

## Guardians of the Castle: How the Political Establishment Restricts Voter Choice

Written by Jeff Ignatius

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On the general-election ballot in Illinois, voters will be able to choose from four candidates for U.S. Senate: a Republican, a Democrat, a Green, and a Libertarian.

That might seem like sufficient choice – and it certainly covers a wide political spectrum – but consider that seven candidates were removed by the Illinois State Board of Elections.

That's because Illinois has put so many barriers between people who want to run for office and the ballot. Established parties – Republicans, Democrats, and Greens presently – need to collect 5,000 valid signatures for their statewide slates. Independent statewide candidates and other parties need to collect five times as many valid signatures: 25,000.

Beyond that, the petitions of third parties and independent candidates are often challenged by people working on behalf of Democratic or Republican organizations. This year, Republicans have been most active in the ballot-access wars, perceiving a threat from several limited-government parties.

These challenges have several effects. First, they make the effective signature threshold much

higher. “The challenge process effectively turns the 25,000 requirement into a 50,000 requirement to account for potential[ly] invalid signatures,” wrote Steve Hellin, the communications director for Illinois’ Libertarian Party, in [an e-mail](#) .

Second, the financial, human, and time resources required to fight a challenge are significant and come at the expense of traditional campaign activities such as fundraising, advertising, and connecting with voters one-on-one. “Attention is put to the mechanics of existence, which may or may not be especially relevant in actually getting someone elected,” wrote Phil Huckelberry, chair of the Illinois Green Party. “It’s an absurd approach to democracy.”

### A Question of Choice

This might seem like a trivial issue, fighting for the right to third place in a winner-takes-all system. But what’s really at stake is voters’ rights – the electoral equivalent of having 11 cereal choices at the grocery store instead of just four.

As attorney Doug Ibendahl wrote in a court filing asking for judicial review of the Constitution Party’s nominating petition: “It can be said with confidence that the right to vote, on the one hand, and the right to seek office, on the other, are among the most cherished in this land. Illinois courts have also observed in a variety of contexts that there is a dual import to ballot access. In *McGuire V. Nogaj* ... the court observed: ‘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 the voters.’ ... The *McGuire* court further noted that this state has a policy in ‘favor of a candidate’s eligibility’ ... , and the Illinois Supreme Court has observed that the right of access to the ballot is a substantial one that may not lightly be denied.”

Put simply, a key right of voters is choice on the ballot, one that is severely curtailed by Illinois’ current ballot-access system.

As Michael White, the Constitution Party’s gubernatorial candidate who is now running as a write-in, said in an e-mail: “While voters are afforded the opportunity to vote, the ballot-access process limits a voter’s ability to choose among any candidate. This is the same as saying you have the right to vote, but someone else is deciding among whom you may choose.”

Christina M. Tobin, the founder and chair of the nonpartisan Free & Equal Elections Foundation (FreeAndEqual.org), said in an interview last week that Illinois is “one of the most restrictive ballot-access states in the United States. ... Having to get 25,000 signatures alone is not an easy thing to do. It can be quite costly.”

Free & Equal doesn't include Illinois' among its five “worst state ballot-access laws in America.” That list includes Oklahoma (more than 73,000 signatures required for statewide office in 2010), North Carolina (85,000), and Texas (43,000).

But that doesn't change the fact that Illinois' system is onerous for third parties.

Consider Iowa as a contrast. To participate in the primary for one of Iowa's established political parties for governor or U.S. Senate, one must gather 0.5 percent of the vote total for the party's last top-of-the-ticket candidate – either governor or president. For 2010, a Republican had to gather 3,412 signatures, a Democrat 4,145. For other statewide offices, the requirement is 1,000 signatures.

The requirement for being nominated by petition for any statewide office: 1,500 signatures.

Iowa's system is fundamentally fairer than Illinois' in two ways. First, the threshold for established parties compared to independent candidates is actually higher for governor and U.S. Senate, and similar for other statewide offices. Second, even adjusting for the fact that Illinois has almost four times as many registered voters as Iowa, the number of signatures required for an independent candidacy is more easily attainable in Iowa.

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### The Constitution Party Case

You can see Illinois' ballot-access system at work with the Constitution Party.

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According to Ibendahl's petition for judicial review, the Constitution Party on June 28 submitted 32,899 signatures for its slate of seven statewide candidates. After a records examination, the State Board of Elections on August 3 determined that 25,017 signatures were valid – enough to qualify for the ballot.

But that wasn't the end of it. "The Illinois Republican Party is so desperate to keep these candidates off the ballot ... [that] they threw the kitchen sink at these guys," Ibendahl said in an interview last week. "They threw so much mud at the wall just hoping something would stick."

Ultimately, the Illinois State Board of Elections ruled on August 27 that the Constitution Party had submitted 22,043 valid signatures. The board concluded, based on the testimony of a handwriting analyst paid by an attorney for the objectors, that there was a "pattern of fraud" with roughly 3,000 signatures, even though only 444 signatures were examined.

"The code specifically says, and all the court cases say, that the burden of proof is on the objector," Ibendahl said. "Legally, that's true, but these proceedings turn into a mad scramble for the candidates to prove their innocence."

On Friday, a Cook County Circuit Court judge threw out the "pattern of fraud" claim, giving the Constitution Party a valid-signature total of 24,920. That could end up being a mere moral victory; without an additional signature restoration, the Constitution Party won't appear on the general-election ballot.

Ibendahl is still pursuing the case in court, but the reality is that a three-month administrative and court process has made it difficult for the Constitution Party's candidates to effectively campaign or raise money.

That's also true for those who manage to get on the ballot.

Lex Green, the Libertarian candidate for governor, wrote in response to an [e-mail](#)

### [questionnaire](#)

that

even though his party survived a challenge to its petition signatures, “our party suffered in terms of press coverage and campaign donations because of the uncertainty of our ballot standing. We then entered the race with fewer resources, and now have to catch up on name recognition.”

The Green Party’s Huckelberry gave the example of his campaign for state representative: “I submitted 2,550 signatures, collected within 90 days. My volunteer team was very inexperienced and have [sic] never experienced anything like that before. They were totally burnt out. Instead of surging in activity and enthusiasm in October, my volunteer base peaked in June, when I basically overextended them.

“On a larger scale, this is also what happened to the Green Party in 2006. We poured so much time and energy into the petition process, and then the petition-defense process, that it completely distracted us from much of the other work we should have been doing, notably building up a fundraising base.”

Even so, gubernatorial candidate Rich Whitney garnered more than 10 percent of the vote that year, making the Greens an established party and setting a signature threshold of 5,000 for this year’s slate of candidates. (Whitney is running again for governor.)

What’s galling to Ibendahl is that Democrats and Republicans limit ballot access through challenges but don’t put the names of party leaders on the objections. “The Illinois Republican party is trying to hide what they’re doing,” claimed Ibendahl, who was general counsel for the state Republican party from 1998 to 2001. “They’re trying to hide the money flow.”

Illinois Republican-party chair Pat Brady has admitted that his organization was involved in the petition-objection process. “Our lawyers were working on it,” he told Springfield’s *State Journal-Register*

. “Our position is [that], as a party, we have to preserve the integrity of the ballot.”

Ibendahl said the party shouldn’t be using money donated by voters to challenge third-party candidacies. “These people are giving money to the Illinois Republican party with the assumption that it’s being used to fight Democrats,” he said. “In actuality, a big chunk of it has

been used ... this summer to kick people off the ballot. ...

“These guys don’t get it. ... Having some competition on the ballot, especially a conservative challenge, would be the best thing that could happen to the Republican party. The Illinois Republican party has become fat and lazy, atrophied, and some healthy competition would be the best possible thing.”

### Options for Reform

Free & Equal’s Tobin said that her organization is pursuing ballot-access reform in Illinois and has a legislator (whom she declined to name) willing to sponsor a bill. In addition to ballot-access issues, Free & Equal also hosts debates that include third-party candidates; a gubernatorial debate is planned for late October.

“It’s very important to educate the people about what these candidates outside of the two-party tyranny think is best for the voters of the United States,” Tobin said.

Even if the Constitution Party doesn’t end up on the ballot, she added, its gubernatorial candidate will be included in the debate. “Michael White should be on the ballot, and [Constitution Party candidate] Randy Stuffbeam as well for U.S. Senate,” Tobin said. “The fact that they are not on the ballot is wrong. The system has been using ... their insiders to knock these qualified candidates off the ballot.”

Free & Equal supports allowing candidates to pay \$500 to be on the ballot instead of submitting signatures. That is among several ideas that could make Illinois ballots more open:

- **Signature equity.** Make third parties submit the same number of signatures as Democrats and Republicans. Constitution Party gubernatorial candidate White wrote that the current system undermines the one-person/one-vote concept: “When the ballot-access system requires an established-party candidate to obtain 5,000 petition signatures and a third-party candidate to obtain 25,000 petition signatures, the ballot-access system is telling us that each of the 25,000 individuals signing a third-party petition is only worth one-fifth of a person.”

- **Streamlined administrative process.** The argument that Illinois' current challenge system guards against fraud and abuse is disingenuous in three ways. First, only challenged signature petitions are reviewed. Second, in a system that is supposed to favor ballot access, the challenge process effectively shifts the burden of proof to third-party and independent candidates. Third, while a less-rigorous system might allow candidates on the ballot who technically don't meet the valid-signature requirement, voters would still have the final say.

- **Only allow challenges by other candidates.** "At least let the opposition publicly declare that they are the ones trying to subvert voter choice," the Libertarian Party's Hellin wrote.

- **Filing-fee alternative to signatures.** While Free & Equal supports a \$500-fee option in lieu of signatures, Libertarian gubernatorial candidate Green said \$5,000 for a statewide office would be fair. Candidates and parties would still be allowed to collect and submit signatures.

- **Proportional representation.** This idea – supported by Free & Equal – is less about ballot access than ensuring that votes for third-party candidates are genuinely meaningful. While there are a variety of proportional-representation systems, the oversimplified gist is that if the Green Party gets 5 percent of the vote, it also gets 5 percent of the legislative seats. So even if third-party candidates don't have a realistic shot at winning a statewide office, votes for them could still result in representation.

The challenge with any of these reforms, of course, is that the political establishment would fight them. The primary reason the two major parties challenge third-party and independent petitions is the fear that alternative candidates will siphon votes from the big guys.

Republicans, for instance, aren't afraid that the Constitution Party's Stufflebeam will be Illinois' next U.S. senator; they fear that a significant minority of people who would vote for Mark Kirk absent an ideologically conservative alternative might instead cast a ballot for Stufflebeam. In a close election, just 1 or 2 percent of people voting for a third-party candidate could mean the difference between victory and defeat.

And that's what these ballot-access battles are really about.

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*To see which candidates qualified (and which ones didn't) for the Illinois ballot, go to [RCReader.com/y/ballot](http://RCReader.com/y/ballot)*

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*To read the full responses to the River Cities' Reader ballot-access questionnaire of third parties and their candidates, go to [RCReader.com/y/access](http://RCReader.com/y/access)*

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