

**IN THE SUPREME COURT OF FLORIDA
STATE OF FLORIDA**

NEIL J. GILLESPIE,
NEIL J. GILLESPIE FOR PRESIDENT,

Petitioners,

v.

PETITION NO. _____
in forma pauperis

SECRETARY OF STATE KEN DETZNER,
Florida's Chief Election Officer,

Respondent.

_____/

SEPARATE APPENDIX OF EXHIBITS #2

Exhibit 13 *State ex rel. Perez et al. v. Wall, Judge*

Exhibit 14 The Clinton Years, FRONTLINE PBS, "Buy One, Get One Free"

Exhibit 15 Laura Secorun Palet of Ozy.com, America's First Female President?

Exhibit 16 Dennis Jacobs, *The Secret Life of Judges*, 75 Fordham L. Rev. 2855

Exhibit 17 Bronson's email and Gillespie's Oath of Candidate

Exhibit 18 The ABA Journal article, and linked Washington Post story

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26 So. 1020
 49 L.R.A. 548, 41 Fla. 463, 26 So. 1020, 79 Am.St.Rep. 195
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Supreme Court of Florida.
 STATE ex rel. PEREZ et al.
 v.
 WALL, Judge.
 Nov. 7, 1899.

Application by the state of Florida, on the relation of Rita Perez and others, for a writ of mandamus to Joseph B. Wall, judge of the Sixth judicial circuit. Denied.

West Headnotes

Judges 227 45

227 Judges

227IV Disqualification to Act

227k45 k. Relationship to Party or Person Interested. [Most Cited Cases](#)

Under F.S.A. § 314.10, providing that a judge shall not preside in any cause in which he would be excluded from being a juror by reason of interest, or consanguinity or affinity to either of the parties, a judge is disqualified to sit in a case in which the husband of his wife's niece is an interested party.

Syllabus by the Court

Under section 967, Rev. St., husbands of an aunt and niece are so related to each other by affinity as to disqualify the one from sitting as judge in a case in which the other is an interested party.

*463 **1020 Gunby & Gibbons and C. C. Whittaker, for relators.

Sparkman & Carter, for respondent.

MABRY, J.

This is a proceeding by mandamus to compel the Hon. Joseph B. Wall, judge of the Sixth judicial circuit, to take cognizance of and determine a certain cause pending in Hillsboro county, in said circuit,

wherein Solon B. Turman is complainant, and Rita Perez et al. are defendants, and in which it is made to appear that said judge has refused to act on the ground that he is disqualified.

The ground of disqualification relied on by the judge in his answer is that his wife and the father of the wife of complainant, Solon B. Turman, were brother and sister of the full blood, and that his (the judge's) wife and the wife of Solon B. Turman were still living. The question is whether the husbands of an aunt and niece of the full blood are so related to each other as to disqualify*464 the one from sitting as judge in a case in which the other is an interested party.

Our statute provides that 'no judge of any court shall sit or preside in any cause to which he is a party or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity or affinity to either of the parties; **1021 nor shall he entertain any motion in the cause other than to have the same tried by a qualified tribunal.' Rev. St. § 967.

It has been correctly stated that 'the common law was watchful over the purity of the jury trial, and, to secure the fair administration of justice, guarded against the influence of those passions most likely to pervert the judgment of men in deciding upon the conduct and controversies of their fellow men.' [Jaques v. Com.](#), 10 Grat. 690. Challenges were allowed to the polls in capita, which were exceptions to particular jurors, and they were also either principal or to the favor. 'A third ground of challenge to the polls is propter affectum, -as that a jurymen is of kin to either party within the ninth degree.' 2 Tidd, Prac. 853. And this was a principal challenge. The venire facias commanded the sheriff to summon 12 good and lawful men of the body of the county, qualified according to law, by whom the truth of the matter might be the better known, and who were in no wise of kin to either party, to make the jury. Id. 778. Under this writ, relations by affin-

ity were excluded from the jury. As Lord Coke says, 'affinity,' in one sense, is taken for 'consanguinity' or 'kindred,'-as in the writ of venire facias; that affinity is a principal challenge of a juror, and equivalent to consanguinity, when it is between either of the parties,-as if the plaintiff or defendant marry the daughter or cousin of the juror, or *465 the juror marry the daughter or cousin of the plaintiff or defendant, and the same continues, or issue be had. Co. Litt. 157.

It had been decided by this court that relationship, either by consanguinity or affinity, to one of the parties to a suit, within the ninth degree, is, by the common law, a ground of principal challenge of a juror. O'Connor v. State, 9 Fla. 215; Morrison v. McKinnon, 12 Fla. 552. It was held in Ex parte Harris, 26 Fla. 77, 7 South. 1, 6 L. R. A. 713, that affinity is the tie between a husband and the blood relatives of the wife, and between a wife and the blood relatives of the husband; but it does not exist between the blood relatives of either party to the marriage and those of the other, and consequently no affinity existed between a brother of a wife and the brother of her husband, so as to disqualify the husband's brother from presiding in a trial where the wife's brother was charged with crime. The principle stated that no affinity exists between the respective blood relatives of the parties to the marriage is unquestionably true, and was decisive of the case; and it is also true, as a general rule, that affinity only exists between a husband and the consanguinei of his wife, and, vice versa, between a wife and the consanguinei of her husband. The dictionaries generally define direct affinity to be the relation brought about by marriage between a husband and the kindred of his wife and between a wife and the kindred of her husband.

Under the rule stated, Judge Wall is related by affinity to Solon B. Turman's wife within the ninth degree, whether we reckon according to the canonical rule or by the civil law, she being the niece of the full blood of the judge's wife, and he could not, of course, preside in a case where she was an inter-

ested party. But how stands *466 it when the niece's husband is a party? It was decided in Kelly v. Neely, 12 Ark. 657, that in such a case the judge was disqualified. In Tennessee it was held that a judge was not disqualified by affinity to sit in a case where his wife's sister's husband was an interested party. Judge Cooper, in speaking for the court (Hume v. Bank, 10 Lea, 1), says that: 'Affinity, as distinguished from consanguinity, signifies the relation which each party to a marriage, the husband and the wife, bears to the kindred or blood relations of the other. The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other;' but 'the relationship by affinity does not extend further, and hence the maxim 'Affinis mei affinis non est mihi affinis,'-a person related by affinity to one who is related to me by affinity is not related to me by affinity.' The rule stated is all right, but its application to the facts of the case causes us trouble. A judge undoubtedly is related by affinity to his wife's sister, her blood relative; but the sister's husband is not so related under the rule, according to this decision, because he is the affinis of his wife. We do not think it can be maintained that a husband is related to his wife by affinity. They are embraced in the definition of neither affinity nor consanguinity, but are regarded in law, as correctly stated by Judge Cooper, as one person. If we undertake to apply the rule of affinity to the relation of husband and wife, we cannot exclude the husband from sitting in a case where his wife has the right to sue alone, and is an interested party, as they are not related to each other by affinity or consanguinity; and no one would ever suppose that this was permissible. We admit that a decided*467 majority of the American courts, as shown by cases cited, in applying the rule of affinity, have announced conclusions that would not disqualify a judge to sit in a case where the husband of his wife's niece was an interested party (Higbe v. Leonard, 1 Denio, 186; Eggleston v. Smiley, 17 Johns. 133; Rector v. Drury, 4 Chand. [Wis.] 24; Chinn v. State, 47 Ohio St. 575, 26 N. E. 986, 11 L. R. A. 630; Kirby v. State, 89 Ala. 63, 8

South. 110; Deupree v. Deupree, 45 Ga. 415; Oneal v. State, 47 Ga. 229; [Johnson v. Richardson](#), 52 Tex. 481; [Moses v. State](#), 11 Humph. 232; [Bigelow v. Sprague](#), 140 Mass. 425, 5 N. E. 144; [Rank v. Shewey](#), 4 Watts, 218; [Chase v. Jennings](#), 38 Me. 44; [Tegarden v. Phillips](#), 14 Ind. App. 27, 42 N. E. 549), but they proceed upon the theory, it seems to us, that the relation of husband and wife is one of affinity, and the rule as to such relation is applied. We are of opinion that they should be regarded **1022 as one person in law, so far as the question under consideration is concerned, and this will disqualify a judge where any blood relative of his wife, within the ninth degree, or the husband or wife of such relative, is an interested party. Principal challenges or to the favor of jurors proceeded upon the ground that they were biased in favor of one of the parties, and thereby rendered unfit to determine the truth of the matter to be submitted to them. When they were interested in the matter to be tried, or were of kin to either party in the ninth degree, there was such a manifest presumption, in law, of partiality, as to set them aside as for a principal cause of challenge; and when the challenge was to the favor it was determined by triors. Out statute disqualifies a judge when he would be excluded from being a juror by reason of interest, consanguinity, or affinity to either of the parties; *468 and whatever interest, consanguinity, or affinity that would, in law, exclude a juror as for principal cause of challenge, will disqualify the judge. The statement of the rule by Chitty in his book on Criminal Law (volume 1, pp. 541, 542) is as follows: 'The third description of challenges are those which arise propter affectum, or on the ground of some presumed or actual partiality in the jurymen who is made the subject of objection; for the writ, requiring that the jury should be free from all exception, and have no affinity to either party, Must evidently include both these grounds of challenge. If, have no affinity to either party, must evidently within the ninth degree, though it is only by marriage, a principal challenge will be admitted.' In [Mounson v. West](#), 1 Leon. 88, it is stated that it had been held a principal challenge where the sheriff's

wife was sister to plaintiff's wife, and where the brother of the defendant's wife had married the daughter of the sheriff; and it was decided by Chancellor Walworth ([Paddock v. Wells](#), 2 Barb. Ch. 331) that: 'Relationship by affinity may exist between the husband and one who is connected by marriage with a blood relative of the wife. Thus, where two men marry sisters, they become related to each other in the second degree of affinity, as their wives are related in the second degree of consanguinity.' See, also, note to [Cain v. Ingham](#), 7 Cow. 478, [Marshall v. Eure](#), 1 Dyer, 37b, and [Railroad Co. v. Schuyler](#), 28 How. Prac. 187.

Our judgment is that, whenever a judge will be disqualified to sit in a case because a blood relative of his wife is a party, he will likewise be excluded when the husband or wife or such relative is a party, as they should be regarded as one person in interest and in law, so far as the matter in litigation is involved. The result is that *469 the peremptory writ of mandamus will be denied, and it will be so ordered. As the writ must be denied on the ground stated, we do not consider the propriety of the remedy resorted to in this case. See [State v. Call](#) (decided at this term) 26 South. 1016. Order to be entered denying peremptory writ.

Fla. 1899

State v. Wall

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Robert McNeely Photo

clinton & begala (10.24.1992)

1 The Campaign

The Arkansas governor's campaign for the presidency was rocked by scandal almost from the start. But he refused to be derailed and threw himself into the race, proving himself to be a consummate campaigner.

Love at First Sight

In October 1991, five-term Arkansas Governor Bill Clinton declared he was running for President of the United States. For the team starting to build around him, it was political love at first sight -- Clinton appeared to be the centrist, charismatic candidate for whom they had been waiting...

Stephanopoulos: It's hard to talk about it now, because it's become common wisdom to everybody else. But at that time it was a new experience, this notion of meeting someone who is not just in your face, but kind of in your skin from the moment he meets you. You know, you just feel completely connected to him when he turns to you.

... Oh, the smarts. The guy had thought everything through, both on the politics and the policy. I remember when I interviewed for the job, which wasn't really an interview. It was him -- me listening basically for an hour and a half to Governor Clinton just go through the entire landscape of the campaign. And he basically, the very first time I talked to him, in the seamless web of issues and politics said, "It's all going to come down to Illinois on March 17th. If I win the game in Illinois, I'll get the nomination." Exactly what happened. But he had it in his head back in September.

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EXHIBIT

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Begala: I had been in the business for a number of years by then and it was still political love at first sight. I thought he was the ablest guy I had ever met in politics.

Emanuel: Early on, until part of December, there was still the Cuomo cloud that hung over -- that he was going to enter the field. You had two senators. One was Bob Kerrey, and his past, specifically his biography as it related to Vietnam, was kind of the new face of the party. You also had Senator Harkin in there and former Senator Tsongas. So that combination. I remember my father, when I said I was going down to Little Rock to work for Governor Clinton's run for president, he thought maybe somebody needed to check the medication cabinet. He thought somebody was playing around with it. He had never heard of him, he said. I said, "Well, I think he's going to be the next President of the United States."

Myers: I saw a candidate who knew why he wanted to be president and he knew how to get there. He didn't know whether he would be successful but he had in his head kind of a roadmap based on issues. He had a sense of where the country was. There was this uneasiness that there was this kind of economic anxiety and he was pulling together a team that was going to help him get there. But, you know, he was the engine that was driving it, and from the very beginning I was really aware this was a special politician. This was somebody who had more innate talent, both with the substantive side and the politics, than anyone I'd been around. And it was just fascinating to watch him.

Begala: Most politicians, when they meet with a guy like me, or a guy like Carville, tell you about how they can win. They would say, "Look, my wife is from Illinois, which will help me in the Midwest, even though I'm a southerner and I have close alliances with these moderates." They would give you the strategy. Clinton gave us the policy....

I was bowled over. And then he went through the policy specifics, and he focused on these two things. He said, "Economically we're sliding down, and socially we're coming apart." I used to tease him that he had three solutions for every problem, but he went on like this for hours, and we were completely bowled over.

• The Campaign Unravels

January 1992 was a bad month for Bill Clinton. First there were the allegations from Gennifer Flowers that she had carried on a 12-year affair with the governor, and then came the charges that Bill Clinton had avoided the Vietnam draft. The lurching from crisis to crisis not only took its toll on the candidate's popularity, but also shook the campaign staff's faith in him.

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Carville: December went fine. If you remember, Cuomo was thinking about running, he decided that he wasn't gonna run and we sort of were doing -- picking up pretty good in the polls. We had a pretty good December. Then in January, as we say in the trade, we got a little incoming.

Stephanopoulos: The first [*Star* tabloid story] came out and it was kind of easy. It was -- the *Star* alleged that Clinton had affairs with five women, all who had denied it in the past. It had come up in his Arkansas gubernatorial campaigns. And, you know, we just said, "We don't know why everybody's changing their story today or why the *Star* is printing that stuff. It's just cash for trash. And let's keep moving."

Carville: [on the cash for trash strategy]: I think the strategy was to say that there was a lot of money that was passing hands here. It was all odd that this was coming up this 10 days or whatever it was before the election [New Hampshire primary]. I think the strategy was pretty obvious and I think the strategy worked pretty good.

Begala: A lot of times in a campaign you get in trouble, and the inclination of handlers is to hide the candidate, to so-called "protect" him. Well, in this case, there was no one else who could answer anyway, and he was our ablest spokesman. So we set about looking for a venue where he could go and answer these things.

Myers: I think basically all we tried to do was survive. It was really a tremendous feeding frenzy. I remember we were making a swing through the south right around the time all hell was breaking loose. And Governor Edwards was there and he said, "Now, what's this story about this, this girl?" Clinton kind of said, "Yeah," blah, blah, blah. And he said, "How much did they pay her?" And Clinton said, "Well, that's the point, it's \$150,000." And Edwards says, "\$150,000? If they paid all my girls \$150,000 they'd be broke." And Clinton just cracked up because it was much-needed comic relief at the time.

Carville: You've got to fight back. Yes, sir. And our strategy from day one was to contest at every point. And, to have them out there... the best person to give the explanation of what happened and where it was, was then-Governor Clinton and Mrs. Clinton. And that's why we did the *60 Minutes* thing, because it was the biggest deal that there was, and you had to be shown that you were out taking it on.

You advised the president that the best thing he had going for him in that interview was Mrs. Clinton.

Carville: Yeah.

How come?

Carville: Because in the end, if the wife is with... you know, people overwhelmingly, they say, "Look, that's his wife, they're fine." ... Clearly had he gone on without her it would have been a big gap...then my advice would have been if she wouldn't go, don't go.

Stephanopoulos: And what worked for them was, I think, a couple of things. One, they did it together. Again, once the couple is together, it says to the rest of the world, "This is our business, not yours." And two, and it's hard to get back to this at a time when the country is doing so great right now, but in January 1992 a lot of people around the country were worried about the economy. People were hurting. And the very basic message -- that the campaign should be about everybody else's future, not my past -- was very powerful to a lot of people watching, especially in New Hampshire.

Myers: So, you argue the facts and you try to make the case that Clinton has always had political enemies, Arkansas is an interesting state in that regard. A lot of stuff had gone on. But, obviously, over time as Gennifer Flowers gave way to the draft, to other questions, it became harder. And it became hard for people like myself and George Stephanopoulos and Paul Begala who had to go out there and defend him every day. You learned to be very careful and you learn to listen very carefully to what he said, and you learn to try not to go further than what he said. And we had a lot of conversations over the months and years about "What do you think that means?" You know, "What can we say? Where's the safe ground here?"

Stephanopoulos: One of things that James and I tried to do very early on was to authorize just a full investigation of our own record, of Clinton's own record, of Clinton's own statements, so that we would -- at a minimum, we wouldn't compound any problems by saying things that weren't true. And that there wouldn't be any problem of, you know, telling the story of what happened in Vietnam. The problem is when you appear to be lying about it. But you know, there was a great reluctance to do that. We ended up doing some. But by the time we really did a full vet of Clinton's background, it was too late. The stories were already coming out.

Begala: We were handed [the draft letter] as we landed in New Hampshire. We had been in Arkansas. The governor had gotten badly sick, a high, high fever. And this story of the draft had broken in the Wall Street Journal, and he had to go home. He was bad sick. So he was home trying to recuperate. We were getting poll numbers that showed us absolutely collapsing in a way we never did with the earlier scandals. And so we stayed up all night writing a speech that basically said, "I'm going to fight like hell." You know, "We're not going to give up. Try this one more time." And we flew up there, and we're landed, and we're all revved up, and he's ready to go. And as we got off the

plane, Mark Halperin of ABC hands Georgie and I this letter, and I'm looking over George's shoulder as he reads it, and I see that line, "Thank you for saving me from the draft," and my knees kind of buckled. And George said, "That's it. We're through. We're out. It's over."

Carville: I said, you know, "If anybody who is 21-22 years old could write a letter like this you could almost see kind of a future president there." So we took the letter, published it, put it in the newspaper, and we get a *Nightline* date.... *Nightline* did an interesting thing. They read the whole letter.

Begala: Ted [Koppel] read the whole letter to the country, and you could see, even among the press corps, which really did think he was a slick Willie, you could see for the first time they thought, "Well, okay. This is a highly nuanced letter from a tortured young man who's really thinking through these issues just like every other young man of that generation did."

So your initial reaction was wrong? I mean, you initially thought that maybe this was --

Begala: Before I had read it. The first thing I saw was that line. But, no, even me, who did not have much of a feel for that time, I thought, "Yeah, this letter" -- I mean, the line we used was, "This letter is going to be your best friend."

• The Comeback Kid

Following the early scandals of the campaign, it looked like Bill Clinton's candidacy was over. Yet the governor refused to give up, even if it meant he had to shake every hand in the state of New Hampshire. Amazingly, he came in second in that primary and declared that "New Hampshire has made Bill Clinton the Comeback Kid."

Myers: Over the course of his public life, he's never been more focused than when his back was up against the wall. I don't want to say it helped him, but it was the fire that steeled him for the rest of the campaign. He was a much better candidate for going through New Hampshire, not just because of the scandals, but getting down there and campaigning and looking in people's eyes. And he really absorbed a lot of -- he really did feel their pain. I mean it was an amazing thing to watch.

But, yeah, he took the scandal, what was handed to him or the situation that he helped create, and he managed to -- he took the energy from that and he did manage to boomerang it. He was the focus. Everybody was watching him, waiting for him to go down. And

what did he do? He used that spotlight to turn the thing from being about him to being about what he could do for the people.

Stephanopoulos: There's nothing you can do on election day. Election day in campaigns you basically wait. And we waited in James' hotel suite. And we waited for the first exit polls, which would come in around 11:00 o'clock. And we were a pretty grubby crew at that point. It was kind of James, me, Paul, Bob Boriston. Mandy [Grunwald, media advisor] was around. And what I remember most vividly waiting for the exit polls was James walking around the suite in his undershirt lashing himself on the back with a piece of rope like a medieval penitent and --just lashing himself, lashing himself, lashing himself.

And then the first exit polls come in. And miracle of miracles we're a strong second place. And everything changes. We order cheeseburgers. Paul and Bob start to write out the acceptance speech that night. Clinton is still out campaigning. He's amazing. But the germ of what turned out to be one of the most memorable lines of the campaigns started then. I don't know who takes credit for it now or who gets credit, but I think it was some combination of Paul and Mandy came up with the line, "Tonight New Hampshire's made me the Comeback Kid." And we all felt like comeback kids that afternoon because the campaign had been on life support and now we had a second chance.

• The Mother of All Campaigners

Bill Clinton's staff was in awe of his ability to campaign. They had never seen anything like it and in private called him "Secretariat." His volatile temper -- or what was known as the "standard morning outbursts" -- was mainly kept in private. And by the summer of 1992, the governor's grasp of the issues, his ability to empathize, and his sheer tenacity paid off. It was clear he would be the Democrats' choice.

Stephanopoulos: We called him "Secretariat" because he was just the absolute thoroughbred of thoroughbreds of campaigners. Whether it was working a rope line or giving a speech or devising the policy or just having the stamina to last through four 20-hour campaign days in a row and do it with good humor and grace. None of us had ever seen anything like this before. I mean, he is the politician probably not only of his generation, but if you're thinking just pure raw political skills, probably the politician of the century. And it was an awesome sight to watch.

Carville: You had the sense that these were really, kind of, extraordinary people and extraordinarily talented. Okay? And I don't, it's kind of a hard -- you can't really define it, but there was a certain

way that he could change a chemistry in a room. He could walk into a room of a hundred people and immediately have the sense of who the most vulnerable person was, whose mother just died or who just had a child that had a crisis or something like that. And it's an instinctive thing. I can't explain it. I've just seen it happen again and again and again.

Myers: I'm a baseball freak. So, I say he's the guy who could throw a no-hitter and hit 50 home runs. I mean nobody can do that, nobody can master the substantive side of policy and genuinely thrive on the human contact of the politics. But he does both. And, I mean he was the best strategist in the campaign, most of the time. He was totally steeped in the details of "How many electoral votes, how many states are we targeting, why are we targeting them, what's our organization in those states, who are the local elected officials who are going to be with us, does this make sense?" Every step of the way he was totally involved in decision-making.

... Sometimes, I shouldn't say save him from himself, he's obviously tremendously successful, but one of his tendencies has been and throughout his presidency at times, has been to try to do everything, to talk about every issue, emphasize everything, which means you're emphasizing nothing. So, that was the flip side of him. He's interested in everything. He has encyclopedic knowledge. He has a voracious sort of appetite for information about everything from the Beatles to the details of nuclear disarmament.

• Buy One, Get One Free

Early in the campaign, Clinton declared that he and his wife were basically a bargain deal -- "buy one, get one free." While Mrs. Clinton was credited for keeping the candidate and the campaign focused, she also became an issue herself. In the spring of 1992 -- following criticism of her law firm's work with the state of Arkansas -- she defended her decision not to "stay home and bake cookies." From that moment on, Hillary Clinton was as controversial a figure as her husband.

Myers: And then after January and February of 1992, the Jennifer Flowers thing broke and they appeared on *60 Minutes* together. There was a sense that he was in debt to her. And he was obliged to take seriously her advice.

... By defending him and standing by him and saying to the world, "You know, we've had our ups and downs, it's none of your business. We're still together. And, you know, leave us alone." And-- I mean, what could anybody else really say at that point?

So, there was an indebtedness to her because she had saved him?

Myers: Yeah. And I think that that's been a pattern throughout probably their relationship, before I knew them, but certainly in his presidency. I mean, he tends to do worse when he's furthest and then he screws up and she helps save him and then he's sort of much more -- indebted, obliged, mindful, all those things. And I suspect it probably was that way before I was around.

Stephanopoulos: I think I was sitting with Paul, chatting with a few reporters, drinking a cup of coffee in the coffee shop while they did their thing meeting with people. And then all the sudden, Hillary starts to do this kind of impromptu -- reporters had gathered around at this impromptu press conference.

I don't remember much of what she said except the words that everyone would soon know, "tea and cookies." And it was just like bam, all of us all of the sudden perked up and said, "That's going to be a problem." because it was just too good a phrase. You know, it was just impossible for any reporter sitting there that day not to use the most resonant, rich, colloquial phrase she could possibly use to describe her choice to work in a law firm as opposed to staying at home. And we knew it was a problem. But nobody wanted to tell her, because that wouldn't be fun at all.

And I was sitting there with Paul, like the old Life commercial, saying, "No, I'm not going to do it, you go do it." "No, I'm not going to do it, you go do it."... We knew it was a problem the minute she said "tea and cookies." And we knew a lot of people would take it as proof that she is this radical feminist who has no respect for traditional women. And we're going to have to try to clean it up.

Begala: As soon as I heard that, I thought, "People are going to take that out of context. They're going to suggest she doesn't care about stay-at-home moms." So I went up to her and I told her that. I pulled her aside, and I said, "You know, Hillary, you've got to go restate this. People are going to think that's an attack on stay-at-home moms."

And she had the most wounded and naive look on her face. It is -- to think of all she's gone through since then, it's hard to imagine. She had no idea that that might be taken out of context. She said, "No one could think that." She said, "I would have given anything to be a stay-at-home mom. My mother was a stay-at-home mom. I just didn't have a choice because Bill was making \$35,000 a year and we needed to support the family."

I said, "I know that." And she said, "Oh, you worry too much." I mean, it was unimaginable to her that that would be a firestorm. I was certain it would be. I had been doing this for a while. So she went back out and tried to clean it up, but it was too late.

Stephanopoulos: What it was was, you know, we're trying to figure out the damage that had been done, not only by the "tea and cookies," but just the overall primary campaign. It looked then like we were on the road to the nomination since Stan [Greenberg, polling advisor] had done some focus groups, dial-up groups, you know. But the footage that was used for Hillary was footage from election night 1992, in New Hampshire where she had this elaborate Nefertiti-style hairdo that night -- one that I've never seen since and had not seen before. And it really was something.

But we were all sitting around the focus group watching these dials, and up until that point they had been pretty steady. And then this picture of Mrs. Clinton comes on and the dial groups go like [noise], and Clinton doesn't miss a beat. He just says, "Oh, they don't like her hair." And I'm sitting next to James on the couch and he starts to grind his fist into my thigh because it was -- for us, it was like someone farted in church and we were about to start laughing uncontrollably. And we were just holding it in and he's grinding his fist into my thigh. And we finally, we're not breathing, we finally run out of the room, get into the hallway, and just break up laughing.

Now, looking back, it was kind of sweet that Clinton said that. His instinct was to protect her -- he's a smart politician and he knew that we had a pretty serious problem coming out of "tea and cookies" and that a lot of people had very strong feelings about Mrs. Clinton. And he was kind of just being protective of her in that moment. We didn't dwell on it that day.

◦ We Are Gonna Win

By the fall of '92, following the Democratic Convention and the nomination of Al Gore as vice president, it started to look like Governor Bill Clinton might win the election. And then, with 43 percent of the vote and 13 months after the campaign began, William Jefferson Clinton won the presidency. His campaign staff recall when they realized their candidate would be the next president.



In '92 when do you know that you're going to win? When are you pretty sure?

Begala: In Parrot, Georgia. We took a bus trip through Georgia, as I worked for Zell Miller and his



(11.1.1992)

campaign in 1990, so
I knew the state fairly

well. And we were on a bus with Zell, and with some other Georgia politicians. We went through this little town called Parrot, Georgia, and we drew more people in Parrot, Georgia than the total population of the town. And-- it was raining, and I looked out there, and I thought, "You know, we're going to win this race." And that night in some little motel in I don't know where, I called Stephanopoulos, and I was just giggling. I was giddy. And I sat there on some crummy bed in some crummy motel, and I said, "George, I will guarantee you this, we win this election." I can't remember what month it was, but it was in the fall campaign. That was the moment.

Stephanopoulos: I remember the first time I ever really let myself believe we could win and we were going to win. It was late September in the Washington Hilton on a Sunday morning and Clinton was about to go give a speech in North Carolina on NAFTA. And he called me in and had his standard morning outburst on the speech and was yelling about it. But his heart wasn't really in it and I could tell. And I kind of sat there, I was in his bedroom and just took it. He was lying back, propped up in his jeans on his bed, propped up on about two pillows. And he suddenly stops yelling, looks me right in the eye and says, "You think we're going to win, don't you?" I said, "Well, yeah." And he goes, "I do too." And for me, that was just incredible.

He was saying out loud what we all hoped for but could never say. It would be like talking about a no-hitter in the eighth inning. And from that moment on inside we didn't feel like underdogs anymore. We felt like we had this responsibility to win. And as a staffer, it was starting to get a little bit out of control because, you know, I had never been through anything like that and nobody else had either.

Begala: The day before the election we were at the Mayfair Diner in Philadelphia, Pennsylvania. And this is maybe, professionally, aside from the birth of my child during that campaign, the sweetest moment. I was the guy that told Bill Clinton he was going to win. I had gotten the final polling numbers. He had a comfortable lead. He was not going to lose. And as he climbed into the car at the Mayfair Diner, I told him. I said, "Governor, it's over. You're going to be the President of the United States." And he said, "How do you know that? What do you think?" And I gave him the latest numbers, and he said, "That may not hold." So I told him what the latest numbers were for Reagan in '80, and then what the final election was. And I think that historical comparison -- and he didn't say anything then. He just kind of quieted down, and his eyes got big and he sat back. That was very sweet.

Myers: So we finished our little tour and I remember going to the Governor's Mansion and down to the basement about 8 o'clock and-- I

mean, by that point we already knew it was pretty much over. I mean, we knew we were going to win. But seeing that map, standing in the basement -- they had a TV down there -- and standing in the basement with him and he kind of had a half grin on his face looking at the map turning whatever color we were. I think it was different on different networks. But, you know, as the electoral college count came in and he was closer and closer to that magic number, and it was just the weirdest. ... It's like, "Wow, here we are and he's the next president and he's just standing here in his basement, watching TV like millions of other Americans right now." It was just very strange -- in an odd way slightly anticlimactic, even though it's the biggest thing that can ever happen in politics to you.

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FLASHBACK ([HTTP://WWW.OZY.COM/FLASHBACK](http://www.ozy.com/flashback))

AMERICA'S FIRST FEMALE PRESIDENT? BEEN THERE, DONE THAT

WHY YOU SHOULD CARE

Because she ran a country and never asked for applause, or votes.

By Laura Secorun Palet

THE DAILY DOSE SEPT 13 2015

It's 1920, and a stout, round-faced woman wearing a long dark dress paces vigorously around the White House carrying a pile of mail and memos. Meanwhile, journalists huddle by the entrance, notebooks in hand, waiting to catch a glimpse of the person running the country: her.

Sorry, Hillary Clinton, but America has already had its first (acting) female **president** (<http://www.ozy.com/immodest-proposal/why-you-should-be-president/41468>). Three decades before Clinton was born, Edith Wilson, Woodrow Wilson's second wife, ran the Oval Office for 17 months. Nobody voted for her, and she never actually referred to herself as president, but she did take charge of many executive duties after her husband was left incapacitated by a massive stroke.

Records and third-party accounts suggest her role stretched far beyond caretaker and into gatekeeper of Woodrow's vision.

Back then, the U.S. Constitution didn't specify what to do if the president was unable to fulfill his duties (it does now). There was no mechanism in place for automatically transferring power to the vice president. To further complicate matters, Wilson's second-in-command was an unambitious man named Thomas R. Marshall, who, even when Woodrow was paralyzed, bedridden and suffering memory loss, vehemently refused to assume the president's duties for fear of assassination.

Faced with the prospect of her husband's legacy falling apart, and following the advice of his physician — who thought Woodrow might lose the will to live if he lost the presidency — the first lady took matters into her own hands. She didn't do it out of political ambition so much as affection: Edith and Woodrow, both widowed, quickly fell in love, **marrying** (<http://www.ozy.com/flashback/this-us-president-married-a-college-coed/41605>) just three months after their first encounter in 1915. Edith Bolling Galt, the daughter of a landowning but broke Virginia family, was 14 years younger than Woodrow and had just two years of formal education, but she was equipped with a bright mind and strong sense of duty. Before the U.S. entered World War I in 1917, the first lady was focused on hosting parties, but as the war grew, she dropped the hostess act to help the federal rationing effort, observing gasless Sundays, meatless Mondays and wheatless Wednesdays. She even traded in the White House gardeners for grazing sheep so as not to steal manpower from the war.

After Woodrow's stroke, Wilson controlled all communication to and from the president — who, though bedridden and exhausted, was still lucid — and gave orders on his behalf to rally support for the Treaty of Versailles and to lobby the Carnegie Steel Co. to negotiate an end to the steelworkers' strike that was crippling the country. To be sure, there were limits to what Wilson could do, and she never admitted to making any decisions impacting governance. Betty Van Iersel, a guide at the Woodrow Wilson House and a researcher, says, "In [Edith's] autobiography, she only mentions taking care of him and coordinating with his physician," making everything else "pure speculation."

Yet Wilson's considerable power over state affairs didn't go unnoticed. Congressmen complained, labeling Woodrow's second term a "petticoat presidency," and newspapers wrote about what they called a "regency presidency." Praise came from some corners: Dolly Gann, writer for a Republican newspaper, lauded Wilson for working for the good of the country, and London's *Daily Mail* even called her a "perfectly capable president." Official records and third-party accounts suggest that

her role stretched far beyond that of a caretaker and into a gatekeeper of Woodrow's vision at a crucial time when the U.S. Congress was still in the process of approving the Treaty of Versailles to end the war. Andrew Phillips, curator at the Woodrow Wilson Presidential Library, says things could have been much worse for foreign affairs if an open power struggle had ensued between Cabinet members. "Edith provided some stability at a very crucial time," he adds.

After Woodrow's term ended in 1921, the couple retired and stayed in Washington, D.C., where he died three years later. But Edith's commitment to Woodrow's vision lived on: She continued to reside in their home for decades and made an effort to maintain some of the rooms as they had been when he was alive, allowing no renovations and helping raise money for organizations to preserve Woodrow's legacy (<http://www.ozy.com/flashback/does-democracy-need-lame-ducks/37055>).

Edith Wilson died on December 28, 1961, on the anniversary of the birth of Woodrow, the man she loved so much, and for whom she steadied the helm.

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The Secret Life of Judges

Dennis Jacobs

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THE JOHN F. SONNETT MEMORIAL LECTURE

THE SECRET LIFE OF JUDGES

*Dennis Jacobs**

Dean Treanor, distinguished faculty, students, alumni, colleagues, and fellow friends of Fordham Law School, I am honored more than I can say to be invited to deliver this distinguished lecture in the post-centennial year of this great law school—now, this venerable law school. I am going to express my gratitude by saying some things that matter to me, that are not often said, and that distill observations that have (increasingly) bemused me over the fourteen years that I have been a judge.

The title of my lecture gives little clue, I suspect, as to what I am going to say; but it is not a tease. I am going to talk about “The Secret Life of Judges,” by which I mean a habit of mind that, among so many admirable features of the judicial mentality, amounts to a serious and secret bias. There is a social reluctance to talk about this kind of thing. It sounds sanctimonious. Then again, a neat thing about giving a lecture is that it disarms inhibitions about lecturing people. I get to be sanctimonious without worrying about it.

This lecture is about bias, the judge’s inbred preference for outcomes controlled by proceduralism, the adversary system, hearings and experts, representation by lawyers, ramified complexity of doctrines and rules, multiple prongs, and all things that need and use lawyers, enrich them, and empower them vis-à-vis other sources of power and wisdom.

Let me make this bias concrete by example. If you arrived in an appellate court as counsel for a medical-malpractice plaintiff, and the three individuals on the bench were wearing white coats instead of black robes and had stethoscopes around their necks, I think your heart would sink. I could tell you that the three doctors deciding your case have taken an oath to be impartial as between patients and the medical profession and that they are conscientious, decent individuals who take seriously the obligation to be neutral. You would not be reassured: You would understand that there is (at least) an internalized bias that the doctors would not acknowledge because they would not notice it. A similar dread would come over the

* Chief Judge, United States Court of Appeals for the Second Circuit. These remarks were made on November 20, 2006, at the 2006 John F. Sonnett Memorial Lecture held at Fordham University School of Law. This transcript of Chief Judge Jacobs’s remarks has been lightly edited.

defendant's lawyer if the three judges each had a limb suspended in traction.

In our courts, judges are lawyers. They are all lawyers. Most of us have never been, nor want to be, anything else. We are proud of being lawyers. For many of us (like myself), lawyering is our only talent (assuming we have any talent at all), and it is the source of as much esteem as we enjoy. Our calling says a lot about how our minds work, what we respect, and whom we trust.

I am not—I repeat, I am not—speaking about a bias based upon politics or agenda, economic class, ethnicity, or para-ethnicity. When I refer to the secret life of judges, I am speaking of an inner turn of mind that favors, empowers, and enables our profession and our brothers and sisters at the bar. It is secret, because it is unobserved and therefore unrestrained—by the judges themselves or by the legal community that so closely surrounds and nurtures us. It is an ambient bias.

The result is the incremental preference for the lawyered solution, the fee-paid intervention or pro bono project, the lawyer-driven procedure, the appellate dispensation—and the confidence and faith that these things produce the best results. It is an insidious bias, because it is hard to make out, in the vast maze of judicial work and outcomes, the statutes, doctrines, and precedents that are woven together like an elaborate oriental rug in which the underlying image of the dragon emerges only after you stare for a while. I discern in this jumble a bias in favor of the bar and lawyers: what they do; how they do it; and how they prosper in goods and influence. This is the “figure in the carpet.”¹

This bias has several effects and ramifications. Judges all too frequently frame legal doctrines without considering the litigants' transaction costs. Considering how many of us conscientiously think hard about the economic consequences of the outcomes we adopt, it seems strange that our cases reflect an almost complete disregard and ignorance of the costs, uncertainties, and delays inflicted by the judicial process itself. I think that is because judges as lawyers cannot see as a problem the activity and busyness from which our brothers and sisters at the bar draw their livelihood, their career advancement, their distinction, and (often) their sense of purpose in life. All of this depends on the ceaseless turning of the legal machine.

Judges tend to assume that the adversary process assures a fair fight and a just outcome. And judges work hard to be fair as between the adversarial positions presented. But almost always, the adversaries on all sides are lawyers; so adversariness is no great engine for assuring fairness when it comes to the allocation of decision-making power between lawyers (adversaries all) and the institutions and populations outside our profession. The result is not that lawyers and the legal profession always win in court

1. See Henry James, *The Figure in the Carpet*, reprinted in *The Figure in the Carpet and Other Stories* (Frank Kermode ed., Penguin Books 1986).

contests (even though they are on both sides); but, there is no doubt that they get to punch above their weight.

As I hope I have made clear, I am talking about altruistic litigation as well as hourly fee-paid work and work on contingency. For all the good that public interest lawyers do (and it is a great deal), some of it results in the short circuit of democratic decision making and coerced policy choices. Thus, the threat of litigation often compels school boards to suppress all orthodoxies except those endorsed by the cadres of constitutional lawyers and constitutional law professors. A school-board member exercising fiduciary duties will bow to anticipated demands rather than bear the cost of exercising or testing the board's own rights, if only because the cost of litigating a flag, a reference to God, a locker search, a dirty word, or something like that, can easily cost the school board the annual services of a music teacher or a teacher of remedial reading.

To my observation, judges are blind to this. I think that is because public interest litigation greatly enhances lawyer influence and—not at all incidentally—increases the influence and power of judges. Judges love these kinds of cases. Public interest cases afford a judge sway over public policy, enhance the judicial role, make the judge more conspicuous, and keep the law clerks happy.

Whether fee-paid or pro bono publico, when lawyers present big issues to the courts, the judges receive the big issues with grateful hands; the bar patrols against inroads on jurisdiction and independence and praises the expansion of legal authority; and together we smugly congratulate ourselves on expanding what we are pleased to call the rule of law.

Among the results are the displacement of legislative and executive power, the subordination of other disciplines and professions, and the reduction of whole enterprises and industries to damages. Examples come ready to hand, though, speaking as I do as a judge, I am constrained from citing specifics of controversies that may come before me. In generalities, let me observe,

- Judicial power over the legislature and the executive is dilated by constitutional litigation, much of which is lawyer-driven. Often, the plaintiff's standing is made to rest on largely notional, abstract harms (like annoyance or anxiety), and sometimes the existence of the plaintiff is a recruitment detail that is easily arranged.
- Through such constitutional litigation, judges get to direct the work of educators, police, child protection officers, and many other professionals who have training to discharge critical responsibilities that require their expertise and experience.
- Class actions and consent decrees allow judges to operate prisons and schools, to force appropriations, and to channel funds.
- In mass tort, judges hold in their hands the fate of vast enterprises and can cause their extinction, with capitalization

forfeit to distribution between lawyers and plaintiffs and workers
let go.

Judges who issue expansive rulings in these spheres enjoy wide esteem and reputation. There are judges whose fine reputations rest in part on the ability to handle and administer innumerable claims through litigation and settlement, pretty much without regard to whether the claims themselves are based on fraud, corrupt experts, perjury, and other things that would be deplored and persecuted by the legal profession if done within other commercial fields.²

The broadest judicial bias I see, and the one I will describe most vaguely, is the bias in favor of legal complexity. The volumes of the third edition of the Federal Reporter spread themselves like kudzu vine over the shelves of law libraries. I will offer no example, because I would be honor-bound to cite myself as a chief offender, but it is a problem when the complexity of the law causes laymen to view the legal process as either political or as essentially random. This phenomenon is made visible in the papers of pro se litigants, who rarely bother to read the trial court decisions that reject their claims, and proceed to appeal on the theory (perhaps not altogether misguided) that the sheer, ramified, sprawling patterns of law will (in the hands of the right judge) yield a substantial payment or a sweet revenge.

It is an observed fact that the complexity of doctrines and opinions (not to mention the discovery of new doctrines) evokes praise and respect from within the profession. But our highly ramified litigation system imposes vast costs on other fields of endeavor, on our democratic freedoms, and on the unrepresented and the non-litigious.

The law reviews seem to have exhausted all topics dealing with bias in the law and the ethics and infractions of other professions. I asked one of my law clerks to check to see how many articles have dealt with the bias of judges toward the dominance and control of the legal profession, and my clerk came up dry.³ That does not surprise me, because if judges have this unconscious bias, so (I think) do law professors, for the same reasons—and students, for the same (and other) reasons. Scholarly papers undertake to expose and demonstrate the institutional and cultural biases of the law in every direction but this one. It is not for me to say whether I am making the point of this lecture effectively; but at least I can say that the competition is thin.

2. This point has been made in the asbestos context. See, e.g., Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 Hofstra L. Rev. 833, 911 (2005) (“[T]he pervasiveness of the absence of application of ethical rules to asbestos litigation and to a large extent, to asbestos bankruptcy proceedings as well, can only stand as an indictment of the courts, disciplinary authorities and indeed, the legal profession.”); Lester Brickman, *On the Theory Class’s Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 Pepp. L. Rev. 33, 37 (2003).

3. Subsequent to this Lecture, Professor Benjamin Barton has posted a paper that discusses this bias. See Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?* (Apr. 3, 2007) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976478

Why do we not notice this bias that I am talking about? If you are with me so far, and you now agree (or started out believing) that judges have a bias in favor of legalism and the legal profession, you may wonder as I have, why it is not noticed. Actually, it is a very familiar phenomenon that we do not recognize our bias as such. One tends to assume that bias has a nasty face, and that decent people shrink away instinctively. But some forms of bias are culturally embedded and are exercised with popular or elite approval.

Bias is not a moral evil. Everyone feels tugs of loyalty; everyone should. The bias I am talking about is more finely characterized as a tropism, an instinctive turning to follow a source of vital energy. That is what the sunflower does. But it is one thing to turn to follow the sun, and it is another to follow the American Bar Association (ABA), the law schools, law clerks, and the sound of applause.

Judges are susceptible to the opinions of others in our profession. But the bias in favor of more law, more procedure, and more process is in great measure bred in the bone of a lawyer. A judge is trained in the law; virtually all of us have high self-approval and a high regard for our profession, its processes, its culture and values, and its judgments—the profession which (after all) did loft judges to the bench, where we presumably wanted to go.

The tropism in favor of what lawyers do, and our tendency to expand the spheres of activity in which lawyers act and control, comes clothed in virtue. It is seen by us mainly as respect for due process, as the open door of the courthouse, as a flowering of the rule of law—and so excesses are viewed with indulgence as a Tocquevillian quirk of the American character. But it is unbecoming for judges to dismiss this phenomenon. It matters that our conduct as judges is reinforced by the support and praise that we get from colleagues, lawyers, bar associations, and law schools. I think fair-minded people should recognize the dangers that arise when judges, as the final arbiters for allocating vast power, money, and influence, are all members of the same (self-regulating) profession—and often of the same professional groups and social environments. It is a matter of like calling unto like.

Judges adhere to tight ethical constraints that keep us honest in that way and to that degree; but (ironically) some of those same constraints tend to reinforce our professional bias by insulating us from the influences of politics and (non-law) commerce. Unless we make an effort, we can become disconnected from the values and perceptions of the larger public. The more we obey the constraints that isolate us within a circle of legal culture, the more we are left to be judged, evaluated, and flattered (or not) by the nourishing, attentive, knowledgeable circle of lawyers, law students, and professors—which (to make matters worse) includes often the most charming and scintillating people in the community.

The mystique of the judicial process, and its power and pretension in this country, is pretty much all based on the idea of neutrality. If that idea is

deflated, by puncture or slow leak, it is bad for judges and for the larger community. Our work is subject to hostile critiques; and, if we do not acknowledge and restrain our bias, others will notice, and forces will marshal to rein us in.

These critiques are often classified as attacks on judicial independence, and resisted as interference, or dismissed as ignorant. Thus, a great theme of the legal profession is emphatic support for judicial independence. That is a good thing, and I enjoy my independence as much as the next judge; but judges should consider and appreciate that one effect (maybe a motive) of the bar's avid support of judicial independence is to make judges "independent" of many influences (good and bad) that compete with the dominant influence over judges that is exerted by fellow lawyers, bar associations, and law professors. This support of judicial power by the bar may be a pillar of law, but it can also operate as group loyalty, the protection of turf, or a reciprocal commitment to the ascendancy of judges and lawyers.

This bias I am talking about keeps us from seeing obvious things. For example, bar associations nowadays are chiefly trade groups. It is naive to think that the legal profession is the only disinterested player in our economic life. And bar groups are highly political. The ABA has formally adopted and announced hundreds of positions on virtually every issue in political dispute: You can look them up. It lobbies for those views in legislatures; it promotes them in amicus briefs filed in the courts. Yet hundreds of federal judges are members; thousands in the state and local courts. The canons of judicial conduct⁴ make space for that anomaly.

The canons broadly warn that "[a] judge should refrain from political activity."⁵ But the same canon (7) has a proviso: "this should not prevent a judge from engaging in the activities described in Canon 4,"⁶ which says that "[a] judge may serve as a member, officer, or director of an organization . . . devoted to the improvement of the law."⁷ And the commentary positively "encourage[s]" a judge to "contribute to the improvement of the law" by various means, expressly including "through a bar association."⁸ Hospitably, the commentary allows a judge to "receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a relative incident to the judge's attendance at a bar-related function."⁹

The legal profession, like all other fields, should be able to tap the experience and wisdom of its leading members, judges among them. And

4. Code of Conduct for United States Judges (2000), available at <http://www.uscourts.gov/guide/vol2/ch1.html>.

5. *Id.* Canon 7.

6. *Id.* Canon 7C.

7. *Id.* Canon 4C.

8. *Id.* Canon 4 cmt.

9. *Id.* Canon 5C(4) cmt.

there are times and places for that; at one time, the organized bar may have been such a forum. But now?

Judges who are members of the ABA are technically in an auxiliary for judges in which they presumably participate in the development of legal ideas. But allowing judges to join a trade association so that they can collaborate with the membership in developing the law seems to me to make matters much worse rather than better. In any event, the expedient of a judges' auxiliary would not be tolerated in any other ethical context. If there were a judges' auxiliary to the American Bankers Association or the Brotherhood of Pharmaceutical Manufacturers, I am sure they would love to have us, and would happily work with us on shaping legal improvements. What if there were a judges' auxiliary to the Tobacco Institute or the American Insurance Association that paid my way to their conventions (with my relative), where I could work with them shoulder to shoulder on beneficial improvements in the law? Why assume that the improvements favored by the ABA are less self-serving than the improvements favored by other professional and trade groups?

When the ABA considers improvements in the law, it usually comes down on the side of punitive damages, attorney's fees, the expansion of causes of action, and new areas of regulation that require maintenance by lawyers (such as speech at election time). I do not claim to be any better than the next one, but I would be uncomfortable being a guest of the ABA on well-oiled occasions when such improvements are discussed. All of this is made worse by the fact that the ABA often litigates as *amicus curiae* (and I will pass over without comment the ABA's evaluation of judicial nominees).

Of course, judges should be involved in the development of the law—case by case, chiefly. No doubt, judges also read some books, go to debates and forums, and attend seminars. But the idea that judges will develop the law under the sponsorship and aegis of a powerful interest group should provoke disquiet—and would, but for the fact that (with some notable exceptions) judges do not see this as an issue.

I sometimes think that the problem at bottom is really a lack of respect by lawyers for other people. Judges live chiefly in a circle of lawyers. Our colleagues are lawyers; happily, our friends are lawyers (and I am hoping to keep some after this lecture); the only outside income a federal judge can earn (aside from royalties) is from teaching in law schools (with the idea, I suppose, that they furnish a nonpartisan environment); and the only political and trade organizations we can join are bar associations.

But outside that circle there are people who are just as fully absorbed by other pursuits that deserve consideration and respect. Judges need a heightened respect for how nonlawyers solve problems, reach compromises, broker risks, and govern themselves and their institutions. There are lawyers on the one hand; and just about everybody else is the competition in the framing of values and standards of behavior.

In that competition, judicial bias has eroded the independence and influence of doctors, medical administrators, insurance underwriters, engineers, manufacturers, the military, the police, wardens and corrections officers, the clergy, employers, and teachers and principals.

I think that judges ought to appreciate that they operate under an internalized conflict of interest when they deal with all of these categories of people, and others, and that (as someone observed) divided loyalties are rarely divided down the middle. There is a great danger that, by the subordination of other professions, callings, and centers of power (and of their judgment and discretion), we are losing indispensable influences.

Another consequence of biased vision is the assumption that if something is of great importance, it can be safely left to lawyers. That is fine when it comes to statutory interpretation and such, but lawyers lack humility in approaching great matters. As judges, we tend to assume that adversarial hearings and expert testimony will render the judge omni-competent and fit to decide the great questions, and that a legal mind is the highest and most useful development of mental capacity.

The mind-set is that if something is of great importance—such as speech, thought, and expression; race, identity, and sexuality; life and death—it cannot be safely and properly left chiefly to anyone else. How else does one account for the fixation on issues such as capital punishment and the right to die, given that capital punishment cases are few (at least in these parts), and that death is coming for us as a certainty, regardless of whether we classify it as an entitlement? As we exercise power over all the basic, ultimate, and transcendent things, I think that judges should consider how we inevitably diminish the influence of doctors and juries, clergy and social workers, legislatures, and the ordinary citizen.

The legal mind is indispensable to lawyering, and for other purposes it is perfectly okay in its way. But it has its limitations. For example, every problem-solving profession—except ours—quickly adopts as preferred the solution that is simplest, cheapest, and most efficacious, or (as they say) elegant. Also, our legal mind is invasive: It has institutional advantages for subordinating other modalities of thought, and it presses those advantages. And it is triumphalist about its expansions of influence. The uninitiated, who lack the legal mind, are harnessed to our purposes as jurors or are put to the margins. What nonlegal professionals think can be dismissed as arbitrary and capricious, or (if needed to assist the legal process) can be classified as expert opinion, to be weighed by us and by our standards.

The legal mind can hold its own with the competition in terms of rigor; I have one, and I make no apology for it. But at least I have come to admit that, depending on the question, the legal mind may be insufficient or may be inferior to the moral imagination; the scientific method; the practical arts of healing, politics, and entrepreneurship; the promptings of loyalty, faith, and patriotism; and the experience and expertise found elsewhere and among others.

If you are not with me this far, you will have little interest in this last question: What can be done to correct this bias and to place the legal profession again on a footing of parity and fair competition with other professionals and activities that have a right to influence in our communities and our culture? In a nutshell, judges should lead the bar in exercising the self-restraint and self-discipline that is incumbent on a profession that has a virtual monopoly on legislative power and a monopoly by patent on the power of the judiciary, and that is largely self-regulating.

Other professions, by ethics or honor, exert the imagination and self-possession to avoid exercising all the power they have. Let me give an incendiary example.

When a military force occupies a conquered province, the military has vast power and may be tempted to run things in a way that best serves the dominance and comfort of the military profession. A military solution can be found for every challenge; such solutions fit the salient talents and skill-sets of military commanders. No doubt it is of the greatest convenience to the military and a great comfort to them to impose early curfews; to censor letters; to close the outspoken newspapers and the satirical magazines; to take over the radio, the police, and the prisons; to shoot looters; to draft strikers; to favor military justice; and to commandeer all the better hotels. I think there is a natural temptation for the military officers in charge to do all these things because these are measures that subordinate a lot of conduct that undermines military administration, and because no doubt lifelong professional military officers might believe that these measures are effective and fair and constitute the best design for the organization of the society under their thumbs. Others in the military might applaud the tidy administration that results.

We (in the profession of law) recoil from such measures in part because it is not our profession; it does not fit our salient talents and skill-sets; it puts to the margin what we do and the sphere in which we operate; and so we lack faith in it. It seems to us, viscerally illegitimate.

But an enlightened military recognizes that imposition of all these measures on an ongoing or permanent basis improperly subordinates other spheres of life. The military types (I am not one) seem to control themselves through a concept of honor. Maybe judges should consider their example. I concede that a country could do worse than suffer rule by lawyers: I would prefer a tyranny of law to life under a military regime. But outside our professional sphere, the dominance of the legal profession and the judiciary is resented more than we appreciate.

As a matter of self-awareness and conscience, judges should accept that the legal mind is not the best policy instrument, and that lawyer-driven processes and lawyer-centered solutions can be unwise, insufficient, and unjust, even if our friends and colleagues in the legal profession lead us that way. For the judiciary, this would mean a reduced role, *but not a diminished one* if the judiciary is elevated by considerations of honor, self-restraint, and respect for other influences.

Notes & Observations

Neil Gillespie

From: "Bronson, Kristi R." <Kristi.Bronson@DOS.MyFlorida.com>
To: <neilgillespie@mfi.net>
Sent: Thursday, September 01, 2016 9:11 AM
Subject: RE: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President

Dear Mr. Gillespie –

The deadline for submitting the oath of candidate for a write-in candidate for the office of President was July 12, 2016. Accordingly, your submission is untimely and will not be processed.

I trust this is responsive to your inquiry.

Regards,

*Kristi Reid Bronson, Chief
Division of Elections,
Bureau of Election Records
(850) 245-6240*

This response is provided for reference only and does not constitute legal advice or representation. As applied to a particular set of facts or circumstances, interested parties should refer to the Florida Statutes and applicable case law, and/or consult a private attorney before drawing any legal conclusions or relying upon the information provided.
Please note: Florida has a very broad public records law. Written communications to or from state officials regarding state business constitute public records and are available to the public and media upon request unless the information is subject to a specific statutory exemption. Therefore, your e-mail message may be subject to public disclosure.

From: DivElections
Sent: Thursday, September 01, 2016 8:03 AM
To: Bronson, Kristi R.
Subject: FW: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President

From: Neil Gillespie [<mailto:neilgillespie@mfi.net>]
Sent: Wednesday, August 31, 2016 10:05 PM
To: Detzner, Kenneth W. <Kenneth.Detzner@dos.myflorida.com>; DivElections
<DivElections@DOS.MyFlorida.com>
Cc: Neil Gillespie <neilgillespie@mfi.net>
Subject: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President

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VIA UPS No. 1Z64589FP296243338

August 31, 2016

Ken Detzner, Secretary of State
Email: Ken.Detzner@dos.myflorida.com

Florida Department of State
Division of Elections
Email: DivElections@dos.myflorida.com

R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary of State Detzner, and the Division of Elections,

Enclosed you will find my Oath of Candidate Write-In For President and Vice President. A qualified write-in candidate for Vice President is to be announced. To the extent my Oath of Candidate does not comply with F.S. § 103.022, I request a waiver. In the alternative I may appeal, or make a Constitutional challenge. You may provide information on that process.

In compliance with F.S. § 103.022, Write-in candidates for President and Vice President, enclosed is a list containing the names and addresses of 29 persons to serve as electors.

Not later than September 1, 2016, the candidate submits a list containing the names and addresses of 29 persons to serve as electors to the Department of State.

The list is for the first 29 qualified names and addresses that appear in the 2016 Oak Run Community Directory. F.S. § 103.022 does not prohibit this approach that I am aware.

Sincerely,

A handwritten signature in black ink, reading "Neil J. Gillespie". The signature is written in a cursive, flowing style.

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: 352-854-7807
Email: neilgillespie@mfi.net

Attachments/Enclosures

OATH OF CANDIDATE

(Section 103.022, Florida Statutes)

WRITE-IN FOR PRESIDENT AND VICE PRESIDENT

OFFICE USE ONLY

We, Neil J. Gillespie, write-in candidate for President
(PLEASE PRINT NAME)

and n/a, write-in candidate for Vice
(PLEASE PRINT NAME)

President, state that we possess all the qualifications required by law for the office of President of the United States and Vice President of the United States, respectively, and that we will accept the office if elected.

X



Signature of Candidate for President

X

n/a

Signature of Candidate for Vice President

Pursuant to Section 103.022, F.S., write-in candidates shall file with the Department of State a certificate naming the required number of persons to serve as electors.

STATE OF FLORIDA

COUNTY OF Marion

Sworn to (or affirmed) and subscribed before me by the above named persons this 31st day of August, 2016.

Personally Known: _____ or

Produced Identification: X

Type of Identification Produced:

FL DL 6421630560990



Signature of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public



AALTO, Tauno & Sally Louise
229-0965
 10875 SW 90th Tr 1 C 37 FL

ABBATE, n/a
 8490 SW 109th Ln Rd 4 E 10

ABBOTT, Jeannine / GRAY, David & Barbara
317-517-9402
 9057 SW 108th Pl 1 A 23 IN

ABBOTT, Joan S
861-0661
 11456 SW 67th Ct BG F 5 FL

ABELE, Julian
237-2198
 7149 SW 113th Lp LS A 5

ABRAMS, Ken & Kathy
620-0022
 7421 SW 111th Pl TF F 13 IL

ABRAMS, Tommy & Virginia
873-3897
 11528 SW 89th Tr 8 A 42 TN

ABT, Murray & Ila
854-8098
 10920 SW 86th Av 2 F 37 AL

ACCOMANDO, Richard
484-8767
 11539 SW 89th Tr 8 G 6

ACCORDINO, Sam & Angie
300-307-8288
 10837 SW 91st Ct 1 C 3

ACOSTA, Theresa
291-1975
 10907 SW 83rd Av 5 E 4 FL

ACQUARD, Russell & Jan
237-8636
 11436 SW 76th Cr PV B 5 NY

ADAMS, Erroll & June
207-5202
 10961 SW 84th Av 4 A 1

ADAMS, Michael & Tanya
433-3702
 11432 SW 82nd Cr WS A 15 FL

ADAMS, Nelson & Carmen
861-2348
 11719 SW 79th Cr TP C 21 IL

ADAMS, Sheila
237-2723
 6590 SW 111th Lp FO E 11 OH

ADAMS, Steve & Sonja
861-8685
 7730 SW 114th Lp TG A 55

ADDINGTON, William & Delores
861-5756
 11101 SW 69th Cr CO B 2 MD

ADKINS, William & Ana Diaz
786-546-6986
 7798 SW 114th Lp TG A 40 FL

ADLER, Bob & Fran
854-6629
 10826 SW 83rd Av 3 B 35 CT

ADLER, Nina
291-1534
 11644 SW 75th Cr TP G 42 OH

ADLER, Paul & Olive
873-6730
 11253 SW 72nd Av LS C 4 GA

AGRIPPA, Donald & Elaine
873-2696
 10953 SW 87th Ct 2 D 4

AHER, Patrick & Blanche
861-6398
 10857 SW 91st Tr 1 C 16 MA

AIKENS, Glenn & Florence
237-9961
 6805 SW 111th Lp FO A 10 PA

AKERS, Connie
305-942-1921
 10819 SW 86th Av 12 D 49 AUS

ALBRIGHT, Bob & Anne
873-4134
 11083 SW 73rd Tr TF G 26 NY

ALBRITTON, Chris / SMITH, Sherry
304-7849
 8630 SW 108th Ln Rd 12 C 7 OH

ALCOTT, William & Lynn
609-713-1050
 11233 SW 73rd Cr TF H 12 NJ

ALDUINO, Robert & Karen
631-579-5927
 11702 SW 71st Cr GV F 2 NY

ALEXANDER, Mary & BROOKS, Fred
708-602-9016
 11408 SW 82nd Tr 9 A 7 IL

ALGIRE, M and D
291-0291
 10654 SW 71st Cr EP O 86

ALIBERTI, Ron / SHELTON, Joanne
873-3850
 10808 SW 86th Av 12 A 69 TX

ALIENGENA, Harry
854-6859
 11564 SW 75th Cr TP G 24 MA

ALIX, Normand
570-490-7534
 8541 SW 108th Pl Rd 12 A 50 CAN

ALLEN, James & Kathy
724-674-7946
 7452 SW 111th Ln TF E 11 PA

ALLEN, Perry & Judy
873-8947
 11749 SW 79th Cr TP C 26 NC

ALLETTO, Alfred & Florence
291-1191
 10933 SW 84th Av 4 A 5 CT

ALLGOOD, Frank & Helen / GAGE, Mary
237-7812
 8595 SW 108th Pl Rd 12 B 1 FL

ALLIE, David & Gerry
861-1259
 7171 SW 113th Lp LS A 11 IL

ALLISON, Richard & Carol
237-5780
 11081 SW 73rd Ct TF H 22 VA

ALLOR, Steve & Marla
237-7988
 8386 SW 109th Ln 4 D 28MD/WV

ALLORO, Andy & Jeanette
854-1429
 7774 SW 114th Lp TG A 46 NY

ALLUMS, Ted & Earleen
854-8546
 8394 SW 109th Ln Rd 4 E 18 IL

ALMEIDA, Carlos & Kathleen
237-5465
 7250 SW 115th Pl HS A 48 CT

ALPER, Leslie & Leona
237-1112
 11300 SW 78th Cr TG A 37 FL

ALTIERI, Angelo
873-9084
 11565 SW 89th Av 8 E 4 CT

ALTIERI, Emil & Patricia
237-0344
 8152 SW 108th Lp 10 C 11 CT

ALVES, Gilbert & Charlotte
237-6875
 7348 SW 115th Pl HS A 34

ANDERSOM, James & Patricia
479-409-3126
 7326 SW 111th Ln TF I 4 TX

ANDERSON, Arthur & Donna
854-3447
 11605 SW 71st Cr GV G 19

ANDERSON, Dave
854-8008
 8685 SW 116th Pl Rd 8 C 3

ANDERSON, Erma
291-1232
 10963 SW 86th Tr 2 E 13

ANDERSON, Gloria
854-7507
 11564 SW 71st Cr GV G 6

ANDERSON, Gloria, Dan, Cheryl, Stephen
873-3953
 11427 SW 82nd Av 9 A 13

ANDERSON, Jerry & Barb
216-4808
 11637 SW 70th Ct GV A 20

ANDERSON, Lexie & Joanne
237-9770
 8221 SW 115th Ln 9 E 7

ANDERSON, Lou & Alice
854-3254
 8761 SW 116th Ln Rd 8 B 13

ANDERSON, Pat
873-4814
 7819 SW 117th St Rd TP E 18

ANDERSON, Robert & Marianne
861-1483
 11731 SW 77th Cr TP E 42

ANDREWS, Edward
237-2237
 8016 SW 108th Lp 10 D 27

ANDREWS, Gary & Veronica
861-1088
 7143 SW 113th Lp LS A 3

ANDREWS, Irene
854-1311
 7952 SW 115th Lp TP A 10

ANDREWS, James & Dawn
873-4603
 10859 SW 69th Cr CO C 22

ANDRUS, James & Sheila B
413-563-4492
 8720 SW 108th Ln 2 D 15

ANDZESKI, Joseph
236-0035
 10975 SW 86th Tr 2 E 11

ANSPACHER, Mary
861-2361
 6759 SW 114th St Rd BG B 18

ANTILL, Dan & Susan
724-833-0311
 8192 SW 115th St Rd WS C 5

ANTOINE, Betty / SHEDLOCK, George
502-435-5709
 8108 SW 108th Ln Rd 5 D 17

ANTRAM, Paul & Susan
237-0507
 8072 SW 116th Lp WS E 1

ANZALONE, James W & Naomi
291-7507
 11101 SW 73rd Ct TF H 20

ANZALONE, Marianne / COHEN, Phil
237-7227
 7512 SW 113th Pl PV D 8 PA



Select Year:

The 2016 Florida Statutes

Title IX	Chapter 103	View Entire Chapter
ELECTORS AND ELECTIONS	PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS	

103.022 Write-in candidates for President and Vice President.—Persons seeking to qualify for election as write-in candidates for President and Vice President of the United States may have a blank space provided on the general election ballot for their names to be written in by filing an oath with the Department of State at any time after the 57th day, but before noon of the 49th day, prior to the date of the primary election in the year in which a presidential election is held. The Department of State shall prescribe the form to be used in administering the oath. The candidates shall file with the department a certificate naming the required number of persons to serve as electors. Such write-in candidates shall not be entitled to have their names on the ballot.

History.—s. 15, ch. 81-105; s. 9, ch. 83-251; s. 19, ch. 2005-286.

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Ken Detzner" <Ken.Detzner@dos.myflorida.com>; <DivElections@dos.myflorida.com>
Cc: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Wednesday, August 31, 2016 10:05 PM
Attach: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President.pdf
Subject: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President

8/31/2016

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Wednesday, August 31, 2016 10:06 PM
Attach: ATT00022.txt
Subject: Read: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President
This is a receipt for the mail you sent to
"Ken Detzner" <Ken.Detzner@dos.myflorida.com>; <DivElections@dos.myflorida.com> at 8/31/2016 10:05 PM

This receipt verifies that the message has been displayed on the recipient's computer at 8/31/2016 10:06 PM

Neil Gillespie

From: "Detzner, Kenneth W." <Kenneth.Detzner@dos.myflorida.com>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Wednesday, August 31, 2016 11:36 PM
Attach: ATT00005.eml
Subject: Read: Neil J. Gillespie Oath of Candidate Write-In For President and Vice President

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Please take our Customer Satisfaction Survey<<http://survey.dos.state.fl.us/index.aspx?email=Kenneth.Detzner@dos.myflorida.com>>.



Proof of Delivery

[Close Window](#)

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number: 1Z64589FP296243338
Service: UPS Ground
Weight: 1.00 lb
Shipped/Billed On: 08/31/2016
Delivered On: 09/01/2016 11:35 A.M.
Delivered To: 500 S BRONOUGH ST
3 316
TALLAHASSEE, FL, US 32399
Received By: MYNARD



Left At: Inside Delivery

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 09/01/2016 11:46 A.M. ET

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UPS Internet Shipping: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.

2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. **GETTING YOUR SHIPMENT TO UPS**

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point™ location, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the 'Find Locations' Quick link at ups.com. Schedule a same day or future day Pickup to have a UPS driver pickup all of your Internet Shipping packages.

Hand the package to any UPS driver in your area.

UPS Access Point™ UPS Access Point™
THE UPS STORE THE UPS STORE
11100 SW 93RD COURT RD 3101 SW 34TH AVE
OCALA, FL 34481 OCALA, FL 34474

FOLD HERE

NEIL J. GILLESPIE 352-854-7807 NEIL J. GILLESPIE 8092 SW 115TH LOOP OCALA FL 34481	1 LBS	1 OF 1	DWT: 12,11,1
SHIP TO: DIVISION OF ELECTIONS FLORIDA DEPARTMENT OF STATE R. A. GRAY BUILDING, ROOM 316 500 SOUTH BRONOUGH STREET TALLAHASSEE FL 32399-6519			
	FL 323 0-01 		
UPS GROUND TRACKING #: 1Z 645 89F P2 9624 3338			
			
BILLING: P/P ATTENTION UPS DRIVER: SHIPPER RELEASE			
 ™			
UIS 18.5.39. WXPNV50 78.0A 07/2016			

Drop-Off Package Receipt: 1 of 1

THIS IS NOT A SHIPPING LABEL. PLEASE SAVE FOR YOUR RECORDS.

DROP-OFF LOCATION:
The UPS Store #5520
11100 SW 93 COURT RD
STE 10

(352) 402-0099

DROP-OFF DATE/TIME:
Wed 31 Aug 2016 5:20 PM

ESTIMATED PICKUP DATE:
UPS Wed 31 Aug 2016 1pkg

CUSTOMER:

Not Provided

ID Type: Not Provided

TOTAL PACKAGES:

1pkg

TRACKING NUMBER	CARRIER & SERVICE	WEIGHT
1Z64589FP296243338	UPS Ground	0 15 lbs

This receipt lists each package received by The UPS Store #5520 and indicates that the information for each package has been transmitted to each carrier's data system. This receipt is not confirmation that the carrier has picked up the packages. To verify when and if a package has been picked up, enter one of the following web addresses in your browser and enter the tracking numbers listed above: <http://theupsstore.com> (select Tracking, then enter Tracking #). You acknowledge that the shipment services provided by The UPS Store #5520 for the listed packages are subject to and governed by each Carrier Agreement, if applicable, the Rates and Service Guide for each carrier, and the tariff in effect at the time of shipment.

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08/31/2016 02:19 PM Pacific Time



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Retrieved on Nov 8, 2016, 12:10 pm CST



Home / Daily News / If you cast a write-in vote for president,...

ELECTION LAW

If you cast a write-in vote for president, will it count? State laws differ

POSTED NOV 07, 2016 07:00 AM CST

BY DEBRA CASSENS WEISS ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/4/](http://www.abajournal.com/authors/4/))



Thinking of casting a write-in vote for president? It may not be counted.

You can write in anyone on the ballot in 10 states and Washington, D.C., the Washington Post (https://www.washingtonpost.com/graphics/politics/2016-election/write-in-votes/?hpid=hp_special-topic-chain_gfx-writein-9pm%3Ahomepage%2Fstory) reports. But you will face more hurdles if you want your write-in to count in other states.

Eight states don't even have a line for write-ins, according to the article. Thirty-two states won't count write-ins unless a candidate is registered with the state before the election.

The jurisdictions allowing write-ins for anyone are: Alabama, the District of Columbia, Iowa, Mississippi, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont and Wyoming.

The states that don't allow write-ins are: Arkansas, Hawaii, Louisiana, Nevada, New Mexico, Oklahoma, South Carolina and South Dakota.

There are additional restrictions in some states, including some of those that allow write-ins for anyone. In Mississippi, for example, write-ins won't be considered unless a candidate on the ballot dies, resigns, withdraws or is removed from the ballot. Some states won't allow a write-in to win unless additional paperwork is filed after the election.

And in some states, preciseness counts. Nicknames and initials may not be allowed.

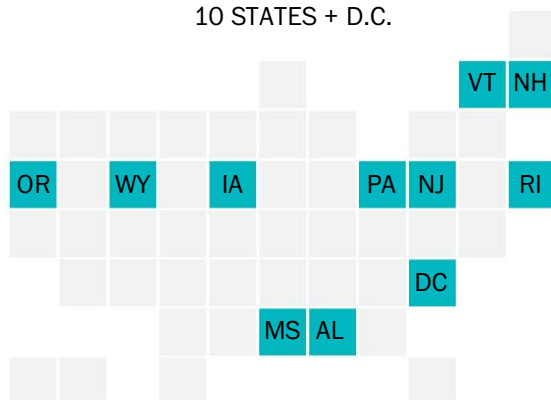
Copyright 2016 American Bar Association. All rights reserved.

Planning to write in Paul Ryan or Bernie Sanders?

It won't count in most states.

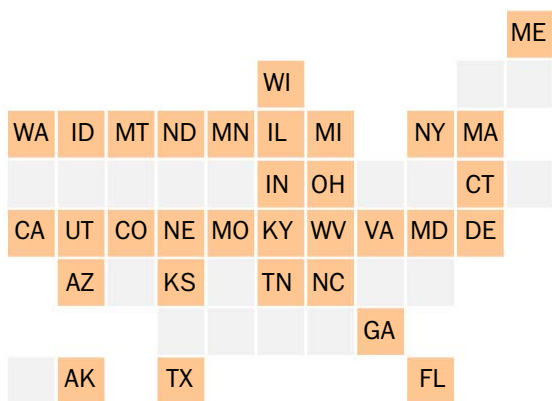
WRITE IN ANYONE

No prior filing is required for write-in candidates
10 STATES + D.C.

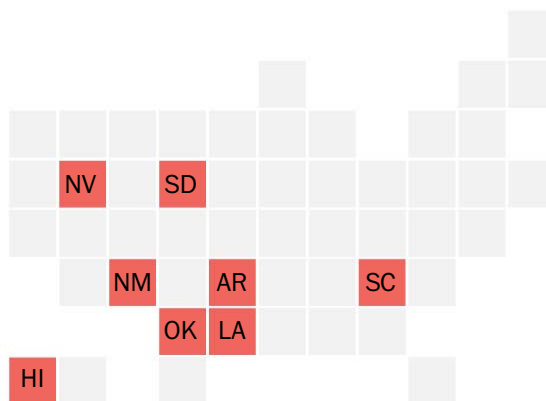


LIMITS ON WRITE-IN CANDIDATES

Prior filing is required to be an official write-in candidate
32 STATES



No option to write in
8 STATES



By **Denise Lu** and **Kevin Uhrmacher**

Nov. 3, 2016

In an election year with two [historically unpopular nominees](#), write-in candidates can be enticing to undecided voters who can't find someone to get behind, or who are searching for a way to voice their disappointment.

And it's not just the [Bernie Bros](#): Even high-profile politicians like Republican senators Kelly Ayotte (N.H.) and Rob Portman (Ohio) [say they will write in](#) Donald Trump's running mate, Mike Pence.

[[How to vote in your state](#)]

But because of [state laws restricting ballot access](#), writing in a candidate is not as simple as it sounds. There are eight states where ballots won't even have a space for write-ins. In 32 others, write-in candidates have to file with the state prior to the election to be counted as official candidates.

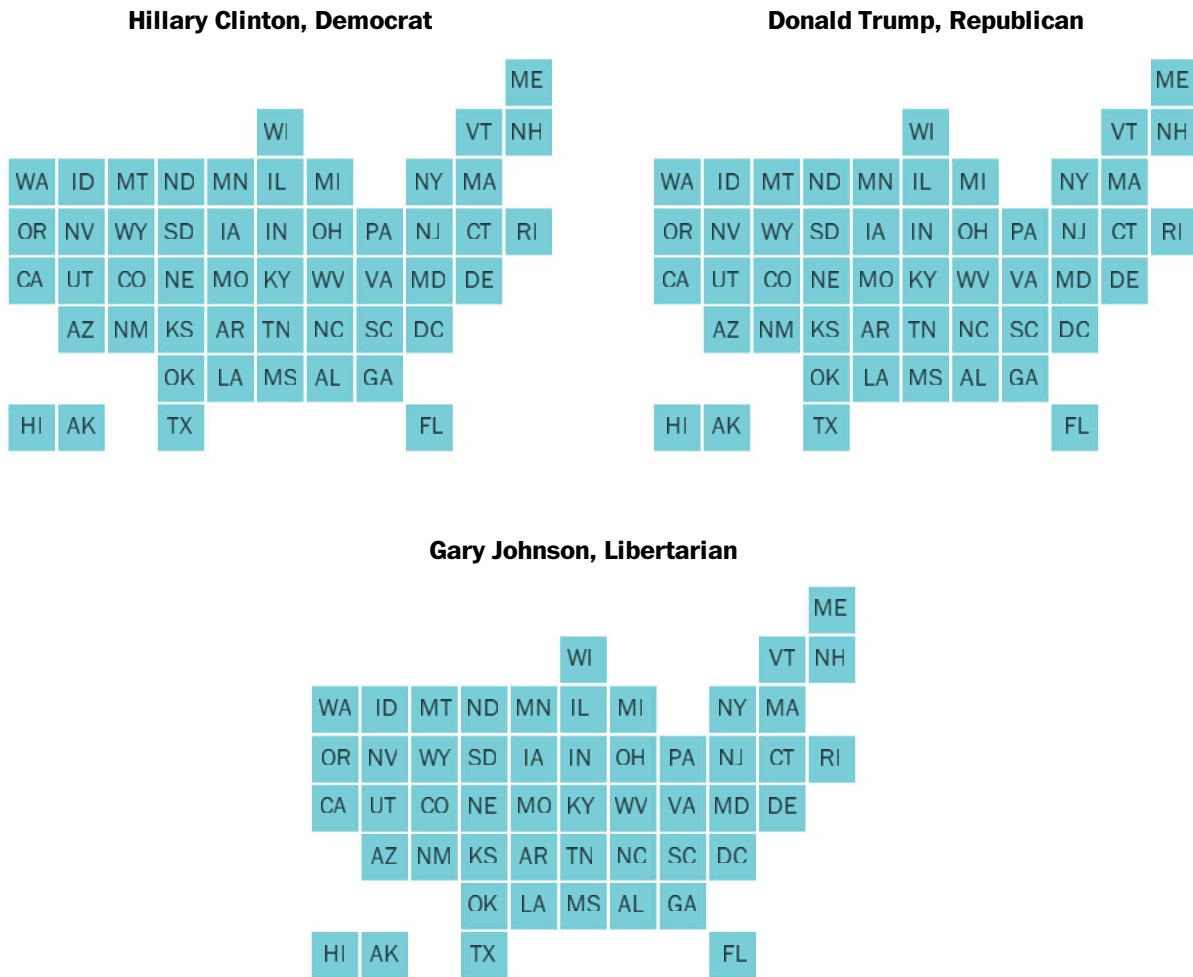
That means that even if a write-in candidate wins the popular vote — an extremely unlikely scenario — their votes won't be counted if the candidate hasn't pre-registered. States often throw these write-in votes for unregistered candidates into an "All others" category and don't tally them up individually.

[[As Clinton builds a lead, write-in campaigns flower and falter](#)]

Which candidates are options in each state?

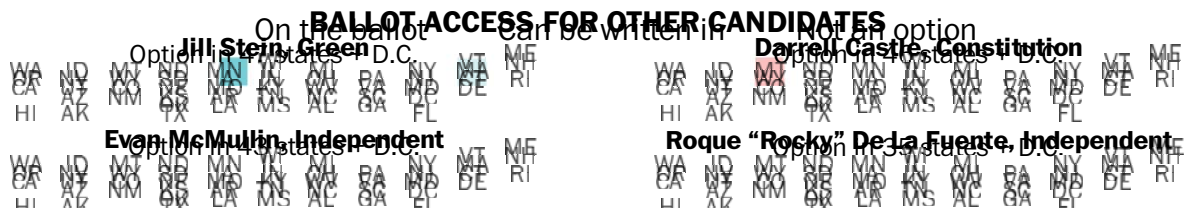
Every state will have at least three options on its ballot for president: Democrat Hillary Clinton, Republican Donald Trump and Libertarian Gary Johnson.

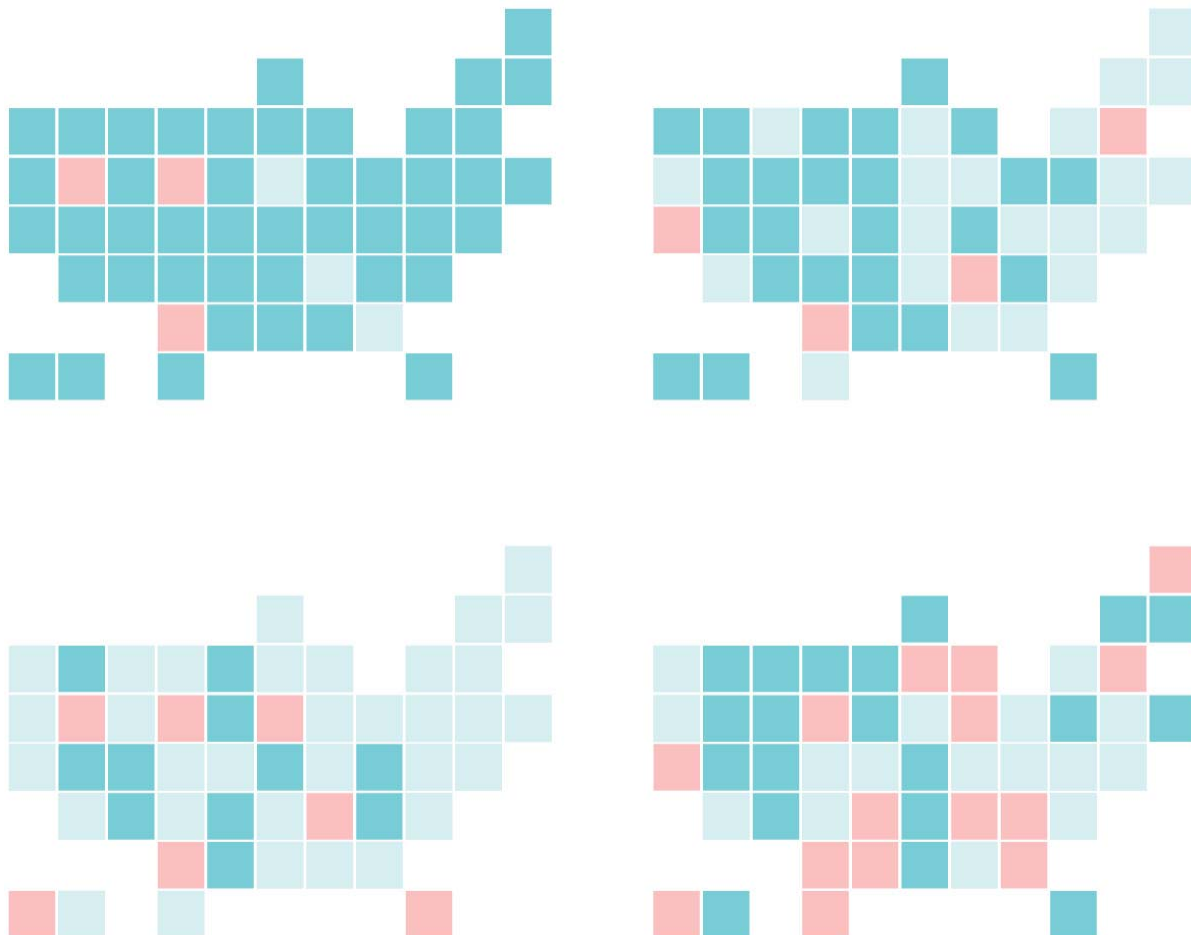
CANDIDATES ON EVERY BALLOT



Green Party candidate Jill Stein will be on the ballot in all but six states, but she is available as a write-in candidate in half of those six.

Independent candidate Evan McMullin is on the ballot in 11 states, including his home state of Utah. If the conservative-leaning candidate wins there, it would be the first time someone other than a major-party nominee would [win electoral votes since 1968](#). Voters can officially write him in at polling places in more than two dozen other states.

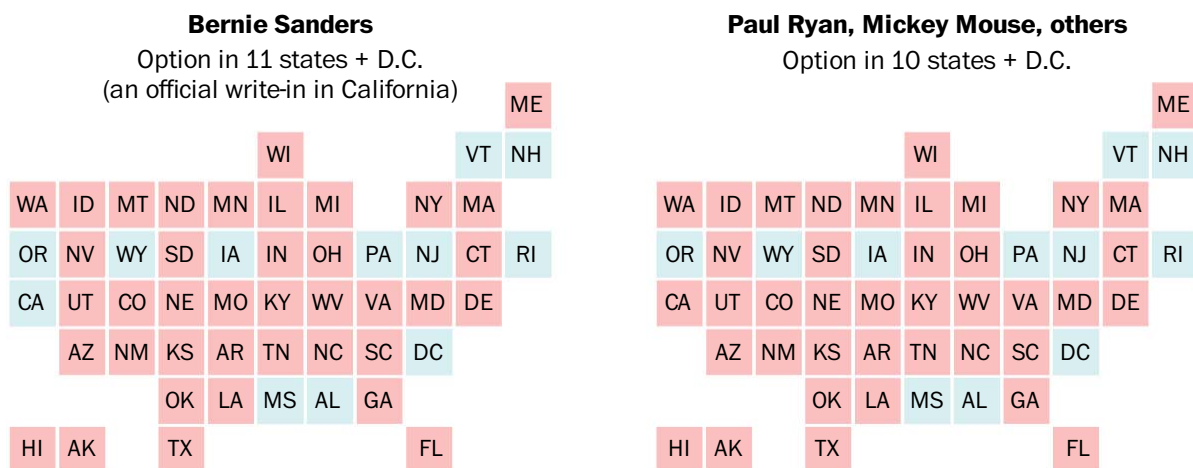




For comparison, here are the places where voters can write in anyone — from Bernie Sanders to Mickey Mouse.

BALLOT ACCESS FOR OTHERS NOT RUNNING

Can be written in Not an option



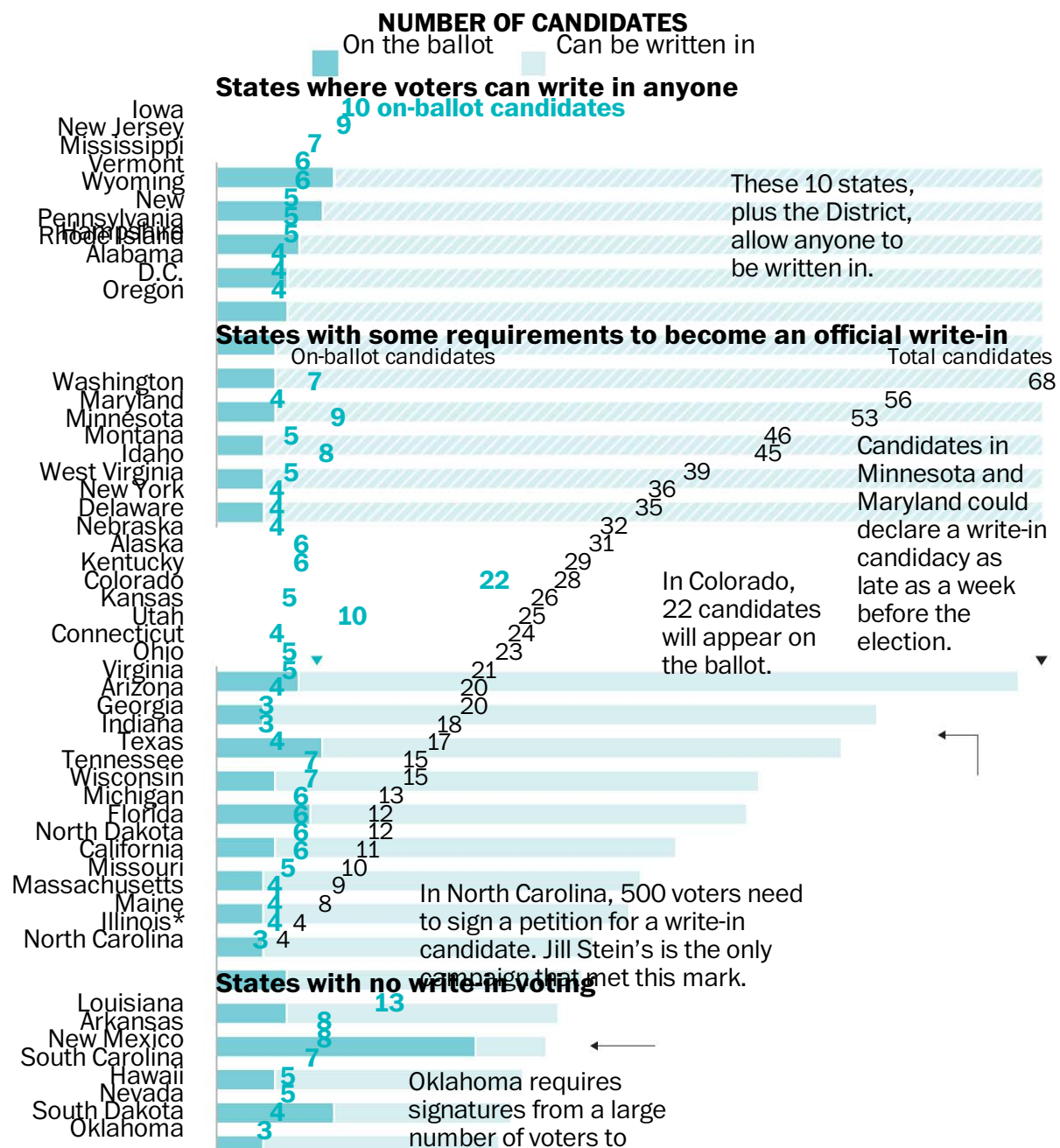
To be an official write-in in California, 55 people must sign a

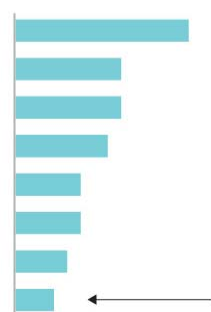
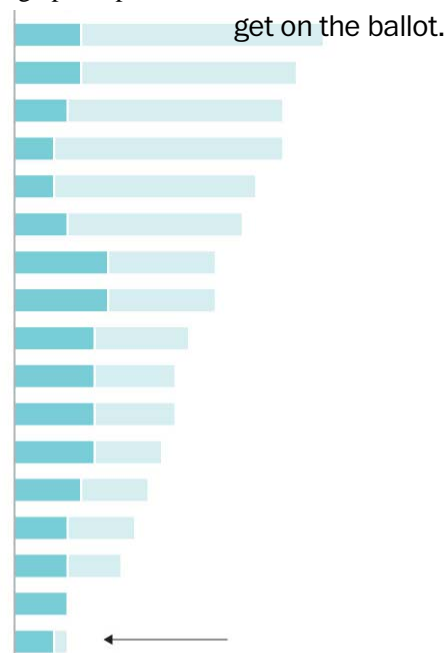
petition for a nominee. But that person doesn't have to consent, which is why **Bernie Sanders is an official write-in** in California even though he isn't running for president.

[Bernie Sanders: 'This is not the time for a protest vote']

How many options are there in each state?

Most states have fewer than a half-dozen presidential candidates on the ballot, but write-in options exist in most states.





Getting ballot access can be hard for smaller campaigns with fewer resources. [Darrell Castle](#), the candidate for the Constitution Party, is on the ballot in more than two dozen states. Castle said his campaign has faced ballot access obstacles in California, Texas and Oklahoma. “Those states are virtually impossible for a party like mine because they cost so much money,” Castle said.

Castle isn’t on the ballot in Oklahoma. To be on the ballot there required signatures from at least 3 percent of all votes cast in the state in 2012, or about 40,000 signatures. Castle says this would likely require hiring professionals who often charge a few dollars for each signature.

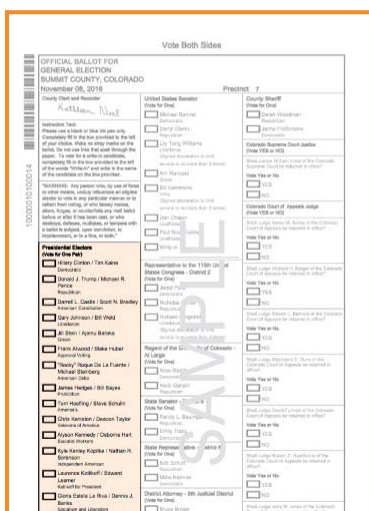
Roque “Rocky” De La Fuente is running as an independent and is on the ballot in 20 states. As other non-major-party candidates have promised to do, De La Fuente has mounted several legal challenges for ballot access.

Registering as an official write-in is only half the battle

Even in states where a voter can write in anyone, there are still hurdles for a candidate to emerge victorious. Some states and the District of Columbia require post-election paperwork from any winning write-in. In Mississippi, write-ins are considered only in the event of the death, resignation, withdrawal or removal of a candidate already on the ballot.

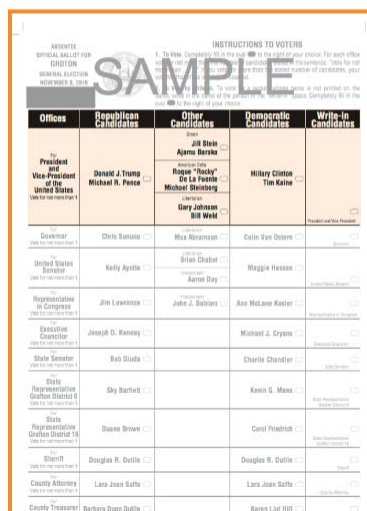
States also differ in how they standardize write-ins on a ballot. Aside from spelling a candidate's name correctly, some are more lenient with nicknames and initials than others. Massachusetts allows candidates to run **sticker campaigns**, and Pennsylvania allows **stamp campaigns**. Some others strictly prohibit these, making it even harder for write-in candidates to get any votes.

COLORADO SAMPLE BALLOT
22 presidential candidates
and write-in option



This is a sample ballot for the 2016 General Election in Summit County, Colorado. It features a large 'SAMPLE' watermark. The ballot is divided into sections for various offices, including President, Vice President, U.S. House of Representatives, U.S. Senate, State Representative, State Senator, State Attorney, and County Treasurer. Each section lists candidates with checkboxes for voting. A 'Write-In' option is provided for each office. The ballot also includes instructions for voters and a section for 'Vote Both Sides'.

NEW HAMPSHIRE SAMPLE BALLOT
5 presidential candidates
and write-in option



This is a sample ballot for the 2016 General Election in New Hampshire. It features a large 'SAMPLE' watermark. The ballot is divided into sections for various offices, including President, Vice President, U.S. House of Representatives, U.S. Senate, State Representative, State Senator, State Attorney, and County Treasurer. Each section lists candidates with checkboxes for voting. A 'Write-In' option is provided for each office. The ballot also includes instructions for voters and a section for 'Vote Both Sides'.

SOUTH DAKOTA SAMPLE BALLOT
4 presidential candidates
and no write-in option



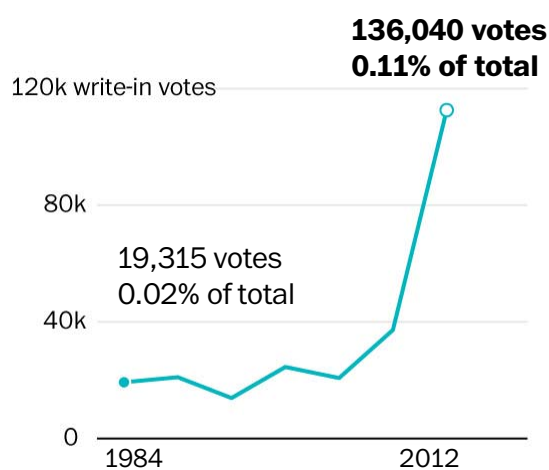
This is a sample ballot for the 2016 General Election in South Dakota. It features a large 'SAMPLE' watermark. The ballot is divided into sections for various offices, including President, Vice President, U.S. House of Representatives, U.S. Senate, State Representative, State Senator, State Attorney, and County Treasurer. Each section lists candidates with checkboxes for voting. There is no 'Write-In' option provided for any office. The ballot also includes instructions for voters and a section for 'Vote Both Sides'.



Not that people won't try. In 2012, a man [legally changed his name](#) to "Santa Claus" and registered as a write-in candidate in Maryland. In all, [625 people](#) wrote in "Santa Claus" for their presidential vote, the most for any write-in in Maryland that year.

[Who are you writing in? The overwhelming allure of voting for someone who won't win.]

According to the Federal Election Commission, nationwide write-in votes have increased more than fivefold since 1984. This is probably an underestimate, because some states only tabulate write-in votes if a race is close.



Note: Totals may not include write-in and blank votes that were compiled as one total in New

Write-ins usually account for less than 1 percent of all votes cast.

Alaska had the highest share of write-in votes in 2012, at 0.96 percent, two years after the state's high-profile Senate race was [won by a write-in incumbent](#).

That race was the exception. At current levels, write-in voters alone are not enough to fuel a winning presidential campaign.

But that won't stop tens of thousands of voters from supporting write-ins in 2016, whether on principle, or as an act of protest of the

two major-party candidates.

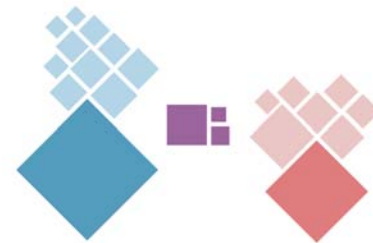
Sources: National Association of Secretaries of State, Federal Election Commission, campaign sites, secretary of state sites and state board of election sites.

Note: An earlier version of this graphic mislabeled Darrell Castle's ballot access. He is on the ballot in Michigan and a write-in candidate in Kentucky. In the state of Washington, [candidates may file as an official write-in candidate](#), but voters can write in anyone. All write-ins are counted together into one pool and will be tallied separately if the amount of all write-ins is significant enough to make a difference in an election outcome. In Oregon, there is no definitive ruling yet on whether the state's "[sore loser](#)" law would be in effect for the presidential election. The law would prevent a candidate who failed to receive the nomination of a major political party in a primary to run again for the same office at the succeeding general election.

More stories

Choose your own electoral adventure: Map out the ways Clinton or Trump could win

Hillary Clinton is ahead in so many states, according to polls and experts, that she has many routes to capture the presidency with 270 electoral votes. Donald Trump, meanwhile, can get there by overturning expectations in several states.



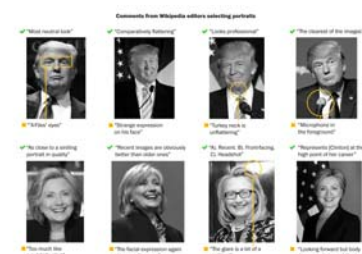
Election maps are telling you big lies about small things

In 2012, 160 counties cast about the same number of votes as the rest of the country. But, your run-of-the-mill election map won't show you that.



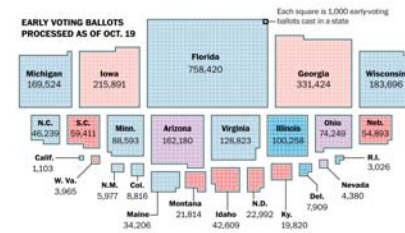
Wikipedia editors are essentially writing the election guide millions of voters will read

From selecting pictures to verifying sources, every fact about a candidate is nitpicked to perfection by a small army of volunteer editors.



More than 2.5M votes were cast before the final debate. Does it matter?

Voting in the 2016 general election began weeks ago. Did those voters miss key information?



105 Comments

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Kathleen Hunt Paez

4:42 AM EST

Thank you for the detailed information on 'write-in votes' in your article related to the 2016 Campaign. This has given me the understanding I needed before making my Vote of choice in the Presidential Election.

Like Reply Share

Andy Hess

11/7/2016 11:35 PM EST

Jill Stein is not on the ballot in Kansas.

Like Reply Share

Ocharles

11/7/2016 5:00 PM EST

Mississippi should be listed as not counting write-ins. DC, Oregon, and Washington require presidential candidates to file before the election. Wyoming requires filing within two days of the election. Half of the remaining "write-in anyone" states have regularly failed to count write-ins.

The best option is to vote for the most progressive candidates on the ballot: Jill Stein / Ajamu Baraka.

Like Reply Share

jc

11/7/2016 2:17 AM EST

You CAN write in any presidential candidate without restriction or registration in Washington state. You incorrevtly list WA as "not an option" repeatedly in your article—fir Sanders mickey mouse etc etc. Sources (updated/additional yo previous (PLEASE READ) :

<http://www.king5.com/news/politics/doing-a-write-i...> (<http://www.king5.com/news/politics/doing-a-write-in-vote-it-may-not-count/348128948>)

Really? WRONG ON WASHINGTON STATE. IT IS AN OPTION WITHOUT OFFICIAL REGISTRATION. How many sources do you need that explain why you CAN write in Sanders ir anyone without registering and have your vote count in WA?
<http://heavy.com/news/2016/11/where-how-can-you-wr...> (<http://heavy.com/news/2016/11/where-how-can-you-write-in-bernie-sanders-for-president-on-election-day-alabama-california-iowa-new-hampshire-jersey-oreg>)

Like Reply Share

Denise Lu

STAFF 11/7/2016 12:24 PM EST

Hi, jc, thanks for the comment.

We have added a note to the graphic indicating that voters can write in anyone. Because the state still has a system to file as an official candidate, we will be keeping our maps as is.

Like Reply

jc

11/7/2016 2:02 AM EST

Still not corrected. You can write in Sanders, or anyone for president , without registering in WA Washington State. Still sticking to false inaccurate deceptive ifo WAPO? NICE! Does THIS make it clearer: <http://www.king5.com/news/politics/doing-a-write-i...> (<http://www.king5.com/news/politics/doing-a-write-in-vote-it-may-not-count/348128948>)

Official registration does not apply to presidential candidates. Why not fixing this if you are actually not biased? More proof that this is not about journalism but propaganda.

Like Reply Share

CZ077

11/5/2016 6:04 AM EDT

Want to break free of the two party stranglehold without fear of 'wasting' your vote? Use the power of the Electoral College in two easy steps!

If you live in a state which polling has indicated is 'safe Democrat', and you were considering voting for Trump or normally vote Republican, vote for Gary Johnson.

If you live in a state which polling has indicated is 'safe Republican', and you were considering voting for Clinton or normally vote Democrat, vote for Jill Stein.

Your vote wasn't going to count anyway, so if you vote either of the two parties of the duopoly, you've truly wasted your vote. But if we get both the Libertarian and Green parties up above the 5% threshold, we have a real chance to shake things up in Washington.

If everyone follows along, we can let the elite power monger overlords on both sides of the aisle know that their Parties are Over.

3 · Like Reply Share

DissentingPostReader

3:03 AM EST

Like, like, like!

Like Reply

Personlady99

3:49 AM EST

I want quadruple "like" this! One loud voice, WE, THE PEOPLE! As a side note, I'd like to add that the electoral college needs to be abolished! Modern technology is more than capable of counting EVERY vote! While not making us feel like we're tangled in a huge, confusing plethora of nonsensical equations of how it all works! This article alone made my head spin! Keep it simple, stupid.

Like Reply

jc

11/5/2016 3:20 AM EDT [Edited]

You can write Sanders in in WA.

Our Sec of State is on record explaining why here: <http://www.seattleweekly.com/news/bernie-supporter...> (<http://www.seattleweekly.com/news/bernie-supporters-if-we-write-him-in-theres-still-a-chance/>) And here: <http://www.king5.com/news/politics/faq-will-my-wri...> (<http://www.king5.com/news/politics/faq-will-my-write-in-vote-for-president-count/345101621>.) Your vote for Sanders will be saved and counted. Period. Saying it is "not an option" because unofficial write in numbers are not published for non-winning candidates is inaccurate at best and deceptive in

fact (as I sent in the correction and it has been ignored). The losing numbers don't matter for a ballot candidate, official write in candidate, or unofficial write in in WA—they are the same—they count if you win.

All you self-satisfied, glib rats have accomplished is to engender more cynicism, skepticism, and distrust for both major parties and the media—we'll be more prepared and less trusting of parties "political promise" of impartiality and the rest of the disenfranchising stunts. There was only one candidate with integrity, and it is apparent for all to see now. Tammany Hall -style "victory" is nothing to be proud of. You lost far more than you "won" in the short run by cheating and lying...truth will out.

1 · Like Reply Share

Whitney Weltz

11/4/2016 4:16 PM EDT

Bernie fans, please vote Jill Stein!! If she receives just 5% of the vote, the Green party can receive federal funding for future elections to the tune of \$8-10 million!! This can help the Green party grow its constituency, run more down ballot candidates at the local level, and gain more exposure! It's the only way they can become a viable party in future elections!

Stopping supporting parties who do not support you! Don't waste your vote continuing the Oligarchy! Vote with your conscience and support a brighter future!

2 · Like Reply Share

Stephen Clark

11/4/2016 9:33 PM EDT

You're assuming that President Trump and the Republican Congress will keep the federal funding law once you elect them in your tantrum.

1 · Like Reply

NoToGMOs

11/5/2016 8:50 AM EDT

There may be a President Trump, but there sure will not be a Republican Congress!

#Jill2016

#BlueDownBallot

Like

DoctorL94

11/4/2016 2:11 PM EDT

Don't waste your vote young Bernie fans - there is too much at stake here including

your futures if trump gets elected!

1 • Like Reply Share

Jeroboam

11/4/2016 2:12 PM EDT

There's also too much at stake if Hillary Clinton gets elected.

5 • Like Reply

UNLISTED

11/4/2016 2:41 PM EDT

actually, most of us Bernie supporters are neither young nor 'fans'.

1 • Like Reply

Jeroboam

11/4/2016 2:05 PM EDT

Writing in a candidate is really only a form of therapy for the voter in any case. So what's the difference whether such a vote "officially counts" or not? It's just as therapeutic a gesture of protest even if it doesn't – or can be viewed that way by the one who casts it.

1 • Like Reply Share

TFCFM

11/4/2016 1:35 PM EDT

The graphics accompanying this article appear to show that all states' ballots include at least 3 candidates.

If your conscience won't permit you to vote for either of the despicable human beings nominated by the two major parties, it appears that all states' voters have at least one other option that will definitely be counted. (If you're not particular, why not cast it for the Libertarian candidate, Gary Johnson, who is on the ballot in, I believe, all 50 states?)

Write-in voters beware - your 'protest' will not register at all in many states, as the article indicates.

1 • Like Reply Share

NoToGMOs

11/5/2016 8:52 AM EDT

Jill Stein is close behind....she can be voted for or written in in 48 states including DC.

1 • Like Reply

David William Eidson

11/4/2016 12:15 PM EDT

The top two choices are now written in political stone, I believe in the intelligence of the American people and of the two choices the best one will be selected by a free and democratic election, more than can be said for many foreign governments. If you cherish your rights, get out the vote! Make your choice and let your voice be heard where it counts, in the ballot box!

Like Reply Share

TFCFM

11/4/2016 1:36 PM EDT

>The top two choices are now written...

"Top" is a matter of opinion.

5 • Like Reply

sonderweg

11/4/2016 12:03 PM EDT

Is Deez Nuts on the ballot anywhere?

2 • Like Reply Share

DissentingPostReader

3:05 AM EST

Vermin Supreme!

Like Reply

DandyDon

11/4/2016 12:00 PM EDT

Being real for a minute...there are only three ways to vote:

1. I prefer Trump to be President instead of Clinton;
2. I prefer Clinton to be President instead of Trump;
3. I will let everybody else decide for me.

2 • Like Reply Share

Steven Sprouse

11/4/2016 12:30 PM EDT

I prefer others can decide WITHOUT me. Whomever gets elected will be my President, but not with my support/vote.

4 • Like Reply

TFCFM

11/4/2016 1:38 PM EDT

>there are only three ways to vote:

Actually, there are only two:

1. I will ignore what my conscience is SCREAMING at me and vote for one of Ms. Clinton and Mr. Trump.
2. I will listen to my conscience and vote for the candidate who I believe will best serve the People of the United States.

5 · Like Reply

Jam Tomorrow

11/4/2016 1:54 PM EDT

I hope you're actively working at the municipal and state level to enact instant-runoff / parliamentary systems of voting, otherwise your "its all about me" vote will only guarantee that the opposition wins in a tight race.

Like

TFCFM

11/4/2016 1:57 PM EDT

Voting according to one's conscience means the "opposition" (whatever you mean by that) always wins?

Pray tell how.

3 · Like

Jeroboam

11/4/2016 2:10 PM EDT

Right. But if everybody else decides for me, (1) they exercised the decision in my place because I positively wanted them to and (2) I escape the taint of having personally, voluntarily and affirmatively cast a vote for one of two persons who are both (though in different ways) entirely unfit for the office.

2 · Like Reply

Trulysaved1

11/4/2016 11:59 AM EDT

Trump may speak before he thinks, but as President will have a cabinet and Congress to actually make arrangements and laws. Hillary, as Secretary of State, totally

disregarded Executive Order 13526 and was not prosecuted by this nation's top law enforcement agency: that made her above the law and very dangerous.

1 • Like Reply Share

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