

OKLAHOMA SENATE PASSES BILL EASING BALLOT ACCESS

On April 22, the Oklahoma Senate passed a bill that lowers the number of signatures for a newly-qualifying party from 5% of the last vote cast, to 3% of the last gubernatorial vote.

If this bill had been in effect in 2014, it would have required 31,044 valid signatures, instead of the 66,744 that were actually required. If the bill is signed into law, for 2016 and 2018 it will require 24,745 signatures.

The bill, HB 2181, had already passed the House unanimously, but the House version required 1% instead of 3%. The Senate Rules Committee had amended the bill on April 8. The vote in the Senate was 37-4. The four "No" votes were all cast by Republicans, three of whom are in their first term. They are Mark Allen, Larry Boggs, Ron Sharp, and Wayne Shaw.

Because the House and Senate versions of the bill differ, now the bill returns to the House to see if the House will accept the Senate version. It is very likely that the House will accept the Senate version, and then it will go to the Governor. That is likely to happen in the week of May 11-15.

The national Libertarian Party had paid \$3,000 to a professional lobbyist to help achieve the Senate vote. He is continuing to work on the bill. The sponsor of the bill is the Speaker of the House, Representative Jeffrey Hickman.

Implications for Jurisprudence

Assuming the bill passes, no state will require a petition greater than 3% of the last vote cast for an independent, or a new party, to get on the ballot for statewide office. That fact undercuts the vitality of *Jenness v Fortson*, the 1971 U.S. Supreme Court decision that upheld Georgia's petition of 5% of the number of registered voters.

If no state has a 5% petition (for statewide office, anyway), clearly there is no state interest in a petition requirement that severe.

Although it would still be true that California has a petition of 10% of the last gubernatorial vote for a new party, that requirement is not mandatory, because a new party can also qualify by obtaining registered members equal to one-third of 1% of the number of registered voters. And it would still be true that Minnesota has a petition of 5% of the last vote cast for a new party, but, again, that is not mandatory, because new parties can also appear on the Minnesota ballot with the party label by using the candidate petitions, which are never greater than 2,000 signatures.

OKLAHOMA'S 22-YEAR RECORD OF FAILED BALLOT ACCESS BILLS

Passage of Oklahoma HB 2181 will be historic, given that every ballot access improvement bill introduced in the last 22 years has failed to pass.

In 1994 Representative James D. Holt introduced HB 2307, to eliminate petitions for minor party and independent presidential candidates who paid a fee of \$2,000 (the Oklahoma petition for presidential candidates is 3% of the last presidential vote cast).

In 1999, Representative Bill Graves introduced HB 1742, to lower the party petition to 10,000 signatures.

In 2001, Representative Ray Vaughn said he would introduce a ballot access bill, but he didn't.

In 2002, Representative Sue Tibbs introduced HB 2654, to lower the party petition to 5,000 signatures and the vote test for a party to stay on from 10% to 1%.

In 2003, Representative Wayne Pettigrew introduced HB 1412, to lower the vote test from 10% to 8%.

In 2005, Representative Marian Cooksey introduced HB 1429, to lower the party petition to 5,000 signatures and the vote test to 1%.

In 2007, Cooksey re-introduced her bill, this time HB 1539. Senator Randy Brogdon introduced the same bill in the Senate, SB 28.

In 2009, Brogdon re-introduced his bill as SB 359, and Representative Charles Key introduced it as HB 1072.

In 2011, Key introduced HB 1058, to set the party petition at exactly 22,500 signatures.

In 2013-2014, Senator Rob Johnson introduced SB 668, to lower the party petition in midterm years from 5% of the last presidential vote, to the last gubernatorial vote. Representative Jeffrey Hickman introduced HB 2134, which originally required 5,000 signatures. The bill, as amended, passed both Houses, but the versions differed. The conference committee settled on a version that only lowered the number of signatures for the independent and minor party presidential petition, but then the legislature adjourned before voting again on that bill.

None of the bills mentioned above passed. The lesson is that persistence pays.

NEVADA BILL BALLOT ACCESS BILL ADVANCES

On April 21, the Nevada Senate passed SB 499 unanimously. It moves the petition deadline for newly-qualifying parties from April to June, and moves the non-presidential independent candidate petition deadline from February to June.

NORTH CAROLINA BALLOT ACCESS BILL

On April 1, twenty-eight North Carolina Representatives introduced HB 509, which eases ballot access for newly-qualifying parties and independent candidates. Currently, statewide independents and new parties need 89,366 signatures (2% of the last gubernatorial vote). The bill changes that to one-fourth of 1% of the last gubernatorial vote, which in 2016 would be 11,171 signatures.

The sponsors include 18 Democrats, nine Republicans, and the legislature's only independent member.

ALABAMA BALLOT ACCESS BILL

On April 1, the Alabama ballot access bill, SB 221 passed the Senate Rules Committee. It will probably receive a vote on the Senate floor during the week of April 27-30. It cuts the number of signatures for new parties and non-presidential candidates from 3% of the last gubernatorial vote to 1.5%, and provides a later petition deadline for new parties.

NEBRASKA LEGALIZES PAYING CIRCULATORS PER-SIGNATURE

On April 13, Nebraska Governor Pete Ricketts signed LB 367. It repeals the law that makes it illegal for initiative sponsors to pay circulators on a per-signature basis. The bill had passed the Senate unanimously. Senator Michael Groene, who is in his first term, has long been a proponent of the initiative process. When he ran for the Senate in 2014, he made this bill his number one legislative priority.

RESTRICTIVE ARIZONA BILL SIGNED

On April 14, Arizona Governor Doug Ducey signed HB 2608, which makes it substantially more difficult for members of small parties to get on their own party's primary ballot.

CALIFORNIA BILL TO FORCE WRITE-IN CANDIDATES TO PAY

On April 15, the California Assembly Elections Committee passed AB 372 by 4-2. It requires write-in candidates for congress or partisan state office who place second in the June primary to pay a filing fee in order to be on the November ballot. The four "yes" votes were all from Democrats; the two "no" votes were one Republican and one Democrat.

The bill seems to violate the California Constitution, which says, "Article 2, sec. 5(a): The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election." That seems to say candidates who place first and second have a right to be on the November ballot, which cannot be taken away.

The bill was amended a few days after the hearing to provide that indigent candidates need not pay. Then, the bill's author, Assemblyman Frank Bigelow, learned that in 1974 the California Supreme Court said the state is obliged to provide alternative to filing fees for all candidates, not just indigent candidates. So, he plans to amend the bill again, on the Assembly floor, to provide for a petition in lieu of filing fee.

Assemblyman Bigelow is the only California legislator who had a Libertarian opponent in November 2014. That Libertarian, Patrick Hogan, was a write-in candidate in the June 2014 primary, and placed second, because Bigelow was the only name on the primary ballot. In November, Hogan received 26% of the vote.

California has not charged a filing fee for write-in candidates prior to any election, because in 1972 the State Supreme Court ruled in *Steiner v Mihaly* that such a filing fee for a write-in candidate would be unconstitutional, because filing fees are for the purpose of keeping ballots from being too crowded, and a write-in candidate does not make a ballot more crowded.

PRESIDENTIAL PRIMARY DATE CHANGES

The April 1, 2015 *B.A.N.* contained a chart showing the likely presidential primary dates in each state in 2016. However, since then, some unexpected developments in certain state legislatures have occurred.

Arkansas: the chart showed that the primary would be March 1. SB 389, setting that date, had already passed the State Senate 20-5. However, the bill was defeated in the House, so the primary will probably be May 24. However, it is possible the March bill can be revived in an upcoming special session of the legislature.

Mississippi: the chart showed March 1, but the bill setting that date, SB 2531, failed to pass, even though it had passed both houses. Each house had a slightly different version and the conference committee couldn't agree. Therefore, the primary will be March 8.

Ohio: the chart showed March 8, but a bill was introduced in April moving it to March 15, and that bill, HB 153, passed the House on April 22 and will probably pass the Senate.

In addition, it now appears likely that Washington won't hold any presidential primary.

BILLS ON WHO CAN VOTE IN PRIMARIES

Colorado: Representative Dominick Moreno has introduced HB 1354, which would let independent voters vote in primaries. Independent voters would receive a primary ballot prepared just for them, which would list all the Democrats and Republicans running in that voter's area.

Maine: Senator Roger Katz has introduced LD 744, to let independent voters choose a primary ballot. The bill has nine co-sponsors.

Oregon: Representative Val Hoyle has introduced HB 3500, which says that independents would receive primary ballots for each party that has a primary, and the voter could choose one and vote on it.

NINTH CIRCUIT UPHOLDS ARIZONA REGISTRATION FORM

On April 24, the Ninth Circuit upheld Arizona's voter registration form, which lists the two largest parties and gives them a checkbox, and which forces people who want to register into any other qualified party to write-in that choice on a blank line. The line is less than one inch long. *Arizona Libertarian Party v Bennett*, 13-16254. The decision is by Judge A. Wallace Tashima and co-signed by Marsha S. Berzon and M. Margaret McKeown.

The decision says if the state listed all the ballot-qualified parties, it would need to reprint the form every time a new party qualifies, or an old party goes off the ballot, and this would cost money. The decision also says that the qualified minor parties are only suffering a "trivial" harm. Yet the decision acknowledges that parties remain on the ballot if they have registration of two-thirds of 1% of the state total. The Green Party has never met the registration test, so five times it has done a burdensome petition (usually requiring more than 25,000 signatures), and then it goes off the ballot and must do another.

The decision says there is no evidence that a party would gain more registrations if its name were printed on the form with its own checkbox, compared to being a "write-in" choice. Yet the U.S. Supreme Court has repeatedly said that write-in candidates are at a huge disadvantage relative to candidates whose names are on the ballot, and that Court thought this was so obvious, it never required any evidence.

In *U.S. Term Limits v Thornton*, the U.S. Supreme Court invalidated Arkansas' term limits law for members of Congress. The Arkansas law said that a long-term member of Congress could run for re-election by write-ins, but he or she could not be on the ballot. The Supreme Court said "Our prior cases have suggested that write-in candidates have only a slight chance of victory."

Those prior decisions were: (1) *Williams v Rhodes*, where Justice William O. Douglas's concurrence on page 37 says, "To force a candidate to rely on write-ins is to burden him with disability"; (2) *Lubin v Panish*, page 719, "Realities of the electoral process...strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot"; *Anderson v Celebrezze*, p. 799, "A write-in opportunity is not an adequate substitute for having the candidate's name appear on the printed ballot."

The Ninth Circuit decision also says, "The overwhelming majority of Arizona voters are registered with one of the two major parties", but actually only 63.1% of them are registered in the two major parties.

McKeown wrote separately to say that although she agrees with the decision, the majority should not have used the "rational basis" test, but should have used the balancing test, which requires a stronger state interest to justify the challenged law.

REFERENDUM BEGINS TO REPEAL NEW SOUTH DAKOTA BALLOT LAW

During April, the South Dakota AFL-CIO and its allies launched a referendum petition against SB 69, the election bill passed this year that injures ballot access. As noted in the April 1 *B.A.N.*, the bill makes it more difficult for candidates to get on primary ballots, more difficult for independent candidates to get on the general election ballot, and more difficult for new parties to get on the ballot.

The AFL-CIO probably would not act against the bill, except for the fact that it even injures Democrats who want to get on the Democratic primary ballot, by increasing the number of signatures for them from 1% of the last Democratic vote for Governor, to 1% of the number of registered Democrats. The bill also makes their deadline earlier, from the spring to the winter.

REPUBLICAN PARTIES OF TWO STATES FAIL TO GET JUDICIAL RELIEF

During April, the Republican Parties of Utah and Virginia failed to persuade federal judges to give them relief against state laws that control their nominations process.

Utah: on April 10, U.S. District Court Judge David Nuffer, an Obama appointee, refused to enjoin a Utah law that lets candidates petition onto a primary ballot, even if they have not shown substantial support at a party caucus. The Republican and Constitution Parties had tried to block the law, arguing that the law even lets a non-member of the party run in that party's primary, and the parties don't want that. *Utah Republican Party v Herbert*, 2:14cv-876. The parties could still conceivably win the case, but so far they are not entitled to stop that system.

Virginia: on April 2, U.S. District Court Judge Elizabeth K. Dillon, an Obama appointee, upheld a state law that says, even though normally parties can choose whether to nominate by convention or primary, when there is an incumbent running for re-election, he or she can dictate to the party how the nomination will be made. *Adams v Alcorn*, w.d., 5:15cv-12. The decision does not reach the merits of the issue. It is based on the fact that the state party bylaws themselves say the party will obey state election laws. The party is free to delete this rule from its bylaws and then file a new lawsuit.

MONTANA THWARTS REPUBLICAN LAWSUIT

On April 20, the Montana legislature passed HB 454, designed to injure the Republican Party lawsuit against the state's open primary. The party's strongest legal point had been that it is unconstitutional to force it to use an open primary to elect local party officers. The bill says parties are free to appoint local officials if they don't want them elected in an open primary.

BOOK REVIEW: *UNSTOPPABLE*

Unstoppable, the Emerging Left-Right Alliance to Dismantle the Corporate State, by Ralph Nader, Nation Books, 2014, 225 pages.

Nader argues that there are many large issues in which activists on the left and the right do agree with each other, and if they work together, they can make substantial progress on their joint agenda.

He suggests this list:

1. Require that the Department of Defense budget be audited annually.
2. Establish rigorous procedures to evaluate the claims of businesses looking for a government handout.
3. Promote efficiency in government contracting and spending.
4. Adjust the minimum wage to inflation.
5. Introduce specific forms of taxation reform.
6. Break up the "Too Big to Fail" banks.
7. Expand contributions to charity.
8. Allow taxpayers standing to sue.
9. Expand direct democracy.
10. Push community self-reliance.
11. Clear away the obstacles to a competitive electoral process.
12. Defend and extend civil liberties.
13. Enhance civic skills and experience for students.
14. End unconstitutional wars.
15. Revise trade agreements.
16. Protect children from commercialism.
17. End corporate personhood.
18. Control more of the commons that we already own.
19. Get tough on corporate crime.
20. Ramp up investor power.
21. Oppose the patenting of life forms.
22. End the war on drugs.
23. Push for environmentalism.
24. Reform health care.
25. Create convergent institutions.

Nader writes about Adam Smith, Ludwig von Mises, Friedrich Hayek, Frank Meyer, and Russell Kirk. Nader knows that he bears the burden of showing that people on the right are interested in working with people on the left. He analyzes what these leading thinkers on the right have said to show that convergence is possible.

Readers of this newsletter will be especially interested in chapter 7, which discusses obstacles to competitive elections. He reiterates his long-standing opposition to top-two election systems.

The jacket blurbs include praise for the book from Grover Norquist, Cornel West, Robert Reich, Ron Unz, and John Nichols. The book deserves the widest audience.

MORE LAWSUIT NEWS

Indiana: on March 31, the Seventh Circuit heard *Common Cause v Members of the Indiana Election Commission*, 14-3300. The issue is a state law that says no party may run for more than half the judicial seats. Indiana elects trial judges on a partisan basis. The specific law limiting parties only applies in Marion County, which is co-terminous with Indianapolis. The lower court had invalidated the law.

New Jersey: on April 8, the Third Circuit upheld the state's closed primaries. Independents can vote in primaries but only if they join a party at the polls on primary election day. The plaintiffs are voters who have philosophic objections to being a member of a party, but who argued that if they can't vote in primaries they have no means to influence who runs in November. The decision says that New Jersey has easy procedures for independent candidates to petition onto the November ballot. *Balsam v Guadagno*, 14-3882.

New Hampshire: on April 20, U.S. District Court Judge Paul Barbadoro, a Bush Sr. appointee, denied the request of the Republican National Committee to intervene in the ballot access lawsuit *Libertarian Party of N.H. v Gardner*, 1:14cv-322. The issue is a 2014 law that makes it illegal for a group to petition for party status during an odd year. The Republican National Committee had wanted to defend the law, but the judge said that would delay the case, and also the state is capable of defending the law. As far as is known, this is the first time the Republican National Committee has ever tried to intervene in a lawsuit over the constitutionality of a ballot access law.

North Carolina: on April 20, the U.S. Supreme Court told the State Supreme Court to rehear a challenge to the state's U.S. House and legislative districts. The plaintiffs had charged that the 2011 redistricting plan packed African-American voters into a limited number of districts so that there would be very few such voters in most other districts. The State Supreme Court had upheld the plan 4-2 but now must re-hear the case. *Dickson v Rucho*.

CHART ON PAGE FIVE:

Page five lists the 50 most populous countries, and tells how many parties are represented in that nation's legislative lower house. Many countries on the list have unicameral systems, so for those countries, the chart simply refers to the single chamber.

The United States and Nigeria are the only nations on the list with two parties in the lower house. This shows that such "two-party systems" are rare indeed, and unnatural.

Further evidence that it is unnatural to have only two parties in office is the fact that between 1828 and 1948, even the United States had more than two parties represented in the House, for all but 9 of the 71 congressional elections. The third parties held the balance of power in the House in 1848, 1854, 1858, 1862, 1878, 1916, and 1930.

WORLD PARTIES

Nation	Name of Body	Term	Size of Body	No. of Parties
China	National Peoples Congress	5 years	2,987	1
India	House of the People	5 years	545	35
United States	House of Representatives	2 years	435	2
Indonesia	People's Representative Council	5 years	550	10
Brazil	Chamber of Deputies	4 years	513	22
Pakistan	National Assembly	5 years	342	17
Nigeria	House of Representatives	4 years	360	2
Bangladesh	National Parliament	5 years	350	5
Russia	State Duma	4 years	450	4
Japan	House of Representatives	4 years	475	8
Mexico	Chamber of Deputies	3 years	500	7
Philippines	House of Representatives	3 years	292	15
Vietnam	National Assembly	5 years	500	1
Ethiopia	Council of People's Representatives	5 years	547	8
Egypt	House of Representatives	5 years	567	16
Germany	Bundestag	4 years	598	5
Iran	Consultative Assembly	4 years	290	0
Turkey	Grand National Assembly	4 years	550	3
Dem Rep of Congo	National Assembly	5 years	500	90
Thailand	House of Representatives	4 years	500	11
France	National Assembly	5 years	577	11
United Kingdom	House of Commons	5 years	650	12
Italy	Chamber of Deputies	5 years	630	12
South Africa	National Assembly	5 years	400	13
Burma	House of Representatives	5 years	440	22
South Korea	National Assembly	4 years	300	3
Colombia	Chamber of Representatives	4 years	166	9
Tanzania	National Assembly	5 years	324	6
Kenya	National Assembly	5 years	349	22
Spain	Congress of Deputies	4 years	350	16
Argentina	Chamber of Deputies	4 years	257	7
Ukraine	Supreme Council	5 years	450	8
Algeria	Peoples National Assembly	5 years	462	27
Poland	Sejm	4 years	460	6
Sudan	National Assembly	6 years	354	12
Iraq	Council of Representatives	4 years	328	18
Canada	House of Commons	4 years	338	6
Uganda	Parliament	5 years	385	7
Morocco	House of Representatives	5 years	325	18
Saudi Arabia	- - -	- -	- -	- -
Peru	Congress	5 years	130	6
Venezuela	National Assembly	5 years	165	13
Uzbekistan	Legislative Chamber	5 years	150	4
Malaysia	House of Representatives	5 years	222	16
Nepal	Constituent Assembly	4 years?	575	30
Ghana	Parliament	4 years	200	4
Afghanistan	House of the People	5 years	250	19
Yemen	House of Representatives	6 years	301	5
Mozambique	Assembly of the Republic	5 years	250	3
North Korea	Supreme People's Assembly	5 years	687	3

This chart lists the 50 most populous countries, in order of population. It shows how many parties are represented in each country's lower legislative chamber, as of April 10, 2015.

MAINE LEGISLATOR BECOMES AN INDEPENDENT

On April 6, Maine Representative Stanley Short said that he has left the Democratic Party and become an independent. He is in his second term. This makes the fourth instance since the start of 2015 in which a legislative seat has switched from being held by a Democrat, to an independent. The earlier instances were in Virginia in January, in Missouri in January, and in Connecticut in February.

MARIJUANA PARTY PETITIONS IN NEBRASKA

The Marijuana Party is petitioning for party status in Nebraska, and is approximately half done. It needs 5,395 valid signatures by February 1, 2016, if it wants a primary. If it wants to nominate by convention, its petition isn't due until August 1, 2016.

The only other petition to qualify a group for party status that has made much headway in the last month is the Libertarian petition in Arkansas, which is over halfway done.

The United Independent Party of Massachusetts, which is on the ballot, is conducting a registration drive so that it can keep its party status after November 2016. It needs approximately 43,000 registered members, and now has approximately 2,400.

FILM: ROSEANNE FOR PRESIDENT

A new film, "Roseanne for President" was released a few weeks ago, and has been shown at the Tribeca Film Festival. The film has received reviews in *Variety* and *The Daily Beast*. It describes Roseanne Barr's 2012 quest for the Green Party presidential nomination, and then her subsequent nomination by the Peace & Freedom Party and her general election campaign. Barr received 67,037 votes, even though she was only on the ballot in three states.

BRITAIN HOLDS A 7-PARTY DEBATE

Great Britain holds a Parliamentary election on May 7. On April 2, the leaders of seven parties debated. The debate attracted a large television audience. On April 16, another debate was held, this time with 5 party leaders.

Because Britain does not use proportional representation or ranked-choice for House of Commons, and because there are vibrant third parties, many voters are worried about the "wasted vote" problem. To help solve that, a vote-swapping web page has been set up, so that strangers can find each other and promise each other to vote for a particular party that they would otherwise not support. Voters in districts that are perceived to be too close to predict promise to vote for a major party favored by that voter's "partner"; the partner, someone who lives in a district that is safe for one party, in return promises to vote for the other voter's favorite minor party.

SPECIAL ELECTION RESULTS

Florida: in the April 21 special election for State House, 64th district, James Grant, the Republican nominee, received 6,851 votes. The write-in candidate, Daniel John Matthews, received 92 votes.

Missouri: on April 7, St. Louis County held a special election for Commission, 6th district. Results: Democrat Kevin O'Leary 53.9%; Republican Tony Pousosa 42.3%; Constitution Party nominee Cynthia Redburn 3.8%.

MINOR PARTY ELECTION WINS

On April 7, three Illinois Greens won non-partisan races. They are Peter Schwartzman, alderman in Galesburg; Steve Alesch, Park Commissioner in Warrensburg; and Adrian Frost, Library Board member in Plano. Also on April 7, Socialist Party member Wendell J. Harris was elected to the Milwaukee, Wisconsin School Board, defeating an incumbent.

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BALLOT ACCESS NEWS (ISSN 10436898)
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