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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

THOMAS G. DEL BECCARO, MARK A. PRUNER, DAVID B. PRINCE, CARL A. BURTON, and ADAM C. ABRAHMS, Plaintiffs, vs. EDMUND GERALD "JERRY" BROWN JR., an individual; BRUCE McPHERSON, Secretary of State of the State of California; BILL LOCKYER, Attorney General of the State of California; STEVE WESTLY, Controller of the State of California; and DOES 1-100, inclusive, Defendants.	No.: 06AS04494 **DEFENDANT EDMUND G. BROWN JR'.S FEDERAL AUTHORITIES CITED IN SUPPORT OF OPPOSITION TO ELECTION CONTEST AND PLAINTIFFS' FIRST AMENDED COMPLAINT** Hearing: Date: February 9, 2007 Time: 1:30 p.m. Dept: 11 (The Honorable Gail D. Ohanesian)

Pursuant to Rule 3.1113(j) of the California Rules of Court defendant Edmund G. Brown Jr. provides the Court with a copy of the following federal authorities:

Case	Exhibit
Belitskus v. Pizzingrilli (2nd Cir. 2003) 343 F.3d 632	A
Lubin v. Panish (1974) 415 U.S. 709	B

Dated: January 29, 2007

Respectfully submitted,

Robin B. Johansen
Thomas A. Willis
Margaret R. Prinzing
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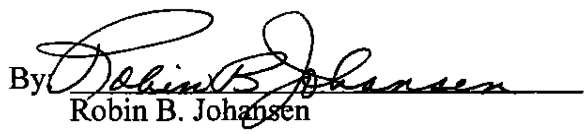
By 
Robin B. Johansen

Attorneys for Defendant
EDMUND GERALD "JERRY" BROWN JR.

(00031241-3)

EXHIBIT A

Briefs and Other Related Documents
Belitskus v. PizzingrilliC.A.3 (Pa.),2003.
United States Court of Appeals,Third Circuit.
William M. BELITSKUS; Thomas Alan Linzey; Barbara Knox; John Stith; Eric Prindle; Jennaro Pullano; Ralph Nader; Nader 2000 Primary Committee; Pennsylvania Green Party; Will Donovan, III
v.
Kim PIZZINGRILLI, in her official capacity as Secretary of State of Pennsylvania; Richard Filling, in his official capacity as the Commissioner overseeing Pennsylvania's Bureau of Commissions, Elections and Legislation, Appellants in Docket No. 01-3747
Thomas Alan Linzey, John Stith [FN*] Pennsylvania Green Party and Will Donovan III, Appellants in Docket No. 01-3824.

FN* Dismissed Per Clerk's 11/29/01 Order.
Nos. 01-3747, 01-3824.

Argued Sept. 10, 2002.
Decided Sept. 11, 2003.

Political party, voter, and candidates brought action challenging constitutionality of Pennsylvania's mandatory filing fee in state elections. The United States District Court for the Middle District of Pennsylvania, A. Richard Caputo, J., 243 F.Supp.2d 179, entered judgment in favor of one candidate and enjoined enforcement of the filing fee requirement. Commonwealth appealed, and voter and other candidate cross-appealed. The Court of Appeals, Roth, Circuit Judge, held that: (1) candidates had standing to challenge constitutionality of filing fee requirement; (2) mandatory filing fees for ballot access were not narrowly drawn to advance compelling state interest, as required by equal protection; (3) candidates' challenge was not moot; but (4) voter's challenge was moot; and (5) injunction was over broad.

Affirmed in part, reversed in part, vacated in part, and remanded.

West Headnotes

[1] Federal Courts 170B ⚿763.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk763 Extent of Review Dependent on Nature of Decision Appealed from
170Bk763.1 k. In General. Most Cited Cases

Court of Appeals exercises plenary review over all jurisdictional questions, including whether a plaintiff has standing to assert a particular claim, and whether a plaintiff's claim is moot.

[2] Declaratory Judgment 118A ⚿61

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak61 k. Necessity. Most Cited Cases

Federal Courts 170B ⚿12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases

Existence of a case or controversy is a prerequisite to all federal actions, including those for declaratory or injunctive relief.

[3] Federal Civil Procedure 170A ⚿103.2

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing

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170Ak103.2 k. In General; Injury or Interest. Most Cited Cases
Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation.

[4] Federal Courts 170B ⚷12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases
In order to establish a case or controversy, plaintiff must demonstrate three elements: first, plaintiff must have suffered injury in fact - invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical; second, there must be causal connection between the injury and conduct complained of - injury has to be fairly traceable to challenged action of defendant, and not result of independent action of some third party not before court; third, it must be likely, as opposed to merely speculative, that injury will be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 2, cl. 1
.

[5] Constitutional Law 92 ⚷42.1(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k41 Persons Entitled to Raise Constitutional Questions
92k42.1 Particular Statutes or Actions Attacked
92k42.1(1) k. In General. Most Cited Cases
Candidate for state representative had standing to challenge constitutionality of Pennsylvania's mandatory $100 filing fee requirement; candidate had only $50 in campaign funds at the time the fee was due, his monthly income only marginally exceeded his monthly expenses, and he was unable to afford basic expenses such as health insurance, dental care, and prescription eyeglasses. U.S.C.A. Const. Art. 3, § 2, cl. 1; 25 P.S. § 2873(b.1).

[6] Federal Courts 170B ⚷13.20

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13.20 k. Elections and Officers. Most Cited Cases
Significant impact of mandatory filing fee on an indigent candidate's ability to meet personal living expenses and on the candidate's campaign strategy and allocation of resources is sufficient to satisfy the requirements of Article III. U.S.C.A. Const. Art. 3, § 2, cl. 1; 25 P.S. § 2873(b.1).

[7] Constitutional Law 92 ⚷42.1(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k41 Persons Entitled to Raise Constitutional Questions
92k42.1 Particular Statutes or Actions Attacked
92k42.1(1) k. In General. Most Cited Cases
Candidate for attorney general had standing to challenge constitutionality of Pennsylvania's $200 mandatory filing fee requirement, although he received a single $200 campaign donation that would have exactly covered the cost of his fee; paying the filing fee would have caused candidate's expenses to exceed his annual adjusted gross income. U.S.C.A. Const. Art. 3, § 2, cl. 1; 25 P.S. § 2873(b.1).

[8] Constitutional Law 92 ⚷225.2(1)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(1) k. In General. Most Cited Cases
State's power to regulate elections must be exercised in a manner consistent with the Equal

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Protection Clause of the Fourteenth Amendment. U.S.C.A. Const. Art. 1, § 4, cl. 1; U.S.C.A. Const.Amend. 14.

[9] Constitutional Law 92 ⇐82(8)

92 Constitutional Law
92V Personal, Civil and Political Rights
92k82 Constitutional Guaranties in General
92k82(6) Particular Rights, Limitations, and Applications
92k82(8) k. Political Activities. Most Cited Cases

In order to exercise their inherent power to regulate their own elections, even though the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system, the states may limit access to the ballot. U.S.C.A. Const. Art. 1, § 4, cl. 1.

[10] Constitutional Law 92 ⇐82(8)

92 Constitutional Law
92V Personal, Civil and Political Rights
92k82 Constitutional Guaranties in General
92k82(6) Particular Rights, Limitations, and Applications
92k82(8) k. Political Activities. Most Cited Cases

Constitutional Law 92 ⇐91

92 Constitutional Law
92V Personal, Civil and Political Rights
92k91 k. Right of Assembly and Petition. Most Cited Cases

State statutes regulating ballot access inevitably affect - at least to some degree - the individual's right to vote and his right to associate with others for political ends; nevertheless, not all such restrictions are unconstitutional.

[11] Constitutional Law 92 ⇐225.2(1)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(1) k. In General. Most Cited Cases

Mere fact that a State's system regulating ballot access creates barriers tending to limit the field of candidates from which voters might choose does not of itself compel close scrutiny under equal protection analysis. U.S.C.A. Const.Amend. 14.

[12] Constitutional Law 92 ⇐82(8)

92 Constitutional Law
92V Personal, Civil and Political Rights
92k82 Constitutional Guaranties in General
92k82(6) Particular Rights, Limitations, and Applications
92k82(8) k. Political Activities. Most Cited Cases

Constitutional Law 92 ⇐225.2(1)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(1) k. In General. Most Cited Cases

Rigorousness of court's inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. U.S.C.A. Const.Amends. 1, 14.

[13] Constitutional Law 92 ⇐82(8)

92 Constitutional Law
92V Personal, Civil and Political Rights
92k82 Constitutional Guaranties in General
92k82(6) Particular Rights, Limitations, and Applications
92k82(8) k. Political Activities. Most Cited Cases

Constitutional Law 92 ⇐225.2(1)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(1) k. In General. Most Cited Cases

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When First and Fourteenth Amendment rights are subjected to severe restrictions under state election regulation, the regulation must be narrowly drawn to advance a state interest of compelling importance; however, when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions. U.S.C.A. Const.Amends. 1, 14.

[14] Constitutional Law 92 ⚷225.2(5)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(3) Qualifications of Voters or Candidates
92k225.2(5) k. Property, Taxes or Fees. Most Cited Cases

Elections 144 ⚷21

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k21 k. In General. Most Cited Cases
Pennsylvania's failure to provide a reasonable alternative means of ballot access, other than paying mandatory filing fee, severely burdened rights of indigent candidates and their supporters, requiring filing fee statute to be narrowly drawn to advance a state interest of compelling importance in order to satisfy equal protection. U.S.C.A. Const.Amend. 14 ; 25 P.S. § 2873(b.1).

[15] Constitutional Law 92 ⚷225.2(5)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(3) Qualifications of Voters or Candidates
92k225.2(5) k. Property, Taxes or Fees. Most Cited Cases

Elections 144 ⚷21

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k21 k. In General. Most Cited Cases
Pennsylvania's mandatory filing fees for ballot access were not narrowly drawn to advance a state interest in limiting ballot access to serious candidates, as required by equal protection; imposing mandatory filing fee in addition to existing signature requirement, while failing to provide alternative means of ballot access, was not narrowly drawn. U.S.C.A. Const.Amend. 14; 25 P.S. § 2873(b.1).

[16] Constitutional Law 92 ⚷225.2(5)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(3) Qualifications of Voters or Candidates
92k225.2(5) k. Property, Taxes or Fees. Most Cited Cases

Elections 144 ⚷21

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k21 k. In General. Most Cited Cases
Pennsylvania's interest in defraying election costs was not a compelling state interest, and mandatory filing fees were not narrowly drawn means of achieving such interest, as required by equal protection; fees collected exceeded costs incurred by the Commonwealth for election related services it provided and were deposited directly into the Commonwealth's general operating fund. U.S.C.A. Const.Amend. 14; 25 P.S. § 2873(b.1).

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[17] Federal Courts 170B ⇐12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases
In order for claim to be excepted from mootness on ground it was capable of repetition, yet evading review, plaintiff must establish that (1) the challenged action was in its duration too short to be fully litigated to its cessation or expiration and (2) there is a reasonable likelihood that [he will] be subjected to the same action again.

[18] Constitutional Law 92 ⇐46(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k46 Necessity of Determination
92k46(1) k. In General. Most Cited Cases
Indigent candidates' "as applied" equal protection challenge to Pennsylvania's mandatory filing fee requirements was not moot under "capable of repetition, yet evading review" exception to mootness doctrine, although election in which they ran had been held; challenge was too short in duration to be fully litigated prior to its expiration, and given lack of evidence to the contrary, it was reasonable to assume that the candidates would once again seek waiver of mandatory fees due to indigency. U.S.C.A. Const.Amend. 14; 25 P.S. § 2873(b.1).

[19] Constitutional Law 92 ⇐46(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k46 Necessity of Determination
92k46(1) k. In General. Most Cited Cases
Voter's "as applied" equal protection challenge to Pennsylvania's mandatory filing fee requirements did not fall within "capable of repetition, yet evading review" exception to mootness doctrine; election in which voter sought to vote for indigent candidates allegedly barred from the ballot by the fees had been held and voter had left Pennsylvania, and there was no evidence he would return in the future. U.S.C.A. Const.Amend. 14; 25 P.S. § 2873(b.1).

[20] Injunction 212 ⇐189

212 Injunction
212V Permanent Injunction and Other Relief
212k189 k. Nature and Scope of Relief. Most Cited Cases
District courts granting injunctions pursuant to rule governing terms of injunctions should craft remedies no broader than necessary to provide full relief to the aggrieved plaintiff. Fed.Rules Civ.Proc.Rule 65(d), 28 U.S.C.A.

[21] Injunction 212 ⇐189

212 Injunction
212V Permanent Injunction and Other Relief
212k189 k. Nature and Scope of Relief. Most Cited Cases
Injunction permanently enjoining Commonwealth of Pennsylvania from applying its mandatory filing fee statute to indigent candidates who successfully challenged the statute as applied was overly broad; district court was only required to enjoin Commonwealth from enforcing mandatory filing fees against the candidates during upcoming election and in any future election where they demonstrated that they would be subjected to financial hardship by requirement that they pay the fee. Fed.Rules Civ.Proc.Rule 65(d), 28 U.S.C.A.; 25 P.S. § 2873(b.1).

[22] Injunction 212 ⇐85(1)

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k85 Enforcement of Statutes,

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Ordinances, or Other Regulations
212k85(1) k. In General. Most Cited Cases
Injunction preventing Commonwealth of Pennsylvania from enforcing challenged mandatory filing fee statute against candidates who could not afford to pay the filing fee or otherwise requiring candidates to pay a filing fee they could not afford in order to appear on the ballot was not necessary; injunction did nothing more than order the Commonwealth to obey established federal law. Fed.Rules Civ.Proc.Rule 65(d), 28 U.S.C.A.; 25 P.S. § 2873(b.1).
West CodenotesUnconstitutional as Applied25 Pa. Stat. Ann. § 2873(b.1)

***635** D. Michael Fisher, Attorney General, John G. Knorr, III (Argued), Chief Deputy Attorney General, Chief, Appellate Litigation Section, Gregory R. Neuhauser, Senior Deputy Attorney General, Office of Attorney General, Harrisburg, PA, for Appellants/Cross Appellees.
Bonita P. Tenneriello (Argued), John C. Bonifaz, Brenda Wright, Lisa J. Danetz, National Voting Rights Institute, Boston, MA, Jordan B. Yeager, Boockvar & Yeager, Doylestown, PA, David Kairys , Philadelphia, PA, for Appellees/Cross Appellants.

Before: NYGAARD, ROTH and WEIS, Circuit Judges.

OPINION OF THE COURT

ROTH, Circuit Judge.
The Pennsylvania election code requires candidates for various local, state, and national offices to pay a filing fee prior to having their names placed on the ballot. During the 2000 campaign, plaintiffs challenged the filing fee, contending that the mandatory nature of the fee, coupled with the absence of an alternative***636** means by which indigent candidates might gain access to the ballot, violated the Equal Protection Clause of the Fourteenth Amendment. The District Court found the mandatory filing fee unconstitutional as applied to John Stith, a candidate for the state legislature who demonstrated his inability to pay the fee without financial hardship. The District Court therefore permanently enjoined the Commonwealth [FN1] from applying the challenged fee structure to Stith or to other similarly situated candidates.

> FN1. For ease of reference, the two defendants, Kim Pizzingrilli, Secretary of State, and Richard Filling, Commissioner of the Bureau of Commissions, Elections, and Legislation, both of whom were sued in their official capacity, will be collectively referred to throughout this Opinion as "the Commonwealth."

The Commonwealth appealed on the grounds that Stith had ample resources to pay the fee, that the fee was constitutional as applied to Stith, and that, even if the fee was unconstitutional, the District Court's order was unduly broad and vague. The remaining plaintiffs, Thomas Linzey, a candidate for state attorney general, William Donovan, a registered voter supporting Linzey's candidacy, and the Pennsylvania Green Party, of which Stith, Linzey, and Donovan were members, have cross-appealed the District Court's granting of summary judgment against them.

I. Background

A. The Commonwealth's Ballot Access Laws

The Pennsylvania ballot access law requires candidates for various public offices to pay a filing fee in order to have their names placed on the general election ballot. Specifically, the law provides: "Each person filing any nomination petition shall pay for each petition, at the time of filing, a filing fee ... *and no nomination petition shall be accepted or filed, unless and until such filing fee is paid* ...." 25 Pa. Stat. Ann. § 2873(b.1) (emphasis added). The fees range from $5 to $200, depending on the office sought. The law applies equally to all candidates regardless of political affiliation. However, it contains no waiver provisions or other means for an indigent candidate to gain access to the ballot. The Commonwealth concedes that it has received "several inquiries" regarding fee waivers but that it keeps no official record of such inquiries and is unable to state the

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exact number received.

Candidate filing fees for statewide elections are paid when the candidates' nomination petitions are filed with the Secretary of the Commonwealth. 25 Pa. Stat. Ann. §§ 2873(a) & 2873(b.1). The total collected varies by year, averaging approximately $70,000 to $80,000 in even years, and $22,000 to $23,000 in odd years. These funds are used to provide a variety of election-related services, including (1) review of nomination petitions and papers to ensure compliance with applicable requirements, (2) review of documents pertaining to candidate withdrawals and substitutions, (3) creation and distribution of election information for candidates, and (4) consideration of and responses to candidate inquiries. The total cost of such services is estimated to be approximately $46,000 in even years, and $23,000 in odd years. The revenue generated by the filing fees is not, however, expressly earmarked for the funding of these services. It is instead placed into the Commonwealth's general operating fund. *See* 25 Pa. Stat. Ann. § 2873(b.1).

In addition to paying the required filing fees, candidates must also comply with the statutory signature requirements. Specifically, candidates for statewide office must collect signatures equal to two percent of the largest vote total for any statewide *637 candidate in the last election. 25 Pa. Stat. Ann. § 2911(b). Those seeking other offices must obtain signatures equal to two percent of the largest vote total received by any candidate in their district during the last election. *Id.* However, these signature requirements are in no way correlated with, or affected by, the applicable filing fee. Thus, although the number of signatures needed to obtain ballot access will naturally vary from one district to another, candidates for positions in the state legislature all pay the same filing fee regardless of the size of their district or the number of signatures required.

B. Factual Background

Plaintiff John Stith sought to have his name placed on the November 2000 ballot as the Green Party candidate for State Representative in the 77th District. As such, he was required to pay a $100 filing fee. To support his allegation that he would suffer financial hardship if compelled to pay the fee, Stith has submitted evidence that he had an adjusted gross income of approximately $35,000 in 1999 and $11,000 in 2000. As of July 2000, his take-home pay was approximately $1,200 per month, compared to his monthly living expenses of $1,073. [FN2] At the time the fee was due, Stith's assets included $50 in campaign funds and a personal bank account balance of $1,500. Among his liabilities were $40,000 in student loans and $3,500 in credit card debt. Stith made a loan of $1,000 of his own money to his campaign. The loan was repaid with campaign funds following the election. [FN3]

> FN2. There is some debate between the parties as to the proper method for calculating Stith's monthly income and expenses. Because we would reach the same result regardless of which set of figures is used, we will, for the sake of argument, accept those proffered by the Commonwealth.

> FN3. Although Stith had collected only $50 in campaign contributions at the time the filing fee was due, he had raised a total of approximately $4,800 by the time of the election.

Plaintiff Thomas Linzey, the Green Party's candidate for Attorney General, was required to pay a filing fee of $200 in order to gain access to the ballot. Like Stith, Linzey alleged that he too " would suffer financial hardship" if forced to pay the applicable fee. Linzey's adjusted gross income for the year 2000 was $4,611. He incurred average monthly living expenses of $380 ($150 for rent, $120 for food, $70 for utilities, $20 in credit card payments, $10 for clothing, and $10 for fuel and maintenance for his housemate's car). Linzey received a $200 check from a campaign supporter but was unable to cash it because the check was made out to the "Linzey for Attorney General Committee," an entity which did not exist.

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Plaintiff William Donovan was a student at Pennsylvania State University at the time the complaint was filed. He was registered to vote in the Commonwealth during the November 2000 election and was a supporter of various Green Party candidates, including Linzey. His gross income for the year 2000 was $5,821.68. Donovan no longer lives in Pennsylvania, and there is no evidence in the record to suggest he plans to return at any time in the future.

Plaintiff Pennsylvania Green Party, of which Stith, Linzey, and Donovan are members, is a political body as defined by Pennsylvania law. *See* 25 Pa. Stat. Ann. § 2831. It alleges that many of its candidates "would suffer financial hardship" as a result of the continued application of the challenged fee structure. The Party asserts that its members, many of whom "are drawn from the less affluent segment of the Pennsylvania community," support ***638** their chosen candidates "regardless of their ability to pay the filing fees." *Id.*

Defendant Kim Pizzingrilli is Secretary of State of the Commonwealth. As such, she is responsible for overseeing various aspects of the Commonwealth's election process, including receipt of candidates' nomination petitions and filing fees. Defendant Richard Filling serves as Commissioner for the Bureau of Commissions, Elections and Legislation and has administrative responsibility for various aspects of the election process, including ballot access. Both defendants were sued in their official capacity.

II. Procedural History

Plaintiffs filed their complaint on July 24, 2000. Pursuant to 42 U.S.C. § 1983, they seek, *inter alia,* declaratory and injunctive relief on behalf of a number of individuals and political organizations. [FN4] Specifically, they allege that the statutes establishing the Commonwealth's ballot access scheme violate the Equal Protection Clause of the Fourteenth Amendment.

> FN4. Of these, only Stith, Linzey, Donovan, and the Pennsylvania Green Party are before us on appeal. The remaining plaintiffs were dismissed by joint stipulation, *see* Fed.R.Civ.P. 41, prior to the filing of the cross-motions for summary judgment.

On July 25, 2000, the District Court denied plaintiffs' request for a temporary restraining order but then, on July 28, the court granted a preliminary injunction as to Stith and "any otherwise qualified candidate who is unable to pay the cost of the fee." This injunction required the Commonwealth to provide Stith and other similarly situated candidates with "an alternative measure or measures for gaining access to the ballot prior to or at the time of the August 1, 2000 deadline."

As a result of the preliminary injunction, the Commonwealth offered to exempt Stith and Linzey from payment of their respective fees upon their execution of an affidavit declaring that they could not comply with the law without suffering financial hardship. Stith and Linzey both signed affidavits and were placed on the November 2000 ballot without having to pay the required fees. [FN5]

> FN5. Copies of these affidavits were not included in the record. However, neither party disputes this issue, and we therefore accept Plaintiffs' representations as to the affidavits' existence and content.

The District Court entered a permanent injunction on August 20, 2001, enjoining the Commonwealth from applying the statutory fee to "Plaintiff Stith or other candidates who cannot afford to pay the filing fee." *Belitskus v. Pizzingrilli,* 243 F.Supp.2d 179, at 184 (M.D.Pa.2001). The permanent injunction further prohibited the Commonwealth from " requiring candidates to pay a filing fee they cannot afford in order to appear on the ballot." *Id.* Because the District Court concluded that Linzey and Donovan failed to demonstrate entitlement to relief, summary judgment was granted to the Commonwealth with respect to their claims.[FN6] *Id.* at 181 n. 2.

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FN6. This portion of the District Court's ruling has caused some confusion. The court mistakenly classified Donovan as a candidate, rather than a voter, and therefore granted summary judgment to the Commonwealth based at least in part on the fact that the court believed Donovan had failed to sufficiently establish his inability to pay the required fee. In addition, the order fails to dispose of the claim asserted by the Pennsylvania Green Party. We address both of these issues below.

On August 28, 2001, plaintiffs moved to amend the injunction to include Linzey. The District Court denied this motion, stating that the broad scope of the order permitted Linzey to attempt at a later time to demonstrate his inability to pay the required fee, thereby making such an ***639** amendment unnecessary. This appeal and cross-appeal followed.

III. Jurisdiction and Standards of Review

Plaintiffs filed suit pursuant to 42 U.S.C. § 1983. The District Court therefore exercised subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331. We have jurisdiction to review a district court's issuance or refusal to modify an injunction pursuant to 28 U.S.C. § 1292(a).

[1] We exercise plenary review over all jurisdictional questions, including whether a plaintiff has standing to assert a particular claim, *see General Instrument Corp. of Del. v. Nu-Tek Elec. & Mfg., Inc.*, 197 F.3d 83, 86 (3d Cir.1999), and whether a plaintiff's claim is moot. *See Salovaara v. Jackson Nat'l Life Ins. Co.*, 246 F.3d 289, 295 (3d Cir.2001). Our review of the District Court's summary judgment determinations is also plenary, and we utilize the same test applied below. *Saldana v. Kmart Corp.*, 260 F.3d 228, 231 (3d Cir.2001). Thus, "[s]ummary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' " *Chisolm v. McManimon*, 275 F.3d 315, 321 (3d Cir.2001) (quoting Fed.R.Civ.P. 56(c)). Summary judgment is not appropriate, however, "if a disputed fact exists which might affect the outcome of the suit under the controlling substantive law." *Josey v. John R. Hollingsworth Corp.*, 996 F.2d 632, 637 (3d Cir.1993).

IV. Discussion

A. Standing

[2][3] Because " '[t]he existence of a case or controversy is a prerequisite to all federal actions, including those for declaratory or injunctive relief,' " *Philadelphia Fed'n of Teachers v. Ridge*, 150 F.3d 319, 322-23 (3d Cir.1998) (quoting *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir.1994)), we first must consider the Commonwealth's contention that plaintiffs lack standing to challenge the mandatory filing fee. The fact that the Commonwealth asserts this argument for the first time on appeal is immaterial, as "[s]tanding represents a jurisdictional requirement which remains open to review at all stages of the litigation." *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255, 114 S.Ct. 798, 127 L.Ed.2d 99 (1994); *see also Public Interest Research Group of N.J., Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 117 n. 5 (3d Cir.1997) ("Like any jurisdictional requirement, standing cannot be waived.").

[4] In order to establish a case or controversy, a plaintiff must demonstrate the following three elements:

First, the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly ... traceable to the challenged action of the defendant, and not ... the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to

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merely speculative, that the injury will be redressed by a favorable decision.

AT & T Communications of N.J., Inc. v. Verizon N.J., Inc., 270 F.3d 162, 170 (3d Cir.2001) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). " These requirements ensure that plaintiffs have a ' personal stake' or 'interest' in the outcome of the proceedings, 'sufficient to warrant ... [their] invocation of federal-court jurisdiction***640** and to justify exercise of the court's remedial powers on ... [their] behalf." ' *Joint Stock Soc'y v. UDV N. Am., Inc.*, 266 F.3d 164, 175 (3d Cir.2001) (quoting *Wheeler v. Travelers Ins. Co.*, 22 F.3d 534, 537-38 (3d Cir.1994)).

In addressing this issue, the Commonwealth argues that neither Stith nor Linzey suffered a cognizable injury because both possessed sufficient funds to pay the applicable filing fees at the time they were due. Because the claims asserted by Donovan and the Pennsylvania Green Party are derivative of those brought by Stith and Linzey, the Commonwealth concludes that they too are without standing to challenge its fee structure.

[5] We disagree. Turning first to Stith, we note that he possessed only $50 in campaign funds at the time the fee was due. Although he had a personal savings account containing approximately $1,500, his liabilities included roughly $43,500 in unpaid student loans and credit card debt. In addition, Stith's monthly income only marginally exceeded his monthly expenses, and he was unable to afford basic expenses such as health insurance, dental care, and prescription eyeglasses. Paying the required fee would have completely depleted his campaign funds and required him to delve into his limited personal assets. Accordingly, we conclude that Stith has successfully demonstrated sufficient injury to satisfy the requirements of Article III. *See Joint Stock Soc'y*, 266 F.3d at 177 ("All that the Article III 's injury-in-fact element requires is 'an identifiable trifle' of harm") (quoting *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973)).

[6] In so concluding, we reject the Commonwealth's argument that a candidate challenging a mandatory filing fee must establish that payment of the fee would result in the complete depletion of personal or campaign funds in order to demonstrate injury to a protected interest. *See, e.g., Green v. Mortham*, 155 F.3d 1332 (11th Cir.1998) (standing not questioned where candidate used campaign contributions to pay filing fee under protest during pendency of ballot access challenge); *Harper v. Vance*, 342 F.Supp. 136, 140 (N.D.Ala.1972) (three judge panel) (candidate considered "unable" to pay mandatory filing fee where doing so would leave him "nearly destitute"). FN7 Rather, we conclude ***641** that a significant impact of such a fee on an indigent candidate's ability to meet personal living expenses and on the candidate's campaign strategy and allocation of resources is sufficient to satisfy the requirements of Article III. Indeed, similar harms have often been held to confer standing in the political context. *See, e.g., Becker v. Federal Election Comm'n*, 230 F.3d 381, 386-87 (1st Cir.2000) (candidate's claim that challenged practice of allowing corporate sponsorship of presidential debates affected use of his campaign funds and overall strategy held to establish standing); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 (1st Cir.1993) (candidate's forced choice regarding the acceptance of public campaign financing affected campaign strategy and therefore " constitute[d] an injury of a kind sufficient to confer standing"); *Fulani v. Krivanek*, 973 F.2d 1539, 1544 (11th Cir.1992) (standing not questioned where candidate asserted that paying signature verification fee "would impose an undue burden by diverting funds from her party's attempt to identify, reach, and communicate with potential supporters").

FN7. As noted by the court in *Harper*, the rejection of this argument is consistent with the approach taken by the Supreme Court regarding indigent plaintiffs seeking permission to proceed *in forma pauperis:*
We cannot agree with the court below that one must be absolutely destitute to enjoy the benefit of the statute. *** To say that no persons are entitled to the statute's benefits until they have sworn to contribute

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> to payment of costs, the last dollar they have or can get, and thus make themselves and their dependents wholly destitute, would be to construe the statute in a way that would throw its beneficiaries into the category of public charges. *** [T]he result [is not] desirable if the effect of this statutory interpretation is to force a litigant to abandon what may be a meritorious claim in order to spare himself complete destitution.
>
> *Harper,* 342 F.Supp. at 140 (quoting *Adkins v. E.I. DuPont de Nemours & Co.,* 335 U.S. 331, 339-40, 69 S.Ct. 85, 93 L.Ed. 43 (1948)). *See also Jones v. Zimmerman,* 752 F.2d 76, 78-79 (3d Cir.1985) (holding that district court abused its discretion in denying *in forma pauperis* status to prisoner facing a $5.00 filing fee when the prisoner earned $15.00 per month and had a prison savings account containing $17.39); *Bullock v. Suomela,* 710 F.2d 102, 103 (3d Cir.1983) (district court abused its discretion in denying *in forma pauperis* status and requiring prisoner to pay partial filing fee of $4.00 out of net assets of $4.76); *Souder v. McGuire,* 516 F.2d 820, 823-24 (3d Cir.1975) (district court erred in denying *in forma pauperis* status to prisoner with total assets of $50.07).

Because Stith's injury is clearly traceable to the actions of the Commonwealth and was redressed by a favorable decision below, we conclude that Stith has also satisfied the remaining elements of the case or controversy requirement. *See AT & T Communications,* 270 F.3d at 170. We conclude therefore that he has demonstrated that he has standing to challenge the mandatory filing fee.

[7] For the reasons stated above, we also hold that Linzey, whose financial resources were even more limited than Stith's, has standing. Indeed, given the fact that Linzey's living expenses totaled $4,560 ($380 per month for twelve months) in 2000, paying the required $200 filing fee would have caused his expenses to exceed his adjusted gross income of $4,611. Moreover, the fact that Linzey received a single $200 campaign donation that would have exactly covered the cost of his fee does not alter our analysis. Our conclusion is consistent with the Supreme Court's rejection of forced reliance upon campaign contributions to satisfy mandatory filing fees. *See Bullock v. Carter,* 405 U.S. 134, 144, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972).

Finally, because the alleged injuries suffered by Donovan and the Green Party are derivative of those of Stith and Linzey, *see id.* at 143, 92 S.Ct. 849; *Henderson v. Fort Worth Independent School District,* 526 F.2d 286, 288 n. 1 (5th Cir.1976) (citing *Bullock* for the proposition that a voter wishing to support a candidate barred from the ballot "clearly has standing" to challenge the ballot access law at issue), we hold that they too have satisfied the applicable standing requirements.

B. The Supreme Court's Ballot Access Jurisprudence

[8] Turning then to the merits of plaintiffs' challenge to the Pennsylvania mandatory filing fee, Article I, Section 4, Clause 1 of the Constitution grants to the individual states not only the power to regulate congressional elections but also the inherent power "to regulate their own elections" as well. *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). Indeed, " 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.' " *Id.* (quoting *Storer v. Brown,* 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974)). Nevertheless, a state's power to regulate elections "must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment." ***642** *Bullock,* 405 U.S. at 141, 92 S.Ct. 849.

[9] In order to exercise this inherent power, even though " 'the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system,' " *Lubin v. Panish,* 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974) (quoting *Reynolds v. Sims,* 377 U.S. 533, 562, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)), the states may limit access to the

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ballot. For example, they may enact laws limiting the number of names appearing on a ballot "in order to concentrate the attention of the electorate on the selection of a much smaller number of officials." *Id.* at 712, 94 S.Ct. 1315 (citation and internal quotation omitted). These restrictions afford voters " 'the opportunity of exercising more discrimination in their use of the franchise.' " *Id.* Accordingly, mandatory filing fees are widely used as a means of both limiting ballot access and recouping some of the costs incurred in the administration of public elections. *Id.* at 713, 94 S.Ct. 1315.

Nevertheless, the Supreme Court has twice held filing fees to be unconstitutional if, as here, the state has failed to provide an alternative means of ballot access for indigent candidates unable to make the required payment. First, in *Bullock*, the Court invalidated a Texas statute that established a mandatory filing fee but failed to provide any other means of ballot access. Although the challenged fee in *Bullock* was both "far from exceptional" in size, 405 U.S. at 138, 92 S.Ct. 849 and limited to party primaries, *id.* at 140, 92 S.Ct. 849, the Court concluded that its exclusionary effect was "neither incidental nor remote." *Id.* at 144, 92 S.Ct. 849. Rather, the Court held that the statutory scheme at issue tended "to deny some voters the opportunity to vote for a candidate of their choosing," while simultaneously giving affluent voters "the power to place on the ballot their own names or the names of persons they favor." *Id.* The Court therefore concluded that the challenged fee structure fell " with unequal weight on voters, as well as candidates, according to their economic status." *Id.*

The Supreme Court next addressed the mandatory filing fee issue in *Lubin.* There, it again recognized the state's legitimate interest in limiting ballot access:

A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process. That no device can be conjured to eliminate every frivolous candidacy does not undermine the state's effort to eliminate as many such as possible.... Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects of success.

415 U.S. at 715-16, 94 S.Ct. 1315.

The Court nevertheless held that this interest "must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." *Id.* at 716, 94 S.Ct. 1315. Accordingly, because fee statutes can "operate to exclude some potentially serious candidates from the ballot without providing them with any alternative means of coming before the voters," the Court held that, " in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay." *Id.* at 718, 94 S.Ct. 1315. It is against this backdrop that we consider the challenge before us.

643 C. Anderson *Balancing

Our first step in analyzing equal protection claims is to determine the appropriate level of scrutiny. *Reform Party of Allegheny Co. v. Allegheny Co. Dep't of Elections,* 174 F.3d 305, 314 (3d Cir.1999) (*en banc*). Making this determination requires an analysis of the challenged fee's effect on plaintiffs' rights. *Id.*

[10][11] In examining this issue we note that, as a practical matter, it is self-evident that state statutes regulating ballot access " 'inevitably affect - at least to some degree - the individual's right to vote and his right to associate with others for political ends.' " *Council of Alternative Political Parties v. Hooks,* 179 F.3d 64, 70 (3d Cir.1999) (*Alternative Political Parties II*) (quoting *Anderson,* 460 U.S. at 788, 103 S.Ct. 1564). Nevertheless, "not all such restrictions are unconstitutional." *Id.* Rather, " [w]here the statute imposes only a minimal nondiscriminatory burden on minor parties, yet

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affords 'reasonable access' to the ballot, it generally has been upheld." *Id.* (citing *Burdick,* 504 U.S. at 438, 112 S.Ct. 2059). Indeed, subjecting "every voting regulation to strict scrutiny and ... requir[ing] that the regulation be narrowly tailored to advance a compelling state interest ... would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick,* 504 U.S. at 433, 112 S.Ct. 2059. "Accordingly, the mere fact that a State's system 'creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny.' " *Id.* at 433-34, 112 S.Ct. 2059 (quoting *Bullock,* 405 U.S. at 143, 92 S.Ct. 849).

[12][13] In light of these competing interests, the Supreme Court has developed the following balancing test for use in determining the appropriate level of scrutiny to be applied in ballot access cases:

[A reviewing court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it must also consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789, 103 S.Ct. 1564. Pursuant to this test, "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059. "[W]hen those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance. ' " *Id.* (quoting *Norman v. Reed,* 502 U.S. 279, 289, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992)). However, "when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify ' the restrictions." *Id.* at 434, 112 S.Ct. 2059 (quoting *Anderson,* 460 U.S. at 788, 103 S.Ct. 1564).FN8

FN8. We note that *Anderson* was not expressly decided on equal protections grounds, *see Anderson,* 460 U.S. at 786, 103 S.Ct. 1564, and that some uncertainty therefore exists regarding its applicability to equal protection-based challenges of state ballot access laws such as the one at bar. *See, e.g., Fulani,* 973 F.2d at 1543 (" It is not entirely clear ... whether the Supreme Court would apply [the *Anderson* test] in an equal protection situation. None of the Supreme Court cases employing the *Anderson* test concerned an equal protection challenge to state election laws."); Recent Cases, 113 Harv. L.Rev.. 1045, 1047 n.27 (2000) ("In the years since the *Anderson* test was formulated, the Supreme Court has not evaluated any ballot access restrictions under the Equal Protection Clause. As a result, legitimate disagreement exists about whether the *Anderson* balancing test applies in that context."). However, neither party challenges its application to the instant equal protection claim, nor do we see any basis for refusing to so apply it. *See Reform Party,* 174 F.3d at 314 (assuming that certain burdens "require the same level of scrutiny in an equal protection analysis that they do in an associational rights analysis"); *Republican Party of Arkansas v. Faulkner Co.,* 49 F.3d 1289, 1293 n. 2 (8th Cir.1995) ("In election cases, equal protection challenges essentially constitute a branch of the associational rights tree. When the Supreme Court finds a violation of Equal Protection, it is nevertheless First and Fourteenth Amendment associational rights which are inequitably burdened."); *Fulani,* 973 F.2d at 1543 (finding *Anderson* applicable to equal protection-based challenges to ballot access laws).

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> Additionally, we note that, although *Anderson* involved a national election, we have previously held that it is equally applicable in the context of state elections. *See Council of Alternative Political Parties v. Hooks,* 121 F.3d 876, 882 (3d Cir.1997) (*Alternative Political Parties I*). We therefore conclude that its application to the case before us is appropriate.

***644** [14] Our first step in applying *Anderson* requires a consideration of the burdens imposed on plaintiffs' constitutional rights. *See Anderson,* 460 U.S. at 789, 103 S.Ct. 1564. Here, plaintiffs contend that the rights of indigent candidates and their supporters are severely burdened by the filing fees at issue and that the challenged ballot access scheme therefore is subject to strict scrutiny under *Anderson* and its progeny. In reply, the Commonwealth urges that Stith and Linzey had sufficient resources from which to pay the applicable filing fee. It therefore contends the burdens they faced were minimal, and that strict scrutiny is thus inappropriate.

For the reasons cited above in our discussion of Article III standing, we reject the argument that Stith and Linzey were required to pay the mandatory fees simply because they had access to minimally sufficient funds to do so. Although we do not pass on the precise showing necessary to establish the type of financial hardship contemplated by the Supreme Court in *Bullock* and *Lubin,* we conclude that difficulty in raising the funds to pay the required fee, looked at in light of the total assets and liabilities of the candidate, is sufficient to satisfy the test. The fact that, in order to pay the fee, Stith and Linzey would have had to completely deplete their campaign funds and to expend funds needed to pay ongoing living expenses and prior legitimate debts is sufficient to demonstrate financial hardship.

Moreover, if a ballot access scheme, such as the one here, imposes a mandatory filing fee but fails to provide an alternative means of ballot access, such as signature collection, that scheme constitutes a severe burden on the rights of indigent candidates and their supporters. This conclusion is clearly supported by the Supreme Court's decision in *Bullock.* There, the Court conceded that the " disparity in voting power" caused by election systems that separate candidates on the basis of wealth "cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause." 405 U.S. at 144, 92 S.Ct. 849. It further noted that "there are doubtless some instances of candidates representing the views of voters of modest means who are able to pay ***645** the required fee." *Id.* Nevertheless, the Court concluded that such systems clearly "fall[ ] with unequal weight on voters, as well as candidates, according to their economic status." *Id.*

The *Bullock* Court therefore looked to poll tax cases such as *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), which utilized traditional equal protection strict scrutiny analysis, as providing the appropriate level of scrutiny for analysis of ballot access laws such as those at issue here. *See Bullock,* 405 U.S. at 142-44, 92 S.Ct. 849; *see also Anderson,* 460 U.S. at 792-93 & n. 15, 103 S.Ct. 1564 (citing *Bullock* for the proposition that "it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status"); *Dart v. Brown,* 717 F.2d 1491, 1501 (5th Cir.1983) (noting that the application of strict scrutiny in *Bullock* and *Lubin*); *Adams v. Askew,* 511 F.2d 700, 703 (5th Cir.1975) ("[W]here the fees exacted have 'a real and appreciable impact on the exercise of the franchise,' based solely upon lack of wealth and inability to translate voter support into dollars, a strict standard of review is to be applied.") (quoting *Bullock,* 405 U.S. at 144, 92 S.Ct. 849).

The Commonwealth points to the size of its filing fees as a reason to avoid strict scrutiny. This argument is not sufficient. A relatively minimal fee, which is nevertheless mandatory, means only that a smaller class of potential candidates will be barred from the ballot. *See Lubin,* 415 U.S. at 717, 94 S.Ct. 1315 (even moderate fees may prevent " impecunious but serious candidates ... from running"). In the absence of a reasonable alternative means

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of ballot access, any mandatory fee, no matter how small, will inevitably remain "exclusionary as to some aspirants." *Id.* at 718, 94 S.Ct. 1315. We therefore conclude that the Commonwealth's failure to provide a reasonable alternative means of ballot access severely burdened plaintiffs' rights.

The second, and final, step under *Anderson* requires us to "identify and evaluate the precise interests put forward by the [Commonwealth] as justifications for the burden imposed by its rule." 460 U.S. at 789, 103 S.Ct. 1564. In so doing, we "must not only determine the legitimacy and strength" of the interests asserted by the Commonwealth, but "also must consider the extent to which those interests make it necessary to burden [Stith and Linzey's] rights." *Id.* Because we have found the burden to be severe in this case, the Commonwealth's regulations "must be narrowly drawn to advance a state interest of compelling importance." *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059 (internal quotations omitted).

In conducting this analysis, "we cannot speculate about possible justifications" for the challenged statute, but instead " 'must identify and evaluate the precise interests put forward by the [Commonwealth] as justifications for the burden imposed by its rule.' " *Reform Party,* 174 F.3d at 315 (quoting *Anderson,* 460 U.S. at 789, 103 S.Ct. 1564). Moreover, our review is limited to those justifications cited by the Commonwealth before the District Court, as " '[i]t is well established that failure to raise an issue in the district court constitutes a waiver of the argument.' " *Id.* at 316, 103 S.Ct. 1564 (quoting *Brenner v. Local 514, United Bhd. of Carpenters,* 927 F.2d 1283, 1298 (3d Cir.1991)).

Here, the Commonwealth identified two justifications for the imposition of the disputed fees: (1) the regulation and/or limitation of the number of candidates permitted on the ballot, and (2) the use of filing ***646** fees to defray election costs. We consider each in turn.

[15] First, with respect to the Commonwealth's assertion that a mandatory filing fee properly limits ballot access to serious candidates, we note, as the District Court did, *see Belitskus,* 243 F.Supp.2d 179 at 183-84, that the *Bullock* Court found such fees to be "extraordinarily ill-fitted to that goal" due to the availability of other means for protecting such interests. *Bullock,* 405 U.S. at 146, 92 S.Ct. 849. Indeed, courts in subsequent cases have repeatedly held that mandatory fees do not, in and of themselves, properly separate out spurious candidates. *See, e.g., Clements v. Fashing,* 457 U.S. 957, 964, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) ("Economic status is not a measure of a prospective candidate's qualifications to hold elective office, and a filing fee alone is an inadequate test of whether a candidacy is serious or spurious."); *Lubin,* 415 U.S. at 717, 94 S.Ct. 1315 ("Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office. A large filing fee may serve the legitimate function of keeping ballots manageable but, standing alone, it is not a certain test of whether the candidacy is serious or spurious."); *Fulani,* 973 F.2d at 1547 (states "cannot use [a signature verification fee] to decide who deserves to be on the ballot," as "a party's ability to pay a verification fee is not rationally related to whether that party has a modicum of support"); *Dixon v. Maryland State Admin. Bd. of Election Laws,* 878 F.2d 776, 784 (4th Cir.1989) (noting that mandatory fees "bar neither a wealthy frivolous candidate, who can afford the fee, nor a destitute one, who is entitled to a waiver").

We see no basis for reaching a different conclusion where, as here, the Commonwealth's election laws also contain signature requirements, *see* 25 Pa. Stat. Ann. § 2911, that more appropriately measure a candidate's level of commitment and popular support than does a mandatory filing fee. In contrast to the fee, these signature requirements fall equally on all candidates regardless of economic status. *See Green v. Mortham,* 989 F.Supp. 1451, 1461 (M.D.Fla.), *aff'd,* 155 F.3d 1332 (11th Cir.1998). Accordingly, even though the Commonwealth's interest in limiting the number of candidates on the ballot may be considered to be one "of compelling importance," *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059, its attempt to achieve this goal by imposing a mandatory filing fee in addition

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to the existing signature requirement while, at the same time, failing to provide an alternative means of ballot access, can in no way be said to be "narrowly drawn." *See Lubin,* 415 U.S. at 718, 94 S.Ct. 1315 ("Selection of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means is not reasonably necessary to the accomplishment of the State's legitimate election interests."). We therefore reject this interest as a potential justification for the challenged ballot access scheme.

[16] The Commonwealth's second asserted justification - that it has a legitimate interest in defraying the costs of elections - has been rejected by the Supreme Court in its determination that a candidate need not pay his share of the costs of an election that his participation incurs. *See Bullock,* 405 U.S. at 148, 92 S.Ct. 849; *see also Dixon,* 878 F.2d at 783 (citing *Bullock* for the proposition that costs which are simply "concomitants of the State's legislative choice to hold an election" may not be imposed on candidates). Such a claim is particularly unavailing here where the fees collected exceed the costs incurred by the Commonwealth for the election related services described earlier and are deposited *647 directly into the Commonwealth's general operating fund. Thus, we conclude that this interest is not "of compelling importance," nor is the means of achieving it "narrowly drawn." *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059. We therefore also reject it as a basis for upholding the constitutionality of the Commonwealth's mandatory filing fee as applied to Stith and Linzey.

In making this "as applied analysis," we do not disapprove of the importance of the interests cited by the Commonwealth. Our rejection of these interests as justifications for the mandatory filing fee is premised not on their legitimacy, but rather on the fact that they do not resolve the core issue before us. Simply put, this case is not about the size of the challenged filing fees, which, as the Commonwealth correctly notes, are relatively moderate. Nor is it about the interests pursued by the Commonwealth in assessing these fees. Indeed, both interests cited by the Commonwealth are legitimate; they have been recognized as such by the Supreme Court, *see Lubin,* 415 U.S. at 713, 94 S.Ct. 1315, and have repeatedly been held to justify similar filing fees when the challenged ballot access scheme includes a reasonable alternative means of ballot access. *See, e.g., Lindstedt v. Missouri Libertarian Party,* 160 F.3d 1197, 1199 (8th Cir.1998); *Green,* 155 F.3d at 1338; *Mathews v. Little,* 498 F.2d 1068, 1069 (5th Cir.1974).

Rather, the primary issue in this case is the absence of a reasonable alternative means of ballot access. *See Fulani,* 973 F.2d at 1546; *Little v. Florida Dep't of State,* 19 F.3d 4, 5 (11th Cir.1994) ("It is undisputed that a filing fee as part of the qualifications for seeking elected office does not run afoul of the constitution where ... an alternative method is also available."). By failing to provide such an alternative, the Commonwealth has made economic status a decisive factor in determining ballot access. It therefore has run afoul of the Supreme Court's ballot access jurisprudence. *See Anderson,* 460 U.S. at 805, 103 S.Ct. 1564 ("For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty.... If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.") (citations and internal quotations omitted).

Because we conclude that the Pennsylvania mandatory filing fee, as applied to Stith and Linzey, clearly violates the Equal Protection Clause, we will affirm the District Court's grant of summary judgment as to Stith's claim, and we will reverse and remand the District Court's ruling as to Linzey with instructions that summary judgment be entered on his behalf.

D. Claims Asserted by Donovan and the Pennsylvania Green Party

As noted above, the District Court entered summary judgment in favor of the Commonwealth with respect to the claim asserted by Donovan. However, the August 20th Order has caused some confusion, as it appears the District Court

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mistakenly classified Donovan as a candidate rather than a voter and also failed to dispose of the claim brought by the Green Party.[FN9]

FN9. In ruling on his claim, the District Court held that Donovan "did not present evidence establishing that [he] could not afford to pay the filing fee," and therefore granted summary judgment to the Commonwealth as to his claim. *Belitskus,* 243 F.Supp.2d 179, at *181 n. 2. The order makes no mention of the Pennsylvania Green Party.

In their cross-appeal, Donovan and the Green Party now contend that the ruling below was equivalent to a finding that the ***648** Commonwealth's ballot access scheme is unconstitutional on its face. Each then argues in the alternative that they are entitled to summary judgment even in the absence of a finding of facial unconstitutionality.

First, we reject the assertion that the District Court intended to strike the challenged ballot access scheme as unconstitutional on its face. Simply put, there is no question that this case was filed and litigated as an "as applied" challenge.[FN10]

FN10. Indeed, plaintiffs' claims clearly would have failed if brought as a facial challenge. In order to successfully prosecute such a challenge, plaintiffs would have to establish that no set of circumstances exist under which mandatory filing fees are valid. *See Artway v. Attorney Gen. of the State of N.J.,* 81 F.3d 1235, 1252 n. 13 (3d Cir.1996) ("To make a successful facial challenge in a non-First Amendment context, a litigant 'must establish that no set of circumstances exists under which the Act would be valid.' ") (quoting *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). Such a ruling would clearly run afoul of the Supreme Court's general approval of such fees. *See Lubin,* 415 U.S. at 712-13, 94 S.Ct. 1315; *Bullock,* 405 U.S. at 147, 92 S.Ct. 849; *see also West Virginia Libertarian Party v. Manchin,* 165 W.Va. 206, 270 S.E.2d 634, 639 (1980) (noting that *Bullock* and *Lubin* "cannot be read to abrogate all filing fee requirements. Their teaching is that as to those candidates who cannot pay the filing fee, some alternative mode of gaining access to the ballot must be provided such as petitions containing voter signatures."). Accordingly, a suit such as the one at bar must, by definition, be brought as an "as applied" challenge and decided on its facts.

[17] Nor do we need to reach the merits of Donovan's "as applied" claim because we conclude that his claim is not "capable of repetition, yet evading review," and is therefore moot. In order for Donovan's claim to be excepted from mootness, Donovan must establish that "(1) the challenged action was in its duration too short to be fully litigated to its cessation or expiration and (2) there is a reasonable likelihood that [he will] be subjected to the same action again." *Doe v. Delie,* 257 F.3d 309, 313 (3d Cir.2001).

[18] We have no difficulty in concluding that the claims asserted by Stith, Linzey, and the Pennsylvania Green Party meet the above-cited requirements, and that they therefore are not moot despite the fact that the 2000 election has long since passed. *See Belitskus,* 243 F.Supp.2d 179 at 184 n. 7; *Green,* 989 F.Supp. at 1453 ("[I]t is a well-settled principle that given the brief duration of the election season ballot access cases are capable of repetition yet susceptible to evading review. Therefore, the fact that the election at issue has come and gone does not moot a plaintiff's claims.").[FN11] Indeed, ***649** the Commonwealth makes no argument to the contrary. We also note that derivative voter claims similar to the one asserted by Donovan have qualified for this exception in the past. *See Corrigan v. City of Newaygo,* 55 F.3d 1211, 1213-14 (6th Cir.1995) (holding that voters' claim that their rights were violated by virtue of the fact that their candidates of choice were barred from the ballot was capable of repetition, yet evading review).

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FN11. Despite our limitation of the scope of the District Court's injunction, discussed *infra,* we have no trouble in concluding that Stith and Linzey's "as applied" challenge was too short in duration to be fully litigated prior to its expiration and that it therefore satisfies the first prong of the exception to mootness: capable of repetition, yet evading review.

Thus, the only question before us is the second prong of mootness - whether there is a "demonstrated probability" that the same parties will again be involved in the same dispute. *See Honig v. Doe,* 484 U.S. 305, 318 n. 6, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988) (citation omitted).

The question whether Stith and Linzey will run in a future election, and, if so, whether they will again qualify as indigent, is a close one. However, as other courts have, we conclude that it is reasonable to expect political candidates to seek office again in the future. *See Vote Choice,* 4 F.3d at 37 n. 12 (concluding that the case was not moot where plaintiff "ha[d] not renounced possible future candidacies, and politicians, as a rule, are not easily discouraged in the pursuit of high elective office"). Given the lack of evidence to the contrary, we further conclude that it is reasonable to assume that Stith and Linzey will again seek a waiver of the mandatory filing fees based on indigency. Thus, " [t]here is 'every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints....' " *Patriot Party of Allegheny County v. Allegheny County Dep't of Elections,* 95 F.3d 253, 257 (3d Cir.1996) (quoting *Norman,* 502 U.S. at 287-88, 112 S.Ct. 698). Moreover, a finding that this case is moot would essentially doom all challenges to the Commonwealth's ballot access law, as it is unlikely that any indigent candidate's claim could complete its course during a given election. *See Arkansas AFL-CIO v. Federal Communications Comm'n,* 11 F.3d 1430, 1436 (8th Cir.1993) (concluding that forcing plaintiffs to re-litigate their claim would lead to a reoccurrence of the same issues which prevented it from being litigated to conclusion prior to the previous election).

Our conclusion that the instant "as applied" challenge is capable of repetition, yet evading review, comports with the Supreme Court's treatment of similar cases. *See Storer,* 415 U.S. at 737 n. 8, 94 S.Ct. 1274 (holding that "as applied" challenge to a state election law was capable of repetition, yet evading review despite the fact that the election was "long over, and no effective relief c[ould] be provided to the candidates or voters"); *see also Anderson,* 460 U.S. at 784 n. 3, 103 S.Ct. 1564 (concluding that challenge to state's early filing deadline for independent candidates was not moot despite the fact that the election at issue had passed).

[19] However, because Donovan has left the Commonwealth, and there is no evidence in the record to suggest he will return in the future, we simply cannot find that there is a reasonable likelihood he will again be eligible to vote for indigent candidates barred from the ballot by the challenged fee structure. *See Lyons,* 461 U.S. at 108-09, 103 S.Ct. 1660 (plaintiff's claim that he will again be stopped by police and subjected to unreasonable force too speculative to support finding that challenged behavior was capable of repetition, yet evading review); *Doe,* 257 F.3d at 314 (finding no reasonable likelihood that a prisoner who is no longer incarcerated will again be subjected to the allegedly objectionable practices of prison officials). We therefore lack jurisdiction to address the merits of his claim, and will remand it to the District Court with instructions that it be dismissed as moot. *See Klein v. Califano,* 586 F.2d 250, 255 (3d Cir.1978).

Finally, we address the claim that the District Court erred in failing to grant summary judgment to the Pennsylvania Green Party.[FN12] Because the claim of the Green Party is derivative of those asserted by Stith and Linzey and because both candidates adequately proved their claim, we conclude that the

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Green Party also has established entitlement to relief. We therefore will remand the claim asserted by the Green Party with instructions that summary judgment be entered on its behalf.

FN12. Because this appeal is brought pursuant to 28 U.S.C. § 1292(a), finality of judgment is not required and our jurisdiction to consider these appeals is unaffected by the District Court's failure to rule on the Pennsylvania Green Party's motion for summary judgment.

E. Scope of the Injunction

[20] Rule 65(d) of the Federal Rules of Civil Procedure states, in pertinent part, as follows:
Every order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained....

Fed.R.Civ.P. 65(d). As we have previously held, district courts granting injunctions pursuant to this rule should craft remedies ***650** "no broader than necessary to provide full relief to the aggrieved plaintiff." *McLendon v. Continental Can Co.,* 908 F.2d 1171, 1182 (3d Cir.1990).

[21] The injunction at issue here permanently enjoins the Commonwealth from applying the challenged statute "to Plaintiff Stith or other candidates who cannot afford to pay the filing fee," and from "otherwise requiring candidates to pay a filing fee they cannot afford in order to appear on the ballot." *Belitskus,* 243 F.Supp.2d 179, at 184. The Commonwealth contends that this order is overly broad and unduly vague because it prevents the application of the challenged fee structure to candidates unable to pay the required amount, but provides no criteria for making such determinations.

Having reviewed the text of the injunction in light of the facts of this case and the conclusions reached above, we conclude that the District Court erred in issuing an injunction broader than necessary to resolve the harm demonstrated by plaintiffs. *See McLendon,* 908 F.2d at 1182. Specifically, we hold that the District Court need only have enjoined the Commonwealth from enforcing the mandatory filing fees against Stith and Linzey during the November 2000 election and in any future election where they demonstrate that they will be subjected to similar financial hardship by the requirement that they pay the mandatory filing fee.

[22] We also hold that it was not necessary for the District Court to include language in the injunction preventing the Commonwealth from enforcing the challenged statute against "candidates who cannot afford to pay the filing fee" or "otherwise requiring candidates to pay a filing fee they cannot afford in order to appear on the ballot." *Belitskus,* 243 F.Supp.2d 179 at 184. This language does nothing more than order the Commonwealth to obey the law as stated in *Bullock* and *Lubin.* It therefore will be struck from the order. *See Public Interest Research Group of N.J., Inc. v. Powell Duffryn Terminals, Inc.,* 913 F.2d 64, 83 (3d Cir.1990) (" Overbroad language in an injunction that essentially orders a party to obey the law in the future may be struck from the order"); *SEC v. Warren,* 583 F.2d 115, 121 (3d Cir.1978) (affirming district court's decision to dissolve injunction that "merely require[d] defendants 'to obey the law' in the future ... a requirement with which they must comply regardless of the injunction").

In closing, we note that the vagueness and uncertainty of which the Commonwealth complains in challenging the scope of the District Court's injunction, as well as the need for such injunctions in the first instance, could be cured by simply amending the election code to comply with the Supreme Court's ballot access jurisprudence.

Many state election codes similar to the one at issue here (*i.e.,* ones that impose mandatory fees but lack alternative means of ballot access) were successfully challenged and/or amended following the Supreme Court's decisions in *Bullock* and *Lubin. See, e.g., Andress v. Reed,* 880 F.2d 239, 241 (9th Cir.1989) (noting that California amended its election code following *Lubin*); *Robinson v. Pottinger,* 512 F.2d 775, 780 (5th Cir.1975) (Alabama election law held to violate the Equal

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Protection Clause under *Lubin*); *Brown v. North Carolina State Bd. of Elections,* 394 F.Supp. 359, 362 (W.D.N.C.1975) (three judge panel) (North Carolina ballot access scheme held unconstitutional pursuant to *Bullock* and *Lubin*); *West Virginia Libertarian Party,* 270 S.E.2d at 639 (West Virginia filing fees held to violate Equal Protection Clause as applied to indigent candidates under *Bullock* and *Lubin*); *see also* Br. For Appellees/Cross-Appellants at nn. 16-19 (listing more than two dozen ***651** state statutes providing various alternative means of ballot access). Thus, the Commonwealth's current mandatory filing fee places it among the few states that have failed to come into compliance with applicable Supreme Court precedent.

The problems at the core of this case are better resolved by the Commonwealth's legislature than by the federal courts. The current lack of a reasonable alternative means of ballot access results in an election structure that is fundamentally flawed and will inevitably fail to pass constitutional muster as applied to a certain percentage of candidates. Continued case-by-case litigation of the Commonwealth's attempts to collect filing fees from indigent candidates will not serve the interests of the candidates, the Commonwealth, or its voters. The only way in which to conclusively resolve the problems that gave rise to this litigation is for the legislature to amend the statutes at issue to comply with the Supreme Court's ballot access jurisprudence.

V. Conclusion

For the reasons stated above, we will affirm the judgment of the District Court as to Stith, but we will vacate the injunction and remand it to the District Court to reissue it, limiting its scope in accordance with this Opinion. We will also reverse the District Court's judgments as to Linzey and the Pennsylvania Green Party and remand these claims to the District Court with instructions that summary judgment be entered in their favor and that Linzey be included as a party named in the injunction. We will remand the claim asserted by Donovan to the District Court with instructions that it be dismissed as moot.

C.A.3 (Pa.),2003.
Belitskus v. Pizzingrilli
343 F.3d 632

Briefs and Other Related Documents (Back to top)

- 2002 WL 32513456 (Appellate Brief) Reply Brief for Appellants/Brief for Cross-Appellees (May. 21, 2002) Original Image of this Document (PDF)
- 2002 WL 32513544 (Appellate Brief) Brief for Appellees/Cross-Appellants (Apr. 18, 2002) Original Image of this Document (PDF)
- 2002 WL 32514909 (Appellate Brief) Brief for Appellants (Mar. 18, 2002) Original Image of this Document (PDF)
- 01-3824 (Docket) (Oct. 16, 2001)
- 01-3747 (Docket) (Oct. 05, 2001)
- 2001 WL 34556363 (Appellate Brief) Reply Brief for Cross-Appellants (Jan. 01, 2001) Original Image of this Document (PDF)

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EXHIBIT B

Westlaw.

Briefs and Other Related Documents
Lubin v. Panish,U.S.Cal. 1974.
Supreme Court of the United States
Donald Paul LUBIN, etc., Petitioner,
v.
Leonard PANISH, Registrar-Recorder, County of Los Angeles.
No. 71-6852.

Argued Oct. 9, 1973.
Decided March 26, 1974.

Indigent, who was denied nomination papers to file as a candidate for position of county supervisor in California because he was unable to pay filing fee required of all candidates by California statute, brought class action for a writ of mandate against Secretary of State and county registrar-recorder, claiming that the statute deprived him and others similarly situated of equal protection and rights of expression and association. A California superior court denied writ of mandate. The Court of Appeal and the California Supreme Court also denied writs, and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that selection of candidates solely on basis of ability to pay a fixed fee, without providing any alternative means, is not reasonably necessary to accomplishment of state's legitimate interest of maintaining integrity of elections, that in absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay, and that California's system failed to meet constitutional standards.

Reversed and remanded with directions.

Mr. Justice Douglas filed a concurring opinion.

Mr. Justice Blackmun filed an opinion concurring in part, in which Mr. Justice Rehnquist joined.
West Headnotes

[1] Elections 144 ⚷24

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k23 Power to Regulate Conduct of Election
144k24 k. In General. Most Cited Cases
Legitimate state interest of maintaining integrity of elections must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in continued availability of political opportunity. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[2] Elections 144 ⚷22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases
Process of qualifying candidates for a place on the ballot may not constitutionally be measured solely in dollars. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[3] Elections 144 ⚷22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases
Selection of candidates solely on basis of ability to pay a fixed fee, without providing any alternative means, is not reasonably necessary to accomplishment of state's legitimate interest of

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maintaining integrity of elections. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[4] Elections 144 ⟹22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases

In absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[5] Elections 144 ⟹22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases

States may, without violating constitutional standards, impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[6] Elections 144 ⟹22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases

A candidate who establishes that he cannot pay filing fee required for a place on the primary ballot may be required, without violating constitutional standards, to demonstrate the seriousness of his candidacy by persuading a substantial number of voters to sign a petition in his behalf. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[7] Elections 144 ⟹22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases

Ballot access must be genuinely open to all subject to reasonable requirements. U.S.C.A.Const. Amends. 1, 14, 25, 26; Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

[8] Constitutional Law 92 ⟹90.1(1.2)

92 Constitutional Law
92V Personal, Civil and Political Rights
92k90 Freedom of Speech and of the Press
92k90.1 Particular Expressions and Limitations
92k90.1(1.2) k. Election Regulations. Most Cited Cases
(Formerly 92k90.1(1))

Constitutional Law 92 ⟹91

92 Constitutional Law
92V Personal, Civil and Political Rights
92k91 k. Right of Assembly and Petition. Most Cited Cases

Constitutional Law 92 ⟹225.2(5)

92 Constitutional Law
92XI Equal Protection of Laws
92k225.2 Regulations Affecting Political Rights
92k225.2(3) Qualifications of Voters or Candidates
92k225.2(5) k. Property, Taxes or Fees. Most Cited Cases

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Elections 144 ⇐22

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k20 Power to Regulate Nominations and Ballots
144k22 k. Official Ballots. Most Cited Cases
California statute requiring payment of filing fees ranging from $192 for state assembly, $425 for Congress, $701.60 for Los Angeles County board of supervisors, $850 for United States Senator, to $982 for governor, while providing no alternative means of access to the ballot, deprived indigent persons who were unable to pay filing fees and who desired to be nominated for public office of equal protection guaranteed by Fourteenth Amendment and rights of expression and association guaranteed by First Amendment. West's Ann.Cal.Elections Code, § 6551; U.S.C.A.Const. Amends. 1, 14.

****1316** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

***709** Petitioner, an indigent, was denied nomination papers to file as a candidate for the position of County Supervisor in California because, although otherwise qualified, he was unable to pay the filing fee required of all candidates by a California statute. He brought this class action in California Superior Court for a writ of mandate against the Secretary of State and the County Registrar-Recorder, claiming that the statute, by requiring the filing fee but providing no other way of securing access to the ballot, deprived him and others similarly situated of the equal protection guaranteed by the Fourteenth Amendment and rights of expression and association guaranteed by the First and Fourteenth Amendments. The Superior Court denied the writ of mandate; the Court of Appeal and the California Supreme Court also denied writs. Held: Absent reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees that he cannot pay; denying a person the right to file as a candidate solely because of an inability to pay a fixed fee, without providing any alternative means, is not reasonably necessary to the accomplishment of the State's legitimate interest of ****1317** maintaining the integrity of elections. Pp. 1318-1321.

Reversed and remanded.

Marguerite M. Buckley, Venice, Cal., for petitioner.
Edward H. Gaylord for respondent.
***710** Mr. Chief Justice BURGER delivered the opinion of the Court.
We granted certiorari to consider petitioner's claim that the California statute requiring payment of a fili ng fee of $701.60 in order to be placed on the ballot in the primary election for nomination to the position of County Supervisor, while providing no alternative means of access to the ballot, deprived him, as an indigent person unable to pay the fee, and others similarly situated, of the equal protection guaranteed by the Fourteenth Amendment and rights of expression and association guaranteed by the First Amendment.

The California Elections Code provides that forms required for nomination and election to congressional, state, and county offices are to be issued to candidates only upon prepayment of a nonrefundable filing fee. (Cal.Elections Code s 6551. Generally, the required fees are fixed at a percentage of the salary for the office sought. The fee for candidates for United States Senator, Governor, and other state offices and some county offices, is 2% of the annual salary. Candidates for Representative to Congress, State Senator or Assemblyman, or for judicial office or district attorney, must pay 1%. No filing fee is required of candidates in the presidential primary, or for offices which pay either no fixed salary or not more than $600 annually. ss 6551, 6552, and 6554.

Under the California statutes in effect at the time

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this suit was commenced, the required candidate filing fees ranged from $192 for State Assembly, $425 for Congress, $701.60 for Los Angeles County Board of Supervisors, $850 for United States Senator, to $982 for Governor.

The California statute provides for the counting of write-in votes subject to certain conditions. s 18600 ***711** et seq. (Supp.1974.) Write-in votes are not counted, however, unless the person desiring to be a write-in candidate files a statement to that effect with the Registrar-Recorder at least eight days prior to the election, s 18602, and pays the requisite filing fee, s 18603. The latter section provides that '(n)o name written upon a ballot in any state, county, city, city and county, or district election shall be counted for an office or nomination unless . . . (t)he fee required by Section 6555 is paid when the declaration of write-in candidacy is filed . . ..' Thus, the contested filing fees must be satisfied even under the write-in nomination procedures.

Petitioner commenced this class action on February 17, 1972, by petitioning the Los Angeles Superior Court for a writ of mandate against the Secretary of State and the Los Angeles County Registrar-Recorder. The suit was filed on behalf of petitioner and all those similarly situated persons who were unable to pay the filing fees and who desired to be nominated for public office. In his complaint, petitioner maintained that he was a citizen and a voter and that he had sought nomination as a candidate for membership on the Board of Supervisors of Los Angeles County.[FN1] Petitioner asserted that on February 15, 1972, he had appeared at the office of James S. Allison, then Registrar-Recorder of the County of Los Angeles, to apply for and secure all necessary nomination papers requisite to his proposed candidacy. Petitioner was denied the requested nomination papers orally and in writing solely because he ****1318** was unable to pay the $701.60 filing fee required of all would-be candidates for the office of Board of Supervisors.

FN1. The Board of Supervisors of Los Angeles County is the governing body for Los Angeles County, California. The term is four years, the annual salary $35,080.

***712** The Los Angeles Superior Court denied the requested writ of mandate on March 6, 1972. Petitioner alleged that he was a serious candidate, that he was indigent, and that he was unable to pay the $701.60 filing fee; no evidence was taken during the hearing. The Superior Court found the fees to be 'reasonable, as a matter of law.' Accordingly, the court made no attempt to determine whether the fees charged were necessary to the State's purpose, or whether the fees, in addition to deterring some frivolous candidates, also prohibited serious but indigent candidates from entering their names on the ballot. The Superior Court also rejected the argument that the State was required by Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), to provide an alternative means of access to the ballot which did not discriminate on the basis of economic factors.

On March 9, 1972, a second petition for writ of mandate was denied by the Court of Appeal, Second District, and on March 22, 1972, after the deadline for filing nomination, papers had passed, the California Supreme Court denied petitioner's third application for a writ of mandate.

Historically, since the Progressive movement of the early 20th century, there has been a steady trend toward limiting the size of the ballot in order to ' concentrate the attention of the electorate on the selection of a much smaller number of officials and so afford to the voters the opportunity of exercising more discrimination in their use of the franchise.' [FN2] This desire to limit the size of the ballot has been variously phrased as a desire to minimize voter confusion, Thomas v. Mims, 317 F.Supp. 179, 181 (S.D.Ala.1970), to limit the number of runoff elections, ***713**Spillers v. Slaughter, 325 F.Supp. 550, 553 (M.D.Fla.1971) , to curb 'ballot flooding,' Jenness v. Little, 306 F.Supp. 925, 927 (N.D.Ga.1969), appeal dismissed sub nom. Matthews v. Little, 397 U.S. 94, 90 S.Ct. 820, 25 L.Ed.2d 81 (1970), and to prevent the overwhelming of voting machines-the modern counterpart of ballot flooding, Wetherington v. Adams, 309 F.Supp. 318, 321 (NDFla.1970). A majority of States have long required the payment

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of some form of filing fee, [FN3] in part to limit the ballot and in part to have candidates pay some of the administrative costs.

FN2. H. Croly, Progressive Democracy 289 (1914).

FN3. See Comment, The Constitutionality of Qualifying Fees for Political Candidates, 120 U.Pa.L.Rev. 109 (1971), for a detailed description of each State's filing-fee requirements.

In sharp contrast to this fear of an unduly lengthy ballot is an increasing pressure for broader access to the ballot. Thus, while progressive thought in the first half of the century was concerned with restricting the ballot to achieve voting rationality, recent decades brought an enlarged demand for an expansion of political opportunity. The Twenty-fifth Amendment, the Twenty-sixth Amendment, and the Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. s 1973 et seq., reflect this shift in emphasis. There has also been a gradual enlargement of the Fourteenth Amendment's equal protection provision in the area of voting rights:
'It has been established in recent years that the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population. See, e.g., Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506; Kramer v. Union School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583; ****1319** Dunn v. Blumstein, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274.' ***714**San Antonio School District v. Rodriguez, 411 U.S. 1, 59 n. 2, 93 S.Ct. 1278, 1310, 36 L.Ed.2d 16 (1973) (Stewart, J., concurring).

This principle flows naturally from our recognition that'(l)egislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.' Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1382 (1964) (Warren, C.J.).

The present case draws these two means of achieving an effective, representative political system into apparent conflict and presents the question of how to accommodate the desire for increased ballot access with the imperative of protecting the integrity of the electoral system from the recognized dangers of ballots listing so many candidates as to undermine the process of giving expression to the will of the majority. The petitioner stated on oath that he is without assets or income and cannot pay the $701.60 filing fee although he is otherwise legally eligible to be a candidate on the primary ballot. Since his affidavit of indigency states that he has no resources and earned no income whatever in 1972, it would appear that he would make the same claim whether the filing fee had been fixed at $1, $100, or $700. The State accepts this as true but defends the statutory fee as necessary to keep the ballot from being overwhelmed with frivolous or otherwise nonserious candidates, arguing that as to indigents the filing fee is not intended as a test of his pocketbook but the extent of his political support and hence the seriousness of his candidacy.

***715** In Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972),[FN4] we recognized that the State's interest in keeping its ballots within manageable, understandable limits is of the highest order. Id., at 144-145, 92 S.Ct. at 849, 856. The role of the primary election process in California is underscored by its importance as a component of the total electoral process and its special function to assure that fragmentation of voter choice is minimized. That function is served, not frustrated, by a procedure that tends to regulate the filing of frivolous candidates. A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process. That no device can be conjured to eliminate every

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frivolous candidacy does not undermine the state's effort to eliminate as many such as possible.

FN4. Bullock, of course, does not completely resolve the present attack upon the California election statutes because it involved filing fees that were so patently exclusionary as to violate traditional equal protection concepts. Cf. Rosario v. Rockefeller, 410 U.S. 752, 760, 93 S.Ct. 1245, 1249, 36 L.Ed.2d 1 (1973); James v. Strange, 407 U.S. 128, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972); Rinaldi v. Yeager, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966). Under attack in Bullock was a Texas statute that required candidates to pay a flat fee of $50 plus their pro rata share of the costs of the election in order to get on the primary ballot. Tex.Election Code, Art. 13.07a (Supp.1974). The assessment of costs involved sums as high as $8,900.

That 'laundry list' ballots discourage voter participation and confuse and frustrate those who do participate is too obvious to call for extended discussion. The means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not. Rational results ****1320** within the framework of our system are not likely ***716** to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects of success.

[1][2] This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. 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.

'(T)he right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.' Williams v. Rhodes, 393 U.S. 23, 31, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968).

This must also mean that the right to vote is ' heavily burdened' if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot. It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues. This does not mean every voter can be assured that a candidate to his liking will be on the ballot, but the process of qualifying candidates for a place on the ballot may not constitutionally be measured solely in dollars.

In Bullock, supra, we expressly rejected the validity of filing fees as the sole means of determining a candidate's 'seriousness':

'To say that the filing fee requirement tends to limit ***717** the ballot to the more serious candidates is not enough. There may well be some rational relationship between a candidate's willingness to pay a filing fee and the seriousness with which he takes his candidacy, but the candidates in this case affirmatively alleged that they were unable, not simply unwilling, to pay the assessed fees, and there was no contrary evidence. It is uncontested that the filing fees excluded legitimate as well as frivolous candidates. . . . If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal; other means to protect those valid interests are available.' 405 U.S., at 145-146, 92 S.Ct. at 857. (Emphasis in original.) (Footnotes omitted.)

Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office. A large filing fee may serve the legitimate function of keeping ballots manageable but, standing alone, it is not a certain test of whether the candidacy is serious or spurious. A wealthy candidate with not the remotest chance of election

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may secure a place on the ballot by writing a check. Merchants and other entrepreneurs have been known to run for public office simply to make their names known to the public. We have also noted that prohibitive filing fees, such as those in Bullock, can effectively exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running. Even in this day of high-budget political campaigns some candidates have demonstrated that direct contact with thousands of voters by 'walking tours' is a route to success. Whatever may be the political mood at any given time, our ***718** tradition has been one of hospitality toward all candidates without regard to their economic status.

[3][4] The absence of any alternative means of gaining access to the ballot inevitably renders the California system exclusionary as to some aspirants. As ****1321** we have noted, the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office. Thus, California has chosen to achieve the important and legitimate interest of maintaining the integrity of elections by means which can operate to exclude some potentially serious candidates from the ballot without providing them with any alternative means of coming before the voters. Selection of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means is not reasonably necessary to the accomplishment of the State's legitimate election interests. Accordingly, we hold that in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay.

[5][6][7][8] In so holding, we note that there are obvious and well-known means of testing the ' seriousness' of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee. States may, for example, impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election. See American Party of Texas v. White, 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744. Similarly, a candidate who establishes that he cannot pay the filing fee required for a place on the primary ballot may be required to demonstrate the 'seriousness' of his candidacy by persuading ***719** a substantial number of voters to sign a petition in his behalf.[FN5] The point, of course, is that ballot access must be genuinely open to all, subject to reasonable requirements. Jenness v. Fortson, 403 U.S. 431, 439, 91 S.Ct. 1970, 1974, 29 L.Ed.2d 554 (1971). California's present system has not met this standard.

FN5. It is suggested that a write-in procedure, under s 18600 et seq., without a filing fee would be an adequate alternative to California's present filing-fee requirement. The realities of the electoral process, however, strongly suggest that ' access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot. It would allow an affluent candidate to put his name before the voters on the ballot by paying a filing fee while the indigent, relegated to the write-in provision, would be forced to rest his chances solely upon those voters who would remember his name and take the affirmative step of writing it on the ballot. That disparity would, itself, give rise to constitutional questions and, although we need not decide the issue, the intimation that a write-in provision without the filing fee required by s 18600 et seq. would constitute 'an acceptable alternative' appears dubious at best.

Reversed and remanded for further consideration not inconsistent with this opinion.

It is so ordered.

Mr. Justice DOUGLAS, concurring.

While I join the Court's opinion I wish to add a few words, since in my view this case is clearly controlled by prior decisions applying the Equal Protection Clause to wealth discriminations. Since classifications based on wealth are 'traditionally

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disfavored,' Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668, 86 S.Ct. 1079, 1082, 16 L.Ed.2d 169 (1966), the State's inability to show a compelling interest in conditioning the right to run for office on payment of fees cannot stand. Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972).

The Court first began looking closely at discrimination against the poor in the criminal area. In *720Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), we found that de facto denial of appeal rights by an Illinois statute requiring purchase of a transcript denied equal protection to indigent defendants since there 'can be no equal justice where the kind of trial a man gets depends on the amount of money he has.' Id., at 19, 76 S.Ct. at 591. In **1322 Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963), we found that the State had drawn 'an unconstitutional line . . . between rich and poor' when it allowed an appellate court to decide an indigent's case on the merits although no counsel has been appointed to argue his case before the appellate court. Just recently we found that the State could not extend the prison term of an indigent for his failure to pay an assessed fine, since the length of confinement could not under the Equal Protection Clause be made to turn on one's ability to pay. Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018, i6 L.Ed.2d 586 (1970); see Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971). But criminal procedure has not defined the boundaries within which wealth discriminations have been struck down. In Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971), the majority found that the filing fee which denied the poor access to the courts for divorce was a denial of due process; Mr. Justice Brennan and I in concurrence preferred to rest the result on equal protection. And it was the Equal Protection Clause the majority relied on in Lindsey v. Normet, 405 U.S. 56, 79, 92 S.Ct. 862, 877, 31 L.Ed.2d 36 (1972), in finding that Oregon's double-bond requirement for appealing forcible entry and detainer actions discriminated against the poor: ' For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be.'

Indeed, the Court has scrutinized wealth discrimination in a wide variety of areas. In Shapiro v. Thompson, 394 U.S. 618, 633, 89 S.Ct. 1322, 1330, 22 L.Ed.2d 600 (1969), we found that deterring indigents from migrating into the State was not a constitutionally*721 permissible state objective. Closer to the case before us here was Turner v. Fouche, 396 U.S. 346, 362-364, 90 S.Ct. 532, 542, 24 L.Ed.2d 567 (1970), in which the Court found that Georgia could not constitutionally require ownership of land as a qualification for membership on a county board of education. See Kramer v. Union Free School Dist., 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); Cipriano v. Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969). In Harper v. Virginia Bd. of Elections, supra, we found a state poll tax violative of equal protection because of the burden it placed on the poor's exercise of the franchise. And in Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), we invalidated a Texas filing fee system virtually indistinguishable from that presented here.

What we do today thus involves no new principle, nor any novel application. '(A) man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States.' Edwards v. California, 314 U.S. 160, 184, 62 S.Ct. 164, 172, 86 L.Ed. 119 (1941) (Jackson, J., concurring). Voting is clearly a fundamental right. [FN*] Harper v. Virginia Bd. of Elections, supra, at 667, 86 S.Ct. at 1079; Reynolds v. Sims, 377 U.S. 533, 561-562, 84 S.Ct. 1362, 1381, 12 L.Ed.2d 506 (1964). But the *722 right to vote would be empty if the State could arbitrarily **1323 deny the right to stand for election. California does not satisfy the Equal Protection Clause when it allows the poor to vote but effecitvely prevents them from voting for one of their own economic class. Such an election would be a sham, and we have held that the State must show a compelling interest before they can keep political minorities off the ballot. Williams v. Rhodes, 393 U.S. 23, 31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). The poor may be treated no differently.

FN* 'No right is more precious in a free country than that of having a voice in the

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> 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.' Wesberry v. Sanders, 376 U.S. 1, 17, 84 S.Ct. 526, 535, 11 L.Ed.2d 481 (1964).

Wesberry involved a federal election. Article I, s 2, of the Federal Constitution declares that Members of the House should be 'chosen every second Year by the People of the several States'; and the Seventeenth Amendment says that Senators shall be 'elected by the people.' But the right to vote in state elections is one of the rights historically ' retained by the people' by virtue of the Ninth Amendment as well as included in the penumbra of First Amendment rights. As Mr. Justice Brennan stated in Storer v. Brown, 415 U.S. 724, at 756, 94 S.Ct. 1274, at 1291, 39 L.Ed.2d 714, 'The right to vote derives from the right of association that is at the core of the First Amendment, protected from state infringement by the Fourteenth Amendment.' (Dissenting opinion.)Mr. Justice BLACKMUN, with whom Mr. Justice REHNQUIST joins, concurring in part.
For me, the difficulty with the California election system is the absence of a realistic alternative access to the ballot for the candidate whose indigency renders it impossible for him to pay the prescribed filing fee.

In addition to a proper petitioning process suggested by the Court in its opinion, ante, at 1321, I would regard a write-in procedure, free of fee, as an acceptable alternative. Prior to 1968, California allowed this, and write-in votes were counted, although no prior fee had been paid. But the prior fee requirement for the write-in candidate was incorporated into the State's Elections Code in that year, Laws 1968, c. 79, s 3, and is now s 18603(b) of the Code. It is that addition, by amendment, that serves to deny the petitioner the equal protection guaranteed to him by the Fourteenth Amendment. Section 18603(b) appears to be severable. See Frost v. Corporation Comm'n, 278 U.S. 515, 525-526, 49 S.Ct. 235, 239, 73 L.Ed. 483 (1929); Truax v. Corrigan, 257 U.S. 312, 341-342, 42 S.Ct. 124, 133, 66 L.Ed. 254 (1921). The Code itself provides for severability. Cal.Elections Code s 48. That, however, is an issue for the California courts to deicde.

*723 I would hold that the California election statutes are unconstitutional insofar as they presently deny access to the ballot. If s 18603(b) were to be stricken, the Code, as before, would permit write-in access with no prior fee. The presence of that alternative, although not perfect, surely provides the indigent would-be candidate with as much ease of access to the ballot as the alternative of obtaining a large number of petition signatures in a relatively short time. See Storer v. Brown, 415 U.S. 724, at 738-746, 94 S.Ct. 1274, 1283-1287, 39 L.Ed.2d 714. The Court seemingly would reject a write-in alternative while accepting many petition alternatives. In my view, a write-in procedure, such as California's before 1968, satisfies the demands of the Equal Protection Clause as well as most petitioning procedures. I, therefore, join the Court in reversing the order of the Supreme Court of California denying petitioner's petition for writ of mandate and in remanding the case for further proceedings.

U.S.Cal. 1974.
Lubin v. Panish
415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702

Briefs and Other Related Documents (Back to top)

- 1973 WL 172556 (Appellate Brief) Brief for Respondent (Jul. 31, 1973) Original Image of this Document (PDF)
- 1973 WL 172555 (Appellate Brief) Brief for Petitioner (Jul. 10, 1973) Original Image of this Document (PDF)

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On January 29, 2007, I served a true copy of the following document(s):

Defendant Edmund G. Brown Jr.'s Federal Authorities Cited in Support of Opposition to Election Contest and Plaintiffs' First Amended Complaint

on the following party(ies) in said action:

Please see attached Service List.

☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

- ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY PERSONAL SERVICE:** By giving the document(s) directly to the persons listed above.

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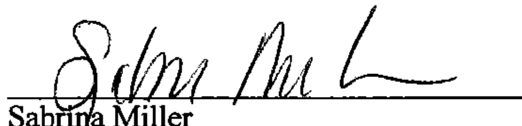
I declare, under penalty of perjury, that the foregoing is true and correct. Executed on January 29, 2007, in San Leandro, California.



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