

## *STEVE PEACE, AUTHOR OF CALIFORNIA TOP-TWO, NOW WANTS TOP-THREE WITH INSTANT RUNOFF VOTING*

On August 19, former California State Senator Steve Peace, the man who wrote Proposition 14, the top-two system used in California, declared publicly that he now favors changing the system to top-three with instant runoff voting.

The announcement was made at a public forum organized by the Independent Voters Network and California Forward. The meeting featured California's Secretary of State and six state legislators. Despite the impressive roster of speakers, no news media covered the meeting and thus Peace's announcement has not been publicized in California.

Peace expressed his opinion twice at the meeting. In conversation later, he said he would also consider top-four, again with IRV. A co-chair of the Independent Voters Network, Dan Howle, said that IVN does not support the initiatives in Florida and Arizona for a top-two system, and if asked, he would advise top-two backers in other states not to proceed with advocacy for a top-two system.

The approximately 120 people in attendance also heard from two political science professors, J. Andrew Sinclair and Kimberly Nalder. They both said that the top-two system injures minor parties.

The audience also heard another speaker say that California voter turnout between November 2010 and November 2014 declined more than any other state's turnout, and that a plausible reason is that in the November 2010 voters had a choice of six parties for all the statewide offices, but in November 2014 Californians were the only voters in the U.S. who were forced to vote for a Republican or a Democrat for all the statewide offices, or they couldn't vote at all.

The same speaker also said that Washington state has been using top-two longer than California, and Washington state's legislature is not harmonious and needed three special sessions to pass a budget in 2013 and three special sessions to pass a budget in 2015, and a fourth special session may be needed to amend that budget.

In related news, on August 28 Fairvote filed an *amicus curiae* brief with the U.S. Supreme Court, urging the Court to hear the California minor party lawsuit *Rubin v Padilla*, 15-135. The brief is co-signed by the Center for Competitive Elections, and does not take a position in favor of either side, but points out to the U.S. Supreme Court that it is possible to have an election system that permits independent voters to vote in primaries, without necessarily having a top-two system. The *amicus* also points out that the Court hasn't heard a ballot access case since 1992. The *amicus* also points out that the California Secretary of State's own webpage rebuts the lower court assertion that independents couldn't vote in California primaries before Proposition 14 passed.

### **PENNSYLVANIA WILL APPEAL BALLOT ACCESS DECISION**

On August 21, Pennsylvania's Attorney General said she will appeal the June 24 U.S. District Court decision that struck down the system by which minor parties who submit petitions without enough valid signatures can be assessed up to \$110,000 in court costs. Both the *Philadelphia Inquirer* and the *Lancaster New Era* had earlier urged the state not to appeal the decision. The case is *Constitution Party of Pennsylvania v Cortes*.

However, the Pennsylvania Senate State Government Committee will hear SB 495 on Tuesday, September 22, at 9 a.m. This bill would completely revise state ballot access laws for minor parties and independents. Most bills in Pennsylvania never get a committee hearing. When Pennsylvania legislative committees do grant hearings, they are often lengthy, sometimes lasting all day.

In the meantime, on August 18, a Pennsylvania state trial court removed the Green Party nominee for Philadelphia Commissioner from the November 3 ballot, using the same judicial process for checking signatures that had been declared unconstitutional in federal court on July 24. The candidate, Glenn C. Davis, is appealing that decision.

### **U.S. DISTRICT COURT UPHOLDS ARKANSAS MARCH 3 DEADLINE**

On August 25, U.S. District Court Judge James Moody upheld the March 3 independent candidate petition deadline that was in effect in Arkansas in 2014. *Moore v Martin*, 4:14cv-65. The same deadline will be in effect in 2018 also (if the law is not changed), but for 2016 the independent deadline is November 2015.

The decision says early deadlines are only unconstitutional when combined with a high number of signatures. The plaintiff needed 10,000 signatures. The decision is wrong, because in *Anderson v Celebrezze* the Supreme Court said early deadlines are unconstitutional regardless of the number of signatures. In *Anderson*, Ohio had a March 20 deadline combined with 5,000 signatures, which was only one-tenth of 1% of the number of voters. Moore will ask for reconsideration.

## PRESIDENTIAL DEBATES

On August 28, Level the Playing Field filed a new Complaint in U.S. District Court concerning general election presidential debates, and dismissed its original June 22 Complaint. The new case, like the old one, is *Level the Playing Field v Federal Election Commission*, in U.S. District Court in Washington, D.C. The original case complained that the FEC had ignored Level the Playing Field's 2014 request for a new rule on general election presidential debates. But, the FEC acted on that request on July 16, denying it by a vote of 4-2.

The new Complaint alleges that the existing rule on presidential debates violates federal campaign law. The co-plaintiffs with Level the Playing Field are Peter Ackerman, the Libertarian Party, and the Green Party.

On July 31, Ohio Governor John Kasich, who is seeking the Republican nomination, was speaking in Keene, New Hampshire. Darryl Perry, who is seeking the Libertarian nomination, was able to ask Kasich if Kasich felt more than two presidential candidates should be included in the general election debates. Kasich said, "I don't know; I haven't thought about it." Then he asked Perry who the third candidate might be. Perry mentioned the Green and Libertarian Parties. Kasich then started to say that when he was running for reelection for Governor of Ohio in 2014, and he had a Green Party opponent, he had had some discussions about including the Green in the general election gubernatorial debates. But then his sentence trailed off, and he said, "I don't know. I'll see how serious they are." Actually in 2014, the Democratic nominee for Ohio Governor had agreed to let the Green Party nominee, Anita Rios, in the debate, but Kasich had said "no."

Anyone who lives in Iowa or New Hampshire may speak to major party presidential candidates during this season. If you live there, please try to ask other candidates the question.

## PRESIDENTIAL PRIMARIES

On July 28, the South Carolina Republican Party said the deadline for candidates to file in the party's presidential primary will be September 30, and the filing fee is \$40,000.

South Carolina law lets parties set their own presidential primary filing deadlines, even though the government pays for them. However, the deadline must not be later than 90 days before the primary. The Republican deadline is 143 days before the February 20, 2016 primary, which seems excessively early.

The \$40,000 fee is almost certainly unconstitutional, because there is no alternate route for candidates who can't afford it. Half of the fee goes to the government and the Republican Party keeps the other half.

Democrats still haven't set their filing deadline. The Democrats do not keep any of the filing fee, and are willing to reimburse candidates they approve of \$10,000 toward the government's share (the government share is \$20,000).

A 3-judge district court in Vermont ruled in *Wright v Thomas* in 1976 that the U.S. Supreme Court precedents against mandatory filing fees for candidates who can't afford them do apply to presidential primaries. That filing fee was only \$1,000. The decision is not reported and was case 76-31, decided on February 21, 1976.

The August 1, 2015 *BAN* chart on filing deadlines for presidential primaries was printed before the South Carolina news was known, so the South Carolina deadlines in that issue are in error.

In other news about presidential primaries, the Washington Secretary of State has set a May 24 primary date; the North Carolina legislature still hasn't settled that state's primary date; and Kentucky Republicans will use a caucus instead of a primary to choose delegates to the national convention.

## SOUTH DAKOTA ACCIDENTALLY REPEALED DEADLINE

*BAN* learned recently that in 2012, the South Dakota legislature accidentally repealed the independent presidential candidate petition deadline that had been passed in 2001 to conform to a court ruling. In 2000 a U.S. District Court had ruled in *Nader v Hazeltine*, 110 F.Supp.2d 1201, that June is too early. The deadline, for presidential independents only, was then set in August. But when the legislature passed a bill in 2012 moving the non-presidential independent deadline from June to April, it inadvertently erased the presidential deadline. Therefore presidential candidates now have an April deadline, which is obviously unconstitutional, since even June had been held to be too early.

## CHART ON PAGE 3

The chart on page three lists 34 jurisdictions which have interpreted their "sore loser" law not to apply to presidential primaries.

For the other 17 states, below the chart is an explanation of why sore loser laws can't be enforced in presidential elections in them as well, with the exception of Texas and South Dakota.

Michigan's sore loser law does not pertain to independent candidates for any office. It is true that in 2012, Michigan enforced its sore loser law against Gary Johnson, who had appeared on the Republican presidential primary ballot and then was barred from being the Libertarian nominee. Michigan argued that Johnson was free to petition as an independent.

Ohio has had a sore loser since before the 1970's, but Ohio let Lyndon LaRouche on the ballot as an independent in 1984, 1988, and 1992, even though he had also been in the Democratic presidential primary in Ohio in all three years.

## HISTORICAL PRECEDENTS THAT SORE LOSER LAWS DON'T APPLY TO PRESIDENTIAL PRIMARIES

State	Candidate	Year	Pres. Pri.	Vote	November Label	Nov Vote
Ala.	Lyndon LaRouche	1992	Dem.	6,542	independent	641
Ark.	Lyndon LaRouche	1992	Dem.	14,656	Justice, Integrity, Agriculture	830
Cal.	Roseanne Barr	2012	Green	7,399	Peace and Freedom	53,824
Ct.	John Anderson	1980	Rep.	40,354	Anderson Coalition	171,807
D.C.	John Anderson	1980	Rep.	2,025	independent	16,131
Fla.	Gary Johnson	2012	Rep.	1,195	Libertarian	44,726
Ga.	Gary Johnson	2012	Rep.	740	Libertarian	45,324
Ida	John Anderson	1980	Rep.	13,130	independent	27,058
Ill.	John Anderson	1980	Rep.	415,193	independent	346,754
Ind.	John Anderson	1980	Rep.	56,342	independent	111,639
Ky.	John Anderson	1980	Rep.	4,791	Anderson Coalition	31,127
La.	Ron Paul	2008	Rep.	8,590	Louisiana Taxpayers	9,368
Md.	John Anderson	1980	Rep.	16,244	independent	119,537
Ma.	John Anderson	1980	Rep.	122,987	Anderson Coalition	382,539
Mich.	John Anderson	1980	Rep.	48,947	Anderson Coalition	275,223
Minn	Lyndon LaRouche	1992	Dem.	532	Independents Economic Recovery	622
Miss	Gary Johnson	2012	Rep.	392	Libertarian	6,676
Mo.	Gary Johnson	2012	Rep.	536	Libertarian	43,151
Mt..	Ron Paul	2008	Rep.	20,606	Constitution	10,638
Neb.	John Anderson	1980	Rep.	11,879	independent	44,854
N.H.	Gary Johnson	2012	Rep.	181	Libertarian	8,212
N.J.	Lyndon LaRouche	1992	Dem.	7,799	Six Million Jobs	2,095
N.M.	John Anderson	1980	Rep.	7,171	independent	29,459
N.C.	John Anderson	1980	Rep.	8,542	Independent Party	52,800
N.D.	Lyndon LaRouche	1992	Dem.	7,003	independent	642
Ohio	Lyndon LaRouche	1992	Dem.	17,412	(no label)	2,772
Ore.	John Anderson	1980	Rep.	32,118	independent	112,389
Pa.	John Anderson	1980	Rep.	26,890	Anderson Coalition	292,921
R.I.	Lyndon LaRouche	1992	Dem.	300	independent	494
S.C.	Gary Johnson	2012	Rep.	211	Libertarian	16,321
Tenn.	Gary Johnson	2012	Rep.	572	independent	18,623
Vt.	Herb Lewin	1988	Lib Union	66	Peace and Freedom	164
Wa.	Lyndon LaRouche	1992	Dem.	1,060	independent	855
Wis.	Lyndon LaRouche	1992	Dem.	3,120	Indp. for Economic Recovery	633

In the 34 jurisdictions listed above, the sore loser laws have been construed not to apply to presidential primaries. The chart above lists the candidates who set the most recent precedent, except in the case of Michigan, which is discussed on page two.

Among the other 17 states, there no presidential primaries in 2016 in Alaska, Colorado, Hawaii, Iowa, Kansas, Maine, Nevada, Utah, and Wyoming (9 states).

Among the other 8 states, there is no sore loser law in Arizona, Delaware, New York, Oklahoma, and West Virginia. As to Virginia, the sore loser law says "If the candidate is defeated in the primary, his name is not to be printed on the ballots for that office in the succeeding general election (24.2-520)." This does not pertain to presidential primaries, because if it did, Michael Dukakis could not have had his name on the Virginia November 1988 ballot, because he placed third in the Virginia Democratic presidential primary ballot in 1988. This leaves only South Dakota and Texas as states in which the sore loser law does apply to presidential primaries.

**2015 PARTY REVENUE FROM STATE INCOME TAX “CHECK-OFF”**

	Demo.	Rep.	Lib't.	Constitn	Green	Wk Fam	Indp. Party	other
Alabama	5,885	7,097	--	--	--	--	--	--
Arizona	8,137	4,096	444	--	220	--	--	174
Iowa	38,399	30,959	--	--	--	--	--	--
Kentucky	71,866	78,412	--	--	--	--	--	--
Minn.	34,006	16,681	931	--	--	--	3,400	734
N. Mex.	4,402	2,216	368	0	6	--	--	230
Ohio	46,982	46,982	--	--	--	--	--	--
Oregon	15,754	4,305	882	219	1,551	1,353	1,168	459
Rhode I.	13,821	5,569	--	--	--	--	--	2,082
Utah	32,628	46,300	4,638	2,236	--	--	--	2,652
Virginia	8,343	3,779	--	--	--	--	--	--
<b>TOTAL</b>	<b>280,223</b>	<b>246,396</b>	<b>7,263</b>	<b>2,455</b>	<b>1,777</b>	<b>1,353</b>	<b>4,568</b>	<b>6,331</b>

The states above let income-tax payers send a contribution to the party of their choice. The chart above lists the amounts received by each party. Ohio does not let taxpayers decide which party to help, and only lets taxpayers help parties that polled 20% in the last election. The other states let the taxpayer decide which party to help. Entries in the “Other” column are: Minnesota, Grassroots; New Mexico, Independent American; Oregon \$1,268 Working Families and \$504 Progressive; Rhode Island, Moderate. “Indp. Party” means Independent Party in Oregon and Independence Party in Minnesota.

**TOTALS FOR THE ENTIRE NATION THROUGH HISTORY, 2000 - 2014**

YEAR	Democrat	Republican	Green	Lib't.	Ref/AE	Constit.	Other
2000	941,463	822,671	31,864	13,024	5,054	19,209	71,824
2001	680,608	611,065	12,184	8,173	755	2,295	46,232
2002	928,716	892,438	84,120	7,289	749	2,886	97,559
2003	1,181,312	1,126,585	20,665	7,859	46	51	9,975
2004	828,136	786,190	16,309	8,446	324	1,409	8,822
2005	750,461	714,238	18,100	5,546	34	2,442	25,887
2006	915,945	806,193	50,434	7,282	--	5,847	45,355
2007	1,050,593	850,580	15,716	5,839	--	3,503	15,627
2008	1,520,746	1,127,478	8,324	5,034	--	5,938	5,219
2009	978,325	718,165	7,642	45,889	--	4,520	4,970
2010	830,562	616,027	5,257	11,115	--	3,617	5,630
2011	850,490	603,022	6,560	53,133	--	4,367	11,766
2012	1,883,507	1,245,403	7,862	101,253	--	2,458	8,733
2013	740,897	545,527	4,041	22,438	11,516	2,816	21,430
2014	369,153	324,042	1,836	7,418	817	3,041	3,175
2015	280,223	246,396	1,777	7,263	174	2,455	12,078

### 2016 PETITIONING FOR PRESIDENT

STATE	REQUIREMENTS		SIGNATURES COLLECTED			THREE TYPES OF DEADLINES		
	FULL PARTY	CAND	LIB'T	GREEN	CONSTI	Full Party	Pres Party	Pres. Indp.
Ala.	35,413	5,000	0	0	0	Mar. 1	Mar. 1	Aug. 18
Alaska	(est) (reg) 8,400	#3,005	already on	*400	finished	May 2	Aug. 10	Aug. 10
Ariz.	20,119	(est) #36,000	already on	already on	0	March 3	Sep. 9	Sep. 9
Ark.	10,000	#1,000	already on	*already on	*already on	Sep 2 '15	Aug. 1	Aug. 1
Calif.	(es) (reg) 61,000	178,039	already on	already on	355	Jan. 4	July 11	Aug. 12
Colo.	(reg) 1,000	#pay \$1,000	already on	already on	already on	Jan. 8	Aug. 10	Aug. 10
Conn.	no procedure	#7,500	can't start	can't start	can't start	--	Aug. 10	Aug. 10
Del.	(est.) (reg) 650	(est.) #6,500	already on	already on	366	Aug. 20	Aug. 20	July 15
D.C.	no procedure	(est.) #4,600	can't start	already on	can't start	--	Aug. 10	Aug. 10
Florida	be organized	119,316	already on	already on	already on	April 15	Sep. 1	July 15
Georgia	51,912	#49,336	already on	can't start	can't start	July 12	July 12	July 12
Hawaii	707	#4,347	already on	already on	*100	Feb. 24	Aug. 10	Aug. 10
Idaho	13,047	1,000	already on	can't start	already on	Aug. 30	Aug. 30	Aug. 24
Illinois	no procedure	#25,000	can't start	can't start	can't start	--	June 27	June 27
Indiana	no procedure	#26,654	already on	0	0	--	June 30	June 30
Iowa	no procedure	#1,500	0	*1,000	0	--	Aug. 19	Aug. 19
Kansas	16,960	5,000	already on	0	0	June 1	June 1	Aug. 1
Ky.	no procedure	#5,000	can't start	can't start	can't start	--	Sep. 9	Sep. 9
La.	(reg) 1,000	#pay \$500	already on	already on	185	May 21	Aug. 19	Aug. 19
Maine	(reg) 5,000	#4,000	*2,000	already on	0	Dec 1 2015	Aug. 1	Aug. 1
Md.	10,000	(est.) 38,000	already on	already on	0	Aug. 1	Aug. 1	Aug. 1
Mass.	(est) (reg) 45,000	#10,000	10,920	already on	96	Feb. 2	Aug. 2	Aug. 2
Mich.	31,519	30,000	already on	already on	already on	July 21	July 21	July 21
Minn.	98,770	#2,000	0	0	0	May 2	Aug. 23	Aug. 23
Miss.	be organized	1,000	already on	already on	already on	Feb. 1	Sep. 9	Sep. 9
Mo.	10,000	10,000	already on	500	already on	July 25	July 25	July 25
Mont.	5,000	#5,000	already on	0	0	Mar. 17	Aug. 17	Aug. 17
Nebr.	5,395	2,500	already on	*300	0	Aug. 1	Aug. 1	Aug. 1
Nev.	5,431	5,431	already on	*500	already on	June 3	June 3	July 8
N. Hamp.	14,556	#3,000	can't start	can't start	can't start	Aug. 10	Aug. 10	Aug. 10
N.J.	no procedure	#800	0	0	0	--	Aug. 1	Aug. 1
N. M.	2,565	15,388	already on	already on	already on	June 30	June 30	June 30
N.Y.	no procedure	#15,000	can't start	already on	can't start	--	Aug. 23	Aug. 23
No. Car.	89,366	89,366	already on	5,442	0	May 17	May 17	June 9
No. Dak.	7,000	#4,000	already on	0	4,000	Apr. 16	Sep. 5	Sep. 5
Ohio	30,560	5,000	in court	already on	0	July 6	July 6	Aug. 10
Okla.	*24,745	40,047	*1,800	*400	0	March 1	July 15	July 15
Oregon	22,046	17,893	already on	already on	already on	Aug. 30	Aug. 30	Aug. 30
Penn.	no procedure	(es) #25,000	can't start	can't start	can't start	--	Aug. 1	Aug. 1
R.I.	16,203	#1,000	0	0	0	Aug. 1	Sep. 9	Sep. 9
So. Car.	10,000	10,000	already on	already on	already on	May 8	May 8	July 15
So. Dak.	6,936	*2,775	*800	0	*2,500	*Mar. 29	*Mar. 29	*April 26
Tenn.	33,816	275	0	in court	in court	Aug. 10	Aug. 10	Aug. 18
Texas	47,086	79,939	already on	already on	can't start	May 16	May 16	May 9
Utah	2,000	#1,000	already on	200	already on	Feb. 15	Aug. 15	Aug. 15
Vermont	be organized	#1,000	already on	0	0	Dec 31 '15	Aug. 1	Aug. 1
Virginia	no procedure	#5,000	can't start	can't start	can't start	--	Aug. 26	Aug. 26
Wash.	no procedure	#1,000	can't start	can't start	can't start	--	July 23	July 23
West Va.	no procedure	#6,705	already on	already on	*5,500	--	Aug. 1	Aug. 1
Wisc.	10,000	#2,000	already on	already on	already on	April 1	Aug. 2	Aug. 2
Wyo.	3,302	3,302	already on	can't start	already on	June 1	June 1	Aug. 30
STATES ON			31	*22	*14			

#partisan label is permitted on the ballot (other than "independent"). "CONSTI" = Constitution Party. The number of signatures for new parties is in court in Tennessee; for independents, in New Mexico. \* = change since July 1, 2015 issue.

### THREE MINOR PARTIES CHOOSE PRESIDENTIAL NOMINEES

On July 31, the Prohibition Party chose James Hedges for President and Bill Bayes for Vice-President. The nomination was made in a two-hour conference call. All dues-paying members of the party were permitted to participate. Hedges lives in Big Cove Tannery, Pennsylvania, and has been the publisher of the party's newsletter for many years. Bayes lives in Hattiesburg, Mississippi.

On July 26, the executive board of the American Freedom Party chose Robert Whitaker for President. There is no Vice-Presidential nominee yet. Whitaker lives in Columbia, South Carolina.

On August 15, the Veterans Party, which was formed in December 2013, chose Chris Keniston of Texas for President, and Deacon Taylor for Vice-President. The meeting was in Keystone, South Dakota, and included 20 delegates who were there in person, and 35 others who were on a video conference.

### GREENS SET LATE CONVENTION

The Green Party presidential convention will be August 4-7 in Houston, Texas. This is the latest date the party has ever chosen for its presidential convention, and is the first time the party has met later than the two major party conventions. The late date gives the party's presidential candidates more time to raise primary season matching funds.

### FORMER CONGRESSMAN SEEMS LIKELY TO SEEK CONSTITUTION NOMINATION

Several news sources have reported that former Indiana congressman John Hostettler intends to seek the Constitution Party presidential nomination. He represented southwest Indiana 1994-2006 as a Republican. In 2008 he had endorsed the Constitution Party's presidential nominee, Chuck Baldwin.

### CANADA HOLDS 4-PARTY DEBATE

Canada will have a parliamentary election October 19. On August 6, Maclean's Magazine sponsored a debate. The leaders of the Conservative, Liberal, New Democratic, and Green Parties participated. They are the only parties who will run in a majority of the nation's districts.

There are technically no members of Parliament just now because the session is over. However, on August 16, an individual who was a member of Parliament just before it dissolved said he is leaving the New Democratic Party and becoming a Green, so in a sense one can say that the Green Party now has three members of Parliament. The new member is Jose Nunez-Melo, of Quebec.

A poll released on August 15 showed that the New Democratic Party is leading. The New Democratic Party has never named the Prime Minister of Canada. If it does form the next Canadian government, that will be more evidence that new parties can rise to power, even in systems without proportional representation, if the ballot access laws and the debate rules are fair and equal.

### OREGON INDEPENDENT PARTY QUALIFIES FOR ITS OWN PRIMARY

The Independent Party of Oregon, which has been a qualified party since 2007, now has enough registered members to qualify for a government-administered primary. Oregon law says any party with 5% of the registration qualifies. The Independent Party will be the first Oregon party, other than the Republican and Democratic Parties, to have a government-administered primary since 1914, when the Progressive Party had one.

Ironically, the Independent Party now has less ability to nominate the nominee of another party. No one can get on a primary ballot who is not a member of that party; but convention parties can nominate anyone they wish.

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