

MINUTES

MEETING OF THE ALLEGHENY COUNTY BOARD OF ELECTIONS

MONDAY, JUNE 8, 2015, 10:00 A.M., IN CONFERENCE ROOM #1, FIRST FLOOR
COURTHOUSE, PITTSBURGH, PENNSYLVANIA 15219.

BOARD MEMBERS: HONORABLE MICHAEL J. FINNERTY, CHAIR
HONORABLE PAUL E. COZZA, MEMBER
HONORABLE HEATHER S. HEIDELBAUGH, MEMBER

IN ATTENDANCE: JERRY TYSKIEWICZ – DIRECTOR, DEPT. OF ADMINISTRATIVE
SERVICES
MARK WOLOSIK – MANAGER, DIVISION OF ELECTIONS
ALLAN J. OPSITNICK - ASST. COUNTY SOLICITOR, LAW DEPT.

- I. CALL TO ORDER: Meeting was called to order by Mr. Finnerty at 10:00 a.m.
- II. APPROVAL OF MINUTES: Approval of November 24, 2014 Minutes: Mr. Finnerty, Yes, Judge Cozza, Yes, Ms. Heidelbaugh, Yes. Approval of May 5, 2015 Minutes: Mr. Finnerty, Yes, Judge Cozza, Yes, Ms. Heidelbaugh, Abstained.
- III. PUBLIC COMMENT: **Ron Bandes, Judge of Elections, Pittsburgh Ward 14, District 1:** Concerns pertaining to polls not being opened on time, battery problems, PEB failure, provisional ballots not counted and requested voting by paper ballots. Mr. Wolosik responded. **Audrey Glickman, Vote Allegheny, Pittsburgh, Ward 15, District 2:** Two visually impaired voters unable to vote on machine due to malfunction of Audio, Judge of Elections assisted them and voted for them on the voting machine. (Citizen Reported). Mr. Wolosik shall investigate and report to the Board. **Annette Shimer, League of Women Voters:** Suggested that e-mail address be put on Nomination Petitions. Stated that Judicial Candidates have e-mail addresses on petitions. **David Tessitor, Vote Allegheny:** Presented a document on Ballot Access News (See attached) and requested the reposting of previous Board minutes.
- IV. CERTIFICATION OF MAY 19, 2015 MUNICIPAL PRIMARY ELECTION RESULTS: Motion to certify election results of the May 19, 2015 Municipal Primary, Mr. Finnerty, Yes, Judge Cozza, Yes, Ms. Heidelbaugh, Yes.
- V. NEW BUSINESS: Mr. Finnerty inquired about the cost to replace voting machines. Mr. Wolosik indicated cost and stated that no Federal monies are available. Ms. Heidelbaugh reported a problem she experienced with Election Results website on Election night.
- VI. ADJOURNMENT: Moved by Ms. Heidelbaugh, meeting was adjourned at 10:40 a.m.

THREE PENNSYLVANIA BALLOT ACCESS RESTRICTIONS STRUCK DOWN

On March 2, U.S. District Court Judge Stewart Dalzell, a Bush Sr. appointee, struck down three Pennsylvania ballot access laws. *Green Party of Pennsylvania v Aichele*, e.d., 2:14cv-3299.

Notarization of petition sheets: Pennsylvania has long required each petition sheet to be notarized. The plaintiffs, the Green Party and the Libertarian Party, challenged this requirement on the basis that it costs a large amount of money to get each sheet notarized. Pennsylvania notaries charge \$5.00 per sheet. The plaintiffs argued that their statewide petitions, which usually need 30,000 raw signatures, require the expenditure of thousands of dollars in notary fees.

The decision uses the precedents that say mandatory filing fees are unconstitutional, to conclude that notarization also requires a form of mandatory filing fees and therefore the notarization requirement is unconstitutional. In addition, the decision says that there is no evidence that notarization is really needed for any purpose. If the petition is not challenged, elections officials accept it as valid. If the petition is challenged, the challenger then compares the signatures on the petition with the signatures in the statewide voter registration files. In either event, the notarization serves little purpose.

The number of states that require ballot access petitions for parties and candidates to be notarized has steadily shrunk. Back in 1984, 23 jurisdictions required notarization, but now only 14 states require it. States that still require it, other than Pennsylvania, are Colorado, Georgia, Idaho, Illinois, Kansas, Maine, Missouri, Nebraska, Nevada, New Jersey, Rhode Island, Texas, and Virginia.

Jurisdictions that have abandoned the requirement are Arkansas, District of Columbia, Iowa, Maryland, North Carolina, Ohio, Oklahoma, Washington, and Wisconsin.

This is only the second decision to strike down notarization. The first was a North Carolina case filed by the Libertarian Party, *McLaughlin v N.C. State Board of Elections*, 850 F.Supp 373 (1994). The basis for that decision was that the state only required notarization for newly-qualifying parties, but did not require it for any other type of petition, so the court used Equal Protection to strike it down. North Carolina did not appeal that decision.

The U.S. Supreme Court seemed to consider notarization in *American Party of Texas v White* in 1974, but said that the plaintiffs didn't present evidence that the notarization requirement was burdensome, so left the Texas requirement in place.

Judge Dalzell technically did not strike down the Pennsylvania notarization requirement, because he interpreted the Pennsylvania law not to require it. The state law says the circulators are "affiants", and generally an "affiant" is someone who appears in front of a notary. But the judge said that isn't necessarily so. However, he said if the law does require notarization, then it is unconstitutional.

He said his ruling (for all three laws he struck down) only applies to the Green Party and the Libertarian Party. Assuming the ruling isn't reversed on appeal, though, it would be easy for any other group to depend on this precedent and get its reach extended. The state hasn't said whether it will appeal. It need not reveal that until June 11.

Signing for multiple minor parties: Pennsylvania law says a voter can only sign one general election petition per office. This was also struck down.

In Pennsylvania, major party members who want to run in a party primary also must submit petitions. The opinion says that the state doesn't prevent major party voters from signing for one primary candidate and then voting for some other candidate for that same office in the primary. Therefore, because major party members have the ability to support more than one candidate for a particular office, it follows that voters who support minor parties and independent candidates should have the same freedom.

Besides Pennsylvania, 21 other states limit the number of petitions a voter may sign: Arizona, California, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Oregon, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. This list shouldn't be taken to mean that all types of petitions are restricted. For instance, in Oregon, voters can't sign for two new parties, but they can sign for multiple independent candidates for the same office.

Out-of-state circulators: this is the third restriction that was struck down. This part of the decision was not surprising, because on July 31, 2014, Judge Dalzell had enjoined that law. However, last year, he had not enjoined the other two laws described above.

He issued another part of his opinion on May 11, upholding the law that doesn't permit signers from different counties on the same sheet.

The March 2 decision upheld the law that says only registered voters (as opposed to people who aren't registered but who could register) can sign. Also, his March 2 opinion said there is no need for him to rule on two other restrictions, because the state has already said it won't enforce them: (1) the state will no longer print on the form language that says circulators must live in the district; (2) the state will no longer force signers to fill in the year, in the blank in which they show the date.

CALIFORNIA SUPREME COURT WON'T HEAR TOP-TWO CASE

On April 29, the California Supreme Court refused to hear *Rubin v Padilla*, S224970. This is the case that challenged the California election law that forces all voters to either vote in the general election for the two candidates who did best in the June primary, or not to cast a ballot at all.

As a result, California voters now have fewer choices in the election itself than the voters of any nation in the world that holds elections, with the sole exception of North Korea, China, and Vietnam. Even Washington, which has a system similar to California, allows write-ins for all office in November.

The California Supreme Court once had a proud record of protecting voting rights for all voters. In 1942, it struck down laws passed by the legislature in 1940 and 1941, banning the Communist Party from the ballot. It was the only state court in the U.S. that took such an action. All other state courts that considered such laws, including the state courts of Arkansas, Kansas, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Ohio, Pennsylvania, and Washington, either upheld such laws or ducked the question. Finally they were all invalidated by the U.S. Supreme Court in 1974, in *Communist Party of Indiana v Whitcomb*.

OKLAHOMA BALLOT ACCESS BILL SIGNED

On May 12, Oklahoma Governor Mary Fallin signed HB 2181, to lower the number of signatures for a new party from 5% of the last vote cast, to 3% of the last gubernatorial vote. The bill had passed the House on May 6 by a vote of 83-0.

As a result, the 2016 Oklahoma requirement drops from 41,242 to 24,745. Oklahoma still has the nation's highest percentage for presidential ballot access; all other states have some procedure that is at or below 2% of the last gubernatorial vote.

In 2016, a presidential candidate running outside the major parties can now get on the ballot in all 51 jurisdictions with support from approximately 562,000 voters. The exact number can't be known until early 2016. By contrast, in 2012, support was needed from 639,345 voters. The reasons for the easier hurdle in 2016, compared to 2012, are ballot access improvements in Oklahoma, California, and Virginia; and also the lower turnout in 2014 compared to 2010 means that the formula for the number of signatures in some states caused some requirements to drop.

North Carolina now requires 16% of all the signatures needed to get on the ballot in all jurisdictions, even though North Carolina only cast 3.5% of the 2012 presidential vote. North Carolina requires 89,366 signatures, the largest number required in any state for president in 2016.

NEVADA BALLOT ACCESS BILL PASSES

On May 22, Nevada SB 499 passed the Assembly. 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. Now the bill goes to Governor Brian Sandoval. If it is signed, the Green Party's pending lawsuit against the deadlines will be moot.

NEW MEXICO LOSS

On April 30, U.S. District Court Martha Vazquez, a Clinton appointee, upheld New Mexico's petition requirement for independent candidates of 3% of the last gubernatorial vote. *Parker v Duran*, 1:14cv-617. The plaintiff was an independent candidate for Public Education Commission, a partisan office, in district 4. The decision was not too surprising, because the same judge had denied him injunctive relief last year. He was the incumbent. As a result of his being kept off the ballot, the only candidate on the ballot was the Democratic Party nominee.

Alabama and New Mexico are the only states that require statewide independent candidates to submit a petition more difficult than 2% of the last vote cast. New Mexico has never had an independent candidate on the ballot for statewide office other than President.

The plaintiff argued that there can't be a good reason to require him to submit a petition signed by 3% of the last gubernatorial vote, because if he had been a member of one of New Mexico's four ballot-qualified minor parties, he only would have needed a petition signed by 1% of the last gubernatorial vote. He submitted 1,379 signatures. His requirement was 2,196, but the minor party requirement was only 732.

The decision fails to mention four of the five precedents that say states cannot require independent candidates to get more signatures than minor parties. Judge Vazquez did mention *Lee v Keith*, an Illinois decision, but she said that precedent doesn't apply because the Illinois petition deadline was too severe. The cases she did not mention are *Danciu v Glisson* from the Florida Supreme Court, *DeLaney v Bartlett*, a U.S. District Court decision from North Carolina; *Patton v Camp*, a U.S. District Court decision from Alabama, and *Greaves v State Board of Elections*, another North Carolina U.S. District Court case. The plaintiff, will probably appeal.