

# *Ballot Access Initiative for Ohio*

*July 2014*

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First and foremost, it is incumbent on the voters in Ohio that they understand how Ohio currently determines party membership and the constraints that this places on voters as well as candidates for political office. Without this understanding, there will be no motivation for change.

First of all, unlike some other states, one does not register in Ohio with the Board of Elections or the Secretary of State as a member of a political party. When one registers to vote in Ohio there is no place to register for party membership or affiliation. I have no problem with this, especially as it relates later to my recommendation for an initiative to change the ballot access procedures in Ohio.

While a person can affiliate with any political party based upon that party's bylaws for membership, joining or affiliating with a party does not currently make one a recognized member of that party by the state. The only way a voter becomes a formal member of a political party in Ohio is by voting in that party's primary elections. When a person goes to the polls to do his or her civic duty (as we older persons were taught in school) and vote in the primary elections, the person states to the election officials in which party primary he or she is voting. That registers that person as a member of that party for at least the next two years. (Note the radio advertisements broadcast in Ohio during the primary election season trying to make everyone feel guilty about NOT voting in the primaries and trying to convince people [falsely in my estimation] that to not vote negates "your freedom of choice." Read on to learn how voting in the primaries is what negates your right to choose.)

Different political parties in Ohio, particularly minor parties, have different procedures for formally aligning with that party, but those procedures are up to

the party. However, while filling out a membership application, for instance, may make your interest known to that party's leadership, NOTE that it DOES NOT make you an official member of that party with the Ohio Secretary of State's Office. That can only be done only by "pulling" a ballot for that party during the Ohio State primary elections. IF the party has no candidates running in the elections in that particular voting precinct or on a statewide ballot, then one cannot pull a primary ballot for that party and thus is unable to switch parties.

Currently, if a person votes in a political party's primary, as noted, they are then considered by the Secretary of State's Office to be a member of that party. As such, for two-years following that vote, the voter cannot sign a petition of someone running as a candidate in a different party. Thus, if a political party candidate is running for office, it requires that he or she obtain the required number of VALID signatures of registered voters who did NOT vote in another party's primary within the past two years. (Too often, other than teenagers who recently turned 18 and who were not eligible to vote during the previous primary election, the voters who are eligible to sign that candidate's petition because they did not vote in previous primaries are those who are generally politically unmotivated and disinterested in participating in the political process at any level.)

The Constitution, Libertarian, Green, and Socialist Parties are currently the only recognized minor parties in Ohio by the Secretary of State's Office although Senate Bill 193 (SB 193) will eventually kill all third parties if allowed by the courts to stand. (Currently the ACLU is contesting this legislation passed by the Republicans at the last minute last year in a vain attempt to negate all third parties from having ballot access beginning in 2014. Thanks to the ACLU, the courts issued an injunction against SB 193 for 2014, but it still remains up in the air whether or not it will stand for 2015 and beyond. Hopefully not, but... We thank the ACLU for their continuing efforts to fight this onerous legislation on behalf of all citizens in Ohio although they are currently officially acting on behalf of the Constitution and Green Parties.

Being a recognized minor party holds a tremendous advantage in that for most elective offices, minor party candidates need only 25 valid signatures of registered voters who have not voted in another party's primary in the last two years (compared to 50 for a major party candidate); for many local and regional offices it is only 5 for a minor party candidate (compared to 10 for a major party candidate). Candidates affiliated with non-recognized parties (such as all minor parties will eventually become if SB 193 is allowed to stand including those currently recognized) must run as independent candidates unless his or her affiliated party is gathering the sufficient number of signatures to gain official recognition as a political party. Independent candidates must obtain the number of signatures equal to at least 1% of the vote in the political district for which office they are seeking, which for Congress, for instance, can be in the thousands of signatures (see more below).

However, for everyone that did their civic duty of voting in a primary election, either as conscientious citizens and/or to try to get the best Republican or Democratic candidate on the ballot, they are now unable to sign a nominating petition of another party's candidate for a period of two years and then only by NOT VOTING in any party's primary, or voting only in the primary of the political party they are certain to endorse in the future – **IF** there is a candidate running in that primary. A candidate for office can change his or her party affiliation by filing a valid election petition for another party and thereby run as a different party's candidate but the VOTER CANNOT change parties via any kind of notification to the Board of Elections or other state entity. (Constitution Party candidates running for office in 2014 who had run for the same office as a major party candidate in the past stated that it was much-much harder to obtain 25 signatures of voters who had not voted in another party's primary in the past two years than it was obtain the needed signatures as a major party candidate when so many of their friends were already affiliated with that party but were now unable to sign the nominating petition of the Constitution Party candidate even though they intrinsically supported the candidate.)

In Ohio, if a person supports a minor political party that does not have any candidates on the primary ballot in that person's political subdivision, the only way the voter can sign a minor party candidate's nominating petition two years hence is by **NOT VOTING** in any other party's upcoming primary elections – major or minor. If there are issues for which one wishes to vote, the voter can obtain an "Issues Only" ballot but if one pulls a party ballot, even to vote for only one candidate, then that person is DENIED the ability to sign another party candidate's petition for the next two years.

While NOT voting in any party's primary election will allow one to sign a nominating petition, or gather signatures, for a candidate in another party after the two years from the last time that person voted in a party's primary (which should be up shortly after the primary election in which that voter did NOT vote, but not in time to sign or help gather signatures for another party's candidate petition for the current primary election), most people who have subsequently checked with the Board of Elections (BoE) after NOT voting in the last primary or last few primary elections have found that the BoE still considers them to be members of the party in whose primary they last voted. (It has been reported that one way a person may be able to remove his name from any party affiliation at the BoE and that is to go to the BoE and have one's name removed as a registered voter. Later, return to the BoE and register anew as a voter which, as noted above, does not include registering an affiliation with any party.) (In addition, if I understand the law correctly, by NOT voting in any primary elections, the voter is free to sign multiple candidate petitions in different parties as long as he does not sign two or more times for the same office in the same year.)

So, what does it mean to you if Senate Bill 193 (SB 193) is allowed to stand for the 2016 elections? For many, it won't mean a thing because they will go through the motions of voting as they always have without any care or understanding as to how their rights and privileges in voting have been taken away from them. But for all who care and want to know, here is what SB 193 means to you:

1. All currently recognized minor parties will be declared null and void (with the possible exception of the Green Party who does have a candidate for Governor on the ballot and IF they receive 2% of the vote for Governor – a real possibility given no other minor party currently has a candidate on the ballot for Governor / Lt. Gov. – then they will have ballot access for four years).
2. After the general election this fall, the only way a minor party will be able to regain recognition as a political party by the Secretary of State's Office will be by obtaining the valid signatures of qualified electors equal to at least one per cent (1%) of the votes cast in the 2014 gubernatorial race, or approximately 40,000 signatures, based upon past gubernatorial elections, beginning 12 months prior to the 2016 general election with the petitions submitted to the Secretary of State no later than 125 days before the general election, or around July 4<sup>th</sup>.
3. Also, as I understand it currently, nominating petition solicitors/signature gatherers for another party or political candidate must be in-state registered voters who did not vote in another party's primary within the last 2 years (i.e. the 2014 primary elections). Minor party candidates in Ohio, except for Presidential/ Vice Presidential candidates – if I am not mistaken, are prohibited from using non-Ohio residents as solicitors.
4. Finally, it should be noted that historically, petitioners need to collect a minimum of 30% more signatures than the required minimum because at least 25% of the signatures will typically be declared invalid for one reason or another. So, for 2016, to obtain 40,000 valid signatures will require that each minor party collect at least  $40,000 \times 1.3 = 52,000$  signatures from those who are registered voters. Of course, a voter may sign only one party petition.

In accordance with SB 193, any minor party that is able to collect the necessary 52,000 signatures will then need to poll 3% of the votes cast in the 2016 presidential race, or receive approximately 162,000 votes, (based upon the 2012 Presidential voting numbers) for them to remain a State recognized minor political party for another four years. None of the minor parties will be able to

meet this threshold based upon historical figures, as those Republican legislators knew full well when drafting the legislation. The Libertarians did get just over 2% of the vote in the 2010 gubernatorial race and the Green Party got 1.6%. In 2012 no minor party candidate received even 1% - Libertarian Gary Johnson received 0.89% and no one else was close to that number. (Remember the mantra used by the major parties – “a vote for the minor party candidate is a vote for the guy you don’t want the most,” i.e. “a vote for Virgil Goode, the Constitution Party presidential candidate in 2012, is a vote for Obama.”

It must be further noted that to remain ballot qualified under SB 193, minor parties must run candidates – and succeed - in the two most expensive races in the state – the race for Governor or alternately the race for President (each two-years apart from the other). To effectively compete in those races, even to get 3% of the vote, would likely require more than a hundred thousand dollars, perhaps several hundred thousand dollars, in advertising and other campaign promotional activities. Remember, the two major parties will be spending millions of dollars in promotional campaigns for each of those two offices. In addition, they will be campaigning and soliciting campaign funds even before the primary elections take place while the minor party candidate will need to wait until August before he or she can truly begin their campaign, which then requires even a higher level of funding to successfully compete in those expensive races. The time and financial effort it takes to garner even 3% of the vote in either of those two races significantly takes away from the minor party’s ability to successfully run candidates at the local and regional levels, those races where they can most effectively build the party.

Regarding SB 193 for 2018 (and beyond), if any minor party candidate for President did receive 3% or more of the vote, then that party would remain ballot qualified for 4 years. Any minor Party that did not retain party status in 2016, in order to be recertified as a ballot eligible party in 2018 will have to gather 1% of approximately 5,500,000 votes cast (based upon the 2012 elections) =  $55,000 \times 1.3 = 71,500$  signatures of registered voters. And that is before they start campaigning.

Even if a party obtains the required number of signatures and submits its party formation signatures, the election law goes on to state, “Any qualified elector may file a written protest against the petition with the secretary of state....” (You think the duopoly [Republicans and Democrats] is not going to take full advantage of this statement, especially if they feel threatened by the petitioning party!? Just ask Charlie Earl and the Libertarians!)

Ohio Election Rules state that “at least ninety-five (95) days before the general election, the secretary of state shall determine whether the party formation petition is sufficient and shall notify the designated committee.” (Do you believe that any minor party will receive notification any earlier than 95 days – which is in August – before the general election at which point candidates must still submit their own petitions for certification! And what candidate is going to start spending time and money campaigning before they know if they will be able to be on the ballot for the general election.)

It goes on to state, “If a party formation petition is insufficient, no candidate shall appear on the ballot in the general election as that political party’s nominee, regardless of whether any candidate’s nominating petition is sufficient.” What this effectively means is that potential candidates for parties being formed or reformed or reconstituted cannot confidently begin campaigning for office at any level until 3 months before the election (until after the party receives notice from the Secretary of State’s Office that they have met the qualifications to be a recognized political party for the upcoming election).

This also means that they are prevented from running in the primary elections, which would allow them the opportunity to gain name recognition. In addition, Ohio Election Laws currently state they must run in the Primary Elections in order to be on the ballot in the General Election. (I have been unable to reconcile this requirement with the SB 193 rules; I asked a legal representative of the ACLU if he could explain it and all he could say is that he probably reads SB 193 once per day

and he cannot reconcile it at this time only to note that SB 193 is a horrible piece of legislation regarding such issues.)

By the way, to run as an independent candidate, which includes anyone that is not part of an officially recognized political party by the Ohio Secretary of State, one must typically gather signatures of registered voters equal to at least 1% of the voters for that office in the last election. (Whether any Ohio registered voter can sign an independent candidate's petition or only those who did not vote in a party's primary within the last two years is currently indeterminate and needs further research although it is more likely that any registered voter can sign a petition for an independent candidate.)

Something else everyone needs to consider. Primaries not only restrict access to the ballot by third parties and independents, they also fund the election process for the two major parties at taxpayer expense! Why? Should not every party be responsible at its own expense for selecting its candidates and then meeting the necessary qualifications for placing those candidates on the general ballot in the fall? Do you understand how ensconced into the state constitution and election laws the two-party "duopoly" of Republicans and Democrats is? If you do not, you likely have not read the Ohio Constitution or you are not adequately thinking this through. Read the Ohio Constitution and see how many rules, regulations, and restrictions there are dealing with primary elections. In addition, check out the Ohio Revised Code on Election Laws. No wonder people say a third party cannot win. Under current laws contained in the Ohio Constitution along with all the other rules and regulations regarding Primary Elections, they are absolutely correct.

The voting public, sold a bill of goods by the duopoly – the Republicans and Democrats – fails to understand that the best form of government would be derived by having choices in voting that most closely aligns with one's political and other life choices (i.e. one's world view it is now called), such that one does not choose the "lesser of the two evils between the two duopoly candidates" but his vote becomes a positive statement supporting his personal political

viewpoint. Yes, sometimes that may cause the “worst” candidate to win an election. How did that other side of the argument work out in the last election!? The worst candidate (arguably) won the Presidential election, while all those "TEA Party conservatives" got nothing in terms of political positions within the Republican Party or the political arena (Congress, Legislatures, etc.). Worst, they gave up a golden opportunity to stand for principle over politics but in the end they all caved and became of none effect.

Unfortunately, because of this false philosophy implying that all elections are really only about two candidates, the general voting public has fallen into the trap, set by the duopoly, of only being willing to support one of two major party candidates. We must get the attention of the voting public and educate them to embrace the real truth and that is that choice is as valuable to good government as it is to the marketplace for goods and services. According to the current political way of thinking, the way to insure we would have the best cars on the road would be to consolidate all car companies into two major competing car companies, each with a single car line as dictated by the company executives and officials, with both companies operating through laws and procedures passed by the owners of the two major car companies. Of course, if this were to ever come to pass, we would have terrible cars that would operate poorly and be maintenance nightmares, and be anything but what we really wanted in our own personal automobile while the company executives would live lives of luxury all the while claiming what a great job they are doing for the general public. Why can't we see this is what has happened in politics by allowing our political choices to be constrained by law to basically only two choices controlled by those in charge of each party!

Here is a baseline question that needs to be answered. IF competition is supposedly good for business, why is it bad for political office? Why is fair and equal competition at the ballot box undesirable?

What we need are uniform ballot access rules/laws that are reasonable and apply to all parties as well as to independents. Rules that allow a new Party to build

from the ground up, county by county, and precinct by precinct, rather than be required to maintain ballot access by running candidates only in the most expensive and difficult races for political office (Governor and President) wherein they must then receive a virtually unachievable (for an emerging minor party) minimum percentage of the vote to remain ballot qualified. We need rules that allow “the little guy” to compete and have real opportunity to win, not just the very well to do or those who curry favor with the wealthy or “political big wigs.”

While details of said proposal are still being worked, below is the essence of a fair and equitable ballot access that would apply equally to all candidates, regardless of political affiliation.

First, political parties should be permitted to choose their candidates in accordance with their party rules free of state mandates but at their own expense! To be recognized as a political party by the Secretary of State (SoS), any group wishing to be so recognized would need to submit a set of Bylaws to the SoS detailing how their candidates for office are to be selected by the party. Anyone failing to meet these qualifications would then be ineligible to be a candidate representing that party. Publically run primary elections should be done away with, along with the costs now borne by the taxpayer. While it may be proper to place other requirements such as submitting a list of officers on groups wishing to form a recognized political party, whatever those requirements are, they must be fair, reasonable, and equitable applying equally to ALL political parties, even the two current major parties. They should be so constructed as to encourage competition, not limit it to a select few.

To gain ballot access in the general election, candidates for political office, whether associated with a party or running as an independent, would need to secure the same number of valid signatures of Ohio registered voters within the political subdivision of the office they are seeking who have not signed another candidate’s petition for the same office. My initial suggestions (subject to debate) are:

- For elective offices below the county level – 10

- For elective offices at the county level or for State Representative or State Senator – 50
- For U.S. Congress – 100
- For President of the U.S., U.S. Senate, or Statewide offices – 2,000 with 100 signatures from at least 10 different counties.

Signatures could be any registered voter within that political subdivision for which the candidate is seeking office as long as the voter did not sign a petition for another candidate seeking the same office. Obviously, the signatures would have to be submitted to the proper Board of Elections by some specified uniform date such that the BoE has a reasonable time period to certify the signatures and print the ballots.

Yes, much work still needs to be done to be certain the proposal is properly constructed and all legitimate concerns regarding its workings have been addressed. However, I believe this does provide the basis for a ballot initiative to provide reasonable and proper ballot access rules for Ohio.

I am recommending that this be a change (Amendment) to the Ohio Constitution voiding all primary voting as well as all laws and rules that conflict with this proposed Amendment (which will take time to research and incorporate into a complete petition). I am further recommending that this be instituted as a state ballot initiative thereby voted upon by the voting public. This is an initiative that can and should be supported by every freedom loving political party and person in Ohio from the Socialist Party to the Constitution Party, from the TEA Party to the ACLU, and every independent. In reality, it should also be embraced by the Republicans and Democrats as it also gives them better control of the candidates they wish to run for political office. This a win-win-win proposition for all.

LET FREEDOM RING!

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*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety. Ben Franklin*