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INDEPENDENTS, MINOR PARTIES ON BALLOT

House Bill 4090 as enrolled
Second Analysis (5-9-88)

Sponsor: Rep. Maxine Berman
House Committee: Elections
Senate Committee: Government Operations

THE APPARENT PROBLEM:

The Michigan Election Law contains no procedure for independent candidates, those without party affiliation, to get their names on the ballot. The courts have scolded state officials about this defect for ten years, since a U.S. District Court found the state's election laws "constitutionally deficient" in (Eugene) McCarthy v Austin in 1976 because they did not provide independent candidates access to the ballot. Since then, courts have been putting independent candidates for state, national, and local offices on the ballot on a case-by-case basis, and ordering the state to pay candidates' court costs and attorneys' fees. In 1986 the secretary of state's office instructed county clerks to certify independent candidates for partisan offices if they submitted affidavits of identity and an affidavit showing support from at least one registered voter. The instructions from the elections division to the clerks said that the policy recognized that "until the state legislature enacts an independent candidate law, the courts will grant independent candidates easy and direct access to the ballot and require the unit of government that denied them access . . . to pay the attorney fees involved." (The state had already paid $35,000 in such attorney fees.) One result of the policy was a 24-person contest for two state Supreme Court judgeships, which generated much unfavorable comment from the press and general public.

The courts have also attacked Michigan's ballot access provisions for certain "minor" parties (known, somewhat misleadingly, as "new" parties). In 1982 the Michigan Supreme Court struck down parts of Public Act 94 of 1976, which had instituted a two-step method by which "new" parties could appear on the November general election ballot: in addition to collecting petition signatures, a new party had to get three-tenths of one percent of the total number of votes cast in the primary. The court said the law imposed unreasonable and unnecessary restrictions on new parties and denied them equal treatment. As a result, only the petition requirement remains, and some people doubt that it is by itself sufficient demonstration of community support to guard against frivolous candidacies.

In both cases, the legislature needs to put in place ballot access requirements that balance the right of citizens to vote for the candidates of their choice against the need to protect the process from frivolous candidacies and overcrowded ballots.

(NOTE: a "major party" is one that had at least one candidate who polled five percent or more of the total vote cast for all candidates for secretary of state at the last election, and therefore selects its candidates by the direct primary method. A "minor party" is one that fails to meet this requirement, and therefore selects its candidates at caucuses or conventions. A "new party" is a minor party whose principal candidate failed to receive a vote equal to at least one percent of the votes cast for the successful candidate for secretary of state at the last election, and therefore must meet petition requirements in order to appear on the ballot.)

THE CONTENT OF THE BILL:

The bill would amend the Election Law to:

- establish petition requirements for independent candidates (those without political party affiliation) seeking a place on the ballot.
- increase the number of petition signatures a new political party must gather to be on the ballot (effective after the 1988 November election).
- allow the countywide circulation of petitions by new parties and by independent candidates running for state and federal offices.
- require major political parties to hold their state conventions at least 66 days before the general November election, reversing a 1983 action to reduce the minimum from 66 to 55 days (effective after the 1988 November election).
- repeal two provisions ruled unconstitutional by the Michigan Supreme Court: (1) Section 560b, which required a new political party to receive three-tenths of the total number of votes cast at a primary election before it can have its name, party vignette, and candidates listed on the general election ballot (this requirement was in addition to the petition requirement), and (2) Section 703a, which specified that incumbents' names be listed first on a ballot.
- reduce the number of signatures a person needs to become a candidate for delegate to a party's county convention (from 15 to 3) and put in place a procedure for disqualifying delegates from participating in a convention if at the time of the convention they did not reside in the precinct from which they were elected.

Independent Candidates

To qualify for the ballot, an independent candidate for statewide office would have to file a qualifying petition containing signatures equal in number to one percent of the votes cast for all candidates for governor in the most recent election. (At present, this would mean about 24,000 signatures.) Petitions of statewide candidates would also need at least 100 signatures from voters in each of nine congressional districts, and no more than 35 percent of the signatures could be from any one congressional district.

Independent candidates for other partisan offices would need signatures at least equal in number to two percent of the votes cast by the district for all gubernatorial candidates, but in no case fewer than 15 signatures.

The deadline for filing a petition for the November general election would be 4 p.m. on the 110th day before the

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election. For other elections, the deadline would be that established by statute or charter for filing a partisan petition or certificate of nomination for the office. An independent candidate would have until 4 p.m. of the third day after the filing deadline to withdraw. Independent candidates for governor or president would have to file the names of their running mates at least 66 days prior to the election.

Petitions for state and federal offices could be circulated on a countywide basis. All signatures on a qualifying petition would have to be obtained within 180 days immediately preceding the date of filing. County and municipal clerks would have to provide petition forms for their jurisdictions upon request, but only the county clerk would be required to supply forms for countywide circulation.

Existing provisions for the form and circulation of nominating petitions, petition certification and investigation, recordkeeping, candidate affidavits, and filing fees generally would apply to petitions filed by independent candidates.

During the same calendar year, a person could not be both an independent candidate and a political party candidate nor both an independent candidate and a write-in candidate.

New Parties, Minor Parties

The bill would increase the number of petition signatures a new party needs to get on the ballot from one percent of the votes received by the successful candidate for Secretary of State at the last election to one percent of the votes cast for all candidates for governor at the last election. (At present, this would mean an increase from 16,312 to 23,966 signatures.) Petitions would have to be signed by 100 residents in each of at least nine Congressional districts, and no more than 35 percent of the signatures could be from any one district. (Similar requirements are in place now.)

New party petitions, which must at present be circulated on a municipal basis, could be circulated on a countywide basis. The filing deadline for new parties would be moved from three months before the primary election (early May) to 4 p.m. of the 110th day before the general November election (early June).

The bill would make the date of the August primary the deadline by which minor parties must hold caucuses or conventions to select their candidates. (The caucus deadline is now 71 days before the primary, while the state convention deadline is 64 days before the primary.) This provision would not take effect until after the November 1988 election.

Severability

The bill would stipulate that if any of its provisions or the application of its provisions were found invalid by a court, the invalidity would not affect the remaining provisions or applications that can be given effect without the invalid provisions or applications unless the court found them to be inoperable.

MCL 168.534 et al

FISCAL IMPLICATIONS:

The bill would have no fiscal impact, according to the Senate Fiscal Agency. (3-1-88)

ARGUMENTS:

For:

The bill provides a reasonable, balanced solution, consistent with the demands of the courts, to the problem of guaranteeing the political rights of citizens without cluttering election ballots with frivolous candidates. Michigan now lacks a statutory method of dealing with independent candidates and it is imperative that the legislature provide one or else anyone who wants to be on the ballot will be. The creation of an orderly process will reduce the need to make last-minute changes to ballots, which has created printing problems and worked to deprive some absentee voters (overseas residents, including people in the military) of the right to vote. The bill's requirements are not onerous: they simply require an independent candidate to show a modicum of community support before being placed on the general election ballot. A candidate for statewide office will need about 24,000 signatures; a candidate for congress 2,000 to 3,000; a candidate for state Senate, 1,200 to 1,600; and a candidate for the state House of Representatives about 400 to 550. Unlike candidates from the major parties, independents will go directly to the general election ballot and will not face primary contests. Given this, it is sensible for the state to impose requirements that help to ensure that the candidates facing voters at the general election are viable candidates. The bill also guards against "sore loser" independents, candidates who lose a primary as a partisan candidate and then become independents overnight.

For:

The bill treats new parties equally with independent candidates, by raising the number of petition signatures a party needs to qualify a slate of candidates for the general election ballot. Political parties are supposed to be coalitions of people who share common ideas and a measure of organization, and it makes no sense for them to face an easier road to the general election ballot than candidates without party affiliation. The current signature requirement is merely wreckage from the supreme court's demolition of a 1976 election law and was never designated by the legislature as the only criterion for minor political parties to gain access to the general election ballot. The new signature requirement is not unreasonable. In fact, the bill makes it easier for third parties to collect signatures, by extending the filing deadline (and thus providing more warm weather), removing the requirement that petitions be signed by party members, and, significantly, by allowing the countywide circulation of petitions rather than requiring petitions be circulated on a municipal basis.

Against:

What justification is there for raising the signature requirement for minor parties? No evidence has been presented that minor parties are cluttering the ballot or confusing the voters. There has been no demonstration that the candidates of minor parties are frivolous; in fact, most of the active minor parties in Michigan have long histories and represent serious ideas, even if those ideas are not shared by a large portion of the population. The legislature needs to pass a bill dealing with independent candidates, but there is no compelling need to make changes to the ballot access requirements imposed on minor parties. To do so merely invites lawsuits that the state will lose. Time and money minor party activists must spend on collecting signatures are resources taken away from campaigning

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and spreading the party's message. Minor parties play an important role in political life by generating new or different ideas, some of which later gain wider acceptance or, at least, force the mainstream parties to inquire more deeply into their own beliefs and policies. By imposing a 50 percent increase in signature requirements, this bill would work to restrict the dissemination of ideas.

Against:

Some people believe that the decision as to which candidates are "frivolous" ought not to be made by Democrats and Republicans in the legislature, who have an incentive to reduce competition, nor by election officials, who are overwhelmingly concerned with "administrative burdens," but by the voters. Since cluttered ballots have not been a problem even with direct access to the ballot for independents, why not experiment with a much lower signature requirement? Perhaps an influx of new candidates would increase voter interest and voter participation, which have been woefully low in recent elections. There is some evidence that voter interest was stimulated by the crowded state supreme court race, since the percentage of voters who ignored the supreme court contest after voting for governor went down. The legislature should be leaning in the direction of more democracy, more candidates, more choices for voters, not restricting the political process.