"Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional."—Justice STEVENS

"[I]n cases like this ... we have never required that States meet some kind of "narrowly tailored" standard in order to pass constitutional muster. "—Justice REHNQUIST

Anderson v. Celebrezze

460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983).

Ohio required independent candidates for the presidency to file a statement and nominating petition signed by 5,000 qualified voters 75 days before the primary election (229 days before the general election). In 1980, John Anderson did not file the necessary papers until May, two months after the deadline but some weeks before the state primary elections and well before the national nominating conventions were to meet. Ohio officials denied him a place on the ballot, and he filed suit in federal district court. The judge ordered the state to place Anderson's name on the ballot, but the Court of Appeals for the Sixth Circuit reversed. Noting that the courts of appeals for the First and Fourth Circuits had sustained orders against enforcement of similar laws in Maine and Maryland, the Supreme Court granted certiorari.

Justice **STEVENS** delivered the opinion of the Court. ...

I

... "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." Bullock v. Carter (1972). Our primary concern is with the tendency of ballot access restrictions "to limit the field of candidates from which voters might choose." Therefore, "[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters."

The impact of candidate eligibility requirements on voters implicates basic constitutional rights. Writing for a unanimous Court in NAACP v. Alabama (1958), Justice Harlan stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." In our first review of Ohio's electoral scheme, Williams v. Rhodes (1968), this Court explained the interwoven strands of "liberty" affected by ballot access restrictions:

> [T]he state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most

precious freedoms.

> As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. ... The right to vote is "heavily burdened" if that vote may be cast only for major-party candidates at a time when other parties or other candidates are "clamoring for a place on the ballot." *Williams.* The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens.

Although these rights of voters are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally-suspect burdens on voters' rights to associate or to choose among candidates. We have recognized that, "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 processes." Storer v. Brown (1974). To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. ... [T]he state's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. *Storer.* Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments. ... 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 also must 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. ...

II

An early filing deadline may have a substantial impact on independent-minded voters. In election campaigns, particularly those which are national in scope, the candidates and the issues simply do not remain static over time. ... Such developments will certainly affect the strategies of candidates who have already entered the race; they may also create opportunities for new candidacies. Yet Ohio's filing deadline prevents persons who wish to be independent candidates from entering the significant political arena established in the State by a Presidential election campaign—and creating new political coalitions of Ohio voters—at any time after mid-to-late March. At this point developments in campaigns for the major-party nominations have only begun, and the major parties will not adopt their nominees and platforms for another five months. ...

[The statute] also burdens the signature-gathering efforts of independents who decide to run in time to meet the deadline. When the primary campaigns are far in the future and the

election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. ...

... [I]t 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. "Our ballot access cases ... focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity.' " Clements v. Fashing (1982) (plurality opinion), quoting Lubin v. Panish (1974).[1]

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties. By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. In short, the primary values protected by the First Amendment—"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," New York Times v. Sullivan (1964)—are served when election campaigns are not monopolized by the existing political parties.

Furthermore, in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus in a Presidential election a State's enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries. ...

III

The State identifies three separate interests that it seeks to further by its early filing deadline for independent Presidential candidates. ...

Voter Education

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[1]In addition, because the interests of minor parties and independent candidates are not well represented in state legislatures, the risk that the First Amendment rights of those groups will be ignored in legislative decisionmaking may warrant more careful judicial scrutiny. [S]ee generally United States v. Carolene Products (1938); J. Ely, *Democracy and Distrust: A Theory of Judicial Review* 73–88 (1980). [Footnote by the Court.]

There can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election. Moreover, the Court of Appeals correctly identified that interest as one of the concerns that motivated the Framers' decision not to provide for direct popular election of the President. We are persuaded, however, that the State's important and legitimate interest in voter education does not justify the specific restriction on participation in a Presidential election that is at issue in this case.

The passage of time since the Constitutional Convention in 1787 has brought about two changes that are relevant to the reasonableness of Ohio's statutory requirement that independents formally declare their candidacy at least seven months in advance of a general election. First ... today even trivial details about national candidates are instantaneously communicated nationwide in both verbal and visual form. Second ... today the vast majority of the electorate not only is literate but is informed on a day-to-day basis about events and issues that affect election choices. ... [I]t is somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label. ...

It is also by no means self-evident that the interest in voter education is served at all by a requirement that independent candidates must declare their candidacy before the end of March. ... As we observed in another First Amendment context, it is often true "that the best means to that end is to open the channels of communication rather than to close them." Virginia Pharmacy Board v. Virginia Consumer Council (1976).

Equal Treatment

We also find no merit in the State's claim that the early filing deadline serves the interest of treating all candidates alike. ... The consequences of failing to meet the statutory deadline are entirely different for party primary participants and independents. The name of the nominees of the Democratic and Republican parties will appear on the Ohio ballot in November even if they did not decide to run until after Ohio's March deadline had passed, but the independent is simply denied a position on the ballot if he waits too long.[2] Thus, under Ohio's scheme, the major parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms, but the independent's judgment must be based on a history that ends in March. ...

Political Stability

... The State's brief explains that the State has a substantial interest in protecting the two major political parties from "damaging intraparty feuding." ... Ohio's asserted interest in political stability amounts to a desire to protect existing political parties from competition. ... In *Williams*

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[2]It is true, of course, that Ohio permits "write-in" votes for independents. We have previously noted that this opportunity is not an adequate substitute for having the candidate's name appear on the printed ballot. ... [Citing Lubin v. Panish (1974).] [Footnote by the Court.]

we squarely held that protecting the Republican and Democratic parties from external competition cannot justify the virtual exclusion of other political aspirants from the political arena. Addressing Ohio's claim that it "may validly promote a two-party system in order to encourage compromise and political stability," we wrote:

> ... There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. ...

... [*Storer*] recognized the legitimacy of the State's interest in preventing "splintered parties and unrestrained factionalism." But we did not suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters. Political competition that draws resources away from the major parties cannot, for that reason alone, be condemned as "unrestrained factionalism." ... Moreover, we pointed out that the policy "involves no discrimination against independents."

Ohio's challenged restriction is substantially different from the California provisions upheld in *Storer*. ... [T]he early filing deadline does discriminate against independents. And the deadline is neither a "sore loser" provision nor a disaffiliation statute. Furthermore, it is important to recognize that *Storer* upheld the State's interest in avoiding political fragmentation in the context of elections wholly within the boundaries of California. The State's interest in regulating a nationwide Presidential election is not nearly as strong. ... The Ohio deadline does not serve any state interest in "maintaining the integrity of the various routes to the ballot" for the Presidency, because Ohio's Presidential preference primary does not serve to narrow the field for the general election. ... In addition, the national scope of the competition for delegates at the Presidential nominating conventions assures that "intraparty feuding" will continue until August. ...

Reversed.

Justice **REHNQUIST**, with whom Justice **WHITE**, Justice **POWELL**, and Justice **O'CONNOR** join, dissenting.

Article II of the Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" who shall select the President of the United States. This provision, one of few in the Constitution that grants an express plenary power to the States, conveys "the broadest power of determination" and "[i]t recognizes that [in the election of a President] the people act through their representatives in the legislature, and *leaves it to the legislature exclusively to define the method of effecting the object."* McPherson v. Blacker (1892) (emphasis added). ...

... [T]he Constitution does not require that a State allow any particular Presidential candidate to be on its ballot, and so long as the Ohio ballot access laws are rational and allow

nonparty candidates reasonable access to the general election ballot,[1] this Court should not interfere with Ohio's exercise of its Article II, § 1, cl. 2 power. ...

Anderson makes no claim, and thus has offered no evidence to show, that the early filing deadline impeded his "signature-gathering efforts." That alone should be enough to prevent the Court from finding that the deadline has such an impact. A statute "is not to be upset upon hypothetical and unreal possibilities, if it would be good upon the facts as they are." Pullman Co. v. Knott (1914). What information the record does contain on this point leads to a contrary conclusion. The record shows that in 1980 five independent candidates submitted nominating petitions with the necessary 5,000 signatures by the March 20 deadline and thus qualified for the general election ballot in Ohio. ...

... [T]he effect of the Ohio filing deadline is quite easily summarized: it requires that a candidate, who has already decided to run for President, decide by March 20 which route his candidacy will take. ... Anderson ... submitted in a timely fashion his nominating petition for Ohio's Republican Primary. Then, realizing that he had no chance for the Republican nomination, Anderson sought to change the form of this candidacy. The Ohio filing deadline prevented him from making this change. Quite clearly, rather than prohibiting him from seeking the Presidency, the filing deadline only prevented Anderson from having two shots at it in the same election year.

Thus, Ohio's filing deadline does not create a restriction "denying the franchise to citizens." Likewise, Ohio's filing deadline does not create a restriction that makes it "virtually impossible" for new-party candidates or nonparty candidates to qualify for the ballot, such as those addressed in *Williams*, *Bullock*, and *Lubin*. ... [W]e are not without guidance from prior decisions by this Court.

In *Storer*, the Court was faced with a California statute prohibiting an independent candidate from affiliating with a political party for 12 months preceding the primary election. This required a prospective candidate to decide on the form of his candidacy at a date some eight months earlier than Ohio requires. In upholding, in the face of a First Amendment challenge, this disaffiliation statute and a statute preventing candidates who had lost a primary from running as independents, the Court determined that the laws were "expressive of a general state policy aimed at maintaining the integrity of various routes to the ballot," and that the statutes furthered "the State's interest," described by the Court as "compelling," "in the stability of its political system." ... The similarities between the effect of the Ohio filing deadline and the California disaffiliation statute are obvious.

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[1]Anderson would not have been totally excluded from participating in the general election since Ohio allows for "write-in" candidacies. The Court suggests, however, that ... a write-in procedure "is not an adequate substitute for having the candidate's appear on the printed ballot." [Footnote 2, above.] Until today the Court had not squarely so held and in fact in earlier decisions the Court had treated the availability of write-in candidacies as quite relevant. See *Storer*. [Footnote by Justice Rehnquist.]

Refusing to own up to the conflict its opinion creates with *Storer*, the Court tries to distinguish it, saying that it "did not suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters." The Court asserts that the Ohio filing deadline is more like the statutory scheme in *Williams*, which were designed to protect " 'two particular parties—the Republicans and the Democrats—and in effect tends to give them a complete monopoly.' " ... But this simply is not the case. The Ohio filing deadline in no way makes it "virtually impossible" ... for new parties or nonparty candidates to secure a position on the general election ballot. ... What the Ohio filing deadline prevents is a candidate such as Anderson from seeking a party nomination and then, finding that he is rejected by the party, bolting from the party to form an independent candidacy. This is precisely the same behavior that California sought to prevent by the disaffiliation statute this Court upheld in *Storer*. ...

The Court further notes that "*Storer* upheld the State's interest in avoiding political fragmentation in the context of elections wholly within the boundaries of California. The State's interest in regulating a nationwide Presidential election is not nearly as strong." ... The Court's characterization of the election simply is incorrect. The Ohio general election in 1980, among other things, was for the appointment of Ohio's representatives to the Electoral College. The Court ... fails to come to grips with this fact. While Ohio may have a lesser interest in who is ultimately selected by the Electoral College, its interest in who is supported by its own Presidential electors must be at least as strong as its interest in electing other representatives. ...

The point the Court misses is that in cases like this and *Storer*, we have never required that States meet some kind of "narrowly tailored" standard in order to pass constitutional muster. In reviewing election laws like Ohio's filing deadline, we have said before that a court's job is to ensure that the State "in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life." Jenness v. Fortson (1971). If it does not freeze the status quo, then the State's laws will be upheld if they are "tied to a particularized legitimate purpose, and [are] in no sense invidious or arbitrary." Rosario v. Rockefeller (1973). The Court tries to avoid the rules set forth in some of these cases, saying that such rules were "applicable only to party primaries" and that "this case involves restrictions on access to the general election ballot." The fallacy in this reasoning is quite apparent: one cannot restrict access to the primary ballot without also restricting access to the general election ballot. ...

The Ohio filing deadline easily meets the test described above. [T]he interest of the "stability of its political system," *Storer*, ... alone is sufficient to support Ohio ballot access laws. ... But this is not the only interest furthered by Ohio's laws. Ohio maintains that requiring an early declaration of candidacy gives its voters a better opportunity to take a careful look at the candidates and see how they withstand the close scrutiny of a political campaign. ... But the Court finds that "the State's important and legitimate interest in voter education does not justify the specific restriction on participation in a Presidential election that is at issue in this case." ...

I cannot agree with the suggestion that the early deadline reflects a lack of "faith" in the voters. That Ohio wants to give its voters as much time as possible to gather information on the potential candidates would seem to lead to the contrary conclusion. ... Besides, the Court's assertion that it does not take seven months to inform the electorate is difficult to explain in light of the fact that Anderson allowed himself some 19 months to complete this task; and we are all

well aware that Anderson's decision to make an early go of it is not atypical. ...

Editors' Notes

(1) As the debate between Stevens and Rehnquist indicates, in earlier cases involving restrictions on access to the ballot neither the Court's doctrinal reasoning nor its general approach to constitutional interpretation had been consistent. See espec. Clements v. Fashing (1982), which sustained a Texas law forbidding state judges and certain other officials to run for the state legislature.

(2) **Query:** In *Anderson,* Stevens prescribed the proper decisional strategy as that of "weighing" the various interests and factors at stake: The Court

> must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments. ... It must then identify and evaluate the precise interests put forward by the State. ... [T]he 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.

How does this sort of test differ from "strict (or exacting) scrutiny" used in Buckley v. Valeo (1976; reprinted above, p. 828) and other cases in this Chapter? To what degree is Stevens prescribing a *balancing approach*? Recall O'Connor's claim in Roberts v. Jaycees (1984; reprinted above, p. 818) that "strict scrutiny" is really a form of *balancing*. Did Stevens give more weight to O'Connor's claim? Is *balancing* compatible with *reinforcing representative democracy*?