

## **OKLAHOMA BALLOT ACCESS IS REASONABLE**

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Richard Winger has amassed an amazing amount of electoral facts and these he applies toward an analysis of ballot access. In this Journal he argues Oklahoma election law is tough on minor and independent presidential candidates and is out of line with current practice in the other states. He has organized an eclectic body of arcane material in support of his contention. Here, we show that Oklahoma law is not particularly tough on minor and independent presidential candidates.

**ROOSEVELT, THOMAS, LEMKE, THURMOND,  
WALLACE**

**Richard Winger argues that** there have been fourteen minor presidential candidates that have gained at least two percent of the vote in elections since Oklahoma became a state. “Oklahoma kept five of

the fourteen candidates off the ballot. . . . No other state kept so many of the fourteen off the ballot.” (Winger, 1999a, p.66). These were Theodore Roosevelt (1912 Progressive), Norman Thomas (1932 Socialist), William Lemke (1936 Union), Henry Wallace (1948 Progressive) and Strom Thurmond (1948 States Rights).

Between 1907 and 1927 Oklahoma ballots did not list any Presidential candidates. Theodore Roosevelt was not alone in not being on the ballot here. Wilson and Taft were not on either. As was the case with many states, even into the 1950s, ballots listed the candidates for Presidential Elector. The idea was that the Constitutional design provided for Electors who, in turn, would vote for a presidential candidate. Other states did the same thing. The 1928 Indiana ballot, for example, did not mention the actual candidates for President. Voters there selected electors individually (Merriam and Gosnell, 1929: 356). In Oklahoma these electors were selected on the August Primary ballot. In 1912 this primary was August 6<sup>th</sup>. Theodore Roosevelt contested for the Republican nomination in that year and did not walk out from that party’s convention and start up his own party until August 5<sup>th</sup>. His electors were not on the November 5<sup>th</sup> Oklahoma ballot because Roosevelt’s party did not exist at the time of the primary. Likewise, Strom Thurmond walked out of the Democratic convention in mid July 1948. The primary for selecting electors had been held in Oklahoma on July 6<sup>th</sup>. William Lemke only declared his 1936 presidential candidacy June 19<sup>th</sup> and was not nominated by his Union for Social Justice Party convention until August, too late for the Oklahoma primary.

What we have with the minor party candidacies of Theodore Roosevelt and Strom Thurmond is a clash of principles. On the one hand there is the idea that someone who stove mightily to gain their party’s nomination and lost in the convention should be able to run for President anyway, that the system should allow them to start over with some new party they may concoct. On the other hand there is the idea that the people should be able to select their party’s presidential electors — rather than the party boss or bosses. True minor parties were able to work within this system. In 1912 eleven Republicans and Prohibition candidates contested in their party’s August 6<sup>th</sup> primaries for ten elector positions. Only ten Socialists filed for Presidential Elector so they did not have to compete in the primary. Oklahoma law treated the Prohibition and Socialist parties exactly like the Republicans and Democrats.

For the 1932 election Oklahoma created a runoff primary it has used ever since. The idea is that if a primary candidate does not get a majority of the votes cast for the office, there is a second vote three or four weeks later in which the two top candidates face one another. Presidential electors were selected in primaries and runoff elections in Oklahoma until the 1960 presidential elections. After 1960 electors were no longer selected in primaries. Holding a runoff forced an earlier primary. From 1932 to 1960 the presidential electors were selected in a primary the first week of July.

In the period 1912 – 1948, the period cited by Winger as particularly harsh on minor party presidential candidates, Oklahoma minor political parties qualified candidates for President or Presidential Elector seventeen times. These were the Socialist Party (1908, 1912, 1916, 1920, 1924, 1928, 1936), the Independence Party (1908), the Populist Party (1908), the Prohibition Party (1912, 1916, 1936, 1940, 1944), the Progressive party (1916) and the Farm Labor Party (1924, 1928).

Norman Thomas was not on the Oklahoma ballot in 1932 but his electors were in 1928 and 1936 and Socialist electors were on the Oklahoma ballot in 1908, 1912, 1920 and 1924 as well.

Overall, Oklahoma was not the most restrictive state between 1912 and 1948, the period Richard Winger complains of. *The Congressional Quarterly's Guide to U.S. Elections*, third edition (Washington, D.C. 1994) lists minor presidential candidates in these ten elections. The average state had one minor party or minor independent presidential candidate running in each election. Ten percent of the states averaged two or more of these candidates and thirty-eight percent had one or more but less than two candidates. Another thirty-eight percent averaged between .4 and .9 of these candidates in each election. Finally, fourteen percent averaged less than .4 of these candidates per election. Oklahoma averaged .4 and was not among the states with the lowest average number of candidates and was certainly not the most restrictive state.

Historically Oklahoma does not have a history of restrictive practices aimed at keeping minor party presidential candidates off the ballot. It is true, however, that populist aspects of Oklahoma's primary laws frustrated a few candidates who wanted to create a new political party for themselves at the last minute after losing the contest for their party's presidential nomination. Plenty of minor party candidates made it on to the Oklahoma ballot in the period of which Winger complains.

## WRITE IN VOTES

Richard Winger writes “Oklahoma is only one of seven states which does not permit write-in votes for president at the general election. As a result, many Oklahoma voters throughout history have been barred from having an absolutely free choice in presidential elections.” (Winger, 1999a, p.66)

The United States does not directly elect its president. The Constitution does not permit it. Instead, the states appoint electors who, in turn, cast votes for president. Voters select the electors. Write-in votes for president, then, are problematical, as the race is for elector, not president. Further, an individual who may be eligible for president, a senator or representative or person holding an office of trust or profit under the United States, for example, is not constitutionally eligible for elector. Al Gore holds an office under the United States (Vice President). If I wrote in ‘Al Gore’ on my 2000 ballot for elector it would not be a valid vote. Then there is the Vice-President. Some states, at least, require a vice-presidential candidate although write-in voters often appear unaware of this.

For write-in presidential votes to make any sense there must be a slate of electors pledged to that candidate and the state must have a way of recognizing that connection and attributing the vote for the presidential candidate to the slate of electors. If the state permits a voter to cast a write-in vote for president without providing in some way for a slate of electors then the state is simply inviting the voter to waste his or her vote.

An inquiry among some of the states allowing write-in Presidential votes reveal that there are actually candidates that manage to fulfill the requirements and gain votes although most of those initiating the process fail to select electors or otherwise fail to qualify. In Kansas, Keith Russell Judd of Alabama and Jack Fellure of West Virginia, have already qualified as write-ins for the November 2000 ballot.

The write-in provisions of the several states and the District of Columbia are outlined below.

**Write-in Vote not restricted:**

Alabama	Alaska	Delaware
Idaho	Iowa	Maine
Montana	NewHampshire	New Jersey
Pennsylvania	Rhode Island	Tennessee
Vermont	Wyoming	

(14)

**Candidate Must File:**

Arizona	Arkansas	California
Colorado	Connecticut	District of Columbia
Florida	Georgia	Illinois
Indiana	Kansas	Kentucky
Maryland	Massachusetts	Michigan
Missouri	New Mexico	New York
North Carolina	North Dakota	Ohio
Oregon	Texas	Utah
Virginia	Washington	West Virginia
Wisconsin		

(28)

**Write-in Vote not Permitted:**

Hawaii	Louisiana	Minnesota
Mississippi	Nebraska	Nevada
Oklahoma	South Carolina	South Dakota

(9)

Source: Authors' calculations from Karen Markin, *Ballot Access 3: For Presidential Candidates* (Washington, D.C.: National Clearinghouse for Electoral Administration, 1995) and personal communication from Richard Winger.

Only 14 states still allow the essentially meaningless waste afforded by a write-in presidential vote. Twenty-eight states allow candidates to file write-in presidential candidacies, some permitting this at the last minute. In these states, however, the voter does not have an unlimited right to have counted anything he or she records on the ballot. Only

those votes for candidates that have completed the filing process are recorded. Further, the state does not make this fact known to voters. That is the write-in candidate's responsibility. An informal survey of states reveals that those that have successfully filed tend to have done so unknown to the voters with no realistic strategy to make their candidacies known.

Richard Winger editorializes elsewhere "There are twelve states which permit write-ins, but which usually fail to canvass such votes, even for bona fide candidates who are not on the ballot" (*Ballot Access News* 15 #7 October, 1999b:1). This reduces the number of states that record anyone's write-ins whatsoever to a small number indeed.

For all practical purposes there is no state where voters are free to cast a meaningful recorded vote for anyone he or she may wish to vote for. Oklahoma is far from alone in restricting such write-ins and, given the totality of circumstances, Oklahoma's write-in provisions are reasonable. The Oklahoma ballot does not delude the voter into thinking he or she can do something they cannot actually accomplish.

### **SIGNATURES TO GET ON TO THE BALLOT, VOTES TO STAY ON**

Richard Winger states that Oklahoma has the "highest petition requirement of any state" (Winger, 1999a, p.77) for an independent or minor party presidential candidate to qualify for the ballot. Oklahoma requires a petition with signatures equal to five percent of the vote in the previous gubernatorial election. This is 43,679 signatures. Other states require more signatures but they are larger. California, for example, requires the signatures of one percent of the registered voters or something around 150,000 names. California is a larger state than Oklahoma, of course, but the cost of getting a signature, about a dollar for each, is the same.

We cannot talk about the relative electoral benefits of being on the California versus Oklahoma ballot as third party candidates have not yet won the presidency and none has gained even an electoral vote in either state since Theodore Roosevelt got eleven of California's thirteen electoral votes in 1912.

Oklahoma requires a party receive ten percent of the vote to stay on the ballot. Six states require a higher percent, although some allow a smaller percent for minor parties. About a quarter of the states have similar or more strict requirements than Oklahoma (Markin, 1995).

## CONCLUSION

Oklahoma has an electoral system that recognizes only one type of political party. These parties must have their candidates nominated by primary if more than one person desires the party's nomination for an office. This frustrates last-minute presidential candidates dissatisfied with major party nominees. The remedy is to organize prior to the election season and stay organized afterwards. Oklahoma does not permit write-in voting. Given the nature of our presidential elections, this is certainly reasonable and no state offers a meaningful opportunity to select a president through write-in votes. Recently several states lowered their ballot access requirements or created special categories such as 'minor party' for which the requirements of ballot access are reduced. Oklahoma has not done so as of yet.

Oklahoma political partisans who appear frustrated by these requirements are really frustrated by Oklahoma disinterest in their candidates or ideas. In 1996, for example, the Libertarians qualified Harry Browne for the ballot. He received less than one half of one percent of the total vote cast for president. Agnes Regier, their candidate for U.S. Senator got slightly more than one percent of the votes cast for that office. Robert Murphy, their candidate in the fourth congressional district, got a little over two percent of the vote cast. Randy Boyd, their candidate for the state representative in district 45 got almost 3.5 percent of the votes cast. Those were the only Libertarian candidates on the ballot although as a recognized political party at the time they could have nominated candidates for every office. The Libertarian Party has been on Oklahoma presidential ballots since 1980 when they gained slightly over one percent of the votes cast. In subsequent presidential elections they averaged less than one half of one percent of the votes.

Their problems certainly must frustrate the small number of Libertarians in the state but these problems go far beyond Oklahoma's

ballot access laws. Their electoral support is limited to the stray and random votes a totally unknown candidate of an unknown political party would receive, should they manage to show up on the ballot.

### REFERENCES

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