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Hop On, Hop Off? Not So Fast!

By [Jerry H. Goldfeder](#)



Anyone who travels is familiar with the “[Hop On, Hop Off](#)” buses that cruise the capitals of so many countries, providing the opportunity to easily get around a new city and see the major sites. In New York, the term is a good metaphor for how our ballot access rules *should* work, but do not: It should be relatively easy for candidates to get on the ballot, and, if circumstances warrant, to remove one’s name. After all, the voters should have a full panoply of choices, and, at the same time, should not be confused by having candidates on a ballot who are no longer actually competing. Instead, although the state’s laws have been liberalized over the years, there remain picayune requirements to earn a place on the ballot and difficult procedures for removing a candidate’s name from it.

I have been writing about this for over 35 years, my first published essay appearing in *Newsday* in 1985 titled *Reforms To Take Election Law Out of Its Present ‘Wonderland’*. The reference of course was to Alice in Wonderland, where everything is not exactly what it seems to be. This is what I meant: The way a political hopeful gets to run in an election is to obtain a certain number of signatures of registered voters (and in a primary, enrolled party members),

supposedly to show support and not overcrowd the ballot with so-called frivolous candidates. But the signatures must be written just-so (no initials please!); addresses of the signers must be complete (is it *East 9th Street*? Or South, West or North? and is it Boulevard, Avenue, or Street?); corrections of the information provided must be initialed (a strike-over to correct a date will not do!); and a voter cannot sign a petition for more than one candidate running for the same office. These are just [some of the arcane, hyper-technical rules](#) that lead to challenges of a candidate's petitions in an attempt to knock them off the ballot. And, reflecting the Lewis Carroll classic, Board of Elections staff, Judicial Referees and Judges often have inconsistent views as to whether a candidate has complied with these rules, and, therefore, is eligible to run.

So, as of this writing, there are a good number of campaigns scrutinizing their opponents' petitions—and, of course, those whose candidacies are being challenged are crying foul. In just two examples of the many petition challenges being currently waged, [one Republican gubernatorial](#) candidate has accused an opponent of undemocratic conduct for trying to thwart his competitors from appearing on the primary ballot; and some Democratic candidates for party office in Brooklyn are [alleging forged signatures](#). In too many instances, voters will know who is on this year's June 28th primary ballot only after rulings by the Board of Elections and the courts during the next month or so.

This bizarre system for nominating candidates is not, unfortunately, unique to New York. In Iowa, former Representative Abby Finkenauer, currently a candidate for United States Senate, was thrown off the ballot because several signatures were missing dates. She was compelled to appeal to the state's [Supreme Court, which reversed that decision](#). In Washington, D.C., a candidate for Mayor this year claimed that an opponent's petition contained no less than 2,800 invalid signatures out of the 4,300 submitted. The Board of Elections rejected enough of the objections to validate the candidate's petitions, which led him to declare the challenge as ["really disingenuous" and "sneaky."](#) And, of course, let's not forget Barack Obama, [who successfully challenged all of his competitors' petitions](#) (even the incumbent's) when he first ran for Illinois State Senate, guaranteeing success in his one-party town of Chicago.

As I said in 1985, and [many times thereafter](#), this system often deprives voters of real choices at the ballot box, and should be reformed. Just as New York statewide candidates who get party backing can be placed on the ballot without petitioning, there is no reason that other candidates cannot show support in alternative ways without the burdens of petitioning. For example, if a candidate enrolls in a public matching funds program and succeeds in raising the threshold number of contributions, [shouldn't that be sufficient to get on the ballot?](#) (New York City and Suffolk County have such programs, and after this year so will statewide and state legislative races.) Or, as in some states, shouldn't a simple filing fee do the trick? The [New York](#)

[City Bar Association urged this reform](#) a dozen years ago. Many of us in the election law bar have urged the legislature to enact multiple methods to get on the ballot. I remain hopeful.

If these ballot access lawsuits and the concomitant ambiguity as to who voters can choose from isn't sufficiently perplexing, the flip side can also be an issue: how and when a candidate can get *off* the ballot. Generally speaking, a candidate can be removed only if they die, move out of the pertinent jurisdiction, or are otherwise disqualified. Last year the Supreme Court sitting in Dutchess County had occasion to opine on this. In that case, [Salem v. Petsas](#), Jenna Liguori was the Republican candidate for Councilmember At-Large in the City of Poughkeepsie. She apparently became ineligible to serve, and therefore to be a candidate, when she moved out of the city, registered to vote in Monroe County, and had her registration to vote in Poughkeepsie purged. On its face, these actions should have been sufficient to replace her with another candidate. However, as the court discussed, the law is not self-executing, and it is not clear-cut when the disqualification was triggered—on the day she moved, when she registered from her new home, or as a result of her voter registration in Poughkeepsie being cancelled. The Election Law does not provide a straightforward mechanism for the candidate to declare their ineligibility or for their removal.

As such, the legislature would be well-advised to clarify the law to ease the process and expand the opportunities for candidates to remove themselves from the ballot. Voters deserve to have a clear idea of who is actually running for a particular office, and to know this well in advance of Election Day.

Obviously, New York's ballot rules are not as easy as Hop On, Hop Off. Wouldn't the voters be better served with a more streamlined system?

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