

U.S. DISTRICT COURT INVALIDATES TENNESSEE BALLOT ACCESS LAW FOR NEW AND MINOR PARTIES

On September 20, U.S. District Court Judge William J. Haynes, a Clinton appointee, struck down Tennessee's ballot access law for new and previously unqualified political parties. The case had been filed on January 23, 2008, by the Constitution, Green, and Libertarian Parties of Tennessee. *Libertarian Party of Tennessee v Goins*, 3:08-cv-00063.

Tennessee requires a party to submit a petition of 2.5% of the last gubernatorial vote, to get on the ballot. The law does not say what the deadline is, but officials say the petition is due by the first Thursday in March. Tennessee holds its non-presidential primary in August, and the law requires all parties, even newly-qualifying parties, to nominate by primary.

The ruling says that the combination of the high number of signatures, and the early deadline, makes the law too difficult. No group has successfully qualified since the existing law was passed in 1972. In 2008 and 2010, the law requires 45,464 signatures.

The law also says that the signers must be "members" of the party whose petition they are signing. The state said it doesn't enforce this law, which is unclear in any event, because Tennessee doesn't have registration by party. However, the membership provision acts to discourage groups from circulating the petition, because if they prepare their own petition and it says nothing about the signers being members, there is a fear that the petition could be challenged.

Tennessee has very easy independent candidate requirements. Only 25 signatures are required for any independent (except that presidential independents need 275 signatures). However, candidates who use the independent procedure cannot have any label on the ballot except for the word "independent".

Also, in most Tennessee counties, party nominees are placed in a party column with the name of the party in large print, but independent candidates are squeezed into a single column headed "Independent Candidates."

The state has not yet said if it will appeal. The decision will have no effect on the 2010 election.

States often try to justify early petition deadlines for newly qualifying parties, by saying that the state wants to give all parties a primary, so the deadline must be early to give time to check the petition and then prepare a primary for that party. But courts have not let the state's policy override precedents against early petition deadlines. Other states in which the ballot access laws for new parties were found to be too early, even though the state wanted to provide a primary for them, are Idaho, Nevada, Nebraska, Arkansas, and Ohio. Also, two federal courts in South Carolina (a state that lets any party choose to nominate by convention) have ruled that the state can't force newly-qualifying parties to hold conventions as early as the older parties.

Most of these states then changed their laws to provide for petition deadlines in the second half of the year, and to provide that newly-qualifying parties may nominate by convention. However, Ohio and South Carolina not yet revised their laws to take account of these court decisions.

In 2007, bills were introduced in the Tennessee legislature to provide that parties need 2,500 signatures, due in July, and that they would nominate by convention. The bills were SB 288 and HB 626. They did not make any headway, but perhaps the 2011 session of the legislature will pass similar bills.