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Barriers to Participation

Trevor Potter

The Campaign Legal Center

Marianne H. Viray

The Campaign Legal Center

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Trevor Potter*

Marianne H. Viray**

Despite the nation's founding commitment to participatory democracy, many barriers to candidate and public participation in the electoral process are damaging the public's confidence that our elections are fair and open to full participation by candidates and voters.

The nominating processes created by the two major parties mainly serve the goals of party "insiders" and the more politically extreme factions, at the expense of competition and public confidence in the two-party system. At the same time, barriers to minor party and independent candidates—closed primaries, excessive early-voter registration requirements and complicated state primary and general ballot access requirements—operate to foreclose the possibility of a meaningful multi-party system.

This Article will evaluate these and other legal and political barriers, and discuss the cost that such practices impose upon the nation's civic life.

INTRODUCTION

While the United States is committed in theory to maximizing public participation in elections, it has long been accepted that states must necessarily regulate elections, even through restricting candidate access to the ballot.¹ With regard to potential candidates for office, for example, the Supreme Court has reasoned that:

* President and General Counsel, The Campaign Legal Center; former Commissioner and Chairman, Federal Election Commission. B.A. 1978, Harvard College; J.D. 1982, University of Virginia School of Law.

** Managing Director, The Campaign Legal Center. B.A. 1996, Brigham Young University. The authors gratefully acknowledge the assistance of Mark Glaze, Amity Clausen, Jason Davis, James Athas, Lana Price, Micheal Thorpe, Rebecca McAdams, Melissa Barnson and Ashley Facio, of the Campaign Legal Center.

1. It is often argued that governmental regulation is necessary in order to maintain political stability. In *Storer v. Brown*, 415 U.S. 724 (1974), the U.S. Supreme Court stated its agreement "with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government." *Id.* at 736. The Court reiterated this standard in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), where it ruled that the need for political stability allows the state to create "reasonable election regulations that may, in practice, favor the traditional two-party system . . . and that temper the destabilizing effects of party splintering and excessive factionalism." *Id.* at 367.

A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process.²

And with regard to voters, requirements of citizenship and minimum age have long been considered reasonable.³

Nonetheless, the type and severity of ballot restrictions administered by the states and state parties have often become barriers to participation for serious candidates, third parties and voters alike.

This Article will discuss a myriad of barriers facing candidates and voters. Specifically, we will focus on major party presidential primary ballot access requirements, minor party and independent candidate barriers to the general election ballots, and barriers to voter participation.

I. CANDIDATE BARRIERS IN STATE PRIMARY BALLOT ACCESS REQUIREMENTS

A. Party and State Restrictions

As a matter of both constitutional doctrine and political practice, Congress does not control candidates' access to state presidential nominating convention delegations.⁴ Similarly, the Democratic and Republican National Committees have only a few very general guidelines that state parties must follow in delegate selection, petition requirements, primary dates and filing

2. *Lubin v. Panish*, 415 U.S. 709, 715 (1974).

3. The Supreme Court has explicitly approved such voting restrictions for over 30 years. *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972) (residency); *Oregon v. Mitchell*, 400 U.S. 112, 118 (1970) (minimum age); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 625 (1969) (citizenship). The United States Constitution was amended in 1971 to permit 18 year olds vote in federal elections.

4. The Constitution of the United States gives the federal government plenary power to control the manner of general elections but does not detail the selection of candidates or the administration of primary elections. See U.S. CONST. art. I, § 4. However, the Supreme Court has upheld federal regulation of state primary contests to the extent necessary to protect the participation of racial minorities in the process. See *Nixon v. Herndon*, 273 U.S. 536 (1927), *Nixon v. Condon*, 286 U.S. 73 (1932), *Smith v. Allwright*, 321 U.S. 649 (1944) and *Terry v. Adams*, 345 U.S. 461 (1953).

deadlines.⁵ State law and state parties control access to the presidential primary nominating process.⁶ Some states issue burdensome and costly requirements while other states impose neither fees nor restrictive conditions.

During the nineteenth century, states selected candidates by holding small closed-party meetings, or caucuses, which were made up of party leaders, advocates or elected officials.⁷ At the start of the twentieth century, caucuses were called into question in an attempt to reduce the control political bosses exercised over their parties.⁸ Caucuses not only excluded rank-and-file party members from participating in the nomination selection process, but they also allowed the party structure to retain more control over the nominating process and the candidates who progressed beyond the state level.⁹ Direct primary elections were developed in the Progressive Era (1890–1913) and succeeded in increasing civic participation.¹⁰ As a result, primary elections generally began to represent the choices of a wider segment of party members than those of closed-party caucuses, where the nominee simply mirrored the preferences of the party bosses.¹¹

Some states resisted moving from caucuses to direct primary elections, and some have devised ingenious methods to retain party influence. In Utah, for example, a party-endorsing convention selects the two leading candidates who will face off in the

5. See DEMOCRATIC NAT'L COMM., DELEGATE SELECTION RULES: FOR THE 2004 DEMOCRATIC NATIONAL CONVENTION, Rule 13 (2002) (on file with the University of Michigan Journal of Law Reform) [hereinafter DNC RULES] REPUBLICAN NAT'L COMM., THE RULES OF THE REPUBLICAN PARTY, Rule 15 (July 31, 2000) [hereinafter RNC RULES], http://www.rnc.org/gopinforules/2000rules11_15.htm (last visited Apr. 17, 2003).

6. Nathaniel Persily, *Candidates v. Parties: The Constitutional Constraints on Primary Ballot Access Laws*, 89 GEO. L.J. 2181, 2187 (2001).

7. Andrew Pierce, *Regulating Our Mischievous Factions: Presidential Nominations and the Law*, 78 KY. L.J. 311, 315 (1990).

8. BARBARA NORRANDER, *SUPER TUESDAY: REGIONAL POLITICS & PRESIDENTIAL PRIMARIES* 6 (1992).

9. *Id.* at 11.

10. *Id.* at 11, 111.

11. See NELSON W. POLSBY & AARON WILDAVSKY, *PRESIDENTIAL ELECTIONS: STRATEGIES AND STRUCTURES OF AMERICAN POLITICS* 43 (2000); John F. Bibby, *State Party Organizations: Coping and Adapting to Candidate-Centered Politics and Nationalization*, in *THE PARTIES RESPOND: CHANGES IN AMERICAN PARTIES AND CAMPAIGNS*, 23–24 (L. Sandy Maisel ed., 1998). Caucuses were often convened by bosses without any formal notice and required participants to make public (and therefore sanctionable) declarations as to who they were supporting. See Leonard P. Stark, *The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?*, 15 YALE L. & POL'Y REV. 331, 333 (1996).

primary election. If one candidate receives more than 70% of the convention tally, a primary election is not held.¹²

Endorsements by small state party conventions prior to the formal primary election is another way state parties retain influence and control in primary elections. These endorsements carry weight with the party loyalists and benefit the party-favored candidate.¹³ First, some states automatically place the endorsed candidate on the ballot, while challengers must collect petition signatures and pay filing fees with the parties.¹⁴ Second, the favored candidate often receives the preferred position on the ballot.¹⁵ Third, the preferred candidate is sometimes publicly designated as the party-favored candidate in the primary election through party leaders publicly supporting that particular candidate.¹⁶ These practices increase the obstacles a challenger must overcome to win a party nomination.

The procedures in New Hampshire and Virginia, two politically critical states, reflect the range of primary access regulations and two disparate philosophies regarding access. New Hampshire, home of the nation's earliest presidential primary, requires a potential candidate to pay only a \$1,000 filing fee with the state and does not require signed petitions.¹⁷ New Hampshire Secretary of State William H. Gardner has noted that the state "view[s] it as a privilege to have the first presidential primary in the nation. . . . We think we should make access to the ballot as easy as possible and let the voters do the winnowing."¹⁸

At the other end of the spectrum, Virginia's approach features one of the nation's most rigorous presidential primary ballot access requirements.¹⁹ Virginia limits access to the primary ballot to only the most successful presidential candidates.²⁰ In order to appear on the ballot, the candidate must file a petition containing the signatures of 10,000 registered voters, with a minimum of 400 from each

12. SARAH M. MOREHOUSE, *THE GOVERNOR AS PARTY LEADER: CAMPAIGNING AND GOVERNING* 38 (1997).

13. See L. Sandy Maisel et al., *The Continuing Importance of the Rules of the Game: Subpresidential Nominations in 1994 and 1996*, in *THE PARTIES RESPOND*, *supra* note 11, at 149.

14. *Id.*

15. *Id.*

16. *Id.*

17. Tyler Whitley, *Getting on Ballot for Presidential Race is Difficult in Virginia*, *RICHMOND TIMES-DISPATCH*, Jan. 2, 2000, at C1.

18. *Id.*

19. *Id.*

20. *Id.*

of the eleven congressional districts in the state.²¹ Petition circulators may only distribute petitions in their home districts or districts directly adjacent.²² In addition to this substantial signature requirement, Virginia recommends a candidate go further and gather between 15,000 and 20,000 signatures, representing a minimum of 700 from each congressional district.²³ This recommendation is due to the relatively high number of petition signatures that will prove invalid (i.e., signatures from individuals not registered to vote).²⁴ The prospect of completing this petition, with its significant monetary and man-power implications, can be fatally daunting to prospective candidates. This requirement discouraged former 2000 presidential hopeful Senator Orrin Hatch (R-UT) from attempting to get on the Republican primary ballot—even though the Senator had qualified for federal matching funds by raising over \$100,000 from individuals in more than twenty different states.²⁵

Virginia also effectively dissuades minor parties and their candidates from participating in the election process. To qualify as a party in Virginia, an organization must have received at least 10% of the popular vote in the two most recent elections.²⁶ The history of the Reform Party illustrates the ongoing struggle that minor parties face in gaining a position on the state's ballots. Having received more than 10% of the vote in 1992 and 1994, the Reform Party qualified for state recognition as a party in 1996.²⁷ However, in 1996, the Party only received slightly more than 6% of the vote and lost its ballot certification.²⁸ Thus, according to Virginia State Code, the Party once again was required to gather the 10,000 petition signatures, including 400 signatures from each Congressional district, to qualify its candidates for the 2000 ballot.²⁹ And even then, the Reform Party name will not be permitted to appear on the ballot as a recognized state political party until its candidates once again receive 10% of the popular vote in two consecutive

21. VIRGINIA STATE BOARD OF ELECTIONS, CANDIDATE BULLETIN: BALLOT ACCESS REQUIREMENTS: GENERAL ELECTION FOR PRESIDENT 3 (2000) (on file with the University of Michigan Journal of Law Reform).

22. *Id.* at 4.

23. *Id.* at 3.

24. *Id.*

25. Whitley, *supra* note 17 at C1.

26. VA. CODE ANN. § 24.2-101 (Michie 2002).

27. Whitley, *supra* note 17 at C1.

28. *Id.*

29. VA. CODE ANN. § 24.2-543 (Michie 2002).

elections despite having met the petition and filing requirements in earlier election cycles.³⁰

Examples such as New Hampshire and Virginia shed light on the widely disparate ways in which states treat candidates seeking a place on their presidential primary ballots. In general, there are four separate categories of potential requirements for candidates seeking access: petitions, filing fees, media recognition and federal matching funds. In discussing each of these categories, we will also consider how these requirements differ for major, minor and independent party candidacies.

B. Petitions

All fifty states and the District of Columbia have complex statutes regulating ballot access for primary contests. Twenty-seven states require petition signatures from major party candidates.³¹

Compelling evidence of problems with the petition requirement arose in New York during the presidential primaries of 1996 and 2000. New York is considered to have the most restrictive primary ballot access requirements in the nation, requiring twice the number of petition signatures as the second most restrictive state, Indiana.³²

In two cases in two consecutive presidential election years, federal courts ruled that the New York GOP's requirements were unconstitutional. In 1996, Republican businessman Steve Forbes spent nearly a million dollars on 320 professional petition circulators trying, unsuccessfully, to raise the necessary 37,000 signatures to qualify for New York's ballot in the Republican presidential primary.³³ The GOP rules required, among other highly technical requirements, that candidates garner signatures from 5% or 1,250, whichever is less, of enrolled party voters per

30. VA. CODE ANN. § 24.2-101 (Michie 2002).

31. The twenty-seven states requiring signatures are: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Virginia, Washington and Wisconsin. Twelve states offer the option of paying a filing fee or collecting petition signatures. They are: Colorado, Kansas, Kentucky, Louisiana, Maine, Missouri, New Hampshire, Oklahoma, Pennsylvania, Texas, Vermont, and West Virginia. See Table 2.

32. Persily, *Candidates v. Parties*, *supra* note 6, at 2202.

33. See *Rockefeller v. Powers*, 917 F. Supp. 155, 162 (E.D.N.Y. 1996) [hereinafter *Rockefeller II*], *aff'd*, 78 F.3d 44 (2d Cir. 1996).

congressional district, and that these petitions be notarized.³⁴ The Democratic Party, on the other hand, required that candidates collect only 0.5% or 1,000, whichever is less, of enrolled party voters per district.³⁵ Forbes and a group of Republican voters brought suit against the GOP and the state in federal court, alleging that the restrictive ballot rules burdened, inter alia, the First Amendment right to vote.³⁶ The district court agreed, holding that the state's ballot requirements were unnecessarily restrictive and, in most cases, served no legitimate state interest.³⁷ In the ruling, the court asserted that these restrictive rules undermined the very purpose of primaries:

Although at the primary all candidates are members of the same party, they represent different political ideas and have different qualifications for national and party leadership. . . . In politics, one challenges establishments in primaries, not elections. . . . If discriminatory requirements prevent "independent" candidates from obtaining the requisite number of signatures to place on the ballot delegates pledged to them, then the primary becomes little more than a state-sponsored endorsement of the candidate of the party leadership.³⁸

In determining that the Republican Party's ballot requirements imposed an undue burden on the voters of New York and on GOP candidates, the court reasoned that because New York offered the political parties two separate petition options—one for Republicans, the other for Democrats—that "New York State has no compelling interest in a more restrictive rule than 0.5% per congressional district," the less rigorous Democratic standard.³⁹ The court went on to reject the notion that "particular interests of the major parties can automatically be characterized as legitimate state interests," especially when they only serve to "assure monolithic control over its own members and supporters."⁴⁰

34. Act of Aug. 28, 1995, 1995 N.Y. Laws 586, § 3.1(6)(c). The Democratic and Republican Primary preferences for delegate selection are discussed in *Rockefeller II*, 917 F. Supp. at 164.

35. See *Rockefeller II*, 917 F. Supp. 155 at 164.

36. See *id.* The initial injunction against the GOP was made in *Rockefeller v. Powers*, 909 F. Supp. 863 (E.D.N.Y. 1995) [hereinafter *Rockefeller I*], *rev'd*, 74 F.3d 1367 (2d Cir. 1995).

37. See *Rockefeller I*, 909 F. Supp. at 869.

38. *Id.* at 868–69 (internal citation omitted).

39. *Rockefeller II*, 917 F. Supp. at 164.

40. *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 803 n.30 (1983)).

Candidates in New York revisited these issues only four years later. In 2000, Senator John McCain, a nationally recognized challenger to leading presidential candidate Governor George W. Bush, struggled to meet even the revised, more lenient Republican primary requirement of 1,000 or 0.5%, whichever is less, of all registered Republicans per congressional district (approximately 20,000 petition signatures total).⁴¹ Of particular issue were two technical regulations the GOP established for the 2000 primary detailing how these petitions were to be collected. These provisions required that petition circulators collect signatures from their own congressional district only, and stated that Republican signatures could be disqualified if the signatory listed her *town* instead of her city of residence.⁴² The party rules required the McCain campaign to gather the necessary 20,000 petition signatures within 37 days.⁴³ These rules were perceived to benefit the state party-favored candidate, Bush, who could gather the necessary signatures in a short period at party precinct meetings.⁴⁴ Challengers, however, found obtaining the necessary signatures over party opposition quite difficult.⁴⁵

The McCain campaign deployed 31 volunteer teams to gather the petition signatures, but in the end, lacked the necessary number of signatures in 14 of the 31 state congressional districts and did not qualify for the primary ballot.⁴⁶ The McCain campaign's state chairman and a group of McCain supporters brought suit against New York and the state GOP, arguing, as *Forbes* had four years earlier, that the party's ballot requirements were unreasonably restrictive and violated the First Amendment rights of both candidates and voters.⁴⁷ The purpose and result of the New York GOP rules, the McCain camp asserted, was to ensure that the state party committee's favored candidate, Governor Bush, would be the only candidate who could meet the requirements.⁴⁸

41. Act of June 29, 1999, 1999 N.Y. Laws 137, § 3.1(6)(c).

42. See Persily, *Candidates v. Parties*, *supra* note 6, at 2204.

43. See *Molinari v. Powers*, 82 F. Supp. 2d. 57, 70 (2000).

44. *Id.* at 62.

45. *Id.* at 70.

46. Press Release, Brennan Center, McCain Legal Team to Present Oral Arguments in New York Ballot Access Case (Jan. 27, 2000), at http://www.brennancenter.org/presscenter/releases_2000/pressrelease_2000_0127.html (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

47. See Persily, *Candidates v. Parties*, *supra* note 6, at 2199-2206 (discussing the McCain complaint and describing the undue burden placed on the McCain team).

48. See *id.*

Again, the federal district court held that the state party requirements imposed undue burdens on the candidate and voters, and that the requirements were broader than necessary to satisfy the party's asserted interest in eliminating unknown and unqualified candidates from the ballot.⁴⁹ The court also struck down two technical petition-gathering requirements and agreed that the GOP primary ballot requirements were crafted to severely burden candidates like Senator McCain from participating and his supporters from exercising their First Amendment right to vote.⁵⁰

C. Filing Fees

States and parties commonly impose filing fees on candidates, and the funds raised in this manner are often used to support various electoral projects and party-building activities.⁵¹ On occasion, states and parties have imposed very high fees,⁵² and these requirements—especially when fees for all 50 states are combined—can be tremendously burdensome. Fees for the Republican and Democratic primary ballots range from \$200 in Pennsylvania to \$10,000 in Arkansas and South Carolina.⁵³ In a number of states, paying the filing fee can substitute for submitting signed petitions, and vice versa.⁵⁴ For example, Kansas requires either 1,000 signatures or a \$100 filing fee.⁵⁵ This option enables candidates to save precious resources for their campaigns.

49. See *id.* at 2200.

50. *Molinari*, 82 F. Supp. 2d at 71. Among the requirements the court found to be unduly burdensome were: the rule requiring that the collection of signatures must occur in a period of 37 days from December through early January (a period characterized by few hours of daylight and inclement weather, encompassing a number of holidays and a high probability of school and family vacations); the rule prohibiting a voter from signing petitions for more than one candidate, resulting in a "shrinking pool" of voters eligible to sign petitions; rules as to the qualification of witnesses to signatures (the witness was required to be a registered Republican voter residing in the same district as the signer, a notary public, or a commissioner of deeds); the rule requiring each signatory to designate her city of residence, not her town; and rules concerning the presentation of signed petitions to election officials. *Id.* at 70.

51. Mark P. Brown, *Popularizing Ballot Access: The Front Door to Election Reform*, 58 OHIO ST. L.J. 1281, 1298 (1997).

52. See, e.g., *id.* at 1298–99.

53. See 25 PA. CONS. STAT. ANN. § 2872.1, 2873 (West 2003), ARK. CODE ANN. § 7-7-201(5) (Michie 2003) and S.C. Code Ann. § 7-13-40 (2002).

54. Brown, *supra* note 51, at 1286.

55. See KAN. STAT. ANN. § 25-4502(b) (2001).

The courts have been instrumental in keeping filing fees low by repeatedly striking down excessively high state primary filing fees that may prevent a potential candidate from running for office.⁵⁶ In a seminal filing fee case, *Bullock v. Carter*, the U.S. Supreme Court reasoned that the rights of voters and candidates “do not lend themselves to neat separation,”⁵⁷ and that the burden imposed by excessive fees falls not only on the candidates, but also on voters whose right to vote is unconstitutionally minimized when states do not offer the maximum number of primary candidate choices.⁵⁸

Two years later in *Lubin v. Panish*,⁵⁹ an indigent candidate for the county supervisor position in Los Angeles County was denied a place on the primary ballot when he was unable to pay a filing fee.⁶⁰ The Court not only held that fees discriminate against poor candidates, but that the “right to vote is ‘heavily burdened’ if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot.”⁶¹

D. Media Recognition Statutes

At last count, statutes in twelve states require the Secretary of State or a selection committee, with the Secretary of State often acting as chair, to place on the ballot only those presidential candidates generally recognized as candidates by the national and/or local media.⁶² These media recognition statutes have been attacked by would-be candidates for being too vague and discriminatory and have been challenged in the courts on numerous occasions, with mixed results.

56. *Bullock v. Carter*, 405 U.S. 134 (1972).

57. *Id.* at 143.

58. *Id.* See also Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 HARV. L. REV. 649, 669 (2002); Persily, *Candidates v. Parties*, *supra* note 6 at 2188–89, 2194.

59. 415 U.S. 709 (1974).

60. *Lubin v. Panish*, 415 U.S. at 710.

61. *Id.* at 716 (quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968)).

62. The twelve states include: California, Connecticut, Idaho, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Mexico, Oregon, Tennessee and Washington. CAL. ELEC. CODE § 6041 (Deering 2003); CONN. GEN. STAT. § 9-465 (2003); IDAHO CODE § 34-732(1) (Michie 2003); MD. CODE ANN., ELEC. LAW § 8-502 (2003); MASS. GEN. LAWS ch. 53 § 70E (2003); MICH. COMP. LAWS § 168.614a(1) (2002); MISS. CODE ANN. § 23-15-1089 (2003); NEB. REV. STAT. § 32-614 (2002); N.M. STAT. ANN. § 1-8-56 (Michie 2002); OR. REV. STAT. § 249.078 (2001); TENN. CODE ANN. § 2-13-304(a) (2002); WASH. REV. CODE § 29.19.030(1) (2003).

In a 1993 case, *LaRouche v. Kezer*,⁶³ the Second Circuit upheld Connecticut's media access provision as a substitute for petition requirements on the grounds that it was not "wholly irrational."⁶⁴ Yet in the 1992 case *Duke v. Connell*,⁶⁵ a federal district court ordered the plaintiff candidate to be placed on Rhode Island's Republican Party primary ballot because the statute empowering the Secretary of State to allow only "bona fide" candidates on the primary ballot was vague and granted the Secretary of State unchecked authority and discretion, in violation of the First Amendment.⁶⁶

E. Federal Matching Funds

In 1966, Congress first codified public financing for presidential elections to limit the financial burden campaigning creates for candidates.⁶⁷ The sky-high costs of presidential campaigns make this money an absolute necessity for most presidential candidates.⁶⁸ Under the 1974 Federal Election Campaign Act (FECA),⁶⁹ one way to qualify for matching funds as a candidate is to raise \$100,000 in individual donations from at least 20 different states in sums of at least \$5,000 from each state.⁷⁰ A state may grant candidates automatic ballot access if they have qualified for matching funds from the federal government. In North Carolina, for example, a candidate must file either 10,000 signatures or show proof of qualifying for federal matching funds.⁷¹

63. 990 F.2d 36 (2d Cir. 1993).

64. *LaRouche v. Kezer*, 990 F.2d at 38.

65. 790 F. Supp. 50 (D.R.I. 1992).

66. *Duke v. Connell*, 790 F. Supp. at 54–55.

67. Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89-809, §§ 301–305, 80 Stat. 1539, 1587 (1966).

68. Direct presidential campaign expenditures more than tripled between 1956 and 1968, and almost tripled again between 1968 and 1980. See CONGRESSIONAL QUARTERLY, INC., *DOLLAR POLITICS?* 92 (1982). Presidential campaign spending increased from an average of \$92.3 million in 1980 to \$343.1 million in 2000. Center for Responsive Politics, *Total Contribution to Presidential Candidates*, at <http://www.opensecrets.org/presidential/index.asp?graph=spending> (last visited Apr. 9, 2003) (on file with the University of Michigan Journal of Law Reform).

69. Pub. L. No. 93-433, 88 Stat. 1297 (1974).

70. Federal Election Campaign Act, § 9033(b)(3)–(4). Note that no more than \$250 of any individual contribution is credited to the \$5,000 amount necessary to qualify for matching funds. *Id.*

71. N.C. GEN. STAT. §§ 163-213.4, 163-213.5 (2002).

Federal matching funds help equalize the playing field for major party candidates—but the minimum fundraising requirement tends to undermine minor party candidates and shut out independent candidates altogether, as will be discussed below.⁷²

F. Conclusion

As this section has detailed, states and state parties impose multiple procedural barriers that limit most major party candidates' access to presidential primary ballots. Burdensome and technical petition demands, high fees, media recognition and federal matching fund requirements all limit a candidate's ability to assert her candidacy, and consequently limit voter choice. Many of these procedural requirements are implicitly designed to favor the party establishment's chosen candidate and undermine the candidacies of all others. These tactics only serve to disenfranchise voters and potential candidates—an outcome in which the party and the party-favored candidate are the only beneficiaries.

II. OPEN PRIMARIES VS. CLOSED PRIMARIES

There are two main varieties of election systems that govern primary elections. Open primaries are open to both party and non-party registered voters.⁷³ Closed primaries are limited to only registered party members.⁷⁴ Some states opt for a semi-open system that allows independent voters to participate in an otherwise closed primary system.⁷⁵ Closed primaries serve the goals of the parties' dominant insiders at the cost of public participation in the election process, while open primaries may increase voter turnout and facilitate widespread public participation in the democratic process by reaching out to minority party members and self-identified independents.⁷⁶

72. In fact, no minor party candidate had ever met the fundraising requirements until Ross Perot met them in 1996. See *infra* note 144 and accompanying text. Independent candidates are excluded by the Internal Revenue Code from receiving this benefit. See *infra* note 152 and accompanying text.

73. See, e.g., Maisel, *Rules of the Game*, *supra* note 13 at 151.

74. See, e.g., *id.*

75. See Table 1 for a state-by-state primary system breakdown.

76. See Maisel, *Rules of the Game*, *supra* note 13 at 151–53.

In the 2000 presidential primary elections, 16 states and the District of Columbia conducted closed primaries and 33 states conducted some version of open primaries (Hawaii does not have a presidential primary election).⁷⁷ The states conducting open primary elections saw an unprecedented influx of voters.⁷⁸ According to the Committee for the Study of the American Electorate, the 2000 primary turnout was “aided by the large number of open . . . and semi-open . . . primaries. GOP turnout was up substantially in open and semi-open primaries, compared to the last competitive Presidential primary in each state, while it was down in the closed primaries.”⁷⁹ South Carolina, for example, experienced record-breaking turnout in the GOP primary, in substantial part because it changed from a closed party system to an open party system and altered its voting venues from party-chosen localities to the standard state polling places used in general elections.⁸⁰

Truly open primary systems may encourage voter participation and candidate competition. This principle was clearly reflected in the 2000 election, when polls indicated that the candidacy of Senator John McCain, the Republican challenger to Governor George W. Bush, was the main reason Republican voter turnout broke records in nine states.⁸¹ Those records had stood for more than 40 years.⁸²

One available alternative is for states and state parties to conduct primary elections wherein all registered voters may vote, but not all votes will be counted toward a party's delegate selection. Prior to 2001, California maintained a blanket primary system under which any registered voter could participate in the primary election and selection of the state's presidential delegates.⁸³ The statute was struck down by the U.S. Supreme Court as a violation of a political

77. There are multiple variations of open and closed primaries that involve: Open (Private Choice)—a voter receives each party's ballot and chooses which primary he or she wants to participate in at the voting booth; Open (Public Declaration)—a voter must declare which party ballot he or she wants to vote with on election day; and blanket primaries—a voter receives one ballot which lists all candidates of every party affiliation. See Table 1; Federal Election Commission, *Party Affiliation and Primary Voting in 2000*, at <http://www.fec.gov/votregis/primaryvoting.htm> (last visited Apr. 9, 2003) (on file with the University of Michigan Journal of Law Reform).

78. Press Release, Committee for the Study of the American Electorate, McCain, Schedule, Open Primaries Propel GOP Turnout Sharply Higher; Democratic Turnout Low (Mar. 9, 2000), at <http://www.gspm.org/csae/cgans10.html> (last visited Apr. 17, 2003).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. See *Cal. Democratic Party v. Jones*, 530 U.S. 567, 570 (2000).

party's First Amendment right to freedom of assembly by forcing parties to "adulterate their candidate selection process . . . by opening it up to persons wholly unaffiliated with the party. Such forced association has the likely outcome . . . of changing the parties' message. We can think of no heavier burden on a political party's associational freedom."⁸⁴ The blanket primary system was replaced by a more closed-party system that still allows all registered voters the opportunity to vote in the primary, but only allows registered party members' votes to count toward party delegate selection.⁸⁵ Washington had a similar primary process in 2000 whereby unaffiliated individuals could cast their ballots for any candidate but the political parties were not required to count the unaffiliated voters' votes for the purpose of selecting the parties' delegates, though these votes were tabulated as unaffiliated votes.⁸⁶

Another discriminatory trend in primary elections evident in the past two election cycles is "frontloading." State parties have pressured the national parties to set their primary election windows (a period of time in which a state party may select its delegates prior to the national party convention) as early as possible so that their state may be instrumental in selecting the party's general election nominees.⁸⁷ Frontloading of primaries puts independents and major party challengers at a disadvantage by limiting candidacy to those who are able to raise significant amounts of campaign funds extremely early in the campaign cycle and who are able to qualify for ballots up to a year in advance of the election.⁸⁸ This has not proven fatal to most presidential candidates, but imposes additional burdens on candidates who do not have their party's financial and logistical support. In 1996, for example, frontloading forced nine of the eleven Republican presidential candidates to file for candidacy and begin campaigning before the summer of 1995

84. *Id.* at 581-582.

85. *See, e.g.*, CAL. ELEC. CODE §§ 6001, 6003(a) (b) (West 2003).

86. *See* WASH. ADMIN. CODE § 434-219-250 (2000); Federal Election Commission, *Party Affiliation*, *supra* note 77.

87. National party committees control the primary calendar and set state primary election windows prior to the national nominating conventions. In 2000, the Democratic National Committee's nominating window extended from the first Tuesday in March to the second Tuesday in June. The DNC created an exception for the Iowa Caucus and the New Hampshire primary, allowing them to be held even earlier. Republicans maintained an earlier window in 2000 beginning with the first Monday in February and ending on the third Tuesday in June with no exception for Iowa or New Hampshire. *See* Eric M. Appleman, *Democracy in Action: More Primaries*, at <http://www.gwu.edu/~action/chrnthp.html> (last modified 2003) (on file with the University of Michigan Journal of Law Reform).

88. *See* Stark, *supra* note 11, at 349, 353.

in order to start fundraising.⁸⁹ The two exceptions, Morry Taylor and Steve Forbes, relied on personal fortunes for campaign funds and could therefore wait to announce their candidacy.⁹⁰ Furthermore, candidates must not only have a significant amount of cash on hand to start the primary season, but must also have full-scale state campaign organizations well ahead of the primary election in order to qualify for the ballot in time for the election.⁹¹

Another consequence of frontloading is the effect it has on voters in states with later primaries. These voters invariably encounter ballots with fewer candidates.⁹² Candidates are whittled down as the primary season presses on and candidates disfavored by the party leadership drop out for lack of financial resources or successful early primary races.⁹³ Not surprisingly, voters' participation rates in states with later primary election dates are low.⁹⁴

Frontloading also extends the general election campaign season for months, discouraging candidates who want to enter the campaign late in the season⁹⁵ and dramatically cutting into the time the public has to scrutinize candidates prior to primary elections.⁹⁶

The national political parties have perpetuated this problem by approving earlier and earlier primary election and caucus windows. The 2004 Democratic Rules provide that state Democratic primaries may only occur between February 3 and June 8, 2004—beginning a full month earlier than the 2000 primaries.⁹⁷ The Republican National Committee set out its 2004 primary rules offering a window closely approximating that of the Democrats, from February 3 to June 15, 2004.⁹⁸ Because the DNC Rules create an exception for the Iowa caucus and New Hampshire primary to hold their primary activities earlier than the party-sanctioned window,⁹⁹ and because both parties will hold primary elections to begin in early February, a full month earlier than in the 2000 election, the favored candidates will be decided even sooner and the

89. *Id.* at Table 6.

90. *Id.* at 348.

91. *See supra* notes 33, 36, 46, 48 and accompanying text.

92. *See Stark, supra* note 11, at 347.

93. *See POLSBY & WILDAVSKY, supra* note 11, at 99.

94. Blaine Harden & Dan Balz, *Compressed Primary Schedule Leaves Some Looking for Better Way*, WASH. POST, Mar. 14, 1996, at A6.

95. Stark, *supra* note 11, at 353.

96. *Id.* at 348.

97. DNC RULES, *supra* note 5, Rule 10(A). *See also* California Democratic Party v. Jones, 530 U.S. 567, 581–82 (2000) (comparison to 2000 primary windows).

98. RNC RULES, *supra* note 5, at R15(b)(11)(i). *See also* Jones, 530 U.S. at 581–82 (comparison to 2000 primary windows).

99. *See supra* note 87 and accompanying text.

nominating convention will continue to be a coronation of the chosen candidate.

III. CANDIDATE BARRIERS IN DELEGATE SELECTION AND CONVENTIONS

A. State Delegate Selection

Much like the electoral college, the presidential nomination process utilizes a state delegate system, whereby representatives from each state pledge their support to the candidate assigned in primary elections or delegate-selection caucuses at their quadrennial national conventions.¹⁰⁰ The two major parties' delegate selection systems serve to exacerbate party leaders' control of the presidential nomination process. The Democratic Party's proportional allocation system tends to counteract these tendencies, but only to a limited degree: the practice of using "superdelegates," or delegates picked by the party leadership, serves to confirm the party elites' choice.¹⁰¹ The Republican Party's rules, although not explicitly favoring the party leadership's choice, may function in practice to ratify the candidate with the party's financial and logistical backing.¹⁰²

Generally, all party delegates must be selected within a three-month period prior to the national party convention.¹⁰² State delegates are selected either by the party or by state primary, caucus, and convention voters.¹⁰³ If the party selects the delegates, candidates generally propose their own delegates to the party.¹⁰⁴ If the delegates are elected, the public votes for the delegates typically knowing each delegate's general preferences.

Party rules determine how delegates' votes are allotted. The Democratic National Committee (DNC) has employed a nationwide rule mandating that each state's delegates be proportionally divided among candidates so long as the candidates receive at least 15% of the congressional district or statewide primary vote.¹⁰⁵ This

100. See generally POLSBY & WILDAVSKY, *supra* note 11, at 97.

101. *Id.* at 149.

102. *Id.* at 97.

103. For example, in 1988, approximately 64% of the delegates at the Democratic National Convention were chosen in primaries, 15% were unelected "superdelegates," and state and district conventions chose the other 20%. See *id.* at 142.

104. See POLSBY & WILDAVSKY, *supra* note 11, at 126.

105. DNC RULES, *supra* note 5, Rule 12(E).

allocation system gives primary challengers an opportunity to earn delegates proportional to their primary success.¹⁰⁶ The DNC, however, reserves 20% of its entire delegation for party officials and elected leaders.¹⁰⁷ These “superdelegates,” as they are called, are not bound to any candidate, but tend to support the candidate preferred by the party leadership.¹⁰⁸

The Republican National Committee (RNC), unlike the DNC, does not set national guidelines on how delegates should be apportioned. It allows each state to create its own method.¹⁰⁹ In 2000, 57% of all Republican delegates were allocated on a winner-take-all basis in twenty five state primaries and the District of Columbia.¹¹⁰ Republican delegates are also divided up among the state parties by a formula that gives added weight to states that voted Republican in the last presidential, congressional, or gubernatorial elections.¹¹¹ This formula creates an incentive for presidential candidates to campaign more extensively in states that voted Republican in previous elections,¹¹² although extra incentives seem unnecessary because most candidates already have an incentive to win in states that tend to vote Republican.¹¹³

The type of delegate allocation determines the type of candidates the party supports. In a winner-take-all system of delegate allocation, candidates with the strong support of small groups are less likely to be successful because most party voters oppose them.¹¹⁴ On the other hand, the proportional allocation system helps more extreme candidates because a premium is placed on the intense commitments of candidate enthusiasts.¹¹⁵

106. POLSBY & WILDAVSKY, *supra* note 11, at 98–99.

107. Rhodes Cook.com, *A Win is a Win is not a Win* (2001), at http://www.rhodescook.com/analysis/presidential_primaries/national/delegateallocate.html (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

108. For example, in 1984 the superdelegates overwhelmingly supported Walter Mondale early in the primary season, influencing his eventual nomination. See POLSBY & WILDAVSKY, *supra* note 11, at 150.

109. See *id.* at 98.

110. See Richard E. Berg-Andersson, *Republican Delegate Selection and Voter Eligibility*, at <http://www.thegreenpapers.com/PCC/R-Del.html> (last modified Dec. 26, 2000) (on file with the University of Michigan Journal of Law Reform).

111. See POLSBY & WILDAVSKY, *supra* note 11, at 98.

112. *Id.*

113. This is because the method of apportionment of Republican delegates to each state gives extra weight to states that voted Republican in recent elections. POLSBY & WILDAVSKY, *supra* note 11, at 98.

114. *Id.* at 119.

115. *Id.*

Courts have been reticent to interfere with the political parties' methods of allocating delegates¹¹⁶ in light of Supreme Court precedent holding that state parties are usually not subject to judicial review because they are not state actors¹¹⁷ and because it is a political question.¹¹⁸ Nevertheless, an individual may challenge a national party's delegate selection process if the individual can show that the national parties have a sufficient nexus to government action.¹¹⁹ In the case of delegate selection, national parties rely on the presence and support of the state in carrying out elections. Thus, private action against national parties may be permitted under the right circumstances.¹²⁰

B. National Party Conventions

The mid-twentieth century began with very robust and important national conventions where party business was conducted and nominating candidates was a competitive process.¹²¹ At the turn of the 21st century, however, national conventions are no longer decision-making events; rather, they simply ratify the previous work of the primaries and caucuses and launch a presidential candidate's campaign on national television.¹²² The formal business of approving platforms and putting candidate names before the convention is addressed early in the afternoon, prior to the evening hours of nomination speeches, advertisements, entertainment, and acceptance speeches.¹²³ Not since 1972 for the Democrats and 1976 for

116. See, e.g., *Jackson v. Mich. State Democratic Party*, 593 F. Supp. 1033, 1045 (E.D. Mich. 1984); *Ferency v. Secretary of State*, 362 N.W. 2d 743 (Mich. App. 1984).

117. See, e.g., *Cousins v. Wigoda*, 419 U.S. 477, 483 n.4 (1975) (reserving question whether national political party's selection of delegates to nominating convention amounts to state action); *O'Brien v. Brown*, 409 U.S. 1, 4-5 (1972) (expressing "grave doubts" about Court of Appeals' view that political parties' delegate selection methods constitute state action).

118. See *O'Brien v. Brown*, 409 U.S. at 4 (raising the issue of whether political parties' actions are unjustifiable as a political question but not deciding it); see also Kevin R. Puvalowski, *Immune From Review?: Threshold Issues in Section 1983 Challenges to the Delegate Selection Procedures of National Political Parties*, 62 FORDHAM L. REV. 409-11 (1993).

119. See *Lugar v. Edmonson Oil Co., Inc.*, 457 U.S. 922, 939 (1982) (articulating a two-pronged test for state action: 1) whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority; and 2) whether defendants may be appropriately characterized as state actors).

120. See *O'Brien*, 409 U.S. at 14 n.7 (Marshall, J., dissenting).

121. See, e.g., POLSBY & WILDAVSKY, *supra* note 11, at 140.

122. *Id.* at 141.

123. *Id.*

the Republicans has a national convention been the site of a contest over the presidential nomination for either party.¹²⁴ The old strategy of winning the presidential nomination by picking up last-minute delegates at the convention is no longer viable.¹²⁵

There are a few mechanisms that exist to counteract these tendencies. The presidential matching funds system is one example; the DNC's practice of proportionally allocating delegates to primary candidates who receive over 15% of the primary vote is another. The Republican Party, however, does not offer a similar balance to counteract the ever-increasing certainty that one presidential candidate will have the required delegate votes or that all opposing candidates will have dropped out long before the national convention.¹²⁶

IV. MINOR PARTY AND INDEPENDENT CANDIDATE BARRIERS TO BALLOTS

Minor party and independent candidates are—or ought to be—an important means of presenting voters a wider spectrum of political choices. However, state election laws and major party regulations burden legitimate minor and independent candidates, augment the incumbent's advantage, and, as the Supreme Court observed, perpetuates a “complete monopoly” by the two main parties.¹²⁷

Since 1850, only two independents (John Anderson in 1980 and Ross Perot in 1992) and eleven minor parties have received more than 5% of the popular vote in a presidential election. Not one of those eleven parties remained a force in American politics for long.¹²⁸ Of the eleven, four dissolved prior to the next presidential election, five continued to exist but received fewer popular votes, and two merged with one of the major parties.¹²⁹

124. NELSON W. POLSBY, *CONSEQUENCES OF PARTY REFORM* 77 (1983).

125. See POLSBY & WILDAVSKY, *supra* note 11, at 119; see also Rhodes Cook.com, *supra* note 107 (“Regardless of the different nominating rules . . . there is a dynamic affecting both parties that makes early defeats devastating. No candidate in either party in recent years has mounted a successful comeback during the mop-up period.”).

126. See *supra* notes 87-99 and accompanying text.

127. *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

128. CONGRESSIONAL QUARTERLY, *1 GUIDE TO U.S. ELECTIONS* 424 (John L. Moore et al. eds., 4th ed. 2001).

129. *Id.*

The court cases surrounding the troubled run of 1980 presidential candidate John B. Anderson reflect the disparity in treatment of major and minor party candidates.¹³⁰ Anderson was initially a Republican primary candidate in 1980; in the spring of that year, however, he dropped his party affiliation and ran as an Independent.¹³¹ Anderson was denied access to the ballot as an independent candidate in six states because the very early independent candidate deadlines had passed.¹³² Anderson argued that in order to compete with the major party candidates, an independent candidate had to declare candidacy and meet filing regulations more than four months in advance of Republican or Democratic candidates, and that this violated his First Amendment rights.¹³³ Anderson brought suit in six federal district courts and won in each of them.¹³⁴ Eventually Anderson succeeded at appearing on each of the 50 state presidential general ballots and received 7% of the popular vote.¹³⁵

A. Petition Gathering

A number of states impose onerous conditions on their petition requirements, and these, too, have the effect of shutting out minor party candidates. Twelve states require individuals who sign petitions to attest that they are members of the party named on the petition, that the voter will vote for the named candidate, or that the voter will support the named party's candidate in another way (contribute to or volunteer for the campaign, etc.).¹³⁶ Texas

130. See *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980); *Anderson v. Babb*, 632 F.2d 300 (4th Cir. 1980); *Anderson v. Celebrezze*, 499 F. Supp. 121 (S.D. Ohio 1980), *rev'd*, 664 F.2d 554 (6th Cir. 1981), *rev'd*, 460 U.S. 780 (1983); *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980); *Greaves v. Mills*, 497 F. Supp. 283 (E.D. Ky. 1980), *aff'd and rev'd in part*, *Anderson v. Mills*, 664 F.2d 600 (6th Cir. 1981); *Anderson v. Quinn*, 495 F. Supp. 730 (D. Me. 1980), *aff'd mem.*, 634 F.2d 616 (1st Cir. 1980).

131. *Justices to Rule on Plea by Independent Candidate*, N.Y. TIMES, May 4, 1982, at B7.

132. Anderson filed to be an Independent candidate in Kentucky, Maine, Maryland, New Mexico, North Carolina, and Ohio. See *Morris*, 636 F.2d 55 (Maryland); *Babb*, 632 F.2d 300 (North Carolina); *Celebrezze*, 499 F. Supp. 121 (Ohio); *Hooper*, 664 F.2d 554 (New Mexico); *Greaves*, 497 F. Supp. 283 (Kentucky); *Quinn*, 495 F. Supp. 730 (Maine).

133. Fred H. Perkins, *Better Late Than Never: The John Anderson Cases and the Constitutionality of Filing Deadlines*, 11 HOFSTRA L. REV. 691, 692-93 (1983).

134. See *Morris*, 500 F. Supp. 1095; *Babb*, 632 F.2d 300; *Celebrezze*, 499 F. Supp. 121; *Hooper*, 498 F. Supp. 898; *Greaves*, 497 F. Supp. 283; *Quinn*, 495 F. Supp. 730.

135. *Justices to Rule*, *supra* note 131 at B7.

136. See CAL. ELEC. CODE § 6430 (West 1977); DEL. CODE ANN. tit. 15, § 3001 (1981); HAW. REV. STAT. § 11-62(a)(2) (Supp. 1992); 10 ILL. COMP. STAT. ANN. 5/10-2 (West 2002);

required petition-signers to include their voter registration numbers, which are given to voters when they certify their eligibility to register.¹³⁷ The Texas registration number statute has been ruled unconstitutional and “unduly burdensome” for petition signers and candidates alike.¹³⁸ However, the Texas election code still states that in order for a signature on a petition to be valid, the petition must include the signer’s voter registration number. Additionally, the *Petition to Place Nominees on November General Election Ballot* provides a place for the voter registration number with a small footnote indicating that including the voter registration number is optional.¹³⁹ Most minor party candidates in Texas must therefore resort to pursuing a write-in candidacy in order to avoid this onerous requirement.

Multiple states prohibit individuals from signing independent candidate petitions if the person votes in a major party primary.¹⁴⁰ In West Virginia, for example, petitioners working for independent candidates must advise signers that by signing they are forfeiting their right to vote in a major party primary.¹⁴¹ Requirements such as these deplete campaign treasuries and leave little funds for travel, advertising and other means of placing a candidate’s message before voters.¹⁴²

B. Filing Fees

Surprisingly, the states have less onerous filing fee requirements for minor party and independent candidates. In a majority of states, either no fee or a nominal fee is required, or the states offer

IND. CODE ANN. § 3-8-6-5(5) (Michie Supp. 1992); MD. CODE ANN., ELEC. LAW § 8-502 (2003); N.J. STAT. ANN. § 19:13-4 (West 1989); N.Y. ELEC. LAW § 6-140 (McKinney 2002); N.C. GEN. STAT. § 163-96(6) (1987); OHIO REV. CODE ANN. § 3517-011 (Anderson 1988); OR. REV. STAT. § 249.732(1) (1991); UTAH CODE ANN. § 20-3-2.5(2)(b)(1) (Supp. 1991).

137. TEX. ELEC. CODE ANN. § 141.063 (Vernon 1997).

138. *Pilcher v. Rains*, 683 F. Supp. 1130 (W.D. Tex. 1988); see also *Texas Independent Party v. Kirk*, 84 F.3d 178, 187 (5th Cir. 1996).

139. TEXAS SECRETARY OF STATE, PETITION TO PLACE NOMINEES ON NOVEMBER GENERAL ELECTION BALLOT (1997), at <http://www.sos.state.tx.us/elections/forms/c11pm.pdf> (last visited June 18, 2003).

140. See, e.g., ARIZ. REV. STAT. ANN. § 16-341(c) (West 2002); NEB. REV. STAT. § 32-620(2) (1997); N.Y. ELEC. LAW § 6-138 (McKinney 2002); TEX. ELEC. CODE ANN. § 192.032(3)(f) (Vernon 1987); W. VA. CODE ANN. § 3-5-23(c) (Michie 2003).

141. W. VA. CODE ANN. § 3-5-23(c) (Michie 2003).

142. GLENN DAY, MINOR PRESIDENTIAL CANDIDATES AND PARTIES OF 1992: A REFERENCE 7 (1992).

the option to submit signed petitions in place of the filing fee.¹⁴³ These options boost minor party candidates' chances of qualifying for ballot access.

C. Federal Matching Funds

It is difficult for a minor party candidate to qualify for federal matching funds. In fact, no minor party candidate had met the conditions until 1996 when Reform Party candidate Ross Perot received \$29 million.¹⁴⁴

A minority party presidential candidate has two ways of qualifying for federal matching funds. The candidate may qualify by raising \$100,000 from individuals in at least 20 states—the same requirement asked of major party candidates.¹⁴⁵ Alternatively, the party may qualify for federal funds by receiving a minimum of 5% of the popular vote in the preceding general election.¹⁴⁶ This bar is set too high, and excludes many worthy minor party candidates from accessing the matching funds necessary to compete with well-funded major party candidates.

The Reform Party presents another telling case study of the difficulty minor parties have obtaining these funds. The 2000 Reform Party presidential candidate, Patrick Buchanan, qualified for \$12.6 million in matching funds because of the 8.4% popular vote Ross Perot had received in 1996 as the Reform Party candidate.¹⁴⁷ To receive the funds, however, Buchanan had to certify to the Federal Election Commission that he had qualified as a Reform Party candidate on more than ten states' ballots—a requirement neither the Democratic nor Republican Party candidates were required to meet.¹⁴⁸ The Reform Party had a coordinated spending limit of

143. See, e.g., VA. CODE ANN. § 24.2-101 (Michie 2002).

144. Press Release, Federal Election Commission, FEC Certifies General Election Public Funds for Buchanan-Foster Ticket (Sept. 14, 2000), at <http://www.fec.gov/press/buchgecert.htm> (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

145. Ky Fullerton, *Bush, Gore, and the Presidential Election: Time for the Electoral College to Go?*, 80 OR. L. REV. 717, 751 (2001).

146. *Id.* at 752.

147. Press Release, Federal Election Commission, Reform Party to Receive Public Funding for 2000 Convention (Nov. 22, 1999) [hereinafter FEC Reform Party Press Release], at <http://www.fec.gov/press/refconv.htm> (last visited Apr. 17, 2003).

148. Federal regulations espouse a restrictive definition of "candidate":

\$13.6 million (in addition to the \$12.6 million in matching funds) to spend on the party ticket, but in the end, Buchanan did not receive the 5% popular vote necessary to qualify the Reform Party for matching funds in the 2004 presidential election.¹⁴⁹

The burden of a minor party candidate relying on the outcome of the party's popular vote in the previous election undercuts the candidate's current relevance and support in the election. It is an unfair way to judge the viability of the candidate and has limited the number of minor party candidates to a handful over the past 175 years. As mentioned previously, only 11 minor parties have received the 5% necessary to receive matching funds.¹⁵⁰ However, 39 minor parties have received at least 1% of the popular vote since 1824.¹⁵¹ A lowering of the 5% threshold would increase participation of minor parties and their candidates.

The federal matching fund requirement automatically disqualifies and discriminates against all independent candidates without party affiliation. The Internal Revenue Code states that "to be eligible to receive payments . . . a candidate shall certify to the Commission that the candidate is seeking nomination *by a political party* for election to the office of President of the United States."¹⁵²

It is common for state statutes to stipulate that political parties can be automatically placed on the state ballot for the general election if they received a predetermined percentage of votes in the previous general election.¹⁵³ This was the case in all but 16 states in the 2000 election.¹⁵⁴

For the purpose of this subchapter, "candidate" means with respect to any presidential election, an individual who—(1) Has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States; or (2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States.

11 C.F.R. § 9002.2(a) (2003).

149. FEC Reform Party Press Release, *supra* note 147; CONGRESSIONAL QUARTERLY, *supra* note 128, at 688.

150. *See supra* note 128 and accompanying text.

151. *Id.*

152. I.R.C. § 9033(b)(2) (2002) (emphasis added).

153. *See, e.g.*, ARIZ. REV. STAT. ANN. § 16-804 (West 2000) (requiring 5% of vote in previous election for automatic ballot access); ARK. CODE ANN. § 7-1-101(16)(A) (Michie 2000) (requiring 3%).

154. All states but Alaska, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Maryland, Nevada, New York, Oregon, Pennsylvania, South Carolina, Tennessee, West Virginia, and Wyoming provided such access to the ballot. These sixteen states have no

There are several negative consequences of the high requirements for matching funds and a state's willingness to automatically put only those parties that qualify for such funds onto the ballot. First, it limits the number of minor parties that can compete for the Presidency. Second, a minor party and its candidate must work even harder to meet the other ballot qualifications because they do not automatically have access to the ballot. For example, if the Green Party seeks to put a candidate on the 2004 ballot, because it did not qualify for matching funds, it will have to collect upwards of a quarter of a million signatures in Illinois, Texas, and California alone—excluding the many other states that also require petitions from a party that does not automatically receive ballot access by qualifying for matching funds.

D. Media Recognition

Although media recognition is not a common criterion for a minor party or independent candidate to access the general election ballot, the amount of media attention a minor party candidate receives makes a significant difference in the minor party candidate's ability to show her position on issues and gain public support. The need for publicity is one reason that participating in the traditional nonpartisan presidential debates sponsored by the League of Women Voters has been such an important goal for minor party candidates.¹⁵⁵ Unfortunately, participation in those debates remains an elusive brass ring.

The Commission on Presidential Debates sets the qualification guidelines for the nationally televised presidential debates.¹⁵⁶ The Commission has laid out new criteria for each recent presidential election.¹⁵⁷ In 1996, the Commission calculated the front page newspaper coverage given to minor party candidates in compari-

statute that automatically places a political party on the ballot for receiving a predetermined percentage of votes in a previous election.

155. See generally Press Release, Fairness & Accuracy in Reporting (FAIR), The Compromised Commission on Presidential Debates: Why Do TV Networks Allow it to Decide if the Two Major Parties Will Face Competition? (2000), at <http://www.fair.org/articles/compromised-commission.html> (last visited Apr. 10, 2003) (on file with the University of Michigan Journal of Law Reform) [hereinafter FAIR Press Release].

156. COMM'N ON PRESIDENTIAL DEBATES, COMMISSION ON PRESIDENTIAL DEBATES' CANDIDATE SELECTION CRITERIA FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION, at <http://www.debates.org/pages/candsel.html> (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

157. See *id.*

son with the coverage given to major party candidates.¹⁵⁸ The Commission also tallied minor party candidates' attendance at rallies and state campaigning events.¹⁵⁹ In 2000, the criteria also included a requirement that a candidate have a statistical chance of receiving an electoral majority and sizable public support, as determined by public opinion firms.¹⁶⁰ No minor party or independent candidates qualified to debate in 1996 and 2000, and if the 2000 criteria of requiring at least 15% support in nationwide public opinion polls had been applied to the three 1992 debates, Ross Perot would have been excluded from the debates.¹⁶¹

V. VOTERS: EXCESSIVE REQUIREMENTS AND BARRIERS TO PARTICIPATION

There are many barriers to candidate participation that also adversely affect voters. For example, the United States is the only Western nation that still follows the English tradition of making the citizen solely responsible for registration,¹⁶² with 25.6% of the United States' eligible voters unregistered in 1996.¹⁶³ Voter turnout in the U.S. consistently ranks poorly in comparison to that of other democratic nations.¹⁶⁴ The most likely reason for our low voter turnout is the significant, and unique, barriers to participation that American voters face.

158. See COMM'N ON PRESIDENTIAL DEBATES, COMMISSION ON PRESIDENTIAL DEBATES' CANDIDATE SELECTION CRITERIA FOR 1996 GENERAL ELECTION DEBATE PARTICIPATION, at <http://www.debates.org/pages/candsel.html> (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

159. *Id.*

160. COMM'N ON PRESIDENTIAL DEBATES, CRITERIA FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION, *supra* note 156.

161. FAIR Press Release, *supra* note 155.

162. Mark Quinlivan, *One Person, One Vote Revisited: The Impending Necessity of Judicial Intervention in the Realm of Voter Registration*, 137 U. PA. L. REV. 2361, 2376 (1989).

163. See Federal Election Commission, *National Voter Turnout in Federal Elections: 1960-1996* (1997), at <http://www.fec.gov/pages/htmlto5.htm> (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

164. See Quinlivan, *supra* note 162, at 2376.

A. Registration

Registration sometimes includes cumbersome regulations including: excessively early deadlines; limited locations and shortened hours of operation that make it difficult for full-time workers to go to the central office to register; mandatory registration anew after any move; separate registration for federal and state/local elections; and the chance of being removed from the state records if a registered voter does not vote in a predetermined number of elections.¹⁶⁵ Additionally, local registrars have discretionary power to establish even more obligations.¹⁶⁶ These multiple obstacles lead to the well-founded proposition that registering to vote is often more difficult than voting.¹⁶⁷

Clearly this should not be the case. Initiatives such as the Motor Voter Act,¹⁶⁸ which allows simultaneous voting and motor vehicle registration, have been implemented in hopes of lessening voting requirements and increasing turnout.¹⁶⁹

Registration is not a federal voting requirement; the states maintain discretion over which registration requirements, if any, will be required.¹⁷⁰ However, the Courts and the federal government have a history of invalidating state registration requirements that discrimination against African American participation in the political process, including nullifying grandfather clauses, poll taxes, "good character" clauses, and literacy tests, as well as reversing gerrymandered districts produced by state legislatures.¹⁷¹

165. *Id.* at 2372-74.

167. *Id.* at 2374.

167. Steven J. Rosenstone & Raymond E. Wolfinger, *The Effect of Registration Laws on Voter Turnout*, 72 AM. POL. SCI. REV. 22, 22 (1978).

168. 42 U.S.C. § 1973gg (1994).

169. PIPPA NORRIS, *DEMOCRATIC PHOENIX: REINVENTING POLITICAL ACTIVISM* 80 (2002).

170. 2001 U.S. GEN. ACCOUNTING OFFICE, *REPORT TO CONGRESSIONAL REQUESTERS: ELECTIONS—PERSPECTIVES ON ACTIVITIES AND CHALLENGES ACROSS THE NATION 10* (2001) [hereinafter GAO REPORT].

171. See *Guinn v. United States*, 238 U.S. 347 (1915) (The Court invalidated so-called "grandfather clauses"); The Constitution of the United States, Amendment XXIV, Section 1, ratified January 23, 1964, abolished the poll tax as a measure for voter registration; a 1970 amendment to the Voting Act abolished literacy tests, see 42 U.S.C. § 1973, § 4; in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) the Supreme Court held that state legislatures could not gerrymander for purposes of discriminating against the right of African Americans to register to vote; and in a series of cases, the Supreme Court ruled that all-white primary elections were not constitutional (see *Nixon v. Herndon*, 273 U.S. 536, (1927), *United States v. Classic*, 313 U.S. 299 (1941) and *Smith v. Allwright*, 321 U.S. 649 1944).

The extent of registration requirements clearly correlates with turnout rates, as can be seen through state-to-state comparisons.¹⁷² According to some experts, the voter turnout rate could be boosted by 5% to 9% if all states had same-day registration rather than markedly early registration deadlines.¹⁷³ While twenty one states and the District of Columbia allow registration by mail, this registration method is a progressive exception and not the rule.¹⁷⁴ Registration deadlines range from no registration requirement at all (North Dakota),¹⁷⁵ to same-day registration,¹⁷⁶ to registration 30 days in advance of an election.¹⁷⁷ North Dakota experienced 62% voter turnout in the last election, in part because of its relaxed registration system.¹⁷⁸

Unfortunately, several states and the District of Columbia continue to use excessively early registration deadlines which impede voter turnout.¹⁷⁹ Typically, the number of voters paying attention to specific elections and candidates increase as the election nears; but in most jurisdictions, the point where interest peaks is long after the local registration deadline has passed.¹⁸⁰ Increasing the use of same-day registration or adhering to shortened registration deadlines would encourage registration and participation in elections.¹⁸¹ Statistical data support this claim by showing that voter participation declined in the late nineteenth century as voter requirements grew more stringent,¹⁸² and currently, states with more relaxed registration standards have higher registration rates than the national average.¹⁸³

172. See, e.g., Quinlivan, *supra* note 162, at 2363–64.

173. G. Bingham Powell, Jr., *Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences*, in ELECTORAL PARTICIPATION: A COMPARATIVE ANALYSIS 11 (Richard Rose ed., 1980).

174. Quinlivan, *supra* note 162, at 2372.

175. Deborah S. James, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615, 1615 (1987).

176. Three states (Maine, Minnesota and Wisconsin) allow same-day registration. *Id.*

177. Examples are: Texas (30 days prior to general election), Arkansas (30 days), South Carolina (30 days), Florida (29), Alaska (30), Oregon (21), Arizona (29), New York (25), Georgia (29). GAO REPORT, *supra* note 170, at 70.

178. GAO REPORT, *supra* note 170, at 54.

179. Quinlivan, *supra* note 162, at 2372.

180. See POLSBY & WILDAVSKY, *supra* note 11, at 22.

181. *Improving Electoral Process: Hearing Before the Senate Comm. on Commerce, Sci. and Transp.*, 107th Cong. 6 (2001) (statement of Wade Henderson, Executive Director, Leadership Conference on Civil Rights).

182. *Id.*

183. *Id.*

B. Procedural Barriers

On a procedural level, there are options available to local jurisdictions to protect a citizen's right to vote. A provisional ballot is one such tool utilized by some states.¹⁸⁴ Provisional ballots allow a voter to vote on Election Day even if the registrar cannot locate the voter's claimed registration, or if there is a difference between the voter's address in identification documentation and the registrar's records, or other such discrepancies.¹⁸⁵ During the 2000 general election, Florida voters who believed they were registered to vote but did not appear in the registrar's records complained of being turned away from the polling place after having been denied these provisional ballots.¹⁸⁶ The absence of such ballots limits a voter's access to the ballot in the face of faulty records, glaring mistakes and other issues out of a voter's control. On that rationale, a provisional ballot was written into the Florida code after the state's disastrous experience in the Bush/Gore race.¹⁸⁷

A second procedural restraint involves absentee ballots. Absentee ballots were designed to allow an increased number of voters to vote who might otherwise be engaged on election day.¹⁸⁸ States vary as to what an acceptable "excuse" for voting early might be. Jurisdictions that narrowly define terms for absentee ballots decrease the state's pool of voters.¹⁸⁹ Nineteen states offer "no excuse" absentee voting policies that enable voters to mail in their ballot without having to offer a specific reason for doing so.¹⁹⁰

184. States that have provisional ballots include California, Florida, Kansas, Maryland, New Jersey, South Carolina and West Virginia. See National Conference of State Legislatures, *Provisional Ballots* (July 2001), at http://www.electionline.org/site/docs/html/provisional_ballots.htm (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

185. According to the Florida state statutes, "a voter claiming to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined, shall be entitled to vote a provisional ballot." FLA. STAT. ANN. § 101.048 (West 2002).

186. Press Release, Congressman Silvestre Reyes, Reyes Participates in Election Reform Hearing (Feb. 27, 2001), at <http://www.house.gov/reyes/pr010227b.htm> (last visited Apr. 17, 2003) (on file with the University of Michigan Journal of Law Reform).

187. Allison H. Eid, *Symposium Overview: A Spotlight on Structure*, 72 U. COLO. L. REV. 911, 916 (2001).

188. See GAO REPORT, *supra* note 170, at 12.

189. GAO REPORT, *supra* note 170, at 104-05.

190. *Id.* at figure 22. Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Maine, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Washington, Wisconsin, Wyoming, and most recently Florida, all have a no-excuse policy. *Id.* Arkansas, North Carolina and Texas have a no-excuse policy to vote early but require an excuse to vote by mail. *Id.*

C. Disenfranchised Voter Sentiment

It stands to reason that voter turnout decreases when voters feel that their votes are inconsequential.¹⁹¹ This would occur most often when the outcome of an election appears so clearly predetermined as to make the election a formality.¹⁹²

In the 2000 primary election, the Republican turnout was extremely high—much higher than the Democratic primary turnout.¹⁹³ The reason for such high voter participation boiled down to one factor: Senator John McCain presented a significant threat to the party favorite George W. Bush in the Republican presidential nomination.¹⁹⁴ Nine states experienced record level voter turnout—the highest in forty years.¹⁹⁵ Not since 1964, when a similarly fierce competitor, the late Senator Barry Goldwater, challenged Henry Cabot Lodge for the Republican ticket, had the Republican Party experienced such a high primary turnout.¹⁹⁶ In states such as Iowa and Delaware, where McCain was not a candidate, turnout was lower.¹⁹⁷ Competition in primaries plainly has a positive effect on the interest and participation of voters in the electoral process.

Another mental barrier involves the timing of presidential primaries. In the 2000 primaries, the general election competitors were more or less decided by the first major wave of primaries on March 7th.¹⁹⁸ The consequences of frontloading, as discussed earlier, are evident in the significantly lower turnout of primary elections held after March 7th.¹⁹⁹

Voters continue to be discouraged from voting as a result of many states' current voting regulations and procedures. Registration and mental barriers result in low voter turnout during each election, while other democratic nations are able to attract higher

191. Harden & Balz, *supra* note 94, at A6.

192. *Id.*

193. Committee for the Study of the American Electorate, *supra* note 78.

194. *Id.*

195. *Id.* All but three states (Arizona, New York and Delaware) experienced an increased Republican turnout. *Id.* New GOP Primary voter turnout records were set in New Hampshire (26 %), South Carolina (19.3%), Washington (18.8%), Michigan (18.7%), Vermont (17.8%), Ohio (16.3%), Virginia (12.6%), Missouri (11.6%), Georgia (10.9%), Massachusetts (10.4%), Maine (9.8%), Maryland (9.5%) and Rhode Island (4.6%). *Id.*

196. *Id.*

197. *Id.*

198. Richard L. Berke, *Core and Bush Triumph Nationwide, Putting Nominations in their Grasp*, N.Y. TIMES, Mar. 8, 2000, at A1.

199. Appleman, *supra* note 87.

percentages of eligible voters.²⁰⁰ Not only are many voting registration procedures confusing and elaborate but they differ widely from state to state, making the process continually cumbersome for citizens who move frequently.²⁰¹

CONCLUSION

A plethora of barriers tend to limit the participation of major party candidates seeking to challenge the institutional favorite, the participation of minor parties and independent candidates, and the participation of voters. Heavy filing fees, unnecessarily high signature petition requirements, and the inability to reach the media recognition status that would qualify candidates in many states are all affecting the democracy in which we live. Relatedly, participation is low when few candidate options are available. Voters are encouraged and motivated to participate by ideological challenges internal and external to the parties. It should come as no surprise, then, that in this electoral system that provides voters with limited choices and sets up additional barriers to voter participation, turnout rates are among the lowest of democratic nations. The structure of politics should encourage challenges to the established party ideologies and not simply propagate a system whereby opportunities to participate are denied to candidates, parties and voters alike.

200. Average voter turnout figures for other democracies include: Australia, 82.7%, Austria, 79.6%, Bahamas, 67.6%, Barbados, 66.7%, Belgium, 84.1%, Botswana, 44.6%, Canada, 60.1%, Colombia, 33.8%, Costa Rica, 81%, Denmark, 81.7%, Finland, 71.5%, France, 60.6%, Germany, 72.7%, Greece, 84.7%, Iceland, 88.3%, India, 60.1%, Ireland, 70.2%, Israel, 83.2%, Italy, 90.2%, Jamaica, 46.4%, Japan, 57%, Luxembourg, 60.5%, Malta, 96.7%, Mauritius, 79.8%, Netherlands, 75.2%, New Zealand, 80.4%, Norway, 75.7%, Papua New Guinea, 72.4%, Portugal, 78.4%, Spain, 79%, Sweden, 82.6%, Switzerland, 37.7%, Trinidad and Tobago, 68.8%, United Kingdom, 72.4%, and Venezuela, 49.9%. The average voter turnout for the United States of America is 44.9%. International Institute for Democracy and Electoral Assistance (IDEA), *Turnout over Time: Advances and Retreats in Electoral Participation*, at http://www.idea.int/vt/survey/voter_turnout_pop1.cfm (last visited Apr. 17, 2003) (average voter turnout data for the 1990s). See generally AREND LIJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES (1999) (an in-depth study of the 36 established democracies, or democracies over 20 years old, listed above).

201. Peverill Squire et al., *Residential Mobility and Voter Turnout*, 81 AM. POL. SCI. REV. 45, 51-57 (1987).

TABLE 1: STATE MANDATORY AND OPTIONAL BALLOT PETITION AND FEE REQUIREMENTS

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Alabama	Democratic	\$2,000*	500 total or 50 per congressional district			Ala. Code § 17-16a-3, 4 (2003)
	Republican	\$5,000*	500 total or 50 per congressional district			
Arkansas	Democratic	\$2,500*	3% of voters in previous presidential primary or 1,000 per congressional district, whichever is less*			Ark. Code Ann. § 7-7-201(5) (Michie 2003)
	Republican	\$10,000*				
California	Democratic		1% of registered Democrats or 500 per congressional district (appx. 26,500), whichever is less			Cal. Elec. Code § 6061 (Deering 2003) Cal Elec. Code § 6343 (Deering 2003)
	Republican		1% of registered Republican voters (appx. 53,889)			
Colorado	Democratic			\$500	5,000	Colo. Rev Stat. § 1-4-1203(1)(c) (2002)
	Republican			\$500	5,000	
Connecticut	Democratic		1% of enrolled party members (appx. 6,300)			Conn. Gen. Stat. § 9-469 (2002)
	Republican		1% of enrolled party members (appx. 4,300)			
Delaware	Democratic		500			Del. Code Ann. Titl. 15, § 3184 (2002)
	Republican	\$5,000*	500			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Idaho	Democratic		1% of votes for presidential electors in previous presidential election (appx. 5,016)			Idaho Code § 34-732(3)(a)
	Republican		1% of votes for presidential electors in previous presidential election (appx. 5,016)			
Illinois	Democratic		3,000-5,000			10 Ill. Comp. Stat. 57-11 (2003)
	Republican		3,000-5,000			
Indiana	Democratic		4,500 including 500 from each congressional district			Ind. Code § 3-8-3-2 (2003)
	Republican		4,500 including 500 from each congressional district			
Kansas	Democratic			\$100	1,000	Kan. Stat. Ann § 25-4502(b) (2002)
	Republican			\$100	1,000	
Kentucky	Democratic	\$1,000	5,000			Ky. Rev. Stat. Ann. §§ 118.611, 118.591 (Michie 2002)
	Republican	\$1,000	5,000			
Louisiana	Democratic			\$1,125	1,000	La. Rev. Stat. Ann. §§ 18:1280.22, 18:464(c) (West 2002)
	Republican	\$5,000*		\$1,125	1,000	
Maine	Democratic			\$2,500	2,000-3,000	Me. Rev. Stat. Ann. tit. 21A, § 412 (West 2002)
	Republican			\$2,500	2,000-3,000	
Maryland	Democratic		400 from each congressional district			Md. Code Ann., Elec. § 8-502(b)(2)(2002)
	Republican		400 from each congressional district			
Massachusetts	Democratic		2,500			Mass. Gen. Laws ch. 53 § 70E (2003)
	Republican		2,500			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Michigan	Democratic		1/2 of 1% of the total votes cast in the last Presidential election for the party's presidential candidate, not to exceed 1,000 times the number of congressional districts in the state			Mich. Comp. Laws § 168.615a(2) (2002)
	Republican		1/2 of 1% of the total votes cast in the last Presidential election for the party's presidential candidate, not to exceed 1,000 times the number of congressional districts in the state			
Minnesota	Democratic		2,000			Minn. Stat. § 204B.11 (2002)
	Republican		2,000			
Mississippi	Democratic		500 total or 100 per congressional district			Miss. Code Ann. § 23-15-1093 (2003)
	Republican		500 total or 100 per congressional district			
Missouri	Democratic			\$1,000 (unless unable to pay)	5,000 signatures and sworn statement of inability to pay fee	Mo. Rev. Stat. § 115.761.1 (2003)
	Republican			\$1,000 (unless unable to pay)	5,000 signatures and sworn statement of inability to pay fee	
Montana	Democratic		500			Mont. Code Ann. § 13-10-404(1) (2003)
	Republican		500			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Nebraska	Democratic		300			Neb. Rev. Stat. § 32-613 (2002)
	Republican		300			
New Hampshire	Democratic			\$1,000	210	N.H. Rev. Stat. Ann. § 655:48 (2002)
	Republican			\$1,000	210	
New Jersey	Democratic		1,000			N.J. Stat. Ann. § 19:25-3 (West 2003)
	Republican		1,000			
New Mexico	Democratic		2% of the total number of votes for presidential cast in each congressional district in the last presidential election (appx. 14,000)			N.M. Stat. Ann. § 1-8-57 (Michie 2002)
	Republican		2% of the total number of votes for presidential cast in each congressional district in the last presidential election (appx. 14,000)			
New York	Democratic		15,000			N.Y. Elec. Law § 6-136 (Consol. 2003)
	Republican		15,000			
North Carolina	Democratic		10,000			N.C. Gen. Stat. § 163-213.5 (2003)
	Republican		10,000			
Ohio	Democratic		1,000			Ohio Rev. Code Ann. § 3513.05 (West 2003)
	Republican		1,000			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Oklahoma	Democratic			\$2,500	1% of registered voters in each congressional district or 1,000 voters per district, whichever is less	Okla. Stat. Ann. Tit. 26, § 20-120 (West 2009)
	Republican			\$2,500	1% of registered voters in each congressional district or 1,000 voters per district, whichever is less	
Oregon	Democratic		5,000 (1,000 from each congressional district, including signatures from voters in 5% of the precincts in at least ¼ of the counties in the district)			Or. Rev. Stat. § 249.078 (2001)
	Republican		5,000 (1,000 from each congressional district, including signatures from voters in 5% of the precincts in at least ¼ of the counties in the district)			
Pennsylvania	Democratic	\$200	2,000 (100 from each county)			25 Pa. Cons. Stat. Ann. §§ 2872.1, 2873 (West 2003)
	Republican	\$200	2,000 (100 from each county)			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Rhode Island	Democratic		1,000			R.I. Gen. Laws § 17-12.1-4(2) (2002)
	Republican		1,000			
South Carolina	Democratic	\$2,500*				S.C. Code Ann. § 7-13-40 (2002)
	Republican	\$10,000*				
Tennessee	Democratic		2,500			Tenn. Code Ann. § 2-5-205(a)(2) (2002)
	Republican		2,500			
Texas	Democratic	\$4,000*	300 signatures per congressional district, or 4,500*	\$2,500*	5,000*	Tex. Elec. Code Ann. § 191.002 (2003)
	Republican					
Utah	Democratic	\$500				Utah Code Ann. § 20A-9-803(iv) (2002)
	Republican	\$500 + 5,000*				
Vermont	Democratic	\$2,000	1,000			Vt. Stat. Ann. tit. 17, § 2702 (2002)
	Republican	\$2,000	1,000			
Virginia	Democratic		10,000 signatures (at least 400 from each congressional district)			Va. Code § 24.2-545 (Michie 2002), amended by 2003 Va. Acts ch. 1015
	Republican		10,000 signatures (at least 400 from each congressional district)			

STATE	PARTY	MANDATORY		OPTIONAL (EITHER/OR)		STATUTES
		Filing Fees	Petitions	Filing Fees	Petitions	
Washington	Democratic		1,000			Wash. Rev. Code § 29.19.030(2) (2003)
	Republican		1,000			
West Virginia	Democratic			1% of annual salary of office announced (unless unable to pay)	4 signatures per dollar of filing fee amount	W. Va. Code § 3-5-8, 3-5-8a (2003)
	Republican					
Wisconsin	Democratic		1,000-1,500 signatures per congressional district			Wis. Stat. § 8.12(c)
	Republican		1,000-1,500 signatures per congressional district			

* These requirements are mandated by the state political parties and are supported by state code.
 Note: Alaska, Hawaii, Iowa, and Nevada do not hold presidential primary elections. Arizona, Florida, Georgia, North Dakota, South Dakota, and Wyoming have no petition or filing fee requirements.

