Better Late than Never: The John Anderson Cases and the Constitutionality of Filing Deadlines

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NOTES

BETTER LATE THAN NEVER: THE JOHN ANDERSON CASES AND THE CONSTITUTIONALITY OF FILING DEADLINES

Perhaps the greatest strength underlying our nation’s constitutional form of democracy has been the ability of citizens to exercise their voting rights freely. Yet, even though the constitution generally prohibits laws which directly interfere with or usurp the right to vote, this right may be effectively limited by other laws in a more indirect fashion. For example, if a voter’s electoral choice is limited to only two candidates because election laws have denied ballot access to other legitimate non-frivolous candidates, the voter’s ability and right to express his political preference may be severely undermined. Typically, the Democrats and the Republicans always gain a ballot position in major elections and comprise the overwhelming

1. See Wesberry v. Sanders, 376 U.S. 1, 17 (1964): “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.”

2. See, e.g., Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 622 (1969) (invalidating on the basis of the equal protection clause a New York statute excluding certain school district residents, otherwise eligible to vote in a school district election, because they neither "(1) own (or lease) taxable real property within the district [n]or (2) are parents (or have custody of) children enrolled in the local public schools."); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966) (invalidating on equal protection grounds a Virginia poll tax conditioning the right to vote on the payment of a fee or tax); Carrington v. Rash, 380 U.S. 89, 89 n.1 (1965) (invalidating on equal protection grounds a Texas constitutional provision permitting a member of the armed forces throughout the course of his or her military duty to “vote only in the county in which he or she resided at time of entry into service”).

3. See Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979); Lubin v. Panish, 415 U.S. 709, 716 (1974); Williams v. Rhodes, 393 U.S. 23, 30-31 (1968). These cases illustrate the Supreme Court invalidating, on first amendment and fourteenth amendment grounds, various election laws that effectively precluded the plaintiff-candidates from gaining ballot access and thereby undercut their supporters’ rights to vote for them as an expression of their political preference.

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majority of successfully elected candidates. However, insofar as restrictive state laws may bar ballot access to legitimate third party or independent candidates, statutory mechanisms have been created that not only tend to favor a two party system, but that may insure and perpetuate a "complete monopoly" by these two particular parties. The process by which state election laws tend to "freeze the political status quo" conflicts with one of the most basic constitutional principles underlying the first amendment, which implies that the electoral process should be a "marketplace" for the free competition of ideas.

Since the landmark case of Williams v. Rhodes, it has been generally considered beyond dispute that ballot access restrictions burden "two distinct and fundamental" first amendment rights; namely, "the right of individuals to associate for advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Furthermore, where state law requires candidates to comply with varying ballot

5. See, e.g., Williams v. Rhodes, 393 U.S. 23 (1968); Anderson v. Celebrezze, 499 F. Supp. 121 (S.D. Ohio 1980), rev'd, 664 F.2d 554 (6th Cir. 1981), cert. granted, 102 S. Ct. 2035 (1982); MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977) (invalidating on first amendment and fourteenth amendment grounds a statute requiring third parties to comply with filing deadlines ninety days prior to the state primary election and nine months prior to the general election).

At least one Founding Father expressed dismay over the possibility that a two-party system would emerge: "There is nothing which I dread so much as a division of the republic into two great parties, each arranged under its leader, and concerting measures in opposition to each other. This, in my humble apprehension, is to be dreaded as the greatest political evil under our Constitution." 9 Works of John Adams 511 (1854) (letter from John Adams to Jonathan Jackson, Oct. 2, 1780), quoted in McCarthy, Unconstitutional Support of the Two Party System, 21 Loy. L. Rev. 663, 663 (1975).
7. Arutunoff v. Oklahoma State Election Bd., 687 F.2d 1375, 1378 (10th Cir. 1982).
8. See Williams v. Rhodes, 393 U.S. at 32. See also Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting):

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.
access requirements depending on their party affiliations, the equal protection clause of the fourteenth amendment is also at issue. Although there is significant and recent Supreme Court precedent concerning constitutional challenges to ballot access restrictions, the standard of review suggested by these cases is far from clear.

This note analyzes the conflicting strains within the Supreme Court's constitutional analysis and proposes a new standard of review for ballot access cases based on a synthesis of implicit and explicit "tests" employed by the Court. This note also examines how, why, and when a particular type of state ballot access requirement—the filing deadline for a candidate's nominating petition—may violate the constitutional rights of candidates and voters protected by the first and fourteenth amendments. This inquiry into the constitutional validity of filing deadline statutes serves as a vehicle to apply the proposed analytical framework to a specific context within the larger sphere of ballot access law.

Filing deadline statutes have been litigated in various lower court cases involving both national and state elections. Most re-


16. See infra notes 78-143 and accompanying text.


cently, they were challenged on constitutional grounds in several cases arising out of John B. Anderson's 1980 presidential campaign.\textsuperscript{19} Anderson,\textsuperscript{20} who was originally a candidate in several states' Republican presidential primaries,\textsuperscript{21} declared his independent candidacy on April 24, 1980\textsuperscript{22} and sought access to the November ballot via the states' petition procedures.\textsuperscript{23} At that time, however, Anderson was denied access to the ballot as an independent in six states\textsuperscript{24} because the petition filing deadlines for such candidates had already passed.\textsuperscript{25} As a result, Anderson brought declaratory and injunctive


21. "Prior to April 24, 1980, plaintiff Anderson's name appeared or was scheduled to appear on the ballots of 27 of the 36 states holding Republican primary elections. Nine of these primaries were held prior to April 24. Plaintiff [Anderson] did not win any of these nine primaries." Anderson v. Celebrezze, 499 F. Supp. at 143.


24. Anderson was denied ballot access in Maryland, New Mexico, Maine, Kentucky, Ohio, and North Carolina. See cases cited supra note 19.

suits in these states, seeking to have the respective state statutes ruled unconstitutional and to have his name placed on the November presidential ballot. He was successful in all six federal district courts. Furthermore, two of the three circuit courts that have addressed the issue of the constitutionality of the challenged statutes, have affirmed the lower court holdings. Although the actual state statutes and filing dates involved in the Anderson cases differed slightly, their net effect was the same. An independent presidential candidate had to declare his campaign officially and comply with all necessary regulations in these states four to five months earlier than either the Democratic or Republican candidate.


28. Present and subsequent discussion of the Anderson cases will refer only to the four cases resolved on constitutional grounds, see supra note 19, because the infringement of first amendment and fourteenth amendment rights by such statutes is the focus of the present inquiry.


30. See Anderson v. Morris, 500 F. Supp. 1095, 1098 (D. Md. 1980) (challenging the

31. The unsettled issues in the Anderson cases are exemplified by the disagreement between the circuit courts. See supra note 27 and accompanying text.


Despite Mandel's caution to lower courts not to treat their summary decisions with great precedential significance, the Sixth Circuit in Anderson v. Celebrezze, concluded, in dicta, that Sweetenham and Pratt disposed of Anderson's first amendment challenge to Ohio's filing deadline. Anderson v. Celebrezze, 664 F.2d at 560. However, since this was a "slender reed," id., to rest their decision upon, the Sixth Circuit reversed the district court's judgment on other grounds. See id. at 567. Thus, in light of Mandel and the indecisive weight the Sixth Circuit accorded this issue, further examination of this argument is unwarranted.
leading ballot access decisions; part III applies the proposed analytical framework to the central issues in the Anderson cases.

I. FIRST AMENDMENT RIGHTS

Most states have similar legal processes by which third party or independent candidates gain ballot access. Typically, states require a candidate to file, by a particular date preceding the general election, a petition of candidacy with a specific number or percentage of qualified voters' signatures. Despite the basic similarities in state filing statutes, there are wide variations in the quantitative and temporal requirements imposed upon the individuals seeking to gain ballot access through the petition process. This lack of uniformity among the states' petition requirements raises the following question: When is a filing deadline for a nominating petition impermissibly early? Although the controversy may be reduced to a "slippery slope" argument of when to draw the line, the inquiry is complicated by consideration of the constitutional and practical impact of the filing deadline statutes upon excluded candidates and their supporters. For example, assume that state law requires an independent or third party candidate to file his nominating petition by April 1, yet allows a major party candidate to file his declaration of candidacy for the November ballot sometime in September, following his party's primary. The pertinent judicial inquiry must focus not only on whether April 1 is an unduly early deadline, but also on whether the deadline infringes the rights of the excluded candidate's supporters by denying access to their candidate, and whether different types of candidates deserve different temporal deadlines.

The Supreme Court has acknowledged that ballot access restrictions burden two fundamental rights: the right of association and the right to vote. The fundamental nature of these rights plays a critical role in the judicial analysis of ballot access cases and in the de-

35. See infra notes 39-55, 206-21 and accompanying text.
37. See infra notes 39-55 and accompanying text.
38. See infra notes 222-41 and accompanying text.
39. See supra notes 10-11 and accompanying text.
termination of a standard of scrutiny that the courts will apply.  This is especially true since the right of candidacy has never been recognized by a majority of the Supreme Court as a "fundamental right" and thus, by itself, is insufficient to invoke "strict" constitutional scrutiny of ballot access restrictions.

The Supreme Court in *Illinois State Board of Elections v. Socialist Workers Party* has aptly described how ballot access restrictions can burden fundamental rights:

The freedom to associate as a political party, a right we have recognized as fundamental, has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because, absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both." By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure.

If an unreasonably early filing deadline prevents an otherwise legitimate candidate from appearing on the ballot, then the candidate's and his supporters' freedom to associate as a political party or entity is seriously burdened. Although it is true that independent or third party candidates could still express their political viewpoints and their supporters could associate together in some general fashion, the denial of ballot access "diminish[es] the effectiveness of their exercise of the[se] right[s]." To the extent that these rights of

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40. See infra notes 65-69 and accompanying text.
42. *Strict scrutiny is only applicable in cases involving fundamental rights or suspect classifications. See infra notes 65-69 and accompanying text. For an extensive discussion of the constitutional standards of review applicable in ballot access cases, see infra notes 78-143 and accompanying text.*
44. *Id. at 184 (citations omitted).*
expression and association are burdened, fundamental rights protected by the first amendment are affected.47

Similarly, if an independent candidate is precluded from ballot access solely because of a filing deadline, then his supporters' rights to cast their votes effectively for the candidate of their choice are also diminished.48 Thus, in a basic and inescapable way, the fundamental rights of the voters to cast their votes effectively and to associate freely for the advancement of their political beliefs are inextricably intertwined with an individual's right to candidacy and, hence, ballot access.49 This idea has been said to be "axiomatic"50 if the right to vote is to retain its fundamental significance in our democratic structure of government. "[U]nless, first, a voter can find a candidate who expresses the policies the voter desires and second, that the candidate has equal access to the ballot with all other candidates,"51 voting and associational rights become practically impotent as a peaceful and effective means of political expression.

The right to vote in presidential elections may also be affected by filing deadlines in another manner. When the filing deadline initially bars a presidential candidate from a place on the November

23, 31 (1968); Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979). The value of a political campaign was discussed in Illinois Board: "[A]n election campaign is a means of disseminating ideas as well as attaining political office. Overbroad restrictions on ballot access jeopardize this form of expression." Id. at 186 (citations omitted).


   The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.


[T]he rights of voters and the rights of candidates do not lend themselves to neat separation: laws that affect candidates always have at least some theoretical, correlative effect on voters. Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review.

Id. at 143 (citation omitted) (emphasis added). For a further discussion of Bullock, see infra notes 106-14 and accompanying text.

50. Sims, supra note 49, at 166.

51. Id.
ballot (as it did in several states in the Anderson cases), not only are the voting rights of the excluded candidate’s supporters in those particular states jeopardized, but the effectiveness of the voting rights of the excluded candidate’s supporters nationwide are also endangered. This is due to the fact that the excluded candidate’s opportunity to win a majority of electoral votes is necessarily reduced by the value of the electoral votes in those states in which he is denied ballot access. Thus, preclusion from a state ballot arguably dilutes the effectiveness of the votes cast for that candidate in other states, to the extent that his chances for overall electoral success are diminished.

It is well settled that the freedom of political association is protected from federal encroachment directly by the first amendment and from state infringement indirectly by the first amendment through the due process clause of the fourteenth amendment. As a result, it has been argued that analysis of cases involving freedom of association would be less “convoluted” if the court centered its analysis on the first amendment itself, without rephrasing the right as a “fundamental interest” under the rubric of a fourteenth amendment equal protection standard. The underlying rationale for the applicability of equal protection analysis is that the statutes involved in ballot access cases, particularly the filing deadline statutes in the Anderson cases, tend to involve differential treatment of candidates based on their party affiliation (or lack thereof). Since equal protection analysis is indeed the approach which the Supreme Court and lower courts typically adopt when the right of association is implicated in a ballot access case, it is appropriate to examine the four-

54. See id.
55. See id.
teenth amendment equal protection clause before discussing further the substantive issues involved in filing deadline statutes.

II. FOURTEENTH AMENDMENT ANALYSIS

Part of the legacy of the Warren Court was the creation of a two-tier mode of analysis under the equal protection clause. The first level of this two-tier approach employs the traditional "rational relation" test which, when applied by the Court, will uphold a state statute if it is rationally related to a legitimate state interest. Under this minimum scrutiny test, the courts often posit "any conceivable state interest to justify the legislation" and support the presumption that the state legislature "acted fairly and equitably." As a result, rarely is a state statute invalidated under this lower level test which has been criticized as "minimal scrutiny in theory and virtually none in fact."

The upper-tier or strict scrutiny test, requires the state to prove that the statute furthers a compelling state interest and that there is no less restrictive means available to achieve the legislative aims. This strict scrutiny analysis has been generally reserved for state statutes involving either suspect classifications, i.e., race, alienage or fundamental interests, i.e., the right to vote, the right to travel. Since few statutes survive the application of this strict scrutiny test

60. See, e.g., McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809-10 (1969) (failure of Illinois legislature to make voting easier for judicially incapacitated pre-trial detainee who is not absolutely prohibited from exercising franchise, does not offend the Constitution).
61. See Gunther, supra note 59, at 8.
63. Id.
64. Gunther, supra note 59, at 8.
67. See id. §§ 16-8, 16-10.
68. See Gunther, supra note 59, at 8. But see Korematsu v. United States, 323 U.S. 214 (1944) (upholding the compelling interest of the United States government to exclude all Japanese Americans, a suspect class, from the West Coast during World War II); American Party v. White, 415 U.S. 767 (1974) (upholding the state's compelling interest in requiring certain political parties to nominate candidates through various conventions and to evidence 1% popular support); Storer v. Brown, 415 U.S. 724 (1974) (upholding the state's compelling interest in the stability of its political system as a justification for a challenged disaffiliation provision). Though Storer and American Party purported to apply strict scrutiny, they were, in fact, applying a "much diluted" upper-tier approach. Rada, Cardwell & Friedman, Access to the Ballot, 13 URB. LAW. 793, 804 (1981). See infra notes 115-26 and accompanying text.
it has been criticized as being strict in "theory and fatal in fact."69 Thus, the rigid application of either of these tests tends to make the choice of the proper level of scrutiny outcome determinative as to whether the statute will be upheld or invalidated.70 To the extent that this is true, discussion of the proper level of scrutiny "may do more to obfuscate than to clarify the inquiry,"71 and, consequently is of little value in substantive analysis of the issues at hand.72

Due to the inflexibility of the extreme poles of the two-tier approach, alternative intermediary standards of review have been suggested, both by commentators73 and the Justices themselves.74 Although these intermediate tests have been applied on occasion in various equal protection areas,75 the Supreme Court has generally

69. Gunther, supra note 59, at 8. See also Dunn v. Blumstein, 405 U.S. 330, 363-64 (1972) (Burger, C.J., dissenting): "[N]o state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection."

    The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.

Marshall went on to say: "[I]t seems to me inescapably clear that this Court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification." Id. at 109 (Marshall, J., dissenting). See also Clements v. Fashing, 102 S. Ct. 2836, 2849 (1982) (Stevens, J., concurring) (proposing to evaluate whether the state discriminatory classification offends any federal interest in equality); Weber v. Aetna Casualty & Sur. Co., 406 U.S. 164, 173 (1972) (Powell, J.) (proposing to balance the legitimate state interest against the fundamental personal right endangered); Dandridge v. Williams, 397 U.S. 471, 520-21 (1970) (Marshall, J., dissenting) (proposing a multi-factor balancing approach).
continued to apply the language of its two-tier method of analysis in the ballot access area.\textsuperscript{77}

Despite the high Court's reluctance to abandon language indicative of the two-tier mode of analysis,\textsuperscript{78} it has, in fact, created a third level of analysis in its major ballot access decisions.\textsuperscript{79} Although the Court has never clearly distinguished this third standard of review as separate from its polarized form of analysis,\textsuperscript{80} the overall reasoning process of these opinions reveal that the Court is often not rigidly applying the standard that it enunciates.\textsuperscript{81} This third standard utilized by the Supreme Court in its recent ballot access decisions is an intermediate standard, which analytically lies somewhere between

\textsuperscript{76} Although the Court may have invoked the language of the two-tier standard, it may have done so without really applying either of its tests. See infra notes 78-143 and accompanying text.


\textsuperscript{79} See infra notes 84-143 and accompanying text.

\textsuperscript{80} See Joseph v. City of Birmingham, 510 F. Supp. 1319, 1333-35 (E.D. Mich. 1981). The Joseph court discusses and employs what it sees as an intermediate standard of review for ballot access decisions, emerging from Lubin v. Panish, 415 U.S. 709 (1974), and Bullock v. Carter, 405 U.S. 134 (1972). Although the Joseph court's critique of the problems plaguing the two-tier standard in the ballot access area is commendable, by advocating the standard of Bullock and Lubin—the law must be "found reasonably necessary to the accomplishment of the legitimate state objectives in order to pass constitutional muster," Bullock, 405 U.S. at 144,—the Joseph court only reaches a symptom of the problem and not its cause. By simply diluting the strict scrutiny standard, Joseph alleviates some of the outcome determinative tendencies of the two-tier standard, but replaces it with an approach which still must apply an implicit balancing test to adequately weigh the opposing interests. See infra notes 124-30 and accompanying text.

\textsuperscript{81} See infra notes 84-143 and accompanying text. For an argument that the Supreme Court implemented a five-factor balancing test in Williams, Jenness, Storer and American Party, see also Note, supra note 34, at 979-83.

The discussion and analysis in this article overlap that of the Notewriter, supra, to the extent that both suggest that the Court employed an implicit balancing test despite its use of the traditional two-tier terminology; there is, however, significant analytical divergence. Primarily, the Notewriter argues that the Supreme Court's analysis is reducible to a balance of five factors rather than an application of the strict scrutiny test, supra, at 982. In so doing, the Notewriter relegates what is and what should be the central focus of ballot access cases (i.e., weighing the state interest supporting the statute against the burden imposed upon the individuals' constitutional interests) to merely one of five factors. This leaves unclear what relevance this crucial inquiry has had and should have in the Court's overall analysis.
the strict scrutiny and the rational relation test. As this note demonstrates, one of the key features of this third-tier approach is an increased willingness by the Court to balance the opposing state interests with the individual’s constitutional interests, although this balancing is not a traditional component of either pole of the two-tier test.

The conceptual confusion engendered by the divergence between the Court’s language and its analytical process has generated the need to enunciate clearly one uniformly applicable standard. This standard of review should not ignore past decisions but should instead synthesize their implicit balancing tests into one overarching standard which can be implemented in all future ballot access cases. Essentially, the proposed standard should explicitly balance the state interests that justify the statute against the constitutional interests of the candidate and his supporters that are infringed by the statute. Furthermore, this balancing analysis should not merely weigh the importance of these interests qua interests, but should instead encompass a two-fold inquiry: 1) how efficient is the statute in fulfilling its underlying interests? and, 2) how great is the burden imposed by the statute on the constitutional interests of individuals?

Before this proposed standard of review is applied to the Anderson cases, it is helpful to understand its derivation, by examining how the Supreme Court’s constitutional analysis of its ballot access cases has departed from the traditional two-tier test and how the Court has utilized an implicit balancing test.

In Williams v. Rhodes, the first of the major, recent ballot access decisions by the Supreme Court, two political parties challenged a series of Ohio’s election laws which made it “virtually impossible” for third party presidential candidates to qualify for the general ballot. The plaintiffs claimed that the laws violated the equal protection clause by denying them access to the ballot and depriving their supporters of the right to vote for their candidates. Justice Black, writing the opinion for the Court, enunciated the ap-

82. See infra notes 84-143 and accompanying text.
83. See supra notes 60-72 and accompanying text.
84. 393 U.S. 23 (1968).
85. The third parties involved were the Socialist Labor Party and the American Independent Party (organized by George Wallace). Id. at 26.
86. For a description of the burdensome statutes involved and how they interacted, see id. at 36 (Douglas, J., concurring).
87. Id. at 25.
88. Id.
plication of a compelling interest-strict scrutiny analysis and found that the State of Ohio failed to demonstrate any compelling interest that would justify the statutory burdens imposed on the rights to vote and associate.\textsuperscript{88} However, the Court also stated: “In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.”\textsuperscript{90} This implies that the Court was willing to balance the conflicting interests and was not simply applying a strict scrutiny test as an outcome determinative confirmation of their \textit{a priori} decision.\textsuperscript{91} Further evidence of a balancing approach in \textit{Williams} is the Court’s repeated emphasis on examining Ohio laws “in their totality”\textsuperscript{92} and “taken as a whole.”\textsuperscript{93} Although the \textit{Williams} Court’s focus on the entirety of a statutory scheme is not mandated by “pure” two-tier analysis,\textsuperscript{94} this approach seems uniquely appropriate for ballot access cases, since it facilitates the relevant inquiry as to whether the state’s electoral scheme “as a whole” tends to “freeze” the political status quo.\textsuperscript{95}

Chief Justice Warren was concerned that \textit{Williams} left “unresolved what [ballot access] restrictions, if any” a state could constitutionally impose.\textsuperscript{96} However, three years later in \textit{Jenness v. Fortson},\textsuperscript{97} the Court upheld a ballot access restriction\textsuperscript{98} that had been challenged on essentially the same constitutional grounds as in \textit{Williams}.\textsuperscript{99} Although the \textit{Jenness} Court never announced precisely what

\begin{itemize}
\item \textsuperscript{88} \textit{Id.} at 31.
\item \textsuperscript{90} \textit{Id.} at 30.
\item \textsuperscript{91} \textit{See Note, supra note 34, at 982. For comments critical of the outcome determinative nature of “pure” strict scrutiny and the two-tier test in general, see supra notes 69-72 and accompanying text. Probably, it was this type of criticism which stimulated the Supreme Court to dilute its strict scrutiny in ballot access cases such as \textit{Williams} and, particularly, Storer v. Brown, 415 U.S. 724 (1974). See infra notes 115-26 and accompanying text.}
\item \textsuperscript{92} 393 U.S. at 32.
\item \textsuperscript{93} \textit{Id.} at 34.
\item \textsuperscript{94} \textit{See supra} notes 65-67 and accompanying text.
\item \textsuperscript{95} \textit{Jenness v. Fortson}, 403 U.S. 431, 438-39 (1971); \textit{see supra} note 7.
\item \textsuperscript{96} 393 U.S. at 69 (Warren, C.J., dissenting).
\item \textsuperscript{97} 403 U.S. 431 (1971).
\item \textsuperscript{98} The challenged statute required the plaintiff-candidate to file a nominating petition signed by “5% of the number of registered voters at the last general election for the office in question.” \textit{Id.} at 432.
\item \textsuperscript{99} \textit{Id.} at 434. The plaintiffs in \textit{Jenness} claimed that the statute violated the rights of freedom of speech and association guaranteed to the candidate and his supporters, and also that the statute denied the candidate equal protection of the laws under the fourteenth amendment. \textit{Id.}
\end{itemize}
standard of review it was applying, it distinguished Williams and concluded that, in its totality, the Georgia statutory scheme did not unfairly perpetuate the major parties’ political dominance, “but implicitly recognize[d] the potential fluidity of American political life.” This reiteration of Williams’ totality approach may indicate that Jenness similarly employed an implicit balancing of the opposing constitutional and state interests in upholding the statute. In light of the Court’s finding that the challenged statute did not abridge any individual’s rights of free speech, association, or voting, and was justified by an “important state interest,” the Court was apparently weighing these opposing considerations without rigidly applying either of the extreme two-tiers of ordinary equal protection analysis.

In Bullock v. Carter, decided within a year of Jenness, the Supreme Court once again chose to apply the third-tier balancing approach which it had begun to develop in Williams and subsequently modified in Jenness. Bullock involved candidates denied ballot access because they could not pay the filing fees required of primary candidates for various public offices. The Bullock Court began its equal protection analysis with a discussion of the level of

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100. Commentators are in conflict as to what, if any, standard of constitutional review was applied in Jenness. Compare Note, supra note 34, at 981 (“the fact that the court sustained the statute indicates that the test employed was closer to rational relation test than to compelling state interest test”) and Comment, supra note 73, at 1307 (test used was one between strict scrutiny and the rational basis test) with Sims, supra note 49, at 172 (rationality test) and Rada, Cardwell & Friedman, supra note 68, at 804-05 (a hybrid standard employing Williams’ totality of circumstances approach) and Jardine, supra note 62, at 298 (“the opinion provided no test of constitutionality”).

101. 403 U.S. at 438 (distinguishing Williams because of the overall openness of the Georgia system as compared with the harshness of the challenged Ohio restrictions in Williams).

102. Id. at 439.

103. Id. at 438-40.

104. Id. at 442. The important state interest was the requirement of “some preliminary showing of a significant modicum of support” before granting ballot access. Id.

105. The following statement by the Court further supports the theory that Jenness employed a balancing approach: The 5% figure is, to be sure, apparently somewhat higher than the percentage of support required to be shown in many States as a condition for ballot position, but this is balanced by the fact that Georgia has imposed no arbitrary restrictions whatever upon the eligibility of any registered voter to sign as many nominating petitions as he wishes.

Id. at 442. (emphasis added) (footnote omitted).

106. 405 U.S. 134 (1972).

107. Id. at 136-40.
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The Court held that because the statute had a "real and appreciable impact" on the exercise of voting rights by patently excluding candidates "lacking both personal wealth and affluent backers . . . no matter how qualified they might be, and no matter how broad or enthusiastic their popular support," it had to be "closely scrutinized." Although the Court's use of "close scrutiny" sounds like the upper-tier strict scrutiny-compelling interest test, a further examination reveals a significant divergence between the two. Bullock only required the laws to be "found reasonably necessary to the accomplishment of legitimate state objectives" to be upheld. In contrast, the classic formulation of the strict scrutiny test requires that the law must be "necessary to promote a compelling state interest." Ultimately, the Bullock Court invalidated the statute due to the statute's lack of reasonable necessity and precision as well as the absence of alternative means to gain ballot access.

When the Supreme Court decided two more ballot access cases in 1974, it compounded, rather than clarified, the inherent ambiguities in the standard of review established in the earlier ballot access cases. In Storer v. Brown and American Party v. White, the Court purportedly applied strict scrutiny analysis to uphold the challenged statutes. There are several factors in the Storer opinion, however, which indicate that the strict scrutiny test was diluted, and, in fact, more closely resembled the third-tier balancing approach, than the pure upper-tier form of analysis. First, the Storer Court

108. Id. at 142-44.
109. Id. at 144.
110. Id. at 143.
111. Id. at 144.
112. Id. (emphasis added).
114. See 405 U.S. at 146-49.
117. See 415 U.S. at 736; 415 U.S. at 780. See also 415 U.S. at 755-56 (Brennan, J., dissenting).
118. One commentator has argued that Storer and American Party represented the first time the Supreme Court has ever found the state interest to be compelling and, therefore, "the Court may be willing to dilute the strict scrutiny standard in order to uphold state legislation impinging upon ballot-access rights." See Note, supra note 34, at 981 (citing Comment, supra note 73, at 1295 and The Supreme Court, 1973 Term, 88 HARV. L. REV. 41, 95 (1974)). But
states that there is "no litmus-paper test" for separating valid ballot access requirements from those which may be potentially invalid under the equal protection clause.\textsuperscript{119} Second, the Court states in dicta that it is likely that most state election laws would pass constitutional "muster under our cases."\textsuperscript{120} Since this is contrary to the widely accepted notion that it is practically impossible for a statute to be constitutionally upheld under the rigid strict scrutiny test,\textsuperscript{121} the Storer Court, following the equal protection analysis in Williams, Jenness and Bullock, must have envisioned that those cases were not applying the test in its pure form. Third, the Court stressed the fact that the "rule" provided by previous ballot access cases is not outcome determinative in its application since there "is no substitute for the hard judgments that must be made."\textsuperscript{122} Furthermore, Justice White followed these statements by quoting the implicit balancing approach first enunciated in Williams, which considers the "facts and circumstances behind the law," the state interest the statute allegedly protects and the individual interests infringed by the statute.\textsuperscript{123} Fourth, in evaluating the challenged one-year disaffiliation provision,\textsuperscript{124} the Court found that the state had a compelling state interest in the stability of its political system that "outweigh[ed] the interest the candidate and his supporters may have in making a late . . . decision to seek independent ballot status."\textsuperscript{125} What is particularly significant about this evaluation is that the Court essentially concluded its inquiry after balancing the state and individual interests, without making the usually requisite examination demanded by the pure strict scrutiny test as to whether or not there were less drastic means available to serve the compelling state interest.\textsuperscript{126} Al-

\textsuperscript{119} 415 U.S. at 730.
\textsuperscript{120} Id.
\textsuperscript{121} See supra notes 65-69 and accompanying text.
\textsuperscript{122} 415 U.S. at 730.
\textsuperscript{123} Williams v. Rhodes, 393 U.S. 23, 30 (1968); see supra text accompanying notes 90-91.
\textsuperscript{124} This statute prevented an independent candidate from gaining general ballot access if he had been affiliated with any political party for the year immediately preceding the direct primary election. See CAL. ELEC. CODE \$ 6830 (West Supp. 1981). It is important to note that this statute has never been applied to presidential candidates. See infra notes 202-04 and accompanying text.
\textsuperscript{125} 415 U.S. at 736.
\textsuperscript{126} See supra note 65 and accompanying text. As Justice Brennan aptly indicates in his Storer dissent, the majority's use of the analysis employed in Rosario v. Rockefeller, 410
though *Storer* was unique among ballot access cases in explicitly finding a state interest to be compelling and upholding the challenged restrictions, the standard of review employed by the Court is in many ways consistent with the prior ballot access cases which employed a third-tier balancing approach.

*Illinois State Board of Elections v. Socialist Workers Party*,\(^{127}\) decided in 1979, represents the least ambiguous application of the strict scrutiny standard to a ballot access case. The Court invalidated a statute which imposed significantly greater signature requirements in city, town, or county elections than in state elections.\(^{128}\) In so doing, the Court rested its decision on the premise that when such “vital individual rights [of association and voting] are at stake” the precedential significance of *Storer, American Party*, and *Williams* demands the imposition of a compelling interest test.\(^{129}\) Specifically, the Court found that “[t]he signature requirements . . . are plainly not the least restrictive means of protecting the State’s objectives. . . . [The defendant] has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago [than for the State itself].”\(^{130}\) Thus, the Court appears to apply the strict scrutiny test in its unadulterated form.\(^{131}\) It is significant to note, however, that according to the Court’s own citations,\(^{132}\) the standard of review it applied in *Illinois Board* was mandated by the diluted balancing approaches of *Storer* and *Williams*.\(^{133}\) Furthermore, the Court began its equal protection analysis by citing favorably the oft-quoted balancing factors of *Williams*.\(^{134}\) Therefore, it is possible that *Illinois Board’s* standard of review appeared to be that of pure strict scrutiny only because the balancing in favor of the plaintiff was so overwhelming.

Even if a balancing test was not implicitly employed by the ma-
jority in *Illinois Board*, the use of such an approach was recom-
mended explicitly by Justice Blackmun in his *Illinois Board* concur-
ingen opinion.¹³⁵ He joined in the Court's opinion and "its strict-
scrutiny approach for election cases,"¹³⁶ but criticized the Court's
use of such ambiguous terms as "compelling state interest" and "less
drastic means."¹³⁷ Justice Blackmun reasoned that if the strict scrui-
tiny standard is to be a constitutional test at all, and not just a "sig-
nal of the result the Court has chosen to reach,"¹³⁸ then it must in-
herently involve a "balancing process."¹³⁹

The selection and application of the proper equal protection
standard mandated by the ballot access cases has not only perplexed
academicians and commentators but has created widely divergent
views among the Justices themselves. The confusion produced by
these linguistic and conceptual ambiguities¹⁴⁰ has evinced the need
for one clear standard to be applicable in all ballot access cases. This
standard of review, embracing the implicit balancing tests of the
Court's past decisions, should weigh the state interests against the
constitutional interests of the candidates and voters who are affected
by the statute. Such a balancing test should not merely examine the
opposing interests in the abstract, but must consider both the practi-
cal extent of the burden imposed upon the constitutional interests of
the candidate and his supporters as well as the actual efficiency of
the statute in fulfilling its underlying purpose. This type of analytical
approach would not function as an outcome determinative test, sig-
nalling "the result the Court has chosen to reach,"¹⁴¹ but would re-
quire the courts to explicate the rationale of their decision. This is
true because the courts would no longer be able to engage in the
conclusory analysis facilitated by the traditional two-tier test with its
vague phrases such as "compelling state interest," "less drastic
means," or "rational relation."¹⁴² The proposed balancing standard
will not only foster clarity of analysis and facilitate the lower courts' appli-
cation of election law precedent,¹⁴³ but will help enable a court,
by weighing the important and competing interests, to reach the judgment demanded by justice.

III. APPLICATION OF THE PROPOSED CONSTITUTIONAL STANDARD TO FILING DEADLINE CASES

Having reached a conclusion as to the proper analytical framework in which to examine ballot access restrictions, this present inquiry must now determine what specific interests are, in fact, affected by the filing deadline statutes. Once these various concerns are identified, the importance of the state interests and the statute's effectiveness in fulfilling these interests may be balanced against the nature of the burden imposed by the statute upon the candidates and voters rights.

A. State Interests

There are four possible interests that have been asserted by states in support of their challenged filing deadline statutes: (1) facilitating administrative efficiency, (2) promoting voter awareness, (3) preventing voter confusion, and (4) maintaining political stability.

1. Administrative Efficiency.—From an administrative standpoint, one obvious reason to require a filing deadline at all, is to allow adequate time for the physical preparation of the ballot.144 Additionally, where candidates are seeking to qualify for the ballot via the petition process, the state needs time to investigate and verify the authenticity of the signatures in order to insure compliance with the various quantitative and qualitative requirements.145 Although the importance of such state interests is evident, the logic of an argument that postulates administrative purposes as support for a filing deadline statute becomes greatly attenuated as the deadline date falls further away from the actual time period needed to perform these tasks adequately. In fact, such asserted state interests rarely

have been considered sufficient justification in their own right for upholding filing deadlines that occurred significantly in advance of the time needed for physical ballot preparation.\textsuperscript{146} Typically, in cases where there was an early filing deadline, the state either failed to present evidence probative of the administrative rationale\textsuperscript{147} or did not even attempt such a justification due to the improbability of its success.\textsuperscript{148} Thus, in most cases challenging filing deadline statutes, unless the date is relatively near the November election,\textsuperscript{149} the state interest in administrative efficiency will carry little, if any, persuasive impact.

2. \textit{Voter Awareness}.—Another interest which states have invoked in defense of early filing deadlines is that of voter awareness. This argument is premised upon the belief that the earlier the voters receive information about the electoral field, the better the opportunity they will have for careful selection and evaluation of the respective candidates.\textsuperscript{149} Although this is certainly an important concern, it is arguable, in light of modern forms of communication and transportation, as well as the extensive media coverage of political campaigns, that voter awareness does not justify an unduly early filing deadline.\textsuperscript{150} Even assuming arguendo, that contemporary technology

\begin{itemize}
\item \textsuperscript{146} See, e.g., Anderson v. Morris, 500 F. Supp. 1095, 1100 (D. Md. 1980), \textit{aff'd}, 636 F.2d 55 (4th Cir. 1980); Salera v. Tucker, 399 F. Supp. 1258, 1267 (E.D. Pa. 1975), \textit{aff'd mem.}, 424 U.S. 959 (1976). \textit{But see Ashworth v. Fortson, 424 F. Supp. 1178, 1182 (N.D. Ga. 1976)}, which upheld a June 9 filing deadline because of, inter alia, the administrative needs of verifying and processing the petitions. \textit{Id}. at 1182. However, the \textit{Ashworth} court stated in dicta that "some improvement may be had in the overall scheme by moving the filing date for independent candidates and minor political organizations to a time closer to the general election." \textit{Id}. at 1183.
\item \textsuperscript{147} See Salera v. Tucker, 399 F. Supp. 1258, 1267 (E.D. Pa. 1975), \textit{aff'd mem.}, 424 U.S. 959 (1976). The state could not prove its administrative justification in \textit{Salera} because the evidence revealed that actual ballot preparation did not begin until months after the filing deadline had occurred.
\item \textsuperscript{149} Aside from \textit{Ashworth v. Fortson, 424 F. Supp. 1178 (N.D. Ga. 1975)}, which is anomalous, it is not clear what date is sufficiently close to the November election to sustain the state's administrative interest. For a case which struck down an August 12 filing date and found that any administrative burden in placing a presidential candidate on the ballot as late as September 24 was "far outweighed by the loss of plaintiff's rights," see McCarthy v. Noel, 420 F. Supp. 799, 805 (D.R.I. 1976).
\item \textsuperscript{151} Although this argument falls short of completely refuting the state justification, it does raise a significant question concerning the "efficiency" of a filing statute in achieving this
has not greatly facilitated achievement of this state interest.\textsuperscript{182} There is still a valid criticism of this state justification. Namely, if the filing deadline requires only the independent and third party candidates to declare their official candidacies by the required date, the deadline will only marginally increase voters' knowledge, since voters may still be unaware of the identities of the major party candidates in the election.\textsuperscript{183} Assuming that a filing deadline statute requires only independents to file early, the different deadlines may be more justifiable as a means of providing information to the voters, although it would still be subject to the preceding criticism. Such an argument is premised on the belief that voters have some inherent knowledge about the partisan candidate's positions from his party label, while their knowledge of the independent is limited to that which derives from him solely as an individual.\textsuperscript{184} Thus, the state interest in promoting voter awareness may be furthered by providing more time to inform the electorate concerning the independent candidate and his stance on the issues.\textsuperscript{185}

One state has argued that its interest in voter awareness extends beyond fostering intelligent voting to assisting voters in "mak[ing] informed choices about where to allocate their [financial or volunteer] support."\textsuperscript{1286} However, this justification of filing deadlines similarly is subject to a critique based upon the effectiveness of a filing statute that only requires the minor candidates to register officially for the ballot at an early date. Furthermore, despite one court's approval of such a rationale,\textsuperscript{187} it is questionable whether a state should have an interest in what is tantamount to procuring financial


155. See id.

156. Id. at 564.

157. See id.
and volunteer support for candidates. Whether a candidate wishes to obtain volunteer support at an early date is an interest of the individual, not of a state.

3. Voter Confusion.—The Supreme Court has recognized that the state has an “important,”158 “legitimate,”159 or “compelling”160 interest in regulating the number of candidates on the ballot so as to avoid “confusion, deception, and even frustration of the democratic process at the general election.”161 This state interest is grounded upon the concern that a “plethora of political parties”162 and candidates on the ballot would not only bewilder the voters, but would “make increasingly difficult the election of candidates with majority support from the electorate without resort to run-off elections and the attendant expense to the state that they would create.”163 As a result, states have devised various means of evaluating candidates’ seriousness in order to weed out frivolous candidates who unnecessarily clog the ballot. Although “[t]he means of testing the seriousness of a given candidacy may be open to debate,”164 the means used to achieve this end (as with other state interests) must not “unfairly or unnecessarily burden either a minority party’s or an individual candidate’s equally important interest in the continued availability of political opportunity.”165

Before examining how filing deadline statutes may further this state interest, it is helpful to understand how the courts have analyzed this interest in the context of quantitative signature restrictions on nominating petitions. The Supreme Court has said that a state

163. Id. See also supra notes 158-60. But see Williams v. Rhodes, 393 U.S. 23, 33 (1968) (the danger of voter confusion created by the “existence of multitudinous fragmentary groups [is] no more than ‘theoretically imaginable’ ”).
164. Lubin v. Panish, 415 U.S. 709, 715 (1974). States have used at least three methods: “initial showing of minimum support such as voter nominating petitions; the payment of filing fees; or compliance with form deadlines.” Jardine, supra note 62, at 304.
165. Lubin v. Panish, 415 U.S. 709, 716 (1974). Compare McCarthy v. Kirkpatrick, 420 F. Supp. 366, 373 (W.D. Mo. 1976) (“a balance must be struck so that frivolous candidates are restricted while serious candidates are provided an opportunity to secure a place on the ballot”) with Arutunoff v. Oklahoma State Bd. of Election, 687 F.2d 1375, 1378-79 (10th Cir. 1982) (reasonable level of support requirements designed to avoid voter confusion and burdensome run-off elections are constitutionally valid if they are not “unduly oppressive”).
may legitimately require a candidate to indicate his seriousness by demonstrating a significant level of community support. In Storer v. Brown and Mandel v. Bradley, the Court promulgated a test to assess whether the statutory means designed to serve this interest are too burdensome, despite the importance of the state interest:

[I]n the context of [the state's] politics, could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be helpful, if not always an unerring, guide: it will be one thing if the independent candidates have qualified with some regularity and quite a different matter if they have not.

Although the underlying rationale of this test is commendable and in accord with a third-tier balancing approach (i.e., weighing the actual burdens imposed by the statute in preventing diligent candidates from obtaining ballot access with the state interest of avoiding voter confusion by weeding out frivolous candidates), to the degree that this test relies on small statistical samples indicative of past experience, it may be an insufficient basis upon which to infer definitive conclusions. In fact, when Mandel was remanded and the reasonable diligence test was applied, the lower court could not draw firm inferences from the limited statistical data it possessed concerning past candidates' success under the challenged filing restrictions. Furthermore, the district court on remand was troubled by comparing the successful compliance with the challenged filing restrictions by independent candidates for a local office with that of candidates for statewide offices, since "vast differences [exist] . . . with respect to media coverage, campaign costs, need to make [one]self known and the types of issues on which to campaign," which are not accounted for in a direct mathematical comparison.

172. Id. at 988.
173. Id.
174. Id.
Thus, any benefit that can be derived from using the reasonable diligence test to assess the burden of quantitative signature requirements is limited by both the quantity of the statistical data available concerning the challenged restriction and its relevance to the specific type of elective position sought by the plaintiff-candidate.

Assuming arguendo that the state interest in avoiding laundry-list ballots is furthered by filing deadline statutes, the question arises as to whether the reasonably diligent candidate test should apply in an assessment of the burdensome effects of a filing deadline on an excluded plaintiff. In *Anderson v. Celebrezze*, the Sixth Circuit reasoned that this test is "peculiarly well-suited" to measuring the burden imposed upon candidates to gather the requisite amount of signatures within specific time limits, but concluded that it is of little use in measuring the difficulty imposed upon the candidates by compliance with a filing deadline, in and of itself. The rationale for this distinction is that the burden created by signature requirements (i.e., difficulty in persuading a sufficient number of voters to sign the nominating petition) is fundamentally different from the burden created by a filing deadline (i.e., difficulty in deciding to run for election at an early date). Thus, the diligence in a candidate's attempt to gather the required amount of signatures, once he decides to run, is irrelevant to the burden created by forcing him to decide to run at too early a date.

Even if the reasonably diligent candidate test is inapplicable to filing deadline controversies, this does not automatically preclude the possibility that the same state interest which furthers signature re-

176. 664 F.2d at 562.
177. Id. It is worth noting that when the other courts in the Anderson cases considered the issue, they also found the reasonably diligent candidate test to be inapplicable or of minimal significance to the filing deadline controversy. See *Anderson v. Morris*, 500 F. Supp. 1095, 1099 (D. Md.), aff'd, 636 F.2d 55 (4th Cir. 1980) (district court rejected the defendant's contention that Anderson must satisfy, initially, the reasonably diligent candidate inquiry and was willing to consider such an inquiry only after the defendant proved a compelling state interest, which he could not do; circuit court based its affirmance primarily on the district court's opinion and did not mention the test); *Anderson v. Quinn*, 495 F. Supp. 730, 732-33 n.6 (D. Me.), aff'd mem., 634 F.2d 616 (1st Cir. 1980) (reasonable diligence test is inapplicable).
179. See 664 F.2d at 562. For an argument that the reasonable diligence test should only be "nominally important" in determining the constitutionality of state statutes, where the candidate's ability to satisfy the ballot access requirement is viewed theoretically, see Note, supra note 34, at 990.
quirements, (i.e., avoiding voter confusion by screening out frivolous candidates) may not likewise justify early filing deadlines. According to this view, a serious (or reasonably diligent) candidate will not only be able to demonstrate the necessary level of community support to satisfy the signature requirements, but will decide to run at a sufficiently early time so as to submit his nominating petition prior to the filing deadline.\textsuperscript{180}

Although this argument has some surface appeal, a proper inquiry must consider the effectiveness of the statute in furthering the state interest. It is undoubtedly true that there may be some frivolous candidates who decide half-heartedly after the filing deadline to run for office. A filing deadline which would exclude such candidates would be effectively advancing the important state interest of weeding out such trivial candidates. The same statute, however, would also arbitrarily exclude any individual who decided to become a candidate one day following the filing deadline, regardless of the seriousness of his candidacy or the level of community support he could demonstrate.\textsuperscript{181} Thus, to the degree that a filing deadline statute further the state interest in measuring a candidate's seriousness, it does so in an over-inclusive manner.\textsuperscript{182} Therefore, when balancing the state interest of avoiding voter confusion with the candidate and his supporters' interest that is infringed by the statute, one must examine whether the benefits of excluding frivolous candidates in such a manner outweighs the over-inclusive adverse effects upon serious candidates.\textsuperscript{183}


\textsuperscript{182} McCarthy v. Noel, 420 F. Supp. 799 (D.R.I. 1976).\textsuperscript{1}

The early deadline arbitrarily cuts off some candidacies in the same crude, over-inclusive manner that high filing fees did in Lubin v. Panish. It suffers the same defect; it does not work. Whatever spurious and frivolous candidates the Rhode Island scheme has weeded out, it has also put an end to a serious, legitimate candidacy. Early filing is unreliable as a test of the genuineness of a candidacy. Indeed, the most committed independent candidate is often the independent who, dissatisfied with what the major party conventions offer, runs as a third-party or independent candidate.

\textsuperscript{183} Of course, there is a point close to election time when a line must be drawn distinguishing serious and frivolous candidates in order to allow sufficient time for the physical preparation of the ballot. See supra notes 144-49 and accompanying text. Such a state justification
4. Political Stability.—The fourth state interest that arguably supports a filing deadline for independent and third party candidates prior to the selection of major party candidates is the state's concern in maintaining political stability. In *Storer v. Brown*, the Court found this interest to be compelling and upheld a one-year disaffiliation provision. The actual statute barred an independent candidate from gaining access to the general ballot if he was affiliated with a qualified political party within one year preceding the direct party primary. Since the primary was held in June, the effect of this statute was that a person could run as an independent candidate only if he had been unaffiliated with a qualified party for a period of seventeen months prior to the general election. The policy underlying the challenged provision, maintaining political stability, was effectuated by the statute insofar as it prevented the “integrity” of the direct party primary process from being compromised:

[The direct party primary] functions to winnow out and finally reject all but the chosen candidates. The State’s general policy is to have contending forces within the party employ the primary campaign and primary election to finally settle their differences. The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds. The provision against defeated primary candidates running as independents effectuates this aim, the visible result being to prevent the losers from continuing the struggle and to limit the names on the ballot to those who have won the primaries and to those independents properly qualified.

It protects the direct party 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. It works against independent candidacies prompted by short-range 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.

will have the effect of precluding frivolous candidates, but will not be over-inclusive.

185. *Storer*, 415 U.S. at 736; see supra note 124.
188. *Storer*, 415 U.S. at 758 (Brennan, J., dissenting).
189. *Id.* at 735.
This clear and resounding language of the Storer Court establishes that the state has an important interest in promoting political stability by excluding those candidates who have unsuccessfully sought their party’s nomination or were recently affiliated with a political party from running as independents. It has been unsuccessfully argued that a filing deadline statute may further this interest in political stability by functioning as a de facto disaffiliation and/or “sore loser” provision. If this argument is correct, then independent presidential candidates such as John Anderson, who was affiliated with the Republican party and sought its nomination immediately before he declared his independent candidacy, should be barred from the general ballot solely due to his non-compliance with a state’s filing deadline. However, there are at least two major flaws in this argument.

First, a typical filing deadline statute, as exemplified by the statutes in two of the Anderson cases, neither indicates on its face nor in its legislative history that it was intended to function as a disaffiliation or a “sore loser” provision. A statute that merely prohibits an individual from running as an independent candidate, if the candidate does not file his nominating petition by March 20, would neither “bar the staunchest party member who decided on March 19 to change horses and file as an independent... nor would it permit a true independent to run, if he or she filed on March 21.” Such a statute designed purportedly to further political stability by functioning as a disaffiliation statute would be greatly inefficient, since it is both over-inclusive (excluding unaffiliated candidates who decide to run after the deadline date), and under-inclusive (not excluding affiliated candidates who decide to


191. This argument was rejected in three of the Anderson cases, see supra note 190, and was not the basis for the Sixth Circuit’s reversal in Anderson v. Celebrezze, 664 F.2d 554 (6th Cir. 1981), cert. granted, 102 S. Ct. 2035 (1982).


run as independents prior to the deadline date). Thus, unlike the Storer statute which was clearly drafted as a disaffiliation and sore loser provision and achieved those ends efficiently, the typical filing deadline as exemplified by those challenged in the Anderson cases, function "as a disaffiliation provision only by mere happenstance, not by any reasonably discernible legislative design." \(^{195}\)

Additional support for the theory that the filing deadline statutes in the Anderson cases were not intended to function as disaffiliation or sore loser provisions may be inferred by the fact that in four of the states where Anderson was initially excluded from the ballot, there were statutes specifically intended to fulfill such legislative purposes. \(^{196}\) Although for different reasons, the disaffiliation statutes were found inapplicable to bar Anderson’s independent candidacy, \(^{197}\) their existence suggests that when the legislators enacted the filing deadlines without any overt reference to such policies they likely intended the filing deadline to achieve other ends. Thus, in light of other statutes’ explicit treatment of this state interest and the general lack of precision in which a filing deadline would function as a disaffiliation provision, the argument that the filing deadline statute was intended to serve these state interests as part of a comprehensive statutory scheme is not very persuasive. \(^{198}\)

The second major problem with the argument that filing deadline statutes further political stability by functioning as a disaffiliation provision is limited to the context of presidential candidates. As noted earlier, the facts of Storer concerned a state direct party pri-

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195. *Id.* See also Anderson v. Morris, 500 F. Supp. at 1102.
197. In Anderson v. Celebrezze, 499 F. Supp. at 135, the “sore loser” statute prohibit[ed] a candidate from seeking a place on the general election ballot by means of nominating petition or by write-in when he has filed a declaration of candidacy for a party nomination in the preceding primary. Because Anderson withdrew from the Ohio primary in time to have his name removed from the ballot the State concede[d] that [OHIO REV. CODE ANN. § 3513.04 (Page Supp. 1981)] did not apply to him.

*Id.* In the other three Anderson cases, the different sore loser and/or disaffiliation statutes were inapplicable to Anderson because he was a presidential candidate. See Anderson v. Morris, 636 F.2d at 58; Anderson v. Quinn, 495 F. Supp. at 734 n.8; Anderson v. Hooper, 495 F. Supp. at 903.

198. *See* Anderson v. Celebrezze, 499 F. Supp. at 135. But see Williams v. Tucker, 382 F. Supp. 381, 386-87 (M.D. Pa. 1974) (which held that a filing deadline statute, a statute limiting when signatures could be collected and a statute prohibiting petitioning candidates from entering the primary, function collectively as disaffiliation and sore loser provisions).
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mary and not a presidential primary.\textsuperscript{199} A direct party primary, such as that in \textit{Storer}, is conducted entirely statewide and is completely binding on the party;\textsuperscript{200} whereas a presidential primary is conducted throughout many states and does not bind the national party as a whole.\textsuperscript{201} It is also "undisputed"\textsuperscript{202} that the actual disaffiliation provision litigated in \textit{Storer} has never been applied to presidential candidates.\textsuperscript{203} Furthermore, the \textit{Storer} Court's analysis repeatedly emphasized the nature of a direct party primary and made no explicit reference to the applicability of its rationale in a presidential context.\textsuperscript{204} Thus, one may infer that the \textit{Storer} rationale is limited to only statewide direct party primaries.

Beyond these factual distinctions and negative inferences, there is a very important policy issue of promoting political stability in general that tends to undermine the argument that the rationale of \textit{Storer} supports early filing deadlines acting as a de facto disaffiliation provision.\textsuperscript{205} However, since much of this counter-argument focuses on the individual's interest and the burden placed thereon, it will be addressed in the following subsection.

B. Individual Interests

There are two major types of burdens imposed upon the constitutional interests\textsuperscript{206} of individuals by early filing deadline restric-

\begin{footnotes}
\begin{enumerate}
\item See \textit{Anderson v. Babb}, 632 F.2d 300, 305-06 n.2 (4th Cir. 1980).
\item \textit{Id.} Although the primary results in many states are binding on their state delegates for, at least, the first round of the convention, one state's decision as to who shall be the candidate is in no way binding on the entire party or other states. \textit{See J. Davis, Presidential Primaries} 39, 69-70 (1980).
\item Anderson v. Celebrezze, 499 F. Supp. at 135.
\item \textit{Id.} It is also worth noting that the Celebrezze district court could not find any state with a disaffiliation statute which has been applied to a presidential candidate.\textit{Id}.
\item See \textit{Storer v. Brown}, 415 U.S. 724 (1974); Anderson v. Babb, 632 F. 2d 300, 305-06 n.2 (4th Cir. 1980). Although any reference to a presidential primary would have been dicta, considering the fact that two of the other \textit{Storer} plaintiffs (Hall and Tyner) challenging signature requirements were presidential and vice-presidential candidates, it would not have been inappropriate for the court to do so if they believed it applicable. See \textit{Storer v. Brown}, 415 U.S. at 726-28.
\item See infra notes 207-21 and accompanying text, discussing how political stability is furthered by providing minority political groups with the opportunity of ballot access un fettered by restrictive, early deadlines. Furthermore, this section explicates how, in a presidential election, the political stability gained by coalition building within the two major parties is promoted by filing deadlines following the national conventions.
\item For a discussion of the relevant first amendment interests of the individual, see supra notes 33-58 and accompanying text.
\end{enumerate}
\end{footnotes}
tions. The first is the practical difficulty imposed upon independent or third party candidates by an early filing deadline prior to the major party’s primaries, since they must decide whether to run for election before the issues have “crystallized” or the identities of their major party opponents are known. Thus, in effect, such an individual must make the crucial decision of whether or not to initiate a candidacy in a virtual political vacuum. Second, there is a fundamental policy problem with these restrictions to the extent that filing deadlines bar serious independent or third party candidates, the state is effectively silencing a form of political dissent essential to our democratic process.

The indispensable role which independent and third party candidates play in the democratic process has been duly acknowledg-

207. See Anderson v. Celebrezze, 499 F. Supp. at 129; Bradley v. Mandel, 449 F. Supp. at 986; Storer v. Brown, 415 U.S. at 758 (Brennan, J., dissenting). But cf. Anderson v. Celebrezze, 664 F.2d at 565 (even though the issues have not yet crystallized, “[i]t is little enough to ask of a person seeking one of the most powerful and influential posts on earth that he make up his mind whether to run seven and one-half months before the election”). In Bradley v. Mandel (where the plaintiff was a United States senatorial candidate), the court noted that the early filing date also makes it more difficult for an independent (or third party) candidate to attract media coverage, financial contributions, and the voter support necessary to gather sufficient signatures for the nominating petition. Bradley, 449 F. Supp. at 986-87. Although this may be true in some United States senatorial contests and certainly is true in many statewide and local contests, this is not necessarily the case in presidential elections, at least with respect to media coverage, which may begin as early as the first statewide primary election. Nevertheless, even when media coverage begins quite early in presidential elections, it is usually focused on the major party candidates, not the small third party or independent candidates. See J. Davis, supra note 201, at 83-91.

208. See Williams v. Rhodes, 393 U.S. 23, 32 (1968); id. at 39-40 (Douglas, J., concurring).

The underlying premises in the textual argument are as follows: (i) Independent and third party candidates play a crucial role in the political process by providing a legitimate outlet for dissident views; (ii) Independent and third party candidacies often reflect certain voters’ dissatisfaction with the major party candidates and are often initiated in response to the final selection of party candidates and the crystallization of election issues following the primaries; (iii) Early filing deadlines, prior to the primaries, may prevent these candidates from gaining ballot access; (iv) Therefore, early filing deadlines silence the politically dissenting third party and independent candidates and jeopardize the democratic process. See infra notes 209-19 and accompanying text.

209. See W. Heselton, Third Party Movements in the United States 3 (1962): Few “third” parties have conducted national campaigns and only a bare half-dozen can truthfully be said to have influenced national elections. Yet, by voicing grievances and by proposing panaceas, third parties have exerted significant influence upon the policies and programs of major parties. In a curiously anomalous manner, third parties have bolstered the traditional American two-party system. Important figures in American political history such as Presidents Martin Van Buren, Millard Fillmore, and Theodore Roosevelt as well as Governors Robert LaFollette and George Wallace have all at one time been third party or independent candidates. Sims, supra note 49, at 155-
edged by the Supreme Court:

All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society.210

Yet, these dissident minority voices, embodied in third party and independent candidates, are being stifled by forced compliance with deadlines far in advance of the political circumstances which give rise to the need for these alternative ideologies. That is to say, the "popular dissatisfaction with the functioning of the [two-party] system sufficient to produce third party movements and independent candidacies [ordinarily] does not manifest itself until after the major parties have adopted their platforms and nominated their candidates."211 Therefore, filing deadlines significantly in advance of major party primaries often require potential independent and third party candidates not only to predict who their major party opponents will be, but to foresee sudden, unexpected occurrences of great importance212 which may, in a short period of time, dramatically affect the political arena and significantly influence voters' evaluation of the major issues.213 Part of the Williams rationale focused precisely on this paradox:

Since the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election,

56. It is also worth noting that Theodore Roosevelt, presidential nominee of the Bull Moose Party in 1912, was selected as the candidate only after he failed to receive the Republican Party nomination. See W. HESSELTINE, THE RISE AND FALL OF THIRD PARTIES 26 (1957).


211. MacBride v. Exon, 558 F.2d 443, 449 (8th Cir. 1977).


For administrative reasons, there has to be a cutoff date sometime, but there is more than a little of the capricious in laws that force a commitment to act . . . before such an upheaval as President Johnson's withdrawal [of his candidacy] on March 31, 1968, and . . . not to mention such an event as the assassination of Robert F. Kennedy on June 5, 1968.
this disaffected "group" [those who disagree with the major parties and their policies] will rarely if ever be a cohesive or identifiable group until a few months before the election. Thus, Ohio's burdensome procedures, requiring extensive organization and other election activities by a very early date, operate to prevent such a group from ever getting on the ballot and the Ohio system thus denies the "disaffected" not only a choice of leadership but a choice on the issues as well.\(^{214}\)

Though admittedly, the Williams Court was faced with more burdensome access requirements than just an early filing deadline,\(^{215}\) the same analysis should apply because the law results in a similar temporal contradiction.\(^{216}\) To the degree that these "disaffected" individuals constitute a group of a size sufficient to satisfy the quantitative signature requirements, their rights to associate and cast their vote effectively are infringed if the candidate of their choice is excluded from the ballot due to an unjustifiably early filing date.\(^{217}\) To the extent that such voters' and candidates' rights are frustrated, the state's interest in political stability is not furthered, but arguably hindered. Political stability of our democratic process as a whole can not possibly be promoted by denying the "vanguard of democratic thought"\(^ {218}\) realistic access to the general ballot. Rather, at best, the political stability of two particular parties, namely the Democrats and the Republicans, is furthered by the exclusion of such candidates through their non-compliance with early filing dates which occur significantly in advance of the events which tend to give rise to these alternative candidacies initially. Needless to say, such a state interest (preservation of the political status quo) is antithetical to the fundamental principles of democracy and is, therefore, unacceptable.\(^ {219}\)

Furthermore, even if one dismisses these policy concerns and assumes that early filing deadlines neither unfairly burden the interests


\(^{215}\) See supra notes 84-87 and accompanying text.

\(^{216}\) See supra notes 211-13 and accompanying text. The temporal contradiction is simple: How can dissenting political voices effectively express their views through an independent or third party candidate, months before the major party primaries, if these voices neither exist nor are a cohesive political mechanism prior to their dissatisfaction with either the major party nominees or the major parties' positions on newly emergent election issues or circumstances?

\(^{217}\) See, e.g., Anderson v. Quinn, 495 F. Supp. at 731; Anderson v. Celebrezze, 499 F. Supp. at 125; see supra notes 33-58 and accompanying text.

\(^{218}\) See supra notes 208-10 and accompanying text.

\(^{219}\) See Williams v. Rhodes, 393 U.S. 23, 32 (1968).
of these political dissenters nor frustrate the political stability of the system as a whole, there is still a cogent argument that such statutes do not further the state's interest in the stability of the party system. Alexander Bickel has observed that filing deadlines that occur before the major party primaries are actually counterproductive in furthering the essence of the two-party system, namely coalition building.220

The important third-party movements in our history . . . came into being after the two major-party conventions, and were enabled to come into being at that time because major-party conventions used to be held much earlier than at present. . . .

The characteristic American third party . . . consists of a group of people who have tried to exert influence within one of the major parties, have failed, and later decide to work on the outside. States in which there is an early qualifying date tend to force such groups to create minor parties without first attempting to influence the course taken by a major one. For a dissident group is put to a choice of foregoing major-party primary and other prenomination activity by organizing separately early on in an election year, or losing all opportunity for action as a third party later.

From the point of view of fostering the two-party system this is counterproductive. It is calculated to induce early third-party movements . . . calculated to drive people away from the coalition-building process that is the genius of the two-party system, and into a premature and more likely permanent ideological separatism, which is precisely what the two-party system is intended to prevent.221

Thus, one may infer from Bickel that the two party system would actually be furthered if filing deadlines followed the party primaries, because the major parties would have sufficient opportunity to accommodate these dissenting views and perhaps prevent their factionalistic tendencies by constructing a coalition encompassing the various political perspectives. If all filing deadlines did indeed follow the major party primaries, then the important interest of providing a political forum to all significant groups would be served; if the major party could not accommodate the minority views, the possibility of a third party or independent candidacy would still exist.

C. Equality Analysis

Assuming that the burden imposed by early filing deadlines
upon this disaffected group of potential candidates and voters can not be dismissed as de minimis,\textsuperscript{222} a final issue must be addressed before any conclusions can be drawn on the constitutionality of earlier filing deadlines for third party and independent candidates: Do the inherent similarities between independent and major party candidates warrant use of a single filing deadline for all candidates?\textsuperscript{223} Or conversely, are these candidates so inherently dissimilar as to justify different treatment?

In Anderson v. Celebrezze, the district court and the circuit court discussed the issue at length and reached opposite conclusions.\textsuperscript{224} The district court recognized that there are obvious differences between the needs of firmly rooted political parties and new political organizations that may require different treatment and different ballot access routes.\textsuperscript{225} Furthermore, the district court reasoned that to treat such unequals equally can produce equal protection violations that are just as invidious as treating equals unequally.\textsuperscript{226} Thus, it extrapolated that “there may be no invidious discrimination between entities which are by nature to be handled differently.”\textsuperscript{227} Yet, despite this analysis, the district court noted that this logic overlooks the fact that where important interests are actually infringed, “statutory line-drawing . . . must be explicable in terms of differences between the persons on either side of the line.”\textsuperscript{228} It further reasoned that because both independent and partisan candidates’ eventual electoral success depends largely on their

\textsuperscript{222} See Clements v. Fashing, 102 S. Ct. 2836, 2846-48 (1982) (where the Court upheld the constitutional validity of non-partisan ballot access restrictions which imposed a “de minimis burden” upon governmental officials seeking state legislative office by applying the rational relation test).

\textsuperscript{223} For purposes of facilitating analysis of the conflicting arguments in both Anderson v. Celebrezze opinions, the ensuing discussion will center on the distinction between independents and party candidates in general, (as opposed to independent and third party candidates distinguished from major party candidates) since the former is the operative distinction focused upon by the challenged statute and analyzed by both courts. See Ohio Rev. Code Ann. § 3513.257 (Page Supp. 1981); Anderson v. Celebrezze, 499 F. Supp. 121, 128-30 (S.D. Ohio 1980), rev’d, 664 F.2d 554, 565-67 (6th Cir. 1981), cert. granted, 102 S. Ct. 2035 (1982).


\textsuperscript{225} See Anderson v. Celebrezze, 499 F. Supp. at 129-30, citing Jenness v. Fortson, 403 U.S. 431, 441-42 (1971). These differences have produced the need for the nominating petition route of ballot access.

\textsuperscript{226} See supra note 225. “Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in Williams v. Rhodes.” Jenness v. Fortson, 403 U.S. 431, 442 (1971).

\textsuperscript{227} Anderson v. Celebrezze, 499 F. Supp. at 130.

\textsuperscript{228} Id.
personal appeal as individuals, there is sufficient similarity in the two
types of candidacies to warrant equal protection analysis. Upon
application of the strict scrutiny standard, the district court struck
down the filing deadline.

Conversely, the Sixth Circuit, in upholding the filing statute,
emphasized the differences between the two types of candidacies by
stressing that the independent candidate “has no interest or right
compares to that of [a] political party.” Specifically, the court
found that the statutory right allowing a partisan candidate to run in
the general election without complying with the earlier filing dead-
line required of an independent candidate, is a “right of political
parties, with rather an incidental effect on partisan candidates.”
Thus, despite the fact that the two kinds of candidates may have the
“same interest . . . in being able to make a late decision,” the court
ruled that they warrant different treatment due to the incomparable
rights which a political party possesses and an independent candidate
lacks.

The circuit court’s analysis purports to focus on rights in
reaching its conclusion that the two types of candidates are not alike
and, therefore, do not require equal treatment. The lower court’s in-
quiry centers on the similarity of the candidate’s qualities in its con-
clusion that the candidates are sufficiently alike to require equal
treatment. However, both courts’ analyses are subject to the same
criticism: they do not transcend an issue of semantics. As Peter Wes-
ton has aptly indicated, “equality analysis logically collapses into
rights analysis” because the idea that likes should be treated alike
“presupposes anterior constitutional standards for ascertaining ‘lik-
eness’ and ‘unalikeness.’” In other words, since no two individuals
are alike in all respects and yet everyone is alike in some respect, the
conclusion that likes should be treated alike is purely tautological.
The process of ascertaining the constitutional standards upon which
to determine the relevant similarities or differences of these types of

229. Id.
230. Id. at 139.
231. See Anderson v. Celebrezze, 664 F.2d at 567.
232. Id.
233. Id.
234. Specifically, the right of the political parties to make a late decision as to who will
be its candidate. Id.
236. Id. (emphasis in original).
237. Id. at 544, 547.
candidates necessarily involves an examination of the underlying constitutional rights implicated in the controversy, not an ad hoc discussion of abstract differences and similarities merely to support an \textit{a priori} conclusion.

Thus, applying Weston’s analysis, to say that the equal protection clause provides that if independent candidates are “like” partisan candidates for constitutional purposes, then the state must treat them alike, is in one sense completely superfluous—since to reach this decision the court must have already ascertained and applied its constitutional standard for determining when candidates are to be treated alike. In so doing, the court has thereby reached its ultimate conclusion as to the substantive rights at issue.

Thus, the real flaw in both the circuit court and the district court analyses occurs before they even reach the inquiry as to whether or not the independent candidates are sufficiently “like” partisan candidates (and/or political parties) to be treated equally. Their errors lie in the constitutional standard of analysis they applied to ascertain when candidates should be treated alike. In particular, the circuit court did not fully consider the importance of the first amendment rights affected by the statute, since its constitutional standard was essentially whether the laws were “designed rationally to further sufficiently important state goals”; the district court erred by requiring the state to satisfy a compelling state interest test which did not thoroughly consider the rights of the state. The courts should have applied a constitutional standard which would have adequately weighed the opposing interests and rights of the candidate and his supporters against that of the state. If the courts would have completed this substantive examination of rights any further discussion of the similarities and differences of these types of candidates in an abstract comparison, isolated from the preceding constitutional analysis, would have been fruitless.

D. \textit{Balancing Analysis}

This inquiry has explicated the state interests that are potentially furthered by filing deadlines statutes and has shown how the

\begin{itemize}
\item \textbf{239.} \textit{Anderson v. Celebrezze}, 664 F.2d at 567.
\item \textbf{240.} \textit{Anderson v. Celebrezze}, 499 F. Supp. at 127.
\item \textbf{241.} \textit{See supra} text accompanying notes 83, 140-43.
\end{itemize}
interests of individual candidates and voters are arguably burdened by such a statute. It is now appropriate to weigh these competing concerns and draw the proper conclusions. In so doing, one must not only consider the importance of these interests qua interests, but also examine both the level of the statute's efficiency in fulfilling its underlying interests and the weight of the burden imposed by the statute on various individuals.

The Sixth Circuit, in Arlderson v. Celebrezze, found that the burden on a presidential candidate to decide whether to run by March 20 was not very large considering the power and influence of the office and the fact that most serious candidates have already decided to run by such a date. Regardless of the accuracy of such an analysis, the Sixth Circuit prematurely concluded its inquiry concerning the extent of the statute's burdensome effects. Filing deadline statutes, such as those challenged in the Anderson cases, burden not only the candidate's freedom as to when he must initiate his candidacy but, perhaps more importantly, burden his supporters' rights to associate and effectively cast their votes for the candidate of their choice. Thus, the burdensome effects of these statutes can not simply be viewed as the denial of ballot access to the serious candidates who decide to run as independents after the filing deadline. Rather, as in Anderson v. Celebrezze, if the state interest furthered is voter awareness, then the superior knowledge gleaned by voters about independents in the extra time provided by the early deadline must be balanced against the seriousness of the harm inflicted on the supporters of the excluded candidate if they can neither vote for, nor effectively associate with, the candidate of their choice.

As important as an informed electorate may be, an early filing
deadline is not a very effective way to increase voters' knowledge about the candidates. When one weighs the possibility that some voters may be better informed about the independent candidates with the fact that other voters will have their associational and voting rights impaired when their candidate is denied ballot access due to the early filing deadline, one is lead to the conclusion that the constitutional infringement outweighs any increased voter awareness. This conclusion implies that the filing deadline for independent and third parties should be close to the general election, and preferably follow the party's primaries.

If the burden on excluded candidates and their potential voters is balanced with the state interest of preventing voter confusion by denying ballot access to frivolous candidates, the scale tips even further in favor of the individuals' interests. This is so because the weight of the burden on important individual interests remains the same while the effectiveness of the statute in advancing an important state interest diminishes. An early filing deadline would screen out some frivolous candidates who decide to run for election after the deadline, but it would also exclude all serious candidates who initiated their candidacies following the deadlines. Such a statute would not only be over-inclusive in its effect, but would be inefficient and duplicative in accomplishing its goal. Since quantitative signature requirements necessitate that candidates satisfy a reasonable level of community support, all frivolous candidates would be eliminated by such restrictions, regardless of the filing date. The only way to construct an argument in support of this state interest that could avoid the problem of the statute's inefficiency, would be to define all candidates who did not comply with the filing deadline as, ipso facto, not serious candidates. However, this is not only inconsistent with the accepted meaning of this word in the election law context, but would then create

245. This is mainly true because whatever knowledge most voters possess about the candidates is derived from the media. As the Bradley court correctly observed, media coverage does not begin until the primary campaign becomes “heated,” which is for the large part after the filing deadlines challenged in the Anderson cases occur. See Bradley v. Mandel, 449 F. Supp. 983, 986 (D. Md. 1978). Although this may be less true in presidential elections where some media coverage may begin with the first state primary, the focus of the media at such an early date is largely upon the primary candidates. See supra note 207. Furthermore, voter knowledge could be more effectively increased in a variety of other ways.

It is important to note that the foregoing is not a least drastic means inquiry (i.e., could the state achieve its goal by moving the filing date closer to the election?) but an inquiry into how effective the statute is in achieving the goal that supposedly justifies it.

246. See supra notes 180-83, 192-95 and accompanying text.

247. See supra notes 158-83 and accompanying text.
the absurdity of labeling such presidential candidates as John Anderson, and George Wallace (both of whom received substantial popular support in the general election) as frivolous candidates.

IV. CONCLUSION

If there is one principle which has been the cornerstone of our democracy, it is the freedom to select those who will govern us. In fact, one might say that this right is the foundation for all our other constitutional rights. Intrinsic to this notion of self-government is the belief that if people choose among competing candidates, each possessing different political and philosophical perspectives, then the candidate whose views on important issues most closely approximates our societal norms will be elected.

Insofar as the Democrats and Republicans do not have a monopoly on political truth, independent and third party candidates fulfill the important function of providing legitimate outlets for alternative ideologies. The value of such a function can not be underestimated because, as Chief Justice Warren noted, the ideas espoused by the dissident groups of today often become the views accepted by the majority of tomorrow. Thus, regardless of the actual electoral success of independent and third party candidates, their mere presence in the campaign and on the ballot helps to insure that our leaders will be more responsive to, and representative of, the nation at large. Such candidates effectively are prevented from performing this vital role in our political system if they are denied access to the ballot due to non-compliance with such statutory restrictions as filing deadlines. When this occurs, the courts should explicitly balance the constitutional interests of the candidates and supporters against the state interest underlying the statute to determine the statute's validity. In so doing, the courts not only should

249. The purported state interests in promoting administrative efficiency and political stability have been discussed elsewhere in this note. The argument that administrative efficiency in ballot preparation supports a filing deadline as early as March or April is so weak that parties do not address it or courts summarily dismiss it. See supra notes 144-49 and accompanying text. For a discussion of the state interest in political stability balanced against the interests of the individuals, see supra notes 183-205, 208-21 and accompanying text.
250. See supra notes 1, 44 and accompanying text.
251. See supra note 8 and accompanying text.
252. See supra notes 208-19 and accompanying text.
254. See supra notes 208-19 and accompanying text.
255. See supra notes 83, 140-43 and accompanying text.
examine the competing interests equitably but should demonstrate the rationale of their decision without resorting to outcome determinative terminology.

In applying a balancing analysis to the filing deadlines challenged in the Anderson cases, one concludes that the importance of the candidates' and supporters' first amendment rights outweighs the state interests supporting the statute, to the extent that the filing date occurs prior to the time required to satisfy the state's administrative needs and before the major party primaries. This conclusion is based primarily upon two critical observations: (1) a significantly earlier filing deadline would be inefficient or inappropriate to serve administrative purposes, to prevent voter confusion, to promote voter awareness, or to maintain political stability; (2) insofar as the independent and third party candidacies are initiated in response to the voters' dissatisfaction with the major party candidates and their positions on the issues, filing deadlines that occur prior to the major party primaries, require dissident groups and potential candidates to foresee the unknown and seek separate ballot access before allowing the major parties an opportunity to accommodate their minority views. Therefore, early filing deadlines that unjustifiably restrict the ballot access of serious independent and third party candidates, not only chill the important first amendment rights of the excluded candidate and his supporters but, more importantly, threaten the sanctity of our nation's most fundamental principle—the right of self-government.

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256. See supra notes 144-221, 242-49 and accompanying text.
257. See supra notes 206-21 and accompanying text.
258. As this note went to press, the United States Supreme Court decided Anderson v. Celebrezze, 51 U.S.L.W. 4375 (Apr. 19, 1983) (No. 81-1635), reversing the decision of the Court of Appeals for the Sixth Circuit. In a 5-4 decision, the Supreme Court held that Ohio's filing deadline statute imposed an unconstitutional burden on the voting and associational rights of Anderson's supporters. Although the Court utilized the balancing test derived from its previous ballot access cases, it choose to analyze this case directly on first amendment grounds without resting its decision on the equal protection clause. Perhaps, the Court's un-stated rationale underlying this change in its analytical methodology may be rooted in the conceptual need, posited by this note, to liberate its implicit balancing test from the linguistic confines of equal protection's two-tier structure. Furthermore, the Court's willingness to discard its customary equality analysis lends further support to this note's argument that such discussion is often merely superfluous, particularly in the ballot access context.