

Ballot Access Laws

Determining the Proper Standards for New Hampshire

PRS Policy Brief 0910-02
January 12, 2010

Prepared by:

Jeremy M. Kaufmann
William R. Hix
Isabella R. Price

This report was written by undergraduate students at Dartmouth College under the direction of professors in the Rockefeller Center. Support for the Policy Research Shop is provided by the Ford Foundation.

Contact:

Nelson A. Rockefeller Center, 6082 Rockefeller Hall, Dartmouth College, Hanover, NH 03755
<http://rockefeller.dartmouth.edu/shop/> • Email: Ronald.G.Shaiko@Dartmouth.edu

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

1. INTRODUCTION 1

2. CURRENT NEW HAMPSHIRE LAWS..... 2

 2.1. NEW HAMPSHIRE PETITION REQUIREMENTS TO GET ON THE BALLOT..... 2

 2.2. RELATIVE DIFFICULTY OF NEW HAMPSHIRE BALLOT ACCESS 2

3. A COMPARISON OF BALLOT ACCESS LAWS ACROSS STATES..... 3

4. LACK OF ACADEMIC CONSENSUS ON BALLOT ACCESS..... 4

5. CONSTITUTIONAL DIMENSIONS OF BALLOT ACCESS LAWS..... 5

 5.1. SIGNATURE REQUIREMENTS 5

 5.2. FILING FEES 5

 5.3. TIMEFRAME FOR SIGNATURES 6

6. ASSESSING VOTER CONFUSION 6

7. ANALYSIS OF BALLOT ACCESS LAWS IN NEW HAMPSHIRE 6

 7.1. CURRENT NEW HAMPSHIRE PETITION REQUIREMENTS FOR BALLOT ACCESS 6

8. ASSESSING THE NEWLY PROPOSED STANDARDS UNDER HB 1264 7

 8.1. ANALYSIS OF THE NUMBER OF POTENTIALLY QUALIFYING POLITICAL PARTIES..... 8

9. REDESIGNING THE NEW HAMPSHIRE BALLOT..... 9

 9.1. SHRINKING THE FONT SIZE 9

 9.2. USING A LANDSCAPE BALLOT WITH TWO PAGES 10

 9.3. USING A LANDSCAPE BALLOT WITH CANDIDATES ON BOTH SIDES 10

10. A CASE STUDY OF BALLOT FORMATTING IN MISSOURI..... 10

11. OTHER RESULTS OF STATE CHANGES TO BALLOT ACCESS 11

 11.1. FLORIDA 11

 11.2. MARYLAND 11

12. CONCLUSIONS..... 11

APPENDIX I. 2008 NEW HAMPSHIRE BALLOT 13

APPENDIX II. THE NUMBER OF PARTIES GIVEN THE PERCENT REQUIREMENT 14

REFERENCES 15

EXECUTIVE SUMMARY

The rules and regulations that govern the access that third parties have to the ballot in New Hampshire are some of the nation's strictest. This report specifically outlines these relevant state laws, summarizes the constitutional dimensions of ballot access laws, and assesses New Hampshire's laws in comparison to those of other states. It also considers the potential changes proposed in HB 48, legislation introduced by Rep. David Pierce and Rep. Joel Winters. We analyze how these changes would affect the number of registered political parties in New Hampshire and how the Secretary of State might have to alter the current ballot format in order to fit in new parties. We also consider potential concerns with the new legislation including the voter confusion argument and the technological feasibility of ballot reformatting. Finally, we use case studies to discuss what has happened in other states after lowering ballot access standards and what types of successful modifications to the ballot other states have made to deal with the potential for more candidates on the ballot.

1. INTRODUCTION

State regulation of third party ballot access is a relatively new phenomenon. Before 1880, ballots were provided by parties rather than by state governments. Because third parties could print their own tickets, minor parties were regular parts of American electoral politics. This changed in the late 19th century, however, with the introduction of the Australian ballot. Individual states, rather than political parties, were now responsible for producing the ballots. It fell on state governments to make decisions about precisely how many parties should qualify. "Thus, ballot access immediately became both an administrative and political question that the states had to resolve. Many states chose to utilize nominating petitions as the means for deciding who deserved a spot on the ballot."¹

For a political party to be on the ballot means that it has a designated spot assigned for each office to list its candidate. This enhances a party's perceived legitimacy and demonstrates to voters that the candidates are a viable alternative, perhaps in contrast to the long-shot "write-in candidate." At present, every state requires minor-party and independent candidates to collect signatures on nominating petitions and submit them to a state agency by a certain deadline to appear on the ballot. It is much easier for a candidate to run as a Libertarian in one race than it is for a third party such as the Libertarian Party to gain party recognition (and thus get slots in all races). Thus, this report will focus solely on the ability of actual parties to gain ballot access, rather than individual candidates who may or may not have a party affiliation.

Opponents of expanded access offer several justifications for strict ballot access regulations. First, they claim a multitude of third party candidates could split the vote of the majority and lead to the election of a candidate that a majority of the voters actually dislike. If only two candidates are allowed on the ballot, though, at least the one that lacks majority support is never elected. Furthermore, if voters could vote in a primary for one candidate, and then sign a petition for another candidate, this would violate the one

person, one vote mandate of *Reynolds v. Sims*. Some voters might even engage in strategic voting by signing a petition for the candidate they want, and then vote in the primary for the candidate who would be easier to beat.

Supporters of third parties, who often favor less restrictive ballot access laws, believe that many problems are inherent in the two-party system and see third parties as a possible answer. Some believe that a two-party system is polarizing or anti-democratic and deprives voters of the ability to make an adequate electoral choice. Furthermore, some claim that because two party systems are so polarizing, few centrists are actually elected. When public opinion polls show that 44 percent of New Hampshire citizens are undeclared or independent, a larger percentage than are either registered Democrats or Republicans, one might logically question the virtue of having such a polarized two-party system.²

This report will compare the number of signatures required to gain ballot access across a wide variety of states, discuss the relative difficulty of getting on the ballot across states, and comment on secondary barriers to ballot access. These other bureaucratic hurdles include a limited time frame to collect signatures, expensive filing fees, and rules which require all potential signatories to affirm that they have not voted in other primaries and forbid them from signing other petitions. It will focus on the *practical, rather than the philosophical*, implications of expanding ballot access.

2. CURRENT NEW HAMPSHIRE LAWS

2.1. New Hampshire Petition Requirements to Get on the Ballot

New Hampshire currently recognizes only two official political parties: the Democrats and the Republicans. An official political party is defined as a party that received at least four percent of the total number of votes cast for either the office of governor or the office of United States Senator in the previous state election.³ In order to gain ballot access, a party must get signatures equaling three percent of the total votes cast at the previous state general election.⁴ Obtaining and submitting the petitions requires parties to endure an arduous and restrictive process. Voters may only sign one nomination paper for each office and must do so during the year of the election.⁵

2.2. Relative Difficulty of New Hampshire Ballot Access

New Hampshire is one of the most difficult states in the country for minor parties to gain ballot access. It is the only state in New England that only has the two major parties on the ballot. Nationally, New Hampshire is unique in requiring minor-party presidential candidates to submit a declaration of candidacy before the petition is due, and it is also the only state that only allows one signature per petition. In order to remain ballot-qualified, New Hampshire parties must garner four percent of the vote in a statewide office. This is double the median percentage required across the 50 states. New Hampshire is also the only state in the union to have increased this requirement in the last fifteen years by raising it from three percent to four percent in 1997. With these factors

combined, it is no surprise that since its creation in 1996, the New Hampshire petition has only been used once, by the Libertarian Party, to gain access in 2000.

3. A COMPARISON OF BALLOT ACCESS LAWS ACROSS STATES

In the chart below, which compares and contrasts ballot access standards across the nation, it becomes very clear that New Hampshire has some of the strictest requirements for third party ballot access across the country. Very few states have only two registered parties, and these are likely to be the states with the most stringent ballot access requirements. The term “vote percentage” refers to the percentage of votes the party needs to receive in the previous statewide election to qualify as an official party while the term “percent petition” refers to the percentage of petition signatures required to qualify based on the previous statewide election. The percentage of third party voters is estimated based on the percentage of votes in the 2008 election that went to third parties.

Table 1. Ballot Access Requirements

State	Vote %	Petition %	# Parties	% 3 rd party vote
AL	3%		2	0.77%
AK	3%		4	2.16%
AZ	5%		4	1.18%
AR	3%		3	2.42%
CA	1%		6	1.89%
CO	1%			1.59%
CT	1%		2 maj, 6 min	1.16%
DC	7500 votes		3	0.58%
DE	0.050%		9	1.10%
FL	1%		34	0.72%
GA	1%			0.73%
HI	Last 3 ballots			1.57%
ID	Run 3 candid			2.37%
IL	5%		3	1.28%
IN	2%		3	1.06%
IA	2%		2	1.24%
KS	1%		4	1.72%
KY	2%		2	1.43%
NH	4%	3%	2	0.88%
LA		1,000	5	1.50%
ME		2%		1.85%
MD	1%	10,000	6	1.26%
MA	3%	1% reg voters	3	1.74%
MI	1%		3	1.61%
MN	5% sec vote		3	1.79%
MS	Irrelevant	Be organized	8	0.82%
MO	2%		4	1.28%
MT	5% gov vote		4	3.20%
NE	5%		2	1.52%

NV	1%		6	2.20%
NJ	10%		2	0.88%
NM	5%			1.02%
NY	5%		5	1.31%
NC	2% gov vote			1.03%
ND	5%	7,000	2	0.60%
OH	5%	1%	2	1.82%
OK	10%	5%	2	0%
OR	0.10%	1.50%	7	2.11%
PA	Petitions	2%		1.04%
RI	5%	5%	3	1.65%
SC	Irrelevant	10,000 sigs	9	1.23%
SD	2.50%	2.50%	3	2.10%
TN	5%	2.50%	2	1.27%
TX	5%	1%		0.69%
UT	2%	2,000 sigs	4	2.99%
VT	5%		4 maj, 2 min	1.65%
VA	10%	NA	2	0.87%
WA	5%	NA	2	1.87%
WV	1%	NA	3	1.89%
WI	1%	10,000 sigs	5	1.26%
WY	2%	2%	3	2.09%

Source: 2008 Official Presidential General Election Results

4. LACK OF ACADEMIC CONSENSUS ON BALLOT ACCESS

Unfortunately, political scientists have not reached an academic consensus as to whether ballot access signature regulations affect the ability of minor parties to qualify for the ballot. Some political scientists provide evidence that ballot regulations harm minor parties, but many of these studies fail to conduct a full multivariate analysis to control for alternative explanations.⁶ Other studies actually find no evidence that the introduction of the state ballot harmed third parties. One such study finds that the number of parties was smallest during the years when there were no government-printed ballots.⁷ Specifically, in the period of most lenient ballot access laws, 1892-1930, the average number of parties at any given time was 6.7. In the years of strictest ballot access laws, 1964-1996, the average number of parties was 7.7.⁷ This study concludes that potential third party candidates do not seem to be deterred by legal barriers to candidacy. Laws restricting candidate access to the general election ballot have made it harder for minor-party candidates to get their names before the voters, but it has not inhibited would-be third-party candidates from running. This study even goes so far as to suggest a very slight correlation between higher number of parties and severe ballot access laws. Possible explanations include the idea that people form new political parties for reasons more profound than ballot access laws: maybe they care about politics, are distressed by policies currently in effect, and despair that any party already in existence will resolve matters satisfactorily. Maybe minor-party candidates are simply too irrational to respond strategically to institutional incentives and constraints.

Of course, the debate is not one-sided, and other political scientists have found a statistically significant correlation between the number of signatures required, as a percentage of the electorate and the number of parties. As this percentage increases, the number of candidates on the ballot decreases.⁸ Specifically, some have found that ballot regulations primarily affect the number of candidates on the ballot but not their vote totals. This finding supports the idea that if ballot access requirements were lessened, third parties would have an easier time obtaining ballot access and voters would then have the opportunity to express more political viewpoints.

5. CONSTITUTIONAL DIMENSIONS OF BALLOT ACCESS LAWS

State ballot access restrictions can affect fundamental constitutional rights and as a result have been frequently litigated, often in cases reaching the Supreme Court. Common claims against strict ballot access requirements include that they violate the equal protection clause of the Fourteenth Amendment by involving a discriminatory classification of voters, candidates, or political parties. Others have claimed that they violate the rights of political association under the First Amendment, especially when the restrictions burden the rights of political parties and other political associations. Many of the guiding legal precedents focus on issues such as the number of signatures required for nomination papers, the existence of prohibitive filing fees, and the timeframe candidates have to gather these signatures. We concluded that New Hampshire's current and proposed statutes conform fully to all legal precedents.

5.1. Signature Requirements

Over the years, the Supreme Court has been asked to decide what constitutes an overly burdensome signature requirement. In other words, the Court has been tasked with developing a framework that balances a political party's fourteenth-amendment right to equal protection with the states right to regulate elections as they see fit. The Court has split on the issue declaring some requirements too burdensome while allowing others to stand. In *Williams v. Rhodes*, the Court struck down Ohio state laws that required third-party candidates to submit petitions totaling 15 percent of the number of ballots cast in the last proceeding gubernatorial election.⁹ The Court called this an inordinate number of signatures and held that this was a clear violation of a third party's right to equal protection. At the same time, however, the Court upheld a Georgia law requiring candidates to submit signatures representing at least five percent of eligible voters in *Jenness v. Fortson*.¹⁰ Using this framework, it is clear that New Hampshire's three-percent standard conforms to Supreme Court standards.

5.2. Filing Fees

The Supreme Court has also wrestled with the question of prohibitively high filing fees for candidates or parties seeking ballot access. The courts have been rather consistent in this arena, deciding that a state may not require from an indigent candidate filing fees that he or she cannot pay. In *Lubin v. Panish* the Court held that these high filing fees are not reasonably necessary to the accomplishment of the state's legitimate interest of

maintaining the integrity of an election.¹¹ Similarly, in *Bullock v. Carter* the Court held that the payment of fees ranging as high as \$8,900 to appear in the Texas Democratic primary ballot violated the equal protection clause of the Fourteenth Amendment.¹² Clearly, since New Hampshire laws prescribe filing fees of \$100 for governor and United States Senator, \$50 for representative to Congress, \$25 for executive councilor, \$10 for state senator and county officer, and \$2 for state representative, New Hampshire is not in violation of case law.¹³ New Hampshire does prescribe more expensive filing fees in some cases, but candidates can avoid these fees as long as they meet the expenditure limitations put forth by the state.¹⁴

5.3. Timeframe for Signatures

Finally, the courts have handed down decisions concerning state regulations that govern the timeframe potential third parties or candidates have to gather signatures. In *Anderson v. Celebrezze*, the Court invalidated an Ohio statute that required independent candidates running for president to submit nomination papers by March to appear on the ballot in November. In the decision, the Court noted that Ohio's early filing deadline places an unconstitutional burden on the voting and associational rights of petitioner Anderson's supporters.¹⁵ In New Hampshire, nomination papers must be filed with the Secretary of State no later than 5:00 p.m. on the Wednesday one week before the primary.¹⁶ Once again New Hampshire appears to conform to judicial guidance on the matter.

6. ASSESSING VOTER CONFUSION

Advocates of strict ballot access requirements often claim that without these strict laws, ballots would overflow with “vanity candidates” and become so cluttered that voters would have trouble filling out a ballot and become confused. There is little available evidence either in support of or against this claim. However, New Hampshire Secretary of State Bill Gardner said in 2005 that he had never seen any evidence that any voter in New Hampshire has been confused by the large number of names on the state’s presidential primary ballots.¹⁷ This is significant because New Hampshire has some of the least restrictive rules for presidential primary candidates in the nation and voters are sometimes choosing among upwards of 30 candidates on one ballot.¹⁸ It seems that if this did cause confusion, New Hampshire would take notice and change its easy primary ballot access rules, but this is not the case.

7. ANALYSIS OF BALLOT ACCESS LAWS IN NEW HAMPSHIRE

7.1. Current New Hampshire Petition Requirements for Ballot Access

As the law is currently written, New Hampshire requires the names of registered voters equaling three percent of the total votes cast at the previous state general election to nominate via nominating papers. In practice, this means that the actual number of signatures required to get on the ballot varies widely depending on the previous statewide election. A previous statewide election is defined as either a gubernatorial or senatorial

election, and since these occur only in even years, unless there is a special election, they determine ballot access requirement for the following two years. This creates the unusual situation in which parties that wish to qualify in a year in which there is a presidential election will do so based on requirements determined by a non-presidential election year in which turnout is lower. At the same time, if a political organization wants to qualify in an off year, they must do so with requirements based on the heavy turnout of a presidential election year. In the graph below, which shows signature requirements over the last decade, it becomes apparent that these requirements are cyclical as they increase in the years after a presidential election and then fall in the years after a mid-term.

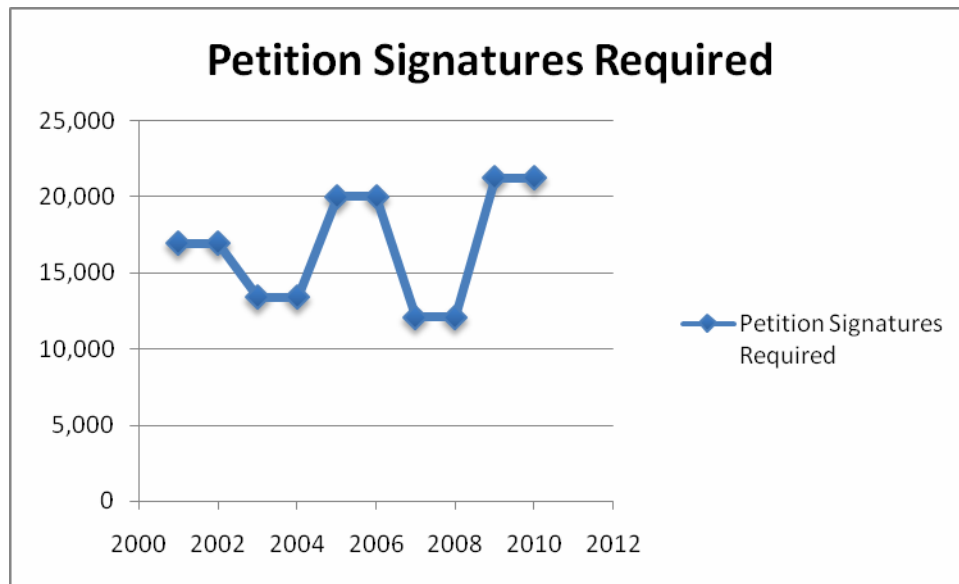


Figure 1. Petition Signatures Required (Source: New Hampshire Secretary of State)

Over the last decade, the average number of signatures required under the three-percent standard is 16,740. The highest requirement was 21,229 signatures in 2009 and 2010, and the lowest was 12,111 in 2007 and 2008. The legislation under consideration, which would modify the signature requirement to 5,000 signatures irrespective of the previous election turnout, would represent a large decrease (70.1 percent) from current standards.

8. ASSESSING THE NEWLY PROPOSED STANDARDS UNDER HB 1264

HB 48, as proposed by Rep. David Pierce, seeks to change the definition of political party in non-primary based situations to a political organization which:

- (a) At the preceding state general election received at least 2 percent of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators; or
- (b) Has its name placed on the state general election ballot by submitting nomination papers in accordance with RSA 655:40-a; or
- (c) Has at least 3,000 voters registered as affiliates according to the statewide centralized voter registration database.

Given the proposed changes in the definition of a political party, it is possible to mathematically assess how many, and which, political parties would have qualified in the last decade under the new definition and in which elections they would have qualified under standard (a). Unfortunately, it is impossible to assess standard (b) as the Secretary of State stops counting the nomination papers after an individual candidate qualifies. For example, when Susan Newell qualified as a Libertarian Party candidate for governor in 2008 (note this is very different from the Libertarian Party qualifying), this required 3,000 signatures; once she reached 3,000 valid petitions, the Secretary of State stopped counting. Therefore, it is impossible to retrospectively say whether or not the Libertarian Party would have qualified in the 2008 election under the new standards, which require a total of 5,000 signatures for a party to qualify. Similarly, standard (c) is impossible to assess as the Secretary of State does not release the signature totals in the centralized voter registration database.

8.1. Analysis of the Number of Potentially Qualifying Political Parties

We can retroactively apply the new standard proposed under HB 48 (that a political party must get two percent of the vote in a statewide general election to be recognized) over the last decade to determine which third parties could actually have gained official status. Table 2 below shows the third-party candidates that ran in statewide elections over the last decade and the vote share they received. Clearly, if they received two percent of the vote or greater, their respective parties would qualify. Since the Libertarian Party was the only third party to run candidates in New Hampshire over the last decade, the analysis will focus on its results.

Table 2. Qualifying Parties Under New Standard

Election Year	Type of Election	Name of Candidate	Political Party	Percentage of Vote	Qualifies
2000	Gubernatorial	John J. Babiarz	Libertarian	1.14%	NO
2002	Gubernatorial	John J. Babiarz	Libertarian	2.94%	YES
2002	Senatorial	Ken Bievens	Libertarian	2.20%	YES
2004	No Third Party Candidates				NO
2006	No Third Party Candidates				NO
2008	Senatorial	Ken Bievens	Libertarian	3.10%	YES
2008	Gubernatorial	Susan Newell	Libertarian	2.19%	YES

From this chart, it is clear that if the new two-percent standard had been in place over the last decade, the Libertarian Party would have been recognized in 2003 and 2004 as a result of qualifying in the 2002 gubernatorial and senatorial elections, and again in 2009

and 2010 because of their showing in the 2008 Senatorial and Gubernatorial elections. For all other years, however, the Libertarian Party would not have been recognized. It failed to obtain two percent of the vote in 2000, which disqualified it in 2001 and 2002, and it failed to run candidates in 2004 and 2006 which disqualified it from the 2005-2008 ballot. It is reasonable to expect that the Libertarian Party will qualify as a party in many elections and will legally be entitled to a column on the ballot if the restrictions are changed.

9. REDESIGNING THE NEW HAMPSHIRE BALLOT

New Hampshire law requires the Secretary of State to produce a column style ballot. Currently, the ballot is longer than it is wide.¹⁹ With this type of ballot design, all official political parties (currently only the Democrats and Republicans) get to list their candidates for all respective offices in columns that span the width of the ballot. In addition to these two columns, there is a third column for the various individual third-party candidates and a fourth column, required by law, for all write-in candidates. Again, our analysis ignores individuals who successfully get on the ballot and focuses exclusively on political parties and their ability to qualify for their own column on the ballot. At present, these four columns encompass all of the ballot's width as seen in the 2008 ballot in the Appendix.

Lowering the requirements for ballot access would likely grant the Libertarian Party its own column on the ballot, bringing the total number of columns to five. The Secretary of State is concerned with keeping the optical scan type ballot in a form that can still be read by pre-existing vote counting technology (AccuVote-OS software). This would prevent additional costs to the state. Under the proposed ballot access changes, the Secretary of State will likely have to redesign the ballot because the paper ballot is already completely full with four vertical columns and a new column would likely have to be added. **To be very clear, our analysis operates under the constraining framework that any changes to the ballot must be compatible with pre-existing AccuVote-OS technology from a feasibility and cost perspective.** We propose three possible changes that are compatible with current technology and could accommodate an additional vertical column for the Libertarian party:

- a) Keeping the ballot on one page but shrinking the font size
- b) Using a double-paged ballot with both pages wider than they are long
- c) Using both the front and back of a one-paged ballot that is wider than it is long

9.1. Shrinking the Font Size

Shrinking the font size can cause problems if the font is so small it becomes difficult to comfortably read. The question is whether there is a font size that is still legible but allows for the insertion of a potential fifth column. The Brennan Center for Justice actually recommends a 12-point font as the ideal font size for ballots as it is legible, commonly viewed by many as the standard font, and meets VVSG requirements.²⁰ The benefit of shrinking the font size is that it allows the ballot to fit on only one page without having to worry about either a two-sided ballot or a two-page ballot. In our analysis of

the voting procedures of other states, we found that most states use font sizes of 10 or 11 and provide magnifying sheets and glasses to help voters who need them read the smaller print. The costs of these aids are nominal.

9.2. Using a Landscape Ballot with Two Pages

Changing the orientation of the ballot so that it is wider than it is long would allow the Secretary of State to fit in a fifth vertical column without shrinking the size of the print. At the same time, however, given the large number of offices up for election in New Hampshire, it is likely that it would be impossible to keep the ballot on only one page. This would leave the Secretary of State with the option of using a double-paged ballot. Currently, the AccuVote-OS technology has already counted votes on doubled-paged ballots in town meetings and is fully capable of counting two page ballots as easily as it can count one-page ballots.²¹ On the other hand, it is probably more difficult for a voter to deal with two pages than it is to deal with only a single page. The Brennan Center highly recommends that double-paged ballots not split candidates for the same office onto different pages or columns. One famous case when candidates for the same office were split among different pages and different columns was in the 2002 Governor's election in Kewaunee County, Wisconsin. In this race, an astonishing 11.8 percent of voters recorded no vote for this race in contrast to a 1.1 percent rate statewide for this race.²² This option is a very real possibility as it has been used before in New Hampshire, but certain precautions must be taken to avoid voter confusion

9.3. Using a Landscape Ballot with Candidates on Both Sides

This front/back option accomplishes the same goal as the double-page ballot by allowing the Secretary of State to fit a fifth column without having to shrink the size of the font. Again, the Secretary of State might want to consider keeping candidates for the same office on the same side of the ballot to avoid splitting up races across different sheets of paper, which has been shown to cause voter confusion. This type of ballot is already in use at the town meetings of certain towns for voting on longer proposals.²⁰ The problem with this type of formatting, though, is the possibility that voters fail to realize that there is a back side and completely skip it even if the words "turn over" are printed clearly and visibly.

10. A CASE STUDY OF BALLOT FORMATTING IN MISSOURI

Missouri uses the same vote counting technology as New Hampshire and only requires a political party to receive two percent of the total vote from the previous statewide election to qualify as an official party. These similarities make Missouri a great state to study. Missouri ballot designers face similar constraints as ballot designers in New Hampshire. Missouri is divided into 116 counties and each county clerk determines ballot layout. St. Louis County, the largest county in Missouri, utilizes both an electronic system (ES&S: Election Systems and Software) and a paper ballot at each polling place. Voters have the choice to use a paper ballot if they do not feel comfortable with an electronic system. Depending upon the election and the available space, font sizes vary

from nine to 15 points. Missouri statutes mandate at least size eight. Also, the front and back of the ballot contain the phrase “turn over” at the end of the front page and the phrase “end of ballot” on the back.

Of course, there are several notable differences between the ballot procedures in Missouri and New Hampshire. Most importantly, the optical scan ballot is used as a backup in Missouri as voters have a choice between electronic voting and paper voting. In New Hampshire, all voting is done on paper. Therefore, it is unlikely that a large number of voters in Missouri use the optical scan method, making it difficult to determine its comparative efficacy. Additionally, New Hampshire Deputy Secretary of State David Scanlon has indicated that the front/ back method is the least desirable in his opinion.

11. OTHER RESULTS OF STATE CHANGES TO BALLOT ACCESS

11.1. Florida

In 1999, the Florida state legislature changed ballot access procedures. Before these changes, they required three percent of registered voters to sign a petition for parties to gain access. The change allowed any party that submits a list of its officers and pays a filing fee to nominate candidates. Currently, Florida has 34 major and minor parties as a result of this change.²³ It is important to note that Florida does not use AccuVote technology. This case study is simply an extreme example of a very populous state with relatively lenient ballot restrictions essentially eliminating all restrictions. Clearly, the New Hampshire legislation does not propose losing the standard to this extent.

11.2. Maryland


The Maryland State Court of Appeals expanded Maryland ballot access in 2003. It ruled in *Maryland Green Party v Board of Elections*, 832 A.2d 214 (Md. 2003) that any party which submits 10,000 signatures be eligible to submit nominee petitions to appear on the state ballot. This came after a decision by the state legislature in 1998 to reduce the number of signatures needed for minor-party nominees from three percent of the registered voters to one percent.²⁴

12. CONCLUSIONS

This report has examined the laws concerning third party ballot access in New Hampshire and the unusual level of difficulty third parties face here. Through our analysis of the proposed changes under HB 48, it is likely that the state of New Hampshire will likely have to add a fifth ballot column for the Libertarian party. As a result, the Secretary of State will likely have to redesign the ballot, especially as New Hampshire state regulation dictates that column style ballots must be utilized in all state elections. As such, the principal aims of ballot redesign efforts should be equitably displaying newly qualifying third parties on the ballot, avoiding voter confusion, and simultaneously keeping the ballot readable by AccuVote technology.

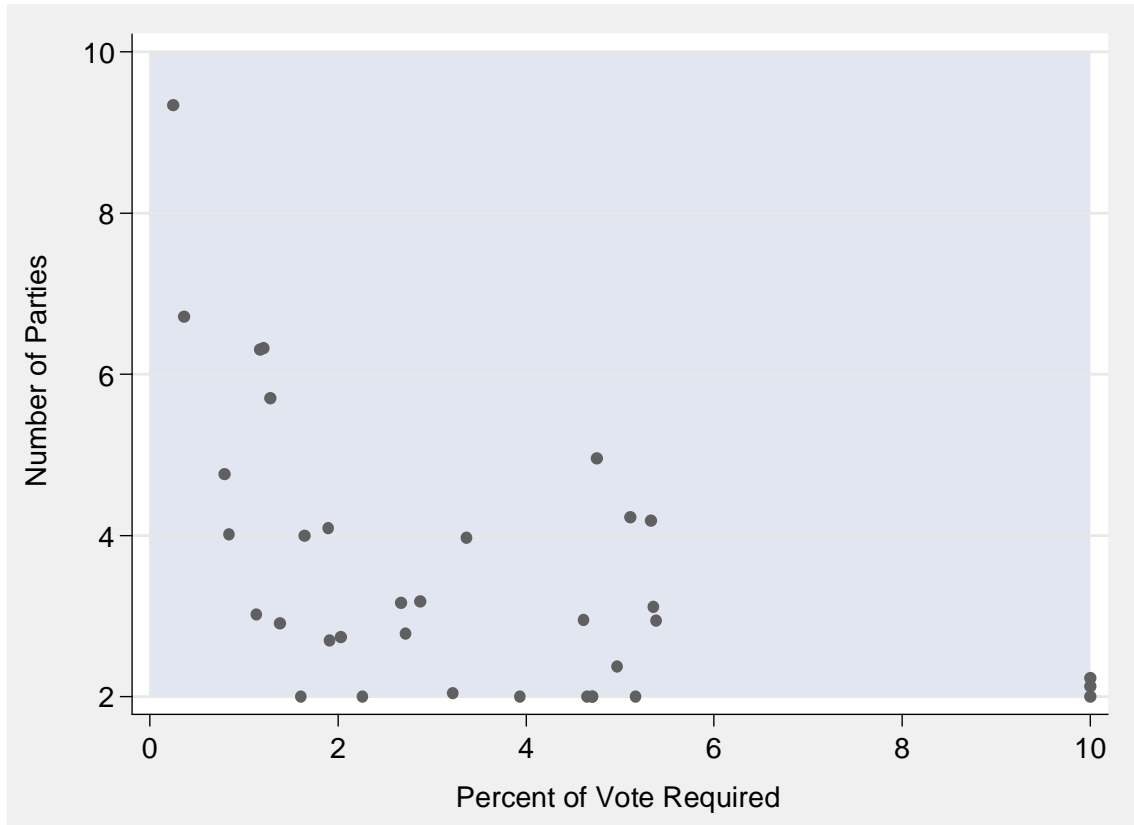
We propose three possible policy options for the state of New Hampshire to adopt, although the Secretary of State's office is leery of the third option due to past difficulties. First, to enable the likely fifth column to be included on the ballot, it may be necessary to use a smaller font size and provide ample supplies of magnifying glasses. The provision of eyewear is currently standard practice in New Hampshire and is also a common practice in most of the other states we surveyed. New Hampshire polling places also provide ballot-reading tools such as magnifying sheets, lights and a telephone-based accessible voting system for auditory voting. Secondly, using a two-page landscape ballot is a valid option as they are easily scannable using current technology and are presently in use in special town meetings. The length of a landscape document can be stretched out to the state's maximum permissible length of 17 inches. An additional option, albeit not deemed successful in the past by the Secretary of State's office, is using the front and back of the ballot. This type of layout is currently in use at town meetings in certain municipalities of New Hampshire. The major drawback though is that an unacceptable amount of voters consistently overlook the back page of a ballot, regardless of highlighted prompts.

APPENDIX I. 2008 NEW HAMPSHIRE BALLOT

ABSENTEE OFFICIAL BALLOT FOR LONDONDERRY GENERAL ELECTION NOVEMBER 4, 2008		INSTRUCTIONS TO VOTERS		
 <small>SECRETARY OF STATE</small>		1. To Vote. Completely fill in the oval <input type="radio"/> to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than ____." If you vote for more than the stated number of candidates, your vote for that office will not be counted.		
		2. To Vote by Write-In. To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval <input type="radio"/> to the right of your choice.		
OFFICES	OTHER CANDIDATES	REPUBLICAN CANDIDATES	DEMOCRATIC CANDIDATES	WRITE-IN CANDIDATES
For President and Vice-President of the United States Vote for not more than 1	Independent Ralph Nader "Matt" Gonzalez <input type="radio"/> Libertarian George Phillies Christopher Bennett <input type="radio"/> Libertarian "Bob" Barr Wayne A. Root <input type="radio"/>	John McCain Sarah Palin <input type="radio"/>	Barack Obama "Joe" Biden <input type="radio"/>	President and Vice-President <input type="radio"/>
For Governor Vote for not more than 1	Libertarian Susan M. Newell <input type="radio"/>	Joseph D. Kenney <input type="radio"/>	John Lynch <input type="radio"/>	Governor <input type="radio"/>
For United States Senator Vote for not more than 1	Libertarian "Ken" Blevens <input type="radio"/>	John E. Sununu <input type="radio"/>	Jeanne Shaheen <input type="radio"/>	U.S. Senator <input type="radio"/>
For Representative in Congress Vote for not more than 1	Libertarian Robert Kingsbury <input type="radio"/>	Jeb Bradley <input type="radio"/>	Carol Shea-Porter <input type="radio"/>	Rep. in Congress <input type="radio"/>
For Executive Councilor Vote for not more than 1		Raymond J. Wieczorek <input type="radio"/>	"Bob" Bruce <input type="radio"/>	Executive Councilor <input type="radio"/>
For State Senator Vote for not more than 1		Sharon M. Carson <input type="radio"/>	"Sandy" Amlaw <input type="radio"/>	State Senator <input type="radio"/>
		Karen Keegan-Hutchinson <input type="radio"/>	Thomas M. Kennedy <input type="radio"/>	State Representative <input type="radio"/>
		Betsy McKinney <input type="radio"/>	Emily Rocheleau <input type="radio"/>	State Representative <input type="radio"/>
		Sherman A. Packard <input type="radio"/>	Donald I. Schwartz <input type="radio"/>	State Representative <input type="radio"/>
		Clinton Bailey <input type="radio"/>	Tammy M. Siekmann <input type="radio"/>	State Representative <input type="radio"/>
		Alfred P. Baldasaro <input type="radio"/>	Mary K. Tetreau <input type="radio"/>	State Representative <input type="radio"/>
		Dudley D. Dumaine <input type="radio"/>	William E. Thomas <input type="radio"/>	State Representative <input type="radio"/>
		Frank R. Emiro, Sr. <input type="radio"/>	Gary Vermillion <input type="radio"/>	State Representative <input type="radio"/>
		James F. Headd <input type="radio"/>	Nancy C. Horten <input type="radio"/>	State Representative <input type="radio"/>
		Robert E. Introne, Jr. <input type="radio"/>	David Howard <input type="radio"/>	State Representative <input type="radio"/>
For Sheriff Vote for not more than 1		"Dan" Linehan <input type="radio"/>	David J. Lovejoy <input type="radio"/>	Sheriff <input type="radio"/>
For County Attorney Vote for not more than 1		"Jim" Reams <input type="radio"/>	Kevin L. Coyle <input type="radio"/>	County Attorney <input type="radio"/>
For County Treasurer Vote for not more than 1		Edward "Sandy" Buck III <input type="radio"/>	David E. Ahearn <input type="radio"/>	County Treasurer <input type="radio"/>
For Register of Deeds Vote for not more than 1		Cathy Stacey <input type="radio"/>	Philip Nugent <input type="radio"/>	Reg. of Deeds <input type="radio"/>
For Register of Probate Vote for not more than 1		Andrew "Spizz" Christie <input type="radio"/>	Debra E. Crapo <input type="radio"/>	Reg. of Probate <input type="radio"/>
For County Commissioner Vote for not more than 1		"Don" Stritch <input type="radio"/>	"Bob" Davidson <input type="radio"/>	County Commissioner <input type="radio"/>

SAMPLE BALLOT

APPENDIX II. THE NUMBER OF PARTIES GIVEN THE PERCENT REQUIREMENT



REFERENCES

- ¹Burden, Barry C. "Ballot Regulations and Multiparty Politics in the States." *PS: Political Science & Politics* (Oct. 2003): 669-672. Web. 4 Nov. 2009. <<http://www.apsanet.org/imgtest/PSOct07Burden.pdf>>.
- ²Klein, Rick. "Independents Rule New Hampshire." *ABC News*. N.p., 4 June 2007. Web. 4 Nov. 2009. <<http://abcnews.go.com/Politics/Story?id=3242844&page=1&page=1>>.
- ³RSA 652:11
- ⁴RSA 655:42 III
- ⁵RSA 655:40
- ⁶Burden, Barry C. "Ballot Regulations and Multiparty Politics in the States." *PS: Political Science & Politics* (Oct. 2003): 669-672. Web. 4 Nov. 2009. <<http://www.apsanet.org/imgtest/PSOct07Burden.pdf>>.
- ⁷Winger, Richard. "How Many Parties Ought to Be on the Ballot?: An Analysis of *Nader v. Keith*." *Election Law Journal* 5.2 (2006): 170-197. Print.
- ⁸Burden, Barry C. "Ballot Regulations and Multiparty Politics in the States." *PS: Political Science & Politics* (Oct. 2003): 669-672. Web. 4 Nov. 2009. <<http://www.apsanet.org/imgtest/PSOct07Burden.pdf>>.
- ⁹"*Williams v. Rhodes*." *Oyez*. US Supreme Court Media, n.d. Web. 5 Nov. 2009. <http://www.oyez.org/cases/1960-1969/1968/1968_543>.
- ¹⁰"*Jenness v. Fortson*." *OYEZ*. U.S. Supreme Court Media, n.d. Web. 5 Nov. 2009. <http://www.oyez.org/cases/1970-1979/1970/1970_5714>.
- ¹¹"*Lubin v. Panish*." *Justia*. US Supreme Court Center, n.d. Web. 5 Nov. 2009. <<http://supreme.justia.com/us/415/709/>>.
- ¹²"*Bullock v. Carter*." *Justia*. US Supreme Court Center, n.d. Web. 5 Nov. 2009. <<http://supreme.justia.com/us/405/134/>>.
- ¹³RSA 655:19-c
- ¹⁴RSA 655:19-b
- ¹⁵"*Anderson v. Celebrezze*." *Justia*. U.S. Supreme Court Center, n.d. Web. 5 Nov. 2009. <<http://supreme.justia.com/us/460/780/index.html>>.
- ¹⁶2010-2011 New Hampshire Political Calendar
- ¹⁷Footnote 71 in Richard Winger's *How Many Parties Ought To Be on the Ballot: An Analysis of Nader v. Keith*
- ¹⁸Interview with David Scanlon in Concord, NH on November 2, 2009
- ¹⁹Interview with David Scanlon in Concord, NH on November 2, 2009
- ²⁰Better Ballots, Brennan Center for Justice
- ²¹Interview with David Scanlon in Concord, NH on November 2, 2009
- ²²Better Ballots, Brennan Center for Justice
- ²³Winger, Richard. "How Many Parties Ought to Be on the Ballot?: An Analysis of *Nader v. Keith*." *Election Law Journal* 5.2 (2006): 170-197. Print.
- ²⁴Winger, Richard. "How Many Parties Ought to Be on the Ballot?: An Analysis of *Nader v. Keith*." *Election Law Journal* 5.2 (2006): 170-197. Print.