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Dec. 3, 1976

To: N.O., PRDF, Andrea

From: Matilde

Report on meeting with McCarthy '76 and Libertarians re. ballot work

Present at meeting: John Armor, McCarthy ballot attorney; Mary Meehan, McCarthy staff; Cindy Burke, CoDEL; Bob Meier, Libertarian Party executive director; Ed Crane, Libertarian Party; Matilde Zimmermann, SWP

At the initiative of CoDEL, a meeting was set up between representatives of the McCarthy campaign, Libertarian Party and SWP to discuss the status of ballot suits around the country and the possibility of future collaboration. All parties concerned reacted favorably to the idea, including John Armor who probably knows more about ballot law, at least as regards independent candidacies, than any other lawyer in the country. The meeting took place Dec. 2 in McCarthy's campaign headquarters in Washington.

Armor is interested in setting up a national tax exempt foundation which would act as a clearing house for information on state ballot laws and challenges to them, and which would sponsor various challenges to discriminatory ballot laws. He had discussed this with McCarthy, and there are plans for him and McCarthy to meet later this month with possible donors who may provide \$50,000 seed money for the foundation and with experts in getting tax exempt status. Armor had drawn up a prospectus for his "First Century Foundation" and a three year budget, amounting to \$100,000 the first year.

Armor was looking for some commitment from the LP and SWP to helping get this thing off the ground and being part of the policy making board. He made it clear after the LP had left that he was looking for money from them and expertise from the SWP and CoDEL.

Armor and Meehan are also very interested in drawing up and trying to get passed "model" legislation on ballot access. Common Cause is reportedly drawing up a proposed federal ballot law, to fill the vacuum left by McCarthy striking down 15 state statutes and possible future challenges. There was a general fear (justifiable) that Common Cause's legislation would be quite restrictive and that a federal ballot law was unconstitutional in any case, and McCarthy's people in particular are looking for a way to intervene in the drafting of new legislation at the state level. Since neither the LP nor the SWP thought it very likely that all the parties concerned could agree on "model" legislation, this part was dropped from the foundation proposal and it was proposed that it just be a clearing house for information on new state legislation (which the various parties could act on if they wanted to), in addition to being involved in legal challenges to existing laws.

The Libertarians took pretty much the same approach to the foundation proposal that we did, which was a friendly, wait-and-see attitude.

The various parties went over the legal suits pending and being considered. A list of McCarthy's legal challenges (involving 27 states) is attached. The state of Nebraska's appeal to the U.S. Supreme Court was turned down after this list was printed, which means that all the flat prohibitions of independent candidacies are pretty much doomed. McCarthy is considering taking the N.Y. law to the Supreme Court, on the grounds that N.Y. is one of only two states with a strict constructionist approach (i.e. signatures can theoretically be disqualified for missing middle initial, etc.), which even if it is ignored in most cases can be used to bar unwanted candidates from the ballot. McCarthy is also requesting the Supreme Court to take cert on the debate case and Armor thinks the Supreme Court will hear it, for reasons which were not completely clear.

The Libertarians are considering filing suit in California contending that they should have permanent ballot status because they got more votes than either the AP or the P&F, both of which have permanent ballot status. They are taking the legislative route in Georgia and think that they can get a bill introduced in the legislature which would reduce the signature requirement from 5% to 1%.

It was decided to set up another meeting for Saturday, Jan. 15 in Washington and to invite the AP, AIP and CP and SLP in addition to the parties present at the first meeting. This meeting would have two purposes: 1) to go over the situation state by state in terms of pending challenges and possible challenges, and 2) to hear a report from Armor on his foundation perspectives.

# MC CARTHY '76

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## STATE SUMMARY OF McCARTHY LEGAL CHALLENGES

**ALASKA** - Election officials agreed without suit that "party" should be interpreted to mean independents as well.

**ARKANSAS** - Early petition deadline challenged pro se by congressional candidate with assistance from McCarthy office. Three judge federal court struck down deadline, moving it to 31 August.

**CALIFORNIA** - State court challenge for additional time due to delay caused by state. Preliminary relief granted, permanent relief denied, also denied by California Supreme Court.

**CONNECTICUT** - Three judge court challenge by political party to requirement that all petition gatherers go personally to the town clerks of all signers (up to 250 towns) to swear they collected signatures. Relief was denied by Trial Court, by Court of Appeals, and by Supreme Court (McCarthy joined in latter two efforts). Decision made clear that timely challenge will strike the law.

**DELAWARE** - Federal court struck prohibition of independent candidacy by state law; no appeal.

**DISTRICT OF COLUMBIA** - Election officials agreed without suit that "party" should be interpreted to mean independents as well. Challenge to D.C. petition deadline of 17 August was rejected; no appeal.

**FLORIDA** - Federal Court struck down prohibition of independent candidacy; appeal to Court of Appeals denied. No further appeals.

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**IDAHO** - Still in court against prohibition of independent candidacy. Expect law will be struck down.

**ILLINOIS** - State reinterpreted its law, after suit was filed, to allow independent candidacy for President; suit dismissed by consent.

**IOWA** - State reversed, out of court, two prior decisions of its Solicitor General and thus permitted petition campaign to proceed.

**KANSAS** - State entered into consent decree in federal court to terminate prohibition of independent candidacy.

**LOUISIANA** - State deadline for petitions moved back to federal court, due to failure by election officials to provide accurate information (same grounds as California); appeal to Court of Appeals denied; no further appeal.

**MARYLAND** - Petition deadline challenge brought too late for relief, due to dishonesty of original attorney; deadline apparently unconstitutional.

**MASSACHUSETTS** - State court found that there were enough signatures; also declared petition verification method unconstitutional. Stay granted by intermediate appeals court; stay vacated by Supreme Judicial Court. (Same grounds apply in Indiana and other states.)

**MICHIGAN** - Three judge federal court struck down prohibition of independent candidacy; no appeal.

**MISSOURI** - Federal court struck down prohibition of candidacy, and deadline, and ruled signatures sufficient; no appeal yet. (Preliminary injunction had gone to Court of Appeals and Supreme Court; denied both places.)

**NEBRASKA** - Three judge federal court struck down prohibition of independent candidacy; state has appealed to Supreme Court.

**NEW MEXICO** - Prohibition still in court; we expect state law to be struck down.

**NEW YORK** - Petitions accepted and McCarthy ordered on ballot by State Election Board. State trial court ordered McCarthy off ballot; intermediate appeals court reversed; highest supreme court reversed again; U.S. Supreme Court denied emergency relief; appeal still under consideration.

**OKLAHOMA** - State supreme court struck down state law prohibiting independent candidacy.

**RHODE ISLAND** - Federal court struck down deadline, moving it to October, court denied last-minute challenge to county distribution requirement of signatures; no appeal.

**TENNESSEE** - State court struck down state position that it would not print the name of independent presidential candidate on ballot with his electors; no appeal.

**TEXAS** - Three judge federal court struck down prohibition of independent candidacy, but denied relief; Court of Appeals denied relief; Supreme Court granted relief; appeal expected unless state concedes.

**UTAH** - Federal court struck down prohibition of independent candidacy; no appeal.

**VERMONT** - Federal court ordered state to accept petitions certified by town clerks after deadline; no appeal.

**WASHINGTON** - Election officials agreed without suit that "party" should be interpreted to mean independents as well.

**WEST VIRGINIA** - Pro se federal case by congressional candidate against deadline unsuccessful; (McCarthy entered case after trial but before decision); no appeal.