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THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON STATE REPUBLICAN  
PARTY, et al.,

Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL  
COMMITTEE, et al.,

Plaintiff Interveners

LIBERTARIAN PARTY OF  
WASHINGTON STATE, et al.,

Plaintiff Interveners

v.

DEAN LOGAN, et al.,  
Defendants,

STATE OF WASHINGTON, et al.,

Defendant Interveners

WASHINGTON STATE GRANGE, et al.,

Defendant Interveners

Case No: CV05-0927-TSZ

DECLARATION OF RICHARD  
WINGER

I, RICHARD WINGER, declare on penalty of perjury under 28 U.S.C. 1746 as  
follows:

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I am over the age of 18, not a party to this action and competent to make the following statements. My curriculum vitae is attached to this document as Exhibit A.

I have had an opportunity to examine Washington state's primary election returns for all congressional elections, and all state office elections, for the years 1992-2002, taking the data supplied on the website for the Washington Secretary of State. I calculated the percentage of the total vote received by each candidate who placed second.

The results for each election return are: 1992, the average second-place finisher polled 31.80%. 1994, 33.37%. 1996, 33.28%. 1998, 29.94%. 2000, 31.58%. 2002, 34.61%. The average of all these averages is 32.43%. The average second-place finisher in Washington state blanket primaries 1992-2002 polled 32.43%.

Excluding the obvious cases when only one major (Democratic or Republican) party candidate was running, I found that no one but a Republican or a Democrat ever placed first or second, with one exception. That single exception was in 2000 in the 38th state legislative district, for State House or Representatives, seat # 2. In a race with two Democratic candidates, one Reform candidate, and one Libertarian candidate, one Democrat (who had polled 63.75% in the primary) and the Reform candidate finished first and second, respectively.

DATED Tuesday, July 05, 2005, at San Francisco, California.

  
RICHARD WINGER

DECLARATION OF RICHARD WINGER

- Page 2 of 2

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SHEPARD LAW OFFICE, INC.

818 So. Yakima Ave., #200

Tacoma, WA 98405

(253) 383-2235

Richard Winger  
3201 Baker Street  
San Francisco, California 94123

Curriculae Vitae, updated April 25, 2005

#### EDUCATION

BA, Political Science, University of California, Berkeley, 1966  
Graduate study, Political Science, UCLA, 1966-67

#### EMPLOYMENT

*Ballot Access News*, Editor 1985-Present  
Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

On the Editorial Board of *Election Law Journal*, published by Mary Ann Liebert, Inc., Larchmont, N.Y., since 2001.

#### PUBLICATIONS

Wrote a chapter or two in each of these books:

*Democracy's Moment*  
edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

*The Encyclopedia of Third Parties in America*  
edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

*Multiparty Politics in America*  
edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

*The New Populist Reader*  
edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Additional articles published in these periodicals:

*Wall Street Journal*  
*American Review of Politics*  
*The Long Term View*  
*University of Mass. Law Review*  
*California Journal*  
*Election Law Journal*  
*Cleveland State Law Review*  
*Chronicles Magazine*  
*Price Costco Connection*  
*Fordham Urban Law Journal*

## NATIONAL INTERVIEWS on Minor Parties, Independents, Ballots and Ballot Access

*NBC**National Public Radio**ABC**Pacifica Radio**CNN**MSNBC*

## CASES: TESTIMONY or AFFIDAVITS (political party or candidate prevailing)

**Alaska:** Libertarian Party v Coghill, state superior court, 3rd dist., 3AN-92-08181, 1992  
Court issued injunction enjoining enforcement of petition deadline for minor parties

**Arizona** (2 cases): Campbell v Hull, 73 F Supp 2d 1081 (1999); Az. Libt. Party v Hull, superior court, Maricopa Co. 96-13996, 1996. Court ordered Secretary of State to place Libertarian Party presidential candidate on ballot.

**Arkansas** (2 cases): Citizens to Establish a Reform Party v Priest, 970 F Supp 690 (E.D. Ark. 1996); Green Party of Ark. v Priest, 159 F.Supp.2d (E.D. Ark. 2001).

**California:** California Democratic Party v Jones, 530 US 567 (2000).

**Colorado:** Ptak v Meyer, 94-N-2250, U.S. Dist. Ct., 1994. Court ordered Secretary of State to place Libertarian legislative candidate on ballot.

**Florida** (2 cases): Libt. Party of Fla. v Mortham, 4:96cv258-RH, U.S. Dist. Ct., N.D., 1996. Court ordered Secretary of State to place Libertarian vice-presidential candidate on ballot. Reform Party v Black, 885 So.2d 303 (Fla. 2004).

**Georgia:** Bergland v Harris, 767 F 2d 1551 (11th cir., 1985). U.S. Court of Appeals remanded case back to U.S. District Court. Before U.S. District Court acted, legislature substantially eased law, so case became moot.

**Hawaii:** Libt. Party of Hi. v Waihee, cv 86-439, U.S. Dist. Ct., 1986. Court ordered Lieutenant Governor to extend petition deadline for new parties.

**Illinois:** Nader v Ill. State Bd. of Elections, 00-cv-4401, U.S. Dist. Ct., N.D., 2000. Court ordered State Board of Elections to place candidate on ballot.

**Iowa:** Oviatt v Baxter, 4:92-10513, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put Grassroots Party candidate for Congress on ballot.

**Kansas:** Merritt v Graves, 87-4264-R, U.S. Dist. Ct., 1988. State did not defend three election laws and signed consent decree on independent petition deadline, requirement that independent petitions not be circulated outside of circulator's home precinct, and requirement that voters could only register in qualified parties. This case should not be confused with another by the same name decided in December, 1988.

**Kentucky:** Libt. Pty. of Ky. v Ehrler, 776 F Supp 1200 (E.D. 1991)

**Maryland** (2 cases): Dixon v Md. State Adm. Bd. of Elec. Laws, 878 F 2d 776 (1989, 4th cir.); Green Party v Bd. of Elections, 832 A 2d 214 (Md. 2003).

**Nevada** (2 cases): Libt Pty. of Nev. v Swackhamer, 638 F Supp 565 (1986); Fulani v Lau, cv-N-92-535, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put various minor parties on ballot.

**New Jersey** (2 cases): Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998); Council of Alternative Political Parties v State Div. of Elections, 781 A 2d 1041 (N.J.Super. A.D. 2001).

**New York** (3 cases): Molinari v Powers, 82 F Supp 57 (E.D.N.Y. 2000); Schulz w Williams, 44 F 3d 48 (2nd cir., 1994); Green Party of N.Y. v N.Y. State Bd. of Elections, 389 F.3d 411 (2<sup>nd</sup> cir., 2004).

**North Carolina:** Obie v N.C. Bd. of Elections, 762 F Supp 119 (E.D. 1991); DeLaney v Bartlett, decided July 26, 2004 (middle district, 1:02-cv-741).

**Oklahoma:** Atherton v Ward, 22 2F Supp 2d 1265 (W.D. Ok. 1998); Beaver v

Clingman, 363 F.3d 1048 (10th cir., 2004).

**Pennsylvania:** Patriot Party of Pa. v Mitchell, 826 F Supp 926 (E.D. 1993).

**South Dakota:** Nader v Hazeltine, 110 F Supp 2d 1201 (2000).

**Texas:** Pilcher v Rains, 853 F 2d 334 (5th cir., 1988).

**Virginia:** Libt. Pty of Va. v Quinn, 3:01-cv-468, U.S. Dist. Ct., E.D. (2001). Court ordered State Board of Elections to print "Libertarian" party label on ballot next to name of Libertarian candidates.

**West Virginia** (3 cases): State ex rel Browne v Hechler, 476 SE 2d 559 (Supreme Court 1996); Nader v Hechler, 112 F.Supp.2d 575 (S.D.W.V., 2000); McClure v Manchin, 301 F Supp 2d 564 (2003).

CASES: TESTIMONY or AFFIDAVITS (political party or candidate not prevailing)

**Arizona:** (2 cases) Indp. Amer. Party v Hull, civ 96-1240, U.S. Dist. Ct., 1996; Browne v Bayless, 46 P 3d 416 (2002).

**Arkansas** (2 cases): Langguth v McKuen, LR-C-92-466, U.S. Dist. Ct., E.D., 1992; Christian Populist Party v Sec. of State, 650 F Supp 1205 (E.D. 1987).

**California:** Socialist Workers Party v Eu, 591 F 2d 1252 (9th cir., 1978).

**Florida** (2 cases): Fulani v Smith, 92-4629, Leon Co. Circuit Court, 1992; Libertarian Party of Fla. v State of Fla., 710 F 2d 790 (11th cir., 1983).

**Georgia** (2 cases): Libertarian Party of Ga. v Cleland, 1:94-cv-1503-CC, U.S. Dist. Ct., N.D. (1994); Esco v Secretary of State, E-53493, Fulton Co. Superior Court, 1998.

**Idaho:** Nader v Cenarrusa, cv 00-503, U.S. Dist. Ct., 2000.

**Illinois:** Libt Party v Rednour, 108 F 3d 768 (7th cir., 1997).

**Kansas:** Hagelin for President Committee v Graves, 804 F Supp 1377 (1992).

**Maine** (2 cases): Maine Green Party v Diamond, 95-318, U.S. Dist. Ct., 1995; Maine Green Party v Secretary of State, 96-cv-261, U.S. Dist. Ct., 1996.

**Maryland** (2 cases): Ahmad v Raynor, R-88-869, U.S. Dist. Ct., 1988; Creager v State Adm. Bd. of Election Laws, AW-96-2612, U.S. Dist. Ct., 1996.

**Missouri:** Manifold v Blunt, 863 F 2d 1368 (8th cir. 1988).

**New Hampshire:** Werme v Gov. of N.H., 84 F 3d 479 (1st cir., 1996).

**North Carolina:** Nader v Bartlett, 00-2040, 4th cir., 2000.

**Ohio:** Schrader v Blackwell, 241 F 2d 783 (6th cir., 2001).

**Oklahoma** (2 cases): Rainbow Coalition v Okla. State Elec. Bd., 844 F 2d 740 (1988); Nader v Ward, 00-1340, U.S. Dist. Ct., 1996.

**Oregon:** Libt Party v Roberts, 737 P 2d 137 (Ore. Ct. of Appeals, 1987).

**Texas** (2 cases): Texas Indp. Party v Kirk, 84 F 3d 178 (5th cir., 1996); Nat. Comm. of U.S. Taxpayers Party v Garza, 924 F Supp 71 (W.D. 1996).

**Virginia:** Wood v Meadows, 207 F 3d 708 (4th cir., 2000).

**West Virginia:** Fishbeck v Hechler, 85 F 3d 162 (4th cir., 1996).

**Wyoming:** Spiegel v State of Wyoming, 96-cv-1028, U.S. Dist. Ct., 1996.

QUALIFIED EXPERT WITNESS

**Fishbeck v Hechler**, 85 F 3d 162 (4th cir. 1996, West Virginia case)

**Council of Alternative Political Parties v Hooks**, 999 F Supp 607 (1998, N.J.)

**Citizens to Establish Reform Party v Priest**, 970 F Supp 690 (E.D. Ark, 1996)

**Atherton v Ward**, 22 F Supp 2d 1265 (W.D.Ok. 1998)

**Calif. Democratic Party v Jones**, 530 US 567 (2000)  
**Swanson v Bennett**, not decided yet, U.S. Dist. Ct., m.d.Ala. (02-T-644-N)  
**Beaver v Clingman**, 363 F 3d 1048 (10<sup>th</sup> cir., 2004, Okla. case)  
**Green Party v N.Y. State Bd. Elections**, 267 F Supp 2d 342 (E.D.N.Y. 2003)  
**Lawrence v Blackwell**, pending in 6<sup>th</sup> cir., U.S. Dist, s.d. Ohio (1:04-cv-398);

In all cases in which I was presented as an expert, the opposition accepted that designation, except in the Green Party of New York case. The U.S. District Court ruled that I qualify as an expert. See headnote #1 at page 342, and footnote nine on page 350.

**SPEAKING ENGAGEMENTS: Colleges and Scholarly Meetings**

Panel of New York City Bar Association, 1994. Ballot access.  
Amer. Political Science Assn., nat. conventions of August 1995 and August 1996. Papers.  
Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.  
Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.  
San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.  
Providence College, R.I., Oct. 1997, seminar on ballot access.  
Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.  
Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.  
Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.