
[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.1

**INTRODUCTION**

Section 3513.257 of the Ohio Revised Code requires an independent candidate for the office of President of the United States to file nomination papers seventy-five days prior to the Ohio primary election in order for the candidate to appear on that state's general election ballot in November.2 In *Anderson v. Celebrezze*,3 the Supreme Court of the United States held that statute unconstitutional because the early filing deadline placed an impermissible burden on the voting and associational rights of John Anderson's supporters.4

The Court applied the "strict scrutiny" standard that it has employed in previous challenges involving first amendment rights.5 The Court found that the burden Ohio's statute placed on the voters' fundamental right to vote for the candidate of their choice clearly outweighed the state's interest in imposing a March filing deadline.6 In its analysis, the Court examined a number of factors: (1) the fundamental rights of association and voting; (2) the close nexus between the right to candidacy, voting and associational rights; (3) the extent to which the statute burdened these rights; and (4) the weight and character of the state's interest in restricting ballot access.7

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2. Section 3513.257 states, "Each person desiring to become an independent candidate . . . shall file no later than four p.m. of the seventy-fifth day before the day of the primary election . . . ." OHIO REV. CODE ANN. § 3513.257 (Baldwin 1982).
4. Id. at 1565.
5. See, e.g., id. at 1578-79 (under the strict scrutiny standard the Court will uphold only the least restrictive alternative when dealing with fundamental personal liberties); Williams v. Rhodes, 393 U.S. 23, 31 (1968) (only a compelling state interest can justify limiting first amendment freedoms); NAACP v. Alabama, 357 U.S. 449, 460-61 (1958) (state action which curtails the freedom to associate is subject to the closest scrutiny).
7. Id. at 1570.
The purpose of this note is to examine the Supreme Court's shift toward the use of the strict standard of scrutiny in resolving challenges to ballot-access restrictions. This note will demonstrate that, while the Court has not explicitly recognized a right to candidacy as a fundamental right, the Court's use of the strict scrutiny standard has effectively established its status as equivalent to the "fundamental" rights of voting and association.

BACKGROUND

The Constitution of the United States guarantees that certain individual liberties are exempt from governmental interference. The Supreme Court has labeled these liberties "fundamental constitutional rights." The Supreme Court has also recognized that there are some rights which, although not expressly provided for in the Constitution, are so essential they are given special protection by the Court. The Court will apply a strict standard of review to any governmental action which limits these fundamental rights.

Restriction on the Right of Candidacy

The Court has recognized that the Constitution grants the states the power to enact laws regulating the electoral process. Acting within this power, the states have employed several means to restrict the right to qualify as a candidate. These restrictions include: (1) residency requirements; (2) party affiliations and other demonstrations of popular support; and (3) wealth restrictions. The Supreme Court has held, however, that these restric-

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8. See note 118 infra.
10. Id.
11. Id. at 411.
12. Id. at 416.
13. See, e.g., Storer v. Brown, 415 U.S. 724, 729-30 (1974) (the Constitution allows the states to perform the initial task of determining the qualifications of voters who elect members of Congress); Bullock v. Carter, 405 U.S. 134, 140-41 (1972) ("[W]e have emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections . . . ."); Williams v. Rhodes, 393 U.S. 23, 29 (1968) (there can be no question that article II, section 1, grants extensive power to the States to pass laws regulating the selection of electors).
Constitutions must not infringe upon the fundamental right to vote, nor the equal protection of voters, without a compelling state justification.\(^{18}\)

*Anderson* is the first decision in which the Supreme Court itself has directly ruled on a challenge to a state's filing deadline for independent candidates; the federal case law directly on point is thus limited to lower federal court decisions.\(^{19}\) However, there have been a number of Supreme Court decisions involving challenges to other ballot-access restrictions from which the Court was able to draw support.\(^{20}\)

**Analysis: Rational Relation or Strict Scrutiny?**

Traditionally, the requirements of the rational basis analysis were met if the legislation created classifications or employed means which were rationally related to a legitimate state objective.\(^{21}\) In a 1968 decision, *Williams v. Rhodes*,\(^{22}\) the Court went beyond the rational relation standard and employed strict scrutiny for the first time\(^{23}\) in a ballot-access case.\(^{24}\) The strict scrutiny

\(^{18}\) Williams v. Rhodes 393 U.S. 23, 30-31 (1968) (both the right of individuals to associate and the right of voters to cast their votes effectively are among our most fundamental freedoms; only a compelling state interest can justify limiting these freedoms).

\(^{19}\) Lendall v. Jernigan, 424 F. Supp. 951 (E.D. Ark. 1977) (Arkansas law compelling independent candidates to file signatures in April held unconstitutional); *E.g.*, McCarthy v. Kirpkatrick, 420 F. Supp. 366, 375 (W.D. Mo. 1976) (Missouri election scheme requiring independent candidate to file signatures in April while permitting major-party and third-party nominations in August violates equal protection clause); McCarthy v. Noel, 420 F. Supp. 799, 803 (D.R.I. 1976) (the court invalidated an August 12th filing deadline for independent candidates because the major parties were not required to nominate their candidates until mid-September); For further analysis, see generally Note, *Nominating Petition Requirements for Third-Party and Independent Candidate Ballot Access*, 11 Suffolk U.L. Rev. 974 (1977).


\(^{21}\) Clements v. Fashing, 102 S. Ct. 2836, 2843 (1982).

\(^{22}\) 393 U.S. 23 (1968).

\(^{23}\) See Note, supra note 20, at 983.
standard requires a state to demonstrate that the restriction furthers a compelling state interest when the challenged statute places a burden upon a constitutional right that the Court deems "fundamental." Under the strict scrutiny standard, if the state lacks a sufficient state interest, or if there is a less restrictive means to accomplish the state's goal, the restriction is struck down. In applying the strict scrutiny standard in Williams, the Court held that restrictive election laws burden the fundamental rights of the voters to cast their vote for the candidate of their choice and further burden the interrelated right of individuals to associate for the advancement of political beliefs.

In Williams, the Ohio American Independent Party and the Socialist Labor Party challenged Ohio election laws which required a new political party to file, by February of the election year, petitions containing signatures of at least fifteen percent of the number of the ballots cast in the last gubernatorial election. The Independent Party obtained the required number of signatures, but did not meet the February deadline. The Labor Party was unable to meet the fifteen percent requirement. Ohio asserted that its law promoted a two-party system which encouraged compromise and political stability, and avoided voter confusion by limiting the number of candidates on the ballot. The Court dismissed Ohio's justification, holding that the statute effectively limited the ballot to the two major political parties. Although the Court considered the burden on the first amendment rights of voting and association, it did not base its decision on a violation of these rights, but rather on a violation of the fourteenth amendment's guarantee of equal protection.

Some of the ballot-access restriction cases have involved classification schemes by the state which burdened minor party or independent candidates. The statutes at issue in these cases

24. See Williams, 393 U.S. at 32.
25. Id. at 32; J. Nowak, supra note 10, at 524.
26. See Anderson, 103 S.Ct. at 1578-79.
27. Id.
28. 393 U.S. at 24-25.
29. Id. at 26-27.
30. Id. at 28.
31. Id. at 32-33.
32. Id. at 32. "[T]he Ohio system does not merely favor a 'two-party system'; it favors two particular parties—the Republicans and the Democrats—and in effect tends to give them a complete monopoly." Id.
33. See id. at 34. J. Harlan, in his concurrence, stated that he would base the decision solely upon the first amendment right of political association. Id. at 41.
34. See, e.g., American Party of Texas v. White, 415 U.S. 767, 772-74 (1974) (Texas statute allowed candidates of parties receiving over 200,000 votes in last gen-
required third party or independent candidates to demonstrate a certain level of support before being permitted ballot-access. In these cases the Court has emphasized that the states have a compelling interest in protecting the electoral system from frivolous candidates and overcrowded ballots. As long as these statutes do not make it virtually impossible for a minor party to obtain a ballot position, the Court has demonstrated a willingness to uphold them.

In a recent case, *Clements v. Fashing,* the Court stated that the type of analysis it would employ depended upon the nature of the interests the state sought to protect and the extent to which the statute burdened the rights of the challenger. In *Clements,* the Court upheld a Texas statute which provided for the automatic resignation of those officeholders who were candidates for other state or federal offices and whose unexpired terms exceeded one year. The Court held that under the facts in *Clements,* the violation of the first amendment rights of the voters was insignificant; the statute was thus upheld as rationally related to a legitimate state interest.

**The Right of Candidacy as a Fundamental Right**

While the right to vote is not expressly mentioned in the Constitution, voters' rights have been recognized throughout the Court's decisions. The Court, declaring that the right to vote is a fundamental right preservative of all rights, has based this recogni-

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35. *American Party,* 415 U.S. at 782; *Storer,* 415 U.S. at 732; *Jenness,* 403 U.S. at 442.
36. *American Party,* 415 U.S. at 782; *Storer,* 415 U.S. at 732; *Jenness,* 403 U.S. at 442.
38. 102 S. Ct. 2836 (1982).
39. *Id.* at 2844.
40. *See id.* at 2848.
41. *Id.* at 2842-48.
42. *Wesberry* v. *Sanders,* 376 U.S. 1 (1963). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic are illusory if the right to vote is undermined." *Id.* at 17; *Reynolds* v. *Sims,* 377 U.S. 533, 562 (1964) (the right to vote is a fundamental matter in democratic society; the right preserves other basic civil and political rights).
tion on the fourteenth amendment. 43

Another right recognized by the Court is the right of association granted by the first amendment. 44 This right includes the right to form a political party, or group, for the advancement of political goals. 45

The Court has yet to label the right of candidacy as a fundamental right, thus denying it the status granted to the rights to vote and to associate. However, the Court has employed the "strict scrutiny" approach in resolving challenges to ballot-access restrictions 46 based on the Court's recognition of the inseparable nature of the rights to vote, to associate, and to run for office. 47 The Court has noted that since these rights are inseparable, any restrictions which affect the right of the candidate will also have a correlative effect on the rights of voters. 48 Therefore, the Court has effectively equated the right to candidacy with the rights to vote and associate.

Anderson v. Celebrezze 49 gave the Court another opportunity to directly address and elucidate the status of the right to candidacy. Anderson also presented the opportunity to firmly establish the standard to be used in dealing with ballot-access restrictions.

43. J. Nowak, supra note 9; at 636.
44. Williams v. Rhodes, 393 U.S. 23, 30 (1968) (we have repeatedly held the first amendment protects freedom of association).
45. Id. at 31.
47. Lubin v. Panish, 415 U.S. 709, 716 (1974) ("The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters."); Bullock v. Carter, 405 U.S. 134, 143 (1972). ("[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters."); Arrow, supra note 46, at 22 (review in ballot access cases necessitates a continuing awareness of the divergent sources of these rights; the right to candidacy is derivative of the right to vote, which is derived from the right of free association protected from state infringement by the fourteenth amendment).

The right to be a candidate is as integral a part of the First Amendment as the right to vote. The two rights are analogous and interdependent. Candidacy without voters would be worthless, and the right to vote would be meaningless were there no parties [nor] candidates from which to choose. Consequently, the right to vote entails more than the ability to cast a vote . . . in a meaningful way—to have a choice of a candidate who represents the voter's views.

. . . Thus, the [right] . . . to run for office [is] integrated in the system of representative government.
49. 103 S. Ct. 1564 (1983).
FACTS AND HOLDING

On April 24, 1980, petitioner John Anderson announced that he was an independent candidate for President of the United States. On May 16, 1980, Anderson's supporters filed the nominating petition, which included approximately 14,500 signatures, with Ohio's Secretary of State, Celebrezze. Celebrezze refused to accept the documents because they had not been filed within the time required by Ohio law. Anderson and his supporters filed suit in the United States District Court for the Southern District of Ohio challenging the constitutionality of the statute. The district court granted Anderson's motion for summary judgment and ordered Celebrezze to place Anderson's name on the general election ballot. The district court held that Ohio's early filing deadline was unconstitutional on two grounds. First, it placed an impermissible burden on the first amendment rights of Anderson and his supporters. Second, the state violated the equal protection clause of the fourteenth amendment by requiring an independent candidate to declare his candidacy in March, without imposing a similar deadline on partisan candidates.

The United States Court of Appeals, Sixth Circuit reversed, holding that the early filing deadline served the state's interest in voter education by allowing its voters a longer opportunity to scrutinize presidential candidates. In a five to four decision, the United States Supreme Court reversed. Speaking for the majority, Justice Stevens announced that the early filing deadline imposed by the Ohio statute burdened the fundamental rights of Anderson and his supporters—without the justification of a compelling state interest—and thus was unconstitutional.

In its analysis, the Court balanced the burden the restriction placed on the constitutional rights of the petitioners against the...
interests advanced by Ohio. Ohio identified three state interests which it sought to further by its early filing deadline: (1) voter education; (2) equal treatment of candidates; and (3) protection of the political stability of the two major parties. The following sections will summarize the Court's analysis of each of these factors.

### Burden upon the Constitutional Rights of the Petitioners

In determining the burden Ohio's early filing deadline has upon candidates and voters, the Court alluded to an equal protection argument relied on in prior election cases. The Court determined that Ohio's statute has the effect of placing a greater disadvantage upon an independent candidate than upon party candidates. The Ohio statute allows major parties the flexibility of announcing party candidates in August after party conventions. In contrast, an independent candidate's failure to file by the March 20th deadline acts as a bar to his eligibility to run as a candidate in the general election.

The Court relied on its opinion in *Williams v. Rhodes* to stress that, historically, third party candidates did not emerge until the selection of party nominees and issues were announced; thus, independent and third party candidates played a pivotal role in representing minority views. The Court noted that issues contin-

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60. See id. at 1570.
61. Id. at 1573.
62. See id. at 1571-72. In *Williams*, an equal protection question arose as to whether independent candidates should be required to comply with the same filing deadline as party primary candidates. Independent candidates organize their campaign with different goals in mind, as preparations for party conventions or primaries are not necessary. Many independent candidates are prompted by the final selection of party candidates. Early filing deadlines may exclude or force premature independent candidacy decisions, possibly precluding potential candidates.
63. *See Anderson*, 103 S. Ct. at 1564-70. In *Jenness v. Fortson*, 403 U.S. 431 (1971), the Court had previously noted that due to the difference in needs between political parties who are firmly established and new parties, discrimination can occur in treating candidates exactly alike. Id. at 441-42.
64. *Anderson*, 103 S. Ct. at 1570-71.
65. Id. at 1571. In *Williams*, the Court determined that since the identity of major party candidates would not likely be known until August, after party conventions, it would not be possible to identify the disaffected party members until August, by which time it would be too late for an independent candidate to get on the ballot. 393 U.S. at 32-33.
66. 393 U.S. 23 (1968).
67. *See Anderson*, 103 S. Ct. at 1571. See also Note, *Developments in the Law—Elections*, 88 HARV. L. REV. 1111, 1123 (1975) (*Minor parties and independent candidacies may also serve a legitimizing function, by providing disaffected voters with an outlet for their frustration with established parties. Without this alternative, dis-
ually change throughout the pre-election period. Various domestic and international developments bring new issues into the election forum which may alter voters’ assessments of candidates and which may influence new candidates to enter the race.

More importantly, the Court recognized that the March deadline infringes upon the fundamental rights of voters. The Court noted that, while the filing deadline has direct effect on aspirants for office, the filing deadline also has a correlative effect on voters because the rights of voters and rights of candidates are inseparable. The Court stated that the restriction placed burdens on two different, but overlapping, fundamental rights—the right of individuals to associate for the advancement of political beliefs, and the right of voters to cast their votes effectively.

The national impact of Ohio’s ballot-access restriction was also noted. In national elections, state-imposed restrictions act as a burden not only upon Ohio voters, but upon all voters who choose to support third party candidates. Ohio’s deadline, by denying Anderson a place on the Ohio ballot, would eliminate the possibility of his gaining Ohio’s twenty-five electoral votes, and thereby reduce his chance of success in the nationwide election.

Ohio’s Interest in Voter Education

The Court determined Ohio had an “important and legitimate interest” in ensuring that its voters make an informed decision in selecting a presidential candidate. The Supreme Court concurred with the Sixth Circuit’s statement that the Framers’ intent in not providing for direct popular vote of the President had
been to guard against ignorance in the electoral process, thus emphasizing the importance of voter education.\textsuperscript{78} However, the Court did not accept the proposition that the state's interest in voter education was a sufficient justification for such an early filing deadline.\textsuperscript{79} The Court noted that developments in communication and increased voter literacy, combined with the intense publicity a presidential candidate receives, negated the necessity of the March filing deadline as a prerequisite for adequate voter education.\textsuperscript{80} Therefore, the Court held that the March filing deadline did not serve the state's interest in ensuring voter education.\textsuperscript{81}

**Ohio's Interest in Treating All Candidates Equally**

The Court also found no merit in Ohio's claim that the early deadline served the interest of treating all candidates alike.\textsuperscript{82} Neither the state's justification of administrative concern, nor the benefit the early deadline purported to give to independent candidates, was found to be applicable.\textsuperscript{83} In reaching this conclusion, the Court reiterated its statement in *Jenness v. Fortson*\textsuperscript{84} that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike."\textsuperscript{85} The Court noted that after filing his nomination papers, the independent candidate did not participate in a primary election nor gain party support and organization.\textsuperscript{86} Therefore, the Court concluded that Ohio's equal treatment argument was not sufficient to justify the burden imposed on independent candidates.\textsuperscript{87}

\textsuperscript{78} *Anderson*, 103 S. Ct. at 1574.
\textsuperscript{79} Id. at 1575. This is especially true in the case at hand. Anderson had previously announced his intention to seek the Republican Party's nomination. Prior to April 24, 1980, Anderson's name appeared or was scheduled to appear on the ballots of twenty-seven of the thirty-six states that hold Republican primaries. *Anderson v. Celebrezze*, 449 F. Supp. 121 (S.D. Ohio 1980).
\textsuperscript{80} *Anderson*, 103 S. Ct. at 1574 ("[E]ven trivial details about national candidates are instantaneously communicated nationwide in both verbal and visual form.").
\textsuperscript{81} Id. at 1575.
\textsuperscript{82} Id.
\textsuperscript{83} Id. at 1576. The District Court had dismissed the state's claim of administrative need for an early filing deadline, determining that their interest was not applicable to independent candidates who did not participate in the primary. *Anderson v. Celebrezze*, 499 F. Supp. at 134.
\textsuperscript{84} 403 U.S. 431 (1971).
\textsuperscript{85} *Anderson*, 103 S.Ct. at 1576 (quoting *Jenness v. Fortson*, 403 U.S. 431, 442 (1971)).
\textsuperscript{86} Id.
\textsuperscript{87} Id. at 1575.
Ohio’s Interest in Protecting The Political Stability Of The Two Major Parties

The primary justification advanced by Ohio in support of its early filing deadline was its interest in ensuring political stability of the two major parties. The state sought to protect the major parties from “intraparty feuding.” In rejecting this argument, the court relied heavily on its determination in Williams v. Rhodes, wherein it had held that Ohio’s restrictions not only protected the two major parties from “intraparty feuding,” but also impermissibly served as a monopoly to exclude independent candidates from representing minority views. The Court reiterated its Williams position that the state’s interest in protecting the two major political parties was outweighed by the underlying values of the first amendment.

The Court distinguished the ballot-access restriction upheld in Storer v. Brown from the restriction imposed by the Ohio statute. The restriction in Storer dealt with elections wholly within the state of California and served the state’s interest in “maintaining the integrity of the various routes to the ballot.” The California restriction did not “[involve] discrimination against independents,” but was used as a means to discourage “independent candidacies prompted by short-range political goals, pique, or personal quarrel.”

The Court concluded its analysis of the state’s interest in political stability by focusing on the language of Ohio’s statute. The

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88. Id. at 1576. The state argued that Anderson’s defection threatened to splinter the Ohio Republican Party. Id.
89. Id.
90. 393 U.S. 23 (1968).
91. 103 S. Ct. at 1576-77. In Williams, Justice Black, writing for the majority stated that, “There is . . . no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas . . . is at the core of our electoral process and of the First Amendment freedoms.” 393 U.S. at 32.
92. Anderson, 103 S.Ct. at 1577.
93. 415 U.S. 724 (1974). In Storer, the California statute served as a disaffiliation statute, which disqualified anyone who voted in the primary from signing an independent’s nominating petition and prevented candidates who had recently been affiliated with another party from running as an independent. The Court upheld the statute stating that the state’s interest in political stability was compelling and outweighed that of the candidate and his supporters. Id. at 736. Ohio’s separate “sore loser” statute was inapplicable to Anderson because of his timely withdrawal from the Republican Party. Anderson, 103 S.Ct. at 1578 n.31.
94. Anderson, 103 S.Ct. at 1577-78.
95. Id. at 1577 (quoting Storer v. Brown, 415 U.S. at 733).
96. Id.
97. Id. (quoting Storer, 415 U.S. at 735).
Court concluded that the statute was drawn too imprecisely to be justified as an effective means to achieve Ohio's articulated goals.\textsuperscript{98}

\textbf{ANALYSIS}

The crucial point in \textit{Anderson} on which the members of the Court could not agree was the standard of review to be employed in resolving ballot-access challenges. The five-four split decision reflects the Court's disagreement as to the standard of scrutiny to be employed.\textsuperscript{99}

The Court has been hesitant to elevate the right of candidacy to the status of a fundamental right.\textsuperscript{100} The Court, however, has recognized on several occasions that the right to candidacy is so closely tied with that of the fundamental right to vote and to associate, that a strict standard of scrutiny should be applied.\textsuperscript{101} Since \textit{Williams},\textsuperscript{102} the Court has consistently applied the strict scrutiny standard appropriate when first amendment rights are infringed, and thus has required the presence of a compelling state interest to justify ballot-access restrictions.\textsuperscript{103} The \textit{Anderson} majority followed this precedent, and held that a strict standard of scrutiny was appropriate due to the infringement of the fundamental rights of voting and association.\textsuperscript{104}

Even without the Court's characterization of the right to candidacy as a fundamental right, this right is sufficiently rooted in the electoral process to warrant a fundamental rights approach. The rights of voters to associate for the advancement of political views,

\textsuperscript{98} 103 S.Ct. at 1578. The early deadline applied too broadly to independent candidates who have not been affiliated in the recent past with another party. At the same time it did not prohibit independent candidates who have been affiliated with another party from running as long as the nomination paper stating his independent candidacy is filed by the statutory deadline. \textit{Id.}

\textsuperscript{99} The four dissenting Justices were White, Powell, Rehnquist, and O'Connor, JJ.

\textsuperscript{100} In \textit{Clements v. Fashing}, the majority stated that, "[f]ar from recognizing candidacy as a 'fundamental right, we have held that the existence of barriers to a candidate's access to the ballot does not of itself compel close scrutiny." 102 S.Ct. at 2843 (quoting Bullock v. Carter, 405 U.S. 134, 142-43 (1972)). \textit{See Anderson}, 103 S.Ct. at 1569 (not all candidate eligibility restrictions impose constitutionally suspect burdens).

\textsuperscript{101} \textit{See Anderson}, 103 S.Ct. at 1568-69; \textit{Bullock}, 405 U.S. at 142-43; \textit{Williams}, 393 U.S. at 30-31.

\textsuperscript{102} 393 U.S. 23 (1969).

\textsuperscript{103} \textit{See, e.g.}, Lubin v. Panish, 415 U.S. 709, 722 (1974) (the state must demonstrate a compelling interest to justify keeping political candidates off the ballot); Kusper v. Pontikes, 414 U.S. 51, 61 (1973) (Illinois' legitimate interest in preventing party "raiding" cannot justify the infringement of the right of political association); Dunn v. Blumstein, 405 U.S. 330, 335 (1972) (when imposing residence requirements, the state must demonstrate substantial and compelling justification).

\textsuperscript{104} \textit{See Anderson}, 103 U.S. at 1569-79.
the right of a candidate to run, and the right of voters to vote for a
candidate of their choice are clearly interdependent. The right
to vote would be restricted if there were a limited number of candi-
dates. The right to vote signifies the freedom of choice in voting
for a candidate who holds similar political views. Under the funda-
mental rights approach employed by the Court, only a compelling
state interest could justify Ohio's restriction on ballot-access.

The majority's approach is consistent with other cases involv-
ing challenges to first amendment rights. With the Court's rec-
ognition of the close nexus between the right to vote and the right
to candidacy, and its rejection of the state's asserted justification
of protecting political stability, there is no reason why a March
20th filing deadline should be upheld. Since the fundamental
rights of Anderson and his supporters were infringed, Ohio had to
justify the restriction with a compelling state interest.

A Compelling State Interest

In view of the strict scrutiny approach employed by the major-
ity, Ohio's interest in voter education and equal treatment of candi-
dates could not measure up as a compelling justification.
Therefore, the Court had little difficulty in dismissing these as
compelling state interests. The Court held that the state's interest
in voter education was not a compelling reason for a March 20th
filing deadline because of recent advancements in media commu-
nications, increased voter literacy, and the fact that it was Ander-
sen, and not the state, who had the responsibility of educating the
voters. The Court noted that Anderson's key to a successful
campaign was to promote public identification and to build support
for his beliefs on controversial issues.

Furthermore, the Court held that there was no merit to the
state's claim that the early filing deadline treats all candidates
alike. The Court observed that major party candidates and in-

106. Williams v. Rhodes, 393 U.S. 23, 31 (1968) (the right to vote is burdened if
that vote may only be cast for one of two parties when other parties are clamoring
for a place on the ballot).
107. See Anderson, 103 S.Ct. at 1578.
108. See note 5 supra.
110. Id. at 1578.
111. Id. at 1568-69.
112. See id. at 1574-75.
113. See id. at 1575 n.25.
114. Id. at 1575. "The name of the nominees of the [major] parties will appear
on the Ohio ballot in November even if they did not decide to run until after Ohio's
March deadline had passed . . . ." Id.
dependent candidates obtain a ballot position through different channels;\textsuperscript{115} arguably, the election laws should reflect this difference.

The Court had a more laborious task in rejecting the state's primary justification, namely, that of protecting the political stability of the two major parties.\textsuperscript{116} One of the major motivations behind the March 20th deadline may have been due to the self-serving interest of the major party legislators.\textsuperscript{117} Major party incumbents have the ability to structure the rules governing ballot-access to protect their own position to the disadvantage of minor parties and independent candidates.\textsuperscript{118} This possibility alone reinforces the majority's use of strict scrutiny when resolving ballot-access challenges. Not only is the state interest in political stability an insufficient justification, it should be examined with some degree of suspicion.

\textit{Dissenting Opinion: The Rational Basis Approach}

The dissenting opinion ignored the Ohio statute's possible impact on "fundamental rights"\textsuperscript{119} and stated that the filing deadline should have been upheld because it was rationally related to the state's interest in political stability.\textsuperscript{120} The dissent based the application of the rational basis standard solely upon the fact that the right to candidacy is not guaranteed by the Constitution.\textsuperscript{121} The opinion went on to state that as long as Ohio's ballot-access laws were rational and allowed nonparty candidates reasonable access to the ballot, the Court should not interfere.\textsuperscript{122}

The dissent accepted Ohio's interest in political stability as a

\textsuperscript{115} See \textit{id. at} 1575-76.
\textsuperscript{116} See \textit{id. at} 1576-79. The Court concluded its analysis of the states interest in political stability stating, "for even when pursuing a legitimate interest, a state may not choose means that unnecessarily restrict constitutionally protected liberty." \textit{Id. at} 1578 (quoting Dunn v. Blumstein, 405 U.S. 330, 343 (1972)).
\textsuperscript{117} See \textit{Anderson}, 103 S.Ct. at 1577 n.30.
\textsuperscript{118} \textit{Id. See also} Elder, \textit{Access to the Ballot by Political Candidates}, 83 \textit{Dick L. Rev.} 387, 406 (1979) (major party incumbent may structure the rules governing access to the ballot to protect themselves, to the disadvantage of independent candidates); Note, \textit{The Supreme Court, 1968 Term}, 83 \textit{Harv. L. Rev.} 62, 92 (1969) (in the past, the two major parties have engaged in a bipartisan effort to destroy minor parties and independent candidates).
\textsuperscript{119} See notes 81-83 and accompanying text \textit{supra}. In \textit{Anderson}, the term "fundamental rights" referred to the right to vote and the right to politically associate. 103 S.Ct. at 1569.
\textsuperscript{120} \textit{Anderson}, 103 S.Ct. at 1580.
\textsuperscript{121} See \textit{id.}
\textsuperscript{122} \textit{Id.}
sufficient justification for its restriction. The reasoning of the dissent was based on the Court's holding in Storer v. Brown. The dissent's reliance on Storer, however, was misplaced because that case involved a California disaffiliation statute which disqualified anyone who voted in the primary from signing an independent's nominating petition. The purpose of a disaffiliation statute is to protect against intra-party feuding by preventing a candidate who has lost in the primary from running as an independent. While the Ohio early filing deadline may also effectively limit splintering of the major parties, the fact that Ohio has a separate disaffiliation statute shows that the early filing deadline was enacted to accomplish a different purpose. Therefore, Anderson and Storer involved statutes enacted with different objectives and cannot be compared.

The dissent's approach also appeared to be unmindful of the significant role played by minor parties and independent candidates in the American political system. Through their representation of unpopular or new ideas, minor parties may actually foster stability in the major political parties by providing a release valve for the expression of political views and ideas that would otherwise go unheard. If minority candidates representing such views were, in essence, silenced—due to a their inability to obtain a place on the ballot—the resulting dissatisfaction could emerge in less legitimate, less constructive ways.

Frequently, these candidates raise issues before the estab-

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123. Id. at 1585. Ohio must be free to determine that a candidate is a serious contender. Id.
124. Id.
125. 415 U.S. at 736.
126. Id. at 726-27.
128. Id.
129. See Sweezy v. New Hampshire, 354 U.S. 234, 251 (1957) where the Court stated:
   All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted.

See also Elder, supra note 117, at 394:
   The danger of suppressing the means effectively to air strongly dissident views of a significant minority is a danger that the first amendment was particularly designed to address . . . . [I]f legitimate access to the ballot is barred for candidates representing these minority interests, supporters may be more likely to lose trust in the openness of the political system and to turn to illegitimate means of expression that could undermine the stability of the political process.
130. See Elder, supra note 117, at 392.
131. Id.
lished parties are prepared to act, and thus give voters an opportunity to support new ideas. Major party nominees may respond to popular support for other candidates by reforming their policies and programs. Despite their lack of electoral success, minor parties and independent candidates often help to implement new political programs and ideas.

CONCLUSION

The Court's decision in Anderson sets desirable precedent for future challenges to candidate ballot-access restrictions. If the Court's approach continues to elevate the right of candidacy to the status of a fundamental right, the Court may strike down all restrictions which burden a candidate's ability to run for office, unless the state is able to demonstrate the existence of a compelling interest.

The decision in Anderson demonstrates the inseparability of the right to candidacy and the right to vote. However, the split decision by the Court offers little guidance as to whether the Court will employ the approach taken in Anderson in future ballot-access litigation, or whether this is but another example of the Court's inconsistent decisions in this area. The decision in Anderson does demonstrate that the Court will not uphold early filing deadlines imposed on independent candidates. However, the Supreme Court left unanswered the important questions of what filing deadline would be permissible and what interests of the State would be found compelling under the fundamental rights approach utilized by the majority. In addition, it appears that until the members of the Court are willing to recognize the important role that the right of candidacy plays in the electoral process, there will continue to be split or inconsistent decisions by the Court.

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133. Id.
134. Id. 354 U.S. at 250-51, where the Court emphasized the importance of third parties in the electoral process:

Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas . . . should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups. . . .