Anderson v. Celebrezze: Ballot Access and the Due Process Clause - An Alternative to Equal Protection Analysis

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ANDERSON V. CELEBREZZE: BALLOT ACCESS AND THE DUE PROCESS CLAUSE—AN ALTERNATIVE TO EQUAL PROTECTION ANALYSIS

In its most recent ballot-access decision, Anderson v. Celebrezze, the United States Supreme Court invalidated an Ohio law that imposed an early filing deadline on independent candidates for President. Independent candidate John Anderson had failed to timely file the necessary nominating petitions and statement of intent to have his name placed on the Ohio ballot for the November 1980 general election. Anderson had filed on May 16, 1980, nearly two months after the statutory deadline of March 20, 1980.

The Supreme Court ruled that the early filing deadline unnecessarily burdened the rights of association and voting guaranteed to independent candidates and their supporters by the first and fourteenth amendments. The Anderson Court further ruled that the early filing deadline discriminated against voters and candidates who were not aligned with the major political parties. Finally, the Court held that the law imposed an unnecessary restriction on a nationwide electoral process.

Anderson is the first ballot-access case in which the Court based its analysis exclusively on the due process clause of the fourteenth amendment. In prior

3. 103 S. Ct. at 1566.
4. Id.
5. Id. at 1579. The fundamental first amendment rights of political association and voting, as well as other first amendment freedoms, are protected from state infringement by the due process clause of the fourteenth amendment. These freedoms have acquired protection from state infringement by the Court's process of selective incorporation of the Bill of Rights into the due process clause of the fourteenth amendment. See, e.g., Edwards v. South Carolina, 372 U.S. 229 (1963) (first amendment rights of free speech, free association, and freedom to petition for redress of grievances are protected from state invasion by fourteenth amendment); Cantwell v. Connecticut, 310 U.S. 296 (1940) (fourteenth amendment liberty clause embraces first amendment freedom of religion as well as other first amendment freedoms).
6. 103 S. Ct. at 1571.
7. Id. at 1573.
8. The fourteenth amendment's due process clause forbids the states from depriving "any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1.
9. 103 S. Ct. at 1569 n.7. In earlier cases, the Court generally had upheld state regulations of candidates and elections that were challenged as unconstitutional under the due process clause. See, e.g., Taylor & Marshall v. Beckham, 178 U.S. 548 (1900) (allowing state legislature the power to choose winner in contested election does not violate due process); Wilson v. North Carolina, 169 U.S. 586 (1898) (allowing state governor the power to remove railroad commissioner elected by general assembly does not violate due process). But cf. Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135 (1892) (reversing the Nebraska Supreme Court's finding that petitioner governor-elect was not a United States citizen as required by state law). For a discussion of pre-1944 case law, see Note, A New Dimension to Equal Protection and Access to the Ballot: American Party v. White and Storer v. Brown, 24 Am. U.L. Rev. 1293, 1296 n.16 (1975). The author notes that the Court consistently would frame the issue as involving a property...
cases, the Court employed an equal protection analysis. An examination of the opinion indicates that while validating an alternative mode of analysis, the Court further confused the appropriate judicial standards in an already muddled string of ballot-access cases.

BACKGROUND

Challenges to state ballot-access regulations usually have been premised on equal protection grounds. Prior to 1968, the Court generally deferred to state legislatures in this area. In the late 1960's, however, the Court began to apply a more rigorous form of equal protection analysis, adopting a strict scrutiny approach in place of a rational basis standard. Although an equal protection analysis has predominated in modern ballot-access cases, several major decisions have relied in part on the fourteenth amend-

right, which was protected by due process, in the office held or sought; yet, at the same time, the Court would hold that it lacked jurisdiction to hear the case due to federalism concerns. Id.; see also infra notes 12-17, 75-77, and accompanying text.

10. See, e.g., Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173 (1979) (number of signatures required to be filed by new political parties and independent candidates violates equal protection clause); Bullock v. Carter, 405 U.S. 134 (1972) (conditioning ability to participate in primary election on ability to pay filing fee violates equal protection clause).

11. See, e.g., Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173 (1978) (equal protection challenge to a statute that required new political parties and independent candidates to gather more signatures to appear on local election ballots than were required to appear on statewide ballots); Williams v. Rhodes, 393 U.S. 23 (1966) (burdensome petition requirements that effectively prevent ballot access for third-party candidates challenged as violating equal protection); McDougall v. Green, 395 U.S. 281 (1948) (state law requiring 200 signatures from at least 50 counties to form a new political party challenged on equal protection grounds).

12. See, e.g., MacDougall v. Green, 335 U.S. 281, 284 (1948) (the "broad constitutional concepts" of due process and equal protection should not be used to deny a state its legitimate power to regulate elections); Snowden v. Hughes, 321 U.S. 1, 8 (1944) (challenge to state election regulations must fail when petitioner does not show purposeful discrimination and lack of rational legislative basis).

13. See Williams v. Rhodes, 393 U.S. 23 (1968). The distinction between the rational basis standard and the strict scrutiny standard relates to the burden imposed on a state to justify the challenged regulation. See G. GUNThER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 671-81 (10th ed.1980). The rational basis standard was concisely defined in McGowen v. Maryland, 366 U.S. 420 (1961). The McGowen Court stated, "The constitutional safeguard is offended only if the [statutory] classification rests on grounds wholly irrelevant to the achievement of the State's objective. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Id. at 425-26 (emphasis added). The strict scrutiny standard imposes a heavier burden on a state. See G. GUNThER, supra, at 671. That standard requires that "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting [fundamental] first amendment freedoms." NAACP v. Button, 371 U.S. 415, 438 (1963) (emphasis added).

14. Under an equal protection analysis, a statute generally is upheld if it is reasonable, not arbitrary, and is related to a legitimate legislative purpose. See G. GUNThER, supra note 13, at 677. The Court will impose a strict scrutiny standard, however, if the statute creates a suspect classification or affects a fundamental right. See, e.g., Kramer v. Union School Dist. No. 15, 395 U.S. 621 (1969) (voting is a fundamental right); McLaughlin v. Florida, 379 U.S. 184 (1967) (racial classifications are suspect). For a discussion of strict scrutiny, see supra note 13.

ment due process clause, and at least one Justice has argued that the due process clause and the first amendment should be relied upon exclusively. Unfortunately, this development has not been free from either dissension or confused and convoluted distinctions.

The Court first held that state ballot-access regulations would be subject to the strict scrutiny standard of review in *Williams v. Rhodes*. In *Williams*, two minor political parties challenged an Ohio election code provision that required new political parties to file the signatures of a number of qualified voters totaling at least fifteen percent of the ballots cast in the preceding gubernatorial election. The Court concluded that this and other burden-

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17. See Williams v. Rhodes, 393 U.S. 23, 41 (1968) (Harlan, J., concurring). In this concurring opinion, Justice Harlan expressed doubts regarding the applicability of the equal protection clause to cases involving challenges to the presidential selection process. *Id.* at 42-43 (Harlan, J., concurring). He noted that the Constitution does not give all citizens an equal voice in the selection of the President. *Id.* at 43 n.2 (Harlan, J., concurring). The provision granting each state at least three electoral votes, for example, effectively gives the votes of citizens in small states greater weight than the votes of citizens in larger states. *Id.* (Harlan, J., concurring). In Justice Harlan’s view, a decision resting on due process grounds would provide a better accommodation of the “original purposes and early development of the Electoral College” with the right of political association. *Id.* at 43 (Harlan, J., concurring).

18. An example of a confusing distinction is found in *Anderson*. In that case, the Court found that independent candidates were disadvantaged by a mandatory filing date, even though major party candidates participating in the primary elections were required to file a statement of candidacy on the same day as independents. *Anderson*, 103 S. Ct. at 1575. The Court reasoned that the major parties still had until the party conventions in the summer to choose their candidate, whereas the independent must make his decision far in advance of the general election. *Id.* A problem with this distinction is that it does not recognize that both types of candidates are burdened to the same degree by the filing deadline; both must assess their chances of ultimate success far in advance of the general election.

Many of the major ballot-access cases have resulted in split decisions. See, e.g., Clements v. Fashing, 457 U.S. 957, 965 (1982) (5-4 decision); Storer v. Brown, 415 U.S. 724 (1974) (6-3 decision); Williams v. Rhodes, 393 U.S. 23 (1968) (7-2 decision).

19. 393 U.S. 23 (1968). *Williams* was a consolidated case composed of a suit brought by the Ohio American Independent Party and an action brought by the Socialist Labor Party. *Id.* at 26. Both parties challenged the same statutory provisions. *Id.*

20. *Id.* at 24-25. The regulations imposed other burdensome requirements as well. *Id.* at 25 n.1. In his concurring opinion, Justice Douglas concisely described the breadth of the election code:

[Ohio has secured the position of the Republicans and Democrats] by abolishing write-in votes so as to restrict candidacy to names on the ballot; it has eliminated all independent candidates through a requirement that nominees enjoy the endorsement of a political party; [and] it has defined “political party” in such a way as to exclude virtually all but the two major parties.

*Id.* at 35-36 (Douglas, J., concurring). Essentially, a new political party was required to elect a state central committee and a county central committee for each Ohio county. *Id.* at 25 n.1. A new party also was required to elect delegates and alternates to a national convention.
some regulations made it "virtually impossible" for a third party to be placed on the Ohio presidential ballot. Because the regulatory scheme imposed burdens on the political association rights of third-party supporters and on their right to cast an effective vote, the Court ruled that "only a compelling state interest" could justify the regulations.

In a number of subsequent ballot-access cases, the Court employed a strict scrutiny analysis to invalidate a law imposing a filing fee on candidates and another law that required candidates to pay a percentage of the primary election costs. The Court's use of a rigid analysis was triggered by the recognition that ballot-access regulations, while having a direct impact on the candidate, impose a correlative burden on the candidate's supporters.

To be eligible to run, the committeemen and delegate candidates could not have voted in another party's primary in the preceding four-year period. Finally, the Ohio regulations required candidates for a new party's nomination to file petitions signed only by people who had never voted in any election before.

21. *Id.* at 24. Although the Court recognized that a state does have an interest in requiring a candidate to show a degree of public support, it held that "the totality of Ohio's restrictive laws . . . as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the equal protection clause." *Id.* at 34.

22. *Id.* at 31. Freedom of association is a fundamental right guaranteed by the first amendment and applicable to the states through the due process clause of the fourteenth amendment. See United Mine Workers of Am. v. Illinois State Bar Ass'n, 389 U.S. 217 (1967) (the rights to assemble peaceably and to petition for redress of grievances are among the most precious liberties guaranteed by the first amendment); NAACP v. Alabama, 357 U.S. 449 (1958) (state action affecting the freedom to associate is subject to the closest scrutiny).

23. *Williams*, 393 U.S. at 31. In his majority opinion, Justice Black stated, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Id.*

24. *Id.* The Court did not find the asserted state interests in preventing ballot flooding, ensuring a majority winner, and promoting a two party system, to be sufficiently compelling to justify the burdens imposed on fundamental rights. *Id.* at 31-34. Justice Stewart dissented and argued essentially for the application of a rational basis standard. *Id.* at 51 (Stewart, J., dissenting). According to Justice Stewart, the regulatory scheme should have been upheld because it was rationally related to legitimate state interests. Chief Justice Warren also dissented and strongly urged judicial abstention based on principles of federalism. *Id.* at 68-69 (Warren, C.J., dissenting).


26. See *Bullock v. Carter*, 405 U.S. 134 (1972) (Texas law required all candidates, regardless of party size, to assist in financing the primary election).

27. See *Lubin v. Panish*, 415 U.S. 709, 716 (1973); *Bullock v. Carter*, 405 U.S. 134, 143 (1971). This link between candidates ad supporters was first recognized by the dissent in *MacDougall v. Green*, 335 U.S. 281 (1948). In that case, the petitioners brought a fourteenth amendment challenge against an Illinois statute requiring new political parties to obtain 200 signatures from each of at least 50 of the 102 counties in Illinois in order to nominate candidates. *Id.* at 282. The petitioners contended that due to gross population imbalances of registered voters between counties, the statute discriminated against new political parties by making their formation unduly burdensome. *Id.* at 283. A majority of the Court rejected this contention, holding that the statute was a valid exercise of the state's power to require candidates or parties to show statewide support. *Id.* at 284.
Although the Court has indicated that there is no fundamental right to candidancy, it has not hesitated to utilize a strict scrutiny analysis premised on the rights of a candidate's supporters.

Nevertheless, in *Storer v. Brown*, the Court adopted a more deferential approach to ballot-access regulations. The *Storer* case was similar to *Williams* with respect to the type and breadth of regulations challenged. The California elections code imposed four onerous requirements on aspiring independent candidates. The *Storer* Court indicated its deference to the state regulations when it declared that "[i]t has never been suggested that the *Williams* . . . rule automatically invalidates every substantial restriction on the right to vote or to associate." The Court added that "[o]ther variables must be considered where qualifications for candidates rather than voters are at issue." According to *Storer*, the state's interests in promoting political stability and protecting the integrity of the ballot justified the limited infringement on these rights.

Justices Douglas, Black, and Murphy dissented. They argued that the majority had ignored the effect of the statute on the rights of voters: "The protection which the Constitution gives voting rights covers not only the general election but also extends to every integral part of the electoral process. . . . When candidates are chosen for the general election by nominating petition, that procedure also becomes an integral part of the electoral process." *Id.* at 288 (Douglas, J., dissenting).

28. See, e.g., Bullock v. Carter, 405 U.S. 134, 142-43 (1971) (even though initial and direct impact of candidate restrictions are felt by candidates themselves, candidacy is not a fundamental right which invokes a rigorous standard of review).

29. See, e.g., Lubin v. Panish, 415 U.S. 709 (1973) (because voters can assert their preferences only through candidates, candidate restrictions infringe on rights of voters); Bullock v. Carter, 405 U.S. 134 (1971) (because rights of voters and of candidates are not easily separated, regulations impinging on the latter will be closely scrutinized).


32. In both *Storer* and *Williams*, the Court was faced with challenges to numerous statutory provisions that effectively hindered the participation of minor party candidates. The *Williams* Court examined the combined impact of the regulations. See *Williams v. Rhodes*, 393 U.S. 23, 25 (1968). By contrast, *Storer* focused on the individual impact of each regulation. See *Storer*, 415 U.S. at 737.

33. In order to qualify for the California ballot, an independent candidate was required to (1) be unaffiliated with a qualified political party for one year prior to the next primary election; (2) file nominating papers signed by qualified voters not less in number than five percent nor greater than six percent of the votes cast in the last general election; (3) obtain all signatures during a 24-day period following the primary elections; and (4) use no signatures from persons who voted in the primary election. *Id.* at 726-27.

34. *Id.* at 729.

35. *Id.* at 732. The *Storer* decision also deviated from the trend in ballot-access cases by focusing on the rights of candidates and deemphasizing the rights of voters. This may explain the Court's deference to the state regulations; had the Court focused on voters' rights, the statute probably would have been subjected to strict scrutiny. *See supra* notes 26-29 and accompanying text.

36. 415 U.S. at 732-33, 736. The Court upheld the disaffiliation statute but remanded the case for further findings with respect to the signature petition requirements. *Id.* at 738. In upholding the disaffiliation statute, the Court found that it "works against independent can-
The Court returned to a strict scrutiny analysis of ballot-access regulations in *Illinois State Board of Elections v. Socialist Workers Party*. In a unanimous decision, the Court struck down an Illinois regulation that essentially required new political parties and independent candidates to obtain more petition signatures for a special Chicago mayoral election than were required in a statewide election. The Court held that due to the regulation’s impact on the supporters of independent and minor party candidates, strict scrutiny was the appropriate standard. Accordingly, the regulation was held to violate the equal protection clause and the first amendment because of its infringement on the fundamental rights of freedom of association and voting.

The Court continued its erratic approach to ballot access restrictions in *Clements v. Fashing*. In a plurality opinion, the *Clements* Court upheld two provisions in the Texas Constitution that prevented certain current officeholders from campaigning for another office during their terms. Justice Rehnquist, writing for the plurality, eschewed a strict scrutiny approach and declared that “[n]ot all ballot access restrictions require ‘heightened’ equal protection scrutiny.” Instead, Justice Rehnquist indicated that the degree of scrutiny employed should be determined by the importance of the state

didacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial barrier to a party fielding an ‘independent’ candidate to capture and bleed off votes in the general election that might well go to another party.” *Id.* at 735.

The rhetorical and analytical differences between *Williams* and *Storer* are confusing because both cases involved substantial and voluminous regulatory schemes. The *Storer* Court distinguished *Williams* as a decision that addressed itself to the “totality” of the challenged election laws. *Id.* at 737. According to the *Storer* Court, *Williams* involved a number of “facially valid provisions,” the combined impact of which produced “impermissible barriers to constitutional rights.” *Id.* The Court noted that the disaffiliation statute in *Storer*, unlike the regulations at issue in *Williams*, did not “change its character when combined with other provisions of the election code.” *Id.* Thus, the *Storer* Court focused on the impact of each specific regulation, rather than on the total regulatory scheme. *Id.*


38. Five Justices joined the majority opinion, with three others filing separate concurring opinions. Two of the concurring Justices, Stevens and Rehnquist, argued that the case should have been decided under a rational basis standard. 440 U.S. at 189-90 (Stevens, J., concurring); *Id.* at 190-91 (Rehnquist, J., concurring).

39. *Id.* at 187.

40. *Id.* at 184-85.

41. *Id.* at 185-86.

42. 457 U.S. 957.

43. *Id.* at 960-61. One challenged provision required a person holding any state or federal public office to complete his current term of office before serving in the Texas state legislature. *Id.* at 960. The other challenged provision stated that holders of certain state and county offices who had more than one year left in their terms would be forced to resign if they became candidates for any other office. *Id.*

44. *Id.* at 965-66.
interests protected by the restrictions and the extent to which they burden ballot access. It was against this background of inconsistent decisions that Anderson v. Celebrezze was decided.

Anderson Facts and Holding

The Ohio law challenged in Anderson required independent presidential candidates to file a nominating petition and a statement of candidacy by March 20, 1980, in order to appear on the ballot for the November 1980 general election. Independent candidate John Anderson did not file until May 16, 1980, and thus was denied a ballot position. Anderson and three supporters promptly filed an action challenging the constitutionality of the early filing deadline.

The district court relied on the first and fourteenth amendments to invalidate the statutory deadline. The court ruled that the statute imposed impermissible burdens on the fourteenth amendment due process rights of association of Anderson and his supporters, and diluted the potential value of votes Anderson may have received in other states. Because no comparable deadline was imposed on candidates from major political parties, the district court further held that the statute violated the equal protection clause of the fourteenth amendment. Accordingly, the Ohio Secretary of

45. Id. at 963. Justice Brennan, writing for the dissent, argued that prior case law called for the application of strict scrutiny in reviewing ballot-access restrictions. Id. at 977 n.2 (Brennan, J., dissenting). In Justice Brennan's view, the challenged restrictions failed to withstand even minimal scrutiny. Id. at 984 (Brennan, J., dissenting). Although Justice Stevens concurred in the judgment, he also rejected the plurality's equal protection analysis. Id. at 976 (Stevens, J., concurring).

46. 103 S. Ct. 1564 (1983).
47. The challenged statute provided, in pertinent part:

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor, shall file no later than four p.m. of the seventy-fifth day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition. . . .

Id. at 1566 n.1.
48. Id. at 1566.
50. Id. at 139.
51. Id. at 127.
52. Id. at 139. Ohio law required major party candidates intending to participate in the primary to file a statement to this effect by March 20, 1980, the date required for Anderson. Id. at 128-29. The district court, however, found that the law treated the independent candidate inequitably; a major party candidate could avoid filing on March 20 to run in the primary and still run as his party's choice in the general election. Id. at 129. An independent candidate, the district court reasoned, had no choice but to file on March 20 to guarantee a position on the November ballot. Id. The Supreme Court used a similar rationale to work around the apparent equality created by the law. See 103 S. Ct. at 1575-76.
State was ordered to place Anderson's name on the general election ballot. 53

The district court was reversed on appeal. 54 The Sixth Circuit held that the district court had incorrectly applied the "compelling state interest" standard, and that Supreme Court decisions, notably Storer, indicated that a less demanding standard should be applied. 55 Recognizing the states' power to regulate elections pursuant to Article II of the Constitution, 56 the court of appeals found that the state interests in voter education and awareness were sufficiently legitimate to justify the burdens imposed on the first and fourteenth amendment rights of independent candidates and their supporters. 57 The Sixth Circuit also rejected the claim that the early filing deadline discriminated against independent candidates and voters, ruling that the significant differences between independents and party candidates justified the disparate treatment. 58 Subsequently, Anderson's petition for certiorari was granted by the Supreme Court. 59

53. 499 F. Supp. at 139. The Secretary of State did not petition for a stay pending appeal of the district court's order. 103 S. Ct. at 1567. Thus, Anderson's name appeared on the Ohio ballot and he received 5.9% of the Ohio vote, or 254,472 votes; nationally, he received 6.6% or 5,720,060 votes. Id.
55. Id. at 562-63. According to the court of appeals, the Supreme Court's decisions required the standard of scrutiny to be linked to the degree of the burden imposed. Id. In other words, a state was required to show a compelling interest to justify laws that grant a monopoly to established parties, whereas "lesser burdens, can be justified by lesser interests." 56. Id. at 562. The Anderson Court did not discuss this portion of the appellate decision, but instead overturned the decision because it had improperly relied on two cases upholding early filing deadline statutes that had been summarily affirmed by the Supreme Court: Socialist Labor Party v. Rhodes, 318 F. Supp. 1262 (S.D. Ohio 1970), aff'd sub nom. Sweetenham v. Gilligan, 409 U.S. 942 (1972); Pratt v. Begley, 352 F. Supp. 328 (E.D. Ky. 1970), aff'd, 409 U.S. 943 (1972). See Anderson, 103 S. Ct. at 1567 n.5.
56. U.S. Const. art. II, § 1, cl. 2.
57. 664 F.2d at 564-65. The court of appeals reasoned that the early filing deadline benefitted voters in two distinct ways: first, it provided voters a significant amount of time within which to evaluate the candidates; second, by providing this time, the statute assisted voters in making informed decisions on allocating their financial support or volunteer efforts. Id. at 564. The court also noted that, in all likelihood, most serious candidates would have made the decision to run by at least the statutory deadline of March 20. Id. at 565.
58. Id. at 566-67. The court ruled that there were essential differences between independent and partisan candidates that justified the alleged discrimination against independent candidates, allowing major parties to wait until the national conventions to choose their candidates. Id. First, the Court noted that a party candidate can rely on both personal and party appeal to gain support, whereas the success of an independent depends on his personal appeal only. Id. at 566. Voters know much about the partisan candidates simply by knowing about the parties each candidate represents. Id. at 567. An independent candidate, on the other hand, carries no similar identifying label. Second, the court claimed that allowing partisan candidates to run in the general election, without running in the primary, is a right granted to political parties, not partisan candidates. According to the court, political parties have an existence apart from the candidates they sponsor and, consequently, have unique interests that need protection. In the court's view, a political party has an interest in selecting at its national convention the candidate best able to advance its views. An independent's candidacy, on the other hand, has no existence separate from that of the candidate and, thus, does not need the flexibility of a later filing date. Id.
59. Anderson v. Celebrezze, 102 S. Ct. 2035 (1982). The Court granted Anderson's petition due to a conflict that had arisen among the Circuits. 103 S. Ct. at 1568. Anderson had pre-
The Supreme Court reversed, holding that the early filing deadline impermissibly burdened both the right of political association and the right to vote as guaranteed by the first amendment and by the due process clause of the fourteenth amendment. The asserted state interests in political stability, voter education, and equal treatment for major party and independent candidates were considered insufficient to justify the imposed burdens.

Justice Rehnquist, joined by Justices White, Powell, and O'Connor, dissented, contending that the early filing deadline was adequately supported by legitimate state interests. He argued that the majority had ignored the broad power of states to regulate elections pursuant to article II of the Constitution. Additionally, Justice Rehnquist stressed that the record did not support the majority's conclusion that the early filing deadline impeded Anderson's efforts to gain ballot access. Finally, the dissent criticized the majority's attempt to distinguish Storer v. Brown and argued that it should control both the analysis and outcome of Anderson.


60. 103 S. Ct. at 1579. The Court based its decision directly on the first and fourteenth amendments and did not engage in a separate equal protection analysis. Id. at 1569 n.7. This is a clear departure from prior ballot-access cases that relied exclusively on equal protection analysis. See supra notes 10-41 and accompanying text.

61. 103 S. Ct. at 1573.

62. Id. at 1585-86 (Rehnquist, J., dissenting). The dissent argued that Ohio's interest in political stability alone was sufficient. Id. at 1585 (Rehnquist, J., dissenting). The early filing deadline served this interest by requiring an independent candidate to show that he had no ties with an established party and also that he had a "satisfactory level of community support." Id. (Rehnquist, J., dissenting). In addition, the dissent found that Ohio's interest in voter education and in having a well-informed electorate justified the regulation. Id. (Rehnquist, J., dissenting). Finally, the dissent noted that an early filing deadline provides those citizens who wish to offer financial or volunteer support enough time to decide how to apportion that support. Id. at 1586 (Rehnquist, J., dissenting).

63. Id. at 1579 (Rehnquist, J., dissenting). Article II provides, in pertinent part, that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to select the President of the United States. U.S. Const. art. II, § 1, cl. 2. The dissent contended that this provision confers broad powers upon the states, recognizes that in the election of a President "the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object." 103 S. Ct. at 1579 (Rehnquist, J., dissenting) (emphasis added by Anderson dissent) (quoting McPherson v. Blacker, 146 U.S. 1 (1892)).

64. 103 S. Ct. at 1580 (Rehnquist, J., dissenting); see also infra notes 89-93 and accompanying text.


66. 103 S. Ct. at 1583 (Rehnquist, J., dissenting). The dissent found that there were more similarities than differences between the early filing deadline at issue in Anderson and the disaffiliation statute upheld in Storer. The dissent noted that both the Ohio filing deadline and the California disaffiliation statute were designed to prevent a candidate who had lost his party's nomination from leaving the party to form an independent candidacy. Id. (Rehnquist, J., dissenting).
Although the *Anderson* Court’s emphasis on the associational and voting rights of a candidate’s supporters is consistent with prior case law, its articulation of the standard of review in cases involving ballot-access regulations is not. The Court held that in order for a ballot-access regulation to be upheld, a state must demonstrate “important regulatory interests . . . sufficient to justify reasonable, nondiscriminatory regulations.” This statement deviates from the usual articulation of the test, which is that regulations impinging on fundamental rights must be carefully tailored to serve compelling state interests. It is unclear whether this represents a relaxation of the judicial standard applicable to state ballot-access regulations. Although the *Anderson* Court enunciated an intermediate standard of scrutiny, its application of that standard was at least as rigorous as the approach found in many earlier cases, which used the seemingly more stringent compelling state interest test. For example, the *Storer* Court held California’s interest in political stability to be sufficiently compelling to justify a one-year disaffiliation statute. In contrast, the *Anderson* Court ruled that the same state interest did not justify the Ohio regulation.

A unique aspect of the *Anderson* opinion is that it is the first major ballot-access case to rely exclusively on a due process analysis. Prior ballot-access cases have employed an equal protection analysis and focused on the discriminatory impact of a specific regulation on particular groups. Unfortunately, *Anderson* does not adequately articulate the distinction, if any, between a due process and an equal protection analysis. According to the Court, the first consideration in a due process analysis is the magnitude of the injury sought to be vindicated; next, the asserted state interests must be identified and evaluated; and finally, the “extent to which those interests make it necessary to burden the plaintiff’s first and fourteenth amendment rights” must be considered. This three-step analysis is virtually identical to that used in equal protection cases. Furthermore, the two approaches are dif-

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68. 103 S. Ct. at 1569-70.
70. See infra note 89 and accompanying text.
71. 415 U.S. at 735-36.
72. 103 S. Ct. at 1578.
73. Id., at 1569 n.7.
75. 103 S. Ct. at 1570.
76. See, e.g., Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 183 (1979) (in determining whether a ballot-access regulation violates the equal protection clause, the Court “must examine the character of the classification in question, the importance of the individual interests at stake, and the state interests asserted in support of the classification”).
difficult to distinguish when an application of either test to the same or similar facts often produces identical results. 77

After articulating its mode of analysis, the Anderson Court identified the nature of the burdens imposed by the statute. 78 The right to associate was held to be burdened in two ways. 79 First, the early filing deadline limited the ability of independent candidates and their supporters to take advantage of events and issues arising after the deadline. 80 The Court noted that the major parties select their nominees and platforms during the summer. 81 Independent candidates, on the other hand, were prevented from entering the Ohio political arena after mid-March and, consequently, were forced to decide whether to run before many of the events and issues crucial to reaching that decision had transpired. 82 The Court added that “independent-minded” Ohio voters, who decided after mid-March that they were dissatisfied with the candidates and platforms offered by the major parties, were denied the opportunity of rallying behind a new candidate who more closely reflected their positions on the issues. 83 Second, the Court noted that the early filing deadline made it more difficult to organize and mount a successful signature gathering effort to gain access to the ballot. 84

77. In Williams v. Rhodes, 393 U.S. 23 (1968), for example, both the majority, which relied on an equal protection analysis, and Justice Harlan, who employed a due process approach, reached the same conclusion that the Ohio statutory scheme violated the first amendment rights of third-party candidates and their supporters. See id. at 34; id. at 41 (Harlan, J., concurring); see also American Party v. White, 415 U.S. 767, 780 (1974) (whether the analysis is viewed as due process or equal protection, ballot-access restrictions are subject to strict scrutiny).
78. 103 S. Ct. at 1570-71.
79. Id.
80. Id. The Court cited President Johnson’s unexpected withdrawal on March 31, 1968, from the presidential election campaign and Robert F. Kennedy’s assassination on June 5, 1968, as examples of events occurring early in an election year that can dramatically alter the political landscape. Id. at 1571 n.11 (citing A. BICKEL, REFORM AND CONTINUITY 88 (1971)). It is questionable, however, whether the Court’s conclusion can be justified by relying on the extraordinary events of one particular year.
81. Id. at 1571.
82. Id.
83. Id. The Supreme Court substantially adopted the reasoning of the district court regarding the disparate treatment of major party candidates and independents. See Anderson v. Celebrezze, 499 F. Supp. 121, 128-30 (S.D. Ohio 1980). The appellate court argued however, that any advantages given to partisan candidates were necessitated by the interest political parties have in selecting the best candidates to represent their view. Anderson v. Celebrezze, 664 F.2d 554, 566-67 (6th Cir. 1981). By allowing the parties to select a candidate who had not filed a statement of candidacy, the court of appeals reasoned, Ohio was granting a benefit to political parties, which partisan candidates only enjoyed incidentally. Id. at 567. This reasoning was also employed by Justice Rehnquist in his dissenting opinion. See Anderson, 103 S. Ct. at 1586-87 (Rehnquist, J., dissenting). In addition, the Sixth Circuit noted that any advantage accorded to political parties over independent candidates was counterbalanced by the more exacting standards required to achieve party status. 664 F.2d at 566-67.
84. Ironically, this was not a difficulty facing Anderson. As the court of appeals noted, Anderson had developed a large and effective campaign organization months before the March 20 filing deadline. Anderson v. Celebrezze, 664 F.2d 554, 555 (6th Cir. 1981). By the time
Similarly, the Anderson Court found that the early filing deadline burdened the right to vote effectively because it denied independents "not only a choice of leadership but a choice on the issues as well." The Court explained that the Ohio statute prevented voters from casting a ballot for a late-emerging independent candidate "whose position on the issues could command widespread community support." Finally, the Court held that the early filing deadline impinged upon the national interest in the selection of the President and Vice President.

According to the Court, a state "has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries."

The Court's findings are not well supported by the record. As the dissenting opinion indicated, Anderson presented no evidence showing that he had difficulty gathering signatures. Nor was there any evidence that Anderson

Anderson announced his independent candidacy on April 24, 1980, he had raised over $7,700,000 and had arranged to appear on Republican primary ballots in 27 states. Id. at 1571.
85. 103 S. Ct. at 1571.
86. Id.
87. Id. at 1573.
88. Id.
89. Justice Stevens, writing for the Anderson majority, did not refer to specific findings of fact; rather, he spoke in speculative terms about the impediments to ballot access that independent candidates faced under the Ohio law. See id. at 1581 (Rehnquist, J., dissenting). To buttress his conclusion that independent candidates were heavily burdened by early filing deadlines, Justice Stevens cited Bradley v. Mandel, 444 F. Supp. 983 (D. Md. 1978), which involved a challenge to a Maryland early filing deadline. In Bradley, a three-judge district court invalidated a law that required independent presidential candidates to file nominating papers in early March, approximately 230 to 240 days before the general election. Id. at 985. The court held that the early filing deadline made it nearly impossible for an independent candidate to obtain signatures, recruit and retain campaign workers, raise funds, and obtain media coverage. Id. at 986-87. Specifically, the district court found that during the plaintiff's signature gathering drive, he recruited and lost three petition drive chairpersons, two schedulers, and five county chairpersons. Id. at 986. According to the court, all of these people quit "because of the frustrations of expending a large effort in a political campaign during a period of time remote from the actual election." Id. The plaintiff's attempts to obtain media coverage were futile because his signature gathering drive was taking place long before the actual primary campaign. Id. The plaintiff also sought to appear before civic and other groups, but these groups said they would permit him to speak only during certain political meetings and "candidates' nights," all of which fell after the filing deadline. Id. at 986-87. These difficulties, the court emphasized, could not be overcome by more diligent efforts on the part of the candidate because the source of the problem was a lack of public interest in an election that would not take place until long after the filing deadline. Id. at 989.

Although both cases involve challenges to early filing deadlines, the Anderson Court's reliance upon Bradley is misplaced. Unlike the plaintiff in Bradley, Anderson had already received much nationwide media exposure as a Republican presidential candidate who had campaigned in a number of other state primaries. See Anderson v. Celebrezze, 499 F. Supp 121, 140-41 (S.D. Ohio 1980). Furthermore, Anderson was relatively well financed, having raised nearly seven million dollars by the time he announced his independent candidacy. Id. at 141. In short, the obstacles faced by the independent candidate in Bradley simply did not exist for Anderson.

90. 103 S. Ct. at 1580 (Rehnquist, J., dissenting).
and his supporters had difficulty in developing an organization.\textsuperscript{91} Prior cases have exacted a more stringent evidentiary standard with respect to the petitioner's required showing of harm or burden.\textsuperscript{92} In addition, the Court in \textit{Storer} implied that many of the burdens complained of by political aspirants could be avoided if they merely exercised a degree of foresight.\textsuperscript{93}

Furthermore, the claim that independent political organizations are disadvantaged in comparison to major parties was not adequately supported by the Court. Indeed, under the Ohio law, candidates intending to run in the

\textsuperscript{91} \textit{Id.} (Rehnquist, J., dissenting). Although Anderson complained that the early filing deadline burdened the voting and associational rights of his supporters, five other independent candidates managed to meet Ohio's March 20 deadline. \textit{See id.} at 1571 n.12. The majority, however, held that this did not "negate the burden imposed on the associational rights of independent-minded voters," whose political leanings might not crystallize until after the primary elections. \textit{Id.} Five independent presidential candidates also qualified for a position on Ohio's 1976 general election ballot. Anderson v. Celebrezze, 499 F. Supp. 121, 144 (S.D. Ohio 1980).

Unlike the Court in \textit{Anderson}, the \textit{Storer} Court remanded portions of its case to the district court for additional findings as to whether the signature petition requirements were unduly burdensome. Storer v. Brown, 415 U.S. 724, 738 (1974). In so doing, the lower court was advised to consider the past effect of the statute: "Past experience will be a helpful, if not an unerring guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." \textit{Id.} at 742; \textit{see also} Mandel v. Bradley, 432 U.S. 173, 177-78 (1977) (per curiam) (past experience of independent candidates is good indicator of burdens imposed by early filing deadline); American Party v. White, 415 U.S. 767, 787 (1974) (finding significant the fact that two parties similarly situated to petitioner managed to comply with all qualifying regulations); Jenness v. Fortson, 403 U.S. 431, 439 (1970) (fact that two previous minority candidates satisfied regulatory requirements indicates that the regulation is not unduly burdensome).

\textsuperscript{92} \textit{See}, e.g., Clements v. Fashing, 457 U.S. 957, 963 (1982) (Court should examine "in a realistic light" the impact of ballot-access restrictions on candidates and voters); Bullock v. Carter, 405 U.S. 134, 143 (1972) (same); \textit{cf.} Pullman Co. v. Knott, 235 U.S. 23, 26 (1914) (a law "is not to be upset upon hypothetical and unreal possibilities if it would be good upon the facts as they are"). In contrast, the \textit{Anderson} Court's discussion of the harm imposed by the early filing requirement appears to be based on speculation and conjecture. This is particularly evident when the Court postulates on the statute's possible effect on a late-emerging presidential candidate. \textit{See Anderson}, 103 S. Ct. at 1571. Anderson was hardly a late-emerging candidate; he had been a Republican candidate for nearly 10 months before deciding to run as an independent. \textit{See id.} at 1581 (Rehnquist, J., dissenting).

\textsuperscript{93} Storer v. Brown, 415 U.S. 724, 734 (1974). The \textit{Anderson} Court held that the early filing deadline impinged upon the flexibility of independent candidates and their supporters. 103 S. Ct. at 1570-71. In \textit{Storer}, however, the Court upheld a statute that required a person affiliated with a political party to disaffiliate himself from that party at least a year in advance of the election if he wished to become either a candidate in another party's primary or an independent candidate. 415 U.S. at 734. The Court expressed little concern that this statute required certain candidates to make an early commitment to run for office. \textit{Id.} Requiring a candidate to plan his political campaign and position early was held to further substantial state interests because it "protects the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot." \textit{Id.} at 735. As Justice Rehnquist argued in \textit{Anderson}, the purpose of the Ohio early-filing statute was no different from the goal of the disaffiliation statute upheld in \textit{Storer}; both were designed to prevent "a candidate such as Anderson from seeking a party nomination and then, finding that he is rejected by the party, bolting from the party to form an independent candidacy." 103 S. Ct. at 1583 (Rehnquist, J., dissenting).
Ohio primary and independent candidates shared the same March 20 filing deadline. Nonetheless, the Court held that independents were disadvantaged because "the major political parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms, but the independent's judgment must be based on a history that ends in March." Thus, reasoning that the extra time afforded major parties was crucial, Anderson declared that it was unconstitutional to allow only major parties to take advantage of that time. Yet, the Court seemingly ignored the fact that past cases have recognized a state's ability to distinguish among different political aspirants and have upheld statutes that had greater discriminatory impact and that imposed heavier burdens than the statute contested in Anderson.

Ohio asserted that three interests were served by the early filing deadline: voter education, equal treatment of all candidates, and political stability. The Anderson Court held that none of these interests was sufficient to justify the regulation. The interest in political stability, however, was found by the Court to be the strongest interest asserted by the state and was the one that received most of the Court's attention. Ohio contended that the early

94. 103 S. Ct. at 1575. The code provision pertaining to persons desiring to participate in party primaries reads, in part, "Each person desiring to become a candidate for a party nomination or for election shall, not later than four p.m. of the seventy-fifth day before the day of the primary election, file a declaration of candidacy and petition." Ohio Rev. Code Ann. § 3513.05 (Page 1982). The filing date set by this section is identical to that set by § 3513.257, the code provision challenged by Anderson. See Anderson, 103 S. Ct. at 1566 n.1. Unlike the Anderson Court, the Court in Jenness v. Fortson, 403 U.S. 431 (1970), found the existence of the same filing deadline for major party and independent candidates to demonstrate a lack of discrimination.

95. 103 S. Ct. at 1575. The Court failed, however, to recognize that one of the primary objectives of requiring independent candidates to file their nominating petitions early is to ensure that they demonstrate substantial public support. See Jenness v. Fortson, 403 U.S. 431, 442 (1971). Recognizing this interest, the Jenness Court declared, "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." Id.; see also Storer v. Brown, 415 U.S. 724, 733 (1974) (because independent candidates need not participate in a primary, they may be required to demonstrate substantial public support in another way). One of the possible reasons that Ohio grants major party candidates a ballot position in the general election is that the parties easily can demonstrate large public support. Cf. Anderson v. Celebrezze, 664 F.2d 554, 566 (6th Cir. 1981) (party appeal is large factor in partisan candidate's success, but independent candidate depends solely on personal appeal).

96. See, e.g., American Party v. White, 415 U.S. 767, 788 (1974) (independent candidates had only a 30-day period within which to gather signatures necessary to qualify for ballot position); Storer v. Brown, 415 U.S. 724, 726-27 (1974) (independent candidate must not have been affiliated with any major party for at least one year prior to primary election and also had only a 24-day period within which to gather signatures necessary to qualify for ballot position).

97. 103 S. Ct. at 1573.

98. Id. at 1579.

99. Id. at 1576-79. The Court summarily rejected Ohio's asserted interests in voter education and equal treatment. First, the Court reasoned that, given the scope and speed of modern
filing deadline furthered political stability by restricting intraparty feuding and by preventing parties from "splintering." Other cases have recognized the validity of regulations with similar purposes and designs. Nevertheless, the Court held that the statute challenged in *Anderson* was different in both purpose and effect than other statutes previously analyzed and, as drafted, did not serve the state's interest in political stability.

One of the major grounds used by the Court to distinguish *Anderson* from persuasive precedent that seemed to call for an opposite conclusion, was the fact that the law regulated presidential elections rather than statewide or local elections. Because the early filing deadline would have an impact on the national election and would affect events beyond Ohio's borders, the Court held that a stronger showing of regulatory interest and necessity was required to justify Ohio's statute than would have been required in cases involving merely local elections. Thus, the same state interests found sufficient to uphold a disaffiliation requirement for congressional candidates in *Storer* were held insufficient in *Anderson* to overcome the "pervasive national interest in the selection of candidates for national office." The authority cited by the Court does not support this holding. In fact, a review of prior decisions indicates that the type of office sought is not a factor to be considered. The *Anderson* Court also may have improperly

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100. Id. at 1574-75. Second, the Court concluded that Ohio's interest in equal treatment was undermined by the fact that a major party candidate could appear on the ballot even if he decided to run after the March deadline. Id. at 1575; see also supra notes 94-96 and accompanying text.
101. 103 S. Ct. at 1576. In addition to the regulation challenged in *Anderson*, Ohio has a "sore loser" statute, which denies a ballot position in a general election to any person who participated in the preceding primary election. See Ohio Rev. Code Ann. § 3513.04 (Page Supp. 1982).
102. 103 S. Ct. at 1576-78.
103. Id. at 1573.
104. The district court noted that "Ohio's deadline, by denying Anderson a place on the ballot, removes the sixth largest slate of electors from Anderson's reach and thereby reduces the total pool of electoral votes for which he may compete nationwide by 25 electors." Anderson v. Celebrezze, 499 F. Supp. 121, 126 (S.D. Ohio 1980).
105. 103 S. Ct. at 1573, 1578.
107. 103 S. Ct. at 1573 (quoting Cousins v. Wigoda, 419 U.S. 477 (1975)).
108. The Court supports its view by citing Cousins v. Wigoda, 419 U.S. 477 (1975). In that case, the Court invalidated an Illinois statute that gave the state some control in the selection of delegates to the national Democratic convention. Yet, despite the *Anderson* Court's implications, *Cousins* did not require a state to show a more compelling interest in the context of a nationwide election than would be demanded in the context of a state or local election. Rather, the *Cousins* Court merely held that the state's interest in the selection of delegates to national party conventions simply was not compelling. Id. at 490. Indeed, an earlier Court decision
identified the state’s interest in a national election. As the dissent noted, the 1980 Ohio general election actually was for the appointment of electoral college representatives, who in turn would cast Ohio’s electoral votes for a President. Justice Rehnquist argued that “[w]hile the Presidential electors may serve a short term and may speak only one time on behalf of the voters they represent, their role in casting Ohio’s electoral votes . . . may be second to none in importance.”

**IMPACT**

The impact of *Anderson* is threefold. First, the decision might give the federal courts an enlarged regulatory role over state election codes. Second, *Anderson* could increase direct access to the ballot. Finally, the decision exacerbates the lack of uniformity in the standards of judicial review that are employed in ballot-access cases; hence, no guidelines exist for states to follow.

An enlarged regulatory role for the federal courts may flow from the *Anderson* Court’s adoption of a due process analysis and its alteration of the burden of proof imposed upon each litigant. Prior cases used an equal protection analysis to focus primarily on the discriminatory impact of election regulations on minority parties and independent candidates. *Anderson* creates the possibility that a petitioner may be able to obtain relief under a due process analysis even if he makes no claim that the challenged statute impeded his access to the ballot. In addition, by altering the burdens

indicates that the purpose of the election should not be a relevant consideration. See Hadley v. Junior College Dist., 397 U.S. 50, 54-55 (1970). According to the *Hadley* Court:

> When a court is asked to decide whether a state is required by the constitution to give each qualified voter the same power in an election open to all, there is no discernable, valid reason why constitutional distinctions should be made on the basis of the purpose of the election. . . . The harm from unequal treatment of voters is the same in any election, regardless of the officials selected.

*Id.*

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109. 103 S. Ct. at 1583.
110. *Id.* at 1583-84.
111. *See supra* notes 73-77 and accompanying text.
112. *See supra* notes 103-10 and accompanying text.
114. This is probably why Anderson premised his case on due process grounds. Given that five other independent candidates complied with the statute and obtained ballot position, it would have been difficult for Anderson to prove disparate treatment. *See supra* note 91 and accompanying text.

Indeed, it is doubtful whether Anderson could have satisfied the equal protection standard used in American Party v. White, 415 U.S. 767 (1974). In that case, the Court stated that when a ballot-access restriction is alleged to violate equal protection, those challenging the regulation must “demonstrate in the first instance a discrimination against them of substance.” *Id.* at 781.
of proof, the Anderson decision makes potential challenges to state election regulations less difficult. The Anderson Court accepted, and thus impliedly validated, a lesser showing of actual harm to a petitioner than prior cases have tolerated.\footnote{115. Prior cases have exacted a more rigorous standard of proof from persons challenging election regulations. See supra note 92. Moreover, the fact that other persons similarly situated to the challenger managed to comply with the regulations has essentially been treated as prima facie evidence against a petitioner such as Anderson. See supra note 91.} In addition, the Court imposed a two-tier evidentiary standard imposed on states, one for statewide and local elections and another for national elections.\footnote{116. See supra notes 86-92 and accompanying text. The Anderson Court further weakened the states' authority by its cursory treatment of their power, pursuant to article II, to appoint electors. See U.S. Const. art. II, § 1, cl. 2. The Court disposed of this provision in a brief footnote. See Anderson, 103 S. Ct. at 1573 n.18. In Storer v. Brown, 415 U.S. 724, 729-30 (1974), on the other hand, the Court emphasized and deferred to the states' constitutional power to regulate elections.} The effect of these developments may be to facilitate successful challenges to ballot-access regulations in federal court.

Anderson may also increase direct access to the ballot. The Anderson Court restricted a legislature's alternatives by discrediting the use of write-in votes as a substitute for an actual ballot position.\footnote{117. Prior to Anderson, an opportunity for write-in votes had been viewed as a valid substitute for placing the candidate's name on the printed ballot. Moreover, the increased burden of proof that Anderson imposes on states to justify ballot access regulations makes it more difficult for a state to maintain the integrity of its ballots. Correspondingly, by decreasing the burden of proof required of candidates, Anderson increases their chances of success in challenging ballot-access regulations.} Prior to Anderson, an opportunity for write-in votes had been viewed as a valid substitute for placing the candidate's name on the printed ballot.\footnote{118. See supra notes 86-92 and accompanying text. The Anderson Court further weakened the states' authority by its cursory treatment of their power, pursuant to article II, to appoint electors. See U.S. Const. art. II, § 1, cl. 2. The Court disposed of this provision in a brief footnote. See Anderson, 103 S. Ct. at 1573 n.18. In Storer v. Brown, 415 U.S. 724, 729-30 (1974), on the other hand, the Court emphasized and deferred to the states' constitutional power to regulate elections.} Moreover, the increased burden of proof that Anderson imposes on states to justify ballot access regulations makes it more difficult for a state to maintain the integrity of its ballots.\footnote{119. See supra notes 103-10 & 112-15 and accompanying text.} Correspondingly, by decreasing the burden of proof required of candidates, Anderson increases their chances of success in challenging ballot-access regulations.

Finally, because the Court failed to articulate the standards it used and to distinguish between due process and equal protection analyses, Anderson seems certain to perpetuate the haphazard and erratic decision making of courts and legislatures.\footnote{120. See supra notes 117-21 and accompanying text.} This failure is illustrated by the fact that there have been no less than five federal court decisions invalidating portions of Illinois' nominating petition requirements.\footnote{121. See supra notes 75-77 and accompanying text.} More confounding, however,
is the Court's apparent unwillingness to overrule prior ballot-access cases and its preference for distinguishing them beyond sense and recognition.¹²³

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¹²³ Although Storer v. Brown, 415 U.S. 724 (1974), and American Party v. White, 415 U.S. 767 (1974), were not explicitly overruled, their persuasiveness is likely to be undermined by *Anderson*. 