

*Legislative Commission's Staff Study of
Ballot Access by Minor Political Parties*



*Legislative Counsel
Bureau*

*Bulletin No.
99-17*

April 1998

LEGISLATIVE COMMISSION'S STAFF STUDY OF
BALLOT ACCESS BY MINOR
POLITICAL PARTIES

BULLETIN NO. 99-17

Michael J. Stewart, Senior Research Analyst
Research Division, Legislative Counsel Bureau

Sue S. Matuska, Deputy Legislative Counsel
Legal Division, Legislative Counsel Bureau

Compiled: April 1998
Distributed: January 1999

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. The Ballot Access System of the State of Nevada	2
A. Nomination of Candidates to Appear on General Election Ballot	2
1. Major Political Parties	2
a. Qualification as a Major Political Party	2
b. Nomination of a Candidate by a Major Political Party	3
2. Minor Political Parties	3
a. Qualification as a Minor Political Party	3
b. Nomination of a Candidate by a Minor Political Party	3
3. Independent Candidates for Partisan Office	5
B. Timeline — Putting It All Together	6
III. Description of Candidate Filing Procedures and Ballot Access Requirements in Other States	7
A. States in Which All Candidates Are Nominated in a Primary Election	7
1. Candidate Filing Deadlines	7
2. Ballot Access Procedures for Political Parties	7
B. States in Which Minor Political Party and Independent Candidates Are Not Nominated in a Primary Election.	8
1. Candidate Filing Deadlines	8
2. Ballot Access Procedures for Political Parties	8

	<u>Page</u>
IV. Constitutional Issues Concerning Ballot Access	23
A. Right to Create and Develop New Political Parties	23
B. The United States Supreme Court’s Balancing Test to Determine the Constitutional Validity of Laws Affecting Ballot Access	23
C. Application of United States Supreme Court’s Balancing Test to Determine the Constitutional Validity of Particular Filing Deadlines	24
D. Application of United States Supreme Court’s Balancing Test to Nevada’s Current Ballot Access System	27
V. Proposals for Possible Changes to Nevada’s Ballot Access System that will Address Concerns of the Nevada Legislature	28
A. Amendments to NRS 293.260	28
B. Overall Structural Changes that May Allow the Legislature to Establish an Earlier Deadline for Minor Political Parties and Independent Candidates	30
VI. Conclusion	34
VII. Appendices	37
Appendix A	
BDR 24-1 Revises provisions governing when names of candidates for major political parties are omitted from ballot for primary election	39
Appendix B	
BDR 24-2 Revises provisions governing when and how many names of candidates for major political party appear on ballot for primary election	45

I. INTRODUCTION

Some members of the Nevada Legislature have expressed an interest in changing the laws governing the procedure that must be satisfied before a candidate's name may appear on an election ballot in the State of Nevada. This procedure is commonly referred to as a "ballot access system." For purposes of this study, therefore, we will refer to the procedure in place in Nevada and in other states as a ballot access system. Specifically, it has been suggested that the ballot access system in Nevada be amended to require candidates of minor political parties and independent candidates to declare their candidacies at the same time that candidates of major political parties are required to declare their candidacies. Currently, the deadline by which candidates of minor political parties and independent candidates must file their declaration of candidacies occurs 44 days after the deadline for candidates of major political parties. Some feel that this waiting period inhibits the ability of a candidate of a major political party to plan campaign strategies and fund-raising efforts.

One reason for the objection to the waiting period is that pursuant to the ballot access system currently in place in Nevada, it does not become clear whether a primary election will occur until the filing deadline for candidates of minor political parties and independent candidates occurs. For example, pursuant to the provisions of NRS 293.260, a primary election will occur if only two candidates from only one major political party file for a partisan office and a candidate of a minor political party is nominated or an independent candidate has filed for the office. *See* Subsection 3 of NRS 293.260. However, a primary election will not occur if only two candidates from only one major political party file for a partisan office and no candidate of a minor political party is nominated and no independent candidate has filed for the office. *See* Paragraph (b) of Subsection 4 of NRS 293.260. The discrepancy between these two scenarios creates uncertainty because a candidate of a major political party cannot determine whether a primary election will occur pursuant to NRS 293.260 until after the filing deadline for candidates of minor political parties and independent candidates occurs. As a result, some members of the Nevada Legislature are interested in amending the provisions of NRS 293.260 to eliminate the uncertainty as to whether a candidate of a major political party must participate in a primary election. It has also been suggested that the filing deadlines for candidates of minor political parties and independent candidates be changed to conform to the filing deadlines for candidates of major political parties to treat the process of declaring candidacy by all candidates in a more uniform manner. Therefore, the Legal Division and the Research Division of the Legislative Counsel Bureau have prepared this study for consideration by the Legislative Commission and transmittal to the appropriate standing committees of the 70th Session of the Nevada Legislature which convenes in 1999.

This study examines how the current ballot access system of the State of Nevada compares with the systems of other states and proposes some changes that could be made to alleviate some of the concerns expressed by members of the Nevada Legislature. Part II of this study examines the current ballot access system of this state. Part III of this study presents findings and details on the ballot access systems of other states. Part IV of this study analyzes some of the constitutional issues that are raised when a state legislature attempts to establish or alter the

structure of a ballot access system. Finally, Part V of this study presents some proposals for change designed to address concerns expressed by members of the Nevada Legislature. Parts II, IV and V were prepared by the Legal Division of the Legislative Counsel Bureau and questions regarding these parts may be addressed to Sue S. Matuska, Deputy Legislative Counsel. Part III was prepared by the Research Division of the Legislative Counsel Bureau and questions regarding this part may be addressed to Michael Stewart, Senior Research Analyst.

II. THE BALLOT ACCESS SYSTEM OF THE STATE OF NEVADA

Chapter 293 of NRS governs elections and the procedures that must be satisfied before a candidate's name may appear on the ballot for a general election. The following analysis addresses the procedure that must be completed for a partisan candidate, other than a candidate for the office of President of the United States, to appear on the ballot for the general election in this state.

A. Nomination of Candidates to Appear on General Election Ballot

The nominees of a major political party are chosen at the primary election in September and the nominees of a minor political party are chosen in early July. An independent candidate for partisan office is also nominated in early July. However, there are many requirements and deadlines with which candidates and political parties must comply before a candidate is eligible for nomination by a political party or qualification as an independent candidate. The following is a detailed analysis of those steps.

1. Major Political Parties

a. Qualification as a Major Political Party

An organization qualifies as a major political party if: (1) on January 1 preceding any primary election it has been designated as a political party on the applications to register to vote of at least 10 percent of the total number of registered voters in the state; or (2) not later than the last Friday in April before any primary election, it files a petition with the Secretary of State signed by a number of registered voters equal to or more than 10 percent of the total number of votes cast at the last preceding general election for Representative in Congress. NRS 293.128. In addition to the above requirements, each organization that wishes to qualify as a major political party must file with the Secretary of State: (1) a certificate of existence that includes the name of the political party, names and addresses of its officers, names of the members of its executive committee and the name of the person who is authorized by the party to act as resident agent in this state; and (2) an amended certificate of existence within 5 days after any change occurs in the information contained in the certificate. Id.

b. Nomination of a Candidate by a Major Political Party

A candidate of a major political party must be nominated at the primary election that occurs on the **first Tuesday of September** in each even-numbered year. NRS 293.175. The name of such a candidate will not appear on the ballot for the primary election, unless he files a declaration or acceptance of candidacy with the proper filing officer¹ not earlier than the first Monday in May of the year in which the election is to be held nor later than 5 p.m. on the **third Monday in May (106 days before the primary election)**. NRS 293.177. Thus, a candidate for a major political party must file his declaration of candidacy not later than **106 days before the primary election** — the first election at which his name may appear on a ballot. Generally, a candidate is chosen as the nominee of a major political party by receiving a certain number of votes at the primary election. Situations do arise, however, where the provisions of NRS 293.260 provide that a candidate is deemed to be the nominee of a major political without a primary election. *See* Subsection 5 and paragraph (b) of subsection 4 of NRS 293.260.

2. Minor Political Parties

a. Qualification as a Minor Political Party

An organization qualifies as a minor political party if it files with the Secretary of State a certificate of existence which includes the name of the political party, the names of its officers, the names of the members of its executive committee and the name of the person authorized to file the list of its candidates with the Secretary of State. NRS 293.171. A minor political party must also file an amended certificate of existence within 5 days after any change occurs in the information in the certificate. *Id.* A minor political party whose candidates did not appear on the ballot for the last general election must file a notice of continued existence with the Secretary of State not later than the second Friday in August preceding the general election. NRS 293.171. The proper filing of the certificate of existence is the only requirement for qualification as a minor political party.

b. Nomination of a Candidate by a Minor Political Party

In addition to qualifying as a minor political party, the party must comply with several other requirements to place the names of its candidates on the ballot for the general election. The minor political party must have: (1) at the last preceding general election, polled for any of its candidates a number of votes equal to or more than 1 percent of the total number of votes cast for the offices of Representative in Congress; (2) on January 1 preceding a primary election, been

¹The Secretary of State is the proper filing officer for United States Senator, Representative in Congress, statewide offices, state senators and assemblymen to be elected from districts comprising more than one county, and all other offices whose districts comprise more than one county. The County Clerk is the proper filing officer for Representative in Congress and district offices voted for wholly within one county, state senators and assemblymen to be elected from districts comprising but one or part of one county, and county and township officers. NRS 293.185.

designated as the political party on the applications to register to vote of at least 1 percent of the total number of registered voters in the state; or (3) not later than the **second Friday in August** preceding the general election, filed a petition with the Secretary of State which is signed by a number of registered voters equal to at least 1 percent of the total number of votes cast at the last preceding general election for the offices of Representative in Congress. NRS 293.1715. If the minor political party attempts to qualify by filing the petition with the Secretary of State, it must have also filed such petition with the County Clerk of the county in which the petition was circulated for signature verification not later than **40 days before the third Tuesday in August, which occurs in the second week of July (117 days before the general election)**. The minor political party must also file with the Secretary of State a list of its candidates not earlier than the first Monday in May preceding the election nor later than the **last Friday in June**. NRS 293.1725. The constitution or bylaws of a minor political party must provide a procedure for the nomination of its candidates in such a manner that only one candidate may be nominated for each office. NRS 293.171. If the minor political party satisfactorily completes the above requirements, it qualifies to have the names of its candidates appear on the ballot for the general election.

The name of a candidate of a minor political party must not appear on the ballot at a primary election. NRS 293.1715. The name of a candidate of a minor political party must be placed on the ballot for the general election as the nominee of the minor political party if the party has complied with the requirements set forth in the previous paragraph and the candidate files his declaration of candidacy with the proper filing officer.² The declaration of candidacy may be filed not earlier than the date on which the list of candidates of the minor political party is filed with the Secretary of State and must be filed not later than the **first Wednesday in July (125 days before the general election)**. NRS 293.1725.³ Thus, a minor political party must file its petition to qualify its candidates for appearance on the general election ballot not later than **117 days before the general election** and a candidate for a minor political party must file his declaration of candidacy not later than **125 days before the general election** — the first election at which his name may appear on a ballot. Therefore, minor political parties must choose their nominees in early July,⁴ approximately two months before the nominees of major political parties are generally chosen, at the primary election in September.

²See footnote 1.

³If after a candidate of a minor political party has filed a declaration of candidacy by the first Wednesday in July, it is determined that the petition of the minor political party filed by the second Friday in August did not contain the required number of signatures, the filing fee paid by the candidate when he filed his declaration of candidacy must be returned to the candidate. NRS 293.194.

⁴Although the minor political party need not file its petition with the Secretary of State until the second Friday in August, if it has not filed the same petition with the County Clerk of the county in which the petition is circulated for signature verification not later than the 40 days before the third Tuesday in August, which occurs in the second week of July, and filed its list of candidates with the Secretary of State by the last Friday in June, it has failed to nominate its candidates and its candidates' names may not appear on the general election ballot.

3. Independent Candidates for Partisan Office

To qualify for his name to appear on the ballot for the general election, an independent candidate for partisan office must file with the proper filing officer:⁵ (1) a copy of the petition of candidacy that he intends to circulate for signature; and (2) the petition of candidacy signed by a number of registered voters equal to at least 1 percent of the total number of ballots cast in the state or in the county or district electing that officer at the last preceding general election in which a person was elected to that office. NRS 293.200. The petition of candidacy must be filed with the proper filing officer not earlier than the first Monday in May preceding the general election and not later than 5 p.m. on the **third Tuesday in August** and must also be filed with the County Clerk of the county in which the petition was circulated for signature verification **40 days earlier** than the date it was filed with the filing officer.

The candidate must also file his declaration of candidacy with the proper filing officer not earlier than the first Monday in May of the year in which the election is held nor later than 5 p.m. of the **first Wednesday in July (125 days before the general election)**. Thus, an independent candidate for partisan office must file his petition for candidacy not later than **117 days before the general election** and his declaration of candidacy not later than **125 days before the general election** — the first election at which his name may appear on a ballot. Therefore, independent candidates for partisan office must qualify in early July,⁶ approximately two months before the nominees of major political parties are generally chosen, at the primary election in September.

⁵See footnote 1.

⁶Although an independent candidate need not file his petition of candidacy with the Secretary of State until the third Tuesday in August, if he has not filed the same petition with the County Clerk of the county in which the petition is circulated for signature verification not later than the 40 days before the third Tuesday in August, which occurs in the second week of July, he has failed to complete the nomination process and his name may not appear on the general election ballot.

B. Timeline — Putting It All Together

	Major Parties	Minor Parties	Independent Candidates
May	Candidate must file declaration of candidacy not later than third Monday (106 days before primary election)		
June		Minor political party must file list of candidates not later than last Friday	
July		Candidate must file declaration of candidacy not later than first Wednesday (125 days before general election)	Candidate must file declaration of candidacy not later than first Wednesday (125 days before general election)
		Minor political party must file petition for signature verification not later than 40 days before third Tuesday in August (117 days before general election)	Candidate must file petition for signature verification not later than 40 days before third Tuesday in August (117 days before general election)
August		Minor political party must file petition with Secretary of State not later than second Friday	Candidate must file petition with Secretary of State not later than third Tuesday
September	Primary Election occurs on first Tuesday		
October			
November	General Election occurs on first Tuesday after first Monday		

Candidates of major political parties must file their declarations of candidacy 44 days before candidates of minor political parties and independent candidates for partisan office and approximately 52 days before the minor political party or independent candidate must file its petition for signature verification. However, it is important to note that the filing of a declaration of candidacy by a candidate of a major political party merely makes that candidate eligible to appear on the primary ballot, it does not determine the nominee of the major political party. In contrast, as long as the petitions filed contain the proper number of valid signatures, a candidate of a minor political party and an independent candidate for partisan office actually completes his nomination process on the date the petition is filed or on the date the candidate of a minor political party files his declaration of candidacy if the minor political party has already qualified its candidates for ballot access. Therefore, the filing of a declaration of candidacy has greater significance to a minor political party or independent candidate for partisan office than to a candidate of a major political party.

III. DESCRIPTION OF CANDIDATE FILING PROCEDURES AND BALLOT ACCESS REQUIREMENTS IN OTHER STATES

For the purposes of this study, the candidate filing procedures and ballot access requirements for both major and minor political parties are examined in various states throughout the country. Particular focus is given to the processes that minor political parties must follow in order to obtain ballot access. Information regarding the date of each state's primary election and the filing deadlines for candidates of major political parties, candidates of minor political parties, and independent candidates are also included in the following tables.

In researching the various nomination procedures used in the United States, it was determined that in 11 states, all political parties nominate their candidates through a primary election process. Conversely, there are 15 states which provide for a process similar to Nevada, whereby access to the primary election ballot is afforded to major political parties, while other political parties and independent candidates are nominated for a position on the general election ballot. These states are examined on the following pages in an effort to offer insight on state policies that are both similar and opposite in nature to those used in the State of Nevada.

A. States in Which All Candidates Are Nominated in a Primary Election

The 11 states in which all political party candidates are nominated at the primary election are: Alaska, Arizona, California, Hawaii, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, Tennessee, and Washington.

1. Candidate Filing Deadlines

With the exception of the states of North Dakota and Ohio, all the states in this category required the same candidate filing deadline for candidates of major and minor political parties, as well as independent candidates. In North Dakota, the candidate filing deadline for independent candidates occurs almost five months later than the filing deadlines for major and minor party candidates, while in Ohio, this filing deadline occurs approximately two and one half months later. In most cases, however, the states in which all candidates are nominated in a primary election have consistent candidate filing deadlines for all candidates.

2. Ballot Access Procedures for Political Parties

While consistency in candidate filing deadlines is common among these 11 states, the process by which political parties obtain ballot access varies. The states of Alaska, Louisiana, Mississippi, and Washington, do not require a petition process to obtain ballot access. The seven remaining states that provide for such a petition process, list varying signature requirements and petition filing deadlines. In addition, variations exist in the requirements to maintain ballot access for political parties. While most states require a minimum level of performance at the polls for a political party's candidates, these performance thresholds vary from a low of 1 percent of the total votes cast in a particular office to a high of 10 percent. Lower performance thresholds

for maintaining access to the ballot are typically required of candidates representing minor political parties. Finally, as noted in the following tables, variations exist in the definition of minor and major political parties. These differences relate to the varied procedures by which parties obtain and maintain ballot access.

B. States in Which Minor Political Party and Independent Candidates are Not Nominated in a Primary Election

The 15 states in which candidates of minor political parties and independent candidates are not nominated in a primary election are: Colorado, Connecticut, Delaware, Georgia, Indiana, Kansas, Kentucky, Michigan, Nevada, New Mexico, Oregon, Texas, Vermont, West Virginia, and Wyoming.

1. Candidate Filing Deadlines

With the exception of the State of Kansas, all the states in this grouping had filing deadlines for candidates of major political parties prior to those for candidates of minor political parties and independent candidates. The differentiation between these dates ranged from approximately seven months in the State of Kentucky to 31 days in the State of Connecticut. However, the majority of the 15 states had differentiations of about two to three months. The State of Kansas provides for the same filing deadline for candidates of both major and minor political parties.

2. Ballot Access Procedures for Political Parties

No discernable trends can be found in this grouping of states regarding the procedures for obtaining and maintaining access to the ballot. Roughly half of the states require a petition process for obtaining ballot access. In addition, candidate performance thresholds for maintaining access to the ballot vary by major and minor political parties and by state. These performance thresholds vary from a low of 1 percent of the total votes cast in a particular office for candidates of minor political parties to a high of 20 percent for candidates of major political parties. As noted earlier, lower performance thresholds are typically required of candidates representing minor political parties.

STATES IN WHICH ALL CANDIDATES ARE NOMINATED BY PRIMARY ELECTION

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Alaska	Fourth Tuesday in August (8-25-98)	June 1 of the year in which a general election is held for the office (6-1-98)	June 1 of the year in which a general election is held for the office (6-1-98)	June 1 of the year in which a general election is held for the office (6-1-98)	No (see notes)	n/a	A political party is "recognized" after one of its candidates (on the ballot through a nominating petition) receive at least 3% of the total votes cast for governor at the last election or after the party has garnered a number of registered voters equal to 3% of the votes cast for governor.
Arizona	Eighth Tuesday before general election (9-8-98)	Not less than 75 days before the primary election (6-25-98)	Not less than 75 days before the primary election (6-25-98)	Not less than 75 days before the primary election (6-25-98)	Yes (for all new parties) Due not less than 75, nor more than 105 days prior to the primary election (6-25-98)	Signatures of qualified electors equal to not less than 1⅓% of the total votes cast for governor or presidential electors at the last general election (18,725 for 1998)	The State of Arizona does not differentiate between minor and major political parties. Candidate filing and ballot access qualifications are identical for both major and minor parties.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
California	First Tuesday after the first Monday in June of every even-numbered year (6-2-98)	88 days before the primary election (3-6-98)	88 days before the primary election (3-6-98)	88 days before the primary election (3-6-98)	Yes (see notes for other methods of qualification) Due on or before the 135 th day before the primary election (1-18-98)	Number of signatures of voters equal to 10% of the total number of persons (8,900,593) who voted in the 1994 general election (890,060 for 1998)	Political parties may also qualify for ballot access by obtaining a number of registered voters equal to 1% of the total number who voted in the 1994 general election (89,006) by the 154 th day before the primary or at the last preceding gubernatorial election, there was polled for any one of the party's candidates for any office, at least 2% of the entire vote cast.
Hawaii	Second to the last Saturday of September (9-19-98) (primary must be held at least 42 days before general)	Not later than 4:30 p.m. on the 60 th calendar day prior to the primary election (7-21-98)	Not later than 4:30 p.m. on the 60 th calendar day prior to the primary election (7-21-98)	Not later than 4:30 p.m. on the 60 th calendar day prior to the primary election (7-21-98)	Yes. Not later than 4:30 p.m. on the 170 th day prior to the next primary election. (4-2-98)	Signed by not less than 1% of the total registered voters of the state as of the last preceding general election	To maintain political party standing, all political parties must receive at least 10% of all votes cast: (a) For any of the offices voted upon in the state; (b) In at least 50% of the congressional districts; (c) In at least the six senatorial districts with the lowest votes cast for the office of state senator; or (d) In at least 50% of the representative districts for the office of state representative.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Louisiana	10-23-99 (Legislative offices) 10-3-98 (Federal offices and certain statewide offices)	Second Wednesday in August for legislative races (8-21-98)	Second Wednesday in August for legislative races (8-21-98)	Second Wednesday in August for legislative races (8-21-98)	No (Petitions required only of candidates wishing to represent a minor party)	n/a (Candidate petitions for State Senate candidates must be signed by at least 500 registered voters, while petitions for House of Representative candidates must be signed by at least 400 registered voters.)	A political party shall be recognized if one of its candidates for presidential elector received at least 5% of the votes cast for presidential electors in the last general election or if at least 5% of voters in the state indicated affiliation with the party.
Mississippi	First Tuesday after the first Monday in August (8-4-98) ["Run off" primary, if needed, occurs three weeks thereafter]	5 p.m. on March 1 of the year in which the primary election for the office is held (3-1-98)	5 p.m. on March 1 of the year in which the primary election for the office is held (3-1-98)	3-1-98 (Candidates running for legislative office who are not nominated by a political party must circulate a petition and obtain 50 signatures)	No	n/a	A political party is an association, committee or organization that nominates a candidate for election to any elective office whose name appears on the ballot as a candidate of the association, committee or organization. Mississippi law makes no provisions for the termination of a political party.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
North Dakota	Second Tuesday in June (6-9-98)	4 p.m. of the 60 th day before the primary election (4-13-98)	4 p.m. of the 60 th day before the primary election (4-13-98)	4 p.m. of the 60 th day before the general election. (Independent/ nonpartisan candidates participate in the general election through a petition process.) (9-4-98)	Yes (see notes) (A "column" on the primary election ballot will also be provided to any political organization [a party] that files a petition with the secretary of state before 4 p.m. of the 60 th day before the primary election.)	Petition to obtain a "column" on the primary election ballot requires 7,000 signatures.	Political parties can field candidates for legislative office if candidates from the party received at least 5% of the total vote cast for presidential electors or governor at the last presidential election, or if the party completed a petition as noted at left.
Ohio	First Tuesday after the first Monday in May (5-5-98)	Before 4 p.m. on the 75 th day before the primary election (2-19-98)	Before 4 p.m. on the 75 th day before the primary election (2-19-98)	No later than 4 p.m. of the day before the day of the primary election (5-4-98)	Yes. Due no later than 120 days before the primary election (see notes)	Signed by qualified electors equal in number to at least 1% of the total vote for governor or nominees for presidential electors at the most recent election.	A political party is defined as a group of voters whose candidate for governor or nominees for presidential electors polled at least 5% of the vote cast for that office. If 5% is not polled, a petition must be filed again.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Oklahoma	Fourth Tuesday in August 8-25-98 ["Run off" primary, if needed, occurs on third Tuesday in September] (9-15-98)	No earlier than 8 a.m. on the first Monday after Independence Day of any even-numbered year and no later than 5 p.m. on the next succeeding Wednesday (7-8-98)	No earlier than 8 a.m. on the first Monday after Independence Day of any even-numbered year and no later than 5 p.m. on the next succeeding Wednesday (7-8-98)	No earlier than 8 a.m. on the first Monday after Independence Day of any even-numbered year and no later than 5 p.m. on the next succeeding Wednesday (7-8-98)	Yes. Petition may be circulated at any time except between May 31 and November 15 of any even-numbered year. Petition must be filed with the secretary of state no later than 5-31-98.	Petition must contain signatures of registered voters equal to at least 5% of the total votes cast in the last general election either for governor or for electors for President and Vice President.	A political party ceases to exist when its nominee for governor or nominees for electors for President and Vice President fail to receive at least 10% of the total votes cast for those offices in any general election. The party may regain recognition by completing the petition process noted at left.
Tennessee	First Thursday in August (8-6-98) [races for governor, state legislature, and federal office]	No later than 12 o'clock noon on the third Thursday in the third calendar month before an election (5-21-98, noon)	No later than 12 o'clock noon on the third Thursday in the third calendar month before an election (5-21-98, noon)	No later than 12 o'clock noon on the third Thursday in the third calendar month before an election (5-21-98, noon)	Yes. One year of petition circulation required. (see notes for other methods of qualification)	After one year of circulation, petition must be signed by a number equal to at least 2.5% of the total number of votes cast for the most recent race for governor. Signers must declare that they are members of the new party.	A political party may also be recognized if it had at least one candidate for statewide office in the past four calendar years who has received votes equal in number to at least 5% of the total number of votes cast for the most recent race for governor.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Washington	Third Tuesday of the preceding September or on the seventh Tuesday preceding the general election, whichever comes first. (9-15-98)	No earlier than the fourth Monday in July and no later than the following Friday (7-31-98)	A petition process is used. After the nominating petitions are verified by the filing officer, candidates must file their declarations of candidacy no earlier than the fourth Monday in July and no later than the following Friday. (7-31-98)	A petition process is used. After the nominating petitions are verified by the filing officer, candidates must file their declarations of candidacy no earlier than the fourth Monday in July and no later than the following Friday. (7-31-98)	No (Petitions required only of candidates wishing to represent a minor party)	n/a	The State of Washington does not prescribe a procedure for the formation of political parties. Parties are, however, classified according to their candidates' performance at the polls. A major party is defined as one that polled at least 5% of the total votes cast at the last general election for President, Vice President, U.S. Senator, or any statewide office. A minor party is a political organization other than a major political party.

**STATES IN WHICH MINOR POLITICAL PARTY CANDIDATES AND INDEPENDENT CANDIDATES
ARE NOT NOMINATED IN A PRIMARY ELECTION**

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Colorado	Second Tuesday of August in even-numbered years (8-11-98)	Within 10 days after the adjournment of the assembly to designate candidates, or 65 days prior to the primary election. (6-8-98)	A written "acceptance" must be filed with the filing officer no later than 10 business days after the filing of the certificate of designation for the nominee, which occurs no later than the 28 th day prior to the primary election. (7-27-98)	Not later than 3 p.m. on the 28th day preceding the primary election. (7-14-98)	Yes. Petitions are submitted to the secretary of state no later than May 1 of the election year for which the minor party seeks to qualify. (5-1-98)	Signed by at least 10,000 registered electors.	A minor party shall continue to be qualified as a minor party if one of its candidates for statewide office received at least 1% of the total votes cast for any statewide office in either of the last two general elections, or if 1,000 or more registered electors are affiliated with the party prior to July 1 of the last two general election years. A major party is one that polled at least 10% of the votes cast for governor in the last general election. Only major parties may nominate candidates in a primary election.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Connecticut	56 th day preceding the day of the general election. If the primary falls on the day immediately following Labor Day, it occurs one week later. (9-15-98)	No later than 4 p.m. on the 14 th day after the close of the party convention to "endorse" candidate. Convention must occur no later than 50 days before the primary election. (8-10-98)	No later than the 55 th day prior to the general election when the list of candidates chosen at the party's nominating convention is filed with the appropriate filing officer. (9-9-98)	55 th day before the general election. (Petition process required for nonpartisan candidates) (9-9-98)	No. New party may, however, file a nominating petition to place a candidate on the ballot.	n/a A new party is formed by (a) Filing a reservation of party designation; (b) Filing nominating petition(s) to place candidates on the ballot under the new party name; and (c) Winning at least 1% of the vote for the office(s) sought to attain minor party status for such offices.	A major political party is one whose candidate for governor polled at the last election at least 20% of the total votes cast or having "enrolled" [registered] at the last general election at least 20% of the total voters in the state. A minor party is one whose candidate for the office in question received, at the last general election for that office, at least 1% of the total number of votes cast for all candidates for that office.
Delaware	First Saturday next following the first Monday in September (9-12-98)	On or before 12 noon of the last Friday in July (7-31-98)	On or before the first day of September of the year of any general election. (9-1-98)	"Unaffiliated" candidates must file for office on September first of the general election year. A petition process is required. (9-1-98)	No (based on candidate performance at the polls)	n/a	A major party is one that, as of December 31 of the year preceding the general election year, has registered at least 5% of the total number of voters in the state. A minor party is one that does not qualify as a major party.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Georgia	Third Tuesday in July in each even-numbered year. (7-21-98)	No later than 12 noon on the Friday following the fourth Monday in April. (5-1-98)	No later than 12 noon on the Friday following the fourth Monday in June. (6-26-98)	No later than 12 noon on the Friday following the fourth Monday in June. (6-26-98)	No (based on candidate performance at the polls)	n/a	State law does not prescribe the procedure for the formation or termination of a political party. A political party qualifies for primary ballot access if it polls either 20% of the total votes cast in the last race for governor, or if 20% of the total registered voters affiliate with the party. All other organizations are called political bodies and have access to the general election ballot.
Indiana	First Tuesday after the first Monday in May (5-5-98)	No later than noon, 74 days before the primary election (2-20-98)	Nominating candidate petitions must be filed by 7-15-98. Petitions are certified by 8-1-98, at which time, candidacy is announced by filing officer.	Nominating candidate petitions must be filed by 7-15-98. Petitions are certified by 8-1-98, at which time, candidacy is announced by filing officer.	No (based on candidate performance at the polls)	n/a (Each minor party candidate must circulate nominating petition.)	State law does not prescribe the procedure for formation of a party. It does require that any party whose nominee for secretary of state received at least 10% of the votes cast for that office at the last election have state, congressional district, and county committees. The party's candidates only appear on the general election ballot if its nominee for secretary of state received at least 2% of the votes cast at the last general election. Ballot access is lost if 2% is not garnered.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Kansas	First Tuesday of August in even-numbered years. (8-4-98)	No later than 12 noon on June 10 prior to the primary election. (6-10-98)	No later than 12 noon on June 10 prior to the primary election. (6-10-98)	No later than 12 noon on the Monday preceding the primary election. (8-3-98)	Yes. Petitions may be filed for parties seeking official "recognition" no later than 12 noon on June 1 prior to the primary election (6-1-98)	Petitions must contain a number of signatures equal to at least 2% of the total vote cast for all candidates for the office of governor at the last general election.	A political party is entitled to participate in a primary if its candidate for governor received at least 5% of the total votes cast for governor at the last election. A "recognized" party whose nominee for any office fails to garner least 1% of the total vote cast, or which fails to nominate candidates for any office, ceases to be recognized.
Kentucky	First Tuesday after the fourth Monday in May (5-26-98)	No later than 4 p.m. on the last Tuesday in January (1-27-98)	No later than 4 p.m. on the second Tuesday in August (8-11-98)	No later than 4 p.m. on the second Tuesday in August (8-11-98)	No (based on candidate performance at the polls)	n/a	A political party is entitled to participate in a primary if it polled at least 20% of the total vote cast at the last presidential election. A political organization that polled less than 20% but more than 2% of the total votes cast may nominate candidates by convention to be voted for at the general election.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Michigan	The Tuesday after the first Monday in August before each general November election (8-4-98)	The 12 th Tuesday preceding the August primary election (5-12-98)	Within 24 hours of the conclusion of conventions to nominate candidates, which must occur not later than the August primary (8-4-98)	No later than 4 p.m. on the 110 th day before the general election (7-16-98)	Yes. Due not later than 4 p.m. on the 110 th day before the general election. (7-16-98)	Petitions must bear the signatures of voters equal to not less than 1% of the total number of votes cast for candidates for governor at the last election. In addition, the petitions must be signed by at least 100 registered voters in each of at least one-half of the congressional districts in the state.	A political party is permitted to nominate candidates by primary election if its principal candidate receives at least 5% of the total votes cast for secretary of state in the last general election. A party whose candidate receives greater than 1% but less than 5% may nominate candidates for the general election. A new political party has access only to the general election ballot.
Nevada	First Tuesday in September of every even-numbered year (9-1-98)	No later than 5 p.m. on the third Monday in May (5-18-98)	No later than the first Wednesday in July (7-1-98)	No later than the first Wednesday in July (7-1-98)	Yes. Due at the secretary of state no later than 8-14-98. Petitions due in county election office for signature verification by 7-9-98	Petitions must be signed by a number of voters equal to at least 1% of the total number of votes cast in the last general election.	Minor political parties maintain ballot access by polling for any of their candidates a number of votes equal to 1% of the total votes cast for Representative in Congress or by having been designated as the party affiliation on at least 1% of the applications to register to vote in Nevada.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
New Mexico	First Tuesday in June of every even-numbered year (6-2-98)	Third Tuesday in March (3-25-98)	Second Tuesday in July (7-14-98) (minor party's nominees certified with the Secretary of State)	Second Tuesday in July (7-14-98)	Yes. Due at the same time party files its rules and regulations, which is no later than the first Tuesday in April. (4-7-98)	Number of signatures equal to ½% of the total votes cast for the office of governor or President at the last general election.	A major political party is any qualified party, any of whose candidates received as much as 5% of the total votes cast for governor or President and whose membership totals not less than one-third of 1% of the statewide registered voter file. Major parties nominate their candidates by primary. A minor party is any qualified party, none of whose candidates received 5% or more of the total votes cast for governor or President.
Oregon	Third Tuesday in May of each even-numbered year (5-19-98)	Not later than the 70 th day before the date of the biennial primary election. (3-10-98)	Not later than the 70 th day before the date of the general election. (8-25-98)	Not later than the 70 th day before the date of the general election. (8-25-98)	Yes. Due not later than two years following the date the "prospective" petition was filed. (date varies)	A number equal to 1½% of the total votes cast in the electoral district for all candidates for governor at the most recent election.	A major party is one which polled for any statewide office or presidential elector at least 15% of the total votes cast. A minor party is one that polled at least 1%. A minor party may only participate in the general election.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/ Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
Texas	Second Tuesday in March in each even-numbered year. (3-10-98) [If needed, a runoff primary occurs on the second Tuesday in April.]	Not later than 6 p.m. on January 2 in the primary election year. (1-2-98)	Not later than 5 p.m. on January 2 preceding the nominating convention (1-2-98) [NOTE: This filing is for a candidate's intention to run for office. The actual nomination occurs on the second Saturday in June]	Not later than 5 p.m. of the 30 th day after the runoff primary election day. (5-14-98) [petition process required]	Yes. If the party lacks the number of convention delegates needed to nominate candidates, it may file a petition. Due before the 75 th day after the date of the precinct convention. (5-24-98)	Number of signatures must equal at least 1% of the total number of votes received by all candidates for governor in the most recent election.	A political party must hold a primary if its nominee for governor received 20% or more of the total votes cast for that office at the last general election. In order to participate in the general election, a minor party must maintain a nominee at each election that garners at least 5% of the total vote cast for an office. Otherwise, the party may participate by having at its convention, a number of delegates equal to at least 1% of the total number of votes cast for governor at the most recent election.
Vermont	Second Tuesday of September in every even-numbered year. (9-8-98)	Third Monday in July preceding the primary election. (7-20-98)	Not later than 5 p.m. on the 47 th day before the general election. (9-17-98)	Not later than 5 p.m. on the 47 th day before the general election. (9-17-98)	No. Political party need only be "organized" pursuant to state law.	n/a	A major political party is one whose candidates for any state office polled at least 5% of the votes for that office at the last general election. A minor party is any party that is not a major party. All political parties must "organize" pursuant to state law every two years.

State	Date of Primary Election	Filing Deadline for Major Party Candidates	Filing Deadline for Minor Party Candidates	Filing Deadline for Independent/Nonpartisan Candidates	Petition Required for Minor Party Ballot Access? Y/N and Date Due	Number of Signatures Required on Ballot Access Petitions	Notes
West Virginia	Second Tuesday in May (5-12-98)	Not later than the first Saturday in February next preceding the primary election. (2-7-98)	Not later than the day preceding the date on which the primary election is held. (5-11-98)	Not later than the day preceding the date on which the primary election is held. (5-11-98)	No. (based on candidate performance at the polls)	n/a	An affiliation of voters that is recognized as political party by polling 1% of the gubernatorial vote is entitled to nominate its candidates in the primary election. Even if a group of citizens does not qualify for political party status, it is entitled to have the names of its candidates place on the general election ballot through a nominating petition process.
Wyoming	First Tuesday after the third Monday in August (8-18-98)	Not later than 74 days next preceding the primary election. (6-5-98)	Minor party candidates are to be certified no later than the day before the primary election. (8-17-98)	Not less than 70 days before a general election. (8-25-98)	Yes. [for new "provisional" political parties] No later than June 1 in any general election year. (6-1-98)	To be valid, a petition shall contain the names and signatures of not less than 8,000 registered eligible to vote in the state.	A political party qualifies for recognition as a major political party if its candidate for U.S. Representative received not less than 10% of the total votes cast in the most recent election. A minor party is a political organization whose candidate for that office received not less than 3% nor more than 10% of the total votes cast.

IV. CONSTITUTIONAL ISSUES CONCERNING BALLOT ACCESS

A. Right to Create and Develop New Political Parties

The United States Supreme Court has recognized the constitutional right of citizens to create and develop new political parties. Norman v. Reed, 112 S. Ct. 698, 705 (1992). Any restrictions imposed on the creation of political parties and the access of political parties to the ballot impinges on “two different, although overlapping, kinds of rights — the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” Williams v. Rhodes, 89 S. Ct. 5, 10 (1968). Both the right to associate for the advancement of political beliefs and the right to vote are protected by the First and Fourteenth Amendments to the Constitution of the United States. Id. The Court has stated that “[t]he 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.” Id. Because voters can only assert their preferences through candidates or parties or both, the right to vote is “heavily burdened” if that vote may only be cast for major party candidates while minor party candidates struggle for a place on the ballot. Anderson v. Celebrezze, 103 S. Ct. 1564, 1569 (1983) (citing Lubin v. Panish, 94 S. Ct. 1315, 1320 (1974); Rhodes, 89 S. Ct. at 10). However, the United States Supreme Court has also recognized that states have an interest in regulating their own elections. Burdick v. Takushi, 112 S. Ct. 2059, 2063 (1992) (citing Sugarman v. Dougall, 93 S. Ct. 2842, 2850 (1973); Tashjian v. Republican Party of Connecticut, 107 S. Ct. 544, 550 (1986)). In fact, the Court has stated that states must substantially regulate “elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” Storer v. Brown, 94 S. Ct. 1274, 1279 (1974).

B. The United States Supreme Court’s Balancing Test to Determine the Constitutional Validity of Laws Affecting Ballot Access

The United States Supreme Court has established the following balancing test for determining whether laws that affect ballot access are constitutional:

A court considering a challenge to a state election law must “weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”

Burdick v. Takushi, 112 S. Ct. 2059, 2063 (1992) (quoting Anderson v. Celebrezze, 103 S. Ct. 1564, 1570 (1983)).

In applying this balancing test, a court must determine whether the challenged state election law “severely” restricts constitutionally protected rights or whether it imposes only “reasonable, nondiscriminatory” restrictions. *Id.* at 2063-64. If the state election law severely restricts the rights protected by the First and Fourteenth Amendments, the law must be narrowly tailored to advance a compelling state interest. *Id.* If, however, the state election law imposes only reasonable, nondiscriminatory restrictions, the law need only be justified by an important regulatory interest. *Id.* (citing Anderson, 103 S. Ct. at 1569-70).

C. Application of United States Supreme Court’s Balancing Test to Determine the Constitutional Validity of Particular Filing Deadlines

Courts have applied the balancing test established by the United States Supreme Court to evaluate cases in which plaintiffs have alleged that early filing deadlines for candidates of minor political parties and independent candidates have unconstitutionally infringed on the right to associate and the right to vote protected by the First and Fourteenth Amendments. Generally, the courts that have struck down early filing deadlines for minor political parties and independent candidates as unconstitutional have found that such deadlines “severely” restrict constitutionally protected rights. *See* Williams v. Rhodes, 89 S. Ct. 5, 12 (1968); Anderson v. Celebrezze, 103 S. Ct. 1564, 1572 (1983); Cromer v. State of South Carolina, 917 F.2d 819, 824 (4th Cir. 1990); Bradley v. Mandel, 449 F. Supp. 983, 986-87 (D.C. Md. 1978); Greaves v. State Bd. of Elections of North Carolina, 508 F. Supp. 78, 83 (E.D. N.C. 1980); Citizens to Establish A Reform Party in Arkansas v. Priest, 970 F. Supp. 690, 698 (E.D. Ark 1996); Libertarian Party of Nevada v. Swackhamer, 638 F. Supp. 565, 570 (D. Nev. 1986). A reason often cited by these courts for why early filing deadlines cause a severe restriction on the First and Fourteenth Amendment rights of minor political parties and independent candidates is that the early date of the filing deadline combined with other requirements for ballot access (e.g. requirements to obtain numerous signatures on a petition, restrictions on how long a party or candidate may take to gather signatures, restrictions on who may sign a petition) make the process of obtaining ballot access extremely burdensome, if not impossible. *See* Rhodes, 89 S. Ct. at 11 (indicating that if the totality of the effect of ballot access laws has the effect of freezing the status quo, the requirements are not constitutionally defensible).

Another reason why courts have found that early filing deadlines cause a severe restriction on the First and Fourteenth Amendment rights of minor political parties and independent candidates is that such parties and candidates are not ordinarily considered by voters to be a viable alternative to the two major political parties until just before the election. Therefore, courts have concluded that early filing deadlines heavily burden the ability of minor political parties and independent candidates to gather signatures and engage in other organizational efforts that may be required by state law. Anderson v. Celebrezze, 103 S. Ct. 1564, 1572 (1983); Rhodes, 89 S. Ct. at 11; Citizens to Establish Reform Party in Arkansas v. Priest, 970 F. Supp. 690, 698 (E.D. Ark 1996); Libertarian Party of Nevada v. Swackhamer, 638 F. Supp. 565, 570 (D. Nev. 1986).

Another closely related reason why courts have found that early filing deadlines cause a severe restriction on the First and Fourteenth Amendment rights of minor political parties and independent candidates is that those parties and candidates need time to react to late-emerging issues and to react to the candidates chosen by the major political parties. Traditionally, minor political parties and independent candidates emerge as a reaction to the public's dissatisfaction with the platforms and candidates of the major political parties. See Anderson, 103 S. Ct. at 1578. Therefore, when minor political parties and independent candidates are compelled to file before the major political parties nominate their candidates, their ability to organize and to obtain ballot access is severely burdened. Council of Alternative Political Parties v. Hooks, 121 F.3d 876, 881 (3rd Cir. 1997); Wood v. Meadows, 117 F.3d 770, 773 (4th Cir. 1997) (remanding to district court to make determination if burden was severe enough to require the challenged statute to be narrowly tailored to serve a compelling state interest); Blomquist v. Thomson, 739 F.2d 525, 528 (10th Cir. 1984); Cromer v. State of South Carolina, 917 F.2d 819 (4th Cir. 1990); Fulani v. Lau, 92-535 (D. Nev. filed October 13, 1992) (*unpublished decision*); Cf. Hagelin for President Committee of Kansas v. Graves, 25 F.3d 956 (10th Cir. 1994) and Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd., 844 F.2d 740, 746 (10th Cir. 1988) (indicating that lower courts are limited in the significance they may place on evidence of a lack of time to react to candidates of major political parties because various holdings of the United States Supreme Court have upheld filing deadlines that occur before conventions of major political parties).

Generally those courts that have upheld early filing deadlines for minor political parties and independent candidates have found that such deadlines along with other restrictions imposed by states, impose only "reasonable, nondiscriminatory" restrictions. See Jenness v. Fortson, 91 S. Ct. 1970, 1974-75 (1971); Texas Indep. Party v. Kirk, 84 F.3d 178, 185 (5th Cir. 1996); Hagelin for President Committee of Kansas v. Graves, 25 F.3d 956, 960 (10th Cir. 1994); United States Taxpayers Party of Florida v. Smith, 871 F. Supp. 426, 432 (N.D. Fl. 1993), *aff'd*, 51 F.3d 241; Socialist Workers Party v. Hechler, 696 F. Supp. 190, 201-2 (S.D. W.Va. 1988), *aff'd in part*, 890 F.2d 1303 (4th Cir. 1989). However, the ballot access systems analyzed by most of these courts provided for filing deadlines for minor political parties and independent candidates that were later than those for major political party candidates. The following summary of the courts' treatment of the issue of filing deadlines illustrates the diversity of opinion expressed by the courts and the difficulty that state legislatures encounter in setting filing deadlines for candidates of minor political parties and independent candidates.

Applying the balancing test adopted by the United States Supreme Court and relying on the various justifications explained in the previous paragraphs, courts have come to the following conclusions concerning the constitutionality of filing deadlines for minor political parties and independent candidates: (1) a February filing deadline is too early (Williams v. Rhodes, 89 S. Ct. 5 (1968)); (2) a March filing deadline which was 229 days in advance of a November general election is too early (Anderson v. Celebrezze, 103 S. Ct. 1564 (1983)); (3) an April 6 filing deadline for an early November general election is too early (New Alliance Party of Alabama v. Hand, 933 F.2d 1568, 1575-76 (11th Cir. 1991)); (4) a May 31 filing deadline for a primary election on the 4th Tuesday in August, although "troublesomely early," is constitutional

(Rainbow Coalition v. Oklahoma State Election Bd., 844 F.2d 740 (10th Cir. 1988)); (5) a June 1st deadline for new political parties which was 90 days before the primary election unduly burdens access to ballot (McLain v. Meier, 637 F.2d 1159, 1164-65 (8th Cir. 1980)); (6) a mid-June filing deadline for third party nominees, which was the same filing deadline that candidates participating in a major political party primary were required to meet, for a November general election was not an unreasonably early filing deadline (Jenness v. Fortson, 91 S. Ct. 1970, 1971-72, 1974 (1971)); (7) a filing deadline 120 days before the general election for third party nominees is not unreasonable or unduly burdensome (American Party of Texas v. White, 94 S. Ct. 1296, 1309, n. 18 (1974)); and (8) a filing deadline of 75 days before the primary election (and 257 days before the general election) is too early (Cripps v. Seneca County Bd. of Elections, 629 F. Supp. 1335 (N.D. Ohio 1985)).

One court has summarized the current state of the law on the issue of ballot access as follows:

While no constitutional maximum or minimum has been developed, most states seemed to have fixed on 75 to 90 days as a reasonable period to accommodate [the] state interests [in administrative processing and voter education], both as relates to primary and general elections. Looking only to those interests, a state surely could require independent candidates to declare and perfect their candidacies 60 to 90 days before a general election. Beyond that period, some other interest would seem to be needed to justify an earlier declaration of independent candidacy.

Cromer v. State of South Carolina, 917 F.2d 819, 825 (4th Cir. 1990). In a subsequent case, the Fourth Circuit Court of Appeals clarified that this summary of the issue of ballot access was intended as a commentary on the general state of the law and was not intended to set forth a bright line rule. Wood v. Meadows, 117 F.3d 770, 774 (4th Cir. 1997).

Scholars on the ballot access issue have summarized the current state of the law on the issue as it relates to federal candidates who are elected in the early November general election by stating:

[S]tates which have filing deadlines for independent or third party candidates before June 1 are likely to find the deadlines invalidated. Deadlines falling between June 1 and July 1 will be viewed as suspect by courts and thrown out if other circumstances compound the burden, and deadlines of 75 days or less (some 2 1/2 months) before the general election will generally be upheld.

James A. Palmer, J.D.; Edward D. Feigenbaum, M.B.A., J.D.; David T. Skelton, J.D., Ed.D., A Summary of Judicial Precedent on Election Issues other than Campaign Financing, p. 55 (April 1997) (published by the Federal Election Commission)

D. Application of United States Supreme Court's Balancing Test to Nevada's Current Ballot Access System

As described in Part II, the State of Nevada has a system which requires: (1) candidates of major political parties to file their declarations of candidacies in late May for an early September primary election and (2) candidates of minor political parties and independent candidates to file their declarations of candidacy and petitions with a certain number of signatures by early July for an early November election. Thus, a minor political party must file its petition to qualify its candidates for appearance on the general election ballot not later than **117 days before the general election** and a candidate for a minor political party must file his declaration of candidacy not later than **125 days before the general election**. Further, an independent candidate for partisan office must file his petition for candidacy not later than **117 days before the general election** and his declaration of candidacy not later than **125 days before the general election**. In analyzing Nevada's filing deadlines, we must consider both the date for filing the declaration of candidacy and the date for filing the petition containing signatures because not all states require both such documents to be filed. In analyzing a state's filing deadlines for candidates of minor political parties or independent candidates, a court may be referring to the date by which the party or candidate must submit a petition containing a certain number of signatures. However, because the deadlines in Nevada for filing the declaration of candidacy and for filing the petition containing signatures are only 8 days apart, we may apply most case law to determine the constitutionality of both Nevada's deadline for filing the declaration of candidacy and for filing the petition.

A comparison of Nevada's filing deadlines to those filing deadlines that have been upheld and struck down by courts, as outlined in Part IV(C), reveals that Nevada's filing deadlines for minor political parties and independent candidates are generally within the range that has been upheld by most courts, although perhaps on the edge of that range. *See Jenness v. Fortson*, 91 S. Ct. at 1971-72, 1974 (1971) (a mid-June filing deadline for third party nominees for a November general election was not an unreasonably early filing deadline); *American Party v. White*, 94 S. Ct. 1296, 1309, n. 18 (1974) (a filing deadline 120 days before the general election for third party nominees not unreasonable or unduly burdensome); *But see McLain v. Meier*, 637 F.2d at 1164-65 (8th Cir. 1980) (a June 1st deadline for new political parties which was 90 days before the primary election found to burden access to ballot unduly). Therefore, it is the opinion of the Legal Division of the Legislative Counsel Bureau that if Nevada's current system for ballot access were challenged today it would be upheld as constitutional. If the Legislature desired to make the filing deadlines for candidates of minor political parties and independent candidates earlier in the calendar year without making other drastic changes to other aspects of the ballot access system, however, it would be difficult, if not impossible, for the Legal Division to determine with any degree of certainty how much earlier a filing deadline may be set.

Because a court must consider the totality of the effect of ballot access laws, *see Williams v. Rhodes*, 89 S. Ct. 5, 11 (1968), it could be argued that it would be constitutional for the Nevada Legislature to keep the basic structure of its current ballot access system and make the filing deadlines for candidates of minor political parties and independent candidates earlier if,

at the same time, it lessened some of the other current requirements for such candidates to obtain ballot access. However, currently Nevada's other requirements for candidates of minor political parties and independent candidates to obtain ballot access are not very burdensome. Unlike other states, Nevada imposes no limitations on how much time a minor political party or independent candidate may take to gather signatures on its petition, Nevada does not limit which registered voters may sign a petition of a minor political party or an independent candidate and Nevada does not prohibit a person who has signed a petition for a minor political party or an independent candidate from voting in one of the major political parties' primary elections. Furthermore, a federal district court in Nevada has already indicated that a deadline for the filing of the petition by a minor political party that is 146 days before the general election (only 29 days earlier than the current requirements) would most likely be struck down as unconstitutional, even though the other requirements for a minor political party to obtain ballot access, at that time, were almost exactly the same as the current requirements. Fulani v. Lau, No. 92-535 (D. Nev. filed Oct. 13, 1992) (*unpublished decision*). The only difference was that in 1992 a minor political party had to file a petition containing the signatures of 3 percent, rather than 1 percent, of the total number of votes cast at the last preceding general election for Representative in Congress to qualify its candidates for a place on the general election ballot. The court's decision in Fulani was limited to whether a preliminary injunction should be granted to require the Secretary of State to place the plaintiffs' names on the general election ballot and therefore the court did not decide conclusively whether the filing deadlines were unconstitutional. However, its conclusion, that the plaintiffs had established a likelihood of success on the merits, indicates that the federal courts in Nevada are not likely to find an earlier filing deadline constitutional within the basic structure of the current ballot access system even if the Legislature were to lessen the other requirements that must be completed for a minor political party or an independent candidate to obtain ballot access.

V. PROPOSALS FOR POSSIBLE CHANGES TO NEVADA'S BALLOT ACCESS SYSTEM THAT WILL ADDRESS CONCERNS OF THE NEVADA LEGISLATURE

A. Amendments to NRS 293.260

Because a court's determination as to whether it would be constitutional for the Nevada Legislature to establish an earlier filing deadline for candidates of minor political parties and independent candidates within the basic structure of the current ballot access system is difficult to predict, the Legislature may wish to consider enacting amendments to the provisions of NRS 293.260. Amendments could be drafted to eliminate the uncertainty as to whether a primary election will occur without altering the filing deadlines of candidates of minor political parties or independent candidates. The Legal Division has prepared and enclosed two sample bill draft requests that would in two different manners require, regardless of whether there are any candidates of a minor political party or independent candidates that have filed a declaration of candidacy, a primary election to occur.

The first sample bill draft request, entitled BDR 24-1, amends subsection 4 of NRS 293.260 to provide that if only one major political party has candidates for a particular office and no minor political party has nominated a candidate for the office and no independent candidate has filed for the office, the names of the candidates of the major political party must appear on the ballot for the primary election, regardless of the number of candidates of that major political party who have filed. Subsection 4 would continue to provide, as it currently does, that the candidates of that major political party who receive the highest number of votes in the primary election, not to exceed twice the number to be elected to that office at the general election, must be declared the nominees for the office, unless only one candidate is to be elected to the office and one candidate receives a majority of the votes in the primary election for that office. In that case, the one candidate of a major political party who receives a majority of the votes in the primary election must be declared the nominee for that office and his name alone must be placed on the ballot for the general election.

The second sample bill draft request, entitled BDR 24-2, would eliminate subsection 4 of NRS 293.260 and amend subsection 3 to provide that when only one major political party has candidates for a particular office, regardless of whether a candidate of a minor political party has nominated a candidate for the office or an independent candidate has filed for the office, the names of the candidates of the major political party must appear on the ballot for the primary election, regardless of the number of candidates of that major political party who have filed. Subsection 3 would continue to provide, as it currently does that the candidate who receives the highest number of votes in the primary election of the major political party must be declared the nominee of that party and his name must be placed on the general election ballot.

Enactment of either sample bill draft request, BDR 24-1 or BDR 24-2, would eliminate the uncertainty as to whether a primary election will occur without affecting the filing deadlines of candidates of minor political parties or independent candidates. The difference between BDR 24-1 and BDR 24-2 is that pursuant to BDR 24-1, if a minor political party candidate or an independent candidate has filed, only one candidate of the major political party will appear on the general election ballot, but if no minor political party candidate and no independent candidate has filed, then the names of the candidates of the major political party, not to exceed twice the number to be elected, will appear on the general election ballot, unless one received a majority of the votes in the primary election and only one person is to be elected to that office. In that case, only one candidate of the major political party will appear on the general election ballot. Whereas, pursuant to BDR 24-2 only one candidate of the major political party will appear on the general election ballot, regardless of whether any candidates of minor political parties or independent candidates will also appear on the general election ballot.

The Legal Division also considered whether a bill draft request could be created that would provide that if no more than twice the number of candidates to be elected have filed and all such candidates are from one major political party, the candidates would, without a primary election, be declared the nominees for the office, regardless of whether a minor political party candidate has been nominated or an independent candidate has filed for the office. It is the opinion of the Legal Division, however, that such legislation would be unconstitutional as applied to the situation

where a minor political party candidate has been nominated or an independent candidate has filed for the office because it would allow the major political party twice as much access to the ballot as the minor political party or independent candidate. In fact, in 1988, the provisions of NRS 293.260 provided for such an arrangement and those provisions were challenged by the Libertarian Party of Nevada. Libertarian Party of Nevada v. Del Papa, No. 88-621 (D. Nev. filed May 15, 1989) (*unpublished decision*). Although the Nevada Legislature amended the provision in question before the court ruled on its constitutionality, the court granted a motion for preliminary injunction because it found that the provision “raised serious questions of constitutional dimensions.” It seems likely, therefore, that if the legislature were to enact a similar provision, a minor political party would once again challenge its constitutional validity. Therefore, the Legal Division did not, at this time, produce a sample bill draft request to amend NRS 293.260 in such a manner.

B. Overall Structural Changes that May Allow the Legislature to Establish an Earlier Deadline for Minor Political Parties and Independent Candidates

From the case law researched by the Legal Division, it appears that if the Legislature were to change its ballot access system so that all candidates would appear on the ballot for the primary election and significantly reduce the current requirements for ballot access imposed on minor political parties and independent candidates, it is possible to devise a procedure which includes the same or similar filing deadlines for candidates of major and minor political parties and independent candidates to declare their candidacy that passes constitutional muster. The ballot access system in place in the State of Washington in 1994 was upheld as constitutional by the Ninth Circuit Court of Appeals. Libertarian Party of Washington v. Munro, 31 F.3d 759 (9th Cir. 1994). The Ninth Circuit Court of Appeals is the federal circuit court of appeals to which cases decided by a federal district court in Nevada are appealed. Therefore, the Legislature may wish to consider modeling its ballot access system after the system in place in Washington in 1994. Washington requires all candidates to appear on the ballot for an open primary. RCW 29.18.200 and 29.30.005. Minor political parties and independent candidates are required to have a convention before the primary election to choose their candidates and to obtain petitions for each such candidate signed by a certain number of registered voters: 200 voters registered to vote in the state for a federal or statewide office; 25 voters registered to vote in the jurisdiction of the office for all other offices. RCW 29.24.020 and 29.24.030. The petitions are required to be forwarded to the office of the Secretary of State for verification and if found to be in order, the candidates of minor political parties and independent candidates are required to file a declaration of candidacy during the same week as the candidates of major political parties. R.W. 29.15.020 and 29.24.070. The court in Munro noted that the effect of this bifurcated procedure is that candidates of minor political parties and independent candidates must announce their candidacies during a nominating convention approximately four weeks before the candidates of major political parties must announce their candidacies by filing a declaration of candidacy. Munro, 31 F.3d at 761. Furthermore, candidates of major political parties are allowed another week to place candidates on the ballot if a vacancy occurs because of a failure of any candidate to file for a particular office on their ticket, whereas minor political parties and independent candidates do not have such an opportunity. Id.

The Ninth Circuit Court of Appeals applied the United States Supreme Court's balancing test to analyze Washington's ballot access system. The court found that forcing a minor political party to choose its candidates barely more than a month earlier than the major political parties was not a severe burden on the access of a candidate of a minor political party. *Id.* at 763. The court relied on the fact that the deadline was only a few weeks before the deadline for a candidate of a major political party, the signature requirement was not onerous, and the fact that all of the candidates of the Libertarian Party, who was the plaintiff in the case, were able to obtain a place on the ballot. Because the court found that the burden on the ability of candidates of minor political parties and independent candidates to obtain access to the ballot was not severe, it required a state interest that was only legitimate, rather than compelling. The court accepted the state's asserted interest that the early convention date: (1) ensured that candidates appearing on the ballot had support from their parties; and (2) allowed the state to verify signatures contained on petitions, as legitimate interests rationally related to the election scheme and therefore upheld the laws as constitutional. *Id.* at 763-65.

However, there are differences between Washington's and Nevada's overall ballot access systems. Under Washington law, any political organization that does not qualify as a major political party is automatically a minor political party. A major political party in Washington means "a political party of which at least one nominee for president, vice president, United States senator, or a state-wide office received at least 5 percent of the total vote cast at the last preceding state general election in an even-numbered year." RCW 29.01.090. A minor political party in Washington means "a political organization other than a major political party." RCW 29.01.100. Therefore, a group wishing to qualify as a political party need not do anything other than organize as a political organization. The term "political organization" is not defined in the title on "Elections" in the Revised Code of Washington. To place a candidate on the ballot for a primary election, a minor political party in Washington need only obtain petitions, for each candidate it chooses at the convention, containing signatures in a number ranging from 25 to 200. RCW 29.24.030. An independent candidate must also hold such a convention and obtain the same amount of signatures. *Id.* To obtain a place on the ballot for the general election in Washington, each candidate on the primary election ballot must receive a number of votes equal to at least 1 percent of the total number cast for all candidates for that position sought and a plurality of the votes cast for the candidates of his or her party for that office at the preceding primary election. RCW 29.30.095; *see also* Munro v. Socialist Workers Party, 107 S. Ct. 533 (1986) (upholding this aspect of Washington's ballot access system). Therefore, Washington's laws impose significantly less burdens on the ability of a minor political party candidate and independent candidate to gain access to a ballot than Nevada currently imposes.

The United States Supreme Court has also reviewed the constitutionality of Hawaii's ballot access system which, in 1992, required all candidates to be nominated at an open primary election. Burdick v. Takushi, 112 S. Ct. 2059 (1992). In Burdick, the Court only ruled on the constitutionality of Hawaii's prohibition on write-in voting. However, in making that ruling the Court examined Hawaii's entire ballot access system. *Id.* at 2064-65. Specifically, the Court outlined the three methods by which a candidate could obtain access to the primary ballot and noted that all three required the candidate to file his nominating papers 60 days before the primary

election, whether the candidate represented an established party (in 1992, Hawaii's established parties included the Republican, Democratic or Libertarian parties) or a new party or was running as a nonpartisan candidate. *Id.* Although the Court did not specifically rule on the constitutionality of requiring all candidates to file their nominating papers by the same deadline, it did note that Hawaii's system "provide[d] for easy access to the ballot until the cutoff date for the filing of nominating petitions." *Id.* at 2064. The Court further noted that under Hawaii's system, "any burden on voters' freedom of choice and association is borne only by those who fail to identify their candidate of choice until days before the primary." *Id.* Therefore, the United States Supreme Court has also indicated that where all candidates are nominated at a primary election, a uniform deadline for the declaration of candidacy by all candidates is not automatically objectionable.⁷

Because the Ninth Circuit Court of Appeals upheld the system in place in Washington and because the United States Supreme Court has indicated that where all candidates are nominated at a primary election uniform filing deadlines are not objectionable, the Nevada Legislature may wish to consider modeling its system after the systems in Washington or Hawaii. Furthermore, other states, including Alaska, Arizona, California, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, and Tennessee, require all candidates to be nominated at a primary election. Most of these states also require all candidates to file for their candidacy at the same time. The fact that the Legislatures of these other states have enacted such systems with uniform filing deadlines lends support to the conclusion that such a structural change may be successful in Nevada. If the Nevada Legislature were interested in legislation that would model its system after the systems in Washington or Hawaii or a hybrid of the two systems, several provisions of chapters 293 of NRS would be required to be considered and most likely amended, such as:

1. The current burdens on minor political parties' and independent candidates' access to the ballot would be required to be changed or eliminated. Major changes to the provisions of NRS 293.1711, 293.1715, 293.172, 293.1725, 293.174 and 293.200 would be

⁷Some federal courts of appeals, other than the Ninth Circuit Court of Appeals which decided Libertarian Party of Washington v. Munro, 31 F.3d 759 (9th Cir. 1994), have commented that "as between new [(minor)] party candidacies and independent candidacies, independent candidacies must be accorded even more protection than [minor] candidacies." Cromer v. State of South Carolina, 917 F.2d 819, 823 (4th Cir. 1990); *see also* Rainbow Coalition v. Oklahoma State Election Bd., 844 F.2d 740, 746 n. 9 (10th Cir. 1988). However, these courts have not specifically struck down as unconstitutional a situation where the filing deadlines of independent candidates and candidates of minor political parties were the same. These cases, therefore, do not provide controlling authority for the proposition that a state must, in every case, provide independent candidates with later filing deadlines than those provided for candidates of minor political parties. Furthermore, the fact that the Ninth Circuit Court of Appeals, in Libertarian Party of Washington v. Munro, 31 F.3d 759 (9th Cir. 1994), did not follow or rely on the opinions issued by the courts of appeals in the Fourth and Tenth Circuits in Cromer and Rainbow Coalition indicates that the Ninth Circuit Court of Appeals, the circuit to which cases decided by a federal district court in Nevada are appealed, is not inclined to rule that states must, in every case, grant independent candidates more lenient ballot access requirements than candidates of minor political parties. However, if in the next year more courts indicate that states must provide more lenient ballot access requirements to independent candidates than for candidates of minor political parties, the Legal Division of the Legislative Counsel Bureau would need to consider such case law in developing a bill draft to change the ballot access provisions set forth in NRS.

required to be enacted. Such changes might consist of altering or eliminating the requirements for obtaining signatures on a petition, the requirements for receiving a certain number of votes in the last preceding general election or the requirement that a party be designated as the political party on the applications to register to vote of at least 1 percent of the total number of votes cast at the last preceding general election, or alterations to all of these requirements.

2. The system and deadlines for verification of signatures for nominating petitions would be required to be examined. This examination could require some changes to NRS 293.12756, 293.12758, 293.1276, 293.1277, 293.1278, 293.1279, 293.12793 and 293.12795. If the Nevada Legislature altered or eliminated the current burdens on minor political parties' and independent candidates' access to the ballot, as described previously, it may be necessary to alter the current deadlines for submission of petitions for verification and possibly the time frame pursuant to which the county clerks and the Secretary of State currently operate to verify such signatures.

3. The deadlines for the filing of declarations of candidacy would be changed. This would require amending NRS 293.177, 293.1725 and 293.200 and ensuring that such amendments are coordinated with the changes made to the dates for filing nominating petitions with the secretary of state and with county clerks and the date of the primary election.

4. It may be necessary to change the date of the primary election relative to the general election. It has been argued that forcing minor political parties to participate in an early primary election could actually work to their detriment inasmuch as the benefits of early public exposure would likely evaporate in a long interim between the primary and general election and thus make the burden of campaigning efforts more burdensome on political parties with lesser campaigning resources. James A. Palmer, J.D.; Edward D. Feigenbaum, M.B.A., J.D., Ballot Access I; Issues and Options, p. 29 (1988) (published by the Federal Election Commission)

5. If the date of the primary election must be changed, other relevant dates should also be altered. For example, the date by which the Secretary of State must certify the names of candidates who will appear on the ballot for the primary election to the county clerks (NRS 293.187), the date by which a governing body of a political subdivision or other local agency which is authorized by law to submit questions to the qualified electors or registered voters of a designated territory must submit a copy of the question to each county clerk (NRS 293.481) and any other date which was established to correlate to the current date of the primary election should be changed.

6. Provisions providing for the manner in which candidates proceed from the ballot of the primary election to the ballot of the general election should also be considered. If the Legislature wanted to impose a requirement, similar to the requirement imposed in Washington, that a candidate for a minor political party or an independent candidate must demonstrate a certain amount of support by achieving a certain percentage of the vote at the primary election in order to proceed to the ballot of the general election, it should **consider providing for a blanket or**

open primary system or a system of multi-party voter registration. A candidate of a minor political party would otherwise have virtually no chance of achieving that certain percentage of the vote or of demonstrating its popular appeal in a primary election in order to progress to the general election ballot. Such a change could require amendments to NRS 293.257, 293.260, 293.263 and 293.265.

7. Certain requirements for conventions and nominating petitions for minor political parties and independent candidates may need to be enacted. This change would involve adding new sections to chapter 293 that address deadlines by which such conventions should occur, proper notice of such conventions, minimal requirements for what constitutes a valid convention, proper format for a nominating petition, and how, where and by whom nominating petitions may be signed.

8. Filling of vacancies on the primary ballot by minor political parties, independent candidates and perhaps major political parties should be examined. This examination may involve amendments to NRS 293.165 and 293.166 and perhaps the addition of new provisions dealing specifically with candidates of minor political parties and independent candidates.

VI. CONCLUSION

Nevada's current ballot access system for candidates of minor political parties and independent candidates fits into the trends found in the various states examined in this study which do not nominate candidates of minor political parties and independent candidates in a primary election. Like many other states, Nevada requires a petition process for new political parties seeking access to the ballot and requires candidate performance thresholds at the polls to maintain ballot access. Furthermore, Nevada provides for filing deadlines for candidates of minor political parties and independent candidates that are later than the filing deadlines for candidates of major political parties. As a result, candidates of major political parties frequently cannot determine whether they must compete in a primary election or will have opponents in the general election until the filing deadlines for candidates of minor political parties and independent candidates occurs.

If the Nevada Legislature wishes to amend the current ballot access system in this state to alleviate the uncertainty as to whether a candidate of a major political party must compete in a primary election, it may do so, without altering the filing deadlines for candidates of minor political parties or independent candidates, by enacting legislation similar to either one of the two enclosed sample bill draft requests, BDR 24-1 or 24-2. Another alternative the Legislature may wish to consider, which will alter the filing deadlines for candidates of minor political parties and independent candidates, is to model its ballot access system after the system in place in the State of Washington or the State of Hawaii. In both of these states, all candidates are nominated at a primary election and all candidates are required to declare their candidacy by the same date. The filing deadlines in place in Washington have been upheld by the Ninth Circuit Court of Appeals which is the federal circuit court of appeals to which cases decided by a federal district

court in Nevada are appealed. The United States Supreme Court has reviewed the overall ballot access system in place in Hawaii and has commented approvingly on the amount of access it provides to the ballot. However, both Washington and Hawaii impose less burdens on minor political parties' and independent candidates' ability to gain access to a ballot than Nevada currently imposes. Therefore, if the Nevada Legislature significantly reduced the current requirements for ballot access imposed on minor political parties and independent candidates and made other structural changes to reflect the requirements in Washington or Hawaii, it is the opinion of the Legal Division of the Legislative Counsel Bureau that it is possible to devise a ballot access system which includes the same or similar filing deadlines for all candidates to declare their candidacy that passes constitutional muster.

VII. APPENDICES

	<u>Page</u>
Appendix A	
BDR 24-1	
Revises provisions governing when names of candidates for major political parties are omitted from ballot for primary election	39
Appendix B	
BDR 24-2	
Revises provisions governing when and how many names of candidates for major political party appear on ballot for primary election	45

APPENDIX A

BDR 24-1 — Revises provisions governing when names of candidates for major political parties are omitted from ballot for primary election

SUMMARY—Revises provisions governing when names of candidates for major political parties are omitted from ballot for primary election. (BDR 24-1)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to elections; providing that if only one major political party has candidates for a particular office, regardless of whether a minor political party has nominated a candidate or an independent candidate has filed for the office, the names of the candidates of the major political party must appear on the ballot for the primary election; providing that if only one major political party has candidates for a particular office, the nomination of a candidate for the office by a minor political party or the filing for the office by an independent candidate determines the number of candidates of the major political party who are the nominees and whose names appear on the general election ballot; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 293.260 is hereby amended to read as follows:

293.260 1. [Where] *If* there is no contest for nomination to a particular office, neither the title of the office nor the name of the candidate may appear on the ballot.

2. If more than one major political party has candidates for a particular office, the persons who receive the highest number of votes at the primary elections must be declared the nominees of those parties for the office.

3. If only one major political party has candidates for a particular office and a minor political party has nominated a candidate for the office or an independent candidate has filed for the office, the candidate who receives the highest number of votes in the primary election of the major political party must be declared the nominee of that party and his name must be placed on the general election ballot with the name of the nominee of the minor political party for the office and the name of the independent candidate who has filed for the office.

4. If only one major political party has candidates for a particular office and no minor political party has nominated a candidate for the office [or] *and* no independent candidate has filed for the office [:

(a) If there are more candidates than twice the number to be elected to the office,] , the names of the candidates must appear on the ballot for a primary election. Except as otherwise provided in this [paragraph,] *subsection*, the candidates of that party who receive the highest number of votes in the primary election, not to exceed twice the

number to be elected to that office at the general election, must be declared the nominees for the office. If only one candidate is to be elected to the office and a candidate receives a majority of the votes in the primary election for that office, that candidate must be declared the nominee for that office and his name must be placed on the ballot for the general election.

[(b) If there are no more than twice the number of candidates to be elected to the office, the candidates must, without a primary election, be declared the nominees for the office.

5. Where] *If* no more than the number of candidates to be elected have filed for nomination for any office, the names of those candidates must be omitted from all ballots for a primary election and placed on all ballots for a general election.

6. If there are more candidates than twice the number to be elected to a nonpartisan office, the names of the candidates must appear on the ballot for a primary election. Those candidates who receive the highest number of votes at that election, not to exceed twice the number to be elected, must be declared nominees for the office.

APPENDIX B

BDR 24-2 — Revises provisions governing when and how many names of candidates for major political party appear on ballot for primary election

SUMMARY—Revises provisions governing when and how many names of candidates for major political party appear on ballot for primary election. (BDR 24-2)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to elections; providing that where only one major political party has candidates for a particular office, regardless of whether a minor political party has nominated a candidate for the office or an independent candidate has filed for the office, the names of the candidates must appear on the ballot for the primary election and the candidate who receives the highest number of votes in the primary election is declared the nominee and his name is placed on the ballot for the general election; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 293.260 is hereby amended to read as follows:

- 293.260 1. [Where] *If* there is no contest for nomination to a particular office, neither the title of the office nor the name of the candidate may appear on the ballot.
2. If more than one major political party has candidates for a particular office, the persons who receive the highest number of votes at the primary elections must be declared the nominees of those parties for the office.
3. If only one major political party has candidates for a particular office [and] *regardless of whether* a minor political party has nominated a candidate for the office or an independent candidate has filed for the office, the candidate who receives the highest number of votes in the primary election of the major political party must be declared the nominee of that party and his name must be placed on the general election ballot . [with the name of the nominee of the minor political party for the office and the name of the independent candidate who has filed for the office.] *If a minor political party has nominated a candidate for the office or an independent candidate has filed for the office, the name of the candidate of the major political party who receives the highest number of votes in the primary election must appear on the general election ballot with the name of the nominee of the minor political party or the name of the independent candidate who has filed for the office, or both. If no minor political party has nominated a candidate for the office and no independent candidate has filed for the office, the name of the candidate of the major political party who receives the highest number of votes in the primary election must appear alone as the nominee for that office on the general election ballot.*

4. [If only one major political party has candidates for a particular office and no minor political party has nominated a candidate for the office or no independent candidate has filed for the office:

(a) If there are more candidates than twice the number to be elected to the office, the names of the candidates must appear on the ballot for a primary election. Except as otherwise provided in this paragraph, the candidates of that party who receive the highest number of votes in the primary election, not to exceed twice the number to be elected to that office at the general election, must be declared the nominees for the office. If only one candidate is to be elected to the office and a candidate receives a majority of the votes in the primary election for that office, that candidate must be declared the nominee for that office and his name must be placed on the ballot for the general election.

(b) If there are no more than twice the number of candidates to be elected to the office, the candidates must, without a primary election, be declared the nominees for the office.

5.] Where no more than the number of candidates to be elected have filed for nomination for any office, the names of those candidates must be omitted from all ballots for a primary election and placed on all ballots for a general election.

[6.] 5. If there are more candidates than twice the number to be elected to a nonpartisan office, the names of the candidates must appear on the ballot for a primary election. Those candidates who receive the highest number of votes at that election, not to exceed twice the number to be elected, must be declared nominees for the office.