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Guest Columns

Libertarian Party meets criteria for major party

By Richard Winger / San Francisco Resident

Friday, July 20th, 2018 at 12:02am

The New Mexico definition of “political party” says it is a group “any of whose candidates received as many as 5 percent of the total number of votes for Governor or President.” See 1-7-7 of the election code. This is relevant now because the Libertarian Party will probably poll over 5 percent of the 2018 gubernatorial vote total for one of its nominees, but the party won’t have a gubernatorial nominee.

When the Green Party was a major party in New Mexico, it did not receive 5 percent for president in 1996, nor did it receive 5 percent for governor in 1998, but the state recognized it as a major party after those elections because it did have some candidates who polled votes in excess of 5 percent of the presidential or gubernatorial vote. In 1996 Peggy Helgeson, Green nominee for corporation commissioner, got 56,628 votes, which was 10.2 percent of the 1996 presidential vote. In 1998, Green nominee Richard Haley for auditor received 115,829 votes, which was 23.2 percent of the 1998 gubernatorial total. The Secretary of State maintained the Green Party’s major party status both times.

Tom Udall, while attorney general, wrote a detailed opinion finding that “any candidate” means “any candidate.” We have the plain meaning of the law – code section 1-7-7 – and precedent, and an AG opinion, all agreeing the Libertarian Party does not need to poll 5 percent for governor this year to maintain party status.

Against that, we have a trial state court opinion in 1999 saying “any candidate” only means “governor or president.” This was almost dicta, because in that case, the Libertarian Party, which had polled over 5 percent of the 1998 gubernatorial vote for land commissioner, was not in court over how to calculate the vote percentage. Instead, it was in court because the secretary of state believed the party did not have registration of one-third of 1 percent – which is the other requirement for major party status. Thus the Libertarian Party’s attorneys weren’t prepared for that ruling and presented no evidence or argument about it. If they had known the judge would come up with this conclusion, the Libertarian attorneys could have presented evidence that similar laws in other states – Nevada and Vermont – had been interpreted to mean that any candidate counts, even though the percentage was calculated using the vote for some particular office. The Vermont Supreme Court in Abbott v. Thomas in 1971 had the same issue before it, and it ruled unanimously any candidate who polled 1 percent of the gubernatorial total remains qualified; the party did not need to poll that for governor.

In Nevada, which has a similar law, there has never been any litigation, because everyone in Nevada agrees “any candidate” who polls 1 percent of the statewide total for U.S. House can maintain the party status; it doesn’t need to be a candidate for U.S. House.

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