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Access to the Political Arena - Texas Looks to a New Primary Election Law: *Bullock v. Carter* and *Bullock v. Calvert*

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NOTES

Access to the Political Arena — Texas Looks to a New Primary Election Law: *Bullock v. Carter* and *Bullock v. Calvert*

Plaintiffs were denied places on their parties' ballot in the 1970 Texas primary elections when they refused to pay the filing fees required by state law because they were financially unable to do so.¹ A petition was filed in federal court, and later amended to add as additional plaintiffs a number of voters who wished to vote for the candidate plaintiffs. A three-judge panel found that the filing fee requirement violated plaintiffs' first and fourteenth amendment rights and enjoined its enforcement.² The State of Texas appealed to the United States Supreme Court. *Held, affirmed*: The state's interest in limiting the ballot to a manageable number of candidates and its desire to collect money to finance the election does not justify discrimination between candidates on the basis of their ability to pay the fee. *Bullock v. Carter*, 405 U.S. 134 (1972).

With enforcement of the original statutes and a legislative attempt at providing a contingent alternative both enjoined,³ Texas Secretary of State Bullock established an alternative filing fee schedule and new instructions under which the primary election could be held.⁴ Relying on his authority as "chief election officer"⁵ and a federal court order⁶ as a grant of extraordinary power to deal with the new circumstances, Bullock presented Comptroller of Public Accounts Calvert with a number of vouchers for payment of election expenses. Calvert, relying on an opinion of the Attorney General of Texas,⁷

¹The Texas Election Code provided that the county chairman of the party concerned would prorate the estimated expense of the election among the candidates. No alternate means was provided for a candidate to have his name placed on the ballot and there was no provision for write-in candidates. TEX. ELECTION CODE ANN. arts. 13.07a, 13.08, 13.08a, 13.09, 13.15, 13.16 (1967). In these particular races the fees were \$1,000 (Commissioner of the General Land Office), \$6,300 (County Judge), and \$1,424.60 (County Commissioner). Brief for Appellants at 6, *Bullock v. Carter*, 405 U.S. 134 (1972).

²*Carter v. Dies*, 321 F. Supp. 1358 (N.D. Tex. 1970).

³The legislature passed an act which provided that a candidate could have his name placed on the ballot if he signed an affidavit to the effect that he was unable to pay the fee and filed a petition signed by a number of voters equal to 10% of those who voted for his party's last gubernatorial candidate in the political territory in which the candidate was running. The act was to become effective Jan. 1, 1972, if the Supreme Court did not consider an appeal from *Carter v. Dies* or if the Court affirmed that decision. Law of June 15, 1971, ch. 11, § 1, [1971] Tex. Laws 33. Enforcement of the act was enjoined by the same three-judge panel which had decided *Carter v. Dies*. The panel asserted that the alternative plan did not change the impermissible and unconstitutional nature of the fee. *Johnston v. Luna*, 338 F. Supp. 355, 357 (N.D. Tex. 1972).

⁴Based on the "compelling state interest in regulating the ballot to permit the voter to make an intelligent choice among candidates for office," the Secretary of State issued an order which provided filing fees which ranged from zero for party offices to \$400 for state-wide offices, with nominating petitions available as an alternative method of obtaining ballot position. Order of the Secretary of State of Texas, Feb. 3, 1972. Rules were later promulgated which provided additional petition instructions. A form was provided for the petition, with a requirement that each signature be notarized. Letter from Bob Bullock, Secretary of State, to All Election Officials, Feb. 7, 1972.

⁵TEX. ELECTION CODE ANN. art. 1.03 (1967), as amended, (Supp. 1972).

⁶The federal court in *Johnston v. Luna* amended its order on Feb. 2, 1972, to include: "The Secretary of State is likewise hereby authorized to make such rules and regulations and to take such other action as may be necessary to effectuate this order and for the uniform operation of primary elections consistent with *Carter v. Dies*." TEX. ATT'Y GEN. OP. NO. M-1068, at 5223 (1972).

⁷TEX. ATT'Y GEN. OP. NO. M-1068 (1972).

refused to honor the vouchers, contending that payment of expenses for party primaries amounted to use of public funds for a private purpose, an expenditure prohibited by the Texas Constitution.⁸ Furthermore, the legislature had not authorized such expenditures. Bullock then initiated mandamus proceedings in the Supreme Court of Texas to order payment of the vouchers. *Held, mandamus denied*: Although payment of expenses for primary elections is payment for a "public purpose," and is not proscribed by the Texas Constitution, it is the function of the legislature to authorize and appropriate the necessary funds.⁹ *Bullock v. Calvert*, 480 S.W.2d 367 (Tex. 1972).

I. EQUAL PROTECTION AND THE ELECTORAL PROCESS

Although the right to vote has long been considered a fundamental right,¹⁰ the Supreme Court has been reluctant to delve into matters which it considered political.¹¹ This reluctance resulted in a limitation on the extent to which the Court would afford relief when confronted with cases involving the right to vote. Thus, the Court would intervene only to protect basic access to the ballot box, and if the complainant had been allowed to cast a ballot, the state was held to have discharged its constitutional duty.¹² However, since the 1962 case of *Baker v. Carr*,¹³ the Court has become involved in questions which go beyond mere access to the ballot.¹⁴ In addition, the Court has applied a more stringent standard in its examination of various state efforts to deny the vote to some of the community, requiring a showing of compelling state interest to justify any classification of voters.¹⁵

⁸ The Texas Constitution provides that "[t]axes shall be levied and collected by general laws and for public purposes only." TEX. CONST. art. VIII, § 3.

⁹ Two weeks after the decision in *Calvert*, Governor Smith called a special session of the Texas Legislature. The legislature passed and the Governor signed the McKool-Stroud Primary Financing Law of 1972, which gave legislative approval to the election instructions promulgated by Secretary of State Bullock on Feb. 3, 1972. It further provided that the state would pay for any expense not covered by the modified filing fees. The sum of 2.15 million dollars was appropriated for this purpose. Law of Apr. 4, 1972, ch. 2, §§ 1-5, [1972] Tex. Laws 7. This act, however, provided only for the financing of the 1972 primary elections, and prior to the 1974 primary the legislature must again consider the matter of election financing in light of *Calvert* and *Carter*.

¹⁰ See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886): "Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless [the right to vote] is regarded as a fundamental political right, because preservative of all rights."

¹¹ In 1946, for example, the Court refused to grant relief based on the equal protection clause in a case involving gerrymandering of legislative districts. *Colegrove v. Green*, 328 U.S. 549 (1946). In *Colegrove* the Court held that it "ought not to enter this political thicket . . . [because the] Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights. *Id.* at 556.

¹² In *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50 (1959), the Court reaffirmed the proposition that "[t]he states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."

¹³ 369 U.S. 186 (1962). *Baker* expressly overruled *Colegrove*. While *Baker* did not mark the demise of the political question doctrine, it did signal a different interpretation of it.

¹⁴ In *Baker* the Court established the proposition that votes may not be diluted so that one person's vote is less effective than that of another person. See also *Avery v. Midland County*, 390 U.S. 474 (1968); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963).

¹⁵ This difference of approach by the Court in the area of voting is part of the "new" equal protection which has been discussed by commentators in recent years. See Cox, *The*

It is important to note, however, that these decisions in the area of voting rights involved solely the right to exercise the franchise, and in no way involved the right of a candidate to run for office. The Court had held that the right to be a candidate was not granted by the Constitution.¹⁶ In *Williams v. Rhodes*,¹⁷ however, the Court revealed that exclusion of the right to candidacy from the area of protected rights might not be absolute.

The Ohio laws challenged in *Williams* made no provisions for independent candidates for presidential electors, and required that new political parties submit petitions with signatures equalling fifteen percent of the voters in the last gubernatorial election, while the established parties were guaranteed ballot position so long as they continued to poll a mere ten percent of the vote. Justice Black, speaking for the Court, concluded that the facts and circumstances behind the election laws, which caused the exclusion of certain candidates, placed a heavy burden on the fundamental right to vote, which in turn infringed the plaintiff political party's first amendment right of association and fourteenth amendment right of equal protection of the law. The Court found that the state's interest in limiting candidate access to the ballot in order to preserve the two-party system was not sufficiently compelling to justify such discrimination. The greatest weakness of the *Williams* decision is that it left no standard by which lower courts would be able to determine what methods the states would be allowed in keeping ballots uncluttered.¹⁸

A flood of challenges to state election laws followed *Williams*, the first of which was *Jeness v. Little*.¹⁹ In *Jeness* a three-judge district court held that a filing fee invidiously discriminated on the basis of wealth, and should be held unconstitutional unless there was an alternative means of obtaining

Supreme Court, 1965 Term; Foreword: Constitutional Adjudication and the Promotion of Human Rights, 80 HARV. L. REV. 91, 95 (1966); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1123-32 (1969). While under the previous equal protection standard it was only necessary for the state to show that there was a reasonable and rational nexus between the classification which it strove to impose and the goal it wished to attain, under the "new" equal protection, if a fundamental right is involved or if a suspect criterion is employed, the Court will apply a strict scrutiny test and require a showing of compelling state interest. See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966).

¹⁶ *Snowden v. Hughes*, 321 U.S. 1 (1944). But see *Turner v. Fouche*, 396 U.S. 346, 362 (1970), in which the Court reaffirmed *Snowden* in more circumspect language: "We may assume that the appellants have no right to be appointed [to the office in question]. But the appellants . . . do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications." The Court has never relied solely on the rights of candidates to find that filing fees are a form of invidious discrimination based on wealth.

¹⁷ 393 U.S. 23 (1968). For discussion of *Williams*, see Barton, *The General Election Ballot: More Nominees or More Representative Nominees?*, 22 STAN. L. REV. 165 (1970); Note, *The Uncertain Impact of Williams v. Rhodes on Qualifying Minority Parties for the Ballot*, 6 HARV. J. LEGIS. 236 (1969); Note, *The Constitutional Limitations Upon State Regulation of Its Ballot*, 30 OHIO ST. L.J. 202 (1969); Note, *Ohio Election Laws Making It Virtually Impossible For Minority Parties To Obtain a Position on the Ballot Declared Unconstitutional*, 20 SYRACUSE L. REV. 777 (1969). *Williams* involved complaints by minority parties in Ohio and was brought to the Court shortly before the 1968 presidential election. The hurried treatment of the case resulted from the Court's desire that the election should not be disrupted by a prolonged court case.

¹⁸ As Chief Justice Warren pointed out in his dissent: "Both the opinion of this Court and that of the District Court leave unresolved what restrictions, if any, a State can impose [on the right to candidacy and access to the ballot]." 393 U.S. at 69.

¹⁹ 306 F. Supp. 925 (N.D. Ga. 1969), *appeal dismissed sub nom. Matthews v. Little*, 397 U.S. 94 (1970).

ballot position. Shortly thereafter, in *Wetherington v. Adams*,²⁰ a different three-judge court found that the purposes for the Florida filing fee were rational and reasonable,²¹ and rejected the strict scrutiny approach taken in *Jenness*. Still another district court held that the right to hold office is a corollary of the fundamental right to vote, and thus required the state to show a compelling interest to justify discrimination between the candidates.²² It was at this rather confused point in the development of the law that the court in *Carter v. Dies* enjoined the enforcement of the Texas filing fee law.²³

II. THE SUPREME COURT CONSIDERS FILING FEES

The Court in *Bullock v. Carter* directed its attention to the intricate problem of whether the primary interest in question was that of the candidate or that of the voter. Conceding that the rights of the voters and the rights of the candidate are not easily separated, the Court resolved the matter by saying that "[i]n approaching candidate restrictions, it is essential to examine . . . the extent and nature of their impact on voters."²⁴

A consideration of the rights of voters rather than candidates begins with the premise that the voting right is a fundamental right.²⁵ Furthermore, the voter has not only the right to cast a vote, but also the right to cast it effectively.²⁶ A vote is not an effective mechanism to promote the voter's interest unless the voter has a candidate who expresses the voter's wishes. Thus, if the filing fee excludes the only candidate who expresses the wishes of a voter, the filing fee impairs that voter's fundamental right to cast an effective vote.²⁷ In *Carter*, however, rather than requiring the state to show a compelling in-

²⁰ 309 F. Supp. 318 (N.D. Fla. 1970).

²¹ The court interpreted Justice Black's opinion in *Williams* to mean that the impact of the election system as a whole must be considered, rather than any single factor, in determining whether strict scrutiny should be applied, citing *Williams*, 393 U.S. at 30. No voters were joined in *Wetherington*, hence the fundamental right to vote was not an issue. 309 F. Supp. at 320, 321.

²² *Thomas v. Mims*, 318 F. Supp. 179 (S.D. Ala. 1970).

²³ 321 F. Supp. 1358 (N.D. Tex. 1970). Other cases were decided on the filing fee issue before *Carter*, but these cases followed the approach of either *Jenness* or *Wetherington* and will not be discussed here. See, e.g., *Georgia Socialist Workers Party v. Fortson*, 315 F. Supp. 1035 (N.D. Ga. 1970), *aff'd sub nom. Jenness v. Fortson*, 403 U.S. 431 (1971); *Fowler v. Adams*, 315 F. Supp. 592 (M.D. Fla.), *injunction granted*, 400 U.S. 1205 (1970), *appeal dismissed*, 400 U.S. 986 (1971). For other cases decided after the district court's decision in *Carter*, see *Socialist Workers Party v. Welch*, 334 F. Supp. 179 (S.D. Tex. 1971); *Wong v. Mihaly*, 332 F. Supp. 165 (N.D. Cal. 1971); *Gonzales v. City of Sinton*, 319 F. Supp. 189 (S.D. Tex. 1970). These cases generally follow the *Jenness* rationale, with the exception of *Gonzales*, in which the same result was reached without the aid of the authorities generally cited by the other district courts.

²⁴ 405 U.S. at 142, 143. By refusing to consider the fee solely in relation to the rights of the candidate to be free of any discrimination based on wealth, the Court avoided an opportunity to extend its earlier reasoning in *Turner* to invalidate all filing fees. See note 16 *supra*.

²⁵ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). See note 10 *supra*, and accompanying text.

²⁶ See note 14 *supra*.

²⁷ In addition, because the fee system regulated the ballot in relation to the ability of the candidate or his supporters to pay a fee, it fell "with unequal weight on voters, as well as candidates, according to their economic status." 405 U.S. at 144. Wealth may be a suspect criterion, and regulation based upon it might be subjected to "strict scrutiny." See *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), where the fundamental right to vote was regulated on the basis of the ability of voters to pay a poll tax. Mr. Chief Justice Burger purported to adopt the standard used in *Harper*. 405 U.S. at 144.

terest in collecting the fee, the Court required the state to show only a reasonable necessity.²⁸ Even under this seemingly less stringent standard, the state was unsuccessful in demonstrating a justification for the fee.

The state contended that it had a legitimate interest in recouping the expense of running the election by use of the filing fee. The Court held that the filing fee system was not a legitimate means of accomplishing this objective.²⁹ The state argued further that it had a legitimate interest in limiting ballot access to serious candidates, but this interest was also held to be insufficient to uphold the fee. Although the Court recognized that "a state has an interest, if not a duty, to protect the integrity of its political processes from frivolous and fraudulent candidacies,"³⁰ the Court contended that the fee would also exclude serious candidates who could not afford to pay it. Chief Justice Burger stated that "even assuming that every person paying the large fees required by Texas law takes his own candidacy seriously, that does not make him a 'serious candidate' in the popular sense."³¹

It is the absence of criteria for the determination of who is a serious candidate which impedes a solution to the problem. The lack of a substantive definition of a serious candidate by the Court in *Carter* leaves open to question what methods might be employed to keep frivolous candidates off the ballot. The Court expressly stated that "nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or license fees in other contexts."³² This statement, however, was in response to an argument made by the state that "[t]he filing fee as a [*sic*] initial step in entering a career based on public service in elective office is no more a form of invidious discrimination by wealth in the following of a career than the license fees required to engage in many businesses, professions or union dues."³³ The problem is therefore narrowed to determining precisely what is a reasonable filing fee. The only indication of what the Court would consider a reasonable fee is found in a statement in a footnote by Chief Justice Burger that "[t]he term 'filing' fee has long been thought to cover the cost of filing, that is, the cost of placing a particular document on the public record."³⁴ If this is indeed the limit of what the Court will consider reasonable, then the states will have to consider other means by which ballot access can be limited to serious candidates. Such a small fee would be an ineffective barrier to virtually any frivolous candidate.

It appears that further cases will have to be heard before the Court will issue a set of guidelines which will clearly establish what standard will be applied when a state attempts to limit its ballot by means of a filing fee. It is impossible to determine from *Carter* whether in future cases a state will be

²⁸ *Id.* at 143. The Supreme Court of New Mexico has relied on this wording in *Carter* to uphold filing fees. Because many other means of regulating ballot position had failed, the New Mexico court found that the state had shown that the fees were reasonably necessary. *State ex rel. Apodaca v. Fiorina*, 495 P.2d 1379 (N.M. 1972).

²⁹ 405 U.S. at 147.

³⁰ *Id.* at 145.

³¹ *Id.* at 146.

³² *Id.* at 149.

³³ Brief for Appellant at 29, *Bullock v. Carter*, 405 U.S. 143 (1972).

³⁴ 405 U.S. at 148 n.29. Indeed, a California court has already accepted this definition of "reasonable" as the controlling standard by which filing fees must be judged. *Zapata v. Davidson*, 24 Cal. App. 3d 823, 101 Cal. Rptr. 438 (1972).

required to show a compelling interest or merely reasonable necessity in order to sustain a filing fee requirement. In addition, the questions of who is considered a serious candidate and what is a reasonable fee still remain. It has been asserted that a state might condition ballot position on a showing of voter support evidenced prior to the election.³⁵ The problem is to produce a "reasonable" procedure which will accomplish such a result.

III. TEXAS RESPONDS TO CARTER

The Supreme Court of Texas, in *Bullock v. Calvert*, held that although the payment by the state of primary election expenses did not violate the Texas Constitution, specific authorization by the legislature was required. This decision was contrary to an earlier decision by the Texas Supreme Court in *Waples v. Marrast*, in which it was held that payment of expenses for political party primary elections was unconstitutional because it was not for a "public purpose."³⁶ Since 1916, when *Waples* was decided, the definition of "public purpose" has been expanded by Texas courts,³⁷ and now, after the *Calvert* decision, includes primary elections.

After the decision in *Calvert*, a special session of the legislature was called, resulting in appropriations totalling 2.15 million dollars to be used to reimburse the political parties for the expenses incurred in running the 1972 primaries.³⁸ The law enacted by the special session did not permanently change the Election Code, but merely provided a basis upon which the 1972 primaries might be held.³⁹ It differed from the old law, which was invalidated by the Court in *Carter*, in two major respects. First, filing fees were made standard throughout the state. Under the old method the amount of the filing fee was a function of the number of candidates running for a particular office and the expense involved in running the election for that particular office.⁴⁰ The 1972

³⁵ Chief Justice Warren, in his dissent in *Williams*, pointed out that both the majority opinion and the district court decision contained intimations that a State can by reasonable regulation condition ballot position upon at least three conditions—a substantial showing of voter interest in the candidate seeking a place on the ballot, a requirement that this interest be evidenced sometime prior to the election, and a party structure demonstrating some degree of political organization.

Williams v. Rhodes, 393 U.S. 23, 69-70 (1968).

³⁶ 108 Tex. 5, 184 S.W. 180 (1916). *Waples* dealt with the Texas Presidential Primary Act of 1913 which provided that parties which polled more than 50,000 votes in the preceding gubernatorial election would be required to hold a primary for the purpose of selecting presidential electors and that expenses of the election would be paid out of county funds. Act of Mar. 27, 1913, ch. 46, [1913] Tex. Laws 88. The court held that the Act violated article VIII of the Texas Constitution. See note 8 *supra*.

³⁷ See, e.g., *Davis v. City of Lubbock*, 160 Tex. 38, 326 S.W.2d 699 (1959); *Coastal States Gas Prod. Co. v. Pate*, 158 Tex. 171, 309 S.W.2d 828 (1958); *Housing Authority v. Higgenbotham*, 135 Tex. 158, 143 S.W.2d 79 (1940); *Davis v. City of Taylor*, 123 Tex. 39, 67 S.W.2d 1033 (1934); *Goodnight v. City of Wellington*, 118 Tex. 207, 13 S.W.2d 353 (1929).

³⁸ Act of Apr. 4, 1972, ch. 2, § 4, [1972] Tex. Laws 10. When this amount proved insufficient to cover the expenses incurred by the parties, available funds were prorated among the county organizations. The state issued warrants for future payment of the balance. Letter from Bob Bullock, Secretary of State, to County Chairmen, Aug. 4, 1972. This lack of sufficient funds is an additional election problem which must be considered by the next legislature.

³⁹ Act of Apr. 4, 1972, ch. 2, § 1, [1972] Tex. Laws 7.

⁴⁰ *Bullock v. Carter*, 405 U.S. 134, 138-39 (1972).

filing fee schedule set a maximum fee of \$400, quite unlike the fee of \$6,300 which had been required of one plaintiff-candidate in *Carter*.⁴¹ This fee schedule was not challenged in the courts, but if the definition of "filing fee" suggested by Chief Justice Burger is accepted as a guideline of what is reasonable, then a fee of \$400 would be unconstitutional.⁴²

The second major change in the Election Code enacted by the special session was the adoption of Secretary of State Bullock's earlier instruction which allowed a candidate to obtain ballot position without paying the fee if a nominating petition was submitted.⁴³ An earlier contingent law had provided that such a petition could be used as an alternative to paying a filing fee if the candidate filed a pauper's affidavit,⁴⁴ but this statute was struck down by a district court.⁴⁵ The act passed by the special session did not require such an affidavit, but did require each signature to be notarized individually.⁴⁶ The disadvantage of this plan is that a Texas statute requires a notary public to be paid a minimum fee of fifty cents.⁴⁷ If this requirement is enforced, a nominating petition would cost more than the filing fee which the petition avoided.⁴⁸

During the special session, bills were introduced which would have made permanent changes to the Election Code, but these died in committee when the special session was adjourned.⁴⁹

IV. CONCLUSION

There are presently no provisions in the Election Code which provide for the financing of the 1974 primary elections. The sixty-third legislature will have to decide whether to make permanent the system used in the 1972 primary elections or to provide alternative means of keeping non-serious candidates off the ballot. The language in *Bullock v. Carter* is not decisive, consequently there is no assurance that the Supreme Court would not hold that a filing fee of \$400 is unreasonable. Further, the total impact of a scheme which requires notarization of each signature is arguably just as unconstitutional as a scheme which allows no nominating petition at all.

If the standard suggested by Chief Justice Warren in his dissent in *Williams v. Rhodes*⁵⁰ is the correct analysis of how states might distinguish between serious and non-serious candidates, then the legislature would be well advised to consider major changes in the system which would place minimal emphasis

⁴¹ See note 1 *supra*.

⁴² See note 34 *supra*, and accompanying text.

⁴³ See note 4 *supra*.

⁴⁴ Act of Sept. 3, 1971, ch. 11, [1971] Tex. Laws 33.

⁴⁵ Johnston v. Luna, 338 F. Supp. 361 (N.D. Tex. 1972).

⁴⁶ See notes 4, 9 *supra*.

⁴⁷ TEX. REV. CIV. STAT. ANN. art. 3945 (1966).

⁴⁸ As an example, for a state office, 2,500 signatures are required for a nominating petition filed in lieu of a filing fee. Order of the Secretary of the State of Texas, Feb. 3, 1972. If a notary public fee of \$.50 were paid for each signature, the petition would cost \$1,250. The fee prescribed for the same office is \$400. *Id.* Apparently the question of whether a candidate would have to prove payment of the notary fee has not been answered.

⁴⁹ One of these, introduced by Senator McKool, would incorporate most of the features of the temporary bill. S.B. 2, 62d Legislature, 2d Sess. (1972).

⁵⁰ 393 U.S. 23, 63 (1968); see note 35 *supra*.