Why The NHCLU Is Suing To Protect Third-Party Ballot Access In New Hampshire

Gilles Bissonnette, Staff Attorney for the New Hampshire Civil Liberties Union

Yesterday, the NHCLU filed a lawsuit on behalf of the Libertarian Party challenging HB1542. HB1542 is a new state law passed this year that imposes onerous restrictions on the ability of third parties to gain access to the ballot in future elections. This law limits voter choice and stacks the deck against candidates who—like roughly 40% of Granite Staters—don't belong to a major party. HB1542 is wrong and unconstitutional.

The NHCLU is known for its work protecting the right to vote. But voting rights mean little if the state can impose oppressive burdens that, like HB1542, protect major parties from competition and prevent voters from being presented with alternative choices. These burdens also implicate two important constitutional rights under the First and Fourteenth Amendments: the right of individuals to associate for the advancement of political beliefs, and the right of voters, regardless of their political persuasion, to cast their votes effectively.

HB1542 addresses the ability of a third party to gain access to the ballot as a recognized political party. Gaining access to the ballot as a recognized party has real advantages, including the ability to run a slate of candidates and engage in pre-election organizing.

HB1542 states that, when a third party seeks to gain access to the ballot before an election by collecting certified signatures, those signatures "shall be signed and dated in the year of the election." In short, HB1542 prohibits third parties from collecting signatures before January 1 of the election year. This may sound benign, but it will make the task of obtaining ballot access far more difficult—if not impossible—for third parties.

Under HB1542, third parties now have only 7 months—from January 1 to early August—to collect the number of signatures necessary to get on the ballot. Given the harsh winter months, this new compressed time period is, in reality, much shorter. And the number of signatures that must be collected during this time frame is huge—3% of the total votes cast during the prior election. To get on the ballot for the 2014 election, 21,330 signatures would be required.

During the 2000 and 2012 election cycles, the Libertarian Party was able to collect the nearly 10,000 and over 13,600 certified signatures, respectively, necessary for the Party to get on the ballot. But to meet these high thresholds in what was already an arduous process, the Party had to start collecting signatures before the year of the actual election—namely, in 1999 and 2011. However, under HB1542, the Libertarian Party is now prohibited from collecting signatures prior to the election year, thus hampering its ability to obtain ballot access in future elections. To use a metaphor, this signature-collection process is like a marathon that's hard

enough just to finish, and now the state is essentially demanding that the Libertarian Party run the marathon in less than two hours.

HB1542 will also put third parties at disadvantage compared to major parties. Using the upcoming 2016 election as an example, a third party must now "sit on the sidelines" for all of 2015. If allowed to collect signatures during 2015, the third party would be able to finish the collection process sooner and campaign when it counts—in the months before the 2016 election. However, under HB1542, the third party will be collecting signatures during the summer months of 2016 when it instead should be—like the major parties—speaking to voters.

Unfortunately, over the years, restricting third-party ballot access has received broad bipartisan support. HB1542, for example, was passed by voice vote by both the House and Senate with little discussion. It was described as a "housekeeping" bill recommended by the Secretary of State, and there wasn't any evidence presented as to why these substantial burdens were necessary. It sailed on through, just like prior ballot access restrictions, including in 1997 and 2009.

HB1542 is far more than a "housekeeping" bill. It hinders our democratic process from functioning vigorously. As a Rhode Island court concluded in striking down a similar law, "[s]ociety is best served when political parties outside the two existing major parties play an active, 'robust' role in the entire campaign process—not simply appear on the final election ballot." HB1542 prevents third parties from playing such a "robust" role. Voters deserve more choices at the ballot box, not fewer. Indeed, according to a 2013 Gallup poll, 60% of Americans believe that a third party is needed.

In the meantime, we will be fighting HB1542 in court.