SUPREME COURT OF THE UNITED STATES

No. 91–535

ALAN B. BURDICK, PETITIONER *v.* MORRIS TAKUSHI, DIRECTOR OF ELECTIONS OF HAWAII, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 8, 1992]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether Hawaii's prohibition on write-in voting unreasonably infringes upon its citizens' rights under the First and Fourteenth Amendments. Petitioner contends that the Constitution requires Hawaii to provide for the casting, tabulation, and publication of write-in votes. The Court of Appeals for the Ninth Circuit disagreed, holding that the prohibition, taken as part of the State's comprehensive election scheme, does not impermissibly burden the right to vote. 937 F. 2d 415, 422 (1991). We affirm.

Petitioner is a registered voter in the city and County of Honolulu. In 1986, only one candidate filed nominating papers to run for the seat representing petitioner's district in the Hawaii House of Representatives. Petitioner wrote to state officials inquiring about Hawaii's write-in voting policy and received a copy of an opinion letter issued by the Hawaii Attorney General's Office stating that the State's election law made no provision for write-in voting. 1 App. 38–39, 49.

Petitioner then filed this lawsuit, claiming that he wished to vote in the primary and general elections for a person who had not filed nominating papers and that he wished to vote in future elections for other

persons whose names were not and might not appear on the ballot. 1 *id.,* at 32–33. The United States District Court for the District of Hawaii concluded that the ban on write-in voting violated petitioner's First Amendment right of expression and association and entered a preliminary injunction ordering respondents to provide for the casting and tallying of write-in votes in the November 1986 general election. App. to Pet. for Cert. 67a–77a. The District Court denied a stay pending appeal. 1 App. 76–107.

The Court of Appeals entered the stay, 1 *id.,* at 109, and vacated the judgment of the District Court, reasoning that consideration of the federal constitutional question raised by petitioner was premature because "neither the plain language of Hawaii statutes nor any definitive judicial interpretation of those statutes establishes that the Hawaii legislature has enacted a ban on write-in voting." *Burdick* v. *Takushi,* 846 F. 2d 587, 588 (CA9 1988). Accordingly, the Court of Appeals ordered the District Court to abstain, see *Railroad Comm'n of Tex.* v. *Pullman Co.,* 312 U. S. 496 (1941), until state courts had determined whether Hawaii's election laws permitted write-in voting.[1]

On remand, the District Court certified the following three questions to the Supreme Court of Hawaii:

> "(1) Does the Constitution of the State of Hawaii require Hawaii's election officials to permit the casting of write-in votes and require Hawaii's election officials to count and publish write-in votes?
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> "(2) Do Hawaii's election laws require Hawaii's election officials to permit the casting of write-in votes and require Hawaii's election officials to count and publish write-in votes?
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> "(3) Do Hawaii's election laws permit, but not require, Hawaii's election officials to allow voters

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[1]While petitioner's appeal was pending, he became concerned that the Court of Appeals might not enter its decision before the September 1988 primary election. Accordingly, petitioner filed a second suit challenging the unavailability of write-in voting in the 1988 election. *Burdick* v. *Cayetano*, Civil No. 99–0365. Coincidentally, petitioner's new suit was filed on the very day that the Ninth Circuit decided the appeal stemming from petitioner's original complaint. The two actions subsequently were consolidated by the District Court. 1 App. 142.

> to cast write-in votes and to count and publish write-in votes?" App. to Pet. for Cert. 56a–57a.

Hawaii's high court answered "No" to all three questions, holding that Hawaii's election laws barred write-in voting and that these measures were consistent with the State's Constitution. *Burdick* v. *Takushi*, 70 Haw. 498, 776 P. 2d 824 (1989). The United States District Court then granted petitioner's renewed motion for summary judgment and injunctive relief, but entered a stay pending appeal. 737 F. Supp. 582 (Haw. 1990).

The Court of Appeals again reversed, holding that Hawaii was not required to provide for write-in votes:

> "Although the prohibition on write-in voting places some restrictions on [petitioner's] rights of expression and association, that burden is justified in light of the ease of access to Hawaii's ballots, the alternatives available to [petitioner] for expressing his political beliefs, the State's broad powers to regulate elections, and the specific interests advanced by the State." 937 F. 2d, at 421.[2]

In so ruling, the Ninth Circuit expressly declined to follow an earlier decision regarding write-in voting by the Court of Appeals for the Fourth Circuit. See *ibid.*, citing *Dixon* v. *Maryland State Administrative Bd. of Election Laws,* 878 F. 2d 776 (CA4 1989). We granted certiorari to resolve the disagreement on this important question. 502 U. S. ––– (1991).

Petitioner proceeds from the erroneous assumption that a law that imposes any burden upon the right to

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[2]The Ninth Circuit panel issued its opinion on March 1, 1991. See *Burdick* v. *Takushi*, 927 F. 2d 469. On June 28, 1991, the Court of Appeals denied petitioner's petition for rehearing and suggestion for rehearing *en banc*, and the panel withdrew its original opinion and issued the version that appears at 937 F. 2d 415.

vote must be subject to strict scrutiny. Our cases do not so hold.

It is beyond cavil that "voting is of the most fundamental significance under our constitutional structure." *Illinois Bd. of Elections* v. *Socialist Workers Party,* 440 U. S. 173, 184 (1979). It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute. *Munro* v. *Socialist Workers Party,* 479 U. S. 189, 193 (1986). The Constitution provides that States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, §4, cl. 1, and the Court therefore has recognized that States retain the power to regulate their own elections. *Sugarman* v. *Dougall,* 413 U. S. 634, 647 (1973); *Tashjian* v. *Republican Party of Connecticut,* 479 U. S. 208, 217 (1986). Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer* v. *Brown,* 415 U. S. 724, 730 (1974).

Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Anderson* v. *Celebrezze*, 460 U. S. 780, 788 (1983). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. See

Brief for Petitioner 32–37. Accordingly, the mere fact that a State's system "creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny." *Bullock* v. *Carter,* 405 U. S. 134, 143 (1972); *Anderson, supra,* at 788; *McDonald* v. *Board of Election Comm'nrs of Chicago,* 394 U. S. 802 (1969).

Instead, as the full Court agreed in *Anderson, supra,* at 788–789; *id.*, at 808, 817 (REHNQUIST, J., dissenting), a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.,* at 789; *Tashjian, supra,* at 213–214. Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be ``narrowly drawn to advance a state interest of compelling importance." *Norman* v. *Reed,* 502 U. S. ––––, ––– (1992). But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions. *Anderson, supra,* at 788; see also *id.,* at 788–789, n. 9. We apply this standard in considering petitioner's challenge to Hawaii's ban on write-in ballots.

There is no doubt that the Hawaii election laws, like all election regulations, have an impact on the right

to vote, *Anderson, supra,* at 788, but it can hardly be said that the laws at issue here unconstitutionally limit access to the ballot by party or independent candidates or unreasonably interfere with the right of voters to associate and have candidates of their choice placed on the ballot. Indeed, petitioners understandably do not challenge the manner in which the State regulates candidate access to the ballot.

To obtain a position on the November general election ballot, a candidate must participate in Hawaii's open primary, "in which all registered voters may choose in which party primary to vote." *Tashjian, supra,* at 223, n. 11. See Haw. Rev. Stat. §12–31 (1985). The State provides three mechanisms through which a voter's candidate-of-choice may appear on the primary ballot.

First, a party petition may be filed 150 days before the primary by any group of persons who obtain the signatures of one percent of the State's registered voters.[3] Haw. Rev. Stat. §11–62 (Supp. 1991). Then, 60 days before the primary, candidates must file nominating papers certifying, among other things, that they will qualify for the office sought and that they are members of the party that they seek to represent in the general election. The nominating papers must contain the signatures of a specified number of registered voters: 25 for candidates for statewide or federal office; 15 for state legislative and county races. Haw. Rev. Stat. §§12–2.5 to 12–7 (1985 and Supp. 1991). The winner in each party advances to the general election. Thus, if a party forms around

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[3]We have previously upheld party and candidate petition signature requirements that were as burdensome or more burdensome than Hawaii's one percent requirement. See, *e.g., Norman* v. *Reed,* 502 U. S. ––––, ––– (1992); *American Party of Texas* v. *White,* 415 U. S. 767 (1974); *Jenness* v. *Fortson,* 403 U. S. 431 (1971).

the candidacy of a single individual and no one else runs on that party ticket, the individual will be elected at the primary and win a place on the November general election ballot.

The second method through which candidates may appear on the Hawaii primary ballot is the established party route.[4] Established parties that have qualified by petition for three consecutive elections and received a specified percentage of the vote in the preceding election may avoid filing party petitions for 10 years. Haw. Rev. Stat. §11–61 (1985). The Democratic, Republican, and Libertarian Parties currently meet Hawaii's criteria for established parties. Like new party candidates, established party contenders are required to file nominating papers 60 days before the primary. Haw. Rev. Stat. §§12–2.5 to 12–7 (1985 and Supp. 1991).[5]

The third mechanism by which a candidate may appear on the ballot is through the designated nonpartisan ballot. Nonpartisans may be placed on the nonpartisan primary ballot simply by filing nominating papers containing 15 to 25 signatures,

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[4]In *Jenness,* we rejected an equal protection challenge to a system that provided alternative means of ballot access for members of established political parties and other candidates, concluding that the system was constitutional because it did not operate to freeze the political status quo. 403 U.S., at 438.

[5]In *Anderson v. Celebrezze,* 460 U. S. 780 (1983), the Court concluded that Ohio's early filing deadline for presidential candidates imposed an unconstitutional burden on voters' freedom of choice and freedom of association. But *Anderson* is distinguishable, because the Ohio election scheme, as explained by the Court, provided no means for a candidate to appear on the ballot after a March cutoff date. *Id.,* at 786. Hawaii fills this void through its nonpartisan primary ballot mechanism.

depending upon the office sought, 60 days before the primary. §§12–3 to 12–7. To advance to the general election, a nonpartisan must receive 10 percent of the primary vote or the number of votes that was sufficient to nominate a partisan candidate, whichever number is lower. *Hustace* v. *Doi*, 60 Haw. 282, 289–290, 588 P. 2d 915, 920 (1978). During the 10 years preceding the filing of this action, 8 of 26 nonpartisans who entered the primary obtained slots on the November ballot. Brief for Respondent 8.

Although Hawaii makes no provision for write-in voting in its primary or general elections, the system outlined above provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary. Consequently, any burden on voters' freedom of choice and association is borne only by those who fail to identify their candidate of choice until days before the primary. But in *Storer* v. *Brown,* we gave little weight to "the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." 415 U. S., at 736.[6] Cf. *Rosario* v. *Rockefeller,* 410 U. S. 752, 757 (1973). We think the same reasoning applies here and therefore conclude that any burden imposed by Hawaii's write-in vote prohibition is a very limited one. "To conclude otherwise might sacrifice the political stability of the system of the State, with profound consequences for the entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot." *Storer, supra,* at 736.[7]

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[6]In *Storer,* we upheld a California ballot access law that refused to recognize independent candidates until a year after they had disaffiliated from a political party.

[7]The dissent complains that, because primary voters are required to opt for a specific partisan or

Because he has characterized this as a voting rights rather than ballot access case, petitioner submits that the write-in prohibition deprives him of the opportunity to cast a meaningful ballot, conditions his electoral participation upon the waiver of his First Amendment right to remain free from espousing positions that he does not support, and discriminates against him based on the content of the message he seeks to convey through his vote. Brief for Petitioner 19. At bottom, he claims that he is entitled to cast and Hawaii required to count a "protest vote" for Donald Duck, Tr. of Oral Arg. 5, and that any impediment to this asserted "right" is unconstitutional.

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nonpartisan ballot, they are foreclosed from voting in those races in which no candidate appears on their chosen ballot and in those races in which they are dissatisfied with the available choices. *Post,* at 3. But this is generally true of primaries; voters are required to select a ticket, rather than choose from the universe of candidates running on all party slates. Indeed, the Court has upheld the much more onerous requirement that voters interested in participating in a primary election enroll as a member of a political party prior to the preceding general election. *Rosario* v. *Rockefeller,* 410 U. S. 752 (1973). Cf. *American Party of Texas,* 415 U. S., at 786 (``[T]he State may determine it is essential to the integrity of the nominating [petition] process to confine voters to supporting one party and its candidates in the course of the same nominating process'').

If the dissent were correct in suggesting that requiring primary voters to select a specific ballot impermissibly burdened the right to vote, it is clear under our decisions that the availability of a write-in option would not provide an adequate remedy. *Anderson,* 460 U. S. , at 799, n. 26; *Lubin* v. *Panish,* 415 U. S. 709, 719, n. 5 (1974).

Petitioner's argument is based on two flawed premises. First, in *Bullock* v. *Carter*, we minimized the extent to which voting rights cases are distinguishable from ballot access cases, stating that "the rights of voters and the rights of candidates do not lend themselves to neat separation." 405 U. S., at 143.[8] Second, the function of the election process is "to winnow out and finally reject all but the chosen candidates," *Storer,* 415 U. S., at 735, not to provide a means of giving vent to "short-range political goals, pique, or personal quarrel[s]." *Ibid.* Attributing to elections a more generalized expressive function would undermine the ability of States to operate elections fairly and efficiently. *Id.,* at 730.

Accordingly, we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls. See *Munro,* 479 U. S., at 199. Petitioner offers no persuasive reason to depart from these precedents. Reasonable regulation of elections *does not* require voters to espouse positions that they do not support; it *does* require them to act in a timely fashion if they wish to express their views in the voting booth. And there is nothing content based about a flat ban on all forms of write-in ballots.

The appropriate standard for evaluating a claim that a state law burdens the right to vote is set forth in *Anderson*. Applying that standard, we conclude that, in light of the adequate ballot access afforded under Hawaii's election code, the State's ban on write-in voting imposes only a limited burden on voters' rights to make free choices and to associate politically through the vote.

We turn next to the interests asserted by Hawaii to

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[8]Indeed, voters, as well as candidates, have participated in the so-called ballot access cases. *E.g., Anderson*, 460 U. S., at 783.

justify the burden imposed by its prohibition of write-in voting. Because we have already concluded that the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction. Here, the State's interests outweigh petitioner's limited interest in waiting until the eleventh hour to choose his preferred candidate.

Hawaii's interest in "avoid[ing] the possibility of unrestrained factionalism at the general election," *Munro, supra,* at 196, provides adequate justification for its ban on write-in voting in November. The primary election is "an integral part of the entire election process," *Storer, supra,* at 735, and the State is within its rights to reserve "[t]he general election ballot . . . for major struggles . . . [and] not a forum for continuing intraparty feuds." *Ibid.; Munro, supra,* at 196, 199. The prohibition on write-in voting is a legitimate means of averting divisive sore-loser candidacies. Hawaii further promotes the two-stage, primary-general election process of winnowing out candidates, see *Storer, supra,* at 735, by permitting the unopposed victors in certain primaries to be designated office holders. See Haw. Rev. Stat. §§12–41, 12–42 (1985). This focuses the attention of voters upon contested races in the general election. This would not be possible, absent the write-in voting ban.

Hawaii also asserts that its ban on write-in voting at the primary stage is necessary to guard against "party raiding." *Tashjian,* 479 U. S., at 219. Party raiding is generally defined as "the organized switching of blocs of voters from one party to another in order to manipulate the outcome of the other party's primary election." *Anderson,* 460 U. S., at 789, n. 9. Petitioner suggests that, because Hawaii conducts an open primary, this is not a cognizable interest. We disagree. While voters may vote on any ticket in Hawaii's primary, the State requires that party candidates be "member[s] of the party," Haw.

Rev. Stat. §12–3(a)(7) (1985), and prohibits candidates from filing "nomination papers both as a party candidate and as a nonpartisan candidate." §12–3(c). Hawaii's system could easily be circumvented in a party primary election by mounting a write-in campaign for a person who had not filed in time or who had never intended to run for election. It could also be frustrated at the general election by permitting write-in votes for a loser in a party primary or for an independent who had failed to get sufficient votes to make the general election ballot. The State has a legitimate interest in preventing these sorts of maneuvers, and the write-in voting ban is a reasonable way of accomplishing this goal.[9]

We think these legitimate interests asserted by the State are sufficient to outweigh the limited burden that the write-in voting ban imposes upon Hawaii's voters.[10]

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[9]The State also supports its ban on write-in voting as a means of enforcing nominating requirements, combating fraud, and "fostering informed and educated expressions of the popular will." *Anderson, supra,* at 796.

[10]Although the dissent purports to agree with the standard we apply in determining whether the right to vote has been restricted, *post,* at 4–5, and implies that it is analyzing the write-in ban under some minimal level of scrutiny, *post,* at 8, the dissent actually employs strict scrutiny. This is evident from its invocation of quite rigid narrow tailoring requirements. For instance, the dissent argues that the State could adopt a less drastic means of preventing sore-loser candidacies, *ibid.*, and that the State could screen out ineligible candidates through post-election disqualification rather than a write-in voting ban. *Post,* at 9.

It seems to us that limiting the choice of candidates to those who have complied with state election law

Indeed, the foregoing leads us to conclude that when a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights—as do Hawaii's election laws—a prohibition on write-in voting will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme.

In such situations, the objection to the specific ban on write-in voting amounts to nothing more than the insistence that the State record, count, and publish individual protests against the election system or the choices presented on the ballot through the efforts of those who actively participate in the system. There are other means available, however, to voice such generalized dissension from the electoral process; and we discern no adequate basis for our requiring the State to provide and to finance a place on the ballot for recording protests against its constitutionally valid election laws.[11]

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we

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requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable. *Anderson, supra,* at 788. The dissent's suggestion that voters are entitled to cast their ballots for unqualified candidates appears to be driven by the assumption that an election system that imposes any restraint on voter choice is unconstitutional. This is simply wrong. See *supra,* at 4–5.

[11]We of course in no way suggest that a State is not free to provide for write-in voting, as many States do; nor should this opinion be read to discourage such provisions.

must live." *Wesberry* v. *Sanders,* 376 U. S. 1, 17 (1964). But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system. *Anderson, supra,* at 788; *Storer,* 415 U. S., at 730. We think that Hawaii's prohibition on write-in voting, considered as part of an electoral scheme that provides constitutionally sufficient ballot access, does not impose an unconstitutional burden upon the First and Fourteenth Amendment rights of the State's voters. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.