CHAPTER 6

"The People
Must Have a Choice"

The theme running through all of Henry Wallace’s speeches early in 1948 was that the people must have a choice; they must be able to express their approval or disapproval of the conduct of the government. With a bipartisan foreign policy accepted by both major parties, it became the self-appointed task of the new party to present an alternative to the people for their decision. Moreover, claimed Wallace, in their domestic policies the major parties were as Tweedledum and Tweedledee, both representing identical militaristic–Wall Street interests. They no longer offered the sharp contrast of early New Deal days. Here too the third party would present the people with a clearly defined alternative.

For the voters to make their choice, it was necessary not only to build a new party but to make sure that the party’s candidates would have places on the ballots in every state of the Union. Experts claimed this was virtually impossible in view of the increasing restrictions placed on third parties by many states, particularly within recent years. They noted that in 1924 Robert W. La Follette had been able to put his Progressive slate before the voters in each of the forty-eight states, but that in 1936 the Union Party of William Lemke had been successful in only thirty-four.
"The People Must Have a Choice"

This point of view had been well expressed by L. D. Wheildon during the previous year in *Editorial Research Reports*:

Even if a third party overcomes the forces of habit and tradition and succeeds in winning a large popular following, it still faces formidable obstacles in state election laws, which have been written for the most part by representatives of the established parties with an eye to discouraging newcomers. Although minor parties are not *forbidden* as such in any state, it is becoming increasingly difficult in most states for them to qualify for a place on the ballot.

The problem faced was a dual one, for in addition to the legal requirements imposed by state election laws, there were also the political implications involved in interpreting and enforcing these laws.

The Constitution of the United States has left to individual state legislatures the power to determine the manner of choosing presidential electors (Art. 2, Sec. 1, Par. 2), and in 1948 the forty-eight states had established forty-eight different methods by which electoral candidates might secure their places on the ballot. Generally speaking, however, there were two broad methods for both existing and new parties.

Several states had established definitions and requirements for a "legal" party and then accorded such parties the virtually automatic privilege of placing nominees on the ballot. For example, the American Labor Party constituted a "legal" party in New York State since it had received more than the requisite 50,000 votes in the last gubernatorial election. The Wallace slate was thus already assured of the ALP's Row C on the Empire State ballot. In Illinois a Cook County Progressive Party had organized prior to the 1947 election and
entered a slate of candidates in the generally uncontested nonpartisan judicial elections. Since its top candidate had amassed a total of 313,000 votes, just short of a majority but well over the 5 per cent legal requirement, the third party seemed assured of a place there.

On the other hand, a completely new party or an existing one that had not achieved "legal" status had to employ other methods. The most widely utilized procedure was that requiring nominating petitions, with either a fixed number of signatures or a percentage of the total vote for some designated office in a prior election. Several states required nomination by convention, and there were still others with less formal stipulations.\(^1\)

Those states requiring petition signatures by a percentage of voters ranged from South Dakota which demanded 20 per cent through Ohio at 15 per cent and California at 10 per cent to Indiana which required only ½ of 1 per cent. Georgia, Nevada, and Oregon required 5 per cent; Arizona, 2 per cent; Connecticut, Vermont, and West Virginia, 1 per cent. The set of election returns on which these percentages was based also varied—the last congressional election being used in Nevada and Oregon, last presidential election in Connecticut, last gubernatorial election in Arizona, California, and Vermont, while Indiana and Michigan used the vote for Secretary of State, and Pennsylvania the highest vote for a state office.

In the states specifying a fixed number of signatures, the requirements again varied—from 50 in Mississippi to 25,000 (with at least 200 from each of 50 of the 102 counties) in Illinois and 50,000 in Massachusetts. But even the most stringent of these states, Illinois and Massachusetts, were generally more lenient than those requiring percentages.

The nine states employing the convention method had rules ranging in stringency from Nebraska, where 750 dele-

\(^1\) See Appendix, Table 1, for a detailed listing of the requirements.
gates had to attend, on down to neighboring Iowa, where only 2 (1 to sign the required certificate as chairman, the other as secretary) were sufficient to constitute a legal convention.

In three states, Mississippi, New Mexico and Texas, the only requirements were formal organization and filing of a slate of electors. In South Carolina the only compulsion was to print and distribute ballots at the polling places, since at this time the Palmetto State still employed the outmoded party ballot system, instead of an officially printed, or Australian, ballot.

Some of the states provided alternate methods of nominating electoral candidates. For instance, in California the 10 per cent petition requirement might be replaced by inducing 1 per cent of the registered voters to change their affiliation to a new party.

With the exception of a few states, such as California, Georgia, Illinois, Massachusetts, Nebraska, New York, Oklahoma, Oregon, and South Dakota, the legal aspects of the task of securing a requisite number of signatures or delegates might not have proven as difficult as commonly believed (the political obstacles being more nearly insurmountable). But the matter of numbers was not the only statutory consideration involved. There still remained such details as deadlines and filing fees.

Filing deadlines in many instances presented the stiffest legal barrier for a new party, unless it had been organized at least one year prior to the election. As described earlier, the California requirement—a March deadline eight months prior to the November balloting—helped force Wallace’s hand in making a decision as early as December of 1947. Elsewhere the dates varied—March in New Jersey; April in Pennsylvania, Maryland, and Oklahoma; May in Michigan, West Virginia, Florida, and Alabama; June in Kentucky. A total of fourteen states required that filing be completed prior to the first of July. Aimed at any group splitting off from a
major party at or after a national convention, these deadlines effectively eliminated in nearly one third of the states any recurrence of a 1912 Bull Moose style split.

While some states provided write-in voting for those parties missing the deadlines, the disadvantages were evident. To cite one example, the States’ Rights Party received only 2,476 write-in votes in Maryland, since they had been excluded from a place on the ballot by their inability to meet the April 17, 1948 deadline.

The provision for filing fees proved much less important, even in states with a relatively high assessment, such as Maryland’s $270. While this sum might have deterred individuals from seeking a ballot position, it was relatively insignificant in light of the other multitudinous expenditures for a nation-wide third party.

Political considerations proved far more important. A major party, in control of state election machinery and determined to block a minor contender, may employ seemingly innocuous statutory provisions to raise insuperable obstacles. Challenges to signatures, court actions at every step, prolonged litigation, and other devices may serve in practice to nullify legal rights. For instance, prior to the April primary in Cook County, Illinois, where they were seemingly entitled to a place on the ballot by their performance in the 1947 judiciary elections, the Progressives found this right challenged by the major parties. Despite a favorable court decision (*Progressive Party v. Flynn*, 79 N.E. 2d 516), they never received this place because the election officials then ruled that the decision had been made too late to print new ballots with the Progressive candidates included.

By the same token, techniques are available by which a major party favorably disposed to a third entrant can assist its efforts to secure a place on the ballot. In the 1948 campaign, according to reports from Progressive Party field organizer Barney Conal, there was little doubt that had it not
been for Republican assistance the Wallace slate would not have been listed in the state of Kansas.

Thus the task facing the New Party in its drive to get on the ballot in 1948 appeared highly formidable, but not completely impossible. Given an early start, which they already possessed, the breadth of representation they were claiming, a sufficient number of patient workers they were soon to acquire, and an organization adequate to plan and guide their energies, chances of success seemed reasonably good.

Moreover, it appeared that political circumstances would operate at least partly in their favor. While it was to be expected that the Democrats would oppose the appearance of Wallace electors in the states whose election machinery they controlled, it also seemed logical to assume that the Republican party would aid the Progressives, at least behind the scenes. This appeared to be no more than sound political strategy in view of the expectation that 90 per cent of the Wallace votes would be drawn from voters otherwise casting Democratic ballots.

The pattern, however, was not to unfold as anticipated. The Republicans—either lulled into a sense of false security by the polls predicting a GOP sweep, unwilling to admit the Wallace-ites as allies under any circumstances, or led by men who failed to assess the situation correctly until too late—failed in many instances to lend a hand in getting the Progressive slates on the ballot. On the other hand, the Democratic Party found itself split into Fair Deal and Dixiecrat wings before the end of the summer. While the Truman wing continued to oppose the third party, the States’ Rights group, as a fourth party, took an immediate hand in efforts to ease the task of qualifying a new party in several states. Unable to devise laws that would admit themselves, yet exclude the Progressives, the States’ Righters wound up in inadvertent support of the Wallace drive for a place on the ballot.
With both the legal and political circumstances in view, what were the Progressives’ strategy and techniques, the court battles in which they became involved, and the political maneuvering in the more crucial states?

Over-all strategy, techniques, and timing of the ballot campaign were planned from national headquarters in New York City. As noted in the preceding chapter, this had a significant impact on the New York State decision not to initiate a petition drive to list the Wallace-Taylor slate under the Progressive name. Elsewhere, however, the Progressives were faced with the necessity of immediate positive action. With top-level planning of the petition drives taking place in headquarters, field organizers were dispatched to those states where success hung in the balance. As noted in the preceding chapter, over-all strategy was to link the petition drives to the organizational activity in the various states, and to the campaign for funds as well. Timing to meet the deadlines as they came due was an essential part of this strategic battle waged from New York.

Within the states the field organizers analyzed the areas in which to concentrate and then devised appropriate coverage. Based on socioeconomic data, these analyses were aimed at predicting the locations, such as Former Populist centers, in which Progressive support might best be uncovered. For example, in Oklahoma, according to Barney Conal, this preliminary planning was so successful that the party was able to acquire more than the necessary five thousand signatures in only two days of actual collecting. Surprisingly enough, in such states as Kansas, Oklahoma, and West Virginia efforts were concentrated not in the cities and towns but in outlying rural areas.

Before the strategy planning had begun, even before Wallace had formally announced his candidacy, the first political shot in the battle of the ballots had been fired by the opposition in Congress. This had taken the form of a measure introduced on November 17, 1947 by Representative Cole (Re-
publican, Missouri) and designed to bar "un-American parties from the election ballot." (H.R. 4482, 80th Cong., 1st sess.) It provided that no party would be allowed to participate in an election if it was "directly or indirectly affiliated . . . with the Communist Party . . . the Communist international, or any other foreign agency, political party, organization or government."

Hearings were held in January by a subcommittee of the Committee on House Administration at which testimony was offered to indicate that the measure would bar the Wallace party because it had not repudiated Communist support. The Attorney General was asked for a ruling on the constitutionality of the proposed measure and on additional hearings which were held, but it was never reported out by the committee. The possible role of the Republican House leadership in halting the bill is virtually impossible to determine, but, in view of the fact that party strategists were relying on the Progressive candidacy to cut into the Democratic vote, this is a possibility that must be borne in mind.

This preliminary "sniping," however, was far less important than the task of securing the necessary petition signatures in the states across the nation as the respective filing deadlines came up.

In California, work was already under way before Wallace's decision had been announced. The Independent Progressive Party had begun the tremendous task of obtaining 275,970 petition signatures—10 per cent of the 2,759,700 votes cast in the last (1946) gubernatorial election. The burden was being carried by the leftwing unions of the CIO and the Townsendites. Sentiment among the Progressive Citizens of America was divided on the advisability of the petition drive. Since Robert Kenny, PCA chairman, felt it would be impossible to obtain the requisite number of signers, he was still urging a fight within the Democratic Party, retaining the registration transfer procedure as a last-minute weapon to put the Progressive Party on the ballot if necessary. Accord-
ingly, the PCA chapters, of considerable strength in the Los Angeles area, did not join in the petition drive until after the announcement of the Wallace candidacy. But when they did, they turned the tide.

With unions, Townsendites, and PCA cooperating, volunteer crews inundated the Southern California area, in which the campaign was concentrated. There were housewives and student groups from the universities for house-to-house canvassing in all the suburbs and permanent crews for downtown Los Angeles corners. The net result was an overwhelming success, even though toward the end of the campaign the party found it necessary to pay its canvassers from 5¢ to 10¢ for each name obtained and even though in San Francisco it was necessary to hire a professional firm whose business it was to obtain petition signatures for various causes on a regular fee basis.

Aided by these deviations from amateur status, the assorted groups amassed a total of some 464,000 signatures a full month prior to the March 18 deadline. Fifty-seven of the state’s fifty-eight counties were represented—giving some indication of the campaign’s breadth. Hugh Bryson, chairman of the Independent Progressive Party Organizing Committee, assigned the credit in a wire to Wallace that was quoted in the Daily Worker:

... The third party drive in California succeeded only because of the active support of thousands of working people, including a large number from trade unions and other organizations, and the active daily work of thousands of volunteers.

The final total of 482,781 signatures was later certified by the Secretary of State as including some 295,000 valid endorsements—15,000 more than the required minimum. The Wallace campaign was off to a flying start in this first and most severe test of its ability to get on the ballot.
From this triumph to a series of victories in Maryland, New Jersey, and Pennsylvania, the Progressive Party moved almost without untoward incident, except in the Keystone State.

In the midst of a drive to obtain the 7,974 signatures necessary in the Commonwealth of Pennsylvania, the Scripps-Howard Pittsburgh Press undertook an unconventional contribution to public information: front-page publication of lists giving the names, addresses, and occupations of those who had signed Wallace nominating petitions. At the same time the Press magnanimously announced that those "claiming they signed under misapprehension or through misunderstanding will have their statements printed the same day their names are used." ²

Although newspapers had been generally hostile to the Wallace candidacy, this policy marked an extreme in attempted broad-scale intimidation. The result, however, was hardly that anticipated by the Press. Of the first one thousand signers whose names were published, only ten retracted, although there were reports that some twenty others had been summoned by their employers and told to "repudiate or else." On the other hand, the Press was flooded with letters from both signers and sympathizers, the majority of whom opposed its action, as the Press admitted near the conclusion of the presentation of this "matter of news." The American Civil Liberties Union took a dim view of the proceedings, commenting in a letter to the editor that

. . . Publication of the Progressive Party lists, and those only, must have the effect of intimidating [free] discussion and inviting discrimination and retaliation against the persons listed.

According to Professor Thomas I. Emerson, the New Haven Register used a variation of this technique, employing

² See Pittsburgh Press, April 11-April 30, 1948. The direct quotation was printed April 13, 1948.
previous Communist petition signatures in an attempt to discourage voters from signing People's Party blanks. Party publicist Ralph Shikes reported that several other Scripps-Howard papers, the *Milwaukee Journal*, and one Boston and one Cleveland paper used variations of the Pittsburgh formula, though less persistently. Although these incidents went unreported in most journals across the nation, few of them saw fit to attempt repetitions in their own communities.

Other forms of intimidation were employed in West Virginia, and this state became one of the bitterest battlegrounds in the petition fight. Despite the fact that the ballot drive there received little or no publicity—perhaps because the requirements seemed to demand so little effort—the campaign was one of the most difficult and perhaps came the closest to failure of any that the Progressives finally won.

In 1941 the Legislature of West Virginia had passed a law clearly aimed at keeping third parties off the ballot. It provided that signing a nominating petition should be construed as legally binding the voter to the party assisted. The statute established as the deadline for filing petitions the day immediately preceding the primary election. Wallace petition signers would thus be barred from participating in the highly important West Virginia primary. Competition for such posts as sheriff and constable has generally been bitter in West Virginia, because of the fees and privileges that accompany these positions. Reports had it that fifteen dollars per vote was not an uncommon offer. Consequently, local politicians were strongly opposed to the circulation of third-party petitions which might disqualify any of their hoped-for primary supporters.

Moreover, in West Virginia it was necessary to purchase petition certificates on which the nominating signatures must be obtained, and only certified gatherers were allowed to seek names. In addition, these workers could operate only in the specific district assigned them.
In addition to these restrictive circumstances, there was a virtually complete lack of existing organization within the state to spearhead a petition drive. It was necessary to build from the ground up. Party headquarters scanned the various letters of endorsement sent to Wallace and chose from them persons who seemed interested and willing to do actual organizational work. Field organizers, headed by Barney Conal, were then sent to canvass these prospects and build a machine. It proved impossible to recruit a sufficient number of workers within the two weeks allotted for the task, and crews had to be brought from New York and other metropolitan areas to aid in the work. Eventually, the number of workers totaled between two hundred and three hundred.

A Committee for Wallace was established and a socio-economic analysis of the state completed. The conclusion reached from this analysis was that the Progressives should concentrate their endeavors in the small mining communities, particularly those within twelve counties—five in the south, two in the central area, three in the Fairmount and two in the Wheeling areas. The fact that the United Mine Workers had recently been fined one and one half million dollars for contempt of court enabled the Progressives to employ a rather deceptive, if ingenious, technique in their attempt to gather signatures. A petition to President Truman protesting against the UMW fine was prepared and circulated by the Progressive workers. Appended to this were petitions for nominating third-party electors. It was easy to convince miners to sign the antifine petition, and, according to party accounts, this document furnished an opening wedge for a sales talk on Wallace and Taylor. Obviously such a device may have easily lent itself to abuse, with many a miner signing both petitions rapidly, without ascertaining their individual contents.

Another propaganda weapon employed in the West Virginia campaign was a speech of the late President Roosevelt to a Union for Democratic Action meeting in which he had
praised Wallace highly as a friend of labor generally and miners specifically. All other pamphlets and mimeographs were discarded and only this one employed.

As the campaign progressed, feelings ran high, and violence was near on numerous occasions. In Logan County, the sheriff had made blunt statements to the press, threatening violators of the primary law with prosecution and implying that extra-legal means might be employed to halt the Wallace petition drive. Picking up the challenge, party strategists planned a meeting for the center of this section. Acting on the theory that a good offense may be the best defense, they advertised that they were coming in after signatures. The counterattack obtained results, but it also led to car chases, threats, and near-shootings. One of the third-party workers, after several warnings that he was endangering his health by obtaining signatures, finally set himself up in business on his front porch. There he sat, gun in hand, with a microphone and loudspeaker hooked up, challenging all visitors, "Anyone coming up here for anything but signing a petition is going to get it," and pointing meaningfully at the gun.

Not all the questionable tactics were on the side of the Progressives, however. In fact, they seem to have been on the defensive most of the time, for West Virginia was crucial to the Democrats nationally, as well as to their local cohorts. There were a few, such as U.S. Senator Matthew Neely, who felt that the Progressives would help rather than hinder state Democrats by encouraging a larger turnout of citizens likely to vote Democratic in local contests. But for the most part the Democratic opposition failed to accept this view and remained bitterly hostile to the Wallace-ites. Allegedly they were at the bottom of much of the intimidation attempted—threats of job loss, landlord "hints" of eviction for tenants working or voting for the third party, and threats of retaliation against Negroes who might aid, as well as against ministers and university professors. All of these tactics combined to make the task
of the party highly difficult, even though Wallace received the endorsement of approximately fifty-four mine locals.

The Progressives were never certain of ballot success until the day the petitions were filed. It was a last-minute, touch-and-go proposition with workers driving all night to bring in their completed blanks before the deadline. Last-second compilation of the totals was difficult, but when the smoke had cleared, the Progressives found they had submitted some 10,189 names, including, as it proved, enough valid signatures to meet the requirement of 7,155.

Although a later court ruling deprived them of their gubernatorial candidate, the Progressives had come out victorious in this, the "bitterest of any fight." 3

Other petition states presented a variety of problems, but none of them so fierce a battle. In North Carolina the Progressives claimed success in stimulating Negroes to political self-organization in that state for the first time since the Populists. Negro students were organized into crews, and mixed racial groups were also employed in the drive to secure petition signatures. This technique was reported by Barney Conal to have been so successful that in the Eleventh Ward of Charlotte, not a single qualified Negro turned down the party workers' requests.

As the continuing drive to obtain signatures in the petition states went on through the summer, the party soon found its filings challenged in the courts of two states—Oklahoma and Illinois.

In Oklahoma, the Democratic Secretary of State had accepted the Wallace petitions, with some eight thousand signatures, as satisfying the requirements of the state election

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3 The state Supreme Court refused to accept the petitions of Henry H. Harvey on the grounds that "a candidate of other than a previously recognized party is not eligible unless nominated by petition prior to the date of the primary election." New York Times, October 13, 1948.
laws. Not only had they exceeded the legal requirements by some three thousand—enough to compensate for challenged signatures—but they had also beaten the April 30 deadline by several weeks.

Suits questioning the validity of the Secretary of State’s action were immediately filed. One of these was brought by the neo-Fascist Gerald L. K. Smith, intent on saving Oklahoma from this Progressive evil. In the Oklahoma Daily (Norman), student newspaper at the University of Oklahoma, Smith charged:

Stalin is in Oklahoma under the guise of the Progressive Party . . . . And the Communist party would have gone on the ballot if the Christian National Crusade had not heard of it and through the anti-communist league challenged the petitions of the Wallace party.

The state election board refused to accept the Wallace electors for a place on the ballot, claiming that the Progressives did not constitute a political party, since the Secretary of State had not approved the party’s non-Communist affidavit prior to the final date for filing declarations of candidacy. According to statute, the Secretary of State could not accept the non-Communist affidavit until May 2, 1948, and the deadline for filing was April 30, 1948. The Progressives contended that they had come into existence as a party as soon as their nominating petitions had been certified and that the non-Communist affidavit was a requirement for appearance on the ballot, not for forming a party. They claimed in their brief that the language of both law and affidavit supported their contention.

Refusing to accept this position, the Oklahoma State Supreme Court denied the party’s petition for a writ of mandamus to compel the election board to accept and file the declarations of intention (Cooper v. Cartwright, 195 P. 2d
By a five to two vote, the Court accepted the contention of the board that the Progressives had not actually constituted a party when they sought to file their declarations. Thus the party was barred from the ballot in Oklahoma.

An appeal to the United States Supreme Court was contemplated, but party counsel John Abt abandoned the plan because of the “difficulty of getting grounds for a Federal suit.” The decision stood, and the party had met its first defeat. Even the fact that Oklahoma possessed only ten electoral votes could not fully temper the blow, since this meant that in Oklahoma, at least, the people would not have a choice.

The second series of court decisions against the Progressives came in Illinois—where the party had anticipated substantial support on the basis of their 1947 judicial election turnout of some 313,000 votes in Cook County (Chicago). After a series of court battles, the Cook County Progressive Party had finally obtained places for its local candidates on the fall ballot. But in order to secure places for the national candidates on the state-wide ballot it was necessary for the party to meet the requirement of obtaining 25,000 signatures, with at least 200 from each of 50 of the 102 counties. Although more stringent than requirements in most of the states, this demand seemed far from insuperable, and the party set out to amass and file its petitions. There appears to have been a tacit understanding that the Republicans in the state administration would look with favor upon the Progressive drive. Accordingly, third-party officials underestimated the number of signatures likely to be invalidated in the downstate counties.

At any rate, the party filed petitions bearing some 75,268 signatures and claimed that they possessed the requisite 200 in each of sixty-two counties. At this stage, the politics of the Republican Party entered the scene. Administration forces of the view that the Progressives would help defeat the Democrats in the coming election controlled the State Certifying
Board, but not the State Officers Electoral Board. This latter group was composed primarily of downstate Republicans violently opposed to the entrance of a third party. Confident of Republican prospects for November, 1948, they felt the party could win without splintering the Democratic vote.

The State Officers Electoral Board held that those persons who had voted in the April primaries of either major party could not validly sign third-party petitions. It ruled that the petitions lacked a few valid signatures (in the downstate counties) of the required total. (Unofficial reports placed the figure at eight.) The Progressives objected, claiming that since no presidential electors had been chosen in April, their signatories had a right to sign third-party petitions for those offices. Moreover, they claimed that the state law itself was invalid. An appeal was taken to the Illinois State Supreme Court, which ruled that it had no power to review the facts before the board.

The next move was to prepare a new case for submission to a special three-member Federal District Court, where an injunction was sought on the grounds that action in ruling the Progressives off the ballot was being taken under statutory provisions repugnant to the Federal Constitution. The third party claimed that the law deprived large numbers of Illinois citizens of their political rights as guaranteed by the Fourteenth Amendment, since it allegedly discriminated against voters living in Cook County (Chicago) and the remaining forty-eight most populous counties, which contained some 87 per cent of the state's voters. The Progressives argued that it

*Under Illinois law, the State Certifying Board, composed of the Governor, the Auditor of Public Accounts, and the Secretary of State, merely received the petitions. In the event of objections, the State Officers Electoral Board examined the petitions and objections and informed the State Certifying Board of its ruling. The latter was obligated to comply with the findings.*
unjustly gave the power to rural areas, particularly the remaining fifty-three counties, containing only 13 per cent of the voters, to prevent freedom of choice by the rest of the state.

The District Court refused to grant the injunction asked for (MacDougall v. Green, 80 F. Supp. 725), and an appeal was taken directly to the United States Supreme Court on October 11, 1948. Acting with the speed required by the approaching election day deadline, the Court heard the case on October 18 and handed down its ruling only three days later. It sustained the action of the District Court by a six-to-three vote, thus keeping the Progressives off the Illinois ballot (335 U.S. 281).

In a brief unsigned decision, Chief Justice Fred Vinson declared for himself and four others that

It is clear that the requirement of 200 signatures from at least fifty counties gives to the voters of the less populous counties of Illinois the power to block the nomination of candidates whose support is confined to geographically limited areas. But the state is entitled to deem this power not disproportionate.

To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation of populations.

It would be strange indeed . . . to deny a state the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the states.
Associate Justice Wiley Rutledge wrote a separate concurring opinion in which he ignored the constitutional problem, because he felt that to order the party placed on the ballot at this late date might disrupt the Illinois electoral procedure. However, in a vigorous dissent on behalf of himself and Justices Hugo L. Black and Frank Murphy, Associate Justice William O. Douglas wrote:

None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees. The dilution of political rights may be as complete and effective if the same discrimination appears in the procedure prescribed for nominating petitions. The fact that the Constitution itself sanctions inequalities in some phases of our political system does not justify us in allowing a state to create additional ones. The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government.

Political considerations also played an important role in this appeal to the Supreme Court, for the Progressive-Party position in the case was supported by the Republican Attorney General of the state, a member of the pro-third party Cook County faction. He and the Governor joined in urging that the Illinois statute be set aside as unconstitutional. As Arthur Krock pointed out in the New York Times, it was highly unusual for two state officials to be appealing to the United States Supreme Court for invalidation of their own state’s law, particularly in view of the fact that the Republican platform was at this same time appealing for a restoration of States rights.

It is difficult to account for this Republican failure to agree
on a program of concealed aid to the Wallace party, for the absence of the third-party slate was to cause the GOP to lose the state of Illinois to the Democrats in the November election. The latter received a margin of only 33,612 out of nearly 4,000,000 votes cast. The fact that the Progressive candidates had garnered some 313,000 votes in 1947 seems conclusive evidence that Henry Wallace would have siphoned off—even with a weak showing—enough Democratic votes to swing the state's electoral total of twenty-eight to Dewey and Warren.

Regardless of the factors involved, the Progressives had suffered their second and most damaging loss. Their hopes had been high in Illinois, and defeat came as a stunning blow.

Republican politics were also prominent in the Ohio court battle, in which legal questions were markedly different. According to Helen Fuller in *New Republic*, Ohio was "the worst legal headache of all," because the wording of a new election law left doubt about whether or not a new party would be able to qualify under any circumstances for a place on the ballot.

Initial action to bar the party in Ohio, however, was taken singlehandedly by Secretary of State Edward J. Hummel. Ostensibly a Republican, Hummel had obtained his state post through the unexpected and untimely demise of his administration-backed primary opponent and was regarded in Ohio Republican circles as "something of an accidental maverick." His motives, other than personal predilections, were difficult to discern. At any rate, he announced on June 4 that the New Party had been denied a place on the ballot by virtue of a 1941 statute barring "parties or groups engaged in un-American activities." The Secretary of State announced that an "investigation" had shown that the party was not entitled to a place on the ballot. At no time had he held a hearing, however, nor would he specify exact testimony or evidence that led to his decision. When the case was later appealed to the Ohio State Supreme Court, Hummel informed
the court that "three of Henry A. Wallace's principal campaigners in Ohio were Communists."

A storm of protest was stirred up by Hummel's one-man verdict. The Toledo Blade, a Paul Block paper opposed to the Wallace party, remarked editorially:

Things have come to a pretty pass, indeed, when Ed Hummel starts saying who can run for the Presidency here in Ohio . . . . Apparently our democratic processes have been subverted more than we realize.

The Wallace backers carried the case to the Ohio State Supreme Court, and Hummel's ruling was reversed. But this was not the only aspect of the court battle in Ohio. Two methods of qualifying for a place on the ballot were specified in the Ohio election laws. First, it was possible, though barely so, to organize a new party by employing a highly technical and complicated procedure which entailed, among other things, obtaining some 500,000 petition signatures. A second method of qualifying independent candidates which necessitated far fewer signatures was also provided. However, a 1947 law, aimed at third parties, had so amended this provision that it was now believed impossible for a presidential candidate to run as an independent. Despite this belief, the Progressives had chosen the second method, that of qualifying independent electors, as the only feasible approach. Secretary of State Hummel, however, refused to certify the party's nominee, claiming that the 1947 amendment made no provision for independent candidates.

*State v. Hummel, 80 N.E. 2d 899. The Ohio State Supreme Court linked into this one case and decision two separate actions before it: State ex rel. Beck et al. v. Hummel, No. 31496 and Zahm v. Hummel, No. 31498. The court ruled in this first part of the case that the presence of 3 Communist Party members among a total of 46,000 petition signers did not disqualify the Progressives under the statute.*
Progressive Party lawyers had uncovered a technical defect. The state legislature had neglected to amend the second of two provisions in the original statute pertaining to the matter. The party contended, and the court agreed (State v. Hummel, 80 N.E. 2d 899, Part 2), that the only possible consistent interpretation of the statute as amended was that it permitted the nomination of independent presidential electors, although the name of the presidential candidate might not appear. Thus twenty-five independent electors for Wallace eventually found their names on the ballot, but with no party or candidate designation and with no provision whereby a straight vote might be cast for the entire slate.

It was, of course, possible to vote straight for the Democratic and Republican electoral tickets. The inherent confusion in this situation led to an election ruling that favored the Progressives. Made by an administration Republican, Attorney General Hugh S. Jenkins, the decision may well have been politically motivated, since it ruled that all ballots found to contain a straight vote for the Republican or Democratic slate as well as marks for one or more Progressive (Independent) electors should be counted for the Wallace candidate, rather than being voided or counted as a major-party vote. Presumably, the Republicans expected that the Democrats would lose more from this system than they would, and that the votes thus acquired by one or two Wallace electors would prove insignificant.

With this one slim concession, the final outcome in Ohio was far from favorable to the third party. The Progressive electors were on the ballot without party designation, and a citizen wishing to cast his vote for Henry A. Wallace was faced with the necessity of making twenty-five separate X's—one before each name. Thus, in two of the largest states—states whose industrial populations had been counted on to turn out a heavy Wallace vote—the ballot barriers had proved too steep for the third party to hurdle.

But what of the states where means other than petitions
were employed to get on the ballot? First, there was the failure—the third and final complete one—in Nebraska. Here the party met the only defeat attributable to its own shortcomings. Nebraska law required an organizing convention at which 750 delegates must sign a new party’s filing petition. Accordingly, the Progressives scheduled a convention for September 10, 1948 in Omaha. But instead of the large assemblage anticipated, exactly 283 delegates turned out. The Nebraska ballot position went by default, as the Secretary of State later ruled that presidential electors could not be nominated by the alternative petition means provided for state candidates. The Nebraska State Supreme Court adopted this view, refusing to issue a writ of mandamus to compel the Secretary of State to accept subsequent Progressive petitions.

At about the same time a more successful convention was held in the state of Mississippi, where there were no requirements concerning the number of attending delegates. Here a small group of Negroes and whites utilized the occasion of a Wallace visit to their state, in the course of a southern tour, to hold their convention.

It was a highly informal affair—actually no more than a luncheon—in Edwards, home of a Negro college where Wallace spoke. Following this, the presidential candidate himself motored to the state capital to present his slate of nine electors. Secretary of State Heber Ladner received them just as informally, advising Wallace that he would request a ruling from the Attorney General about whether or not the legal requirements had been met, inasmuch as the state convention had not been preceded by the customary precinct or county conventions. But, in friendly fashion, he went on to inform Wallace that, if the ruling should prove unfavorable, there would still be time to use an alternative procedure—filing petitions of fifty signatures each by October 15. Ladner, who was, coincidentally, a Dixiecrat, summarized the state procedure succinctly, according to the New York Times: “It’s very easy to get on the ballot in Mississippi.”
A similarly informal procedure was followed the next day in neighboring Arkansas, with Wallace again presenting personally to the secretary of state, C. C. Hall, his slate of seven electors. The comment of this gentleman, a regular Democrat, was in a somewhat different vein—a suggestion that Wallace, in accordance with state laws, file an affidavit stating that he was not a Communist. And although no further objections were raised by the States' Rights administration in Mississippi, the regular Democratic machine in Arkansas insisted upon barring the Wallace slate until the Progressive Party candidates signed the required affidavits. Far from conclusive, these two incidents provided an indication of the relative receptivity of the Dixiecrats and Truman Democrats from whose ranks Wallace votes were likely to come.

But what of the sole attempt made by the Progressives to capture an existing major-party mechanism—that of the Democratic Farmer-Labor Party in Minnesota? There had been indications at the time of the Wallace announcement in December, 1947, that the dissident DFL elements in Minnesota, led by former Governor Elmer Benson, might, by capturing the state DFL organization, force President Truman to run as an independent. This actually happened the same year in Alabama, where the Dixiecrats gained control, and it almost happened in Minnesota with the Progressives. Wallace backers were actually in control of the State Executive Committee of thirty-five, and, normally, arrangements for the state convention would have been left to this group. But in February their opponents, led by Mayor Hubert Humphrey of Minneapolis, accurately appraising the Wallace tactics, forced an unscheduled meeting of the 217-member State Central Committee in which they possessed a three-to-one supremacy. At this meeting the Humphrey rightists were able to set all conditions and name all committees for the state convention, including all seven members of the highly important credentials committee.

The Benson group was unable to make substantial head-
way in the series of county conventions that followed, although nineteen of these assemblages (out of eighty-five) selected leftist delegations for the June state convention at Brainerd. The Credentials Committee, however, refused to seat a single one of these nineteen delegations, and the Benson group "took a walk" to an already prepared rump convention at Minneapolis. Meeting the same day, they named a ticket of pro-Wallace electors as "official DFL designees" and presented this slate to Republican Secretary of State Mike Holm. On the advice of the Attorney General, also a Republican, Holm certified this leftist slate and refused later to accept the pro-Truman slate that was put up by the Brainerd convention.

Another court battle ensued, with the Minnesota State Supreme Court overruling the Secretary of State on the grounds that the Brainerd convention had been legally called and organized. \((Democratic Farmer-Labor State Central Committee v. Holm, 33 N.W. 2d 831)\). Stating that intraparty matters were not open to court interpretation, it ordered the eleven electors pledged to President Truman placed on the ballot and those pledged to the former Vice President withdrawn.

Having failed in their capture attempt, the Wallace organization now needed two thousand nominating petition signatures for a place on the ballot. With an October 2 deadline allowing adequate time, they had little difficulty, but the fact that they were now the independent rather than the party designees weighed heavily against them. While the DFL ticket with Wallace at its head would not in all likelihood have carried the state on November 2, as it did under Truman, the third-party candidate undoubtedly would have received a far greater number of presidential votes than he did as an independent.

The possibility of a state Republican victory arising from this situation lent considerable support to conjectures that the Secretary of State and the Attorney General, both Repub-
licans, were guided primarily by political considerations in accepting the Wallace rather than the Truman designees in view of the obvious invalidity of actions taken by the rump convention. Despite the assist, however, the Progressives failed in this, their only hope of getting on a state ballot under major-party listing.

Political considerations played a pre-eminent role in several other states—Florida, Georgia, and Missouri. In Florida, early in the campaign, the Progressives had little real hope of securing a place on the ballot. The state law posed a virtually impossible requirement—that of persuading 5 per cent of the registered voters to change their affiliations and enroll in the New Party prior to the May primary. With the books closing in March and April, the Progressives wound up with only some 7,000 or 8,000 instead of the 35,000 required. Campaign manager C. B. Baldwin conceded that the party had been defeated and would not appear on the Florida ballot.

But, following the split of the States’ Rights Democrats at the Philadelphia Convention in July, 1948, the Florida Legislature found itself under pressure to amend the statutes for qualifying new presidential slates. An amendment was passed allowing electoral nominees to file without formality. With the legislature unable to write a law that would exclude the Progressives while including the Dixiecrats, the Wallace-Taylor slate was suddenly handed a place on the ballot in the state of Florida.

Similar politics were involved in Georgia. Here the law required petition signatures from 5 per cent of all registered voters, an estimated sixty thousand signatures. Registration books were reportedly in a condition making it impossible for a party to assume the burden of proving that all its signers were qualified. Yet this was precisely the ruling made by the Secretary of State—that the Progressive Party must prove all its endorsements had been made by enrolled voters.

Under the same Dixiecrat pressure found in Florida, the
Georgia Legislature amended its statute to permit merely certifying the names of presidential electoral candidates for the ballot. There still remained a non-Communist affidavit requirement, however, and it eventually became necessary for the Progressive Party to replace seven of its electors who refused to take such an oath. On the night of the deadline, it substituted electors willing to sign and thus qualified for a place on the Georgia ballot.

The question of qualifying state candidates was still pending, however, inasmuch as the pro-Dixiecrat amendment had affected only presidential electoral candidates. An appeal was taken from the ruling of the Secretary of State to another three-judge Federal District Court, on the grounds that the law, as interpreted, was unconstitutional. The special court, however, refused to accept the Progressives' contention, and there was no time to carry an appeal to the Supreme Court. Their presidential electors were on, but their state candidates remained off the Georgia ballot.

Finally, in the ballot battle political considerations were involved in Missouri. In this court test, there were factors dating back to the first Progressive presidential campaign—that of Teddy Roosevelt in 1912. At that time a pro-Roosevelt Missouri State Supreme Court had ruled that a group desiring to nominate presidential electoral candidates merely had to hold a meeting, call itself a party, and thus be entitled to place its names on the ballot. The Wallace Progressives called upon a lower State Court in Missouri to follow this 36-year-old case law and grant them places without petition signatures. Finding a distinction between the 1912 and 1948 cases, the court refused to certify the party's nominees. No appeal was carried to the state Supreme Court, since in the meantime the Progressives had qualified, much to their own surprise, by the petition method. Despite objections lodged by the Pendergast

*Later, the Socialist Party appealed a similar case to the Missouri State Supreme Court, where its position was upheld.
machine in Kansas City, the pro-Pendergast Secretary of State certified that the Progressives had filed well over the minimum number of signatures required.

In this instance at least, the Progressives seemingly received honest and impartial treatment from a state election official who might have obstructed their petition filing. Some of Wallace's followers remained skeptical, suggesting that President Truman may have brought pressure to bear, assured that the state was safely his. Regardless of the motivation involved, the Progressive Party had achieved a place on the ballot in the President's home state.

Thus the Progressives wound up the 1948 battle to give the voters a choice with their candidates, under one party label or another, on the ballots of forty-five states. Three significant conclusions emerge from this phase of the crusade. Once again politics had indeed produced strange bedfellows, for here were the parties of the campaign which were at opposite poles—Dixiecrats and Progressives—finding accommodation through their mutual necessity for a place on the ballot and their similar expectation of taking votes away from the common Democratic enemy. On the other hand, some state segments of the Republican Party emerged as less than politically astute or farsighted. Not only did they grossly overestimate their own political appeal, they also failed to take all possible steps to weaken the enemy by a thorough, if sub rosa, support of the Wallace petition drives that might ultimately have given them the electoral support of Illinois. Only the Democrats reacted as generally anticipated—opposing the ballot appearance of the Progressives with all the strength lent by

*Statistics of the Presidential and Congressional Elections of November 2, 1948*, comp. from official sources by William Graf under the direction of Ralph R. Roberts, Clerk of the U.S. House of Representatives (Washington, D.C., 1949), lists only forty-four states, but the Progressives also appeared on the ballot in New Mexico as the New Party.
the conviction that theirs would be the ranks decimated by defections to the New Party.

Although the Progressives' few failures cannot be easily written off—those in Illinois and Ohio being particularly costly—they had been successful beyond all expectations in getting their candidates on the ballots of forty-five states. With an opportunity to cast their votes for Wallace-Taylor electoral slates all across the United States, the people would, in November of 1948, have a choice.