayor in the Democratic primary, since it endorsed David Dinkins. 2. In another two-person race, Peace & Freedom Party activist Michael Zinzun polled over 30% of the vote for Pasadena, California, city council, district 3, also in September.

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NONPARTISAN BALLOT ACCESS GROUPS

1. COFOE, the Coalition for Free and Open Elections. Dues of \$10 entitles one to membership with no expiration date; this also includes a one-year subscription to *Ballot Access News* (or a one-year renewal). Address: Box 355, Old Chelsea Sta., New York NY 10011. Membership applications can also be sent to 3201 Baker St., San Francisco Ca 94123.

2. RAINBOW LOBBY, organized in 1985, initiated the Conyers ballot access bill in Congress and maintains a lobbying office at 1660 L St., N.W., Suite 204, Washington, D.C. 20036, tel. (202) 457-0700. The Lobby also expects to begin lobbying in certain state capitols.

3. FOUNDATION FOR FREE CAMPAIGNS & BLECTIONS, has non-profit status from the IRS. Consequently, it cannot lobby, but deductions to it are tax-deductible. The Foundation was organized to fund lawsuits which attack restrictive ballot access laws. 7404 Estaban Dr., Springfield VA 22151, tel. (703) 569-6782.

4. ACLU, American Civil Liberties Union, has been fighting for fairer ballot access ever since 1940, when it published recommendations for a model ballot access law, including petition requirements of one-tenth of 1% of the number of voters. National ACLU headquarters is at 132 W. 43rd St., New York NY 10036, tel. (212) 944-9800.

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