The Case For Ballot Access Reform In Oklahoma

Oklahomans For Ballot Access Reform

"All Elections Shall Be Free And Equal"

Oklahoma Constitution, Section III-5

About OBAR

Oklahomans for Ballot Access Reform is a coalition of (legally) unrecognized political parties and independent voters who are united in the struggle for truly free and equal elections – an ideal set forth in the state Constitution. OBAR supports initiatives that promote the will of the voting electorate over the will of party leaders and sitting government officials.

One of our primary goals is to reform Oklahoma's laws regulating the formation of new political parties. Oklahoma laws are among the most restrictive in the nation when it comes to the formation of new political parties – particularly when it comes to accessing the highest ticket on the ballot, that of President of the United States.

> *Six states are responsible for 60% of the total national number of signatures needed to place a new party or independent presidential candidate on the ballot in the entire nation. Those six states are California, Texas, **Oklahoma**, North Carolina, Georgia, and Indiana.* - Richard Winger, publisher of *Ballot Access News*

OBAR supports a variety of reforms to Oklahoma's election laws. These include, but are not limited to, the following:

- Reducing or eliminating the petition signature requirement to form a new party
- Extending the length of time a new party is recognized
- Reducing the number of votes required to retain party recognition
- Reducing or eliminating the petition signature requirement to place an Independent Presidential candidate on the ballot
- Adding a write-in option to state election ballots
- Repealing the straight-party voting option on state election ballots
- Removing the names of Presidential Electors from the ballot

The remainder of this brief explores the evidence that supports these reforms.

Identifying The Need

Oklahoma's ballot access laws are arguably the most restrictive in the nation. These laws effectively blocked non-establishment parties and Independent candidates from appearing on the ballot in the last three presidential elections (2004, 2008, 2012). Consequently, Oklahoma voters were artificially limited at the ballot box.

Recent Gallup polls have shown that voters nationwide are trending towards independent or non-establishment party affiliations. A poll released in January 2015 shows this demographic has increased to 43% of the voting electorate.[1]


U.S. Party Identification, Yearly Averages, 1988-2014
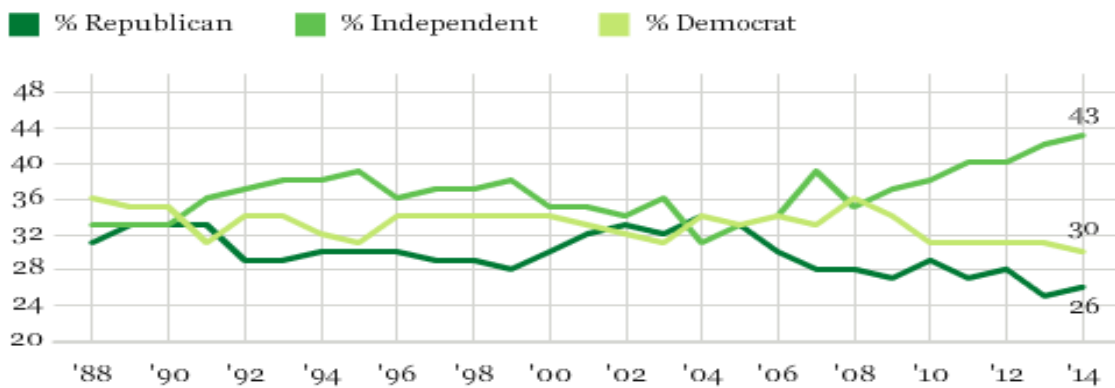
Based on multiple day polls conducted by telephone

GALLUP

A Gallup poll released in October 2013 shows that 60% of voters want a non-establishment party on the ballot.[2]

*Perceived Need for a Third Major U.S. Political Party*

In your view, do the Republican and Democratic parties do an adequate job of representing the American people, or do they do such a poor job that a third major party is needed?
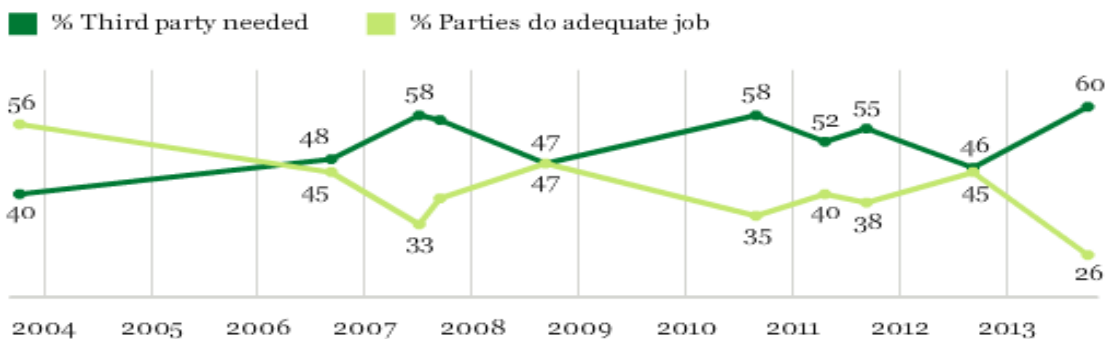
GALLUP

Finally, 61% of voters are dissatisfied with the two major parties.[3]

Average Favorable Rating -- Republican and Democratic Parties

■ % Average favorable rating
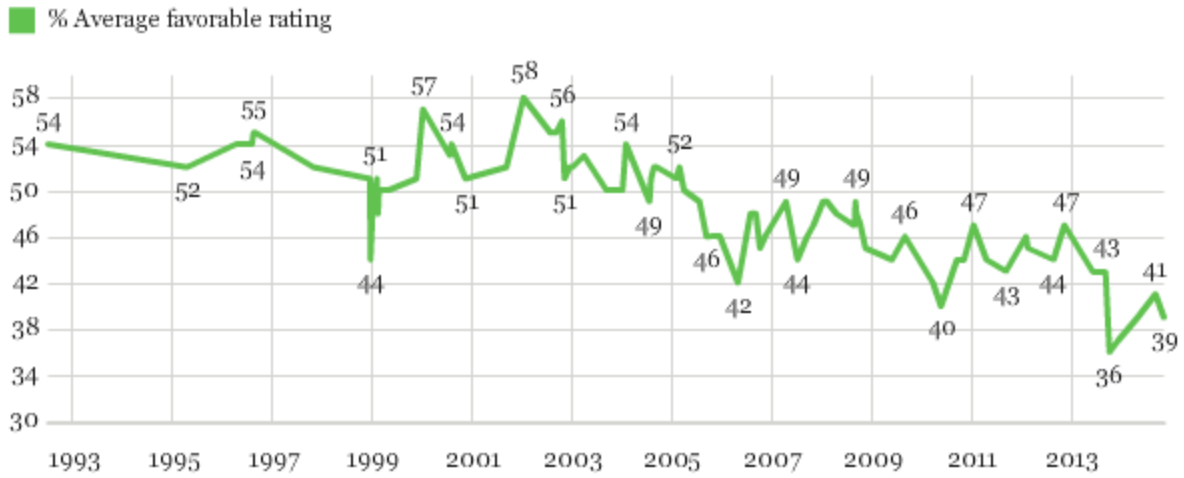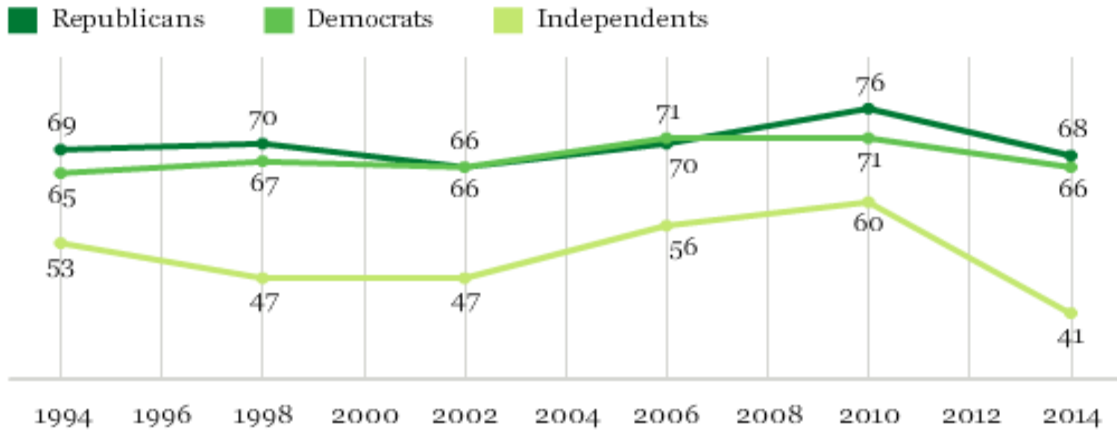

GALLUP

The following graph shows that, among likely voters, only 41% of Independents were interested in voting in 2014.[4]

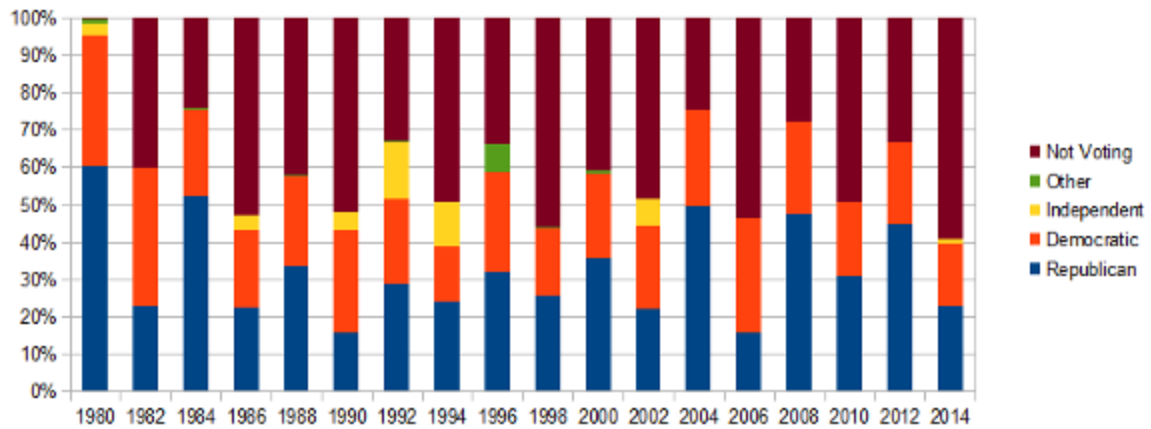### Americans' Certainty to Vote -- by Party ID

% Absolutely certain they will vote in midterm election

■ Republicans   ■ Democrats   ■ Independents

GALLUP

In Oklahoma specifically, voter participation has declined, as shown in the following bar.[5]

These polls and election results suggest that voter disenchantment with the electoral processes, and with candidate options, specifically, is a growing problem. As such, OBAR contends that **by easing the state's ballot-access restrictions to encourage an increase in candidate options, Oklahoma will enjoy renewed faith in its electoral process**.

Political Party Petition

Under current law, new parties must gather signatures equal to 5% of the votes cast in the last general election, either for President or Governor, to gain registered party status.[6] For the 2014 election, a new party would have needed more than 66,000 valid signatures. For the 2016 election, a new party will need more than 41,188 valid signatures. Because signatures can be invalidated for any number of reasons, petition gatherers must often gather 30-50% more than the required number to compensate for this hurdle. **Our goal is to return this requirement to its pre-1974 number – a flat 5,000 signatures (1924-1974).**

When compared to surrounding states, Oklahoma stands out as the most difficult in the region:

State	Number of Signatures	Per Capita (per 100k voters in last governor election)
Oklahoma	41,188	4,994
Texas	47,086	1,002
Kansas	16,960	227
Missouri	10,000	368
Arkansas	10,000	1,178
New Mexico	2,565	510
Colorado	1,000	49

Signature requirements to form a new party in surrounding states, including Oklahoma.

As can be seen clearly, Oklahoma's petitioning requirement is well out of scope when compared to surrounding states. If Oklahoma's petitioning requirement was to be set to the average per capita requirement of surrounding states, Oklahoma would require a mere 556 signatures per capita, with a raw requirement of less than our target goal of 5,000 signatures (4,586).

This high signature requirement also places a huge financial burden on parties seeking recognition. By most estimates, it takes roughly $3 per signature to successfully petition to gain party access.[7] If the current law remains unchanged, it will take a new party seeking recognition in 2016 roughly $185,000 to gain party access (41,188 plus 20,594 signatures as a buffer multiplied by $3 a signature). If we were to bring the signature requirement back to the pre-1974 requirement of 5,000 signatures, the cost would be $22,500 (5,000 plus 2,500 signatures as a buffer multiplied by $3 a signature), leaving any excess funds to go toward promoting the new party's candidates.

This cost is multiplied many times when you consider the fact that most new parties must petition for party recognition before **every** election.

Finally, a political party has only 12 months to gather the required number of signatures. This means that, under current law, petitioners must gather about 5,150 signatures a month to successfully petition for recognition.

By simply reducing the signature burden to 5,000 signatures, the time and financial costs of forming a new party will be greatly decreased, leaving plenty of time and finances for promoting their platform and candidates.

Retaining Party Access

Along with the incredibly high signature barrier to form new parties, Oklahoma places an extremely high barrier to retain party recognition. In order to retain party status from election to election, the new party must field a candidate for Governor or for President, and that candidate must receive at least 10% of the votes cast for Governor or President in that General Election. If the party does not field a candidate or their candidate does not win 10% of the votes cast, the party is no longer recognized, forcing it to repeat the costly petitioning process again.[8]

Since 1974, only one party has managed to meet this vote test, the Reform Party in 1996. The reform party then lost party retention in 1998 when its candidate for governor failed to meet the 10% vote test. No other election has resulted in a new party retaining ballot access.

The table below shows Oklahoma's retention law compared to surrounding states.

State	Party Retention Requirement	Number of Elections Party Retains Recognition
Oklahoma	10% of vote cast for President or Governor	One
Texas	2% for Governor or 5% for any other statewide office	One if they meet the 5% requirement, two if they meet the 2% Governor requirement.
Kansas	1% for any statewide office	One
Missouri	2% for any statewide office	Two
Arkansas	3% for the office at the top of the ballot	One
New Mexico	0.5% for Governor or President	Two
Colorado	1% for any statewide office	Two

Party Retention Requirements in surrounding states, including Oklahoma.

By comparison, Oklahoma's retention requirement far exceeds that of its neighboring states. Oklahoma and Arkansas were the only states in the region in which the Libertarian party was not able to achieve or retain party status in 2014.[9]

Returning party access retention to its pre-1974 requirement of 1% of the last vote for governor or president would bring Oklahoma more in line with its surrounding states.

In addition, Oklahoma, Kansas, and Arkansas are the only states that require parties to meet a vote-test retention requirement every major election cycle. However, Kansas only requires a mere 1% of the votes cast for **any** statewide office; that requirement is easily met from year to year.

We ask that the legislature bring Oklahoma in line with the four states in the region that apply this retention test to **any** statewide office. This would allow new parties greater strategic flexibility with regard to selecting candidates and elections that respect the current political climate.

We also ask that the legislature change the vote-test requirement to every two election cycles (every four years). Such a change would allow Oklahoma voters more time to learn about alternative parties and their candidates, and would likely result in a more active and diverse electorate. Furthermore, new parties would enjoy some relief from the costly and burdensome petitioning process, which is the foremost hinderance to party growth and stability.

Independent Presidential Candidates

Much like its party petitioning requirement, Oklahoma has the most restrictive requirements for getting an Independent or unaffiliated Presidential candidate on the ballot. Oklahoma's was the only electorate in the nation to have only two candidates for President in the last three elections (2004, 2008, 2012). If not changed, Oklahoma could once again be the only state with two choices for President in 2016.

Under current Oklahoma law, only recognized parties and the campaigns of nonpartisan candidates (which meet the petition requirement) are granted access to the ballot. With a petitioning requirement of 3% of the last Presidential election[10], no Independent Presidential candidate has been on the ballot since 1992, when Ross Perot ran as an Independent.

Much like with Oklahoma's petitioning requirements for political parties, the petitioning requirement for Independent Presidential Candidates is outside the norm for the region.

State	Number of Signatures	Per Capita (per 100k voters in 2012)
Oklahoma	40,047	3,000
Texas	79,939	1,000
Kansas	5,000	432
Missouri	10,000	363
Arkansas	1,000	94
New Mexico	15,388	1,963
Colorado	$1,000 fee	N/A

Signature requirements for Independent Presidential Candidate in surrounding states, including Oklahoma.

Once again the data clearly reveals Oklahoma's petitioning requirement is way out of scope when compared to the surrounding states. If Oklahoma's petitioning requirement were to be set to the average per capita requirement of surrounding states, Oklahoma would only require a per capita of 642 with a raw signature requirement of 7,438 signatures.

It should also be noted that Colorado offers a fee in lieu of a petition. If Oklahoma offered the same option, the petitioning requirement would become moot. Under current law, the Presidential office is the only elected office in the state that does not have a fee in lieu of petition when declaring candidacy.

Because of Oklahoma's harsh ballot access laws for political parties and Independent Presidential candidates, Oklahoma voters have been limited to only two candidates for president in the last three elections. In 2012, the next lowest number of candidates on any given state ballot was four candidates. The average number of candidates on all ballots in the US was eight.

With Oklahoma falling so far below the national average, and even the next lowest states, it is time that Oklahoma reformed its Presidential ballot access requirements. By reducing the petition requirement from the current 3% to a flat 5,000 signatures and implementing a filing fee of $5,000 voter choice for presidential elections will greatly increase voter engagement and create a more active political climate.

Other Areas In Need Of Reform

The previous sections highlighted the need to reform the petitioning and retention requirements for new parties and Presidential candidates. However, there are a number of other areas in which Oklahoma falls behind other states.

Write-In Voting

Oklahoma is one of only five states that still ban write-in voting, along with Hawaii, Nevada, South Dakota and Louisiana. Implementing a write-in option for voting can fix one area of concern that has hit Oklahoma over the last decade, the fact that less than 50% of legislative races end up on the General Election ballot.

With the filing period for elected office being held during the legislative session, potential candidates have less time to inspect the record of incumbent legislators and other elected officials before making the decision to run. By implementing a write-in option with a filing deadline much later in the year, potential candidates could have more time to build support for their run for office.

Straight-Party Voting

Oklahoma is one of only eleven states that still uses a straight ticket device on its general election ballots. Over the last 50 years, 9 states have repealed the device and none have brought it back.

Straight Party voting is especially harmful to candidates who choose to run as Independents as they are not represented by the device. This concern is magnified when Independents are one of only two candidates on the ballot for any given office.

Removing The Names Of Presidential Electors

Oklahoma is one of only four states that still lists the names of its Presidential Electors on the ballot. If Oklahoma were to reform its party and presidential petition requirements this could create a messy ballot. By removing those names and leaving only the names of the President and Vice President candidates, the ballot would be cleaner and less confusing when more candidates and parties are listed.

Addressing Concerns

Throughout this effort to reform Oklahoma's ballot access laws, there are always a number of concerns raised regarding the impact these changes would have on elections, mostly centered around the Presidential elections. To address these concerns, we present the following information.

Oklahoma's Laws Limit Voter Choice

Using the Federal Election Commission's official results from the 2012 Presidential Election [11], we can learn a lot about the political climate around the country. It also provides us with a few things that we can use to help ease the minds of those concerned about efforts to bring ballot access reform to Oklahoma.

To start off, this report solidifies one fact that we have often repeated. Oklahoma is the only state to have limited its voters to two choices for President. 2012 was the third Presidential election in a row that this has happened. The next fewest candidates on any ballot in the US in 2012 was four candidates. Three states had that number, Hawaii, Missouri and South Dakota. The next lowest number of candidates on a ballot doubled what was on the Oklahoma ballot.

Here are other statistics from this report. The median number of candidates on any state ballot counting and not counting Oklahoma is eight. If you look at this on average, the average number of candidates on the ballot, including Oklahoma's, is 7.92. Without counting Oklahoma, the average number of candidates on the ballot is eight. This means that Oklahoma has limited the number of candidates to a quarter that of the average in the US. The average voter outside of Oklahoma had six more candidates than we did.

Other Statistics of Note

Other things to note from recent election statistics are just who voters from other states could choose from. Looking at that data, 49 states plus the District of Columbia were able to vote for Gary Johnson. 47 states plus DC were able to vote for Jill Stein. 38 states could vote for Virgil Goode. 28 states had Rocky Anderson as an option. Again we must emphasize that Oklahoma voters could vote for none of these candidates.

Voter Confusion

So let us turn to the arguments against opening Oklahoma's ballots to other parties. Surely with all this choice in the other states, these arguments have merit? First, let's look at one such argument, voter confusion. The argument is that voters will be confused about who to vote for if they are presented with too many options. That must be a problem in some of these other states. this argument falls flat when presented with the facts.

Let's look at the top state for the number of candidates, Colorado. Colorado voters were presented with a ballot containing the names of *sixteen* candidates. That is eight times the number of candidates in Oklahoma. Colorado voters also had a write-in option for a total of seventeen lines on its presidential ticket. Were voters in Colorado overwhelmed and confused? Hardly. The vast majority of voters in Colorado had no problems finding the Republican and Democratic candidates on the ballot and were able to create a clear winner in the race.

The same can be seen throughout the report. In all states, the majority of voters were able to find and vote for the Republican or Democratic candidate of their choice. In fact, there is no state that shows anything irregular in how votes were dispersed.

The Spoiler Effect

The next biggest argument against opening up the ballot is that alternative parties will create a "spoiler effect" between the Republican and Democratic candidates. What this means in real terms is that supporters of our current laws are afraid that people won't want to vote for their candidate of choice and so feel the need to artificially restrict the choice of the voter. Putting aside the fallacy of this argument, let's see if this actually has any merit.

First, let's look back at Colorado. Surely with sixteen candidates and a write-in option, there had to be some spoiler. The data does not support that idea. If you add up all the alternative candidates' votes, you will get 61,176 votes cast. If you look at the difference between the winner in Colorado, Obama, and the runner-up, Romney, you will find a difference of 137,858 votes. In other words, more than double the votes cast for alternative candidates. Even if all those alternative voters voted for Romney, he still would have lost in Colorado.

What about something a little more close to home, such as those three states with four candidates? With a more compact ballot, wouldn't the spoiler effect be more apparent? Not at all. The votes cast for the two alternative candidates in those three states were mere fractions of the difference between the major party winner and runner-up.

The only state in the entire US where a "spoiler effect" could possibly even be argued is that of Florida. In Florida, the total votes cast for alternative candidates is 72,976. The difference between the winner, Obama, and the runner-up, Romney, was 74,309. That is a mere 1,400 difference but still a far cry from a spoiler. Even if all those alternative voters voted for Romney, he still would have lost, even if by a razor thin margin.

Yet, digging deeper into the argument of a spoiler, it is usually in terms of a single candidate flipping the election, not a small army of them. In Florida, the candidate with the third highest number of votes was Gary Johnson with 44,726 votes. Or just a little over half the difference between the major party candidates candidates. this means that he fell far short of creating a spoiler in Florida.

Even when we consider races where an Independent or alternative party candidate earns more votes than the difference between the winner and runner-up, this is not an indication of a spoiler. This is an indication that a sizable number of voters in that region are not satisfied with the other candidates on the ballot. By limiting those voters choices through harsh ballot access laws, these voters won't have their minds changed to like someone they previously did not like.

Fringe Extremist Parties And Candidates

One final concern is that if Oklahoma opens up its ballot access requirements, then fringe or extremist groups or candidates will be on the ballot.

Under current law, any extremist group can just pay a fee and run candidates as Independents for any office except President. In fact, Independents from such fringe groups as the Southern Party and the Natural Law Party have done so. Voters have no party labels to guide them about the party affiliation of Independent candidates. Recent elections show that Independents usually get two to three times as many votes as candidates identified as representing a third party.

And there's nothing to stop an extremist candidate from running under current laws on a major party ticket, as former KKK leader David Duke did when he ran for office in Louisiana as a Republican.

Yet, all this ignores the most important filter in this case, the voter. Voters are the most powerful check on fringe groups and candidates. With the proper information and labels, voters can easily identify and ignore extremist and fringe candidates. Limiting who can get on the ballot through harsh ballot access restrictions does little to help the voter.

Conclusion

With all the above information in place, we the undersigned recommend that the Oklahoma Legislature implement the following legislative changes.

- Reduce the number of signatures required to form a new political party to a flat 5,000 signatures.

- Decrease the percentage of the vote required to retain party recognition to 1% of the votes cast in the last Gubernatorial election.

- Increase the length of time a party retains recognition from one election cycle to two (e.g. every four years).

- Decrease the number of signatures to place an Independent candidate for President or a candidate for an unrecognized party from the current 3% of the last Presidential Election to a flat 5,000 signatures.

- Implement a filing fee in lieu of petition of $5,000 for an Independent candidate for President or candidate for an unrecognized party.

- Create a write-in option for all elected offices on the ballot.

- Repeal the straight party voting device from the ballot.

- Remove the names of Presidential Electors from the ballot.

Implementing these changes will not only give new parties and alternative candidates access to the ballot and all offices on the ballot, it will also increase voter confidence in the election system and better voter engagement in the elections. Voters demand alternative candidates and new parties.

Signed

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