



NCSL

# THE CANVASS

STATES AND ELECTION REFORM®



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## can•vass (n.)

Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.

—U.S. Election Assistance Commission: Glossary of Key Election Terminology

## Presidential Ballot Access: 50 Shades of Law

If Donald Trump's support among Republicans fades, he's indicated he wouldn't rule out joining the ranks of Gary Johnson, Ralph Nader, Ross Perot, John Anderson and Teddy Roosevelt—all people who have [run for president](#) as something other than a D or an R (Roosevelt ran as a Republican in 1904, then ran on the [Progressive Party](#) ticket, aka the Bull Moose Party, in 1912). [To join this select group](#), Trump will have to brave the ballot access labyrinth—no small feat.

To run for the presidency as an independent candidate, or as the candidate of an aspiring party, requires working with a brain trust of election attorneys steeped in the details of each state's laws. (Election law is often called “decentralized” or “arcane,” but never “dull.”) In each state and the District of Columbia a candidate must:

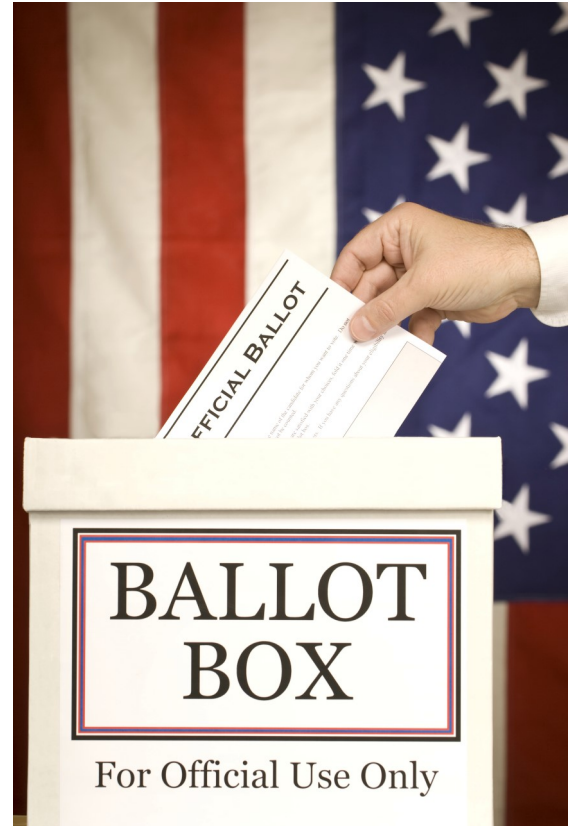
- Qualify
- Meet deadlines
- Work with (or around) resign-to-run laws, “sore loser” laws and other laws that govern who can run—all of which we'll address below.

It is legislators who set these standards—and they frequently adjust ballot access laws, particularly in the year before a presidential election. So far in 2015, 51 bills in 28 states have been introduced that have dealt with some aspect of candidate or political party ballot access.

Why bother with ballot access laws at all? Two reasons. First, there must be some guidelines that determine whose names will appear on ballots, especially now that ballots must be sent to overseas voters 45 days before an election. Second, ballot access laws serve a “gate-keeping” function.

## History

There were no ballot access rules in the country's early years because there were no government-printed ballots, according to Richard Winger, a Libertarian and editor of [Ballot Access News](#). He reports that in 1888, Massachusetts passed a law creating the first-ever government-printed ballot. Over time, states added requirements for getting on the ballot—a name couldn't appear twice, nominating petitions were required, thresholds were set for parties, and more. The big push to restrict ballot access came in the few years immediately after the 1968 presidential election, when George Wallace garnered 13 percent of the presidential vote.



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Recently, there's been a reversal. "Over the last 30 years, the laws have slowly and painstakingly gotten easier," says [Winger](#).

Not easy enough for Winger, who says "the right to vote includes the right of choice for whom to vote, and when a state provides a general election ballot with very few choices, that state is injuring the rights of that voter." Or for [FairVote](#), a nonpartisan group that released a [policy brief](#) last year, asking states to replace what it calls "unfair" ballot access laws.

Whether a law is "unfair," or "necessary to avoid confusing ballots and political instability" is in the eye of the beholder. But it's clear that to get to "yes" in 50 states is tough—and yet doable. In 2012, [Gary Johnson](#) made it onto 48 ballots, and [John Anderson](#) (1980) and [Ross Perot](#) (1992) were on all 50.

So what's Trump—or any potential unaffiliated candidate—up against? We'll start with the basic requirements such as signature gathering and deadlines, and then look at the various kinds of laws that may also apply.

## Qualifications

The U.S. Constitution sets the basic qualifications for the presidency: He or she must be 35 years of age or older, and be a U.S. citizen.

Most states also require that candidates show some level of support from the voters to deter frivolous candidates. This is usually done by setting signature-gathering requirements. In some states, that's a set number—25 for each presidential elector in [Tennessee](#) (275 total) at the low end and 25,000 in [Illinois](#) at the upper end.

In other states, a formula is used to determine the number of signatures needed. [Alaska's](#) formula calls for petitions signed by qualified voters of the state equal in number to at least 1 percent of the number of voters who cast ballots in an election for president of the United States at the last presidential election. New Mexico and Oklahoma ask for 3 percent of the total votes cast in the last general election for independent candidates. Generally speaking, the formulas are harder to meet than the set amounts.

Some states also have a geographic distribution requirement for petitions, so that a candidate can't get on a statewide ballot by collecting signatures in just one region. [New York](#) is one example. The Empire State requires 15,000 signatures, with at least 100 of them coming from each of half the state's congressional districts.

Other states ask for a fee in addition to signatures. And two states—[Colorado](#) and [Louisiana](#)—allow candidates to skip signatures altogether and pay a fee to get on the ballot. That may explain why, in 2012, 16 candidates were on the Centennial State's ballot (the most crowded general election ballot in U.S. history) and 11 were on Louisiana's. In response, Colorado raised the fee from \$500 to \$1,000 in hopes of deterring some of those candidates.

## How Do Aspiring Parties Get On the Ballot?

Candidates from the Democrats, the Republicans and other parties that have achieved "ballot status" based on past performance automatically have a place on the ballot. Those who want to invent their own party and get it listed on the ballot have a separate but equally challenging row to hoe. In fact, the bar is set higher than for an unaffiliated candidate. The party needs to receive recognition from each state either by independent candidates including the name of an aspiring party and having enough success in a general election that they have earned "ballot status," or by filing petitions with the state.

At this point in 38 states, at least one other party besides the Democrats and Republicans has ballot status already. The other parties are:

- The Constitution Party (on the ballot in 12 states)
- The Green Party (on the ballot in 18 states)
- The Libertarian Party (on the ballot in 34 states)

This year, several bills around the country called for reducing the thresholds for independent candidates or minor party recognition—Alabama [SB 221](#) and Connecticut [HB 5303](#), for example. New York [AB 838](#) sought to increase the thresholds. Arkansas enacted [SB 803](#), which now allows someone to be a candidate for president as well as a congressional office.

For existing state-by-state requirements for presidential ballot access, see the [July issue of Ballot Access News](#).

## Deadlines

Independent candidates must file their nominating petitions by state-specific deadlines. These deadlines tend to be in the summer of the election year: The closer the deadline is to Election Day, the easier it is to meet. Winger reports that South Dakota's deadline is April, Texas has its date in May, four other states have their deadlines in June, and the rest are in July, August and even September. The earlier dates are before the major party's nominating events (the GOP meets in Cleveland July 18-21, and the Dems meet in Philadelphia July 25-28), thus requiring independent candidates to have their ducks in a row before the major parties do.

An [Ohio court](#) has found that "deadlines early in the election cycle require minor political parties to recruit supporters at a time when the major party candidates are not known and when the populace is not politically energized."

(cont. on page 3)



(Presidential Ballot Access, cont. from page 2)

## Sore Loser Laws

"Sore loser laws are a powerful form of supply-side regulation," according to Michael Kang, of Emory Law School. He says "they restrict the supply of candidates in the general election by effectively disqualifying candidates who have lost a party primary election from running in the subsequent general election." Over time, more states have enacted them, according to Kang. They "existed in roughly half the states 20 years ago" but now [47 states](#) have them. Connecticut, Iowa and New York are the exceptions.

And yet, these laws "help states maintain the integrity of the nominating and election process by preventing 'interparty raiding,' carrying 'intraparty feuds' into the general election, 'unrestrained factionalism,' ballot clutter, and voter confusion," according to [Substitution of Nominees on the Ballot for Congressional Office, "Sore Loser" Laws, and other "Ballot Access" Issues](#), a 2006 report from the Congressional Research Service. Not all sore loser laws apply to presidential candidates—a fine point keeping Trump's attorneys busy, perhaps.

## Resign-to-Run Laws

Some states require a candidate to give up a current seat to run for a different elected office. And within that list of states, some carve out an exception for elected officials who want to run expressly for the presidency or vice presidency. The exception

was first made in 1959 in [Texas](#) to allow then-Senator Lyndon B. Johnson to run as Kennedy's vice presidential candidate *and* as a candidate for re-election to the U.S. Senate. In July, New Jersey lawmakers introduced a [resign-to-run bill](#), which, if enacted, would force Governor Chris Christie to resign to continue his candidacy for president. Senator Rand Paul of Kentucky has wrestled with this issue for the past year as he sought to be able to run for both president and re-election to the U.S. Senate and successfully pushed for a [change to a presidential caucus](#) instead of a primary to avoid appearing twice on Kentucky's primary ballot.

## Write-in Candidates

Most—but not all—states permit a candidate to mount a write-in campaign. To do so, a person must declare his or her candidacy, and prepare a list of presidential electors. Very slowly, more states have allowed write-in candidacies, and now only Hawaii, Louisiana, Nevada, Oklahoma and South Dakota have outright bans on all write-in candidates, according to Winger, although South Carolina bans write-ins for the presidency.

Given all these interlocking rules, it may be a surprise that in 2012, 24 candidates were on the ballot in at least one state. And, according to [Politics1](#), for 2016, hundreds—yes, hundreds—of potential candidates are possible.

# Legislative Action Bulletin

- 5 states plus Washington D.C. are in session; two states are in special session; Ohio is in skeleton session; Illinois is in extended session.
- 2,322 election-related bills have been introduced.
- 222 bills have been enacted (and 16 have been vetoed)

## Election Crimes Still on States' Radar

Election integrity is always a concern and this year several states have enacted legislation to tighten up their laws concerning election crimes. In previous years, voter I.D. was the primary means of ensuring integrity but now states have chosen to focus on other means of deterring potential fraud.

### ENACTED

Arkansas ([H 1114](#)) extended the crime of perjury to unlawfully applying for an absentee ballot, limited political activity for election commissioners, and allowed the State Board of Election Commissioners to investigate violations of election or voter registration laws ([H 1865](#)).

Kansas ([S 34](#)) strengthened penalties for voter fraud by making it a felony rather than a misdemeanor and allowed the secretary of state to prosecute election crimes.



Louisiana ([H 640](#)) doubled the fines for bribing voters to \$4,000 for the first offense and \$10,000 for the second offense.

Maryland ([H 73](#)) authorized the state attorney general to issue injunctions for violations of election law.

New Jersey ([S 685](#)) amended their ballot bundling law to reduce the number of absentee ballots another person could return from 10 to 3 and required photo identification at time of return.

West Virginia ([H 2157](#)) reenacted statutes that establish absentee ballot fraud or attempts to intimidate an absentee ballot voter as a felony.





## Legislative Summit Resources

We came, we drank Starbucks, we ate seafood, and we talked election issues. It was a whirlwind two days for the Redistricting and Elections Standing Committee sessions but with the help of graphic recorder [Tim Corey](#) we've captured visual summaries of the sessions. Be sure to check out the [Summit resources page](#) for more presentations and handouts from the sessions, using the dates and times listed below.

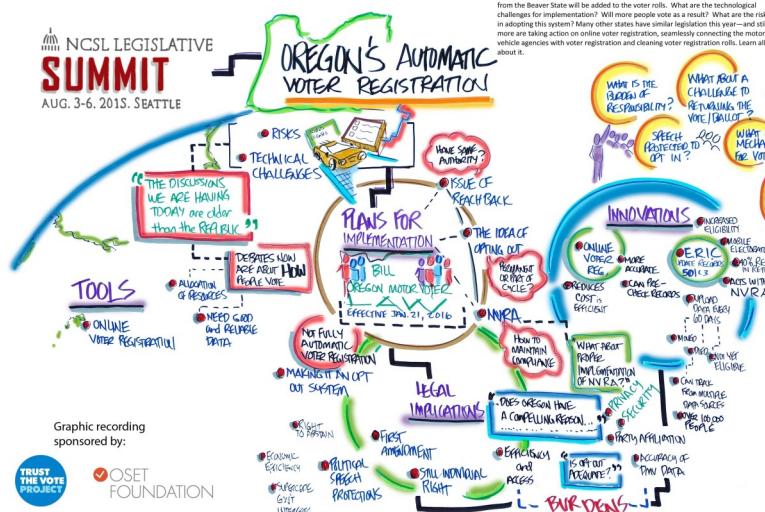


*Monday, August 3, 2015*

- 1:30 p.m. Oregon's Automatic Voter Registration (and Other Registration Initiatives)
- 2:40 p.m. Funding Campaigns: What Have the Courts Said?
- 4:00 p.m. When the Voters Decide: The Role of Ballot Measures in Making Law

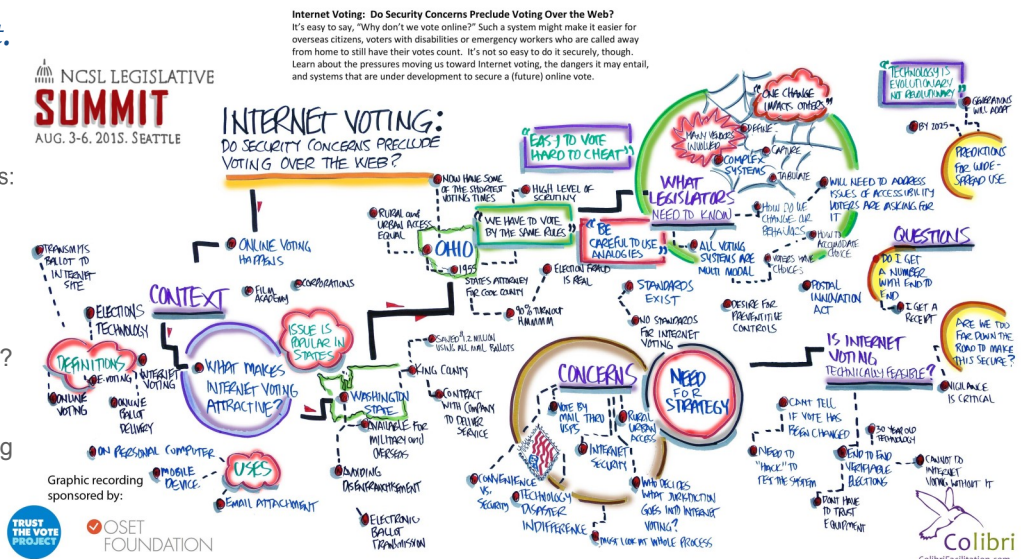
*Tuesday, August 4, 2015*

- 9:45 a.m. U.S. Census Bureau: Update on the Reengineering of the 2020 U.S. Census & the Redistricting Data Program



*Tuesday, August 4, 2015 cont.*

- 11:00 a.m. Redistricting: A Mid-Decade Review
- 12:15 p.m. Increasing Independents: Looking at the Rise of Unaffiliated Voters
- 1:45 p.m. Early Voting, Absentee Voting & Voting by Mail: Is Giving Voters More Options a Good Idea?
- 3:30 p.m. Internet Voting: Do Security Concerns Preclude Voting Over the Web?





## From the Chair

Senator Bill Coley (R-Ohio) is the chairman of the Government Oversight and Reform committee in the Ohio Senate. He is in his first term representing the 4th Senate District which covers the majority of Butler County in southwest Ohio. Sen. Coley spoke to *The Canvass* on August 20.

- Our slogan in Ohio is we want it to be “easy to vote but hard to cheat.”
- We are looking at how we allocate and distribute voting machines and equipment across jurisdictions. If there’s one precinct that has 90 percent of people voting during early voting and another that has far less, we want to be able to move machines around to the areas expecting high Election Day turnout so there aren’t long lines and wait times.
- In Ohio we are under a microscope. I would recommend to other states—be very cautious with the changes you make in election laws. If you are too generous with some of those changes and you go to rein them in, you will have trouble correcting the short comings you find. Err on the side of caution and restraint.
- When people lose faith in the electoral process our country is in deep trouble. We must be vigilant in preserving integrity as we strive to make things easier in voting. Make sure you keep integrity paramount. We’ve had over 40 races that ended in a tie or decided by one vote. With anything that is that close—you have to prevent all the fraud. You can’t be satisfied with preventing most—you have to keep pushing to get better and better.



Senator Bill Coley

Read the [full interview](#) with Senator Coley.

## The Election Administrator’s Perspective

Shelley McThomas is the Democratic director for the Kansas City, Mo., Board of Elections serving more than 200,000 voters. She has served in the role since 2007 and spoke to *The Canvass* on August 18.

- No one ever says “I’m going to grow up to be an election administrator.” You never think of what goes on inside an election board. The position hadn’t been open for 15 or 20 years and a friend told me that they wanted to give my name for it. I looked at the posting and with my varied background and previous skills I decided to go for it and the rest is history. Now I have drunk the Kool-Aid. I am an election geek. I love doing this work.
- One of my strengths is in organization and human resources development. I’m proud that now people can see a career path here and we can recruit good talent. Our industry has changed rapidly, a lot of which is being driven by technology. Now it’s more professional—there are certificates and courses in election administration at colleges and universities.
- I’m committed to an open and transparent process. I want to go the extra mile. I love to have people come to the office because often they don’t think about what it takes for polling places, watchers and ballots to all come together on Election Day.
- We’ve already started pre-election planning for November 2016. Our team is looking at every aspect of our operation. It’s a chance to reflect on how we do things and how we can improve the voting experience—our polling places and polling place management, technology, and have we resolved complaints—to get ready for (in all caps) THE BIG ONE.



Director Shelley McThomas

Read the [full interview](#) with Director McThomas.



## Worth Noting

- Last month's [Canvass](#) was all about the challenges of Internet voting; if you liked that, you may want to see the Heritage Foundation's Hans von Spakovsky's thought-provoking look at [Internet voting](#).
- You may have seen their booth at the Summit, but the folks at [Open Primaries](#) have come out with a new [report](#) on California's top two primary system.
- Get ready to dodge selfie sticks in New Hampshire voting booths. The New Hampshire Supreme Court has [struck down](#) a state law that banned taking pictures of voted ballots and posting them to social media.
- Duluth, Minn., is letting voters decide whether or not to use a [ranked choice voting system](#) for city elections. Also called "instant runoff voting," this system allows voters to indicate their preference of candidates by ranking them, rather than just choosing one candidate.
- Alaska could be joining Oregon as the next state to have a form of automatic voter registration and certainly in a unique way. Supporters are pushing a [ballot measure](#) to link the Alaska Permanent Fund, which distributes money from energy and mining in payments to Alaska residents, with voter registration. It is now in the signature gathering phase.
- Colorado Secretary of State Wayne Williams [responded](#) to concerns about new state rules for overseas and military voters.
- The U.S. Postal Service inspector general has released a new [report](#) estimating that an increase in vote-by-mail could bring in over \$2 million annually for the financially troubled agency.
- Here's a [look](#) at the downside of vote-by-mail, specifically for Native Americans in the western U.S.
- London company Smartmatic declared its elections technology "unhackable." There is no such thing says [John Sebes](#) of the OSET Foundation.
- Need an election law professor on speed dial? Rick Hasen at the Election Law Blog has you covered with his [handy 2015 directory](#).
- The Kansas secretary of state is looking at a [new rule](#) to cancel voter registration applications after 90 days if there is not sufficient proof of citizenship. See last month's [Canvass](#) for an explanation of how its proof of citizenship requirement has led to a dual voting system in Kansas.
- If you can't beat 'em, join 'em—well it was worth a shot anyway. A judge in Louisiana has [rejected](#) a candidate's request to be listed as both a Democrat and a Republican on the November ballot.
- Now for something really funny. The city of Pawnee, Ind., recently had [some concerns](#) about the new voting equipment they purchased.



Many thanks to our speakers and presenters for participating in our sessions at NCSL's 2015 Legislative Summit in Seattle, Wash. This was one of NCSL's most successful Summits and it's clear that election issues are on the minds of many legislators and legislative staff. We will have plenty more programming and information in the coming months, including NCSL's Capitol Forum in December in Washington D.C., on all things election administration, redistricting and campaign finance. Stay tuned!

What are your questions about elections? If we have the information on hand, we'll share it; if not, we'll dig in and see what we can find. Give us a try!

Thanks for reading, and please [stay in touch](#).

—Wendy Underhill and Dan Diorio

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