THE CENTURY FOUNDATION
Issue Brief

CRASHING THE PARTIES: THE PROBLEM OF BALLOT ACCESS
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The latest quixotic bid for the presidency by Ralph Nader raises a relatively obscure issue when it comes to the debate over the democratic process—access to the ballot for candidates. Presidential ballot access laws, which have evolved over the past century, dictate the course of action a would-be candidate must follow in order to place his or her name before the voters on Election Day.

The rules dictating this process vary state by state; each state has its own way of attempting to balance two competing but vital democratic values: ensuring the right to participate in an election versus the need to make the democratic process manageable and rational.[i] Some democracy reformists criticize current ballot access laws as an unjustifiable and excessive limitation on the democratic process and First Amendment rights, especially with respect to states that have—what they argue—are unduly onerous procedures for getting on the ballot. Others recognize them as a legitimate means of ensuring that only those who have some chance at a viable candidacy are accommodated by what is already a complicated election system (consider the work that must go into the configuration of a long ballot alone), and that voters are not overwhelmed by vast numbers of unidentifiable candidates.

Two recent examples highlight the arguments on both sides.

New York has had notoriously difficult ballot access laws, leading to several lawsuits, most notably the one undertaken by Senator John McCain in *Molinari v. Powers*, F. Supp. 2d 57 (E.D.N.Y 2000).

Under a 1999 election law, for Republicans in New York,

> The three delegates for each of the 31 Congressional districts are chosen through a direct delegate election. On the ballot, the delegate-candidate's name is placed next to the presidential candidate's name for whom he or she has chosen to commit. In order to be placed on the ballot in each district, a presidential candidate must get at least one delegate-candidate in each district to commit to him or her. The delegate-candidate must collect signatures from the lesser of 1,000 or 0.5% of registered Republicans in the delegate's district. In addition, the presidential candidate must obtain 5,000 Republican signatures statewide.[ii]

The law further regulated down to the last detail how those signatures were to be collected and what mistakes would cause the signature to be invalidated. "For example, volunteers may only gather signatures in their own districts during a 37 day period that falls during the winter holiday season and includes weekends. . . . Also, a person signing a petition cannot sign more than one. The consequence of doing so is that the multiple signatures are invalidated."[iii]

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Molinari held two specific aspects of the New York law unconstitutional. Under the law, signatures were thrown out when the signer mistakenly gave his mailing address village instead of the larger town. "For example, if a signer named Brooklyn, instead of New York City, as his town of residence the signature would be invalid. This town/city trap was held unconstitutional . . . in *Molinari v. Powers*."

In addition, signatures were thrown out if witnessed by party volunteers who did not live within the district for which the petition was submitted, unless the witness was a notary public or commissioner of deeds. This provision was also deemed unconstitutional by *Molinari*.[iv]

The 1999 law had basically been constructed to guarantee that no candidate could get on the Republican ballot without the full support of the state Republican apparatus. It ensured that a candidate would need vast resources to mount a successful signature collection operation. In the McCain case, *Molinari*, the parties entered into a stipulation allowing McCain on the ballot, but the federal judge stated in a memorandum and order that the Republican scheme as a whole was unconstitutional in this instance. In his order, Judge Korman said "I accepted the Stipulation only after independently concluding that the scheme, both in its totality and by virtue of two of its individual but related elements [referred to above], places an undue burden on the right to vote under the First Amendment."[v]

On the other end of the scale was the gubernatorial recall election in California in 2003. To be a candidate, one needed only to collect 65 signatures and to pay a filing fee of $3,500. As a result, 247 people attempted to get on the ballot, and 135 succeeded, creating a circus-like atmosphere in an important election. The possibility of voter confusion was serious. During and in the aftermath of the election, press accounts such as this were common:

> With 135 people running for California governor, making it to the top 10 vote getters when you are neither famous nor well financed is nothing short of shocking.
>
> And so George B. Schwartzman, 57, an earnest, utterly obscure businessman from Carlsbad, in Southern California, basked in the glory Wednesday of placing ninth in the recall election, with 10,949 votes. . . . Wait a minute. Could some of those 10,949 votes have been meant for Arnold Schwarzenegger and not George Schwartzman?
>
> There was no way to be sure. But Mr. Schwartzman vehemently denied the possibility that his voters had intended to vote for the new governor. As evidence, he chronicled a breathless campaign sweep across the state, where he targeted tailgate parties, constantly wore his "Schwartzman for Governor" T-shirt and spent about $6,500, or 60 cents per vote. . . .
>
> While Mr. Schwartzman placed ninth, he did not beat the former child actor Gary Coleman, who came in eighth, with 12,690 votes, and he barely edged out Mary Carey, a pornography actress, who got 10,114 votes.
>
> Ms. Carey said Wednesday that she was delighted and surprised she placed 10th, but was irked that Mr. Coleman had trumped her.[vi]

While laws and regulations do vary widely, all states require that a candidate collect petitions with a certain number of signatures from registered voters, and some states require payment of a small

filing fee (see Appendix I for an example). As the New York law demonstrated, the devil is in the details of this signature collection: to ensure against fraud, the signatures must be collected in particular ways, sometimes collected by particular people, and signed only by certain voters. For example, Michigan election law says,

> At the time of circulation, the circulator of a petition shall be a registered elector of this state. At the time of executing the certificate of circulator, the circulator shall be registered in the city or township indicated in the certificate of circulator on the petition. . . . Except as provided in section 544d, a petition sheet shall not be circulated in more than 1 city or township and each signer of a petition sheet shall be a registered elector of the city or township indicated in the heading of the petition sheet. The invalidity of 1 or more signatures on a petition does not affect the validity of the remainder of the signatures on the petition.[vii]

These types of instructions allow election administrators to check that the signatures are legitimate. Every year there are numerous instances in which signature collectors have forged great numbers of petitions.[viii]

The number of signatures a candidate must collect is different in states throughout the country: in 2004 the number ranges from 275 signatures in Tennessee to over 100,000 in North Carolina. In two states—Louisiana and Colorado—no signature collection is required at all, just a filing fee. Another sticking point is that sometimes independent and third party candidates are subject to different signature requirements than Democratic and Republican candidates. Supporters of these rules say they are justifiable because major party candidates are only allowed to collect signatures from voters registered with their party, while an independent or third party candidate can collect signatures from any registered voter.

Finally, every state has a different deadline for submitting signatures. This year, that ranges from a deadline of May 24 in Texas to September 16 in Vermont.

The outcomes of a number of Supreme Court and other court cases on the constitutionality of these requirements—on deadlines, the number of signatures that must be collected, what makes a signature invalid, and requiring different number of signatures for different types of candidates—have been inconsistent. As a result, there is no bright line rule as to what is fair and reasonable to require of aspiring candidates (see Appendix II).

This brings us to the Ralph Nader campaign for President in 2004. Nader appeared on the ballot in most states in 2000 by virtue of the endorsement of the Green Party. This year, without the Party's support, Nader has been forced to wage a state-by-state battle (see Appendix III). Although the Reform Party endorsed him, that has only secured him a place on the ballot in Colorado, Mississippi, Florida, and possibly South Carolina.[ix]

A review the Nader campaign's trials and tribulations in some key states demonstrate the complexity of this area of our democracy, and also underscore the necessity for strict but fair ballot access laws.

Nader Successfully Earns His Way onto the Ballot

New Jersey holds the distinction of being the easiest ballot to get on in the nation. Nader needed merely 800 signatures by July 26 (see Appendix III). Nader's candidacy could make a difference here: He earned 94,554 votes, about 3 percent, in 2000. Al Gore won the state by 16 percentage

points. However, a recent poll projects Nader getting 7 percent of the state's vote, with Kerry 6 points ahead of Bush.[x]

Similarly, Washington State has a very minimal threshold for making it onto that state's presidential ballot. One needs only collect 1,000 signatures. After Nader submitted 1,983 signatures, officials checked a sample of 1,200 and verified 1,008, putting him on the ballot.[xi] In 2000, the vote was Gore 50 percent, Bush 45 percent, and Nader 4 percent. This year, polls show Kerry at 48 percent, Bush at 43 percent and Nader at 2 percent.[xii]

Nader Fails to Make the Ballot

Nader has tried and failed to get on the ballot in a number of states. For example, in Georgia he needed 37,153 valid signatures by July 13 and was unable to do so. In Indiana, he needed 29,553 by July 1. In North Carolina, he needed 100,532 signatures by July 6. In Oklahoma he needed 37,027 by July 15. In Virginia, on September 7 elections officials ruled he did not have enough signatures from registered voters from the state to win a place on the ballot there.

Nader and his supporters were also unsuccessful in California. According to Carla Marinucci of the *San Fransisco Chronicle*, "Nader was only able to collect about half of the 153,035 signatures necessary to get on the California ballot. As a result, the campaign is now trying to convince the Green Party in the state to drop its current nominee and substitute Nader. They are trying to convene an emergency party meeting to vote on whether to put Nader on the Green ticket."[xiii]

Nader made a bid for the Green Party nomination at its June convention, but in a major blow to his candidacy, the national party delegates instead nominated David Cobb, a lawyer. Now Nader and his vice-presidential candidate Peter Miguel Camejo (a Californian) are trying to get the party to change course and replace Cobb with Nader. "The Green Party is very divided, and there's a crisis," said Camejo, who won the Green Party's non-binding California primary vote in March. "Any state Green Party can tell the national party, 'We don't accept your convention and we're putting Nader-Camejo on the ballot.'"[xiv] On August 12, the Green Party refused to hold the necessary special nominating convention.

Challenges to Nader's Petitions

Pennsylvania

Pennsylvania has become the most heated battle site of the Nader campaign. Nader was required to submit 25,697 signatures by August 2. Pennsylvania is considered a key battleground state, making Nader's campaign particularly troubling to Democrats.

In 2000, on the Green Party ticket, Nader drew 2.1 percent of the state's vote, compared with Bush's 46.4 percent and Gore's 50.6 percent. Current polls for a three-way contestpredict Kerry 48 percent, Bush 43 percent, and Nader 2 percent, while without Nader, Kerry leads 51 percent to 43 percent (with 6 percent undecided).[xv]

On August 2, Nader filed about 45,000 signatures. "Democratic volunteers immediately began to scrutinize them in preparation for challenging them."[xvi]

Subsequently, Democrats alleged that, "Up to 90 percent of the nominating petitions circulated in Philadelphia by Ralph Nader's presidential campaign were marred by forgeries and other improprieties," and they filed a legal challenge in Commonwealth Court to keep Nader off the ballot. "Volunteers displayed numerous forms that the group said appeared to be improper, including some filled out entirely in the same handwriting and others featuring repeated signatures of the same name." Democrats said "the filing would include evidence that Nader's running mate, Camejo, was registered to vote in California as a member of the Green Party. Under state law, independent candidates may not have been members of another party during the election year. As part of the effort to get on the ballot, Camejo submitted an affidavit saying he was not a member of a party."[xvii] Press reports said that "Among the complaints about Nader's petitions, according to the suit, are 'forged signatures, missing addresses, unreadable names or addresses, incomplete information, missing dates of signatures and signers not being a registered voter.' The suit also claims the Nader petitions show 'a wide ranging and extensive pattern of false and forged entries, entries obtained through [the] deception of signers and whole pages of outright forged signatures.' . . . Democrats from the state House of Representatives said they think there are at most only 10,000 valid signatures on the petitions."[xviii] A nine-member Commonwealth Court, composed of five Democrats and four Republicans, will now determine the validity of the signatures.[xix]

On August 30, the court panel ruled Nader was not entitled to a ballot spot. "It said Nader violated state law by trying to run as an independent here while filing to run on the Reform Party ticket in Michigan. . . . The Pennsylvania court decision made moot questions about whether Nader had gathered enough legitimate signatures to get on the ballot. Instead, the court applied state election law and decided that 'one cannot simultaneously seek to be an independent political candidate [in Pennsylvania] . . . while accepting the nomination of a political party in another state,' said Gregory Harvey, one of the lawyers trying to keep Nader off the ballot. Nader attorney Samuel C. Stretton called the ruling a violation of the right to free speech and said the court erred in its application of the law."[xx] Nader plans to appeal.

Nevada

Under Nevada law, Nader needed to collect just 5,019 signatures by July 9—a relatively low number. Nader's success could have major electoral implications in this state. In 2000, the Nevada election results were Bush 50 percent, Gore 46 percent, and Nader 2 percent (Nader was running as the Green Party candidate). Current polls show Bush 46 percent, Kerry 43 percent, and Nader 4 percent.[xxi]

As in many other states, Republicans were instrumental in Nader's collection effort. According to press reports, "Republican political consultant Steve Wark has said he helped to raise money for Nader to qualify, and did so solely to help President Bush's reelection campaign. Wark also is working on the U.S. Senate bid of Richard Ziser and the reelection campaign of State Sen. Ray Rawson. His mother-in-law is Earlene Forsythe, Nevada Republican Party chairwoman."[xxii]

Nader's bid in Nevada did not go unchallenged, however. On August 24, the State Democratic Party and three voters filed a lawsuit charging signatures "so tainted with misrepresentations, falsity, forgery, misconduct and deceit as to taint its integrity in its entirety." Voters alleged they were asked to sign petitions to repeal taxes when they were really Nader petitions. Fifty charged they signed under false pretenses.[xxiii]

The Court ruled that Nader should stay on the ballot, however. "Judge Bill Maddox said that even after disqualifying more than 3,000 signatures on Nader's ballot petition, about 7,000 remained. The Nader proponents needed only about 5,000 signatures to qualify . . . Nader would have been disqualified if [the judge] dropped the names of about 3,500 people whose signatures were witnessed by name-gatherers from out of state who listed hotels where they were staying rather than their actual residences."[xxiv]

Nader's Litigation

Michigan

Running neck and neck with Pennsylvania for the most contentious Nader battle site is Michigan. In that state, Nader needed to get 31,776 signatures by July 15. In the 2000 vote, it was Gore 51 percent, Bush 46 percent, and Nader 2 percent. Current polls show Kerry 47 percent, Bush 42 percent, and Nader 2 percent.[xxv]

Nader filed 50,000 signatures. However, the Michigan Republican Party submitted 43,000 of them, according to the Michigan GOP itself, creating a controversy that is detailed below.

There are now two actions taking place in Michigan, one initiated by Nader and the other by Michigan Democrats. In May, the national Reform Party endorsed Nader, giving him potential access to the ballot in seven states, including Michigan. In that state, Nader received the nomination of a group claiming to be the Reform Party, but the Secretary of State refused to recognize the endorsement because there is a dispute over whether that group is the legitimate Reform Party in Michigan. A faction of the Reform Party in Michigan has refused to accept the national party's endorsement of Nader. On July 27, Nader filed a lawsuit in federal court in Detroit claiming that by denying his bid to be on the ballot as the Reform Party candidate, the state violated his First Amendment rights.

In the meantime, on July 22 the Michigan Democratic Party challenged his candidacy as an independent candidate on the ballot. It also filed a complaint with the FEC concerning "illegal and excessive contributions against Nader and the Michigan Republican Party."

"The first basis for the challenge is that under Michigan law, only petitions filed by a candidate may be considered by the Board, and therefore the 45,000 MIGOP [Michigan Republican Party] signatures cannot be used to put Nader on the ballot. The challenge is also based on 26,000 disputed signatures. A review of the petitions found numerous instances of fraud committed by MIGOP staffers, who gathered nearly 20,000 signatures."[xxvi]

The Party alleges the following violations:

petitions were signed with fraudulent signatures;

MIGOP Executive Director Greg McNeilly was a circulator of a petition without a county heading;

petitions were filed with thousands of signatures from unregistered voters;

petitions were circulated by people who were not registered voters;

the signatures turned in by the MIGOP staff were altered and doctored with dates, places, and zip codes being changed;

individual MIGOP staffers signed petitions as circulators, which they clearly did not circulate;and

MIGOP staffers claimed to have collected signatures from up to eighteen different counties in one day from around the state including the Upper Peninsula.[xxvii]

At the end of August, the Board of State Canvassers "deadlocked 2-2 on whether the 50,000 votes turned in to get Nader on the Nov. 2 ballot should be certified. Republicans voted yes, while Democrats said no."[xxviii]

The Michigan Democratic Party also filed a complaint with the Federal Election Commission alleging the Republican Party and Nader for violating campaign finance laws. The Republican Party cannot spend more than $5,000 *in coordination with* the Nader campaign in an effort to get him on the ballot. Even if it is proven that it did so, it is nevertheless unclear whether this would affect the legitimacy of the signatures themselves, or only be a violation of campaign finance laws.

As Professor of Election Law Edward Foley has written,

> The real question then is whether signatures may be disqualified if they were collected using unlawful campaign contributions. . . . On the one hand, if the signatures are themselves valid, then why should they be stricken, just because they were collected using improper campaign funds? It's the voters' rights that should be paramount in the implementation of any ballot access law, and if enough legitimate voters want Nader on the ballot (for whatever reason), then he should be there. On the other hand, signature-collection efforts must follow certain procedures, which exist for a reason. Even if valid signatures are submitted after a deadline, they are disqualified, because the deadline enforces procedural fairness. Likewise, if Nader cannot collect enough signatures except by resorting to improper means, then perhaps these tainted signatures should not count toward the number necessary to warrant a place on the ballot.[xxix]

Regarding the suit initiated by Nader, on September 1 a judge ruled him off the ballot. He said that the Secretary of State "could not be expected to decide which of two warring Reform Party factions in Michigan was the right one" The judge further stated that Nader also weakened his case when he did not reject Republican-collected signatures that could put him on the ballot as an independent candidate. "'The plaintiff was aware of the statute that explains how to get off the ballot as an independent, Friedman said. 'He didn't withdraw as an independent candidate by the deadline. The judge said he might reconsider his decision, depending on how the Michigan Court of Appeals ruled after hearing arguments Wednesday on whether Nader should be on the ballot as an independent."[xxx]

In that case, the one brought by Democrats, there was a Court of Appeals hearing; no decision has yet been rendered.

Texas

Texas was not a contested state in 2000 and is not expected to be this year. The state is nonetheless interesting because Nader is challenging the ballot access law itself there.

In Texas, in order to run as an independent candidate, Nader needed to collect 64,077 signatures (1 percent of votes cast in the last presidential election) by May 10 from registered voters who did not vote in the Democratic or Republican primaries. "On July 22, Nader argued in a federal court hearing that the state's ballot access requirements for independent candidates were unconstitutional

because they are stricter than those for third-party candidates. Third-party candidates need to get 45,540 signatures." [xxxi]

Nader submitted his signatures two weeks late in Texas, but evidently even if Nader had been on time it is unlikely he would have qualified for the ballot as an independent candidate because of the number of invalid signatures he collected. However, he might have qualified if he had been trying to be a third-party candidate.

The suit, *Nader et al. v. Connor*, filed in federal court in Austin, notes that the campaign has already collected in excess of 50,000 signatures and urges the Court to find the statute unconstitutional and discriminatory in three respects.

Texas has the earliest due date of any state, May 10. Forty-six states have deadlines of July, August, September, or later. The early due date is not needed to regulate ballot access and therefore is unconstitutional.

It is unconstitutional for Texas to require Independent candidates to collect 64,076 signatures, nearly 20,000 more valid signatures than Third Party candidates, which must collect 45,540.

It is unconstitutional for Texas to require Independent candidates to collect signatures in 60 days, two weeks less time than Third Party candidates, which have 75 days.[xxxii]

On the other hand, "The Texas ballot requirements for independent candidates have been in place for 20 years. Secretary of State Geoff Connor has noted that Reform Party candidates Ross Perot in 1992 and 1996 and Pat Buchanan in 2000 managed to get on the Texas ballot as independents, an argument [Deputy Attorney General] Burbach noted again in court. He said that if 100 Nader petitioners had gathered just 13 signatures a day, they would have passed their goal."[xxxiii]

On September 2, a federal judge upheld Texas' ballot access law and rejected Nader's attempt to get his name on the ballot.[xxxiv]

Illinois

Litigation is also underway in the state of Illinois, where Nader needed 25,000 signatures by June 21 (established party candidates need 5,000 signatures). In 2000, Gore beat Bush by a substantial margin, and polls show Kerry leading Bush this year.

Nader filed about 32,000 signatures and the Democrats filed objections to about 19,000 of them a week later. Expecting that Illinois officials would throw him off the ballot for insufficient numbers of valid signatures (as indeed they later did), Nader filed a federal lawsuit challenging the state's election laws as unconstitutional.

Most of the Democrats' objections relate to claims that the signer was not registered to vote at the same address as shown on the petition sheet. Nader forces argue that such a requirement amounts to an overly "narrow" definition of a qualified voter and violates Nader's First Amendment rights.[xxxv] According to the Nader campaign, "For the purposes of a presidential campaign . . . it does not matter where in Illinois a person lives, merely that the person lives in Illinois and is validly registered to vote in Illinois."[xxxvi]

Moreover, "the suit also assails the state's deadline for signatures—the third-earliest of any state—and the 25,000-signature requirement as unconstitutional infringements…The suit seeks to have the

court declare pertinent sections of the state election code unconstitutional and enter an injunction prohibiting Nader from being removed from the November presidential ballot."[xxxvii]

On August 23, 2004, a federal court in Illinois denied Nader's challenge.[xxxviii]

Arizona

In the battleground state of Arizona, Nader needed to collect 14,694 signatures by June 9.

Although in 2000, it was Bush 51 percent, Gore 45 percent, and Nader 3 percent, current polls show Bush leading Kerry only 48 percent to 45 percent.

For weeks it was thought that Nader was finished in Arizona. Although he submitted more signatures than necessary, Democrats challenged them and Nader abandoned the effort, acknowledging deficiencies in the signature collection.

After Nader submitted his signatures,

> [T]wo Democratic voters, backed by the state party, questioned the validity of Nader's petitions and other documents. The Democrats said more than 70 percent of the signatures were invalid. As a Maricopa County Superior Court judge prepared to hear arguments, Nader campaign attorney Richard K. Mahrle conceded there were "technical errors" in the petition and said Nader would not contest the suit. Judge Mark Armstrong ordered that Nader be kept off the state ballot.
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> Nader spokesman Kevin Zeese said a review by the secretary of state's office found that the campaign fell short of the required number of valid signatures. He said the campaign does not have the resources to fight an aggressive legal challenge and accused Democrats of harassment. . . . In their lawsuit, the Democrats alleged Nader's petitions were signed by thousands of unregistered voters, that some of those collecting signatures were convicted felons and that other collectors did not meet residency requirements.[xxxix]

However, in an about-face, on August 16, Nader filed suit in federal court challenging the constitutionality of the state's ballot access laws. His arguments are similar to the ones he is making in Texas. "The lawsuit, filed in U.S. District Court in Phoenix, contends it is unfair to require that nominating petitions be filed nearly five months before the general election, and that signature gatherers be Arizona residents who are eligible to vote."[xl]

The Nader campaign argues "the July 9 deadline is unfair because it does not apply to the major parties. Instead, they are given until after their national conventions to tell the state who are their nominees." Nader's lawyers say the early deadline means that there is no opportunity for an independent campaign and that "some federal courts have concluded there is 'no legitimate state interest' in keeping people who are not residents from circulating petitions."[xli]

Nader asked the court to either order that Nader's name be placed on the ballot or that the deadline for collecting signatures be extended to allow him to qualify. On September 10, a judge rejected the request.[xlii]

Oregon

Oregon is also a state that is very much in play. Current polls show Bush at 46 percent, Kerry at 45 percent and Nader at 1 percent. Nader was the difference-maker in 2000. Gore won the state by just a few thousand votes; Nader got 77,357 votes.

In Oregon, Nader failed to get on the ballot three times. On two separate occasions, he failed to get 1,000 supporters to come to a convention for independent voters. Republicans and Democrats traded charges accusing each other of packing the events in an effort to sway the outcome.[xliii] Then Nader tried the other method Oregon law allows: attempting to get 15,306 signatures by August 24. Republican allies pitched in to help. Nader turned in 18,186 signatures, but they were immediately challenged. The Oregon Secretary of State said that Nader has enough valid signatures, but was still ineligible for the ballot because his petition pages were supposed to be numbered sequentially. They were not in order in one county that had 3,000 signatures, taking him below the minimum requirement.[xliv] The Nader campaign pledged to sue.[xlv]

On September 9, a county judge ruled that the Secretary of State exceeded his authority when he disqualified those signatures. A circuit court judge ordered state officials to include Nader on the ballot as an independent candidate.[xlvi] State officials appealed on September 14, arguing "the secretary of state must have latitude to interpret rules to deal with potential fraud."[xlvii]

Where Should the Balance Lie?

There are many factors to consider when trying to configure a fair presidential ballot access law. Given the complexity of having to navigate 50 completely different ballot access laws, at first blush it might be thought that there ought to be one uniform rule for the whole country. However, this is probably impossible as the Constitution gives states a good deal of authority over the manner in which they conduct presidential elections, including granting them the power to choose how they appoint electors.[xlviii]

Moreover, even if it were constitutionally permissible, it does not make much sense when given further thought. Each state is so different geographically and demographically that one rule could not be fairly applied across the board. For example, if a candidate were required to obtain a number of signatures based on a percentage of the state population, this would be a much more difficult task in a highly populated state than a sparse one. On the other hand, if there were a requirement of a flat number of signatures in each state, this would be more difficult in a rural, sparsely populated state than a more urbanized populous state. The political dynamics, such as strength of the party organizations in the state, also disfavor a one size fits all approach.

Therefore, if it must be accepted that states will have different rules for allowing candidates on the ballot, there are several issues that each state must address. In providing answers to these questions, states and candidates can move toward an optimally fair yet efficient system.

Deadlines

As has been noted, each state has a different date by which a candidate must submit his or her petitions. How is this deadline determined? It should not be so early as to make it impossible for a candidate to comply with, but not so late as to make it impossible for election administrators to set up the election properly.

Candidates naturally want to have as much time as possible to collect signatures, clearly a big undertaking. However, it must also be understood that government and elections officials must perform a great many tasks once a candidate has submitted his or her application.

Elections administrators and government officials must have sufficient time to review and determine the validity of the signatures submitted; hear challenges to those signatures; and, if there is such a challenge, to allow for potential judicial review by the courts. Then, if the candidate is successful in securing a place on the ballot, elections officials must create and print clear and correct ballots (or program computers to do so); mail absentee ballots; mail absentee ballots to military voters thirty days before the election; and create and publish appropriate voter-education materials.

The operative question then is this: What is the last date by which a state government needs to know who will be on the ballot to complete its administrative duties? Given its resources and experience, each state must make the appropriate determination. If they were to do so, deadlines would certainly not be nationally uniform, but they would likely be closer together.

A sub-issue is should there be different deadlines for Republicans, Democrats, third-party candidates, and independents? While it might seem as though the rules should be the same, the matter is more complex than that. Republicans and Democrats as well as some third parties must file for primaries, which take place much earlier than the signature collection deadlines.

Signature Collection

The most obvious question is, what's the right number of signatures to require? Should it be based on a percentage of the overall voting population of the state? If so, what should that percentage be? Alternatively, should it just be a flat, statewide minimum number? If so, what number? A percentage has the virtue of reflecting population shifts, while a flat number would mean candidates would know well in advance what will be required of them.

As noted, this is a matter each state must assess, but it should reflect in a reasonable manner the registered population of the state (since signers are required to be registered voters). For example, a particular percentage in one state means something very different in another state: for example, Montana requires five percent of the number of voters for the last gubernatorial candidate in the state—this year this means less than 1,500 signatures. At the same time, California requires one percent of voters—now over 150,000. For party candidates, the number may need to reflect the population registered with that party since the rules often require signers to be registered with the party.

In addition to differing numbers, different states obviously have a wide range of requirements regarding who can sign a petition, where they need to be from, and how they complete the information requested. For example, ballot access laws frequently have distributional requirements—that is, they require that a candidate collect a certain number of signatures from a certain number of jurisdictions. The theory is that a candidate ought to be able to show support from throughout the state.

However, in a practical sense this may be more onerous than it is worth. First, you may confront situations like that now occurring in Virginia. Initially, the Board of Elections informed the Nader workers there that "they had not met regulations that call for petitions to be grouped strictly by congressional district and then by cities or counties within each of the districts" by the noon deadline and denied him a place on the ballot.[xlix] In Virginia, candidates must collect 10,000

signatures with at least 400 from each congressional district. So even if Nader's signatures are all valid, he may be disqualified because the petitions are not in the proper congressional order. This seems too picayune and remote from the purposes of ballot access laws to make sense.

In addition, is the motive behind signature requirements a demand that a candidate demonstrate he or she has support in every corner of the state or just that the candidacy is viable enough to win the state? If it is to show the race is winnable, distributional requirements again are nonsensical. For example, a candidate could easily win New York State by simply winning much of New York City.

If a state deems it important to show support in more than one sector of the state, it seems it should at least keep the number of places in which a candidate must get signatures, and the number of signatures from each place, at a reasonable level.

Another question is what requirements should be applied to the content of the signature and additional information required? What errors should be disqualifying? For example, what if the address does not match the voting address? What if a signer puts down a married name when he or she registered with a maiden name?

The logic behind having rules about the content of signatures is that it is necessary to prevent fraud. Administrators and other candidates in the race must have a means for assessing whether the signature is legitimate or fraudulent (that is, a fabrication by the signature collector). It is a problem that, as noted, comes up with some regularity. If someone reviewing the signature has no way of verifying that the signer is a real person and/or a registered voter, that signature must be thrown out. This does not mean that irrelevant details should be disqualifying – for example, the inclusion of a middle initial does not affect the ability to match a signature with a name on a voting roll. Moreover, putting down the wrong town or village should not be disqualifying, since voter rolls are kept at the county level. Giving the right county should be sufficient.

In any case, the Help America Vote Act's new requirement that every state construct and use a statewide voter registration database that is continuously updated with information from the Department of Motor Vehicles and other agencies has the potential to go a long way to simplifying this. Once such a database is fully operational and all registration information is kept at the state rather than the local level, the process of matching signatures on a petition with a list of registered voters will become much easier.

Nader and others have also objected to the requirement that signers and collectors of signatures be registered voters in that jurisdiction. Again, however, this goes to the issue of fraud. This is the means by which boards of election are able to verify the identity of the people signing the petitions.

Finally, there is the question of whether there ought to be some alternative to petitioning to get on the ballot. For example, should someone be able to get a place on the ballot simply through a large filing fee? After all, it might be argued, we often judge candidates' viability by the amount of money they are able to raise. Why not have the same standard for getting on the ballot? By the same token, what if a would-be candidate is able to demonstrate widespread support through a legitimate poll? Legislators in New York at one time entertained the notion of allowing a potential candidate to post a bond with the state in order to get on the ballot, which would have to be repaid if the candidate did not in fact receive a certain number of votes.

In the end, we are surely going to be left with a hodge podge of rules throughout the nation, with most states continuing to go with the petition gathering mechanism. There is, therefore, no "ideal

ballot access law." However, given the issues raised here, it is also clear that some states have rules that are too onerous, while a handful of states have rules that are arguably too easy to comply with. Many democracy advocates argue for increasing opportunities for third-party and independent candidates to run for office, and condemn ballot access laws as a rule. However, advocates need to recognize that some rules, though they must be reasonable rules, are necessary for the system to function. Instead, therefore, perhaps the way to sensible reform lies in negotiating fairer—but not obstacle-free—paths to access on a state-by-state basis.

APPENDIX

EXCERPT

WHAT MUST INDEPENDENT PRESIDENTIAL CANDIDATES DO TO APPEAR ON THE BALLOT IN OHIO?

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http://moritzlaw.osu.edu/electionlaw/candidate_ballot01.html

Ohio procedure for getting on the ballot:

In order for a candidate to earn the right to appear on the general election ballot in November the candidate must meet the requirements outlined in the Ohio Revised Code. Persons desiring to become independent presidential and vice presidential candidates must submit a statement of candidacy, a joint nominating petition, and a slate of presidential electors by four p.m. of the seventy-fifth day before the day of the general election. For the 2004 election, August 19 is the seventy-fifth day before the election.

First, the U.S. Constitution requires that presidential and vice presidential candidates file jointly. Secondly, the statement of candidacy is a perfunctory form that candidates must complete and sign, which includes descriptive information such as voting residences, nominations sought, and election date. Third and most significant, the nominating petition must be signed by at least 5,000 registered voters, but may not include more than 15,000 signatures, and the signatures must be separated by county, where each paper contains signatures from only one county. The petition requires: (1) signatures by qualified registered voters (regardless of political party affiliation); (2) addresses of the voters that correspond with their addresses on the voter registration cards; (3) genuine signatures; (4) legible signatures; (5) signatures in ink; and (6) the filing date. The Ohio Revised Code and Ohio case law permit any candidate who seeks placement on the ballot without the designation of a specific political party to request, at the time of filing the nominating petition, to be designated as a "nonparty candidate," "other-party candidate," "independent," or without any designation. (If a candidate requests the "other-party candidate" designation, this exact term will appear beneath the candidate's name on the ballot—with no identification of the other party to which the candidate refers—because the party itself is not filing a nominating petition on behalf of the candidate, a procedure that is available only when the party is officially recognized under Ohio Law.) A candidate who does not request a particular designation will be listed on the ballot with nothing written below the name. Lastly, candidates must file a list of names of 20 electors who will represent them in the Electoral College, should the candidates win the general election. If independent candidates collect sufficient signatures and submit the petition, the statement of candidacy, and the slate of presidential electors by the deadline, the candidates are automatically placed on the general election ballot.

Once the nominating petition is filed with the Secretary of State and the candidate has properly complied with the requirements of separating the signatures by county, the Secretary must give the petitions to the respective county board for verification. The county board must have examined and determined the sufficiency of the signatures by the sixty-eighth day before the general election, which in the coming general election is August 26, 2004 (only seven days after the filing deadline). All matters affecting the validity or invalidity of the nominating petitions are determined by the county election board with whom such petition papers were filed by the Secretary of State. If a candidate objects to a disqualification by a board, such as if a board disqualifies enough signatures

that the candidate's petition becomes insufficient, the candidate can raise the issue and request the board to reconsider. Notably, there is no statutory or administrative procedure for protesting a decision to disqualify a candidate from the general election ballot, and the law is not entirely clear in this area. However, the U.S. Court of Appeals for the Sixth Circuit has implied that a candidate is entitled to some form of process by a county board.

II

Supreme Court Ballot Access Doctrine

The following chart summarizes the eleven Supreme Court decisions regarding ballot access. State ballot access laws have been challenged as violating the 14th Amendment's Equal Protection Clause or Due Process rights. The Court recognizes the opportunity to vote and to associate with political groups as fundamental rights under the First and Fourteenth Amendments. In addition, a state's interest in regulating elections and keeping them free of chaos, including the denial of ballot access to frivolous candidates, has been deemed legitimate by the Court.[1]

Case	Cite	Challenged State Law	Holding
Williams v. Rhodes	393 U.S. 23 (1968)	Ohio required a new party's presidential nominee to get signatures totaling 15 percent of the total votes cast in the last gubernatorial election nine months before the national election.	The rights to vote and to free association are fundamental. The statute unfairly discriminated against those who wish to vote for or participate in the new party and therefore violated the Equal Protection Clause.
Jenness v. Fortson	403 U.S. 431 (1971)	Georgis only allowed minor party nominees for president access to the national election ballot if they obtained signatures numbering 5 percent of the total voters registered for the last general election.	The Court upheld the statute by comparing the Georgia statute to the Ohio statute held unconstitutional in *Williams*. The Georgia code did not impose an early filing date, allowed write-in candidates, and contained a less onerous percentage requirement.
Bullock v. Carter	405 U.S. 134 (1972)	Texas required payment of filing fee before a candidate could be placed on ballot.	Because it found that the fees affected the ability to vote, the Court applied a heightened level of scrutiny and held the mandatory fees unconstitutional because it excluded both serious and frivolous candidates based on the ability to pay.
Storer v. Brown	415 U.S. 724 (1974)	California required independent presidential candidates to obtain	The Court found the requirement that the candidate be a member of the independent party for over a year

		signatures equal to about 5 percent of the total number of votes in the last election. Voters who had voted in a major party primary were unable to sign the petition. Finally, California denied independent candidates access to the ballot if the candidate had been a registered member of another political party within a year of the last primary election.	before being allowed to participate in that party's upcoming primary constitutional. However, the Court was unable to decide if the signature requirements impinged on a candidate's First and Fourteenth amendment rights, and remanded for further factual development. The lower court was directed to determine whether a reasonably diligent independent candidate could successfully get on the ballot. Three dissenting judges argued for strict scrutiny in all ballot access challenges.
American Party v. White	415 U.S. 767 (1974)	Texas established a tier system in which a major party nominee would get on the ballot after the party held a primary. Smaller parties could hold caucuses while new and unaffiliated candidates had to get signature petitions before gaining access to the ballot.	The Court rejected an Equal Protection challenge, finding that the petition requirements for the unaffiliated nominees were no more burdensome than the primary elections held by the major parties.
Lubin v. Panish	415 U.S. 709 (1974)	California required mandatory filing fees	While the California filing fees were smaller than the Texas fees invalidated in *Bullock*, the court nonetheless found them equally unconstitutional, finding that states should give indigent candidates an alternative that still further the state's legitimate interests.
Illinois Elections Bd. v. Socialist Workers Party	440 U.S. 173 (1979)	Illinois statute required independent or new party candidates to obtain 25,000 signatures if they sought statewide offices. However, the minimum number of signatures required for local positions was 5 percent of the number of voters who cast their ballot at the previous election for that particular office. As a result,	Applying strict scrutiny, the Court found a violation of the Equal Protection Clause.

		independent and new party candidates for the mayor of Chicago had to obtain almost 36,000 signatures in order to be placed on the ballot.	
Anderson v. Celebrezze	460 U.S. 780 (1983)	Ohio statute required independent presidential nominees to file nominating petitions 8 months before the election and before the major party conventions.	The Court enunciated a three-part test. First, a court must consider the weight of the injury to the plaintiff's fundamental rights. Second, a court must identify the legitimate state interests. Finally, a court must determine the extent to which the legitimate state interests must impose burdens on the fundamental rights. The Court found that Ohio's legitimate interests in promoting voter education and ensuring political stability did not outweigh Anderson's fundamental rights.
Munro v. Socialist Workers Party	479 U.S. 189 (1986)	Washington required candidates to receive at least 1 percent of the vote in its blanket primary, a primary in which all candidates for an office are placed on one ballot.	The Court upheld the requirements, finding the state's interest in ensuring the main election ballot was not too cluttered with weak candidates constitutional.
Norman v. Reed	502 U.S. 279 (1992)	Illinois statute did not allow candidate of a party access to all Cook County ballots because the candidate did not obtain enough signatures in a suburban district.	The Court used strict scrutiny to find the statute overbroad and violative of the First and Fourteenth Amendments right to freedom of association. The court did not engage in Equal Protection analysis.
Burdick v. Takushi	504 U.S. 428 (1992)	Hawaii banned write-in voting	The Court applied the *Anderson* balancing test and found the ban constitutional. The Court explained that either a strict scrutiny or a rational basis standard should be used, depending on the extent of the burden on fundamental rights. Here, voters had ample opportunity to participate in elections.

Source: Legal Information Institute, "Special Project: Presidential Primary Ballot Access."

> In 1968, the Supreme Court issued its first decision regarding state ballot access laws in *Williams v. Rhodes*, 393 U.S. 23 (1968). *Williams* invalidated an Ohio statutory requirement that presidential candidates from new parties submit nominating petitions with signatures totaling 15 percent of the total votes for the last gubernatorial election nine months before the national election. The Court found the requirements impinged on the fundamental right of association and voting, and therefore violated the Equal Protection Clause. Because the Court found the right of association and voting to be fundamental, it required a compelling state interest to justify the limitation. The Court fell short of invoking a strict scrutiny test failing to insist that state laws burdening these fundamental rights be narrowly tailored to achieve the compelling state interests.

Since Williams, the Court has decided ten more ballot access cases. In them it has used both strict scrutiny and rational basis standards.[li]

Excerpt from Edward Foley, "The Constitutionality of Filing Deadlines after *Anderson v. Celebrezze*," *Election Law @ Moritz*

The constitutionality of filing deadlines is most governed by the landmark case *Anderson v. Celebrezze.* In 1983, by a 5-4 vote, the U.S. Supreme Court held that Ohio's early filing deadline for independent presidential candidates, which was 75 days before the primary election, placed an unconstitutional burden on the voting and associational rights of independent candidates. The case, *Anderson v. Celebrezze*, involved the 1980 presidential election, where John Anderson, after withdrawing from the race for the Republican Party nomination as a more liberal alternative to Ronald Reagan's candidacy, then entered the general election against both Reagan and the incumbent Jimmy Carter. President Carter had been seriously weakened in his bid for reelection by both the Iranian hostage crisis and domestic economic woes. Anderson, who was a Republican member of the House of Representatives from Illinois (1961–1981) presented himself as a mainstream alternative to both the vulnerable Carter and the conservative insurgency of Reagan's campaign. Although obviously unsuccessful in winning the White House, Anderson proved to be a credible independent candidate, receiving 5.9 percent of the popular vote in Ohio, and 6.6 percent of the vote nationally.

The legal issue before the Supreme Court in *Anderson* was whether Ohio's early filing deadline violated rights of political association protected by the First Amendment of the U.S. Constitution. The five-justice majority opinion, written by Justice Stevens (and joined by Justices Burger, Brennan, Marshall, and Blackmun), ruled that it did. The majority reasoned that while "as a practical matter there must be substantial regulation of elections if they are to be fair and honest," a state's interests in regulation must be balanced against a candidate's First and Fourteenth Amendment rights. The Court concluded that the "March deadline place[d] a particular burden on [...] Ohio's independent-minded voters," and a "burden that falls unequally [...] impinges, by its very nature, on associational choices protected by the First Amendment." Further, the Court noted that "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest," and that Ohio's deadline not only "burden[ed] the associational rights of independent voters and candidates," but "place[d] a significant state-imposed restriction on a nationwide electoral process."

Ohio's interests in voter education, equal treatment, and political stability were not enough to warrant the burdening of voters and candidates' First and Fourteenth Amendment rights, as the deadline was not necessary to further any of these interests.

III

Petitioning Status as of August XX, 2004A

Ballot Access News

Edited by Richard Winger

2004 Petitioning/Ballot Status for President

updated September 7, 2004

State	**Requirements**		Signatures Collected/Status					Deadline later method
	Full Party	Cand.	Lib't	Green	Nader	Consti.	SWP	
Alabama	41,012	5,000	9,000	1,500	10,000	already on	0	Sep 7
Alaska	2,845	no procedure	already on	already on	already on	already on	too late	Aug 4
Arizona	16,348	14,694	already on	too late	in court	too late	too late	Jun 9
Arkansas	10,000	1,000	already on	already on	already on	already on	too late	Aug 2
California	(reg.) 77,389	153,035	already on	already on	too late	already on	too late	Aug 6
Colorado	(reg.) 1,000	pay fee	already on	already on	already on	already on	already on	July 5
Connecticut	no procedure	7,500	finished	already on	already on	already on	too late	Aug 4
Delaware	(reg.) 259	5,184	already on	already on	already on	already on	disputed	Aug 21
D.C.	no procedure	3,567	finished	already on	finished	too late	finished	Aug 17
Florida	be organized	93,024	already	already	already	already	already on	Sep 1

			on	on	on	on		
Georgia	37,153	37,153	already on	too late	too late	too late	too late	July 13
Hawaii	677	3,711	already on	already on	finished	finished	too late	Sep 3
Idaho	10,033	5,017	already on	too late	disputed	already on	too late	Aug 31
Illinois	no procedure	25,000	already on	too late	in court	too late	too late	Jun 21
Indiana	no procedure	29,553	already on	too late	too late	too late	too late	Jun 30
Iowa	no procedure	1,500	already on	already on	already on	already on	already on	Aug 13
Kansas	16,714	5,000	already on	too late	already on	already on	too late	Aug 2
Kentucky	no procedure	5,000	9,000	500	8,000	7,500	0	Sep 7
Louisiana	(reg.) 128,120	pay fee	already on	already on	0	0	already on	Sep 7
Maine	25,260	4,000	already on	already on	finished	already on	too late	Aug 9
Maryland	10,000	27,899	already on	already on	disputed	already on	too late	Aug 2
Mass.	est. (reg.) 38,000	10,000	already on	already on	disputed	too late	too late	July 27
Michigan	31,776	31,776	already on	already on	already on	already on	too late	July 15
Minnesota	112,557	2,000	1,800	already on	2,400	already on	2,000	Sep 14
Mississippi	be organized	1,000	already on	already on	already on	already on	already on	Sep 3
Missouri	undetermined	10,000	already	too late	too late	already	too late	July 26

			on			on		
Montana	5,000	5,000	already on	already on	already on	already on	too late	July 28
Nebraska	4,810	2,500	already on	already on	finished	already on	finished	Sep 1
Nevada	5,019	5,019	already on	already on	already on	already on	too late	July 9
New Hamp.	13,260	3,000	disputed	too late	already on	disputed	too late	Aug 11
New Jersey	no procedure	800	already on	already on	already on	already on	already on	July 26
New Mexico	2,422	14,527	already on	already on	21,000	already on	0	Sep 7
New York	no procedure	15,000	already on	finished	already on	finished	already on	Aug 17
No. Carolina	58,842	100,533	already on	too late	in court	too late	too late	Jul 6
North Dakota	7,000	4,000	already on	too late	finished	finished	too late	Sep 3
Ohio	32,290	5,000	finished	finished	in court	already on	too late	Aug 19
Oklahoma	51,781	37,027	in court	too late	too late	too late	too late	Jul 15
Oregon	18,864	15,306	already on	already on	in court	already on	too late	Aug 24
Penn.	no procedure	25,697	already on	already on	in court	already on	too late	Aug 2
Rhode Island	16,592	1,000	finished	already on	finished	finished	finished	Sep 3
So. Carolina	10,000	10,000	already on	already on	already on	already on	too late	Jul 15
South	8,364	3,346	already	too late	already	already	too late	Aug 3

Dakota			on		on	on		
Tennessee	41,322	275	already on	too late	already on	already on	too late	Aug 19
Texas	45,540	64,077	already on	too late	in court	too late	too late	May 24
Utah	2,000	1,000	already on	disputed	already on	already on	finished	Sep 3
Vermont	be organized	1,000	already on	virtual on	1,000	already on	500	Sep 16
Virginia	no procedure	10,000	already on	too late	finished	finished	too late	Aug 20
Washington	no procedure	1,000	already on	already on	already on	already on	already on	Aug 24
West Va.	no procedure	12,963	already on	too late	already on	too late	too late	Aug 2
Wisconsin	10,000	2,000	already on	already on	4,000	already on	2,000	Sep 7
Wyoming	3,644	3,644	already on	too late	already on	already on	too late	Aug 23
TOTAL STATES ON			43	28	22	32	8	
HIGHEST POTENTIAL*			51	34	45	41	16	

*"Potential" means the number of states the candidate would be on, if everything now in doubt is settled advantageously to that candidate.

B
NADER BALLOT ACCESS WATCH
UPDATED SEPTEMBER 14, 2004

Most Competitive States (Filing Deadline)	On Ballot as Reform Party Nominee	On Ballot as Independent	Not on Ballot	Petition Under Review	Ballot Status in Court

Arizona (6/9)					X
Colorado (7/2)	X				
Michigan (7/15)		X			
Florida (7/15)	X				
Missouri (7/26)			X		
West Virginia (8/1)		X			
Pennsylvania (8/2)			X		
Arkansas (8/2)		X			
Nevada (8/13)		X			
Iowa (8/13)		X			
Maine (8/15)				X	
Tennessee (8/19)		X			
Ohio (8/19)				X	
Oregon (8/24)				X	
Washington (8/24)				X	
Delaware (9/1)	X *				
Louisiana (9/7)					
New Mexico (9/7)					
Wisconsin (9/7)					
New Hampshire (9/8)		X			
Minnesota (9/14)					

* On ballot as Independent Party nominee

Source: Edward B. Foley, "Nader Ballot Access Watch," Election Law @ Moritz, available online at http://moritzlaw.osu.edu/electionlaw/candidate_ballot06.html.

WRITTEN BY TOVA ANDREA WANG, CENTURY FOUNDATION SENIOR PROGRAM OFFICER AND DEMOCRACY FELLOW.

SEPTEMBER 16, 2004

[ii] According to Professor Edward Foley of the University of Ohio of School of Law, "One hypothesis for the "degree of difficulty" question is the extent to which the two-party "duopoly" over the political system was overcome by the populist progressive movement at the end of the 19th century, which was stronger in some states than others (strong especially in upper midwest)." Email exchange with Edward Foley, August 3, 2004

[ii] Legal Information Institute, "Special Project: Presidential Primary Ballot Access"

[iii] Ibid.

[iv] Ibid.

[v] Lawrence Mandelker, "Breaking Down the Barriers to Ballot Access: The 2000 New York Republican Presidential Primary," *Election Law Journal* 1, 3, 2002: p. 421.

[vi] Sarah Kershaw, "The California Recall: The Also-Rans; Just Being in the Game Was Enough for Some Who Came Away as Losers," *New York Times*, October 9, 2003, p. 34

[vii] Michigan Election Law, Act 116 of 1954, Section 168.544c. See also Appendix I.

[viii] A recent notorious instance was the 2002 mayoral campaign in Washington, D.C. The incumbent mayor's petitions were found to be so rife with fraud that they were all thrown out, and the mayor was forced to run a write-in campaign. The petitions were found to be replete "with the signatures of fictitious supporters collected by aides who admitted to ignoring electoral legalities. Among the names on the petitions were the actor Kelsey Grammer; Kofi Annan, the United Nations secretary general; and Prime Minister Tony Blair of Britain." ("Washington Mayor Fined $277,700 Over Petition Fraud," *New York Times*, August 15, 2002, p. 14)

[ix] Nader failed to collect enough signatures in South Carolina to run as an independent candidate and is negotiating with the Reform Party to appear on its ballot line.

[x] Michael Jennings, "Petitions for Nader are filed in N.J.," The Statehouse News, July 21, 2004

[xi] Rebecca Cook, "Ralph Nader Makes Washington Ballot in November," *Seattle Post-Intelligencer*, September 1, 2004.

[xii] "Bush or Kerry: The Electoral College Map; State Poll Data Summarized from PollingReport.com," *Los Angeles Times*, available online at http://www.latimes.com/news/politics/la-polldatapage,1,1906511.htmlstory.

[xiii] Carla Marinucci, "Nader's Ballot Hopes Hinge on State's Greens," *San Francisco Chronicle*, August 7, 2004.

[xiv] Kevin Yamamura, "Nader fails to make California ballot," *Sacramento Bee*, August 7, 2004.

[xv] "Bush or Kerry: The Electoral College Map; State Poll Data Summarized from PollingReport.com," *Los Angeles Times*, available online at http://www.latimes.com/news/politics/la-polldatapage,1,1906511.htmlstory.

[xvi] Thomas Fitzgerald, "Nader Files 45,000 Names," *Philadelphia Inquirer*, August 3, 2004.

[xvii] Michael Currie Schaffer, "Democrats Cry Fraud in Nader Drive," *Philadelphia Inquirer*, August 9, 2004.

[xviii] Tom Barnes, "Nader Petitions Challenged to Keep Him off Pennsylvania Ballot," *Pittsburgh Post-Gazette*, August 10, 2004.

[xix] Michael Currie Schaffer, "Nader's Battlegrounds: Petitions and Payments," *Philadelphia Inquirer*, August 10, 2004.

[xx] Nathan Gorenstein and Thomas Fitzgerald, "Pa. Court Tosses Nader off Ballot," *Philadelphia Inquirer*, August 30, 2004.

[xxi] "Bush or Kerry: The Electoral College Map; State Poll Data Summarized from PollingReport.com," *Los Angeles Times*, available online at http://www.latimes.com/news/politics/la-polldatapage,1,1906511.htmlstory.

[xxii] Brendan Riley, "Nader qualifies for Nevada ballot," Associated Press, July 21, 2004.

[xxiii] Brendan Riley, "Democrats Sue to Kick Nader off Nevada Ballot," Associated Press, August 24, 2004.

[xxiv] Brendan Riley, "Judge: Nader Stays on Nevada Ballot," Associated Press, September 1, 2004.

[xxv] Bush or Kerry: The Electoral College Map; State Poll Data Summarized from PollingReport.com," *Los Angeles Times*, available online at http://www.latimes.com/news/politics/la-polldatapage,1,1906511.htmlstory.

[xxvi] Michigan Democratic Party Press Release, July 22, 2004, available online at http://www.mi-democrats.com/press/2004pr/7-22-04%20Nader.pdf.

[xxvii] Ibid.

[xxviii] "Nader Loses Bid to get on Michigan Ballot as Reform Party Candidate," Associated Press, September 2, 2004.

[xxix] Edward Foley, "Nader's Proverbial Bedfellows," Election Law @ Moritz, available online at http://moritzlaw.osu.edu/electionlaw/candidate_ballot05.html.

[xxx] "Nader Loses Bid to get on Michigan Ballot as Reform Party Candidate," Associated Press, September 2, 2004.

[xxxi] "Nader campaign seeks ballot access," Associated Press, July 29, 2004.

[xxxii] "Nader Campaign Sues Texas," Nader press release, May 10, 2004, Washington, DC.

[xxxiii] "Nader sues to get on ballot in Texas," Associated Press, July 22, 2004.

[xxxiv] Guillermo X. Garcia, "Bid by Nader Hits a Texas-size Barrier; Federal Judge Upholds State Ballot Laws; Candidate Will Appeal," *San Antonio Express News*, September 2, 2004, p. 10A.

[xxxv] Matt O'Connor, "Backers Sue to Keep Nader on Fall Ballot," *Chicago Tribune*, July 28, 2004, p. 6

[xxxvi] "Nader Campaign Sues Illinois Challenging Ballot Access Law and Definition of Registered Voter," press release, July 27, 2004.

[xxxvii] Matt O'Connor, "Backers Sue to Keep Nader on Fall Ballot," *Chicago Tribune*, July 28, 2004, p. 6

[xxxviii] Jonathan Finer and Brian Faler, "Nader Still Unsure of Ballot Spot in Many States," *Washington Post*, August 24, 2004, p. A9

[xxxix] Paul Davenport, "Nader Won't Be on the Ballot in Arizona, Associated Press, July 3, 2004.

[xl] John Kamman, "Nader Challenges Arizona Ballot Rules," Arizona Republic, August 17, 2004.

[xli] Howard Fischer, "Nader Challenges Decision to Keep Him Off the Ballot," Capitol Media Services, August 17, 2004.

[xlii] Beth DeFalco, "Nader Loses Arizona Ballot Restriction Challenges," *Associated Press*, September 11, 2004.

[xliii] Jeff Maples, "Nader Campaign Again Fails To Get Candidate On Ballot," *The Oregonian*, July 23, 2004

[xliv] Richard Winger, email to election law blog, September 1, 2004.

[xlv] "Nader Camp Blames Politics, Democrats for Ballot Rejection," Associated Press, September 3, 2004.

[xlvi] Edward Walsh, "Nader Eligible for Ballot, Judge Says," *Oregon Live*, September 10, 2004.

[xlvii] "State Seeks to Keep Nader Off the Ballot," *Associated Press*, September 14, 2004.

[xlviii] Article 1, Section 4, of the U.S. Constitution states that: "The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." Article II, in conjunction with the Twelfth Amendment, provides that the states shall choose electors for the President and Vice President. However, it should also be noted that the Constitution gives the Congress the power over the time, place and manner of elections, giving that body substantial authority over election administration.

[xlix] Chris L. Jenkins and John Wagner, "Md., Va. Won't Add Nader to Nov. 2 Ballots," *Washington Post*, August 21, 2004.

[l] Legal Information Institute, "Special Project: Presidential Primary Ballot Access."

[li] Ibid.