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HOW STATES CAN AVOID OVERCROWDED BALLOTS BUT STILL PROTECT VOTER CHOICE

*Richard Winger**

INTRODUCTION

Since the beginning of government-printed ballots for federal and state offices in 1889, state legislatures have been wrestling with the problem of how many signatures should be required for independent candidates and new political parties to get on the ballot. Laws on this subject are very volatile; there is not a single instance in United States history in which applicable state laws were the same for two consecutive presidential elections.¹

The volatility increased in 1968, when the U.S. Supreme Court ruled that overly strict ballot access laws for new parties and independent candidates violate the U.S. Constitution.² Since then, every state has been sued by minor party or independent candidates, or both, over whether its laws are too stringent.³ All fifty states and the District of Columbia have lost at least one lawsuit on this subject.⁴

Despite over fifty years of federal litigation and over 120 years of state court constitutional litigation,⁵ there are few resources available to help legislators and judges know how to set the number of signatures. On the one hand, the number of signatures should be high enough to avoid overcrowded ballots. On the other hand, if the requirements are too strict, voting rights are injured. When a candidate or a party is kept off the ballot, individuals who desire to vote for that candidate or party are injured. As the Supreme Court said in *Bush v. Gore*,⁶ “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one

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1. *See infra* Appendix A. Appendix A provides examples of changes to state election laws for every four-year interval between presidential elections.

2. *See Williams v. Rhodes*, 393 U.S. 23, 34 (1968).

3. *See infra* Appendix B. Appendix B contains a list of at least one such lawsuit in each state.

4. *See id.*

5. *See id.*

6. 531 U.S. 98 (2000) (per curiam).

person's vote over that of another."⁷ In states where voter registration forms ask the applicant to choose a party, 2 percent of all U.S. voters are members of political parties other than the Democratic and Republican Parties.⁸ The Constitution protects U.S. voters' right to vote,⁹ and one can logically assume that U.S. voters want to vote for candidates representing their party. However, restrictive ballot access laws and overcrowded ballots may infringe upon the constitutionally protected right to vote.

I. WHAT IS AN OVERCROWDED BALLOT?

This Article relies on two Supreme Court decisions to define "overcrowded ballot." On the one hand, Justice John Harlan in his concurring opinion in *Williams v. Rhodes*¹⁰ noted that a ballot with eight candidates "cannot be said, in light of experience, to carry a significant danger of voter confusion" and does not "support an incursion upon protected rights."¹¹

On the other hand, Chief Justice William Burger in *Lubin v. Panish*¹² wrote:

That 'laundry list' ballots discourage voter participation and confuse and frustrate those who do participate is too obvious to call for extended discussion Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects of success.¹³

No other Supreme Court decisions besides *William v. Rhodes* and *Lubin v. Panish* express any viewpoint about what qualifies as an "overcrowded ballot." Therefore, this Article assumes that a ballot with eight candidates or fewer for a particular office is not "overcrowded."

II. A STATE REQUIRING MORE THAN 5000 SIGNATURES WILL VIRTUALLY NEVER HAVE AN OVERCROWDED BALLOT

An investigation into all instances when a state required more than 5000 signatures for *both* an independent candidate *and* a new or previously unqualified party to get on an election ballot reveals that no state has ever had more than eight candidates on a partisan general election ballot for a single office.¹⁴ The only exception is New York, which had nine candidates

7. *Id.* at 104–05.

8. See Richard Winger, *Voter Registration Totals*, *BALLOT ACCESS NEWS* (Nov. 21, 2020), <http://ballot-access.org/2020/11/21/november-2020-ballot-access-news-print-edition/> [<https://perma.cc/4TMQ-PFP7>] (showing the number of registered voters in each party that has a question about party membership on its registration form).

9. U.S. CONST. amend. XXVI, § 1.

10. 393 U.S. 23 (1968).

11. *Id.* at 47 (Harlan, J., concurring).

12. 415 U.S. 709 (1974).

13. *Id.* at 715–16.

14. See *infra* Appendix D. This Article only discusses elections for a single office.

on the ballot for president in 1980 and 1996.¹⁵ Consequently, a requirement of more than 5000 signatures is sufficient to prevent cluttered general election ballots.

Appendix D supports this conclusion. It lists all instances since 1892—the first election year with government-printed ballots—when a state required more than 5000 signatures to get on the ballot for president and shows how many presidential candidates appeared on the ballot in a particular election year.¹⁶ As Appendix D illustrates, there are only two instances when a state had more than eight presidential candidates on the ballot; New York had nine presidential candidates in 1980 and 1996.¹⁷ Appendix D does not include midterm or U.S. House of Representatives elections, but the conclusion would remain unchanged even if it did. Presidential ballots are significantly more crowded than the ballots for U.S. Congress or any state office.¹⁸

One might be surprised that the relationship between overcrowded ballots and ballot access requirements is better represented by a flat number of signatures, as opposed to a percentage requirement. But a thought experiment demonstrates that flat numbers make more analytical sense. Ask yourself which of the following is easier to collect: 10 percent of the attendees at a birthday party or one-tenth of 1 percent of all the adult citizens of the United States? Obviously, the former is an easier job.¹⁹

A petition requirement involves a great deal of work, which can be expressed in work-hours. Collecting 10,000 valid signatures requires a significant amount of work-hours. The number of work-hours stays relatively the same even if the available pool of eligible signers is one million, ten million, or one hundred million. Most large petition drives are carried out by paid circulators, and the cost of paying them is the same whether the available pool is five million or fifty million. Petition drives do not fail because the circulators run out of potential signers. Instead, petition drives are typically unsuccessful because the party or candidate does not have sufficient funding to hire enough paid circulators.²⁰

The District of Columbia requires a petition signed by 1 percent of all registered voters for an independent presidential candidate or the presidential

15. *See id.*

16. *See id.*

17. *See id.*

18. In U.S. history, the most crowded ballot for a single office was the California 2003 gubernatorial recall election ballot. *See* Richard Winger, *Most Crowded General Election Ballot for Statewide Office*, BALLOT ACCESS NEWS (Aug. 22, 2021), <http://ballot-access.org/2021/08/22/august-2021-ballot-access-news-print-edition/> [https://perma.cc/485A-L9NC]. It listed 135 candidates for governor, but only sixty-five signatures were needed for a candidate to get on that ballot. *See id.*; *see also* CAL. ELEC. CODE § 8062 (West 2021). Sixty-five is far less than 5000. Therefore, the 2003 California election would not have been listed on Appendix D even if it included nonpresidential elections.

19. For another helpful illustration of the relationship between overcrowded ballots and ballot access requirements, see *infra* notes 21–25 and accompanying text.

20. *See* Richard J. Ellis, *Signature Gathering in the Initiative Process: How Democratic Is It?*, 64 MONT. L. REV. 35, 60 (2003).

nominee of an unqualified party to get on the ballot.²¹ So does California.²² The 1 percent requirement was effective in both jurisdictions in the 1976 election.²³ From 1976 to 2020, both jurisdictions had a mid-August petition deadline.²⁴ But because the District of Columbia is much less populous than California, the consequences of the 1 percent requirement are very different in each jurisdiction. In the last ten presidential elections, only one independent presidential petition in California succeeded, whereas thirty-two such petitions succeeded in the District of Columbia.²⁵

APPENDIX A

This appendix provides examples of states that changed their ballot access laws between two particular elections. The first presidential election in which any state used government-printed ballots was the 1892 election, so the appendix starts with the period 1892–1896.

1892–1896: In 1893, Nevada increased the number of signatures for a new party from 3 percent of the last vote cast to 10 percent of the last vote cast.²⁶

1896–1900: In 1897, Nebraska changed the procedure for a new party to get on the ballot from a petition of 500 signatures to a group that could attract at least 200 registered voters to its statewide nominating convention.²⁷

1900–1904: In 1901, California added a restriction to its petition for new parties and independent candidates. Individuals who had voted to select delegates to party-nominating conventions in the primary election were not permitted to sign the petition.²⁸

1904–1908: In 1908, Kansas changed the procedure for new parties to get on the ballot from requiring that the group merely be organized and hold a

21. See D.C. CODE ANN. § 1-1001.08 (West 2021).

22. See CAL. ELEC. CODE § 8400 (West 2021).

23. The 1-percent requirement in California was signed into law on April 23, 1976. See Act of Apr. 23, 1976, ch. 115, 1976 Cal. Stat. 184, 184. In the District of Columbia, the 1-percent requirement was in effect as of 1973. See D.C. MUN. REGS. tit. 22, § 11.4 (1974).

24. See D.C. CODE ANN. § 1-1001.08 (West 2021); CAL. ELEC. CODE § 8403 (West 2021).

25. See *infra* Appendix C. Appendix C provides a list of successful 1-percent presidential petitions in the District of Columbia from 1984–2020. The only such successful petition in California was Ross Perot's 1992 petition. See CAL. SEC'Y OF STATE, STATEMENT OF VOTE 8 (1992), <https://elections.cdn.sos.ca.gov/sov/1992-general/sov-complete.pdf> [<https://perma.cc/8B8M-54KJ>]. Although Lenora Fulani appeared on the California ballot as an independent presidential candidate in 1988, she did not complete the 1-percent petition. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 3 (1989) [hereinafter FEDERAL ELECTIONS 1988], <https://www.fec.gov/resources/cms-content/documents/federaelections88.pdf> [<https://perma.cc/R6W7-SC3B>]. Fulani challenged California's petition requirement. See Richard Winger, *California Settlement*, BALLOT ACCESS NEWS (Aug. 27, 1988), <http://www.ballot-access.org/1988/BAN.1988.08-27-88.pdf> [<https://perma.cc/J5PD-U44H>]. California settled her lawsuit and agreed to put her on the ballot if she submitted 65,000 signatures, which was approximately half the requirement of 128,340. *Id.*

26. See Act of Mar. 6, 1893, ch. 106, 1893 Nev. Stat. 113, 113.

27. See Act of Apr. 29, 1899, ch. 26, 1899 Neb. Laws 121, 123.

28. See Act of Mar. 23, 1901, ch. 187, 1901 Cal. Stat. 590, 595.

nomination convention to requiring that groups submit a petition of 2 percent of the last vote cast.²⁹

1908–1912: In 1912, Louisiana changed the procedure for new parties from requiring that the group merely be organized and hold a nominating convention to requiring that the group submit a petition of one thousand signatures for statewide office.³⁰ Registered members of a qualified party were not permitted to sign the petition.³¹

1912–1916: In 1915, West Virginia changed the new party procedure from a petition of one thousand signatures to a petition of 5 percent of the last vote cast,³² which was 11,768 signatures for the 1915 election.³³

1916–1920: In 1919, Idaho changed the procedure for recognizing a new party from requiring that the group just be organized and hold a convention to requiring that the group submit a petition of 5 percent of the last vote cast.³⁴

1920–1924: In 1922, New York created a new requirement that petitions for independent candidates and the nominees of new parties had to include the precinct number of every signer.³⁵

1924–1928: In 1925, Kansas moved the petition deadline for independent candidates from September to June.³⁶ If this requirement had existed in 1924, U.S. Senator Robert La Follette, a progressive independent presidential candidate, would have had trouble getting on the ballot in Kansas because he did not declare his candidacy until July 4, 1924.³⁷

1928–1932: In 1929, South Dakota changed the procedure for recognizing new parties from requiring that the group be organized and hold a convention to requiring that the group submit a petition of 3 percent of the last vote cast.³⁸

1932–1936: In 1933, Indiana raised the petition for statewide independent candidates and the nominees of unqualified parties from 500 signatures to signatures equal to one-half of 1 percent of the last vote cast,³⁹ which was 7213 signatures for the 1936 election.⁴⁰

29. See Act of Feb. 1, 1908, ch. 54, 1908 Kan. Sess. Laws 59, 62.

30. See Act of June 25, 1912, No. 21, 1912 La. Acts 27, 27.

31. See *id.*

32. See Act of Feb. 26, 1915, ch. 26, 1915 W. Va. Acts 222, 225.

33. See Richard Winger, *How Many Parties Ought to Be on the Ballot?: An Analysis of Nader v. Keith*, in 5 ELECTION L.J. 170, 195 (Daniel H. Lowenstein & Richard L. Hasen eds., 2006).

34. See Act of Mar. 3, 1919, ch. 107, 1919 Idaho Sess. Laws 372, 373.

35. See Act of Apr. 12, 1922, ch. 588, 1922 N.Y. Laws 1326, 1327.

36. See Act of Mar. 13, 1925, ch. 164, 1925 Kan. Sess. Laws 216, 216.

37. See DARCY G. RICHARDSON, OTHERS: “FIGHTING BOB” LA FOLLETTE AND THE PROGRESSIVE MOVEMENT: THIRD-PARTY POLITICS IN THE 1920s 180 (4th ed. 2008).

38. See Act of Feb. 28, 1929, ch. 118, 1929 S.D. Sess. Laws 124, 125.

39. See Act of Feb. 24, 1933, ch. 45, 1933 Ind. Acts 368, 368.

40. See Winger, *supra* note 33, at 195.

1936–1940: In 1937, California raised the petition requirement for new parties from 1 percent of the last gubernatorial vote to 10 percent of the last gubernatorial vote.⁴¹

1940–1944: In 1943, Georgia changed the procedure for recognizing independent candidates and the nominees of unqualified parties from merely requesting a place on the ballot to submitting a petition of 5 percent of the number of registered voters.⁴²

1944–1948: In 1947, Ohio repealed all procedures for an independent presidential candidate or the presidential nominee of an unqualified party to get on the ballot.⁴³ The only avenue that remained was a petition to create a new party, which required the signatures of 15 percent of the last gubernatorial vote.⁴⁴

1948–1952: In 1951, the Ohio legislature raised the nonpresidential independent candidate petition requirement from 1 percent of the last gubernatorial vote to 7 percent of the last gubernatorial vote.⁴⁵

1952–1956: In 1953, Missouri revised the procedure for recognizing new parties from requiring that the group be organized and hold a convention to requiring that the group submit a petition of 1 percent of the last vote cast.⁴⁶

1956–1960: In 1957, Maryland increased the statewide petition for independent candidates and the nominees of unqualified parties from 2000 signatures to 5000 signatures.⁴⁷

1960–1964: In 1961, Tennessee changed the procedure for recognizing new parties from requiring that a group be organized and hold a convention to requiring that the group submit a petition of 5 percent of the last vote cast.⁴⁸

1964–1968: In 1967, Texas changed the procedure for recognizing new parties from requiring that the group be organized and hold county conventions in at least twenty counties to requiring that the group submit a petition of 1 percent of the last gubernatorial vote.⁴⁹ Individuals who voted in a primary that year are not permitted to sign the petition.⁵⁰

1968–1972: In 1969, Montana changed the procedure for recognizing new parties from requiring that the group be organized and hold a convention to

41. See Act of Aug. 27, 1937, ch. 398, 1937 Cal. Stat. 1219, 1219.

42. See Act of Mar. 20, 1943, No. 415, 1943 Ga. Laws 292, 292.

43. See *Williams v. Rhodes*, 393 U.S. 23, 24 (1968) (“The State of Ohio in a series of election laws has made it virtually impossible for a new political party . . . to be placed on the state ballot to choose electors pledged to particular candidates for the Presidency and Vice Presidency of the United States.”).

44. See *id.* at 24–25 (discussing revisions to Ohio’s election laws); see also Act of June 30, 1947, ASSB 109, 1947 Ohio Laws 103, 128.

45. See Act of June 14, 1951, Amended Substitute Senate Bill 269, 1951 Ohio Laws 673, 684.

46. See Act of Apr. 21, 1953, S.B. 117, 1953 Mo. Laws 714, 715–16.

47. See Act of Apr. 1, 1957, ch. 739, 1957 Md. Laws 1180, 1216.

48. See Act of Feb. 20, 1961, ch. 103, 1961 Tenn. Pub. Acts 349, 350.

49. See Act of Sept. 15, 1967, ch. 723, 1967 Tex. Sess. Law Serv. 1858, 1922 (West).

50. See *id.*

requiring that the group submit a petition signed by voters equal to 5 percent of the winner's vote in the gubernatorial election.⁵¹

1972–1976: In 1973, Colorado raised the petition for presidential independent candidates and the presidential nominees of new parties from 300 signatures to 10,000.⁵²

1976–1980: In 1980, Indiana increased the number of signatures required for independent candidates and the nominees of unqualified parties from one-half of 1 percent of the last vote cast to 2 percent of the last vote cast, although the change did not take effect until 1983.⁵³

1980–1984: In 1983, North Carolina increased the petition requirement for a new party from 5000 signatures to 2 percent of the last gubernatorial vote,⁵⁴ which was 36,949 signatures for the 1984 election.⁵⁵

1984–1988: In 1985, Illinois law was changed to provide that independent candidate petitions and petitions for a new party could not be circulated until ninety days before the deadline.⁵⁶ Previously, candidates could circulate the petitions as early as they wished.

1988–1992: In 1990, Kentucky provided that no one could sign a petition for the nominee of an unqualified party unless the signer was a registered member of that party.⁵⁷

1992–1996: In 1995, Alabama increased the petition requirement for new parties from 1 percent of the last gubernatorial vote to 3 percent of the last gubernatorial vote.⁵⁸

1996–2000: In 1999, West Virginia increased the petition requirement for independent candidates and the nominees of unqualified parties from 1 percent of the last gubernatorial vote to 2 percent of the last gubernatorial vote.⁵⁹

2000–2004: In 2003, Kentucky passed a law requiring independent candidates and the nominees of unqualified parties running for state and local office to file a declaration of candidacy by April 1.⁶⁰

2004–2008: In 2005, Oregon passed a bill providing that primary voters could not sign an independent candidate petition.⁶¹

51. See Act of Mar. 15, 1969, ch. 368, 1969 Mont. Laws 992, 1026.

52. See Act of July 6, 1973, ch. 167, 1973 Colo. Sess. Laws 573, 583.

53. See Act of Feb. 27, 1980, Pub. L. No. 6, 1980 Ind. Acts 22, 22.

54. See Act of June 21, 1983, ch. 576, 1983 N.C. Sess. Laws 506, 506.

55. See Winger, *supra* note 33, at 196.

56. See Act of Nov. 15, 1985, Pub. Act 84-1026, Ill. Laws 6556, 6564.

57. See Act of Mar. 30, 1990, ch. 166, 1990 Ky. Acts 351, 351.

58. See Act of Aug. 9, 1995, ch. 786, 1995 Ala. Laws 1872, 1873.

59. See S.B. 591, 1999 Leg., Reg. Sess. (W. Va. 1999), https://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=SB591%20ENR.htm&yr=1999&sesstype=RS&i=591 [<https://perma.cc/5QWM-EGP7>].

60. See H.B. 136, 2003 Leg., Reg. Sess. (Ky. 2003), <https://apps.legislature.ky.gov/record/03rs/HB136.htm> [<https://perma.cc/373A-ZH76>].

61. See H.B. 2614, 73d Leg. Assemb., Reg. Sess. (Or. 2005), https://www.oregonlegislature.gov/bills_laws/archivebills/2005_hb2614.en.pdf [<https://perma.cc/RN76-KA9Q>].

2008–2012: In 2010, California voters passed a measure that had been placed on the ballot by the legislature to create a “top-two” system.⁶² For congressional or state office, the only candidates who had placed first or second in the primary could appear on the November ballot.⁶³ The state also abolished write-in space for congressional and state offices on the November ballot.⁶⁴

2012–2016: In 2015, Arizona increased the petition requirement for candidates of a small, ballot-qualified party to get on the ballot in its own party’s primary.⁶⁵ Arizona requires all ballot-qualified parties to nominate their candidates via primary elections.⁶⁶ The increase was from one-half of 1 percent of the membership of the particular party to one-half of 1 percent of all the registered voters in the state.⁶⁷ The law did not pertain to new parties. The only party that was substantially affected was the Libertarian Party, which was unable to run any candidates for Congress or partisan state office in the 2016, 2018, and 2020 elections because the party members could not get on their own primary ballot.⁶⁸ The new law made a similar increase in the number of write-ins needed in a primary for a candidate to be considered nominated.⁶⁹

2016–2020: In 2020, New York increased the petition requirement for statewide independent candidates and the nominees of unqualified parties from 15,000 signatures to 45,000 signatures.⁷⁰ As a result, no such petitions succeeded in the state in 2020, the first time that no statewide petition succeeded in New York since 1956.⁷¹ As a result of the COVID-19

62. See CAL. SEC’Y OF STATE DEBRA BOWEN, STATEMENT OF VOTE: JUNE 8, 2010, STATEWIDE DIRECT PRIMARY ELECTION 125–27 (2010), <https://elections.cdn.sos.ca.gov/sov/2010-primary/pdf/2010-complete-sov.pdf> [<https://perma.cc/RN75-TMDB>].

63. See CAL. LEGIS. ANALYST’S OFF., PROPOSITION 14: SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT (2010), https://lao.ca.gov/ballot/2010/14_06_2010.aspx [<https://perma.cc/4VND-CKHK>].

64. See *id.*

65. See H.B. 2608, 52d Leg., 1st Reg. Sess. (Ariz. 2015), <https://www.azleg.gov/legtext/52leg/1r/bills/hb2608h.pdf> [<https://perma.cc/66Y3-29VG>].

66. See ARIZ. REV. STAT. ANN. § 16-801(A) (West 2021).

67. See H.B. 2608, 52d Leg., 1st Reg. Sess. (Ariz. 2015).

68. See ARIZ. SEC’Y OF STATE, STATE OF ARIZONA OFFICIAL CANVASS 7–9 (2016), <https://apps.azsos.gov/election/2016/Primary/canvass2016primary.pdf> [<https://perma.cc/S5H2-BPCB>]; ARIZ. SEC’Y OF STATE, STATE OF ARIZONA OFFICIAL CANVASS 4–11 (2018), <https://azsos.gov/sites/default/files/2018%200910%20Signed%20Statewide%20Canvass.pdf> [<https://perma.cc/3A3W-NBZQ>]; ARIZ. SEC’Y OF STATE, STATE OF ARIZONA OFFICIAL CANVASS (REVISED) 3–5 (2020), https://azsos.gov/sites/default/files/2020_Primary_Canvass.pdf [<https://perma.cc/348G-DTN8>].

69. See H.B. 2608, 52d Leg., 1st Reg. Sess. (Ariz. 2015).

70. See S.B. 7805-B, 2019 Leg. Sess. (N.Y. 2019), <https://legislation.nysenate.gov/pdf/bills/2019/S7508B> [<https://perma.cc/44ZM-34Y6>].

71. See Richard Winger, Opinion, *New York Voters Face Sharply Reduced Choices in Future Elections*, GOTHAM GAZETTE (May 7, 2021), <https://www.gothamgazette.com/opinion/10437-new-york-voters-reduced-choices-party-ballot-future-elections> [<https://perma.cc/NP9J-VFFK>].

pandemic, Governor Andrew Cuomo lowered the statewide petition requirement for 2020 to only 30,000 signatures.⁷²

APPENDIX B

This Appendix lists at least one ballot access lawsuit in each state—filed by a minor party or an independent candidate—that resulted in a state’s law being declared unconstitutional or in violation of the federal Voting Rights Act of 1965⁷³ or being enjoined. In some instances, the state did not contest the lawsuit and admitted the challenged law was unconstitutional.

State	Year	Case Name and Holding
Ala.	1991	<i>The New Alliance Party of Alabama v. Hand</i> : April is too early for new parties and nonpresidential independents to get on ballot. ⁷⁴
Alaska	1982	<i>Vogler v. Miller</i> : The 3-percent petition requirement for independent candidates and nominees of unqualified parties is invalid. ⁷⁵
Ariz.	1999	<i>Campbell v. Hull</i> : June is too early for parties to file presidential-electoral candidates. ⁷⁶
Ark.	2019	<i>Libertarian Party of Arkansas v. Thurston</i> : The petition requirement of 3 percent of last gubernatorial vote is too difficult. ⁷⁷
Cal.	2012	<i>California Justice Committee v. Bowen</i> : January deadline for a new party is too early. ⁷⁸
Colo.	2000	<i>Campbell v. Davidson</i> : The state cannot require a candidate for Congress to be a registered voter. ⁷⁹
Conn.	2016	<i>Libertarian Party of Connecticut v. Merrill</i> : The state cannot ban out-of-state circulators. ⁸⁰
Del.	1992	<i>Warren v. Harper</i> : The state cannot require petition signers to list their Social Security numbers. ⁸¹

72. See N.Y. Exec. Order No. 202.46 (June 30, 2020), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.46.pdf [<https://perma.cc/64MH-M492>].

73. 52 U.S.C. § 10101.

74. See *New Alliance Party of Ala. v. Hand*, 933 F.2d 1568, 1576 (11th Cir. 1991).

75. See *Vogler v. Miller*, 651 P.2d 1, 5–6 (Alaska 1982).

76. See *Campbell v. Hull*, 73 F. Supp. 2d 1081, 1092 (D. Ariz. 1999).

77. See *Libertarian Party of Ark. v. Thurston*, 394 F. Supp. 3d 882, 922 (E.D. Ark. 2019), *aff’d* 962 F.3d 390 (8th Cir. 2020).

78. See *Cal. Just. Comm. v. Bowen*, No. CV 12–3956, 2012 WL 5057625, at *10 (C.D. Cal. Oct. 18, 2012).

79. See *Campbell v. Davidson*, 233 F.3d 1229, 1236 (10th Cir. 2000).

80. See *Libertarian Party of Conn. v. Merrill*, No. 15-CV-1851, 2016 WL 10405920, at *7–8 (D. Conn. Jan. 6, 2016).

81. See *Warren v. Harper*, No. 12,744, 1992 WL 296896, at *1 (Del. Ch. Oct. 15, 1992).

State	Year	Case Name and Holding
D.C.	1974	<i>Kamins v. Board of Elections for the District of Columbia</i> : The District's ban on counting write-in votes in general presidential elections is invalid. ⁸²
Fla.	1992	<i>Fulani v. Krivanek</i> : The state cannot charge a fee to check signatures on a minor political party's petition. ⁸³
Ga.	2017	<i>Green Party of Georgia v. Kemp</i> : The petition requirement of 1 percent of registered voters is too difficult for presidential elections. ⁸⁴
Haw.	1986	<i>Libertarian Party of Hawaii v. Waihee</i> : April is too early for new party to get on ballot for president. ⁸⁵
Idaho	2010	<i>Daien v. Ysursa</i> : The state cannot require more signatures for independent presidential candidates than for other independent candidates. ⁸⁶
Ill.	2017	<i>Libertarian Party of Illinois v. Scholz</i> : The state cannot require new parties to run a full slate of candidates for all offices on the ballot. ⁸⁷
Ind.	1990	<i>Paul v. State of Indiana Election Board</i> : The state must print write-in space on ballot and count write-ins. ⁸⁸
Iowa	1992	<i>Oviatt v. Baxter</i> : The state cannot require more signatures for petitions for local offices than for statewide offices. ⁸⁹
Kan.	2002	<i>Natural Law Party of Kansas v. Thornburgh</i> : The state must allow party to have two words in its party name. ⁹⁰
Ky.	2020	<i>Sweeney v. Crigler</i> : The January deadline for an independent candidate to file a declaration of candidacy is too early. ⁹¹

82. See *Kamins v. Bd. of Elections for D.C.*, 324 A.2d 187, 193 (D.C. 1974).

83. See *Fulani v. Krivanek*, 973 F.2d 1539, 1548 (11th Cir. 1992).

84. See *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1374 (N.D. Ga. 2016), *aff'd*, 674 F. App'x 974 (11th Cir. 2017).

85. See *Libertarian Party of Haw. v. Waihee*, No. 86-0439, slip. op. at 3 (D. Haw. July 17, 1986).

86. See *Daien v. Ysursa*, 711 F. Supp. 2d 1215, 1238 (D. Idaho 2010).

87. See *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518, 520–21 (7th Cir. 2017).

88. See *Paul v. State of Ind. Election Bd.*, 743 F. Supp. 616, 625–26 (S.D. Ind. 1990).

89. See *Oviatt v. Baxter*, No. 4-92-CV-10513, slip op. at 2 (S.D. Iowa Aug. 10, 1992).

90. See *Nat. L. Party of Kan. v. Thornburgh*, No. 02-2390, slip op. at 2 (D. Kan. Oct. 7, 2002).

91. See *Sweeney v. Crigler*, 457 F. Supp. 3d 577, 584 (E.D. Ky. 2020).

State	Year	Case Name and Holding
La.	1977	<i>Socialist Workers Party v. Hardy</i> : The oath that a candidate is not a subversive person is unconstitutional. ⁹²
Me.	2016	<i>Libertarian Party of Maine, Inc. v. Dunlap</i> : December of the year before election is too early for new party to get on ballot. ⁹³
Md.	2016	<i>Dorsey v. Lamone</i> : The state cannot require more signatures for statewide independent candidates than new party candidates. ⁹⁴
Mass.	1977	<i>McCarthy v. Secretary of the Commonwealth</i> : Petition procedures place an undue burden on independent candidates. ⁹⁵
Mich.	2021	<i>Graveline v. Benson</i> : The petition requirement of 30,000 signatures is too high for a statewide independent candidate. ⁹⁶
Minn.	2004	<i>In re Candidacy of Independence Party Candidates v. Kiffmeyer</i> : The state cannot require a minimum number of votes in a primary election. ⁹⁷
Miss.	1968	<i>Allen v. State Board of Elections</i> : The state law increasing the number of signatures for independent candidates is invalid. ⁹⁸
Mo.	2015	<i>Constitution Party of Missouri v. St. Louis County, Missouri</i> : The state must have procedures for new parties to run for county office. ⁹⁹
Mont.	2017	<i>Breck v. Stapleton</i> : The 5-percent petition (of winner's vote) requirement is too difficult in special U.S. House elections. ¹⁰⁰
Neb.	1984	<i>Libertarian Party of Nebraska v. Beermann</i> : The petition for a new party cannot require that signers pledge to support that party. ¹⁰¹

92. See *Socialist Workers Party v. Hardy*, 480 F. Supp. 941, 946 (E.D. La. 1977), *aff'd*, 607 F.2d 704 (5th Cir. 1979).

93. See *Libertarian Party of Me., Inc. v. Dunlap*, No. 16-cv-00002, 2016 WL 1642593, at *9 (D. Me. Apr. 25, 2016).

94. See *Dorsey v. Lamone*, No. 1-15-cv-02170, at 5 (D. Md. June 10, 2016).

95. See *McCarthy v. Sec'y of the Commonwealth*, 359 N.E.2d 291, 302 (Mass. 1977).

96. See *Graveline v. Benson*, 992 F.3d 524, 529 (6th Cir. 2021).

97. See *In re Candidacy of Indep. Party Candidates v. Kiffmeyer*, 688 N.W.2d 854, 861 (Minn. 2004).

98. See *Allen v. State Bd. of Elections*, 393 U.S. 544, 570, 572 (1968).

99. See *Const. Party of Mo. v. St. Louis Cnty.*, No. 15-CV-207, 2015 WL 3908377, at *4 (E.D. Mo. June 25, 2015).

100. See *Breck v. Stapleton*, 259 F. Supp. 3d 1126, 1138–39 (D. Mont. 2017).

101. See *Libertarian Party of Neb. v. Beermann*, 598 F. Supp. 57, 60 (D. Neb. 1984).

State	Year	Case Name and Holding
Nev.	1986	<i>Libertarian Party of Nevada v. Swackhamer</i> : The June petition deadline for new parties or independent candidates is too early. ¹⁰²
N.H.	2020	<i>Libertarian Party of New Hampshire v. Sununu</i> : Given the COVID-19 pandemic, the ballot signature requirement was too high. ¹⁰³
N.J.	1997	<i>Council of Alternative Political Parties v. Hooks</i> : The April petition deadline is too early for independent candidates and unqualified party nominees to submit their ballot petitions. ¹⁰⁴
N.M.	2013	<i>Constitution Party of New Mexico v. Duran</i> : The April petition deadline is too early for new party to get on ballot. ¹⁰⁵
N.Y.	2013	<i>Credico v. New York State Board of Elections</i> : Unqualified parties can engage in disaggregated fusion. ¹⁰⁶
N.C.	2004	<i>DeLaney v. Bartlett</i> : The state is not permitted to require more signatures for a statewide independent candidate than for a new party. ¹⁰⁷
N.D.	1980	<i>McLain v. Meier</i> : 15,000 signatures is too many for a new political party. ¹⁰⁸
Ohio	2014	<i>Libertarian Party of Ohio v. Husted</i> : State is prohibited from adopting new ballot access barriers that take effect immediately. ¹⁰⁹
Okla.	1984	<i>Libertarian Party of Oklahoma v. Oklahoma State Election Board</i> : A ninety-day period is too short for new party petition. ¹¹⁰
Or.	2002	<i>Freedom Socialist Party v. Bradbury</i> : A party is permitted to use its own name on a ballot petition even if its name is similar to another party name. ¹¹¹

102. See *Libertarian Party of Nev. v. Swackhamer*, 638 F. Supp. 565, 570 (D. Nev. 1986).

103. See *Libertarian Party of N.H. v. Sununu*, No. 20-cv-688, 2020 WL 4340308, at *23 (D.N.H. July 28, 2020).

104. See *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 878–79 (3d Cir. 1997).

105. See *Const. Party of N.M. v. Duran*, No. CV12-325, 2013 WL 12320406, at *9 (D.N.M. Dec. 9, 2013).

106. See *Credico v. N.Y. State Bd. of Elections*, No. 10-CV-4555, 2013 WL 3990784, at *23 (E.D.N.Y. Aug. 5, 2013). For a definition of fusion, see *infra* note 172 and accompanying text.

107. See *DeLaney v. Bartlett*, 370 F. Supp. 2d 373, 380 (M.D.N.C. 2004).

108. See *McLain v. Meier*, 637 F.2d 1159, 1165 (8th Cir. 1980).

109. See *Libertarian Party of Ohio v. Husted*, No. 13-cv-953, 2014 WL 11515569, at *11 (S.D. Ohio Jan. 7, 2014).

110. See *Libertarian Party of Okla. v. Okla. State Election Bd.*, 593 F. Supp. 118, 122 (W.D. Okla. 1984).

111. See *Freedom Socialist Party v. Bradbury*, 48 P.3d 199, 204 (Or. Ct. App. 2002).

State	Year	Case Name and Holding
Pa.	2017	<i>Constitution Party of Pennsylvania v. Cortes</i> : The state process for challenging the validity of petition signatures is invalid. ¹¹²
R.I.	2009	<i>Block v. Mollis</i> : The party petition must be allowed to circulate in odd years. ¹¹³
S.C.	1990	<i>Cromer v. South Carolina</i> : New parties cannot be required to hold meetings in March. ¹¹⁴
S.D.	2000	<i>Nader 2000 Primary Committee, Inc. v. Hazeltine</i> : The June petition deadline is too early for independent presidential candidates. ¹¹⁵
Tenn.	2012	<i>Green Party of Tennessee v. Hargett</i> : April is too early for a new party to get on ballot. ¹¹⁶
Tex.	1996	<i>Texas Independent Party v. Kirk</i> : The state requirement to include voter registration numbers on independent candidate petitions is unconstitutional. ¹¹⁷
Utah	2017	<i>United Utah Party v. Cox</i> : The petition deadline six months before a special election is too early. ¹¹⁸
Vt.	2013	<i>Anderson v. State</i> : The state must allow photocopies of petitions to be submitted to town clerks. ¹¹⁹
Va.	2013	<i>Libertarian Party of Virginia v. Judd</i> : The state must allow out-of-state circulators to petition. ¹²⁰
Wash.	1974	<i>Orians v. James</i> : The loyalty oath requirement for nominees of unqualified parties is invalid. ¹²¹
W. Va.	2016	<i>Daly v. Tennant</i> : January is too early for independent candidates to file declaration of candidacy. ¹²²
Wis.	2003	<i>Frami v. Ponto</i> : The state must allow out-of-state circulators to petition. ¹²³
Wyo.	1984	<i>Blomquist v. Thomson</i> : The county distribution requirement that petitions must recognize a party is unconstitutional. ¹²⁴

112. See *Const. Party of Pa. v. Cortes*, 877 F.3d 480, 481 (3rd Cir. 2017).

113. See *Block v. Mollis*, 618 F. Supp. 2d 142, 156 (D.R.I. 2009).

114. See *Cromer v. South Carolina*, 917 F.2d 819, 826 (4th Cir. 1990).

115. See *Nader 2000 Primary Comm., Inc. v. Hazeltine*, 110 F. Supp. 2d 1201, 1209 (D.S.D. 2000), *aff'd*, 226 F.3d 979 (8th Cir. 2000).

116. See *Green Party of Tenn. v. Hargett*, 882 F. Supp. 2d 959, 1019 (M.D. Tenn. 2012), *rev'd*, 700 F.3d 816 (6th Cir. 2012).

117. See *Tex. Indep. Party v. Kirk*, 84 F.3d 178, 187 (5th Cir. 1996).

118. See *United Utah Party v. Cox*, 268 F. Supp. 3d 1227, 1250 (D. Utah 2017).

119. See *Anderson v. State*, 82 A.3d 577, 582–85 (Vt. 2013).

120. See *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 312 (4th Cir. 2013).

121. See *Orians v. James*, 529 P.2d 1063, 1065 (Wash. 1974) (en banc).

122. See *Daly v. Tennant*, 216 F. Supp. 3d 699, 707 (S.D.W. Va. 2016).

123. See *Frami v. Ponto*, 255 F. Supp. 2d 962, 971 (W.D. Wis. 2003).

124. See *Blomquist v. Thomson*, 739 F.2d 525, 527 (10th Cir. 1984).

APPENDIX C

This appendix lists the independent presidential petitions or petitions for the presidential nominee of an unqualified party that succeeded in the District of Columbia from 1984–2020. During this period, the petition deadline was mid-August, and the required number of signatures was 1 percent of the number of registered voters.¹²⁵ Between 1984 and 2016, the number of signatures was below 5000.¹²⁶ In 2020, the city council reduced the requirement to 250 signatures in response to the COVID-19 pandemic.¹²⁷

1984: Workers World, Socialist Workers, New Alliance, Independent Candidate Lyndon H. LaRouche, Jr., Libertarian, Communist¹²⁸

1988: Third World Assembly, Workers, Socialist, Socialist Workers, Independent Candidate Lyndon H. LaRouche, New Alliance, Libertarian¹²⁹

1992: New Alliance, Independent Candidate Ron Daniels, Libertarian, Independent Candidate Lyndon H. LaRouche, Natural Law, Socialist, Socialist Workers¹³⁰

1996: Libertarian, Green, Natural Law, Socialist Workers¹³¹

125. See D.C. CODE ANN. § 1-1001.08 (West 2021).

126. For the number of signatures between 1984 and 2004, see Winger, *supra* note 33, at 197 (listing 4425 (1984), 2700 (1988), 3072 (1992), 3458 (1996), 3320 (2000), and 3567 (2004)). The number of signatures in 2008 was 3883. See Richard Winger, *2008 Petitioning for President*, BALLOT ACCESS NEWS (Sept. 1, 2008) [hereinafter *2008 Petitioning for President*], <http://www.ballot-access.org/2008/090108.html#13> [<https://perma.cc/5JKK-F3R4>]. The number of signatures in 2012 was approximately 3900. See Richard Winger, *2012 Petitioning for President*, BALLOT ACCESS NEWS (Aug. 1, 2012) [hereinafter *2012 Petitioning for President*], <http://ballot-access.org/2012/09/01/ballot-access-news-august-2012-print-edition/> [<https://perma.cc/4PZW-BJ9Z>]. The number of signatures in 2016 was 4421. See Richard Winger, *2016 Petitioning for President*, BALLOT ACCESS NEWS (Sept. 1, 2016) [hereinafter *2016 Petitioning for President*], <http://ballot-access.org/2016/10/01/september-2016-ballot-access-news-print-edition/> [<https://perma.cc/9UQV-3LT4>].

127. See Coronavirus Omnibus Temporary Amendment Act of 2020, 23-130, D.C. City Council (D.C. 2020), <https://code.dccouncil.us/dc/council/laws/23-130.html> [<https://perma.cc/4DW6-32CA>]; see also Richard Winger, *2020 Petitioning for President*, BALLOT ACCESS NEWS (Sept. 1, 2020) [hereinafter *2020 Petitioning for President*], <http://ballot-access.org/2020/09/27/september-2020-ballot-access-news-print-edition/> [<https://perma.cc/UU4E-XEC6>] (listing the number of signatures as 250).

128. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 4 (1985) [hereinafter *FEDERAL ELECTIONS 1984*], <https://www.fec.gov/resources/cms-content/documents/federalections84.pdf> [<https://perma.cc/V42K-H5VU>]. Although the District of Columbia's ballot listed Dennis Serrette as an independent candidate, he was the presidential nominee for the New Alliance Party. See OMAR H. ALI, *IN THE BALANCE OF POWER: INDEPENDENT BLACK POLITICS AND THIRD-PARTY MOVEMENTS IN THE UNITED STATES* 211 n.50 (2008).

129. *FEDERAL ELECTIONS 1988*, *supra* note 25, at 4.

130. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 17–18 (1993) [hereinafter *FEDERAL ELECTIONS 1992*], <https://www.fec.gov/resources/cms-content/documents/federalections92.pdf> [<https://perma.cc/8F3N-NKBU>].

131. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 19 (1997) [hereinafter *FEDERAL ELECTIONS 1996*], <https://www.fec.gov/resources/cms-content/documents/federalections96.pdf> [<https://perma.cc/RE8L-P5WZ>].

- 2000: Libertarian, Socialist Workers¹³²
 2004: Libertarian, Socialist Workers, Independent Candidate Ralph Nader¹³³
 2008: Independent Candidate Ralph Nader¹³⁴
 2012: Libertarian¹³⁵
 2016: Libertarian¹³⁶
 2020: The 1-percent requirement was amended due to the COVID-19 pandemic.¹³⁷ The temporary requirement was lowered to 250 signatures;¹³⁸ two independent candidates met this requirement.¹³⁹

APPENDIX D

Appendix D lists all instances when a state required more than 5000 signatures for an independent presidential candidate or the presidential nominee of a new or previously unqualified party to get on the ballot. However, the appendix only lists those instances when *all* procedures for that purpose were above 5000 signatures.

Every state has procedures for independent presidential candidates and for newly qualifying parties to get on the ballot. In many states, one of those procedures is typically easier than the others. The chart below lists the *easiest* method for getting on the ballot.

Appendix D also shows the number of presidential candidates who appeared on a state ballot in a particular election year. There are no instances

132. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 19 (2001) [hereinafter FEDERAL ELECTIONS 2000], <https://www.fec.gov/resources/cms-content/documents/federalections00.pdf> [<https://perma.cc/H2H5-LRYV>].

133. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 28 (2005) [hereinafter FEDERAL ELECTIONS 2004], <https://www.fec.gov/resources/cms-content/documents/federalections2004.pdf> [<https://perma.cc/9L4C-2AL6>].

134. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 29 (2009) [hereinafter FEDERAL ELECTIONS 2008], <https://www.fec.gov/resources/cms-content/documents/federalections2008.pdf> [<https://perma.cc/ZGZ5-62QR>].

135. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 29 (2013) [hereinafter FEDERAL ELECTIONS 2012], <https://www.fec.gov/resources/cms-content/documents/federalections2012.pdf> [<https://perma.cc/XVL2-JHVY>].

136. See U.S. FED. ELECTION COMM'N, ELECTION RESULTS FOR U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 28 (2017) [hereinafter FEDERAL ELECTIONS 2016], <https://www.fec.gov/resources/cms-content/documents/federalections2016.pdf> [<https://perma.cc/YV53-256S>].

137. See Coronavirus Omnibus Temporary Amendment Act of 2020, 23-130, D.C. City Council (D.C. 2020), <https://code.dccouncil.us/dc/council/laws/23-130.html> [<https://perma.cc/3LWN-2AX8>] (“Section 8 (D.C. Official Code § 1-1001.08) is amended as follows . . .”).

138. See *id.*

139. See D.C. BD. OF ELECTIONS, GENERAL ELECTION 2020: CERTIFIED RESULTS 2 (2020), https://electionresults.dcboe.org/election_results/2020-General-Election [<https://perma.cc/8ADC-YGAT>] (listing Gloria La Riva and Brock Pierce as the independent candidates).

in which a state had more than eight presidential candidates on the ballot; the exception is New York, which had nine candidates in 1980 and 1996.

The data points for the number of signatures for the years 1892–2004 can be found in a 2006 article from the *Election Law Journal*.¹⁴⁰ The data points for the number of signatures for 2008,¹⁴¹ 2012,¹⁴² 2016,¹⁴³ and 2020¹⁴⁴ can be found in the online publication *Ballot Access News*.

The data points for the number of presidential candidates for the years 1892–1916 can be found in Svend Petersen's *A Statistical History of the American Presidential Elections*.¹⁴⁵ The data points for the number of presidential candidates for 1920,¹⁴⁶ 1924,¹⁴⁷ 1928,¹⁴⁸ 1932,¹⁴⁹ 1936,¹⁵⁰

140. See Winger, *supra* note 33, at 194–97 (App. F). For the number of signatures required in Connecticut for 2020, see Richard Winger, *Seven States Ease Ballot Access Administratively*, *BALLOT ACCESS NEWS* (June 1, 2020), <http://ballot-access.org/2020/06/24/june-2020-ballot-access-news-print-edition/> [<https://perma.cc/F4FB-7ZXR>]. For the number of signatures required in Michigan in 2000, 2004, and 2008, see MICH. COMP. LAWS ANN. § 168.590c (West 2008), *invalidated by* *Graveline v. Benson*, 992 F.3d 524 (6th Cir. 2021).

141. See *2008 Petitioning for President*, *supra* note 126.

142. See *2012 Petitioning for President*, *supra* note 126.

143. See *2016 Petitioning for President*, *supra* note 126.

144. See *2020 Petitioning for President*, *supra* note 127.

145. SVEND PETERSEN, *A STATISTICAL HISTORY OF THE AMERICAN PRESIDENTIAL ELECTIONS* 57–82 (1963).

146. WILLIAM TYLER PAGE, CLERK OF THE HOUSE OF REPRESENTATIVES, *STATISTICS OF THE CONGRESSIONAL AND PRESIDENTIAL ELECTION OF NOVEMBER 2, 1920* (1921), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/P89M-2B72>].

147. WILLIAM TYLER PAGE, CLERK OF THE HOUSE OF REPRESENTATIVES, *STATISTICS OF THE CONGRESSIONAL AND PRESIDENTIAL ELECTION OF NOVEMBER 4, 1924* (1925), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/CS3A-UEQ8>].

148. WILLIAM TYLER PAGE, CLERK OF THE HOUSE OF REPRESENTATIVES, *STATISTICS OF THE CONGRESSIONAL AND PRESIDENTIAL ELECTION OF NOVEMBER 6, 1928* (1929), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/U5XE-JYUG>].

149. GEORGE D. ELLIS, CLERK OF THE HOUSE OF REPRESENTATIVES, *STATISTICS OF THE CONGRESSIONAL AND PRESIDENTIAL ELECTION OF NOVEMBER 8, 1932* (1933), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/S99J-4W5L>].

150. LEROY D. BRANDON, CLERK OF THE HOUSE OF REPRESENTATIVES, *STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 3, 1936* (1936), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/23UQ-MZ6Y>].

1940,¹⁵¹ 1944,¹⁵² 1948,¹⁵³ 1952,¹⁵⁴ 1956,¹⁵⁵ 1960,¹⁵⁶ 1964,¹⁵⁷ 1968,¹⁵⁸ 1972,¹⁵⁹ 1976,¹⁶⁰ and 1980¹⁶¹ can be found in a congressional report prepared by the clerk of the U.S. House of Representatives. The data points for the number of presidential candidates for 1984,¹⁶² 1988,¹⁶³ 1992,¹⁶⁴

151. LEROY D. BRANDON, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 5, 1940 (1941), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/3LV2-JGY Y>].

152. WILLIAM GRAF, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 7, 1944 (1945), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/GMM6-639T>].

153. WILLIAM GRAF, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 2, 1948 (1949), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/9SCW-LCE5>].

154. EARL ROCKWOOD, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 4, 1952 (1953), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/4E3J-WGHY>].

155. RALPH R. ROBERTS, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 6, 1956 (1958), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/5WYY-8GH7>].

156. BENJAMIN J. GUTHRIE, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 8, 1960 (1961), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/H23M-7XY9>].

157. BENJAMIN J. GUTHRIE, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 3, 1964 (1965), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/3G8W-AJFU>].

158. BENJAMIN J. GUTHRIE, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 5, 1968 (1969), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/8KZZ-B5LM>].

159. BENJAMIN J. GUTHRIE, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 7, 1972 (1973), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/HMD2-R3JL>].

160. BENJAMIN J. GUTHRIE, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 2, 1976 (1977), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/QUM9-YJLH>].

161. THOMAS E. LADD, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 4, 1980 (1981), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/7YNT-8JDT>].

162. FEDERAL ELECTIONS 1984, *supra* note 128, at 3–14.

163. FEDERAL ELECTIONS 1988, *supra* note 25, at 3–14.

164. FEDERAL ELECTIONS 1992, *supra* note 130, at 17–32.

1996,¹⁶⁵ 2000,¹⁶⁶ 2004,¹⁶⁷ 2008,¹⁶⁸ 2012,¹⁶⁹ and 2016,¹⁷⁰ can be found in the *Federal Elections* report prepared by the U.S. Federal Election Commission. The data points for the number of presidential candidates for 2020 can be found in a congressional report prepared by the clerk of the U.S. House of Representatives.¹⁷¹

The data points for the number of presidential candidates for the years 1892–1980 may not distinguish write-in ballots or fusion candidates.¹⁷² For full details on write-in ballots and fusion candidates, if any, the state’s official election returns should be consulted. States’ official election results are maintained by each state’s elections official.

See footnotes appended to data points below for more information on fusion candidates and write-in ballots for data points discussed earlier in text.

State	Year	No. of Signatures	No. of Pres. Candidates
Alaska	1964	5836	2
Ariz.	1976	5523	5
Ariz.	1980	5386	5
Ariz.	1984	7264	3
Ariz.	1988	8670	4
Ariz.	1992	10,555	7
Ariz.	1996	15,062	4
Ariz.	2000	9598	6
Ariz.	2004	14,694	3
Ariz.	2008	20,449	5
Ariz.	2012	23,041	4
Ariz.	2016	20,119	4
Ariz.	2020	31,686	3
Ark.	1972	42,644	2
Ark.	1976	38,219	2

165. FEDERAL ELECTIONS 1996, *supra* note 131, at 17–28.

166. FEDERAL ELECTIONS 2000, *supra* note 132, at 17–31.

167. FEDERAL ELECTIONS 2004, *supra* note 133, at 25–40.

168. FEDERAL ELECTIONS 2008, *supra* note 134, at 25–40.

169. FEDERAL ELECTIONS 2012, *supra* note 135, at 25–40.

170. FEDERAL ELECTIONS 2016, *supra* note 136, at 25–44.

171. CHERYL L. JOHNSON, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION FROM OFFICIAL SOURCES FOR THE ELECTION OF NOVEMBER 3, 2020 (2021), <https://history.house.gov/Institution/Election-Statistics/Election-Statistics/> [<https://perma.cc/7TWT-CM6B>]. For the number of candidates on the West Virginia ballot in 2020, see *Candidate Listing by Office*, W. VA. SEC’Y OF STATE, <http://services.sos.wv.gov/apps/elections/candidate-search/> [<https://perma.cc/BPV2-A3JU>] (last visited Sept. 17, 2021).

172. Fusion or multiple party nomination “entails the nomination of the same candidate to the same office in the same election by more than one political party.” William R. Kirschner, Note, *Fusion and the Associational Rights of Minor Political Parties*, 95 COLUM. L. REV. 683, 683 (1995). Fusion is one of the most effective means available for minor political parties to participate in the electoral process. *Id.* at 683–84.

State	Year	No. of Signatures	No. of Pres. Candidates
Cal.	1892	12,115	4
Cal.	1896	8537	6
Cal.	1900	8612	4
Cal.	1904	9131	4
Cal.	1908	9358	5
Cal.	1912	11,570	4
Cal.	1916	27,800	4
Cal.	1920	20,651	4
Cal.	1924	28,962	4
Cal.	1928	12,125	3
Cal.	1932	14,449	5
Cal.	1936	23,610	5
Cal.	1940	26,960	4
Cal.	1944	22,643	3
Cal.	1948	27,597	4
Cal.	1952	38,458	4
Cal.	1956	41,017	3
Cal.	1960	53,661	3
Cal.	1964	59,297	2
Cal.	1968	66,059	4
Cal.	1972	66,334	4
Cal.	1976	99,284	7
Cal.	1980	101,297	7
Cal.	1984	115,591	5
Cal.	1988	65,000	5
Cal.	1992	134,781	6
Cal.	1996	147,238	8
Cal.	2000	149,692	7
Cal.	2004	153,035	6
Cal.	2008	158,372	6
Cal.	2012	172,859	6
Cal.	2016	178,039	5
Cal.	2020	196,964	6
Conn.	1932	5532	5
Conn.	1936	5942	6
Conn.	1944	7816	4
Conn.	1956	5485	2
Conn.	1960	5586	2
Conn.	1964	6115	2
Conn.	1968	6093	3
Conn.	1972	12,563	3

State	Year	No. of Signatures	No. of Pres. Candidates
Conn.	1976	14,093	4
Conn.	1980	14,085	5
Conn.	1984	14,235	4
Conn.	1988	14,910	4
Conn.	1992	14,620	5
Conn.	1996	7500	7
Conn.	2000	7500	6
Conn.	2004	7500	6
Conn.	2008	7500	3
Conn.	2012	7500	4
Conn.	2016	7500	4
Conn.	2020	5250	4
Fla.	1932	28,767	2
Fla.	1936	39,534	2
Fla.	1940	34,690	2
Fla.	1944	34,486	2
Fla.	1952	7500	2
Fla.	1956	7500	2
Fla.	1960	7500	2
Fla.	1964	7500	2
Fla.	1968	18,479	3
Fla.	1972	27,970	2
Fla.	1976	36,213	3
Fla.	1980	42,172	4
Fla.	1984	48,657	2
Fla.	1988	56,318	4
Fla.	1992	60,312	4
Fla.	1996	65,596	4
Ga.	1944	27,500	2
Ga.	1960	65,530	2
Ga.	1964	65,107	2
Ga.	1968	83,339	3
Ga.	1972	98,022	4
Ga.	1976	108,395	2
Ga.	1980	57,540	4
Ga.	1984	61,670	2
Ga.	1988	25,759	4
Ga.	1992	26,955	4
Ga.	1996	30,036	4
Ga.	2000	39,094	4
Ga.	2004	37,153	3

State	Year	No. of Signatures	No. of Pres. Candidates
Ga.	2008	42,489	3
Ga.	2012	50,334	3
Ga.	2016	7500	3
Ga.	2020	5250	3
Idaho	1980	10,323	5
Idaho	1984	13,123	4
Idaho	2004	5017	4
Idaho	2008	5984	5
Ill.	1932	25,000	6
Ill.	1936	25,000	6
Ill.	1940	25,000	4
Ill.	1944	25,000	4
Ill.	1948	25,000	5
Ill.	1952	25,000	3
Ill.	1956	25,000	3
Ill.	1960	25,000	3
Ill.	1964	25,000	2
Ill.	1968	25,000	4
Ill.	1972	25,000	4
Ill.	1976	25,000	8
Ill.	1980	25,000	8
Ill.	1984	25,000	8
Ill.	1988	25,000	5
Ill.	1992	25,000	8
Ill.	1996	25,000	6
Ill.	2000	25,000	6
Ill.	2004	25,000	3
Ill.	2008	25,000	7
Ill.	2012	25,000	4
Ill.	2016	25,000	4
Ind.	1936	7213	5
Ind.	1940	7798	5
Ind.	1944	6446	4
Ind.	1948	6641	6
Ind.	1952	7912	5
Ind.	1956	7950	4
Ind.	1960	8549	4
Ind.	1964	8863	4
Ind.	1968	8320	5
Ind.	1972	8466	5
Ind.	1976	8406	5

State	Year	No. of Signatures	No. of Pres. Candidates
Ind.	1980	6982	8
Ind.	1984	35,040	4
Ind.	1988	31,077	3
Ind.	1992	29,909	5
Ind.	1996	29,822	4
Ind.	2000	30,717	4
Ind.	2004	29,553	3
Ind.	2008	32,742	3
Ind.	2012	34,195	3
Ind.	2016	26,700	3
Ind.	2020	44,935	3
Kan.	1972	22,356	4
Me.	1976	10,920	4
Md.	1968	45,548	3
Md.	1972	10,000	3
Md.	1976	10,000	2
Md.	1980	10,000	4
Md.	1984	10,000	6
Md.	1988	10,000	4
Md.	1992	10,000	5
Md.	1996	10,000	6
Md.	2000	10,000	6
Md.	2004	10,000	6
Md.	2008	10,000	6
Md.	2012	10,000	4
Md.	2016	10,000	4
Mass.	1940	52,977	6
Mass.	1944	42,052	4
Mass.	1948	50,504	5
Mass.	1952	57,306	5
Mass.	1956	57,114	4
Mass.	1960	56,974	4
Mass.	1964	63,273	4
Mass.	1968	61,236	5
Mass.	1972	56,038	3
Mass.	1976	37,096	6
Mass.	1980	39,246	6
Mass.	1984	41,006	3
Mass.	1988	33,682	4
Mass.	1992	10,000	8
Mass.	1996	10,000	6

State	Year	No. of Signatures	No. of Pres. Candidates
Mass.	2000	10,000	6
Mass.	2004	10,000	4
Mass.	2008	10,000	6
Mass.	2012	10,000	4
Mass.	2016	10,000	4
Mass.	2020	10,000	4
Mich.	1940	7757	6
Mich.	1944	6256	6
Mich.	1948	9880	7
Mich.	1952	9867	6
Mich.	1956	10,874	3
Mich.	1960	12,708	7
Mich.	1964	14,896	4
Mich.	1968	13,371	6
Mich.	1972	14,239	6
Mich.	1976	17,674	8
Mich.	1992	25,646	7
Mich.	1996	30,891	7
Mich.	2000	30,000	6
Mich.	2004	30,000	7
Mich.	2008	30,000	6
Mich.	2012	30,000	5
Mich.	2016	30,000	6
Mich.	2020	12,000	6
Mo.	1956	18,710	2
Mo.	1960	18,084	2
Mo.	1964	18,874	2
Mo.	1968	17,896	3
Mo.	1972	17,518	2
Mo.	1976	18,657	3
Mo.	1980	19,336	5
Mo.	1984	20,881	2
Mo.	1988	21,083	3
Mo.	1992	20,860	4
Mo.	1996	10,000	6
Mo.	2000	10,000	7
Mo.	2004	10,000	4
Mo.	2008	10,000	5
Mo.	2012	10,000	4
Mo.	2016	10,000	5
Mo.	2020	10,000	5

State	Year	No. of Signatures	No. of Pres. Candidates
Mont.	1972	6942	3
Mont.	1976	9199	3
Mont.	1980	9771	4
Mont.	1984	9979	3
Mont.	1988	13,329	4
Mont.	1992	9531	5
Mont.	1996	10,471	5
Mont.	2000	5000	7
Mont.	2004	5000	6
Mont.	2008	5000	5
Mont.	2012	5000	3
Mont.	2016	5000	5
Mont.	2020	5000	3
Nev.	1968	6393	3
Nev.	1972	6883	2
Nev.	1976	8399	4
Nev.	1980	9533	4
Nev.	1984	11,704	3
Nev.	1988	7717	4
Nev.	1992	9392	8
Nev.	2004	5019	6
Nev.	2008	5746	6
Nev.	2012	7013	4
Nev.	2016	5431	5
Nev.	2020	9608	4
N.Y.	1896	6000	5
N.Y.	1900	6000	5
N.Y.	1904	6000	6
N.Y.	1908	6000	6
N.Y.	1912	6000	6
N.Y.	1916	6000	5
N.Y.	1920	12,000	6
N.Y.	1924	12,000	5
N.Y.	1928	12,000	5
N.Y.	1932	12,000	5
N.Y.	1936	12,000	4
N.Y.	1940	12,000	4
N.Y.	1944	12,000	6
N.Y.	1948	12,000	6
N.Y.	1952	12,000	6
N.Y.	1956	12,000	2

State	Year	No. of Signatures	No. of Pres. Candidates
N.Y.	1960	12,000	3
N.Y.	1964	12,000	4
N.Y.	1968	12,000	6
N.Y.	1972	20,000	5
N.Y.	1976	20,000	6
N.Y.	1980	20,000	9 ¹⁷³
N.Y.	1984	20,000	6
N.Y.	1988	20,000	7
N.Y.	1992	15,000	7
N.Y.	1996	15,000	9 ¹⁷⁴
N.Y.	2000	15,000	8
N.Y.	2004	15,000	5
N.Y.	2008	15,000	7
N.Y.	2012	15,000	6
N.Y.	2016	15,000	4
N.Y.	2020	30,000	5
N.C.	1932	10,000	3
N.C.	1936	10,000	2
N.C.	1940	10,000	2
N.C.	1944	10,000	2
N.C.	1948	10,000	4
N.C.	1952	10,000	2
N.C.	1956	10,000	2
N.C.	1960	10,000	2
N.C.	1964	10,000	2
N.C.	1968	10,000	3
N.C.	1972	10,000	3
N.C.	1976	10,000	5
N.C.	1980	10,000	6
N.C.	1984	36,949	4
N.C.	1988	44,535	3
N.C.	1992	43,601	4
N.C.	1996	51,904	5

173. New York's ballot in the 1980 presidential election had nine candidates listed. Both the Republican Party and the Conservative Party selected Ronald Reagan as their presidential nominee. See Kirschner, *supra* note 172, at 683 & n.2.

174. New York's ballot in the 1996 presidential election had nine candidates listed. Both the Democratic Party and the Liberal Party selected Bill Clinton as their presidential nominee. See *Votes Cast for President by County and Party*, N.Y. SEC'Y OF STATE (Dec. 10, 1996), <https://www.elections.ny.gov/NYSBOE/elections/1996/Pres-96.pdf> [<https://perma.cc/BS2R-SB5R>]. The Republican Party, the Conservative Party, and the Freedom Party selected Robert Dole as their presidential nominee. *Id.*

State	Year	No. of Signatures	No. of Pres. Candidates
N.C.	2000	51,324	4
N.C.	2004	58,842	3
N.C.	2008	69,734	3
N.C.	2012	85,379	3
N.C.	2016	89,366	3
N.C.	2020	11,778	5
Ohio	1892	7957	4
Ohio	1896	8375	6
Ohio	1900	9082	7
Ohio	1904	8664	6
Ohio	1908	7924	7
Ohio	1912	9245	6
Ohio	1916	11,293	4
Ohio	1920	9609	4
Ohio	1924	16,258	5
Ohio	1928	13,963	6
Ohio	1932	19,568	6
Ohio	1936	21,871	4
Ohio	1940	24,129	2
Ohio	1944	17,966	2
Ohio	1948	23,038	3
Ohio	1952	433,923	2
Ohio	1956	389,669	2
Ohio	1960	492,621	2
Ohio	1964	467,507	2
Okla.	1916	7901	5
Okla.	1920	8180	3
Okla.	1976	40,243	3
Okla.	1980	32,768	4
Okla.	1988	37,671	4
Okla.	1992	35,132	4
Okla.	1996	41,711	4
Okla.	2000	36,202	4
Okla.	2004	37,027	2
Okla.	2008	43,913	2
Okla.	2012	43,890	2
Okla.	2016	24,745	3
Or.	1964	23,264	2
Or.	1968	23,590	3
Or.	1972	24,510	3
Or.	1976	27,839	3

State	Year	No. of Signatures	No. of Pres. Candidates
Or.	1980	30,897	5
Or.	1984	35,398	2
Or.	1988	36,695	4
Or.	1992	35,932	5
Or.	1996	14,601	8
Or.	2000	13,755	7
Or.	2004	15,306	5
Or.	2008	18,356	6
Or.	2012	18,279	6
Or.	2016	17,893	4
Or.	2020	20,014	5
Pa.	1924	5608	8
Pa.	1928	5515	6
Pa.	1932	9143	7
Pa.	1936	8401	7
Pa.	1940	8502	5
Pa.	1944	6516	5
Pa.	1948	7975	7
Pa.	1952	7846	7
Pa.	1956	9982	4
Pa.	1960	9118	4
Pa.	1964	9647	4
Pa.	1968	10,552	6
Pa.	1972	35,624	5
Pa.	1976	30,584	7
Pa.	1980	48,134	7
Pa.	1984	49,933	6
Pa.	1988	25,568	7
Pa.	1992	37,216	5
Pa.	1996	24,425	6
Pa.	2000	21,739	6
Pa.	2004	25,697	5
Pa.	2008	24,666	4
Pa.	2012	20,601	4
S.C.	1952	10,000	2
S.C.	1956	10,000	3
S.C.	1960	10,000	2
S.C.	1964	10,000	2
S.C.	1968	10,000	3
S.C.	1972	10,000	3
S.C.	1976	10,000	4

State	Year	No. of Signatures	No. of Pres. Candidates
S.C.	1980	10,000	5
S.C.	1984	10,000	5
S.C.	1988	10,000	4
S.C.	1992	10,000	6
S.C.	1996	10,000	6
S.C.	2000	10,000	7
S.C.	2004	10,000	7
S.C.	2008	10,000	6
S.C.	2012	10,000	5
S.C.	2016	10,000	7
S.C.	2020	10,000	5
S.D.	1936	5878	3
S.D.	1940	5537	2
S.D.	1952	5067	2
S.D.	1960	5166	2
S.D.	1964	5122	2
Tenn.	1964	52,590	2
Tenn.	1968	57,203	3
Tenn.	1972	62,431	3
Tex.	1968	14,259	3
Tex.	1972	22,355	3
Tex.	1976	16,548	5
Tex.	1980	23,697	4
Tex.	1984	31,909	3
Tex.	1988	34,424	4
Tex.	1992	38,900	4
Tex.	1996	43,963	6
Tex.	2000	37,381	5
Tex.	2004	45,540	3
Tex.	2008	43,991	3
Tex.	2012	49,729	4
Tex.	2016	47,086	4
Tex.	2020	79,939	4
Va.	1972	9106	4
Va.	1976	9007	6
Va.	1980	10,003	6
Va.	1984	11,428	3
Va.	1988	12,963	4
Va.	1992	13,920	6
Va.	1996	15,168	6
Va.	2000	10,000	6

State	Year	No. of Signatures	No. of Pres. Candidates
Va.	2004	10,000	4
Va.	2008	10,000	6
Va.	2012	10,000	5
Va.	2016	5000	5
W. Va.	1916	11,768	3
W. Va.	1932	6428	5
W. Va.	1936	7438	4
W. Va.	1940	8300	2
W. Va.	1944	8681	2
W. Va.	1948	7156	3
W. Va.	1952	7488	2
W. Va.	1956	8736	2
W. Va.	1960	8309	2
W. Va.	1964	8378	2
W. Va.	1968	7921	3
W. Va.	1972	7543	2
W. Va.	1976	7624	2
W. Va.	1980	7507	4
W. Va.	1984	7378	5
W. Va.	1988	7358	3
W. Va.	1992	6534	4
W. Va.	1996	6837	4
W. Va.	2000	6365	6
W. Va.	2004	12,963	4
W. Va.	2008	15,118	5
W. Va.	2012	7135	5
W. Va.	2016	6705	5
W. Va.	2020	7145	4
Wyo.	1964	5824	2
Wyo.	1968	5972	3
Wyo.	1972	5816	2
Wyo.	1976	6347	2
Wyo.	1980	6469	4
Wyo.	1988	7990	4
Wyo.	1992	7903	5
Wyo.	1996	8000	5