

ANALYSIS OF OHIO SB-193 FOR 2015 and BEYOND
AS NOW UPHELD BY THE COURTS
Otherwise Known As
The Ohio Voter Suppression Act of 2013

As I have noted previously, this new law certainly reminds me of that which we used to ridicule growing up regarding Communist-block countries' elections. In most Communist countries one was required to vote (to make it look to the outside world that they were legitimately holding elections for office) even though there was only one candidate on the ballot, the person chosen by the Communist Party Central Committee as the only candidate permitted on the ballot. No write-in's allowed. Even if there was another name on the ballot, anyone voting for the wrong candidate was subject to prosecution and persecution.

SB-193 obviates what it describes as "a group of voters who have previously been recognized as a political party by court order or a directive issued by the Secretary of State...." (underline mine) Thus, all Parties other than the Republicans, Democrats, and Green have now been declared null and void and must re-form in accordance with the new election laws contained in this bill if they wish to be a recognized political party in the state of Ohio and be able to run candidates for any elective office in the State. **Sec. 3517.012(C)(3)** specifically declares that "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." In Indiana (and several other states), for instance, while the Constitution Party is not an officially recognized Party by their Secretary of State, they are still able to run candidates for office and have them listed as Constitution Party candidates on local ballots if they garner the requisite number of signatures to be on the ballot for that election. This option is not available in Ohio in accord with Ohio Election Law.

In my opinion, because no other third Party was on the ballot for Governor in 2014 other than the Green Party candidate, the Greens received 3.3% of the vote, sufficient to remain as a recognized political party in the State for four more years. The Libertarians subsequently fought in the courts to have their candidate for Governor – who was the cause for the hurried passage of SB-193 in the first place – reinstated because of how their candidate was surreptitiously removed from the ballot by the Republicans. However, the Libertarians were subsequently unable to prevail against those in power. The Constitution Party did not have anyone willing or able to run for Governor at this time. Because the Socialist Party, the Libertarians, or we did not have a candidate running for Governor in 2014, all three of us were automatically removed by State Election Laws, including SB-193, from being a recognized minor Party following the 2014 General Elections.

In an interesting aside, some of our Party officers recently contacted the Secretary of State's (SoS) Office, including the Office of Campaign Finance, in order to determine whether or not we needed to continue filing our financial reports as well as submitting changes to our Bylaws, etc., since we were no longer recognized as an official Party. The officers were informed by the SoS that they could not tell us what to do since they had not received any directives on the matter from above. They recommended that in the meantime we continue our filings as before.

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 in that I do not see the need for any person to be forced to align with one political party or another. However, Ohio's current process is even more deleterious than if one were required to register as a member of a certain Party (or as an Independent) but could go to the Board of Elections at any time and change affiliations. As simple as that sounds, Ohio's current process encumbers the voter much more.

While any 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 truly negates your freedom of choice.)

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.

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 under SB-193) must run as independent candidates unless his or her affiliated party gathers 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. (Whether any Ohio registered voter can sign an independent candidate's petition or only those who did not vote in any 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.)

However, for everyone that did their civic duty of voting in a primary election, either as a conscientious citizen and/or to try to get the best Republican or Democratic candidate on the ballot, they are now unable to sign, or help gather signatures for, 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 by voting in the primary of the political party they are certain to endorse in the future – **IF** there is a candidate for that Party running in that primary. Since all minor parties except the Green Party (for now) have been officially eliminated from official recognition by the SoS, no voter can officially be a member or align with any minor Party except the Green.

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 50 signatures needed as a major party candidate when so many of their friends affiliated with the major 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 or gather signatures for another Party candidate's petition for the next two years. In the 2014 election, friends of the Constitution Party candidates who supported their candidacies were unable by Ohio Election Law from helping them gather signatures on their filing petitions since those friends had voted in another Party's previous primary election. Do you now begin to understand how Ohio Election Laws and Rules encumber and restrict Ohio voters' election freedoms?

So, what does it mean to you the voter now that Senate Bill 193 (SB-193) has been allowed to stand for the 2016 elections and beyond? 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 previously recognized minor parties, with exception of the Green Party who had a candidate for Governor on the ballot and received over 2% of the vote in 2014, have been officially eliminated from having access to any ballot for any political office in the State unless they requalify the Party as a recognized political party by the following rules.
2. To gain recognition as a political party in 2016 by the Secretary of State's Office, any minor Party but the Green Party will need to obtain the valid signatures of qualified electors equal to at least one per cent (1%) of the votes cast in the 2014 gubernatorial race, just over 30,000 signatures. (Note that there were 800,000 fewer votes cast in the 2014 gubernatorial race than in the 2010 race. Thus based upon the 2010 election results, the minor party would have to collect over 38,000 signatures.) For the 2018 elections, if any minor Party but the Green Party does not qualify for, or remain qualified in, the 2016 elections, they will then have to gather 1% of the number of votes cast in the 2016 Presidential race. Based upon 2012 election results, that equates to more than 55,000 signatures even though the total votes cast in 2012 was down

from 2008. To remain ballot qualified after the 2016 election, IF a minor Party is able to gather the requisite number of signatures to be able to place their Presidential / Vice Presidential candidates on the ballot, they then must receive at least 3% of the votes cast for President/Vice President in Ohio, or over 165,000 votes, for their Presidential / Vice Presidential candidates (based upon the 2012 elections). (The Green Party remains ballot qualified through the 2018 gubernatorial race but if they do not receive at least 3% of the votes cast for Governor in 2018, they will no longer be an officially recognized political party by the SoS in Ohio.)

Long term it is unlikely that any of the minor parties will be able to meet this threshold based upon historical figures, as those Republican legislators knew full well when drafting SB-193. The Libertarians did get just over 2% of the vote in the 2010 gubernatorial race; while the Green Party did get 3.3% of the vote in 2014 (with no other minor Party candidate on the ballot), they garnered only 1.6% of the vote in 2010. My guess is that the only hope for the Green Party to remain ballot qualified via the 2018 election is that there still is no other minor political party candidate on the ballot in the 2018 race, a real possibility given the rules for ballot access as further explained below. In 2012 no minor party candidate received even 1% of the votes cast; 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.”)

3. A Party seeking ballot access in Ohio cannot begin collecting signatures earlier than 12 months prior to the next general election with the petitions submitted to the Secretary of State no later than 125 days before the general election, or around July 4th.
4. Ohio Election Rules further 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!
5. 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 re-formed or reconstituted cannot confidently begin campaigning for office at any level until 3 months before the election. After all 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.

This also means that that minor Party candidates 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 that candidates seeking election must run in the Primary Elections and submit their nominating petitions by a certain pre-Primary date in order to be on the ballot in the General Election. However, as I also understand it, candidates for Parties that have not received official recognition by the SoS are unable to be on any ballot including a primary election ballot. I have been unable to reconcile this requirement with the SB 193 rules. I asked a legal representative of the ACLU (who was graciously helping us and the Green Party at the time fight SB-193) 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.

It should be noted that historically, petitioners need to collect a minimum of 30% more signatures (some solicitors are now recommending at least 50% more) than the required minimum because at least 25% of the signatures will typically be declared invalid for one reason or another – such as not signing the petition exactly as he or she signed his or her voter registration card. So, for 2016, to obtain just over 30,000 valid signatures will require that each minor party seeking ballot qualification collect $30,000+ \times 1.3 = 39,000+$ or at least 40,000 signatures from those who are supposedly properly registered Ohio voters. Of course, a voter may sign only one Party's petition.

Also, as I understand it currently, nominating petition solicitors/signature gatherers for a 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 for the 2016 elections, or the 2016 primaries for the 2018 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.

If one contacts the Secretary of State's Office for clarification on such matters as above, the standard reply is that the SoS is unable to provide any guidance on such issues and that we should seek competent legal counsel.

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, and more likely 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 run candidates at the local and regional levels, those races where they can most effectively compete, win, and build the party.

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 for the 2014 Governor's race!)

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 Ohio Elections, especially now including SB-193, 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 instead, his vote becomes a positive statement supporting his personal political viewpoint.

Unfortunately, because of this false philosophy implying that all elections really should be 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."

The Constitution Party did propose what they determined to be a fair and equitable ballot access that would apply equally to all candidates, regardless of political affiliation. We tried to reach out to the other minor political parties and independents to engage in a discussion of the proposed approach in order to come together and make the initiative a joint proposal fair to all political parties as well as independents. No one responded to our efforts; evidently they are all too "stuck in the mud" fighting the system controlled by the two major Parties to consider coming up with a viable alternative that would ultimately provide fair and equal access to the ballot by all.

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