STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 12

UNITED WISCONSIN, et al.,

Plaintiffs,

v. Case No. 25-CV-1438

WISCONSIN ELECTIONS COMMISSION,

Defendant.

DECLARATION OF LYNN K. LODAHL

I, LYNN K. LODAHL, pursuant to Wis. Stat. § 887.015(6), declare as follows:

1. I am an Assistant Attorney General at the Wisconsin Department of Justice. I represent the Wisconsin Elections Commission in the above-captioned matter.

2. Attached as Exhibit A is a true and correct copy of the expert report prepared by Nathan Atkinson and Alexander Tahk and provided to the Plaintiffs in accordance with this Court's scheduling order, along with their *curricula vitae*.

3. Attached as Exhibit B is a true and correct copy of public court filings in *State ex rel. Runge v. Anderson*, 100 Wis. 523, 76 N.W. 482 (1898).

4. Attached as Exhibit C is a true and correct copy of the summary judgment decision from the District Court, 28th Judicial District, Saline County, in *United Kansas, Inc. v. Schwab*, Case No. SA 2024-CV-0152 (D. Ct. Kan. Mar. 3, 2025), *on appeal*, Case No. 25-128896-A (Kan. Ct. App. 2025).

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed this 15th day of June 2026, in Madison, Wisconsin.

LYNN K. LODAHL

Expert Report

Nathan Atkinson[1] and Alexander Tahk[2]

[1]University of Wisconsin Law School, natkinson@wisc.edu
[2]University of Wisconsin–Madison, atahk@wisc.edu

I. INTRODUCTION

We have been asked to describe the mechanics and history of fusion voting, identify the state interests implicated by fusion bans, and evaluate the likely effects of re-legalizing fusion voting. We have also been asked to evaluate the expert reports of Dr. Lee Drutman, Dr. Lisa Disch, and Dr. Barry Burden.

The Complaint filed by United Wisconsin, supported by the reports of their designated experts, rests on a historical and theoretical narrative that characterizes the prohibition of fusion voting as a primary cause of modern political dysfunction. This narrative can be distilled into four core assertions: The Complaint and experts describe fusion voting as a foundational element of early Wisconsin politics that enabled major political shifts.[1] The Complaint and experts argue that the ban was a calculated move by the Republican Party to entrench its power.[2] The Complaint and accompanying expert reports characterize fusion as a historically proven mechanism that

[1]See for example Complaint at ¶ 2 ("Wisconsin was once a hotbed of pluralistic politics. During its pre- and early-statehood years, smaller, newer, and niche-issue political parties routinely acquired political influence through alliances with larger, better-established parties."); Complaint at ¶ 52 ("From statehood in 1848 until the end of the century, Wisconsin permitted fusion voting, and it once played a critical role in coalition-building, in the free association of disparate political constituencies, and in winning elections. In the late nineteenth century, when the major parties failed to address voters' concerns, the result was frequently that voters turned to third parties, both as an electoral option and as a way to educate, mobilize, and advance desired reforms.); and Disch Report at 5 ("Wisconsin politics remained a hotbed of robust competition, fueled by a continuation of multi-party coalitional activity that frequently took the form of fusion nominations").

[2]See for example Complaint at ¶ 9 ("In 1897, the (Republican-controlled) Wisconsin Legislature banned fusion voting in order to weaken the Democratic Party and to restrain the development of additional political parties."); Complaint at ¶ 13 ("the fusion voting ban was enacted to protect the party in power from fair competition and continues to serve that purpose."); and Disch Report at 2 ("Wisconsin's 1897 fusion ban, like that in other states, was motivated by partisan animus against challenger parties.").

would reinvigorate Wisconsin's democracy.[3] Finally, the Plaintiffs present fusion voting as a straightforward fix.[4]

Elsewhere, proponents of fusion have argued that re-legalizing fusion will improve democracy. Perhaps the clearest and most forceful articulation of this view comes from a recent open letter signed by over one hundred scholars of democracy (including all three of the Plaintiffs' experts).[5] The letter presents fusion not merely as a procedural tweak, but as a "historically proven" remedy for the specific ailments of our contemporary politics. Its revival, the signatories argue, would "reinvigorate our democracy by improving representation and accountability while strengthening voters' rights."[6]

Despite the certainty expressed in the Complaint and the expert reports, we find little to no evidence for these claims. Based on our analysis of the historical record, empirical evidence from states where fusion remains legal, and a rigorous theoretical examination of electoral incentives, we conclude that the Plaintiffs' arguments rely on a series of implausible assumptions. More critically, our analysis suggests that invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) would be unlikely to reduce polarization and would create a chaotic new regime for Wisconsin's elections.

The remainder of the report is organized as follows.

We begin in Section II with our affirmative report, which provides an independent analysis of the mechanics, history, and likely effects of fusion voting. We first examine the historical record, demonstrating that nineteenth-century "fusion" is an anachronism when compared to modern election law because it operated under a system of party-printed tickets before the adoption of state-administered ballots. We then turn to the modern practical application of fusion in New York, finding that it has failed to produce the centrist stability promised by advocates. We then detail the cascading administrative dilemmas that the state would face if forced to implement this system, including the unintended introduction of open cross-filing and the dismantling of Wisconsin's "sore loser" safeguards. Following this, we evaluate the theoretical incentives created by fusion

[3] See for example Complaint at ¶ 43 ("In states that prohibit fusion voting, political parties other than the Democratic and Republican Parties have little chance to wield influence in American elections beyond playing the role of spoiler."); Complaint at ¶ 49 ("The two-party system in Wisconsin and nationwide is stuck in this cycle, with the parties moving further apart ideologically, then taking more drastic measures to secure power, which in turn moves the parties further apart. Fewer liberal Republicans and conservative Democrats hold office than ever, including in Wisconsin."); Complaint at ¶ 51 ("Fusion voting provides a critical opportunity for third-party voters to associate with their preferred party while voting for candidates who have a genuine chance to succeed, and it offers a vital path for newer, smaller, or niche political parties to wield influence in a system that is dominated by the Democratic and Republican parties."); and Drutman Report at 2. ("[F]usion voting serves as a coalition-building mechanism that moderates rather than intensifies partisan conflict."). The logic of the Complaint rests on the premise that fusion voting is the specific structural remedy for these pathologies. Specifically, the Complaint assumes that fusion voting will provide the missing "vital path" (¶ 51) for (implicitly moderating) influence that disrupts the cycle of polarization

[4] The Complaint frames the reintroduction as a simple procedural fix: "Wisconsin's fusion voting ban—as embodied by Wis. Stats. §§ 8.03(1) and 8.15(7)", Complaint at ¶ 1. Also, "There is no historical evidence that voters were confused by the existence of fusion candidates. There is no evidence that voters found their ballots to be overly cluttered when candidates were listed multiple times under multiple parties' ballot lines. And there is no evidence that fusion voting was used in a way that undermined or realistically threatened to undermine a single election in state history." Complaint at ¶ 96.

[5] Scholars for Re-Legalizing Fusion Voting, *Open Letter from Scholars in Support of Re-Legalizing Fusion Voting* (July 11, 2024), https://medium.com/@scholarsforrelegalizingfusion/scholars-letter-in-support-of-re-legalizing-fusion-voting-72d405442720 (last visited Oct. 7, 2025).

[6] *Id.* However, despite the certainty of the letter, there is little to no evidence for the claims.

voting in Section, finding the moderation claims hypothesized by proponents to be structurally unsound. Finally, we identify the specific state interests implicated by fusion bans.

Following our overview of the affirmative report, we turn to the specific claims of the Plaintiffs' experts.

In Section III, we evaluate the report of Dr. Lee Drutman, who characterizes fusion as a "proven reform"[7] capable of generating "centripetal force"[8] to counter polarization. We find that Dr. Drutman's analysis relies on a false analogy between fusion voting and Proportional Representation. He does not demonstrate how fusion, which remains a winner-take-all system, overcomes the structural incentives of Wisconsin's elections. Furthermore, we rebut his assertions that fusion provides clear information cues to voters, that fusion ballots do not lead to confusion, and that pop-up parties do not proliferate.[9]

In Section IV, we respond to Dr. Lisa J. Disch, who identifies fusion as a "permitted practice"[10] since statehood and argues the 1897 ban was motivated by "partisan animus against challenger parties."[11] We show that Dr. Disch's report suffers from three significant analytical shortcomings. First, it omits important institutional and comparative context that would situate Wisconsin's 1897 legislation within a broader national reform movement. Second, it conflates distinct phenomena under the single label "fusion," eliding the difference between cross-party coalition-building generally and the specific institution of the fusion ballot. Third, and most critically, it draws a strong inference about legislative motive that we find the historical record cannot sustain.

In Section V, we evaluate the report of Dr. Barry Burden, whose report addresses two practical questions about reintroducing fusion voting in Wisconsin: whether existing voting equipment can accommodate fusion ballots, and whether voters would be confused by such ballots. To the extent this response takes issue with his report, it is not with the technical accuracy of his individual observations but with two significant gaps in his analysis. First, Dr. Burden does not adequately account for the interaction between ballot layout and fusion type. While the Plaintiffs seek disaggregated fusion, where a candidate's name appears multiple times, Wisconsin uses an office-block ballot layout. No state currently combines these two features, and the states Dr. Burden relies upon for evidence of feasibility use fundamentally different ballot configurations. Second, Dr. Burden's discussion of voter confusion focuses narrowly on errors in ballot marking while largely overlooking a more significant concern: confusion about the identities, ideologies, and platforms of the minor parties whose labels would appear on fusion ballots.

Overview of Opinions

Our high-level opinions are summarized as follows:

First, the historical narrative used to justify fusion voting is flawed. Advocates, including Plaintiff's expert Lisa Disch,[12] frequently cite the robust multi-party competition of the nineteenth century as evidence of fusion's efficacy. This comparison is anachronistic. The "fusion" of the nineteenth century operated under a system of party-printed tickets and public voting that bears

[7] Drutman Report at 26.
[8] Drutman Report at 20.
[9] Drutman Report at 20.
[10] Disch Report at 1.
[11] Disch Report at 2.
[12] *See* Disch Report.

little resemblance to the modern state-printed and secret ballot system. The legal bans on fusion enacted in the 1890s were part of a broader shift toward state-administered elections.

Second, the modern practice of fusion in New York, the principal laboratory for the reform, offers a cautionary tale rather than a model for success. In practice, fusion has not empowered a centrist "Center Party." Instead, the main primary minor parties in New York are ideological "flank" parties that seek to pull major-party candidates toward the extremes. Fusion voting in New York has also fostered a political culture of transactional bargaining and corruption around nominations, and has led to the proliferation of "sham" parties that serve as billboard-style slogans rather than genuine organizations.

Third, invalidating §§ 8.03(1) and 8.15(7) would trigger a series of structural administrative dilemmas for which there is no neutral solution. Striking down the current prohibitions would introduce "open cross-filing" (where candidates can run in multiple primaries) and dismantle Wisconsin's "sore loser" laws (where a candidate who loses in the primary cannot contest the general election). These changes would make Wisconsin a significant outlier in election administration. These changes would further create a larger set of dilemmas for the legislature and the Wisconsin Elections Commission.

Fourth, the theoretical mechanism by which fusion is supposed to empower the political center is structurally unsound. The argument relies on the emergence of a "Center Party" capable of organizing moderate voters to endorse the most reasonable major-party candidate, which we show is unlikely. Ultimately, fusion voting fails to address important drivers of polarization.

Fifth, the state has compelling interests in prohibiting fusion voting to maintain a clear and comprehensible ballot for all voters. Prohibiting multiple listings for a single candidate prevents voter confusion, maintains platform coherence, and protects the stability of the party system. Ultimately, the historical record does not support a strong inference that it was partisan motive rather than these state interests that motivated the ban on fusion voting.

Qualifications

This report was prepared by Nathan Atkinson and Alexander Tahk. We are both faculty members at the University of Wisconsin–Madison.

Nathan Atkinson is an Assistant Professor at the University of Wisconsin Law School. He holds a Ph.D. in Business from the Stanford Graduate School of Business and a J.D. from Stanford Law School. Professor Atkinson's research focuses on the design of legal and political institutions, with a specific emphasis on voting procedures and electoral systems. His scholarship has examined the effects of alternative voting rules, such as ranked-choice voting and top-two runoffs, and the structural drivers of political polarization. His work has been published in leading academic journals and law reviews, including the *American Law and Economics Review* and the *Yale Journal on Regulation*. He serves on the advisory board for Better Choices for Democracy and is an affiliate of the Institute for Mathematics and Democracy.

Alexander Tahk is an Associate Professor of Political Science at the University of Wisconsin–Madison and serves as the Director of the Tommy G. Thompson Center on Public Leadership. He holds a Ph.D. in Political Science and an M.S. in Statistics from Stanford University. Professor Tahk's expertise lies in political methodology, judicial politics, and voting behavior. His research involves the statistical analysis of roll-call votes, judicial citations, and the impact of ballot design

on electoral outcomes. His articles have appeared in the leading journals including the *American Political Science Review*, *Political Analysis*, and *Public Opinion Quarterly*.

In preparing this report, we have applied our expertise in political science and law to the analysis of fusion voting's history and likely effects. Our findings draw from a wide array of sources, including the specific historical record of Wisconsin's 1897 legislation, the contemporary practice of fusion in New York and Connecticut, and academic research. All opinions expressed herein represent our independent professional judgment. We reserve the right to amend our opinions if further information is provided.

II. AFFIRMATIVE REPORT

In this section, we present our independent analysis of the mechanics, history, and likely effects of fusion voting. This affirmative report is organized to move from foundational definitions and historical context to the modern empirical record, administrative consequences, and theoretical implications of the reform.

We begin in Section II.A by establishing precise definitions to distinguish between the various forms of cross-nomination, such as aggregated and disaggregated fusion. We then examine the historical record in Section II.B. We demonstrate that nineteenth-century "fusion" operated within a regime of party-printed ballots that bears little resemblance to modern election administration. Following this historical grounding, we turn to the practical application of fusion in New York, which serves as the principal laboratory for modern fusion. Our analysis reveals that the New York experience has not produced a centrist, stabilizing force but has instead empowered sham parties and ideological flank parties while fostering a culture of transactional bargaining.

In Section II.C, we detail the administrative practicalities of the reform. We first situate the prohibition of fusion as one of many necessary choices the state must make to ensure an orderly election with the adoption of the state-administered ballot in the 1890s. We then show that invalidating the current ban would implicitly introduce "open cross-filing" and dismantle Wisconsin's "sore loser" safeguards, effectively reducing the primary to a non-binding preference poll and making Wisconsin a significant outlier in election administration. We then outline new structural dilemmas that would arise following the re-legalization of fusion.

In Section II.D, we evaluate the theoretical incentives created by fusion voting and find that the "Center Party" mechanism hypothesized by proponents is structurally unsound. Political parties are typically formed by activists with intense policy preferences rather than moderate voters, who are historically the least likely to organize the complex infrastructure required to maintain a ballot line. Moreover, fusion voting fails to address the important drivers of polarization. We also discuss voter confusion, how fusion may in fact exacerbate polarization, and how it is unlikely to mitigate voter disaffection.

Finally in Section II.E, we identify the specific state interests that are implicated and served by prohibitions on fusion voting.

A. Defining Fusion Voting

Fusion voting is a system in which multiple parties may nominate the same candidate and these multiple nominations are reflected on the ballot. Thus, if Jane Doe is nominated for a legislative

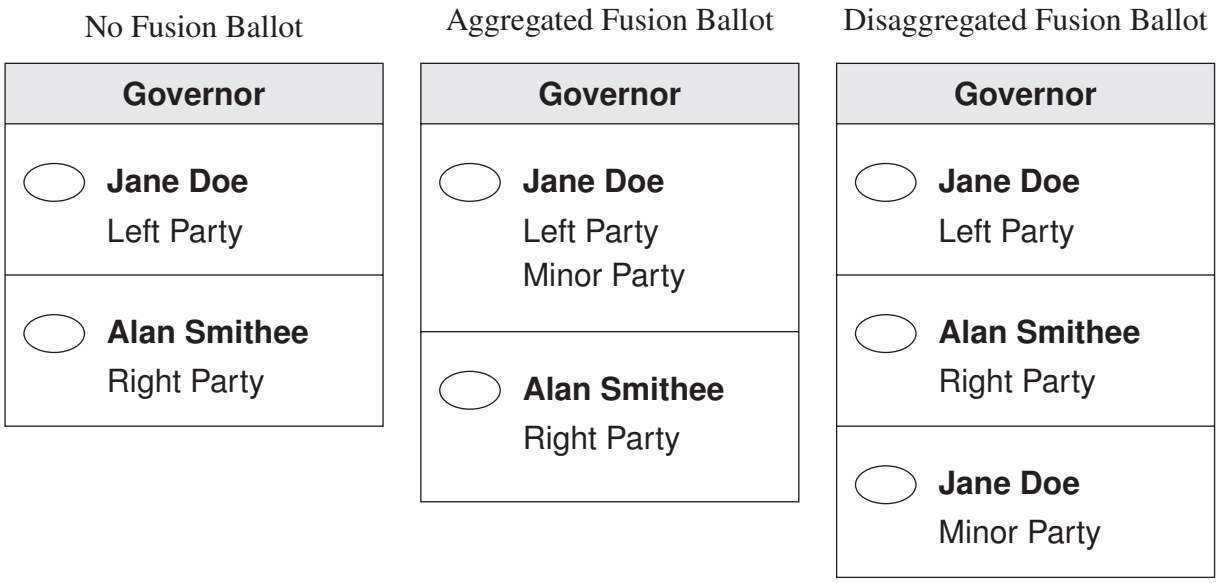


Figure 1: Hypothetical ballots comparing no fusion (left), aggregated fusion (center) and disaggregated fusion (right) voting. In all cases, the two gubernatorial candidates are Jane Doe, endorsed by the Left Party and the Minor Party, and Alan Smithee, endorsed by Right Party. Under no fusion voting, candidates can only list one party one the ballot, so Minor Party endorsement of Jane Doe is not listed.

seat by both the Left Party and the Minor Party, both nominations appear on the ballot.

The term "fusion voting" is sometimes reserved for what can be termed "disaggregated fusion voting," also known as "full fusion voting," in which a candidate nominated by multiple parties appears on the ballot multiple times, with a separate ballot line for each nominating party. An alternative is "aggregated fusion voting," also known as "partial fusion voting," in which candidates nominated by multiple parties appear on a single ballot line that lists all their nominating parties. Under disaggregated fusion voting, Jane Doe would appear once as the nominee of the Left Party and again as the nominee of the Minor Party. Votes cast on both lines for Jane Doe would be added together in determining the election winner. Under aggregated fusion voting, Jane Doe would appear a single time, with both "Jane Doe" and "Minor Party" listed below. In both cases, the ballot contains the same information that Jane Doe was nominated by both parties. The difference is that disaggregated fusion voting asks voters to differentiate between a vote for Jane Doe as nominee of the Left Party and a vote for Jane Doe as the nominee of the Minor Party while aggregated fusion voting does not. These situations are illustrated in Figure 1. Fusion voting is one of many decisions that needs to be made about ballot structure (see Section II.C.1).

The question of whether fusion voting is permitted concerns what information appears on the ballot, along with other choices of election administration (discussed further in II.C). Even where fusion voting is prohibited, parties are free to endorse the candidate placed on the ballot by another party and can choose not to nominate a competing candidate. Parties can campaign for or advocate that their supporters vote for the candidate of another party. However, this endorsement will not appear on the ballots given to voters.

Some scholars have defined fusion voting more broadly as "the electoral support of a single

Figure 2: Example ballots or "party tickets" used in the United States before the introduction of the Australian ballot. (*Source:* American Antiquarian Society)

set of candidates by two or more parties."[13] As we discuss in Section II.B, such a definition is problematic because, to the extent it is broader, it deviates from how the term is used.[14] We further discuss the problems with relying on 19th century practices in our response to Professor Disch.

B. History

1. Broader Fusion Practices

a. Cross-Endorsement

Prior to the introduction of the Australian ballot in the late 19th and early 20th century, voters in the United States either cast their votes by voice (*viva voce*) or provided their own ballots. In the latter case, voters commonly obtained their ballots from political parties, who printed their own ballots with the party's slate of candidates and provided these ballots to their supporters.[15]

Fusion voting, at least in the modern meaning of the term, is not a meaningful concept for this era. Whether fusion voting is used is a question of what appears on official or government-printed ballots, and such ballots did not exist. Just as today, parties were free to endorse or advocate for

[13] *See, e.g.*, Peter H. Argersinger, "A Place on the Ballot": Fusion Politics and Antifusion Laws, 85 American Historical Review 287 (1980). Other scholars, such as Elissa Berger, A Party That Won't Spoil: Minor Parties, State Constitutions and Fusion Voting, 70 Brooklyn Law Review (2005), make explicit reference to the ballot, as we do.

[14] Organizations that advocate for fusion voting define it in ways that make explicit reference to what appears on the ballot. For example, New America and the Center for Ballot Freedom both define fusion voting as "a practice in which a candidate can appear on a ballot as the nominee of more than one party" while Protect Democracy defines it similarly as "more than one political party nominates the same candidate on the ballot."

[15] Less common alternatives were for voters to hand-wrote a slip of paper or to cut a blank ballot from a newspaper.

the same candidate as other parties.[16] Just as today, parties were free to provide their supporters with lists of candidates they endorsed even if these lists overlapped with the lists of other parties. Party nominations did not carry legal recognition at this time.

b. Introduction of the Australian ballot

Before the adoption of the Australian (or secret) ballot, American elections operated under a system that bears little resemblance to modern practice—and even less resemblance to the institutional environment in which contemporary fusion voting proposals would operate. Nineteenth-century ballots were printed and distributed by political parties, often on brightly colored or otherwise distinctive paper, enabling party workers, employers, and others to monitor exactly how each individual voted.[17] Because voting was a public act, and votes were not generically secret in this era, the system facilitated vote buying and voter intimidation. Party machines could enforce compliance through cash payments, threats of retaliation, and the deployment of partisan crowds at polling places, producing a political order in which observability was the foundation of partisan control.[18] The result was a regime of collective, supervised voting—rather than individualized political choice—marked by high levels of coercion, fraud, and party-mediated mobilization.[19]

Reformers increasingly argued that only a publicly printed, uniform ballot marked in private could break machine control and protect the integrity of elections. The model they embraced had been pioneered in 1856 in South Australia and Victoria: the government printed a single official ballot listing every candidate, distributed ballots only at the polling place, and provided screened booths so that ballot marking occurred in secrecy.[20] British adoption followed in 1872,[21] and American reformers soon christened the idea the "Australian ballot."

This institutional shift matters for present purposes because the "fusion" practiced before the Australian ballot emerged under conditions wholly unlike those of the modern electoral system. Nineteenth-century cross-endorsements operated in a world of party-printed ballots, public voting, machine oversight, and routine coercion—precisely the practices reformers sought to eliminate. By contrast, modern fusion proposals operate within a post-reform regime intentionally designed to destroy those mechanisms. Consequently, analogies to nineteenth-century fusion overlook the

[16] One possible exception here is that nominations might have campaign-finance implications. We set this aside for several reasons. First, under *Citizens United v. Federal Election Commission*, parties cannot be limited in their ability to fundraise for campaign advertising for the nominee of another party. Any restriction, whether under state or federal campaign finance laws, would thus be limited to the ability of a party to coordinate with or contribute directly to the nominee of another party. Second, lawsuits and advocacy about fusion voting has focused essentially entirely on cross-nominations appearing on the ballot, not on a party's ability to directly transfer campaign funds or to coordinate campaign advertisements. Any campaign finance regulations that might be affected by a ban on fusion voting could be lifted without allowing candidates to appear on the ballot as nominees of multiple parties.

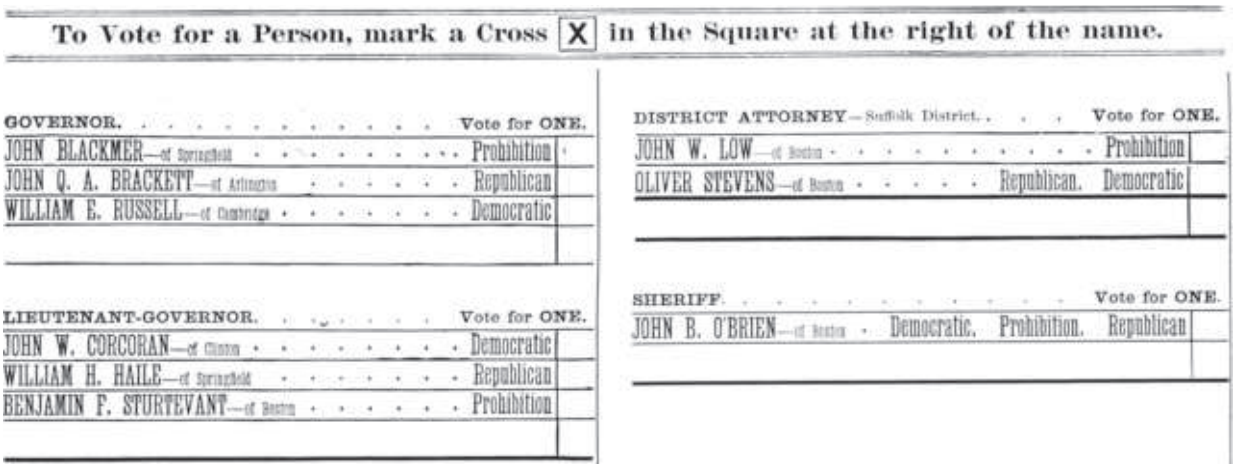
[17] *See, e.g.*, Richard Franklin Bensel, The American Ballot Box in the Mid-nineteenth Century (Cambridge University Press 2004); Peter H. Argersinger, New Perspectives on Election Fraud in the Gilded Age, 100 Political Science Quarterly 669 (1985).

[18] Bensel, *supra* note 17.

[19] Erik J. Engstrom and Samuel Kernell, Party Ballots, Reform, and the Transformation of America's Electoral System (Cambridge University Press 2014); Jerrold G. Rusk, The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876–1908, 64 American Political Science Review 1220 (1970).

[20] Lionel E. Fredman, The Australian Ballot: The Story of an American Reform (Michigan State University Press 1968), at 7.

[21] *Id.* at 15.



To Vote for a Person, mark a Cross [X] in the Square at the right of the name.

GOVERNOR. Vote for ONE.
JOHN BLACKMER—of Springfield . . . Prohibition
JOHN Q. A. BRACKETT—of Attleboro . . . Republican
WILLIAM E. RUSSELL—of Cambridge . . . Democratic

LIEUTENANT-GOVERNOR. Vote for ONE.
JOHN W. CORCORAN—of Clinton . . . Democratic
WILLIAM H. HAILE—of Springfield . . . Republican
BENJAMIN F. STURTEVANT—of Boston . . . Prohibition

DISTRICT ATTORNEY—Suffolk District. Vote for ONE.
JOHN W. LOW—of Boston . . . Prohibition
OLIVER STEVENS—of Boston . . . Republican. Democratic

SHERIFF. Vote for ONE.
JOHN B. O'BRIEN—of Boston . . . Democratic. Prohibition. Republican

Figure 3: Part of a ballot from the November 5, 1889, general election in Boston, Massachusetts. This ballot uses a office-block layout, also known as the "Massachusetts ballot," without a special provision for straight-ticket voting (*Source:* American Antiquarian Society)

profound institutional discontinuity between the two eras and risk drawing lessons from a system whose core features no longer exist.

The Australian ballot was first adopted in the United States in 1888 to govern municipal elections in Louisville, Kentucky.[22] Widespread reports of vote-buying[23] and other forms of corruption during the 1888 presidential election galvanized support for reform, and Massachusetts enacted the first statewide statute for use in the 1889 gubernatorial election.[24]

The switch to government-printed ballots opened up a new question: what should appear on those ballots? States now needed to decide which candidates should appear on the ballot, what information about them should be listed, and how their names and other information should be organized. Indeed, moving to the Australian ballot created dozens of questions that needed to be answered for the first time, with fusion being just one of them (see Section II.C.1).

When Massachusetts adopted the first statewide Australian ballot, it organized candidates into blocks grouped by office. A portion of one of the first examples of this ballot can be seen in Figure 3.[25] This office-block layout, which had also been used the previous year Kentucky, soon came to be known as the "Massachusetts ballot."

[22]Known as the "Wallace Act," the act was introduced to the Kentucky General Assembly by state legislator Arthur M. Wallace and signed by Governor Simon Bolivar Buckner on February 24, 1888. Eldon Cobb Evans, "A History of the Australian Ballot System in the United States" (PhD thesis, University of Chicago 1917) at 19. There are conflicting accounts of whether credit for drafting the bill should go to Wallace or to Lewis N. Dembitz, a local attorney and uncle of future Justice Louis Dembitz Brandeis. *See Lewis Dembitz and the Australian Ballot* (Sep. 28, 2014), https://brandeiswatch.wordpress.com/2014/09/28/lewis-dembitz-and-the-australian-ballot/ (last visited Oct. 7, 2025).

[23]The publication of correspondence with explicit instructions for vote buying sent by Republican National Committee treasurer William Wade Dudley to Republican Party county chairmen in Indiana was particularly notable. *See* Evans, *supra* note 22 at 11.

[24]*Id.* at 19; Richard A. Dana, The Corrupt Practices Act-The Nominating Machinery and the Australian Ballot System of Massachusetts, 14 The American Lawyer 163 (1906).

[25]*Ballot, General Election, Boston, Mass.* (Nov. 5, 1889), https://gigi.mwa.org/imagearchive/fileName/503953_b02_f03_0064.tif (last visited Oct. 7, 2025)

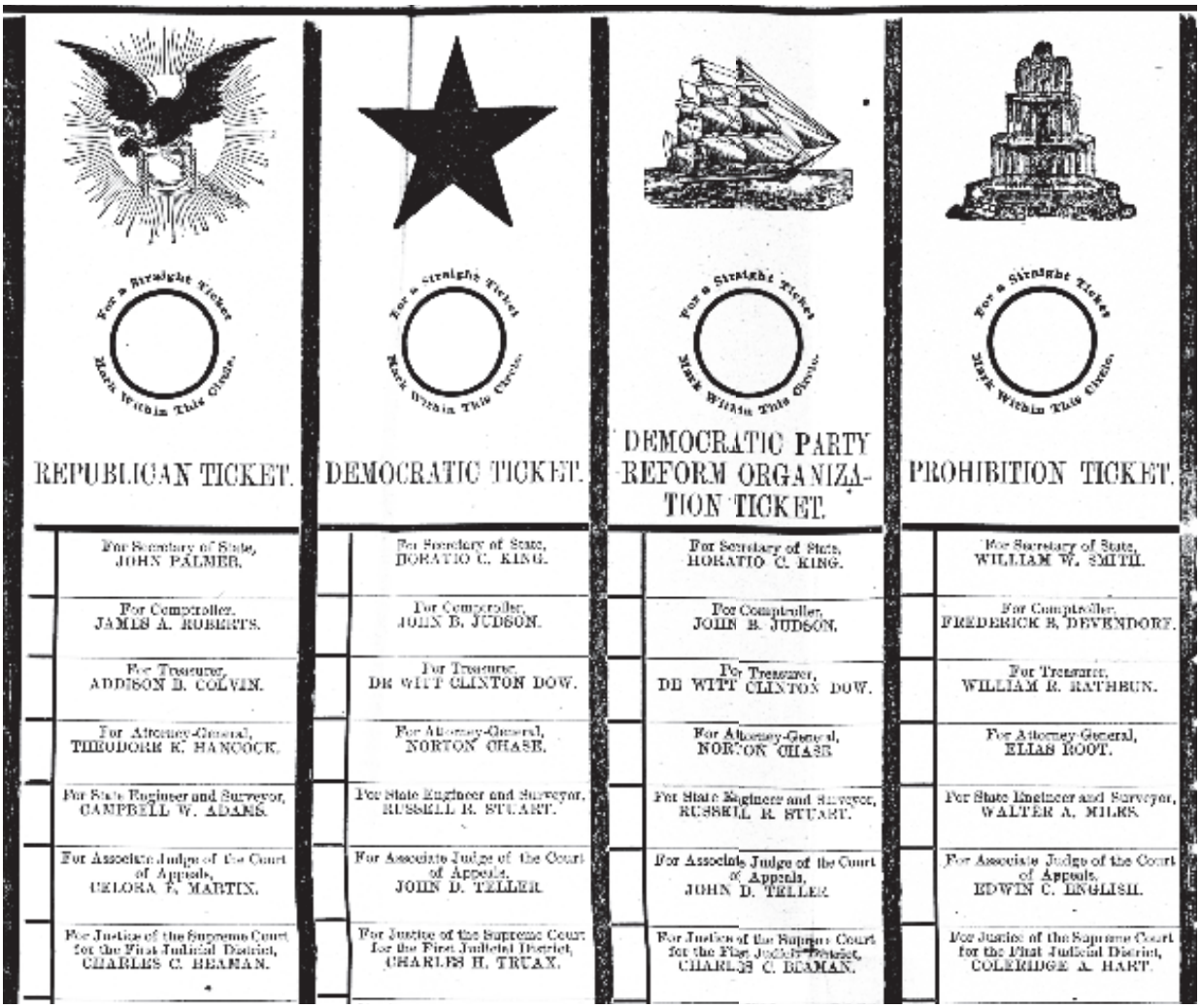


Figure 4: Part of a ballot from the November 5, 1895, general election in New York City. This ballot uses a party-column layout, also known as the "Indiana ballot," with a special provision for straight-ticket voting. (*Source:* New York Public Library)

When Indiana adopted the Australian ballot later in 1889, it did so with a new layout.[26] Rather than organizing candidates into blocks by office, as the Massachusetts ballot had done, the "Indiana ballot" used a party column layout that placed candidates into columns by party. This created a grid, with columns indicated party and row indicated office. An early example of this party column layout from New York is shown in Figure 4.[27]

States' newfound power to design an official ballot led to frequent ballot legislation during this period, with shifts between ballot layouts and experimentation with other rules and regulations. Figure 5 shows the timing of ballot legislation, introduction of the Australian ballot, and ballot formats used from 1888 to 1910 in each of the 46 states as well as the two territories that would

[26] Fredman, *supra* note 20 at 48.

[27] *Ballot, no. 4* (Nov. 5, 1895), https://digitalcollections.nypl.org/items/ba921110-4dce-0137-e5b8-373384e0a129 (last visited Nov. 18, 2025).

become states in 1912. These frequent reforms show that Wisconsin's changes in ballot design in the 1890s were standard for the period.

In 1893, South Dakota switched from an office-block layout to a party-column layout. The law doing so included a provision that "the name of no candidate shall appear more than once on the ballot for the same office."[28] As party was to be indicated by the column in which a candidate's name appeared, this restriction effectively banned fusion voting, as it implied that a candidate could not appear on the ballot as the nominee of more than one party.

Many other states followed suit, either expressly or implicitly, by enacting statutes that prohibited a candidate from appearing on the ballot as the nominee of more than one party.[29] All but three of these states had adopted Indiana's party-column layout, which by then had become the more dominant ballot format. Adoption of such a restriction continued in other states in the following decades.

c. 19th Century "Fusion" is Not the Same as Modern Fusion Voting

Advocates of fusion voting often cite the late nineteenth century as a golden age of third-party vitality and coalition politics, arguing that re-legalizing fusion would restore this dynamic. This reliance is misplaced. It rests on a failure to distinguish between the specific legal mechanism of modern fusion voting and the entirely distinct electoral practices of the pre-Australian ballot era. Because the institutional environments of these two periods are radically different, the nineteenth-century experience offers little to no predictive value for how fusion would operate today.

First, pre-1890s fusion was a private party tactic, not a public election law. As detailed earlier, before the adoption of the Australian ballot, the state did not provide official ballots. Instead, elections were conducted using "party tickets"—slips of paper printed and distributed by the political parties themselves. In this context, "fusing" was simply the act of two parties choosing to print the same name on their respective tickets. There was no state-sanctioned "fusion line" on an official ballot because there was no official ballot. Therefore, the historical record shows only that private parties will coordinate when the state plays zero role in administering the ballot—a condition that no longer exists.

Second, these practices operated within a regime of public voting and machine control that is antithetical to modern democratic norms. Because voting was a public act (often performed with distinctively colored party tickets) party machines could monitor how individuals voted. The decision of minor parties to "fuse" in that era was frequently driven by the leverage of machine politics and the necessity of vote-trading in a non-secret environment. Modern fusion voting, by contrast, relies on the private, expressive choice of individual voters in a secret booth.

To argue that the success of nineteenth-century coalitions proves the viability of modern fusion is to ignore this profound institutional discontinuity. We cannot assume that a practice which flourished in an era of party-printed tickets and public coercion will produce similar results in an era of government-printed ballots and secret voting. Consequently, the nineteenth-century record is not a precedent to be restored, but a distinct historical chapter with few applicable lessons for the contemporary debate.

[28] Laws passed at the Third Session of the Legislature of the State of South Dakota, 1893 (Carter Publishing Co. 1893), at 137.

[29] *See* Argersinger, "A Place on the Ballot": Fusion Politics and Antifusion Laws, *supra* note 13.

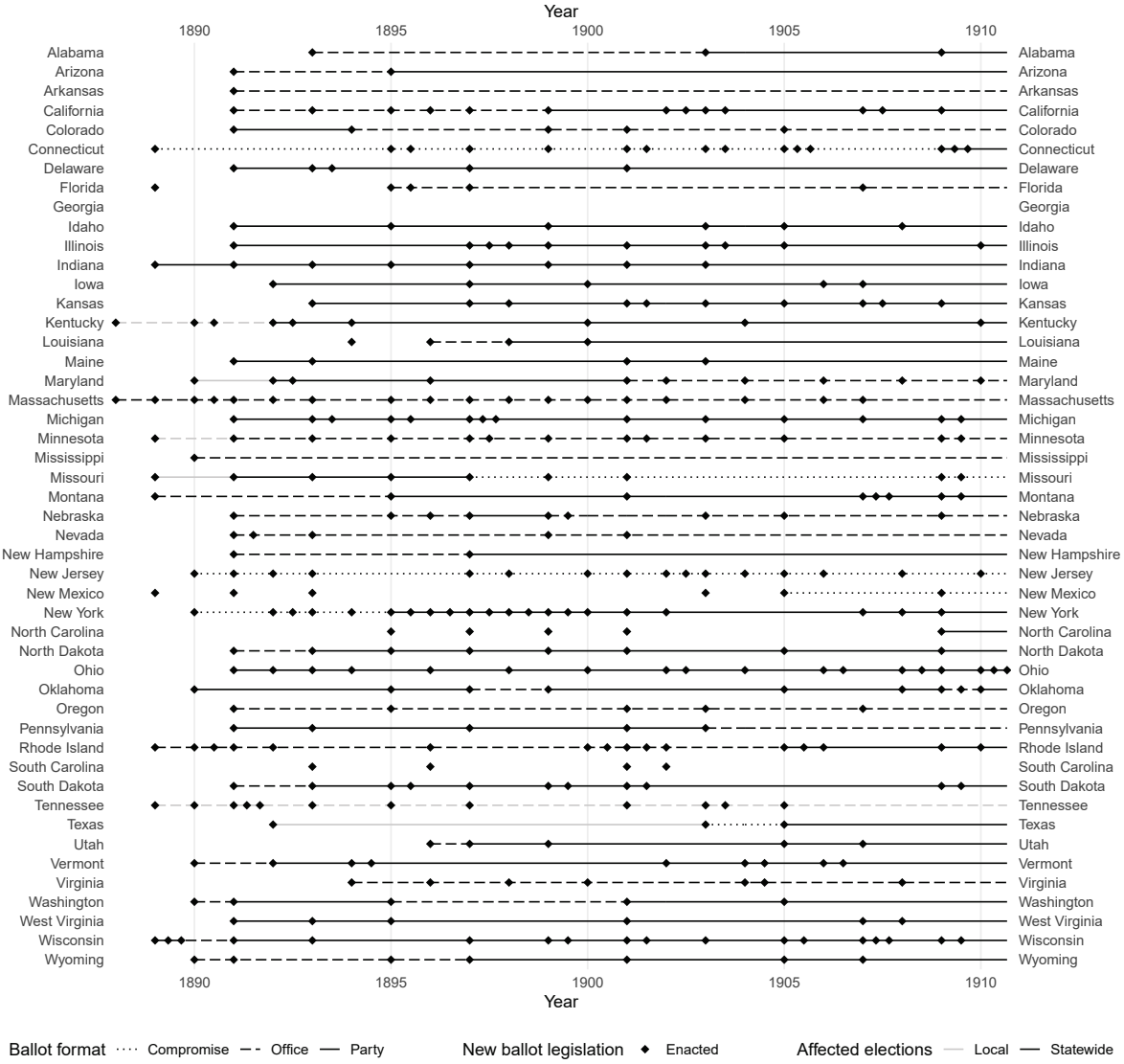


Figure 5: Ballot format and enactment of ballot legislation in U.S. states, 1888–1910. Diamonds indicated the enactment of a law or state constitutional provision modifying or regulating the ballot. Timing is only exact to year and spaced arbitrarily within year to distinguish the enactment of multiple laws within the same year. New Mexico and Arizona were territories, not states, until 1912.

2. The Modern Case: Fusion Ballot Voting in New York State

New York is the principal laboratory for disaggregated fusion voting (where candidates may be listed more than once on the ballot) in the United States. Although Connecticut also permits disaggregated fusion, its smaller scale and different nomination architecture limit inference. Oregon and Vermont allow only aggregated fusion. Mississippi's provision for fusion voting is effectively unused, and South Carolina ended its sporadic use with a 2022 ban.[30] As a result, virtually all modern evidence about how fusion operates in practice comes from New York's statewide and municipal contests over the last eight decades. We therefore focus on New York as the best available empirical case.

New York adopted the Australian ballot through a gradual process, beginning with a compromise approach in 1890 that provided official ballots for each party or independent group. A full adoption of the Australian ballot was completed in 1895 using the party-column layout with a provision for straight-ticket voting, as seen in Figure 4. This legislation omitted Indiana's restriction on candidates appearing on the ballot multiple times, allowing fusion voting.

In 1911, the New York State legislature passed the Levy Election Law. This legislation included a provision limiting each candidate to a single appearance on the ballot in a single party column, prohibiting fusion voting. This provision was challenged almost immediately and was struck down by the New York Court of Appeals of New York, the state's court of last resort, later that same year.[31]

a. Mechanics

Once a candidate can appear multiple times on a ballot, it raises the question of how parties nominate candidates (Discussed in detail in Section II.C.4). New York, like other states, once allowed "cross filing," the practice where a candidate could run in the primary elections of multiple parties. That is, a candidate might contest both the Republican and Democratic (and minor) Party primaries. This system led to many candidates winning both major party primaries.[32] The system was criticized for diminishing party brands.

To prevent unrestricted cross-filing, New York adopted the Wilson-Pakula Act in 1947, which introduced significant procedural barriers to cross-party nominations. Under the statute, candidates not enrolled in a particular party could only run in a partisan primary upon securing a formal authorization, colloquially known as a "Wilson-Pakula certificate," from the relevant party

[30] *See* South Carolina Association of Counties, *2022 Acts That Affect Counties* (Aug. 31, 2022), https://www.sccounties.org/sites/default/files/uploads/resources/2022_acts_final.pdf (last visited Dec. 12, 2025), at 5.

[31] *Matter of Hopper v. Britt*, 203 N.Y. 144 (1911).

[32] A notable example is that Richard Nixon won both the Republican and Democratic primaries for his California seat in the US House of Representatives in 1948.

committee.[33] The law applies broadly to primary elections, state-convention nominations, filling vacancies, and special elections. The primary goal, as articulated by one of the Act's sponsors, Irwin Pakula, was to curb the practice of "raiding of party primaries by candidates who are enrolled members of other political parties."[34] Pakula emphasized that this was necessary to preserve the distinctiveness and ideological coherence of political parties.

In practice today, the process functions as a strict gatekeeping mechanism. If a Democratic candidate for Governor seeks the Working Families Party (WFP) nomination, they cannot appeal directly to WFP voters. Instead, they must first secure a formal authorization from the WFP leadership. This authorization requires a majority vote of the party committee representing the specific political subdivision—such as the State Committee for a gubernatorial race or a County Committee for a local contest. This requirement effectively centralizes power in the hands of party activists and leaders rather than the rank-and-file electorate. Furthermore, the authorization must be filed shortly after the candidate's designating petition, typically within four days. Without this certificate, the Board of Elections invalidates the non-member's petition, removing them from the ballot before the primary campaign begins.[35] Figure 6 is a sample authorization form that a party would need to submit to allow a candidate to run for office under that party's label.

While the Wilson-Pakula Act successfully curtailed cross-filing, the value of the Wilson-Pakula authorizations it created has also laid the groundwork for instances of political corruption. The most notable case of this was a 2013 bribery scandal that resulted from attempts by state Senator Malcolm Smith, a Democrat and former Senate Majority Leader, and Dan Halloran, a Republican New York City Councilman, to buy Wilson-Pakula authorizations.[36] The politicians offered payments in exchange for the opportunity to be listed on the ballot for another party. This resulted in criminal convictions or guilty pleas for all six politicians involved.

b. Minor Parties and Party Influence in New York

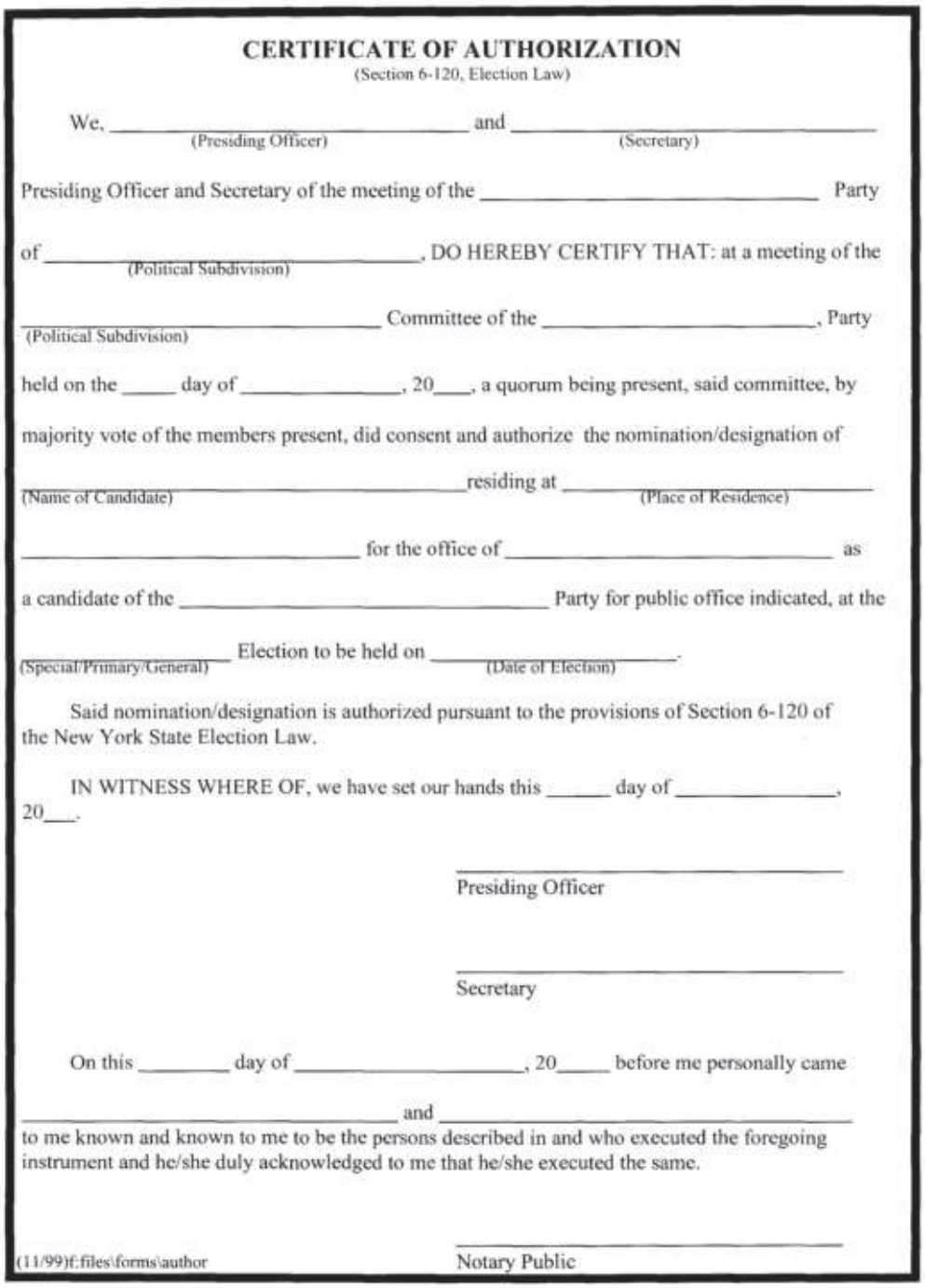
Since the reforms of the Wilson-Pakula Act, several minor parties making heavy use of fusion voting have played a notable role in New York politics. The most successful and enduring of these have been the Liberal Party of New York and the Conservative Party of New York. Both held

[33] New York Consolidated Laws, Election Law § 6-120 states in part: "A petition, except as otherwise herein provided, for the purpose of designating any person as a candidate for party nomination at a primary election shall be valid only if the person so designated is an enrolled member of the party referred to in said designating petition at the time of the filing of the petition . . . The members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee, and except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section."

[34] Sam Roberts, *Wilson-Pakula, Obscure to All but Ballot-Hopping Politicians* (Apr. 2, 2013), https://cityroom.blogs.nytimes.com/2013/04/02/wilson-pakula-obscure-to-all-but-ballot-hopping-politicians/ (last visited Oct. 7, 2025).

[35] *See Petition Information*, https://elections.ny.gov/petition-information (last visited Dec. 12, 2025) for a description of the process including sample forms.

[36] *See* Luca Marzorati, *Former State Senator Malcolm Smith Sentenced to 7 Years*, Politico (July 1, 2015), https://www.politico.com/states/new-york/albany/story/2015/07/former-state-senator-malcolm-smith-sentenced-to-7-years-090717 (last visited Dec. 12, 2025).



CERTIFICATE OF AUTHORIZATION
(Section 6-120, Election Law)

We, _____ and _____
(Presiding Officer) (Secretary)

Presiding Officer and Secretary of the meeting of the _____ Party

of _____, DO HEREBY CERTIFY THAT: at a meeting of the
(Political Subdivision)

_____ Committee of the _____, Party
(Political Subdivision)

held on the _____ day of _____, 20___, a quorum being present, said committee, by

majority vote of the members present, did consent and authorize the nomination/designation of

_____residing at _____
(Name of Candidate) (Place of Residence)

_____ for the office of _____ as

a candidate of the _____ Party for public office indicated, at the

_____ Election to be held on _____.
(Special/Primary/General) (Date of Election)

Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.

IN WITNESS WHERE OF, we have set our hands this _____ day of _____, 20___.

_____
Presiding Officer

_____
Secretary

On this _____ day of _____, 20_____ before me personally came

_____ and _____
to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

_____
(11/99)f:files\forms\author Notary Public

(Sample prepared by the State Board of Elections)

Figure 6: Sample Certificate of Authorization from the New York Board of Elections.

automatic ballot access for over fifty years.[37] Following the collapse of the Liberal Party in the late 1990s and early 2000s, its earlier role as the predominant minor party on the left was supplanted by the Working Families Party of New York.

Other minor parties have included the Independence Party of New York, the New York State Right to Life Party, the Green Party of New York, and the Libertarian Party of New York. The latter two are notable for resisting the use of fusion voting, typically nominating their own candidates rather than fusing with major party candidates.[38] However, the Conservative Party and the Working Families Party remain the most significant minor parties and the only minor parties with automatic ballot access as of 2025.[39]

Liberal Party

The Liberal Party was formed with a platform that would preserve the progressive legacy of the New Deal while firmly rejecting Communist influence.[40] Its founding principles centered on a commitment to anti-Communism, pro-labor advocacy, and support for New Deal liberalism, and sought voters who were disillusioned with the conservative tendencies of the major parties. The party primarily nominated Democratic candidates, but would occasionally nominate moderate Republicans. However, the policy positions of the Liberal Party were not positions that are typically considered centrist. For example the party platform in 1949

> Accordingly, the Liberal platform called, among other things, for fiscal policies to maintain full employment; strengthening rent control and building subsidized housing; expanding social security; national health insurance; federal aid to education; civil rights legislation, including a permanent Civil Rights Commission; defense of civil liberties, including the right of the Communist Party to function legally, but not necessarily the right of Communists to work in sensitive areas; the repeal of the Taft-Hartley Act; a vigorous anti-Communist foreign policy; and strengthening the United Nations with an eye toward world federal government.[41]

By the 1980s and 1990s, the Liberal Party's reputation as a principled progressive force had eroded. Under its leadership, endorsements often appeared to be motivated more by the promise of patronage rather than by ideological alignment. Critics accused the party of abandoning its founding values, especially after its controversial endorsements of Republican Rudy Giuliani for New York City mayor in both 1989 and 1993.[42] These decisions alienated many within the

[37] Parties in New York (like other states) need to meet certain requirements to automatically have the names of their candidates printed on the ballots. This is discussed in more detail in the Wisconsin context at Section II.C.4.

[38] *See, e.g.*, *Time To Get Rid of Electoral Fusion* (Mar. 4, 2019), https://www.gp.org/time_to_get_rid_of_electoral_fusion (last visited Dec. 12, 2025) ("Unlike the major parties' fusion allies, the Green Party runs its own candidates and offers voters an independent, electoral alternative.").

[39] Ballotpedia, *Ballot Access Requirements for Political Parties in New York*, https://ballotpedia.org/Ballot_access_requirements_for_political_parties_in_New_York (last visited Dec. 12, 2025)

[40] *See, e.g.*, Daniel Soyer, Left in the Center: The Liberal Party of New York and the Rise and Fall of American Social Democracy (Cornell University Press 2022)

[41] Daniel Soyer, 'Support the Fair Deal in the Nation; Abolish the Raw Deal in the City': The Liberal Party in 1949, 93 New York History 147 (2012), at 150.

[42] *See, e.g.*, Republican Rudolph, Liberal Giuliani, New York Times, Apr. 15, 1989, at A26; James Bennet, Giuliani Is Endorsed by New York Liberal Party, New York Times, May 16, 1993, at A34.

traditional liberal base, who viewed the party's endorsements as cynical and inconsistent with its stated principles. The perception that the Liberal Party had become little more than a patronage machine further contributed to its declining credibility. In his book on the Liberal Party, Soyer notes that over time "the party seemed to degenerate, becoming less principled and more focused on patronage. In fact, with more power and fewer people, it came to resemble a patronage club in which everyone was angling for appointed office. . . By the end, which came in 2002, the party was little more than a cynical patronage machine, more open than ever to charges of corruption."[43]

In 2002, the party failed to receive the 50,000 votes required to retain its automatic ballot access—a threshold it had met for 57 consecutive years. The loss of the ballot line marked an end to the Liberal Party's relevance in New York politics. Although the Liberal Party technically continued to exist after 2002, it became a nominal organization. It was effectively supplanted by the Working Families Party, which arose as the new home for progressive activists and labor-aligned voters seeking a minor party vehicle.

Working Families Party

The Working Families Party (WFP) of New York was founded in 1998 as a progressive response to the perceived decline and waning political influence of the state's Liberal Party.[44] From the start, the WFP sought to pull the Democratic Party leftward without acting as a spoiler in elections. Dan Cantor, a founder and long-time leader of the party, would later describe the WFP as an "independent faction" within the Democratic Party—akin to the Tea Party's relationship with Republicans.[45] The WFP adopted an ideological position within the progressive left, advocating for economic justice, labor rights, affordable housing, racial equity, and universal healthcare.[46]

The WFP is generally more progressive than the Democratic party. The fact that the WFP functions as a progressive flank rather than a centrist anchor is confirmed by the party's own explicit policy commitments. The WFP's "People's Charter"[47] outlines an agenda that is distinct from, and by the standard account to the left of, the mainstream Democratic Party platform. For instance, while the Democratic platform typically emphasizes strengthening the Affordable Care Act and lowering costs, the WFP advocates for "free and universal" health care. Similarly, regarding public safety, the Charter calls for shifting resources "away from policing, jails and detention centers," a stance that differs from the mainstream Democratic focus on funding for community policing. As noted in the *Boston Review*,[48] the WFP describes itself as the nation's "most vigorous third-party

[43] Soyer, *Left in the Center: The Liberal Party of New York and the Rise and Fall of American Social Democracy*, *supra* note 40 7–8.

[44] Abby Goodnough, Unions and Local Groups Join To Form a New Political Party, New York Times, July 7, 1998, at B6.

[45] Bill Scher, *If the Left Had a Tea Party. . . Dan Cantor and the Making of a Liberal Uprising*, Politico Magazine (June 5, 2014), https://www.politico.com/magazine/story/2014/06/if-the-left-had-a-tea-party-107501/ (last visited Oct. 7, 2025).

[46] Working Families Party, *The People's Charter: A Roadmap Out of Our Current State of Crisis* (Oct. 8, 2020), https://workingfamilies.org/2020/10/the-peoples-charter-a-roadmap-out-of-our-current-state-of-crisis/ (last visited Oct. 7, 2025).

[47] *Id.*

[48] Maurice Mitchell and Daniel Cantor, *"It's Our Job to Be Popular": A Conversation with Maurice Mitchell, National Director of the Working Families Party, on the Way Forward After the Democrats' Loss*, Boston Review (Dec. 5, 2024), https://www.bostonreview.net/articles/its-our-job-to-be-popular/ (last visited Oct. 7, 2025).

project," expressly dedicated to "promoting—and passing—progressive policy" such as "higher marginal tax rates on the wealthy."

In addition to fusing with major party candidates, the WFP is also willing to challenge centrist Democrats through primary contests.[49] The party notably supported progressive insurgent candidates over establishment Democrats. This strategy has also provoked recurrent criticism from centrist Democrats, who often accusing the WFP of endangering broader electoral coalitions by pushing the party too far to the left.[50]

Conservative Party

The Conservative Party of New York was established in 1962.[51] It emerged from a coalition of dissatisfied Republicans and anti-Communist Democrats concerned by the perceived liberal drift of the state's Republican Party.[52]. Reflecting the growing strength of "movement conservatism" as the time, the party's ideological core emphasized anti-Communism, limited government, traditional social values, and a firm commitment to law and order. Today the party's legislative priorities are firmly to the right, including policies against income taxes, a constitutional amendment on budget matters, vigorous police support, opposition to college loan forgiveness, and other conservative policies. [53] That is, the party is not a centrist party.

The Conservative Party's strategy has been its frequent use of fusing with Republican candidates. However, the party has fielded its own candidates, particularly when Republican nominees appeared insufficiently conservative, leveraging the threat of independent nominations to influence GOP platforms and candidate selections.[54]

c. Billboard Concerns and Sham Parties in New York Elections

While the Liberal, Conservative, and Working Families Parties have been the three primary minor parties in New York, there have been a proliferation of other small and often temporary parties. There have also been many "parties" on the ballot that are not genuine political organizations but instead "parties" created for a single election with an ad-hoc slogan or as a means of gaining another ballot line for a candidate. The reality of fusion voting in New York shows that many "parties" are not parties in any sense of the word.

The ballot for the most recent New York City mayoral election (2025) featured multiple "parties" that functioned precisely as single-issue billboards rather than genuine political organizations. For example, Republican candidate Curtis Sliwa utilized a "Protect Animals" party line to highlight a specific platform plank. Incumbent Eric Adams appeared as the "Safe & Affordable" and "End Anti-Semitism" candidate. Other independent candidates followed suit, with Joseph Hernandez

[49] *See, e.g.*, Jesse McKinley, Nixon Wins Endorsement Of New York Progressives, New York Times, Apr. 15, 2018, at A20.

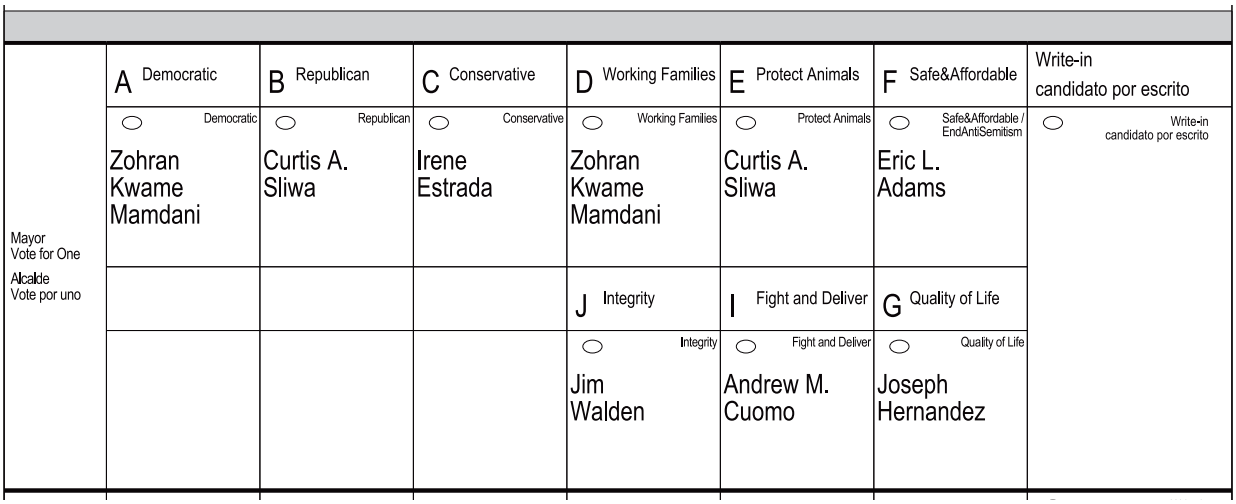
[50] *See, e.g.*, Jason Beeferman, *The Dems' WFP Problem*, Politico New York Playbook (Nov. 18, 2025), https://www.politico.com/newsletters/new-york-playbook-pm/2025/11/18/working-families-party-spoiler-candidates-delgado-gop-00656755 (last visited Oct. 7, 2025).

[51] Conservative Party of New York State, *About* (2025), https://www.cpnys.org/about/ (last visited Oct. 7, 2025).

[52] *Id.*

[53] Conservative Party of New York State, *2025 Legislative Priorities* (2025), https://www.cpnys.org/legislative-priorities/ (last visited Oct. 7, 2025).

[54] *See, e.g.*, Robert D. McFadden, James L. Buckley, 100, Conservative Senator in Liberal New York, Dies, New York Times, Aug. 19, 2023, at A20.



	A Democratic	B Republican	C Conservative	D Working Families	E Protect Animals	F Safe&Affordable	Write-in candidato por escrito
Mayor Vote for One Alcalde Vote por uno	○ Democratic	○ Republican	○ Conservative	○ Working Families	○ Protect Animals	○ Safe&Affordable / EndAntiSemitism	○ Write-in candidato por escrito
	Zohran Kwame Mamdani	Curtis A. Sliwa	Irene Estrada	Zohran Kwame Mamdani	Curtis A. Sliwa	Eric L. Adams	
				J Integrity	I Fight and Deliver	G Quality of Life	
				○ Integrity	○ Fight and Deliver	○ Quality of Life	
				Jim Walden	Andrew M. Cuomo	Joseph Hernandez	

Figure 7: Mayoral election portion of the ballot for the General Election in New York City on November 4, 2025.

running on the "Quality of Life" line and James Walden running on the "Integrity" line. Figure 7 shows the ballot.

These are not political parties in the traditional sense; they are slogans repurposed as ballot lines. The existence of the "End Anti-Semitism" line is particularly illustrative: it allowed a candidate to signal a specific policy stance directly on the ballot face, independent of any genuine party organization. The risk of this "billboard" effect is not merely theoretical but very real.

State-level elections in New York can be similar. The 2014 New York Governor's race had ten different lines on which a voter could cast a vote for the Governor. In addition to the Democratic, Republican, Conservative, Working Families, Green, and Libertarian Parties, there were also the "Independence", "Stop Common Core", "Sapient", and "Women's Equality" Parties. Figure 8 shows a portion of this ballot.

The "Stop Common Core" and "Women's Equality" in particular were never parties in any sense of the word. Instead they were created by the Republican and Democratic candidates respectively to serve as billboards on the ballot.[55]

Several other minor parties in New York have been set up by major party candidates. Critics have accused these parties of being "sham" parties set up to gain additional ballot lines or confuse voters. Michelson and Susin describe the pattern:

> In fact, many minor "parties" which appear on New York ballots are created candidates in order to send a message to voters. For example, in 1994 Republican candidate George Pataki created the "Tax Cut Now" party . . . "Various 'parties' like this appear and disappear regularly in New York, bearing such names as 'Property Tax Cut,' 'Protect Seniors,' 'Taxpayers,' and 'Save Medicare.'" The advantages to using such

[55]Christine Sisto, *Astorino Bets New Yorkers Want to Stop Common Core*, National Review (July 11, 2014), https://www.nationalreview.com/2014/07/astorino-bets-new-yorkers-want-stop-common-core-christine-sisto/ (last visited Oct. 7, 2025); Bill Mahoney, *Women's Equality Party, Under New Management, Still Likes Cuomo*, Politico (Mar. 13, 2018), https://www.politico.com/states/new-york/albany/story/2018/03/13/womens-equality-party-under-new-management-still-likes-cuomo-311509 (last visited Oct. 7, 2025).

OFFICIAL BALLOT FOR THE GENERAL ELECTION - City of New York - County of New York - November 4, 2014
See Enclosed Instructions PROPOSALS ON THE OTHER SIDE
New York Style: 0041

Papeleta Oficial para la Elección General - Ciudad de Nueva York
Condado de Nueva York - 4 de Noviembre del 2014
Vea las Instrucciones Adjuntas PROPUESTAS AL OTRO LADO

	Democratic	Republican	Conservative	Working Families	Independence	Green	WRITE-IN CANDIDATO POR ESCRITO
Governor and Lieutenant Governor Vote Once Gobernador y Vice Gobernador Vote por uno	ANDREW M. CUOMO and - y KATHY C. HOCHUL Democratic	ROB ASTORINO and - y CHRIS MOSS Republican	ROB ASTORINO and - y CHRIS MOSS Conservative	ANDREW M. CUOMO and - y KATHY C. HOCHUL Working Families	ANDREW M. CUOMO and - y KATHY C. HOCHUL Independence	HOWIE HAWKINS and - y BRIAN P. JONES Green	WRITE-IN CANDIDATO POR ESCRITO
			Libertarian	StopCommonCore	Sapient	Women's Equality	
			MICHAEL MCDERMOTT and - y CHRIS EDES Libertarian	ROB ASTORINO and - y CHRIS MOSS StopCommonCore	STEVEN COHN and - y BOBBY K. KALOTEE Sapient	ANDREW M. CUOMO and - y KATHY C. HOCHUL Women's Equality	
Comptroller Vote for one Contralor Vote por uno	THOMAS P. DINAPOLI Democratic	ROBERT ANTONACCI Republican	ROBERT ANTONACCI Conservative StopCommonCore	THOMAS P. DINAPOLI Working Families	THOMAS P. DINAPOLI Independence Women's Equality	THERESA M. PORTELLI Green	WRITE-IN CANDIDATO POR ESCRITO
			JOHN CLIFTON Libertarian				
Attorney General Vote for one Fiscal General Vote por uno	ERIC T. SCHNEIDERMAN Democratic	JOHN CAHILL Republican	JOHN CAHILL Conservative StopCommonCore	ERIC T. SCHNEIDERMAN Working Families	ERIC T. SCHNEIDERMAN Independence Women's Equality	RAMON JIMENEZ Green	WRITE-IN CANDIDATO POR ESCRITO
			CARL E. PERSON Libertarian				

Figure 8: Portion of the ballot for the General Election in New York City on November 4, 2014.

> temporary parties, despite the state's restrictive ballot access laws, are obvious. These sorts of names are likely to appeal to voters, a to boost a candidate's vote totals.[56] (internal citations omitted)

The two most recent examples of this that gained automatic ballot are the aforementioned Tax Cut Now Party and the Women's Equality Party.

In 1994, the New York Republican State Committee filed paperwork to create the Tax Cut Now Party. This party, whose nominations were identical to the Republican Party, giving Republican nominees an additional ballot line.[57] Republican gubernatorial nominee George Pataki received just enough votes on the Tax Cut Now Party line for the party to maintain ballot access for the following election cycle.[58] After the election the party renamed itself the Freedom Party, leading to a legal challenge from a similarly named party founded by the Rev. Al Sharpton.[59] The party lost its ballot access after the 1998 election.[60]

Ten years later, Democratic governor Andrew Cuomo and his allies created the Women's Equality Party (WEP). The party's initial financing came from a loan from Cuomo's re-election campaign, with a second loan from the campaign following several months later while eschewing fund-raising activities.[61] Critics argued that the party was little more than an attempt by Cuomo to gain an extra ballot line and sow confusion with the Working Families Party, whose widely-used initialism, "WFP," was notably similar to this new party's initialism, "WEP."[62] The Women's Equality Party lost ballot access after it failed to achieve the necessary 50,000 threshold in the 2018 gubernatorial election.[63]

d. An Appraisal of Fusion Voting in New York

New York has been the principal laboratory for disaggregated fusion voting. The record is not a particularly good one. The institutional bundle of disaggregated fusion, Wilson–Pakula gatekeeping, and closed major-party primaries ultimately channels bargaining through party elites rather than mass electorates. This means that cross-party nominations hinge on leadership authorizations, not open contests, so that leverage accrues to brokers who control access to lines.

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[56] Melissa R. Michelson and Scott J. Susin, What's in a Name: The Power of Fusion Politics in a Local Election, 36 Polity 301 (2004), at 305.

[57] Ian Fisher, Minor Parties File Petitions for Pataki and Rosenbaum, New York Times, Aug. 24, 1994, at B6.

[58] Michelson and Susin, *supra* note 56.

[59] *Freedom Party of New York v. N.Y. State Bd. of Elections*, 77 F.3d 660 (2d Cir. 1996).

[60] Wayne Barrett, *Andrew Cuomo and Black Voters — The Key to his Father's Victory, Will They Help the Son?*, Village Voice (Sep. 24, 2010), https://www.villagevoice.com/andrew-cuomo-and-black-voters-the-key-to-his-fathers-victory-will-they-help-the-son/ (last visited Oct. 7, 2025).

[61] Ginia Bellafante, About Cuomo's Women's Party, New York Times, May 27, 2018, at MB1.

[62] Michelle Goldberg, *The Women's Equality Party is a Joke*, The Nation (Oct. 24, 2014), https://www.thenation.com/article/archive/andrew-cuomos-farcical-womens-equality-party/ (last visited Oct. 7, 2025); Liza Featherstone, *Never Forget: Andrew Cuomo Once Started a Sham Feminist Party* (Aug. 23, 2021), https://jacobin.com/2021/08/andrew-cuomo-womens-equality-party (last visited Oct. 7, 2025); Daniel Marans, *Andrew Cuomo Once Created A Fake Women's Rights Party As Political Revenge*, Huffington Post (Mar. 12, 2021), https://www.huffpost.com/entry/andrew-cuomo-fake-womens-party_n_604be3d0c5b65bed87da88ce (last visited Oct. 7, 2025).

[63] Zach Williams, *Some Third Parties See Victory in Defeat*, City & State New York (Nov. 18, 2018), https://www.cityandstateny.com/politics/2018/11/some-third-parties-see-victory-in-defeat/177915/ (last visited Oct. 7, 2025).

No ideologically distinct centrist party has emerged. Instead, where fusion matters in New York, it has tended to empower ideological flanks, the Conservative Party on the right and the Working Families Party on the left, rather than hypothetical median-seeking centrists. An empirical study on fusion in New York found that these parties were more likely to cross-nominate candidates closer to their policy goals.[64] The authors concluded that:

> "[M]inor parties can reinforce major-party polarization. This pattern is somewhat ironic, since many voters support the idea of minor parties as a needed solution to excessive polarization (Jones, 2023). The complication is that the minor parties that form and compete are very often towards an ideological extreme. Moderate parties that could give incentives for major-party candidates to moderate simply are not the ones to successfully organize."[65]

It is also important to note that separate ballot lines do not necessarily provide clean signals about the strength of the parties. That is, the fact that Donald Trump captured 321,733 voters on the Conservative line in the 2024 presidential election does not provide clear information about why voters voted under that party line or the strength of the party. It is not always clear what drives voters to vote on the major party line versus the fused minor party line. Advocates of fusion voting allude to the votes captured by minor parties as a source of strength for the party. However, they are poor measures of constituency size or policy mandate, as we discuss this further in the next section. Meanwhile, the minor-parties in New York have been fragile: rule changes to ballot access reshaped the field,[66] and the parties that endured were precisely those with strong organizational identities at the flanks, not centrist parties.

On widely used indicators of "democratic performance," New York is not obviously better than peer states. Its voter participation has tended to lag national averages (e.g., 60.4% of the eligible population in 2024 vs. 64.1% nationally; 42.5% in 2022 vs. 46.2% nationally),[67] and its closed-primary rules, with early deadlines to change party enrollment, limit participation in many decisive contests even as the state has expanded access through statewide early voting and the John R. Lewis Voting Rights Act of New York.[68] New York also retains several institutions often associated with machine-style party control, most notably the Wilson–Pakula gatekeeping rule and judicial nominations via party-delegate conventions (upheld in *N.Y. State Bd. of Elections v. Lopez Torres*[69]), and a leadership-centric bargaining culture long described as "three men in a

[64] Daniel J. Lee and Tanner Bates, Explaining Variation in the Use of Electoral Fusion, 53 American Politics Research 339 (Mar. 11, 2025).

[65] *Id.* 348–349.

[66] As we discuss in II.C, many other legislative choices interact with fusion voting.

[67] Ballotpedia, *Voter Turnout in New York* (2025), https://ballotpedia.org/Voter_turnout_in_New_York (last visited Oct. 7, 2025); Michael McDonald and the University of Florida Election Lab, *2024 General Election Turnout* (2025), https://election.lab.ufl.edu/2024-general-election-turnout/ (last visited Oct. 7, 2025).

[68] N.Y. Elec. Law § 5-304 (McKinney 2025) (party enrollment changes); N.Y. Elec. Law § 8-600–604 (McKinney 2025) (early voting); N.Y. Elec. Law § 17-200–222 (McKinney 2025) (John R. Lewis Voting Rights Act of New York); Off. of the N.Y. Att'y Gen., *John R. Lewis Voting Rights Act of New York* (Dec. 19, 2023), https://ag.ny.gov/resources/organizations/new-york-voting-rights-act (last visited Oct. 7, 2025).

[69] *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008).

room."[70] Finally, while the state has enacted significant voting-access reforms in recent years, New York's public life has featured high-profile corruption prosecutions and historically high federal public-corruption conviction counts in its Manhattan federal district (a metric that may reflect enforcement intensity as well as misconduct).[71] In short, by common yardsticks of participation, moderation, and institutional openness, New York's record is mixed rather than clearly superior.

C. Administrative Practicalities

Turning from history to administrative practice, fusion voting represents one in a constellation of choices that must be made in structuring an electoral system generally, and a state-printed ballot in particular. The modern Australian ballot is not a neutral vessel for voter expression, but instead a highly regulated instrument of governance. To produce an orderly election, the state must navigate a dense thicket of competing interests.

In the following sections, we first situate the regulation of fusion voting within the broader regulatory density of the modern ballot (Section II.C.1). We then analyze the immediate consequences of invalidating down Wis. Stats. §§ 8.03(1) and 8.15(7) as the Plaintiffs request. Specifically, we show that the removal of this statute would not merely permit fusion. It would also lead to the introduction of "Open Cross-Filing" (Section II.C.2) and dismantle Wisconsin's "Sore Loser" safeguards (Section II.C.3), both of which would make Wisconsin an outlier among states. Finally, we outline a set of new structural dilemmas that would arise in response to introducing fusion voting (Section II.C.4).

1. Fusion Voting is One of Many Choices About What Appears on a Ballot.

The adoption of the Australian ballot transformed the ballot from a private party artifact into a public government document. In the era of the party ticket, the state played a minimal role: parties decided who appeared on their slips of paper and how those slips were designed. Voters could also freely submit their own ballots instead of something provided by a party. Today, the state bears the exclusive burden of printing the ballot. This responsibility necessitates a comprehensive regulatory framework: the state cannot print a ballot without first deciding exactly what goes on it.

There is, therefore, no such thing as a "neutral" or unregulated ballot. Every aspect of the document, from the specific font size to the determinants of the ordering of candidate names, is the product of a deliberate government choice. These choices are essential to translate the abstract right to vote into a functional administrative reality. They are driven by the state's compelling interests in avoiding voter confusion, preventing overcrowding, ensuring fairness, and maintaining the integrity of the electoral process.

To characterize the ban on fusion voting as a unique or extraordinary burden is to ignore the density of regulation that surrounds it. The following non-exhaustive taxonomy illustrates the myriad choices a state must make to produce a viable ballot, situating the regulation of

[70] N.Y. Elec. Law § 6-120(3) (McKinney 2025) (Wilson–Pakula authorization); Jeremy M. Creelan and Laura M. Moulton, *The New York State Legislative Process: An Evaluation and Blueprint for Reform* (Brennan Center for Justice, 2004), https://www.brennancenter.org/sites/default/files/legacy/d/albanyreform_finalreport.pdf.

[71] Vital City, *Federal Public Corruption Conviction Rate by District, 1976–2021* (2025), https://www.vitalcitynyc.org/dataviz/federal-public-corruption-conviction-rate-by-district-1976-2021 (last visited Oct. 7, 2025).

cross-nomination as just one component of a much larger administrative system.[72]

A. Structural Framework and Primary Systems

1. **Choosing the Primary System Structure**: Deciding the specific format for candidate nomination, such as implementing a closed primary (where only registered party members can vote), an open primary (where all voters are eligible to participate in one party's primary), or a nonpartisan/blanket primary (where all candidates run regardless of party).
2. **Defining Voter Eligibility in Partisan Primaries**: Establishing rules that determine which registered voters are eligible to participate in a political party's primary election, particularly whether registered independent or minor party voters are legally barred from major party contests.
3. **Granting Party Rule-Making Authority**: Determining the extent to which state political parties are granted the autonomous authority to establish rules that may permit non-affiliated voters (such as registered independents) to participate in their specific primary contests.
4. **Regulating Nonpartisan Primaries**: Setting procedures for nonpartisan primaries (often referred to as blanket primaries), where all candidates appear on a single ballot regardless of party, and determining how the top candidates advance to the general election.
5. **Timing of Primary and General Registration Deadlines**: Setting the deadline for a candidate to register their party affiliation or disaffiliation relative to both the primary and general election.
6. **Sore Loser Laws**: Prohibiting a candidate who loses a primary election for a specific office from subsequently running for the same office in the general election as an independent or the nominee of another political party.
7. **Party Disaffiliation Requirements**: Establishing a mandatory period of time an individual must formally sever ties with a political party before they are eligible to file to run as an independent candidate.

B. Candidate and Party Qualification (Getting on the Ballot)

8. **Established Party Status**: Determining the minimum share of votes (electoral threshold) a political party must receive in prior elections to be granted "established political party" status and automatic, eased ballot access.

[72]This section relies on a synthesis of academic and administrative resources that catalog the extensive variations in state ballot regulations. For a comprehensive overview of the historical and strategic evolution of ballot design, see Erik J. Engstrom and Jason M. Roberts, The Politics of Ballot Design: How States Shape American Democracy (Cambridge University Press 2020) For a detailed survey of current state statutes governing candidate qualifications, ballot access, and election administration, see *State Election Legislation Database* (Oct. 1, 2025), https://www.ncsl.org/elections-and-campaigns/state-election-legislation-database. Legal analysis of these regulatory choices can be found in Eugene D. Mazo, The Oxford Handbook of American Election Law (Oxford University Press 2024), particularly the chapters discussing the constitutional framework of ballot access and party regulation.

9. **Signature Requirements for New/Minor Parties**: Establishing alternative qualification mechanisms for new or minor parties that do not meet the vote percentage threshold, typically involving petition drives or formal voter affiliation.

10. **Personal Eligibility Requirements for Candidates**: Setting standards for candidate qualifications, including minimum age, required residency, and U.S. citizenship.

11. **Filing Fees**: Deciding whether to mandate the payment of filing fees as an initial screening device to demonstrate the seriousness of a candidacy.

12. **Setting Signature Quantity**: Setting the total number of signatures required for a candidate or ballot measure to gain access, typically set as a percentage of votes cast in a prior election or registered voters.

13. **Imposing Geographic Distribution Requirements**: Mandating that signatures be collected from voters residing across a minimum number of political subdivisions (e.g., counties or legislative districts) to demonstrate broad support.

14. **Setting Signature Verification Standards**: Establishing the default standards for election officials to use when verifying signatures, such as adopting a basic presumption of validity and confirming that "exact matches are not required" to confirm validity.

15. **Establishing Verification Oversight**: Deciding whether to allow representatives of major political parties to observe each stage of the signature verification process for petitions and ballots, institutionalizing partisan oversight.

16. **Candidate Withdrawal Deadlines**: Establishing definitive deadlines by which a candidate must withdraw a declaration of candidacy to be removed from the ballot.

17. **Candidate Replacement Protocols**: Determining the rules governing how a political party may substitute a nominee if the original candidate withdraws, is disqualified, or dies after the statutory deadline.

18. **Cross-Nomination (Fusion Voting)**: Choosing whether to prohibit or permit fusion voting.

C. **Ballot Measures and Direct Democracy**:

19. **Defining Direct Democracy Scope**: Determining whether citizens are permitted to utilize initiatives, referenda, or recall procedures at all.

20. **Setting Measure Content Limits**: Deciding whether citizens may propose constitutional amendments or if proposals are restricted only to statutory changes.

21. **Drafting and Reviewing Measure Summaries**: Choosing which governmental body is responsible for drafting and reviewing the proposed measure's title and summary, ensuring political neutrality and accuracy.

22. **Mandating Language Clarity Standards for Measures**: Enacting laws that govern ballot measure readability and mandate that ballot questions and summaries be written in "plain language," avoiding technical jargon.

D. Administrative and Design Choices (Layout, Accessibility, and Appearance)

23. **Ballot Layout Format Choice**: Selecting the overall structural format of the ballot, such as the Party Column format (grouping candidates by party as in New York) or the Office Block format (grouping candidates by office as in Wisconsin).

24. **Determining Ballot Order**: Choosing the order in which candidates appear on the ballot (e.g., alphabetical, randomized by precinct, or ordered by party strength).

25. **Straight Ticket Voting**: Whether to allow voters to cast a vote for all candidates of a single party with one mark.

26. **Whether to Allow Party Symbol to Appear**: This choice determines if a party's official insignia, emblem, or logo (e.g., an animal, star, or geometric shape) is permitted next to its name or the names of its candidates on the ballot.

27. **Regulating Write-in Votes**: Setting rules for write-in candidacies, specifically whether a write-in vote is legally tallied and counted toward a candidate's total only if the individual has filed a prior declaration of intent or registration notice.

28. **Adoption of Technical Voting Standards**: Deciding whether to adopt the federal Voluntary Voting System Guidelines or comparable state standards for testing and certifying voting system hardware and software functionality, accessibility, and security.

29. **Setting Language Accessibility Mandates**: Determining whether to expand upon the minimum federal language assistance requirements (Section 203 of the Voting Rights Act) by providing translated election materials, such as facsimile ballots or instructions, to additional language minority groups.

30. **Setting Voter Instruction Clarity Standards**: Making administrative decisions about the clarity standards for instructional language provided to voters, prioritizing short, simple sentences, active voice, and positive phrasing to minimize voter error.

31. **Minimum Font Size Mandates**: Mandating minimum type sizes for ballots to ensure legibility.

32. **Text Case and Alignment Rules**: Setting standards for ballot text display, such as requiring the use of sans-serif fonts, favoring lowercase letters over all capital letters, and requiring left-aligned text.

33. **Nickname Restrictions**: Setting legal criteria for using a nickname on the ballot, including requiring proof that the nickname is "bona fide" and commonly used by acquaintances.

34. **Nickname and Title Exclusion**: Prohibiting the use of a nickname or designation that functions as a political slogan, title, military rank, academic degree, or spurious phrase to prevent misleading voters.

35. **Name and Nickname Length Limits**: Establishing the maximum number of spaces, letters, and punctuation (e.g., 25 spaces) allowed for a candidate's name and nickname on the ballot.

36. **Professional Designation Limits**: Limiting a candidate's description of their current profession, vocation, or occupation to a maximum number of words.

37. **Incumbency Designation Criteria**: Defining the precise conditions under which a candidate is permitted to use the word "incumbent" on the ballot (e.g., must have been elected by popular vote to the exact office sought).

38. **Name Change Disclosure**: Determining whether candidates who have legally changed their name must disclose their former name on the ballot or in filing documents to prevent voter deception.

39. **Formatting and Punctuation Rules**: Dictating the exact statutory form of the name, including required use of quotation marks around nicknames, placement of abbreviations, and use of commas with generational qualifiers (e.g., Jr. or III).

E. Voter Eligibility and Registration Administration

40. **Voter Identification Requirements**: Deciding whether to require voters to present identification at the polls, and if so, whether that ID must be a photo ID and what specific forms are acceptable.

41. **Registration Deadlines and Same-Day Registration**: Establishing the closing date for voter registration or choosing to permit "Same Day Registration" (SDR) at the polling place on Election Day.

42. **List Maintenance Procedures**: Mandating specific protocols for maintaining the accuracy of voter rolls, including participating in interstate data-sharing programs and defining the process for removing inactive or ineligible voters.

43. **Automatic Voter Registration**: Determining whether to implement systems that automatically register eligible citizens when they interact with government agencies (like the DMV) unless they opt out.

44. **Rights Restoration for Incarcerated Individuals**: Establishing the precise conditions under which voting rights are restored to individuals with felony convictions.

F. Voting Methods, Accessibility, and Polling Place Operations

45. **Absentee and No-Excuse Voting**: Deciding whether to require a specific excuse (e.g., illness or travel) to vote absentee or to adopt "no-excuse" absentee voting for any voter.

46. **Early In-Person Voting**: Establishing the timeframe, locations, and hours for early in-person voting.

47. **Tabulation Methods**: Choosing among methods for counting ballots, such as filling in ovals on a paper ballot with an electronic tabulator counting the ovals, using direct record electronic ballots, or hand-counted paper ballots.

48. **Ballot Curing Processes**: Creating a statutory process that allows voters to correct defects on absentee ballot envelopes, such as missing signatures, before the ballot is rejected.

49. **Drop Box Regulation**: Regulating the use, number, location, and security surveillance requirements for ballot drop boxes.

50. **Military and Overseas Procedures**: Setting specific timelines and transmission methods to ensure military and overseas voters can receive and return ballots in time.

51. **Electioneering Boundaries**: Defining the size of the "buffer zone" around a polling place within which political campaigning or soliciting votes is prohibited.

52. **Poll Watcher and Observer Rights**: Establishing the qualifications, rights, and limitations of partisan poll watchers, including how close they may stand to election workers and what parts of the process they may observe.

53. **Provisional Ballot Protocols**: Defining the criteria for issuing provisional ballots to voters whose eligibility is in question at the polls and the standards for adjudicating whether those ballots count.

54. **Polling Place Hours**: Setting the statutory opening and closing times for polling places and determining rules for voters standing in line at the time of closing.

G. Post-Election Procedures, Security, and Audits

55. **Voter Intent Adjudication Rules**[73]: Defining the legal standard for determining voter intent when a ballot is ambiguously or improperly marked, deciding between a strict compliance rule or one that seeks to reasonably understand the voter's choice.

56. **Automatic Recount Thresholds**: Establishing the vote differential that triggers a mandatory, automatic recount for certain races without requiring a petition.

57. **Post-Election Audit Methodology**: Choosing between methods to verify the election outcome.

58. **Cybersecurity Standards**: Mandating specific cybersecurity frameworks for voter registration databases and election reporting systems.

59. **Chain of Custody Requirements**: Establishing detailed administrative rules for the physical handling, transport, and secure storage of ballots and memory cards to maintain a documented chain of custody.

60. **Administrative Complaint Process**: Implementing administrative procedures for any person to file a formal complaint alleging a violation related to voting equipment, accessibility, or instructions.

[73] *See, e.g.*, *Voter Intent Laws* (Nov. 12, 2024), https://www.ncsl.org/elections-and-campaigns/voter-intent-laws (last visited Oct. 7, 2025).

61. **Voter Eligibility Challenge Rules**: Determining who is authorized to challenge an individual voter's eligibility (e.g., registered voters, poll workers, party challengers) and defining the sufficient grounds for such a challenge.

62. **Election Contest Procedures**: Establishing the legal process and judicial standards for formally contesting election results.

The extensive (but by no means exhaustive) number of choices demonstrates that the creation of a ballot is an exercise in exclusion as much as inclusion. The state does not print a limitless repository of voter expression; it prints a functional instrument of governance. To do so, it must constantly make decisions that privilege certain forms of information over others. The state may choose to group candidates by office rather than party, it may choose to exclude candidates who fail to pay filing fees, and it may choose to prioritize legibility over the exhaustive listing of every minor party endorsement.

Against this backdrop of necessary and routine regulation, the decision to prohibit fusion voting is neither unique nor extraordinary. It is simply one choice in the vast administrative machinery of the Australian ballot.

From an election administration perspective, the decision to list a candidate only once is one of many choices that might be made. Just as the choice of an Office Block layout may reflect a prioritization of the office over the party, the rule on candidate names appearing only once may reflect a prioritization of the candidate's individual identity over their various coalition endorsements. Viewed in this light, fusion voting is a question of ballot formatting. Like the hundreds of other decisions Wisconsin makes to ensure its elections are orderly and intelligible, the choice to list each candidate exactly once is consistent with the state's standard role in designing official election documents.

2. Invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) Would Introduce Cross Filing

The Plaintiffs are seeking fusion voting. Granting relief would also introduce cross-filing—where candidates can compete in multiple parties' primaries—which is only used in a handful of minor elections nationally. This would be a large structural changes beyond fusion voting.

Implementing fusion voting requires a mechanism for a candidate to secure the nomination of a party they do not belong to. Because the Plaintiffs seek to overturn the specific statutory bans on filing for multiple parties without proposing a replacement regulatory structure, the immediate legal consequence of their relief would be a return to Open Cross-Filing.

Cross-filing is the practice wherein a candidate is legally permitted to file nomination papers for the primary elections of multiple political parties simultaneously. While fusion voting focuses on the general election ballot (the end result), cross-filing focuses on the primary election (the selection process).

Without Wis. Stats. §§ 8.03(1) and 8.15(7), the barriers preventing a candidate from entering multiple primaries would be removed. In this system a Republican candidate could legally file to run in both the Republican and Democratic primaries, a Democratic candidate could legally file to run in the Democratic and Green Party primaries, and in fact candidates could file to run in every available primary simultaneously. While this appears to offer voters maximum choice, historical evidence suggests it fundamentally erodes the integrity of political parties by allowing "raiding" and "hostile takeovers."

The most extensive empirical test of this system occurred in California from 1913 to 1959. During this period, the state allowed unrestricted cross-filing. Candidates would be listed on the general ballot using disaggregated fusion (where candidates would appear only once on the ballot, but with all of their party affiliations). The result was not a vibrant multi-party system, but a collapse of meaningful competition as incumbents and major party candidates used the system to capture opposition nominations. In the California model, cross-filing was not limited to minor parties; major party candidates routinely ran in their opponent's primaries. Incumbents with high name recognition often won the nominations of *both* the Democratic and Republican parties, effectively ending the contest in the primary and rendering the general election meaningless.

The historical record provides striking examples of this capture. In 1946, Governor Earl Warren won both the Republican and Democratic primaries for Governor, appearing on the general election ballot as the nominee for both parties. Similarly, in 1948, Republican Richard Nixon cross-filed for re-election to the U.S. House, winning the GOP primary and simultaneously defeating Democrat Stephen Zetterberg in the Democratic primary. Republican Senator William Knowland achieved the same feat in 1952, winning both major-party primaries.

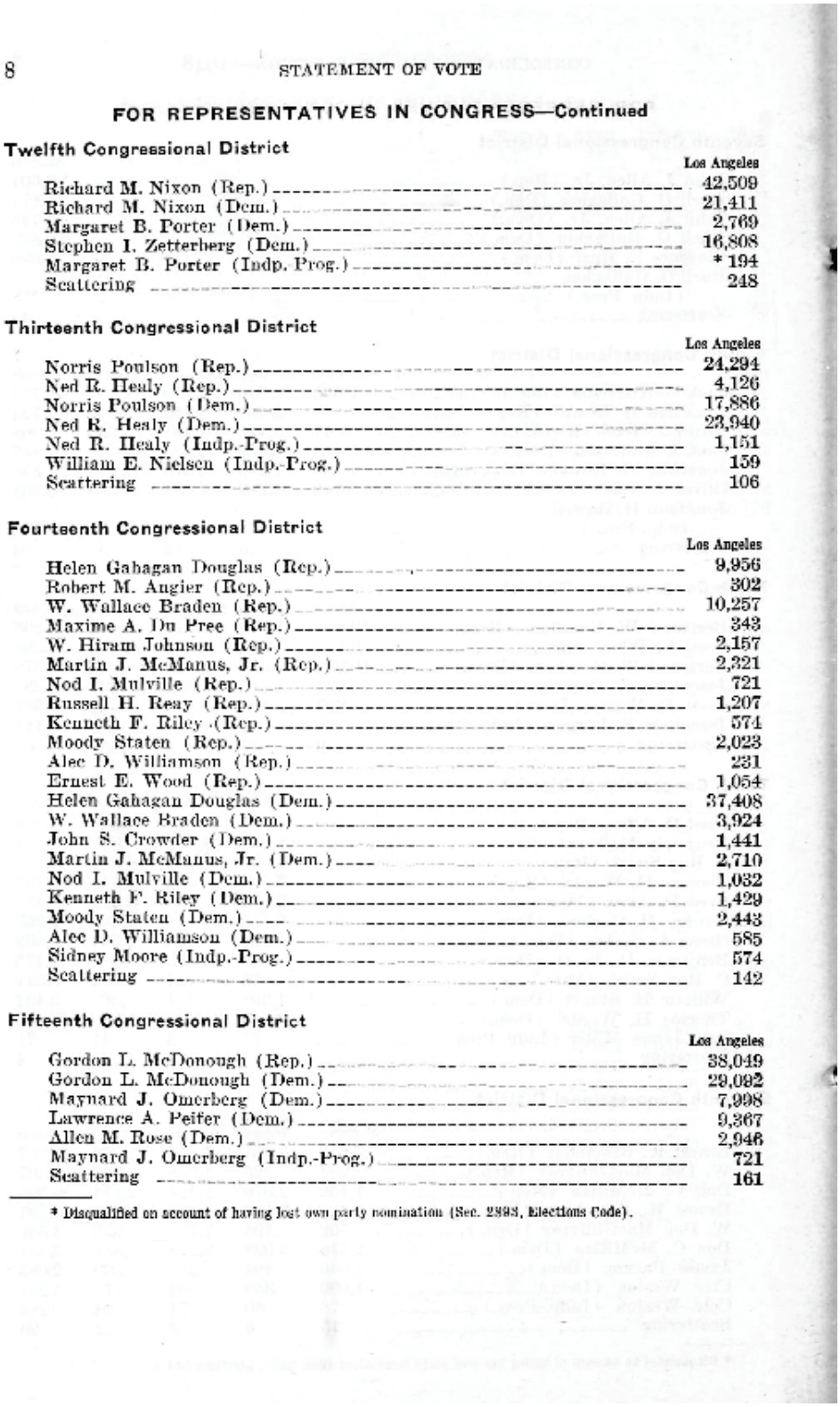
Figure 9 shows primary returns from the Twelfth through Fifteenth Congressional Districts in California's 1948 elections. Observe that in the Twelfth Congressional District, Richard Nixon captured both the Republican primary (where he was uncontested) and the Democratic primary. In the Thirteenth Congressional District, both Noris Poulson and Ned R. Healy contested both the Republican and Democratic primaries, with Healy also contesting the Independent-Progressive primary. The Fourteenth Congressional District shows that ballots under this system could become extremely long when several candidates each contest multiple primaries. Figure 10 shows the general election results for these districts (and several other districts).

In the modern Wisconsin context, it is unlikely that informed Republican voters would vote for a Democrat in their primary and vice versa. However, cross-filing may lead to a weakening of party brands and voter confusion. If candidates can run in multiple primaries, voters can no longer use the fact that the candidate is in a particular primary to infer the candidates policy positions. Moreover, while the California experience highlights major-party capture, the risk is even more acute for minor parties. Because minor parties typically have small electorates, they are uniquely vulnerable to raiding. In an Open Cross-Filing system, a well-funded major-party candidate can mobilize a relatively small number of their own supporters to vote in the minor party's primary. By doing so, they can seize the minor party's nomination against the wishes of its actual membership. This effectively erases the minor party's distinct identity.[74]

Political scientists analyzing the California era observed that while cross-filing reduced overt partisan conflict, it created "a corrupt environment dominated by lobbyists and business interests."[75] Without distinct party labels to guide them, voters lost the ability to hold officials accountable. The cross-filing system was widely viewed as a failure and was abolished in 1959 in favor of strict party distinctions. California retains disaggregated fusion voting for Presidential elections, but it is

[74]Observe, for example, that in the four Congressional primaries in Figure 9, the Independent-Progressive party received a small number of votes in most of the elections. If appearing on a third-party line is valuable for candidates, it would be easy for major party candidates to raid the primaries.

[75]Seth Masket, "The Costs of Party Reform: Two States' Experiences", in American Gridlock: The Sources, Character, and Impact of Political Polarization pp 222–236 (James A. Thurber & Antoine Yoshinaka, eds., Cambridge University Press 2015).



8 STATEMENT OF VOTE

FOR REPRESENTATIVES IN CONGRESS—Continued

Twelfth Congressional District

	Los Angeles
Richard M. Nixon (Rep.)	42,509
Richard M. Nixon (Dem.)	21,411
Margaret B. Porter (Dem.)	2,769
Stephen I. Zetterberg (Dem.)	16,808
Margaret B. Porter (Indp. Prog.)	*194
Scattering	248

Thirteenth Congressional District

	Los Angeles
Norris Poulson (Rep.)	24,294
Ned R. Healy (Rep.)	4,126
Norris Poulson (Dem.)	17,886
Ned R. Healy (Dem.)	23,940
Ned R. Healy (Indp.-Prog.)	1,151
William E. Nielsen (Indp.-Prog.)	159
Scattering	106

Fourteenth Congressional District

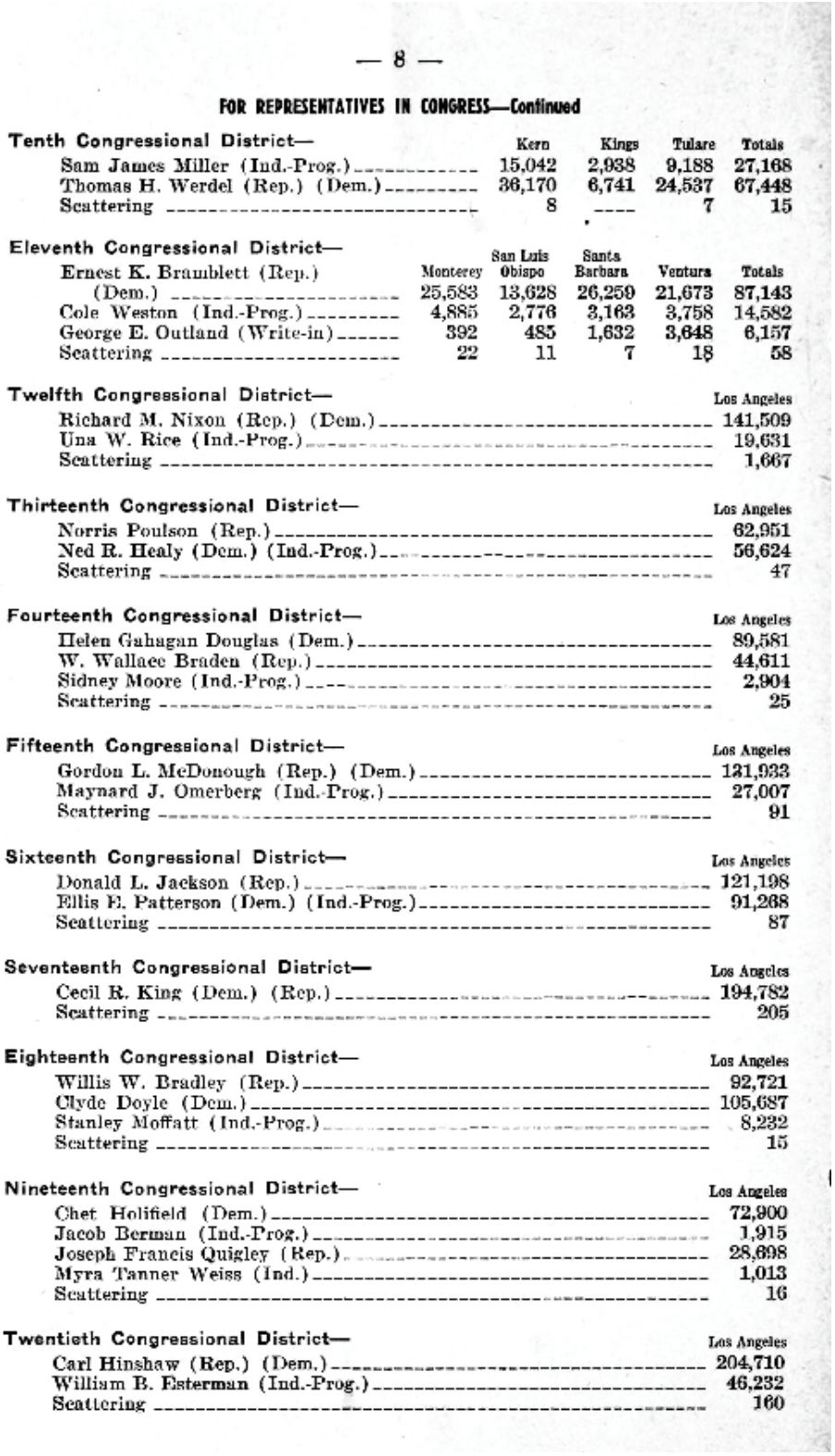
	Los Angeles
Helen Gahagan Douglas (Rep.)	9,956
Robert M. Augier (Rep.)	302
W. Wallace Braden (Rep.)	10,257
Maxime A. Du Pree (Rep.)	343
W. Hiram Johnson (Rep.)	2,157
Martin J. McManus, Jr. (Rep.)	2,321
Nod I. Mulville (Rep.)	721
Russell H. Reay (Rep.)	1,207
Kenneth F. Riley (Rep.)	574
Moody Staten (Rep.)	2,023
Alec D. Williamson (Rep.)	231
Ernest E. Wood (Rep.)	1,054
Helen Gahagan Douglas (Dem.)	37,408
W. Wallace Braden (Dem.)	3,924
John S. Crowder (Dem.)	1,441
Martin J. McManus, Jr. (Dem.)	2,710
Nod I. Mulville (Dem.)	1,032
Kenneth F. Riley (Dem.)	1,429
Moody Staten (Dem.)	2,443
Alec D. Williamson (Dem.)	585
Sidney Moore (Indp.-Prog.)	574
Scattering	142

Fifteenth Congressional District

	Los Angeles
Gordon L. McDonough (Rep.)	38,049
Gordon L. McDonough (Dem.)	29,092
Maynard J. Omerberg (Dem.)	7,998
Lawrence A. Peifer (Dem.)	9,367
Allen M. Rose (Dem.)	2,946
Maynard J. Omerberg (Indp.-Prog.)	721
Scattering	161

* Disqualified on account of having lost own party nomination (Sec. 2883, Elections Code).

Figure 9: Primary returns from the Twelfth through Fifteenth US Congressional Districts in California's 1948 elections.



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FOR REPRESENTATIVES IN CONGRESS—Continued

Tenth Congressional District—

	Kern	Kings	Tulare	Totals
Sam James Miller (Ind.-Prog.)	15,042	2,938	9,188	27,168
Thomas H. Werdel (Rep.) (Dem.)	36,170	6,741	24,537	67,448
Scattering	8	----	7	15

Eleventh Congressional District—

	Monterey	San Luis Obispo	Santa Barbara	Ventura	Totals
Ernest K. Bramblett (Rep.) (Dem.)	25,583	13,628	26,259	21,673	87,143
Cole Weston (Ind.-Prog.)	4,885	2,776	3,163	3,758	14,582
George E. Outland (Write-in)	392	485	1,632	3,648	6,157
Scattering	22	11	7	18	58

Twelfth Congressional District—

	Los Angeles
Richard M. Nixon (Rep.) (Dem.)	141,509
Una W. Rice (Ind.-Prog.)	19,631
Scattering	1,667

Thirteenth Congressional District—

	Los Angeles
Norris Poulson (Rep.)	62,951
Ned R. Healy (Dem.) (Ind.-Prog.)	56,624
Scattering	47

Fourteenth Congressional District—

	Los Angeles
Helen Gahagan Douglas (Dem.)	89,581
W. Wallace Braden (Rep.)	44,611
Sidney Moore (Ind.-Prog.)	2,904
Scattering	25

Fifteenth Congressional District—

	Los Angeles
Gordon L. McDonough (Rep.) (Dem.)	121,933
Maynard J. Omerberg (Ind.-Prog.)	27,007
Scattering	91

Sixteenth Congressional District—

	Los Angeles
Donald L. Jackson (Rep.)	121,198
Ellis E. Patterson (Dem.) (Ind.-Prog.)	91,268
Scattering	87

Seventeenth Congressional District—

	Los Angeles
Cecil R. King (Dem.) (Rep.)	194,782
Scattering	205

Eighteenth Congressional District—

	Los Angeles
Willis W. Bradley (Rep.)	92,721
Clyde Doyle (Dem.)	105,687
Stanley Moffatt (Ind.-Prog.)	8,232
Scattering	15

Nineteenth Congressional District—

	Los Angeles
Chet Holifield (Dem.)	72,900
Jacob Berman (Ind.-Prog.)	1,915
Joseph Francis Quigley (Rep.)	28,698
Myra Tanner Weiss (Ind.)	1,013
Scattering	16

Twentieth Congressional District—

	Los Angeles
Carl Hinshaw (Rep.) (Dem.)	204,710
William B. Esterman (Ind.-Prog.)	46,232
Scattering	160

Figure 10: General Election returns from the Tenth through Twentieth US Congressional Districts in California's 1948 elections.

largely unused.

Cross-filing is not widely available in the United States. Our research found a few sporadic cases of its use:

- Pennsylvania. Pennsylvania allows cross-filing for some local offices including school board elections and magisterial judge elections.[76]
- Maryland. Maryland allows cross-filing for judge of the circuit court and judge of the orphan court elections.[77]

In these jurisdictions, we see candidates running in multiple primaries. For example, a Democrat running in a 2023 school board election in Pittsburgh made the strategic decision to also run as a Republican, stating "It doesn't change my stance on things. . . I'm not going to stand down from those parts of my platform."[78]

Our research did not reveal a single state that allows cross filing. Implementing it in Wisconsin would be a large and potentially chaotic change to elections.

3. Invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) Would Allow Sore Losers

In the American electoral context, "sore loser" laws refer to the set of statutes and regulations designed to prevent a candidate who has been defeated in a primary election from subsequently appearing on the general election ballot for that same office in the same year.[79] Every state except New York and Connecticut have sore loser laws in place.[80] The primary objective of these laws is to protect the integrity of the nominating process by ensuring that the results of a primary are definitive. Without such safeguards, the primary election ceases to function as a winnowing mechanism for parties and instead serves merely as a non-binding preference poll. By requiring candidates to accept the primary outcome as a final determination of their eligibility for the general ballot, these laws promote political stability, prevent voter confusion, and mitigate the "spoiler effect" that occurs when multiple candidates from the same ideological faction compete in a general election.

In Wisconsin, Wis. Stats. §§ 8.03(1) and 8.15(7) serve as the state's "sore loser" law. Invalidating this provision thus carries consequences that extend well beyond the cross-filing discussed above. Because Wisconsin's prohibition on fusion voting is structurally intertwined with its "sore loser" protections, granting the requested relief would likely dismantle the state's mechanism for ensuring the finality of primary elections, allowing defeated primary candidates to appear on the general election ballot as independents or third-party nominees.

Wis. Stat. § 8.03(1) states:

[76]Ballotpedia, *Pennsylvania Judicial Elections*, https://ballotpedia.org/Pennsylvania_judicial_elections (last visited Dec. 12, 2025).

[77]Ballotpedia, *Maryland Judicial Elections*, https://ballotpedia.org/Maryland_judicial_elections (last visited Dec. 12, 2025).

[78]Kate Huangpu, *Party Affiliation Can Be Misleading in Local Pa. Elections. Here's Why*, Spotlight PA (May 3, 2023), https://www.spotlightpa.org/news/2023/05/cross-file-school-board-republican-democrat-pennsylvania/ (last visited Oct. 7, 2025).

[79]See e.g. Ballotpedia, *Sore Loser Laws by State*, https://ballotpedia.org/Sore_loser_laws_by_state (last visited Dec. 12, 2025)

[80]*See* Elijah Meltzer, *Only Two States Welcome Sore Losers in Their Elections* (Sep. 17, 2025), https://www.ncsl.org/state-legislatures-news/details/only-two-states-welcome-sore-losers-in-their-elections (last visited Dec. 12, 2025).

> "The name of any candidate who is nominated to the same office by more than one party or primary or nominated for more than one partisan or state nonpartisan office shall appear under the party first nominating him or her or under the office to which he or she was first nominated. If the double nomination is simultaneous, the candidate who is nominated, before the deadline for filing nomination papers shall file a written statement with the same person with whom he or she files nomination papers stating the person's party or office preference. If the candidate fails to select the party or office, the filing officer shall place the candidate's name on the ballot under either party or office, but may not permit it to appear more than once. If a candidate is nominated at a primary election for partisan office or nonpartisan state office on a ballot where his or her name appears or by nomination papers filed by the candidate, and is also nominated by write-in votes at the primary election to another office, or to the same office as the candidate of a different party, the candidate does not have a choice, but shall be placed on the ballot for the election under the office and party for which the candidate's name appeared on the primary ballot or for which the candidate had filed nomination papers."

Wis. Stat. § 8.15(7) states in relevant part:

> "A candidate may not run in more than one party primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. A person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election."[81]

This provision serves a dual administrative function. First, as discussed above, it prevents cross-filing and ensures a candidate's name is associated with only one nomination. Second, it functions as Wisconsin's "sore loser" law. By requiring candidates to commit to a single ballot line at the time of filing, the state ensures that the primary election serves as a definitive winnowing stage for the general election.[82]

If Wis. Stats. §§ 8.03(1) and 8.15(7) were struck down, a candidate would no longer be forced to choose a single path to the general election. Instead, a candidate could legally file nomination papers for a major party primary while *simultaneously* filing as an independent or as the nominee of a minor party, resulting in a chaotic new paradigm concerning candidates who

[81] Wis. Stat. § 8.15(7) (2025).

[82] Indeed, sore loser laws are intertwined with laws on cross-filling nationally. The National Conference of State Legislatures explains:

> The legal mechanisms of sore loser laws vary by state, but the most common one is a prohibition on cross-filing. . . Some states, such as Arkansas, explicitly prohibit candidates from appearing under multiple party designations in the same election cycle. Other states, including Delaware, prohibit cross-filing implicitly by setting a minimum amount of time that a candidate must be registered with a party to run. Still other states, such as South Carolina, have more targeted sore loser laws, barring defeated candidates from running again in the same election cycle, regardless of party. See Meltzer, *supra* note 80.

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lose primary elections. A candidate would be legally permitted to file for the Democratic primary *and* concurrently file as an Independent (or as the nominee of a "sham" party). This capability permits candidates to effectively "hedge" against rejection by the primary electorate. Currently, the primary election functions as a definitive elimination stage: the defeated candidate is removed from contention. If Wis. Stats. §§ 8.03(1) and 8.15(7) were removed, the primary would be reduced to a mere recommendation. A candidate defeated in the Democratic primary could simply persist into the general election using the Independent ballot line they previously secured.

Such a change would relegate Wisconsin to the small minority of jurisdictions, presently limited to New York and Connecticut, that permit "sore losers" to appear on the general election ballot.[83] In these states, general elections frequently devolve into re-litigations of primary contests.[84]

Consequently, striking Wis. Stats. §§ 8.03(1) and 8.15(7) would dismantle the legal infrastructure that stops sore losers from acting as spoilers. As we discuss further below, the state has an interest in the finality of elections and the prevention of voter confusion. By prohibiting candidates from hedging their bets across multiple lines, Wis. Stats. §§ 8.03(1) and 8.15(7) protects the integrity of the primary process. The invalidation would effectively repeal the state's ability to manage the size and stability of the general election ballot, leading to an environment where the primary election loses its functional significance in the democratic process.

4. The New Administrative Dilemmas (and Unintended Consequences) of Fusion Voting

If Wis. Stat. §§ 8.03(1) and 8.15(7) were eliminated, it would not restore a comprehensive system of fusion voting because no such system exists. Instead, Wisconsin would be forced to create an entirely new election regime. Because "fusion voting" is not a monolithic practice, but rather an umbrella term for several distinct institutional arrangements, the state would immediately confront a series of consequential choices.

The implementation of a functional fusion system would require the resolution of structural conflicts for which there is no neutral or cost-free solution. Each decision involves fundamental trade-offs between party brand integrity, ballot legibility, and the prevention of strategic manipulation. We identify four primary dilemmas that would necessitate intervention:

- **The Ballot Format Dilemma:** Choosing between disaggregated (New York style) or aggregated (Oregon style) layouts, a decision complicated by Wisconsin's existing Office-Block structure.
- **The Nomination Dilemma:** Establishing a gatekeeping mechanism (such as New York's Wilson-Pakula certificates) or abandoning Wisconsin's open primary system to prevent major parties from raiding minor party primaries.
- **The Ballot Access Dilemma:** Redefining the 1% performance threshold for recognized party status in a system where votes are shared across multiple lines.
- **The "Sham Party" Dilemma:** Crafting regulations to prevent candidates from using minor party lines as mere "billboard" slogans or campaign advertisements.

[83] *See* Meltzer, *supra* note 80.

[84] This recently occurred, for example, in the 2025 New York Mayoral race, where Andrew Cuomo ran in the general election after losing the Democratic primary.

a. The Ballot Format Dilemma

The first choice concerns how the multiple nominations are presented to the voter.

The state could choose to list the candidate multiple times (disaggregated fusion), once for each nominating party (the New York model). This maximizes the "signaling" function for the minor party but maximizes ballot clutter. As noted in the response to Dr. Burden (below), this choice is particularly fraught in Wisconsin because the state uses an Office-Block ballot layout. Inserting multiple lines for the same candidate within an Office Block creates a confusing visual redundancy that no other state currently employs.

Alternatively, the state could list the candidate once (aggregated fusion), with multiple party labels printed beneath their name (the Vermont/Oregon model). While this reduces clutter, it obscures the number of votes for the minor party, as votes are cast for the candidate rather than the specific party line.[85]

b. The Nomination Dilemma

The state must decide how a major-party candidate secures a minor-party nomination. This forces a choice between eroding party identity through unrestricted "raiding" or concentrating decision-making power with a narrow group of party elites.

Because the Plaintiffs seek to overturn the specific statutory bans on cross-filing without proposing a replacement mechanism, the immediate legal default would be Open Cross-Filing. Under this regime, filing restrictions are removed entirely, allowing any candidate to enter the primary of any party. This resurrects the specific electoral system used in California during the mid-20th century, a period widely cited by political scientists as a cautionary tale.

In the California model, cross-filing was not limited to minor parties. Major party candidates routinely ran in their opponent's primaries. Incumbents with high name recognition often won the nominations of both the Democratic and Republican parties, effectively ending the contest in the primary and rendering the general election meaningless. Major party candidates could also run in minor party primaries.

To prevent this free-for-all, the Legislature could intervene by adopting a Wilson-Pakula model (as in New York), which restricts access by requiring candidates to secure formal permission from party leaders to enter a primary. However, as the New York experience demonstrates, this creates a democratic deficit of its own: it transforms the nomination into a tradable asset controlled by party bosses. The state is thus forced to choose between a default system of cross-filing that failed spectacularly in California or a regulated system of gatekeeping as in New York.

Another way that the legislature could intervene to mitigate the raiding concerns would be by changing the structure of Wisconsin primaries. Wisconsin has a completely "Open Primary" system.[86] That is, voters do not register by party, and any voter may participate in the primary of their choice. This tradition poses difficulties with the mechanics of fusion voting nominations.

Fusion relies on the premise that a minor party is a distinct entity making a distinct choice. However, in an open primary, the minor party's electorate is undefined. If the state maintains the Open Primary system, minor party primaries will be susceptible to hostile takeovers by voters from

[85] See Section II.D.2 for the reasons that the number of votes for a minor party is not a reliable indicator of party strength.

[86] Wis. Stat. § 5.62 (2025) (partisan primary ballots).

major parties. For example, opposition voters legally crossing over to nominate a spoiler candidate (or their preferred candidate) on the minor party line. That is, nothing prevents Democratic or Republican voters from voting in a minor party primary (such as the United Wisconsin party primary) to get a candidate that they prefer. To protect the integrity of the minor party nomination , the Legislature would likely be forced to abandon the Open Primary and institute Partisan Voter Registration (or party gatekeeping). Thus, the state faces a choice: expose minor parties to raiding, or abandon Wisconsin's historic commitment to the Open Primary system.

c. The Ballot Access Dilemma

Wisconsin law currently grants recognized status (and automatic ballot access) to political parties based on whether they achieve at least 1% of the total vote in a statewide election.[87] This statute relies on a one-to-one relationship between a vote for a candidate and a vote for a party. Fusion voting breaks this relationship, forcing the Legislature to decide between two distinct methods of calculation, each with significant drawbacks.

The Legislature could choose to count votes separately for each ballot line, as in New York. If a voter selects the minor party line, the vote counts toward that party's 1% threshold. This method credits the minor party with support that may belong entirely to the candidate.[88] A minor party can thus secure permanent ballot access not by building its own constituency, but by strategically cross-endorsing a popular major-party incumbent. This forces the state to maintain ballot lines for parties that may have little organic support, such as the "Tax Cut Now" party in New York.

Alternatively, if the state uses an aggregated ballot (as in Oregon) or chooses not to distinguish between lines, the Legislature must decide how to determine ballot access. Oregon, for example, gives initial ballot access based on petition, and maintaining ballot access is based either on vote share or on officially registered members.[89] In aggregated fusion, even if a minor party contributes significantly to a candidate's victory, the official tally shows only the candidate's total. The Legislature would then be forced to abandon the performance-based test (the 1% rule) and create a completely new, administrative hurdle for party qualification—such as mandatory party registration totals or significantly higher petition requirements, thereby changing the rules for every political party in the state.

d. The "Sham Party" Dilemma

Finally, the state must decide how to regulate the creation of new parties in a fusion environment to prevent the ballot from becoming a billboard. If the barrier to entry is low, major party candidates have a strong incentive to create ad-hoc "Sham Parties" as occurs in New York (e.g., the "Tax Cut Now" party or "Stop Common Core") solely to highlight a campaign slogan on the ballot. To prevent this, the state must erect high barriers to party formation (e.g., difficult petitioning requirements). However, high barriers insulate incumbent minor parties from competition and make it difficult for genuine new movements to emerge. The state is thus forced to choose between a ballot cluttered with billboard slogans or a system that freezes the status quo.

[87] Wis. Stat. § 5.62.

[88] E.g., did the Conservative Party "earn" the 321,733 votes that were cast for Donald Trump on their line in 2024?

[89] Or. Rev. Stat. § 248.008 (2023) (qualification as minor political party).

D. Evaluating the Potential of Fusion Voting to Affect Democratic Outcomes

The resurgence of interest in fusion voting is driven by a powerful claim: that its revival could remedy some of the most pressing dysfunctions in modern American democracy. Proponents contend that fusion voting would mitigate partisan polarization, increase accountability, and ultimately produce more representative elected officials. However, as discussed above, there is little historical or empirical evidence for these claims. Therefore, these purported benefits rest on a series of assumptions about the behavior of voters, parties, and candidates that demand rigorous scrutiny. Would the adoption of fusion voting likely generate the democratic benefits that its advocates claim?

1. Baseline: No Fusion Voting

To understand the potential impact of fusion voting, we must first establish a clear baseline of how the current electoral system functions. A fundamental driver of polarization in the status quo is the two-stage nature of American elections: the partisan primary followed by the general election.

In a simple general election between two candidates, political theory suggests that both candidates should move toward the political center. Because the winner is determined by the "median" or average voter, a candidate who moves too far to the extreme risks losing moderate votes to their opponent. Therefore, in a single-stage election, we would expect candidates to converge on moderate positions.

However, in the current system, candidates cannot compete for the median voter in the general election until they have won the support of a primary electorate. Primary voters are typically far more partisan and ideologically distinct than the general electorate. This creates a "primary filter". First, to win a nomination, a Democrat must appeal to the left-leaning primary base, and a Republican must appeal to the right-leaning primary base. Second, a moderate candidate who would be highly competitive in the general election often cannot survive the primary because they are viewed as insufficiently ideological by the party base. Third, by the time the general election arrives, the surviving candidates have already committed to positions far from the center.

This structural reality creates a tension where the incentives of the first stage (the primary) run directly counter to the incentives of the second stage (the general election). The result is that general election voters are frequently presented with a choice between two unrepresentative candidates. This is the specific dysfunction that fusion voting proponents claim to solve; therefore, the efficacy of fusion must be judged by whether it can forcibly overcome this powerful "primary filter."

The preceding analysis illustrates how the "primary filter" pulls candidates away from the general electorate's center. Can fusion voting provide a countervailing force—a "centripetal" pressure—that pushes candidates back toward moderation?

To evaluate this question, we must recognize that fusion voting is a *party-based* reform. Unlike reforms that change how votes are counted (such as Ranked Choice Voting), fusion voting only changes outcomes if it alters the behavior of political parties. Specifically, it relies on the existence of minor parties that are capable of strategically granting or withholding endorsements to discipline major party candidates.

Our analysis below demonstrates that the conditions required for fusion voting to produce

moderation are exceptionally demanding and unlikely to hold. In fact, the strategic incentives created by fusion voting are more likely to empower ideological extremists than moderates. We analyze the three possible mechanisms below.

2. Fusion Voting - Mechanisms

a. The "Center Party" Illusion

The most optimistic argument for fusion voting is that a "Center Party" or "Moderate Party" will emerge, endorse the most reasonable major-party candidate, and provide the margin of victory. This would theoretically force Democrats and Republicans to compete for the center to win the fusion endorsement. This scenario is very unlikely for two reasons: organizational reality and informational logic.

First, political parties are not created by abstract median voters; they are created by activists with intense policy preferences. A party that seeks to appeal to centrist voters is a party that is trying to appeal to a set of voters who are well-known to be less politically engaged.[90] History and political science consistently show that third parties form to press for specific issues ignored by the major parties (e.g., abolition, prohibition, green politics, or nativism). There is no historical precedent for a sustainable "party of the median." The voters in the middle are typically the least politically active,[91] and the least likely to organize the complex infrastructure required to maintain a ballot line.

Second, even if a "Center Party" existed, the mechanism relies on a contradiction regarding voter behavior. Moderate voters are more likely to be "low-information" voters who do not know much about the candidates.[92] Proponents argue fusion helps these voters find the moderate candidate. But if a voter is too uninformed to know that the Democratic nominee is a moderate, how will they know that the "Center Party" is a credible arbiter of moderation? This opens the door to "sham" parties, where major party operatives create sounding-board parties (e.g., "Tax Cut Now" as in New York) simply to trick low-information voters. That is, it does not make sense to assume that voters are low-information in that they cannot make sense of the candidates' positions, but can trust the credibility of a new political party that may itself be a front for an established candidate (again, as happens in New York). In the next section we discuss survey evidence that shows voters have a hard time assessing the policy positions of minor parties.

If instead voters are high-information, they do not need a fusion line to tell them which candidate is more moderate; they can simply vote for that candidate on the major party line. In short, for the "Center Party" mechanism to work, one must assume a minor party that has no activist base but massive organizational capacity, appealing to voters who are informed enough to trust the party but uninformed enough not to know the candidates.

All of the above assumes that "the party" does the nominating. However, as discussed in Section II.C.2 the invalidation of §§ 8.03(1) and 8.15(7) would introduce open cross filing coupled with open primaries, which calls into question whether the third party's nomination is meaningful (i.e. from the base of that party) or whether it was secured through raiding by major-party voters.

[90]Paul R Abramson and John H Aldrich, The Decline of Electoral Participation in America, 76 American Political Science Review 502 (1982)

[91]*Id.*

[92]Donald R Kinder and Nathan P Kalmoe, Neither Liberal nor Conservative: Ideological Innocence in the American Public (University of Chicago Press 2017)

A third issue is identifying the "influence" of the third party. This is often gauged by the number of votes that a candidate receives on a given party line. Aggregated fusion (where candidates appear once next to multiple parties) provides no information about what party line a voter voted on. Disaggregated fusion (where candidates can be listed more than once) provides results broken down by which party voters voted under. What can be made of this information?

Advocates of fusion voting often point to election results to prove their case. For example, if a candidate wins by 1,000 votes and received 5,000 votes on a minor party line, advocates claim the minor party "provided the margin of victory." This reasoning is fundamentally flawed because it confuses *where* a vote was recorded with *why* it was cast. Election returns tell us which line a voter selected, but they cannot tell us what that voter would have done in a world without fusion.

To understand why raw vote counts are misleading, we must distinguish between two very different types of voters who choose a minor party line. The first type is the "Re-Labeler." This voter prefers the major party candidate and would have voted for them anyway on the major party line. When they choose the minor party line, they are simply re-labeling a vote the candidate already had. In this case, fusion changes the tally's appearance but does not affect the election's outcome. The second type is the "New Recruit." This voter would *not* have voted for the candidate on the major party line, perhaps staying home or voting for a different candidate. Only the presence of the fusion line persuaded them to support the candidate. In this case, fusion actually added a new vote.

The problem is that the ballot box does not distinguish between a Re-Labeler and a New Recruit. A vote on the Conservative Party line looks identical whether it came from a lifelong Republican who just wanted to signal their values or a disaffected independent who was brought off the sidelines. That is, some of the 321,733 voters who voted for Donald Trump on the Conservative line in the 2024 presidential election in New York surely would have voted for him on the Republican line if that were their only option. However, there is no way to determine how the votes would have been cast in the absence fusion.

Moreover, raw vote counts also hide the potential *negative* effects of fusion. It is possible that a minor party endorsement actually repels moderate voters. Imagine a Republican candidate fuses with a controversial far-right party. This endorsement might attract 500 New Recruits on the far right, but the association with the far-right party might simultaneously alienate 600 moderate voters who would otherwise have supported the Republican. The raw returns will show 500 votes on the fusion line, leading observers to claim the party "helped." But in reality, the fusion endorsement cost the candidate a net 100 votes.

Because we cannot observe the alternative reality where fusion was not used, we cannot measure the "causal effect" of the minor party line. Treating every vote on a fusion line as a vote "delivered" by that party, and assuming the candidate would have lost those votes otherwise, is a logical error that misjudges the influence of minor parties.

b. Voter Confusion in Surveys

An important question is whether voters understand the ideological commitments of minor parties. Loepp and Melusky conducted a survey experiment of 863 voters to evaluate how fusion ballots influence voter perceptions.[93] To ensure the findings were applicable to real-world fusion

[93]Eric Loepp and Benjamin Melusky, Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting, 21 Election Law Journal: Rules, Politics, and Policy (2022).

contexts, the sample included a representative subset of residents from fusion states.

The experiment presented voters with a series of ballots including the Working Families Party (WFP) and the Conservative Party to test whether these labels provided accurate heuristics or "information cues." The results undermine the claim that fusion labels inherently clarify candidate ideology. The study found that because the name "Working Families Party" does not send an explicit ideological signal, voters incorrectly assumed it was a moderate organization (below we discuss the progressive orientation of the WFP in more detail).

Recent polling data from March 2025 provides confirmation of this confusion.[94] In a messaging survey commissioned by the Working Families Party, voters were asked about their perceptions of party ideology on a scale of 0 (Very Conservative) to 100 (Very Progressive). Figure 11 presents a screenshot of the survey results.

Respondents placed the Democratic Party at 57.8, identifying it as leaning progressive. Respondents placed the Republican party at 29.2, identifying it as leaning conservative. These both track with common perceptions of the parties. However, respondents placed the Working Families Party at 47.2—actually positioning it to the *right* of the Democratic Party and slightly to the *conservative* side of the neutral midpoint. Even more telling is the distribution of these views. Despite the WFP's status as a progressive flank party, 38% of respondents rated it as "Conservative" (0–39), while another 25% rated it as "Moderate". Only 37% identified it as belonging to the liberal/progressive bloc. As discussed in detail in II.B.2.b, the WFP holds positions that are generally considered to be to the Left of the Democratic party.

Like the Loepp and Melusky study, this study was done nationally, and does not isolate the views of New York voters. This makes it difficult to draw inferences, because the Working Families Party is not widely known outside of New York (we could not find any evidence about how well-known the WFP is within New York).

However, the same study also asked about views of the Green Party, which has a national presence. The survey found that 48% of respondents rated the Green Party as "Conservative," producing a mean score of 38.9, suggesting that voters viewed the Green Party as significantly more conservative than the Democratic Party. This contrasts with the Green Party's party platform, which favors policies to the left of the Democratic Party, including free childcare,[95] universal basic income,[96] and an explicit policy of opposing capitalism.[97]

This data provides evidence against the argument that fusion labels serve as clear information cues. If nearly half the electorate believes the Green Party is conservative, and a clear majority believes the Working Families Party is more conservative than the Democrats, then these ballot labels are not informing voters.

c. There is No Viable Path to Running as a Third-Party Candidate

A second possible argument is that fusion allows a genuinely moderate third candidate to run and win, breaking the duopoly. This is unlikely because fusion does not change any of the dynamics that limit third-party candidates from successfully contesting elections.

[94] Working Families Party, *WFP Messaging Study* (Mar. 18, 2025), https://drive.google.com/file/d/16JOQLG0sJLAA73LqvczBAnWyDc3eUfmi/view (last visited Oct. 7, 2025).

[95] https://www.gp.org/democracy#dem_families

[96] https://www.gp.org/economic_justice_and_sustainability/#ejLivableIncome

[97] https://www.gp.org/economic_justice_and_sustainability#ecosoc

On a scale of 0-to-100, where 0 means very conservative and 100 means very progressive, where would you place each of the following parties?

100. Democratic Party

Conservative (0-39)	29%
Moderate (40-60)	22%
Liberal/Progressive (61-100)	49%
Mean	57.8

101. Republican Party

Conservative (0-39)	66%
Moderate (40-60)	15%
Liberal/Progressive (61-100)	19%
Mean	29.2

102. Green Party

Conservative (0-39)	48%
Moderate (40-60)	25%
Liberal (61-100)	26%
Mean	38.9

103. Working Families Party

Conservative (0-39)	38%
Moderate (40-60)	25%
Liberal/Progressive (61-100)	37%
Mean	47.2

104. The Libertarian Party

Conservative (0-39)	52%
Moderate (40-60)	28%
Liberal/Progressive (61-100)	19%
Mean	35.2

Figure 11: Excerpt of survey results from Working Families Party, *WFP Messaging Study* (Mar. 18, 2025), https://drive.google.com/file/d/16JOQLG0sJLAA73LqvczBAnWyDc3eUfmi/view (last visited Oct. 7, 2025), at 17.

Fusion voting operates within the standard plurality (winner-take-all) system. If a Moderate Party nominates its own distinct candidate (rather than cross-endorsing), that candidate still faces the exact same dynamics as any third-party candidate today. If a moderate voter believes the third-party candidate cannot win, they will still vote for the "lesser of two evils" major-party candidate to avoid wasting their vote. Fusion does nothing to change the math of plurality voting. It does not transfer votes or eliminate the spoiler effect. Alternatively, if the moderate candidate attempts to use fusion to bypass the "primary filter" by running in a major party primary *and* holding a minor party line, they still face the original hurdle: the partisan primary electorate. Possession of a fusion line does not make a candidate more appealing to the partisan base; in fact, being labeled a "centrist" outsider often hurts candidates in closed primaries. Fusion offers no bypass around the structural barrier of the primary.

d. The "Flank Effect": How Fusion May Increase Polarization

The most likely outcome of fusion voting is not moderation, but increased polarization. While "Center Parties" are hypothetical constructs that lack a natural constituency, "Flank Parties" are realities. These are parties organized to the left of the Democrats (e.g., the Working Families Party) or to the right of the Republicans (e.g., the Conservative Party).

These parties function as ideological enforcers. They do not work by pulling candidates toward the center, but instead work by pulling them toward the extremes. The mechanism of this influence is the credible threat of the spoiler.

To understand this dynamic, consider a general election between a center-left Democrat and a right-wing Republican. In a standard two-party contest, the center-left Democrat is closer to the median voter and is the probable winner.

A "Left Party" (e.g., the Working Families Party) demands that the Democrat adopt more radical positions as the price of their endorsement. If the Democrat refuses, the Left Party threatens to run its own candidate on its own line. This creates a "spoiler" scenario: the Left Party candidate splits the liberal vote, allowing the Republican to win with a plurality.

The power of the minor party in this negotiation does not come from its ability to elect its own candidate. Rather, its bargaining power stems entirely from its ability to hand the seat to the opposition. As noted by the pro-fusion organization New America, fusion gives minor parties influence specifically "when they can withhold endorsements [and] credibly threaten to spoil a race."[98]

To avoid this outcome, the Democrat must capitulate. They must move to the left (away from the median voter) to secure the fusion line and prevent the spoiler. This effectively acts as "insurance" against a left-flank defection. The result is a major party nominee who is less representative of the general electorate than they would have been without fusion.

Fusion allows a minor party to say, "We will not spoil this election if you adopt some part of our platform." By giving the flank party a dedicated ballot line, fusion maximizes the credibility of the spoiler threat while providing a mechanism for the major party to buy them off. This is a credibility that minor parties do not have in non-fusion elections.

The practical effect of this leverage is to export the polarization of the primary election into the general election. In the current system, incumbents worry about being "primaried" by an

[98] Oscar Pocasangre and Maresa Strano, *What We Know About Fusion Voting* (New America, 2024), https://www.newamerica.org/political-reform/reports/what-we-know-about-fusion-voting/.

ideological challenger. This forces them to move to the extremes early in the cycle. Fusion creates a second checkpoint. Even if a moderate Democrat survives the primary, they must then negotiate with the flank party as well.

This is the observable dynamic in New York. The Conservative Party and the Working Families Party function as ideological anchors, seeking to prevent major party candidates from drifting toward the center. So while fusion voting should not be expected to move outcomes towards the center, it may move policy *away* from the median voter.

3. Will Fusion Voting Mitigate Voter Disaffection?

Beyond the mechanical claims about election outcomes, proponents argue that fusion voting provides a psychological or "expressive" benefit. The argument is that many voters feel "politically homeless." For example, a "Constitutional Republican" who dislikes Donald Trump but cannot bring themselves to vote for a Democrat, or a socialist who finds the Democratic platform too corporate. Proponents claim that fusion allows these voters to "find voice and electoral respect" by voting for a major-party candidate under a minor-party banner that better reflects their values.[99]

This argument conflates the *feeling* of representation with the *reality* of political choice. Upon scrutiny, the purported cure for disaffection acts more as a placebo than a structural remedy.

The fundamental source of voter disaffection in the United States is the perception that the political system offers a binary choice between two unsatisfactory options. Fusion voting does not alter this reality, it merely re-packages it.

Consider the hypothetical "Constitutional Republican." Under fusion, this voter might have the option to vote for the Democratic nominee on a "Conservative Democrats" or "Never Trump" line. While this may offer a moment of expressive satisfaction in the voting booth, the instrumental outcome remains identical: the election of the standard Democratic nominee. If the source of disaffection is *policy*, that is, the voter dislikes Democratic policies, voting for a Democrat on a fusion line does not change the policy outcomes. The elected official will still caucus with the Democrats and vote for the Democratic platform. Re-labeling a binary choice does not make it less binary; offering a voter six different ways to vote for the same two candidates does not expand the menu of options, it only expands the packaging. To argue that a different label cures disaffection is to treat voters as easily placated by aesthetics, assuming that voters are frustrated by the *name* of the party rather than the *substance* of the governance. There is no evidence that putting a new label on the same major-party candidate resolves the deep-seated frustration with the two-party system. Disaffected voters often stay home because they believe their vote does not matter or that neither candidate represents them. Fusion voting does not fix this.

4. An Appraisal of the Theoretical Effectiveness of Fusion Voting

Proponents paint fusion voting as a way to empower the political center and improve American democracy. However, a rigorous analysis of electoral incentives reveals that fusion is more likely to have little or no moderating effect and is much more likely to have a polarizing effect.

The central failure of the pro-fusion argument is that it relies on the emergence of a "Center Party" that lacks a natural constituency of activists to organize it *and* a natural constituency of voters to vote with it. In the absence of such a party, the mechanisms of fusion do not produce

[99] Scholars for Re-Legalizing Fusion Voting, *supra* note 5.

centripetal force toward moderation. If anything it may produce centrifugal force toward the extremes. It allows them to turn the general election into a secondary primary, enforcing ideological purity and punishing major-party candidates who attempt to moderate.

Even if we assume for the sake of argument that a robust Center Party were to emerge, it would remain structurally impotent given partisan primaries. Fusion voting is a general-election mechanism, but the much of the polarization of candidates occurs in the partisan primaries. By the time a Center Party is positioned to offer its endorsement, the major-party nominees have already been selected by their respective bases. Major-party candidates may view the threat of a primary challenge as existential, whereas the benefit of a fusion endorsement is unclear. Consequently, they are unlikely to moderate their positions to satisfy a Center Party if doing so risks alienating their primary base. The Center Party is thus left with a hollow choice: endorse a polarized major-party nominee as the lesser of two evils, thereby validating the status quo, or run a spoiler candidate that paradoxically aids the more extreme opponent.

And in the Wisconsin context, given that eliminating Wis. Stats. §§ 8.03(1) and 8.15(7) also would institute cross filing, it is possible that both the Republican and Democratic candidates would contest the primaries of third parties like United Wisconsin. Given the large number of Democratic and Republican voters and that Wisconsin has open primaries, it may be that these voters would swamp any "true" United Wisconsin voters in the primary.

This theoretical conclusion is consistent with the empirical reality in New York, where fusion has acted through primarily through parties on the wing (the Conservative and Working Families parties) rather than through a hypothetical centrist bloc. Furthermore, the reliance on raw vote returns to justify the reform is methodologically unsound. These returns conflate the re-labeling of existing votes with the recruitment of new ones, masking potential alienation of moderate voters.

Ultimately, fusion voting should not be expected to lead to more representative candidates. It is not likely to allow a third party candidate to successfully contest general elections. It is not likely to incentivize the creation of centrist parties. It is not likely to send meaningful signals to voters. It is not likely to provide useful information from vote shares. It is not likely to lead to more moderate candidates winning partisan primaries. It offers the illusion of greater choice while leaving the binary reality of the two-party system intact.

E. State Interests Implicated by Fusion Bans

There are multiple state interests implicated by fusion voting bans. Any of these interests, or a combination thereof, may have motivated the various state legislatures who enacted laws to ban fusion voting.

1. Ballot integrity and clarity

a. Platform coherence

Early critics of fusion voting often characterized parties as expositors of a coherent platform and doubted whether a single candidate could simultaneously represent two distinct platforms. The modern academic literature is more skeptical that platforms are unitary or static, but the state's interest can be reframed as avoiding a ballot presentation that implies a candidate is, at once, the standard-bearer for potentially incompatible brands. The Supreme Court in *Timmons v. Twin Cities Area New Party* translated that worry into a narrower ballot-formatting claim: the state may

prevent message multiplication on the ballot without silencing speech elsewhere. That is not a theory about truth policing so much as one about the state's prerogative to standardize the one instrument all voters must use.[100]

b. Risk of voter confusion

States have an interest in maintaining a clear and comprehensible ballot. The principal concern is not the well-informed voter who understands the mechanics of cross-endorsement, but the marginal or low-information voter for whom party labels operate as heuristics. In that population, a candidate listed more than once with different party cues could plausibly mislead or at least distract. The empirical literature on "choice fatigue" and ballot complexity underscores that adding options or cues can degrade decision quality at the point of selection. Studies find that longer, more complex ballots increase abstention and reliance on shortcuts—precisely the context in which labels carry disproportionate weight.[101] There is also real-world evidence that minor-party cues can be misunderstood, such as evidence survey respondents on average placing the Green Party as significantly more conservative than the Democratic Party (as discussed in Section II.D.2.b above) and evidence that most voters who registered with the Independence Party of New York had intended to register as independents.[102]

Shorter, simpler ballots reduce cognitive load and poll-site error. Even small additions can matter where voters face dozens of choices; again, the choice-fatigue literature suggests nontrivial effects at the margin. The experience in New York shows that the proliferation of minor parties under fusion voting can lead to poor ballot design. The number of minor parties in some New York elections has sometimes led to confusing ballot designs in which multiple minor parties would share a single column.[103]

2. Stability and the efficacy of the party system

a. Party strength as a governance value

Another family of interests emphasizes system stability—maintaining parties strong enough to recruit, vet, and discipline candidates and to broker coalitions in government. Contemporary political science gives this interest fresh footing. Yale political scientists Rosenbluth and Shapiro argue that American parties have grown too weak as organizational actors, hollowed out by candidate-centered politics and primary-centric nomination rules, leaving them less able to coordinate platforms, discipline officeholders, or assemble broad governing coalitions.[104] In this frame, strong, programmatic parties function as a public good: they provide voters meaningful brands and structure legislative bargaining.

[100] *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).

[101] *See, e.g.*, Ned Augenblick and Scott Nicholson, Ballot Position, Choice Fatigue, and Voter Behaviour, 83 The Review of Economic Studies 460 (2016).

[102] A survey conducted by the *New York Daily News* suggested that a majority of the party's registered members did not intend to affiliate with the party at all Voters are Vics: Registration Word Games Fool Even the High and Mighty, New York Daily News, Dec. 11, 2012, at 14.

[103] See for example the 2014 New York Gubernatorial election ballot in Figure 8 in which the Republican and Democratic candidates received their own columns and other parties shared columns.

[104] Frances Rosenbluth and Ian Shapiro, Responsible Parties: Saving Democracy from Itself (Yale University Press 2018).

From that vantage, ballot rules that multiply party labels for the same candidate—including cross-endorsement—risk turning parties into fluid brands or transactional coalitions rather than coherent governing organizations. Rosenbluth and Shapiro warn that reforms making party labels more fluid risk further weakening parties' gatekeeping capacity and exacerbating candidate-centered, polarized politics.[105] In an article for *Boston Review*, Shapiro makes this point directly in critiquing fusion as "the wrong direction" for party system health.[106]

b. Polarization and legislative performance

A related contention is that fusion can intensify policy-seeking leverage by ideologically distinctive minor parties (e.g., New York's Conservative and Working Families parties), pulling major-party nominees toward poles and, over time, contributing to polarized caucuses. Advocates of fusion often argue the opposite—that it can empower moderates and strengthen the center. However, there is both theoretical and empirical reason to think that it is more likely that fusion voting would exacerbate polarization than the reverse.[107]

This is not an uncontestable proof that fusion has had a polarizing effect in New York or that the effects would be the same under the conditions in other states. Still, when courts apply the *Timmons* framework, they generally require only "sufficiently weighty" interests, not airtight social-science proofs. Whatever the direction, there is broad empirical literature linking polarization to diminished lawmaking effectiveness, which states can plausibly cite as a governance harm to be mitigated.

F. Conclusion

The Plaintiffs' complaint frames the re-legalization of fusion voting as a discrete, restorative act—a simple matter of allowing a candidate's name to appear twice on a ballot. This framing fundamentally obscures the administrative reality. Fusion voting is not a standalone rule that can be toggled on without consequence. Instead, it is a complex institutional arrangement that conflicts with the specific architecture of Wisconsin's election laws. To mandate fusion is to compel the State of Wisconsin to dismantle and rebuild its electoral code.

As the dilemmas detailed above demonstrate, there is no "neutral" or "cost-free" way to implement this reform. Instead, eliminating the two statutory provisions that Plaintiffs challenge would force the Legislature and the Wisconsin Elections Commission into a series of choices where every administrative solution has real tradeoffs. These are not merely technical hurdles to be smoothed over by administrative rulemaking. They are fundamental normative questions about the nature of representation and the structure of the party system.

III. RESPONSE TO DR. LEE DRUTMAN

We find much to agree with Dr. Drutman in his diagnosis of the current political climate. Our evaluation does not take issue with the scale of the problems Dr. Drutman identifies. Instead, our disagreement centers on the efficacy of the proposed remedy. We find that his conclusions regarding the moderating effects of fusion voting rely on a false analogy between fusion and

[105] Rosenbluth and Shapiro, *supra* note 104.
[106] Ian Shapiro, The Wrong Direction, Boston Review, 2024, at 68.
[107] *See* Section II.D.2.

Proportional Representation and ignore the structural realities of the partisan primary. Accordingly, we find his characterization of fusion as a "proven reform"[108] capable of generating "centripetal force"[109] to be unsupported by the evidence.

A. Definitions

A threshold defect in Dr. Drutman's report is its reliance on imprecise and shifting definitions of central concepts. For an expert opinion to be reliable, it must define its terms clearly so that cause and effect can be measured. Dr. Drutman's report, however, treats distinct historical and political concepts as interchangeable. This lack of precision makes it difficult to analyze his central claims around the likely effects of re-legalizing fusion voting.

1. The Definition of Fusion Voting

Dr. Drutman speaks of "fusion voting" as a single, uniform reform, defining it broadly as any system where a candidate accepts nominations from multiple parties. This definition is overbroad because it conflates three distinct institutional arrangements, glossing over critical differences in how they function in the real world.

a. Conflation of Pre- and Post-Australian Ballot Systems

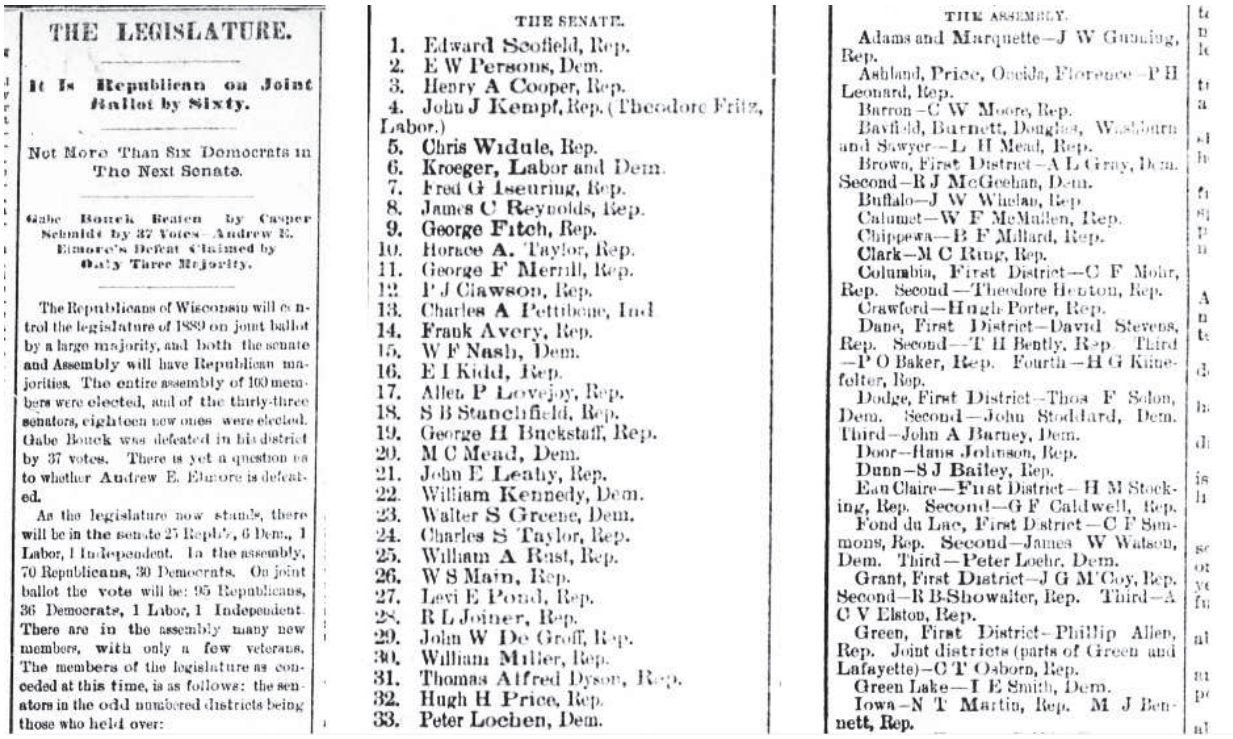
Most importantly, the Drutman Report fails to distinguish between modern fusion voting and the electoral practices of the nineteenth century. As detailed in our affirmative report, the term "fusion voting," which refers to a specific rule of ballot design, is anachronistic when applied to the pre-1890s era.

In that period, the government generally did not print "ballots" at all. Instead, political parties printed and distributed their own "tickets" to voters. "Fusion" in that era simply meant that different parties distributed tickets that happened to list the same candidate. This took place in a system of public, often coerced voting that bears little resemblance to the modern, state-administered secret ballot. By grouping these nineteenth-century practices under the same label as modern fusion, Dr. Drutman improperly draws lessons from a chaotic, defunct system to predict outcomes in our modern regulatory environment. Consequently, his conclusion that "historical evidence from fusion's widespread use in the late nineteenth century... demonstrate[s] that fusion voting serves as a coalition-building mechanism that moderates rather than intensifies partisan conflict" is historically unsound. As we discuss in our affirmative report (II.B), the 19th-century history of party-printed ballots does not provide meaningful evidence of how to think about fusion voting today.

b. Conflation of Aggregated and Disaggregated Fusion

Even within the modern era, Dr. Drutman ignores the material difference between "disaggregated fusion" and "aggregated fusion." Disaggregated fusion (used in New York and Connecticut) lists a candidate multiple times on the ballot—once for each party. Aggregated fusion (used in Vermont and Oregon) lists a candidate only once, with multiple party labels printed underneath. Dr. Drutman

[108] Drutman Report at 25.
[109] Drutman Report at 20.



THE LEGISLATURE.

It Is Republican on Joint Ballot by Sixty.

Not More Than Six Democrats in The Next Senate.

Gabe Bouck Beaten by Casper Schmidt by 37 Votes—Andrew E. Elmore's Defeat Claimed by Only Three Majority.

The Republicans of Wisconsin will control the legislature of 1889 on joint ballot by a large majority, and both the senate and assembly will have Republican majorities. The entire assembly of 100 members were elected, and of the thirty-three senators, eighteen new ones were elected. Gabe Bouck was defeated in his district by 37 votes. There is yet a question as to whether Andrew E. Elmore is defeated.

As the legislature now stands, there will be in the senate 25 Republicans, 6 Dems., 1 Labor, 1 Independent. In the assembly, 70 Republicans, 30 Democrats. On joint ballot the vote will be: 95 Republicans, 36 Democrats, 1 Labor, 1 Independent. There are in the assembly many new members, with only a few veterans. The members of the legislature as conceded at this time, is as follows: the senators in the odd numbered districts being those who held over:

THE SENATE.

1. Edward Scofield, Rep.
2. E W Persons, Dem.
3. Henry A Cooper, Rep.
4. John J Kempf, Rep. (Theodore Fritz, Labor.)
5. Chris Widule, Rep.
6. Kroeger, Labor and Dem.
7. Fred G Iseuring, Rep.
8. James C Reynolds, Rep.
9. George Fitch, Rep.
10. Horace A. Taylor, Rep.
11. George F Merrill, Rep.
12. P J Clawson, Rep.
13. Charles A Pettibone, Ind
14. Frank Avery, Rep.
15. W F Nash, Dem.
16. E I Kidd, Rep.
17. Allen P Lovejoy, Rep.
18. S B Stanchfield, Rep.
19. George H Buckstaff, Rep.
20. M C Mead, Dem.
21. John E Leahy, Rep.
22. William Kennedy, Dem.
23. Walter S Greene, Dem.
24. Charles S Taylor, Rep.
25. William A Rust, Rep.
26. W S Main, Rep.
27. Levi E Pond, Rep.
28. R L Joiner, Rep.
29. John W De Groff, Rep.
30. William Miller, Rep.
31. Thomas Alfred Dyson, Rep.
32. Hugh H Price, Rep.
33. Peter Loeben, Dem.

THE ASSEMBLY.

Adams and Marquette—J W Gunning, Rep.
Ashland, Price, Oneida, Florence—P H Leonard, Rep.
Barron—C W Moore, Rep.
Bayfield, Burnett, Douglas, Washburn and Sawyer—L H Mead, Rep.
Brown, First District—A L Gray, Dem. Second—R J McGeehan, Dem.
Buffalo—J W Whelan, Rep.
Calumet—W F McMullen, Rep.
Chippewa—B F Millard, Rep.
Clark—M C Ring, Rep.
Columbia, First District—C F Mohr, Rep. Second—Theodore Henton, Rep.
Crawford—Hugh Porter, Rep.
Dane, First District—David Stevens, Rep. Second—T H Bently, Rep. Third—P O Baker, Rep. Fourth—H G Kittelfelter, Rep.
Dodge, First District—Thos F Solon, Dem. Second—John Stoddard, Dem. Third—John A Barney, Dem.
Door—Hans Johnson, Rep.
Dunn—S J Bailey, Rep.
Eau Claire—First District—H M Stocking, Rep. Second—G F Caldwell, Rep.
Fond du Lac, First District—C F Simmons, Rep. Second—James W Watson, Dem. Third—Peter Loehr, Dem.
Grant, First District—J G M'Coy, Rep. Second—R B Showalter, Rep. Third—A C V Elston, Rep.
Green, First District—Phillip Allen, Rep. Joint districts (parts of Green and Lafayette)—C T Osborn, Rep.
Green Lake—I E Smith, Dem.
Iowa—N T Martin, Rep. M J Bennett, Rep.

Figure 12: *Green Bay Press-Gazette* (Green Bay, Wis.), Nov. 9, 1888, at 2.

argues that fusion provides a powerful "signal" that voters can send regarding their preferences.[110] But aggregated fusion obscures that signal significantly compared to the disaggregated model, as the vote tally is not separated by party line, so that a candidate does not know what proportion of their support came from the minor party.[111] By treating these distinct rules as a monolithic "fusion voting" reform, the report oversimplifies the mechanics at issue. It is unclear which of Dr. Drutman's conclusions are meant to follow from the general adoption of fusion voting, and which rely specifically on the mechanics of disaggregated fusion. Indeed, it is not clear whether votes were frequently (or ever) disaggregated in the pre-Australian ballot period. The Blue Book of the State of Wisconsin only appears to list the total votes that a candidate received, not any information about which party line that candidate received votes under. That is, unless the vote tallies were widely disaggregated, then, at best, the pre-Australian ballot results would speak only to aggregated fusion, not disaggregated fusion. While we have not done a comprehensive survey of the newspapers of the day, Figure 12 is an excerpt from the Green Bay Press-Gazette reporting on the 1888 election.[112] Notably, there is no breakdown of votes by fusing party.

c. Limited Wisconsin Sample

Dr. Drutman's reliance on history is particularly weak regarding Wisconsin. Wisconsin adopted the Australian ballot in 1891 and banned fusion in 1897. This means the state had only a

[110] Drutman Report at 20.

[111] Moreover, as we discuss in our affirmative report, even disaggregated fusion does not provide any meaningful information to candidates absent additional (untested) assumptions about voter behavior.

[112] The Legislature: It Is Republican on Joint Ballot by Sixty, Green Bay Press-Gazette, Nov. 9, 1888, at 2.

six-year window—covering just three general elections—where the secret ballot and fusion voting co-existed. Given the massive structural changes accompanying the introduction of the Australian ballot—specifically the shift from privately distributed party tickets to a state-administered secret ballot, and the sudden imposition of novel regulations regarding ballot access and layout—it is unclear what valid inferences about the "stability" or "moderation" of fusion voting can be drawn from such a small sample of elections that occurred more than a century ago. Moreover, as discussed above, it is not clear whether votes were disaggregated in Wisconsin the pre-Australian ballot period. So, unless the vote tallies were widely disaggregated, then, at best, the pre-Australian ballot results would speak only to aggregated fusion, not disaggregated fusion.

2. Conflation of Stability and Depolarization

Dr. Drutman relies heavily on the concept of "political stability" without ever defining what he means.

The report begins by citing the Supreme Court's decision in *Timmons*, which upheld fusion bans to protect "political stability." In the context of *Timmons*, stability referred to the preservation of the two-party system itself and the avoidance of factional splintering that could make governance difficult. Dr. Drutman, however, implicitly redefines "stability" to mean "moderation" or a lack of "polarization." He seems to argues that the current system is "unstable" simply because it is polarized.[113]

This is a conceptual error. "Stability" and "polarization" are not the same thing. A political system can be deeply polarized (with fierce disagreement between parties) yet structurally stable (enduring over time without collapse). Conversely, a system with low polarization can be unstable (prone to fragile coalitions falling apart). For example, European democracies can sometimes go years without governments.[114] By conflating these terms, Dr. Drutman avoids showing how fusion voting might produce stability. Instead, he assumes that because fusion might theoretically encourage "cross-cutting coalitions," it is therefore "stabilizing." Without a fixed definition, this claim cannot be tested or proven.

3. Flexibility

Dr. Drutman introduces a new variable, "political flexibility," arguing that fusion provided this benefit in the nineteenth century.[115] It is unclear how "flexibility" relates to his insistence on "stability." In many contexts, flexibility (the ability of coalitions to shift rapidly) is the opposite of stability (predictability and durability). Belgium, for example, has governments that form through coalitional bargaining, but this also led to instability that led to nearly two years without having a government.[116]

Dr. Drutman credits fusion with creating "flexibility" in the past while simultaneously claiming it will restore "stability" today. Because he does not define "flexibility," he can attribute contradictory virtues to the same reform without explaining the mechanism. He offers no evidence for how a

[113] Drutman Report at 11.

[114] *See, e.g.*, Jennifer Rankin, *Brussels Breaks Belgium Record for Longest Period Without a Government*, The Guardian (Dec. 2, 2025), https://www.theguardian.com/world/2025/dec/02/brussels-breaks-belgium-record-longest-period-without-government (last visited Dec. 12, 2025).

[115] Drutman Report at 18.

[116] Rankin, *supra* note 114.

single ballot rule can simultaneously maximize the fluidity of coalitions and the stability of the political system.

Taken together, these definitional problems make it difficult to assess what claims are being made and what evidence there is to back up those claims.

B. Polarization and Its Causes

While we disagree with Dr. Drutman's prescriptive conclusions, we agree with much of his diagnosis of the current political climate. It is widely agreed that American politics has become increasingly polarized and that this polarization presents challenges to democratic governance. However, the existence of a problem does not prove the efficacy of any specific solution. The fundamental defect in the Drutman Report is its failure to establish a causal link between the specific remedy of fusion voting and the mitigation of the deep-seated structural forces driving polarization.

Dr. Drutman explicitly acknowledges that the current dysfunction is driven by a complex array of powerful factors. He identifies "geographic sorting,"[117] noting that parties are now regionally concentrated in ways that eliminate swing districts, which couples with rampant gerrymandering.[118] He points to the "nationalization" of politics,[119] where local issues are subsumed by federal partisan divisions. He highlights "culture war dominance,"[120] observing a shift from economic bargaining to zero-sum identity conflict. He also cites aggressive gerrymandering and the use of single-member districts rather than proportional representation as structural issues.

These are massive, systemic forces that exist independently of ballot design. Yet, after listing these formidable causes, Dr. Drutman essentially asserts, *without explaining the mechanism*, that changing the rules of ballot design to permit fusion voting will reverse them. He offers no rigorous theory or evidence to explain how allowing a minor party to cross-endorse a major-party candidate will undo these effects.

From a methodological standpoint, a reliable analysis requires isolating the impact of the specific variable in question to the best extent possible. Because Dr. Drutman admits that polarization has multiple causes, he cannot simply point to the rise in polarization over the last thirty years and attribute it to the absence of fusion voting. Indeed, the "overlapping, cross-cutting coalitions" he praises[121] from the mid-20th century existed during a period when fusion voting was largely banned. This demonstrates that fusion is not necessary to achieve such coalitions, just as its absence is not sufficient to destroy them.

By failing to control for these confounding variables, the Drutman Report relies on a logical leap. He effectively argues that because the current system is flawed, fusion voting must be the cure. But given the scale of the causes he himself identifies, it is scientifically unsound to assume that a procedural change to ballot labels would serve as a sufficient corrective. Without a mechanism to explain how fusion overcomes these specific structural barriers, his conclusion is speculative.

[117] Drutman Report at 13.
[118] Drutman Report at 10.
[119] Drutman Report at 14.
[120] Drutman Report at 14.
[121] Drutman Report at 12.

C. The Supposed "Stabilizing" and Moderating Effects of Fusion Voting.

Central to Dr. Drutman's report is the assertion that fusion voting is a "proven reform"[122] that will generate "centripetal force" to counteract polarization.[123] He argues that re-legalizing the practice will stabilize American democracy by fostering "overlapping, cross-cutting coalitions." This conclusion, however, is supported by neither the historical record nor political theory.

1. Historical Inconsistencies

Dr. Drutman's own historical narrative contradicts his claim that fusion voting is an effective mechanism for creating stable, cross-cutting coalitions. He praises the "four-party system"[124] of the mid-twentieth century—a period characterized by high levels of cooperation between liberal Republicans, conservative Democrats, and their respective party mainstreams. Yet, as his report acknowledges, this period of high stability and robust "overlapping" coalitions occurred precisely when fusion voting was banned in the vast majority of the country.

This historical fact demonstrates that fusion voting is not a necessary condition for the existence of cross-cutting coalitions, nor is its prohibition sufficient to destroy them. If the mid-20th century political order was able to achieve the very stability Dr. Drutman seeks while fusion bans were in full effect, it follows that the subsequent collapse of that order was driven by the broader structural forces he identifies elsewhere (e.g. geographic sorting and nationalization) rather than the formatting of the ballot.

Furthermore, the report's reliance on the modern experience of New York and Connecticut lacks supporting evidence. Dr. Drutman repeatedly points to these states as evidence that fusion "establish[es] a meaningful centrist force," but he offers no specific data to support this characterization.[125] As detailed in our affirmative report, the actual track record in New York suggests the opposite. The most enduring third parties in that state—the Conservative Party and the Working Families Party—function primarily as ideological enforcers on the flanks, pressuring major party candidates to move away from the center, not toward it. Dr. Drutman's report largely waves away this reality, asserting a moderating effect without engaging with the evidence that fusion often empowers the extremes.

2. Fusion is Not Proportional Representation

Dr. Drutman Report relies on a false analogy between the mechanics of Proportional Representation (PR) and the likely effects of fusion voting. Dr. Drutman devotes a substantial portion of his report to arguing that the United States is a global "outlier" for its instability and that "multiparty democracies using proportional representation consistently outperform two-party majoritarian systems." Again, European democracies with PR can go years without governments, something his report ignores. He claims that these systems foster stability, minority representation, and higher voter satisfaction.[126]

However, this comparative evidence is largely irrelevant to the specific reform at issue in this case because fusion voting is not Proportional Representation. As Dr. Drutman acknowledges, the

[122] Drutman Report at 26.
[123] Drutman Report at 20.
[124] Drutman Report at 12.
[125] Drutman Report at 20.
[126] Drutman Report at 2.

United States uses single-member districts with winner-take-all elections. Fusion voting operates entirely within this framework. The distinction is fundamental to the distribution of power. In a Proportional Representation system, a minor party that secures 10% of the vote typically secures roughly 10% of the legislative seats, allowing it to govern and bargain with independent leverage. Under fusion voting in a winner-take-all system, a minor party that secures 10% of the vote secures zero seats unless it cross-endorses the winning major-party candidate. Even if it does cross-endorse the winner, it holds no independent legislative seats, only the "influence" it can attempt to exert on the major-party winner

Dr. Drutman uses the stability and representational outcomes that he claims exist in PR systems to argue for the adoption of fusion voting, yet fusion voting retains the very winner-take-all mechanics—specifically the zero-sum nature of the contest—that he identifies as the source of the current "doom loop." By conflating the claimed outcomes of multiparty proportional systems (again, European democracies can go years without governments) with the mechanics of single-member fusion systems, the report relies on a false analogy. It promises the structural stability of one system while advocating for a reform that leaves many of the defining features of our existing electoral systems intact.

3. Theoretical Gaps

From a theoretical perspective, the report fails to explain why fusion voting would necessarily, or even usually, produce moderation rather than radicalization. Dr. Drutman argues that fusion allows voters to support a major party candidate while "registering support for moderation."[127] This assumes, without evidence, that the minor parties utilizing fusion will be centrist parties.

However, as Dr. Drutman himself concedes, minor parties struggle to survive in single-member, winner-take-all districts. In such an environment, the parties most likely to overcome the barriers to organization are not amorphous "centrist" parties, but ideologically distinct parties with committed activist bases—precisely the type of "flank" parties seen in New York. If fusion empowers these groups to withhold endorsements or threaten to act as spoilers, the rational strategic response for major-party candidates is to shift toward those extremes to secure their support, as discussed in the affirtmative report. Dr. Drutman's theory presumes a "Moderate Party" will organically emerge and discipline the system; he provides no mechanism for why organized partisans would not instead use fusion to push the major parties towards more extreme positions.

Finally, the report's argument regarding the "lesser of two evils"[128] is logically circular. Dr. Drutman argues that fusion allows voters to avoid the dilemma of holding their nose to vote for a candidate they dislike. Yet, under fusion, the candidate on the minor-party line is usually the same individual as the major-party nominee. A vote for a polarizing candidate on a "Moderate Party" line remains, effectively, a vote for that polarizing candidate. Unless fusion creates a viable path for a different and genuinely moderate candidate to win, a path Dr. Drutman admits is blocked by the winner-take-all system, it does not solve the voter's dilemma; it merely relabels it. For example, he argues:

> When there are only two sides, dissenters on each side have limited options. Many Republicans were uncomfortable with aspects of Trump's MAGA populism in 2016,

[127] Drutman Report at 20.
[128] Drutman Report at 20.

> but their only alternative was to support Democrats or vote for a third party (which would effectively help Democrats). This dynamic led many Republicans to rationalize alignment with positions they might otherwise have questioned.[129]

This assumes that voters did not vote for Clinton because she was a Democrat. We know of no experimental studies that test this proposition. However, the same logic could be used in the 2016 election to rationalize Republican voters voting for Trump rather than Clinton. That is, suppose that there were a "MAGA Party" that fused with Trump and a "Center Party" that fused with Clinton. Dr. Drutman's implicit argument is that the presence of the "Center Party" label would mean that some conservative voters would now feel comfortable voting for Clinton. However, it may be that with the existence of the "MAGA" label, perhaps these voters would feel comfortable registering their support for standard Republican (rather than MAGA) positions and would therefore vote for Trump on the Republican line. Much more behavioral research would be needed to understand what the effect of fusion is on voters' behavior.

4. Billboard Concerns and Confusion

Dr. Drutman argues that fusion voting provides valuable "information cues" to voters,[130] helping them make more informed decisions by signaling a candidate's specific ideological commitments. He relies on research by Loepp and Melusky to suggest that these additional labels act as helpful heuristics rather than sources of confusion. However, this argument rests on the fundamental assumption that the signals provided by fusion labels are accurate. The very research Dr. Drutman cites suggests they are not, as discussed in our affirmative report above.

This confusion is exacerbated when the "parties" on the ballot are not even genuine political organizations but ad-hoc slogans created for a single election. Dr. Drutman explicitly dismisses the concern, often cited by courts and legislators, that fusion voting turns the ballot into a "billboard for political advertising." He argues that this fear is unfounded because "pop-up parties do not proliferate" and that establishing a party requires "real work and genuine support."[131] He posits that candidates would be wary of accepting single-issue labels and that state regulations effectively prevent this outcome. However, as we discuss in our affirmative report above, the reality of fusion voting in New York directly contradicts this contention.[132]

D. Conclusion

In sum, while Dr. Drutman identifies genuine pathologies in contemporary American politics, his report fails to establish a credible causal link between those pathologies and the prohibition of fusion voting. His analysis rests on a series of fundamental category errors such as conflating modern ballot design with nineteenth-century party tickets, and conflating majoritarian fusion

[129] Drutman Report at 19.

[130] Drutman Report at 22.

[131] Drutman Report at 22.

[132] Recall, that the ballot for the most recent New York City mayoral election (2025) featured multiple "parties" that functioned precisely as single-issue billboards rather than genuine political organizations. For example, Republican candidate Curtis Sliwa utilized a "Protect Animals" party line to highlight a specific platform plank. Incumbent Eric Adams appeared as the "Safe & Affordable" and "End Anti-Semitism " candidate. Other independent candidates followed suit, with Joseph Hernandez running on the "Quality of Life" line and James Walden running on the "Integrity" line.

with proportional representation. Dr. Drutman promises a moderating effect that is theoretically improbable and empirically unsupported. Ultimately, his characterization of fusion as a "proven reform" for moderation is not an analytical finding based on the record, but a prescriptive hope that ignores the structural realities of the electoral system he seeks to change.

IV. RESPONSE TO DR. LISA DISCH

The factual claims in Dr. Disch's historical narrative about Wisconsin appear generally accurate. She has marshaled an impressive array of primary sources documenting Wisconsin's tradition of cross-party alliances, and her account of the various forms such cooperation took—mergers, joint conventions, non-compete agreements, and shared nominations—is richly detailed. To the extent this rebuttal takes issue with her report, it is not with her historical description but with the interpretive weight she places upon it.

Dr. Disch's report suffers from three significant analytical shortcomings. First, it omits important institutional and comparative context that would situate Wisconsin's 1897 legislation within a broader national reform movement. Second, it conflates distinct phenomena under the single label "fusion," eliding the difference between cross-party coalition-building generally and the specific institution of the fusion ballot. Third, and most critically, it draws a strong inference about legislative motive that the historical record cannot sustain.

The evidence Dr. Disch cites is at least as consistent with non-partisan or mixed motives—concerns about ballot design, electoral integrity, and the perceived legitimacy of "combination tickets"—as with an intent to impair challenger parties. This rebuttal addresses each of these analytical deficiencies in turn, then concludes with observations about the appropriate standard for inferring legislative motive from historical evidence.

A. The Factual History Omits Important Context

1. Missing Comparative Context from Outside Wisconsin

Dr. Disch correctly describes Wisconsin's long tradition of cross-party alliances and the timing of the 1897 statutory change. What is largely absent from her report, however, is the broader national context in which similar anti-fusion measures were adopted across multiple states during the 1890s. In these jurisdictions, legislators and governors publicly defended such provisions on grounds unrelated to partisan entrenchment: ballot clarity and the avoidance of voter confusion; concern about "deceptive" or "combination" tickets; and skepticism of coalitions perceived as purely office-seeking rather than principle-driven.

Kansas Governor William E. Stanley, for example, argued in 1901 that:

> Honesty in elections can hardly be expected where duplicity is openly practiced in the nomination of candidates, and when the ballot to be cast at the election is a deception. Some higher motive ought to characterize a political party than the desire for office, and this is hardly possible where the fusion of opposing elements, actuated by no higher desire than the spoils of office, is permitted. Deception and pretense in nominating conventions and in the arrangement of the ballot is as much a fraud upon the rights of the voter, and is as great a menace to an honest election as any other

> species of fraud. If a candidate's name appears once upon the ballot it gives every elector an opportunity of voting for him for the office which he seeks, and it sho'd appear only once. Fusion is a fraud and should not be tolerated. Fusion of principles is impossible.[133]

Whatever one thinks of this argument on the merits, it represents a normative critique of fusion as ballot design and as a style of politics—not a hidden confession of partisan entrenchment. Debates in other states—including contemporaneous debate in neighboring Iowa and Illinois,[134] which enacted fusion bans the same year as Wisconsin—featured similarly open discussion of these justifications, and comparable reasoning appears in judicial opinions upholding anti-fusion provisions.

Nor were these arguments limited to politicians. Newspapers supporting fusion bans offered similar arguments. For example, a story in the Republican-aligned *Minneapolis Journal* argued that "[t]he possibility of getting upon the ballot in more than one place has led ambitious aspirants for office to court nominations at the hands of more than one convention, which has resulting in the complete obliteration of party lines and the confusion of the voter."[135] State court judges also offered similar justifications for fusion bans when ruling on legal challenges to them at the time.[136]

These rationales may or may not be persuasive as a matter of policy. But they constitute evidence that, in at least some places, proponents sincerely believed that eliminating fusion ballots promoted cleaner, more intelligible elections and more honest party branding—even when the change plainly carried partisan consequences. By presenting Wisconsin's debate largely in isolation, Dr. Disch makes it easier to read the 1897 enactment as a *sui generis* partisan maneuver rather than as one state's version of a broader, widely defended set of reforms.

2. *The Need to Distinguish "Fusion" from "Fusion Ballot"*

Dr. Disch is explicit that nineteenth-century actors used "fusion" as an umbrella term covering many kinds of party cooperation: mergers, non-compete agreements, joint tickets, and what we would now call multiple-party nominations. In her normative discussion, however, she tends to move between two quite different concepts without always marking the transition. "Fusion" in the broad historical sense refers to any cross-party coalition or merger. "Fusion ballot" in the modern sense refers to an official ballot on which one candidate's name appears under multiple party labels, with votes separately tallied and then combined.

This distinction matters considerably for understanding what the 1897 law did and did not do.

a. What "Fusion Ballot" Actually Means

As the term is used in contemporary election law and practice, a "fusion ballot" is an official, state-printed ballot on which the same candidate appears more than once, each appearance labeled

[133]The Governor's Message, Russel Record, Jan. 12, 1901, at 2.

[134]The contemporaneous legislative efforts at fusion bans in these states received some coverage in Wisconsin newspapers, particularly those located near the borders with these states. *See, e.g.*, Iowa's Fusion Law, The Evening Telegram, Feb. 19, 1897, at 3; Strikes as Fusion, Chippewa Herald-Telegram, Feb. 20, 1897, at 1; Ottawa is Defeated, Kenosha News, Apr. 2, 1897, at 1.

[135]Tis a Perfect Law, Minneapolis Journal, Mar. 12, 1897, at 9.

[136]*See, e.g.*, *State ex rel. Runge v. Anderson*, 100 Wis. 523 (1898); *State ex rel. Dunn v. Coburn*, 260 Mo. 177 (Mo. Sup. Ct. 1914).

with a different party, and the votes on each party line tabulated separately before being combined into a single total for purposes of determining the winner. This is the system New York and Connecticut use today, and it is what Plaintiffs seek in this case.

b. Pre-Australian-Ballot "Fusion" Was Structurally Different

Before the Australian ballot's adoption, there was no official, state-printed ballot at all. Voters brought a party "ticket" or wrote their own. Party tickets were privately printed by parties or newspapers, listed only that party's candidates, and did not present a single, state-sanctioned sheet on which a candidate could appear in multiple party columns.

The various "fusion" arrangements Dr. Disch describes from the 1840s through the 1870s—joint conventions, "People's Tickets," non-compete agreements, and shared nominations—operated predominantly at the level of party organization and ticket-making, not at the level of an official ballot. Most of the "fusion" she discusses is coalition politics in this broader sense; only a subset implicates what we now call a fusion ballot.

c. Fusion Bans Regulate the Ballot, Not the Coalition

This institutional difference is crucial. A ban on fusion ballots dictates that an official ballot list a candidate only once. It does not forbid parties from endorsing another party's nominee, instructing supporters to vote for that nominee, merging organizations, entering into joint conventions, or campaigning together. Even after the 1897 law, Wisconsin parties remained free to engage in many forms of cross-party cooperation—alliances, strategic withdrawals, non-compete agreements, and outright mergers. What changed was a specific mode of ballot presentation, not the underlying capacity for political cooperation.

When "fusion ballots" and "fusion politics" are conflated, the 1897 provision appears to be an attack on coalition-building itself. Once the law's scope is properly understood as limited to ballot format, the story becomes more modest: the statute removed one particularly visible method of expressing a coalition on the state-printed ballot while leaving many other avenues of cooperation intact.

d. Minor Parties Struggled Even in the Party-Ticket Era

Even before the Australian ballot—when fusion ballots as such were not at issue—minor parties frequently proved fragile. The Anti-Masonic Party, the original Free Soil Party, the Greenback Party, and the People's (Populist) Party each enjoyed national or regional moments of strength before fading within roughly a decade as significant independent forces.

This pattern is important for two reasons. It demonstrates that third-party fragility was a recurrent feature of American politics even in institutional environments highly favorable to party-printed tickets and informal fusion. And it means that the limited durability of minor parties cannot be attributed to anti-fusion ballot rules that did not yet exist. If minor parties struggled to maintain organization and identity without such rules, then later difficulties cannot simply be treated as "effects" of the rules—still less as proof of an anti-third-party motive behind their adoption.

B. The Evidence Does Not Support a Strong Inference of Partisan Motive

Dr. Disch's core claim is that "[t]aken as a whole, the historical evidence supports a strong inference that the fusion ban was motivated by a partisan desire to impair the operations of political parties that sought to challenge the Republican Party for power in Wisconsin."

Yet even accepting Dr. Disch's chronology and factual description, her conclusion does not follow. The key pieces of evidence she emphasizes—the absence of floor debate, post-enactment newspaper surprise, the Republican majority, and subsequent Republican success—are weak circumstantial indicators at best. Each is consistent with non-partisan or mixed motives, and none provides direct evidence of the legislature's actual reasoning.

1. Lack of Floor Debate Does Not Establish Partisan Intent

Dr. Disch stresses that the anti-fusion clause was adopted as part of a larger election-administration bill and apparently passed without floor debate. She treats this as evidence of "stealth" and partisan design. This inference is not compelled by the evidence.

Uncontroversial measures routinely move by consent. Provisions perceived as technical or broadly acceptable are frequently adopted without extended floor debate, particularly when folded into omnibus bills. The 1897 Legislature was overwhelmingly Republican; if members understood the measure as a partisan advantage, there is nothing paradoxical about its passing easily and quietly. Supermajorities do not typically need to hide provisions they have the votes to enact openly.

Quiet passage may indicate low salience rather than dark motive. The absence of controversy can suggest that members of both parties did not regard the question as especially momentous. Dr. Disch acknowledges "[i]t is challenging to definitively determine the intent of the legislators who passed this bill at the time."[137]

The law was enacted on April 24, 1897, and published on April 30.[138] The following day, the *Portage Register* reported on the provision.[139] Its reporting was reprinted in several other newspapers.[140] Scattered newspaper coverage appeared the following month.

While Dr. Disch describes this coverage as "almost uniformly express shock" at the method of passage,[141] most of the articles themselves are more muted. For example, the closest to this expressed in the *Wisconsin State Journal* article cited by Dr. Disch is reference that "[c]onsiderable surprise is manifested in certain circles, especially by the Milwaukee News" before going on to say that "the bill was regularly passed and all its provisions open to the inspection of those who now do not like it."[142] Similarly, an article originally published in the *Chicago Tribune* and cited by Dr. Disch[143] as "breathlessly announced,"[144] in full,

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[137] Disch Report at 32.

[138] The Laws of Wisconsin, 1897 (Democrat Printing Company 1897), at 788.

[139] Portage Daily Register, May 1, 1897, at 1.

[140] The article from the *Waupun Leader* on May 14, 1897, that is cited by Dr. Disch in fact reprints the text of this article originally published in the *Portage Register* on May 1, 1897. The *Waupun Leader* cites the *Portage Register* as its source. *See* Waupun Leader, May 14, 1897, at 4.

[141] Disch Report at 32.

[142] Fusion and the Secret Ballot, Wisconsin State Journal, June 26, 1897, at 2.

[143] Dr. Disch credits this article to the *Hartford Times*, which reprinted it a week later. Disch Report at 32 n.185.

[144] Disch Report at 32 n.185.

> It has just come to light that the Legislature, which adjourned in April, passed a law which will prevent in the future any such fusion of political parties in Wisconsin as there was last fall. The law provides that when any person is nominated for the same office by more than one party his name shall be placed upon the ticket under the designation of the party which first nominated him; or if he was nominated by more than one party at the same time he shall within the time fixed by law for filing certificates of nomination file with the officer with whom his certificate of nomination is required to be filed a written statement indicating the party under which he desires his name to be printed on the ballots.[145]

While Dr. Disch adds emphasis to the *Chicago Tribune*'s claim that the law's passage "has just come to light," this is a questionable claim given that the *Portage Register* and other Wisconsin newspapers had reported on it over a month earlier.[146] After a handful more articles "trickled out"[147] in June, 1897, newspaper coverage of the law's passage seems to have largely ended. If the provision had been widely viewed as a major assault on democratic practice, one would expect more shock or opposition than this.

Nor does the reporting on the bill's adoption suggest anything unusual in the legislative process. As Dr. Disch notes, the fusion clause was added in committee.[148] Committees are precisely where policy language is routinely inserted into broader bills; a short ballot-format provision inside a lengthy elections statute is typical, not unusual. If minority-party members on the committee failed to object, that may simply reflect a judgment—even if mistaken—that the provision was unremarkable. If no committee member opposed it, that is evidence not of conspiracy but of low perceived stakes at the time. Committee amendment is ordinary legislative practice, not evidence of concealment.

The chairman's professed lack of recall is not inherently suspicious. One newspaper quoted Senator Julius Roehr, the committee chair, as saying he did not recall the specific anti-fusion language. Dr. Disch finds this "unlikely given his position."[149] But legislative practice suggests otherwise: committee chairs regularly shepherd lengthy, technical bills through the process. It is unreasonable to expect them—especially one as inexperienced as Roehr, who was in his first year in the legislature[150]—to retain vivid memories of each provision.[151] That an elections bill addressing straight-ticket voting also limited multiple ballot listings is not the sort of singular event guaranteed to stick in memory.

In short, the absence of floor debate and the committee-drafting process are entirely consistent with viewing the clause as a technical refinement of the Australian ballot regime—perhaps

[145]Fusion is Prevented in Wisconsin, Chicago Tribune, June 12, 1897, at 4; Fusion Prevented in Wisconsin, Hartford Times, June 17, 1897, at 1.

[146]*See, e.g.*, , *supra* note 139; Aimed at Pop. Fusion, Wisconsin State Journal, May 10, 1897, at 2.

[147]Disch Report at 32.

[148]Disch Report at 33.

[149]Disch Report at 32.

[150]Wisconsin Blue Book, 1897 (Democrat Printing Company 1897), at 661.

[151]Consider the reply of Senator Roscoe Conkling, then Chairman of the Senate Committee on Commerce, to a question from another senator regarding a bill that had just been reported from Conkling's committee: "I have not read the bill as carefully as I should to be able to give the Senator much information about it. I arose to call attention to it." Proceedings and Debates of the U.S. Senate, 8 Cong. Rec. 1753 (Feb. 22, 1879).

debatable, but far from a constitutional crisis. These facts do not, by themselves, support a strong inference of partisan overreach.

2. Newspaper Commentary Offers Little Evidence of Legislative Purpose

Dr. Disch highlights post-enactment newspaper reactions, noting that some publications expressed surprise at how quietly a "consequential" provision had passed, and that some framed it as an anti-Populist, anti-Democratic measure. This evidence illuminates how contemporary commentators understood the law; it tells us little about the legislature's actual motives.

Press reaction is not legislative history. Newspapers of the era were openly partisan actors. Populist- and Democratic-leaning papers had every incentive to decry a law they believed would disadvantage their coalition-building efforts, while Republican-leaning papers had every incentive to celebrate the hobbling of their opponents. Such rhetorical posturing is exactly what one would expect after any rule change with partisan implications—including one adopted for principled reasons.

Moreover, contemporaneous coverage was not uniformly partisan in its framing. Some Wisconsin newspapers discussed the issue in terms of ballot integrity and clarity. The *Wisconsin State Journal*, for instance, observed: "It is a debatable subject whether a candidate should be allowed to spread himself over an official ballot or be compelled to choose his party and stand or fall with it. The legislature of 1897 apparently . . . concluded that one column was enough for him."[152] After the Wisconsin Supreme Court upheld the law,[153] the *Sheboygan Telegram* welcomed the law on the ground that it "will lessen the chances of having some mouthy blatherskite who is the leader of some little factional party being hoisted into office through the fusion process."[154]

The rhetoric is coarse, but the underlying concern—that fusion ballots enabled minor-party leaders to wield disproportionate influence—was not limited to Republican officeholders. Some contemporaries genuinely viewed multiple ballot listings as an invitation to manipulation and a distortion of straightforward party competition.

3. The Runge *Decision Articulates Neutral Ballot-Design Rationales*

The year after the fusion ban was enacted, the Wisconsin Supreme Court upheld the ban against challenges to its constitutionality. In doing so, the Court's majority opinion offered reasons that have nothing to do with entrenching Republicans or punishing challenger parties:

> "Men are supposed to stand for principles when placed in nomination by political parties, and when the candidates of one party are identical with those of another it is supposed, and not unreasonably, that for the time being at least, though there be two organizations there is but one platform of principles, and that one party designation on the official ballot will satisfy all legitimate requirements of both. The confusion and uncertainty that would arise in such a case from the double printing of names, furnishes a strong reason for prohibiting it, and that, with the other reasons mentioned, strongly support the wisdom of the prohibition as a proper legislative regulation."[155]

[152] Fusion and the Secret Ballot, *supra* note 142.
[153] *See Runge*, 100 Wis. 523 (1898).
[154] Sheboygan Telegram, Sep. 21, 1898, at 1.
[155] *Runge*, 100 Wis. 523 (1898).

One may contest this reasoning. But it is plainly grounded in a belief that ballot labels should track substantive principle, a concern about voter confusion from duplicate listings, and a view that a single listing adequately expresses a coalition. Courts in multiple jurisdictions have accepted similar justifications; they are not obviously pretextual. Their articulation undermines the claim that only naked partisan entrenchment can explain the law's enactment or defense.

4. Comparative Evidence Cuts Against the "Stealth Partisan" Narrative

Dr. Disch emphasizes that Wisconsin's adoption of the anti-fusion provision was "stealthy," contrasting it with the more openly contested debates in neighboring states like Iowa. This observation, however, cuts both ways.

In Iowa and Illinois, anti-fusion ballot provisions were debated publicly, justified on non-partisan grounds, and adopted by substantial margins despite opposition. This pattern suggests that such provisions were plausibly defensible on grounds other than partisan entrenchment—and that contemporaries, including Democrats who opposed them, understood the argument even as they rejected it.

If neighboring legislatures felt no need to conceal their anti-fusion provisions, why would Wisconsin's Republicans have believed secrecy essential? They controlled approximately 90% of Assembly seats and nearly 90% of Senate seats. A supermajority of that magnitude does not require stealth to pass ordinary legislation, let alone a modest ballot-format rule.

The simpler explanation is that the clause was one component of a technical ballot-reform bill, supported for a mixture of reasons that may have included partisan advantage, that was not viewed as momentous at the time and, therefore, was not extensively debated. This is unremarkable legislative behavior, not evidence of a scheme to suppress political competition.

5. Subsequent Republican Success Does Not Establish Prior Partisan Motive

Dr. Disch notes that Republicans dominated Wisconsin politics for decades following the 1897 ban, not losing a gubernatorial election or surrendering the Assembly Speaker's gavel until 1933. She treats this as evidence that the ban achieved its intended purpose.

Correlation, however, is not causation. Attributing Republican dominance in this primarily to a ballot-format rule, rather than unrelated political forces, requires much more than temporal coincidence. And there are ample grounds for believing that the Republican Party's dominance in this era was driven by other factors.

Consider how dominant the Republican Party had become in Wisconsin by the 1896 election—the last election *before* the fusion ban was enacted. In that election, Republicans won 90 of 100 seats in the Wisconsin State Assembly and 29 of 33 seats in the Wisconsin Senate. Republican presidential nominee William McKinley won Wisconsin's electoral votes that year with 60% of the vote—soundly defeating his opponent, William Jennings Bryan, despite Bryan appearing on the ballot as fusion candidate under both the the Democratic Party and the People's (Populist) Party.

Shortly thereafter, Robert La Follette emerged as a dominant figure in Wisconsin politics, becoming "the most celebrated figure in Wisconsin history."[156] Elected as a Republican, La Follette's time as Governor of Wisconsin and then United States Senator lasted from 1901 until his death in 1925—a majority of the period in question. It is not difficult to imagine that La

[156]John D Buenker, The History of Wisconsin, Volume IV: The Progressive Era, 1893–1914 (Wisconsin Historical Society 2013), at 490.

Follette's popularity would have further buoyed an already dominant Republican Party in Wisconsin regardless of whether fusion voting was permitted.

C. Conclusion

Dr. Disch's report offers a valuable contribution to the historical record. Her account of Wisconsin's tradition of cross-party coalitions, and of the various institutional forms such cooperation assumed from statehood through the late nineteenth century, is detailed and largely accurate. Any fair assessment must acknowledge the quality of her archival research.

Where her analysis falls short is in the inferential leap from historical description to legislative motive. The circumstantial evidence she emphasizes—timing, partisan composition, quiet passage, and subsequent electoral outcomes—is consistent with multiple interpretations. It does not compel—and arguably does not even favor—the conclusion that the 1897 Legislature acted from partisan animus rather than from a mix of institutional, ideological, and political considerations.

Historical inference about legislative motive is inherently difficult. Legislators rarely announce their true reasons; floor debates, where they occur, may be performative; and post-hoc commentary by partisans on all sides is self-interested. When direct evidence of motive is unavailable, the responsible approach is to acknowledge interpretive uncertainty rather than to assert a "strong inference"[157] that the evidence cannot bear.

The most the record supports is this: Wisconsin's Legislature, dominated by Republicans, adopted a ballot-format rule that contemporaries defended on grounds of ballot clarity, voter comprehension, and skepticism toward multi-label candidacies—grounds that courts and commentators in multiple states found plausible—and that also aligned with the majority party's political interests. Such a blend of institutional and partisan motives is common in legislative history. It does not establish the targeted, animus-driven campaign against challenger parties that Dr. Disch's report describes.

V. RESPONSE TO DR. BARRY BURDEN

Dr. Burden's report addresses two practical questions about reintroducing fusion voting in Wisconsin: whether existing voting equipment can accommodate fusion ballots, and whether voters would be confused by such ballots. His analysis is competent and his review of the relevant academic literature is generally accurate. To the extent this response takes issue with his report, it is not with the technical accuracy of his individual observations but with two significant gaps in his analysis.

First, Dr. Burden does not adequately account for the interaction between ballot layout and fusion type. According to Dr. Burden, the Plaintiffs seek disaggregated fusion—where a candidate's name appears multiple times, once for each nominating party—but Wisconsin uses an office-block ballot layout.[158] No state currently combines these two features. The states Dr. Burden relies upon for evidence of equipment compatibility and voter comprehension all use different ballot configurations. Second, Dr. Burden's discussion of voter confusion focuses narrowly on errors in

[157] Disch Report at 34.

[158] This does not appear to be explicit in the Plaintiffs' complaint, but might reasonably be read as implicit given their arguments.

ballot marking while largely overlooking a more significant concern: confusion about the identities, ideologies, and platforms of the minor parties whose labels would appear on fusion ballots.

A. Wisconsin's Ballot Layout Creates an Untested Configuration

There are two distinct forms of fusion voting: disaggregated fusion and aggregated fusion. There are also two common ballot layouts: a party-column layout and an office-block layout. These two distinctions matter for understanding what the Plaintiffs seek and whether existing evidence supports its feasibility. While Dr. Burden notes the former distinction, he overlooks its interaction with the latter distinction.

1. The Two Forms of Fusion

In disaggregated fusion, a cross-nominated candidate's name appears on the ballot once for each party that nominates them. Votes cast on each party line are tabulated separately, then combined to determine the winner. This is the system used in Connecticut and New York—and the system Dr. Burden says the Plaintiffs seek for Wisconsin.

In aggregated fusion, a candidate's name appears only once on the ballot, with all nominating parties listed together on that single line. Oregon and Vermont use variants of this approach.

2. The Two Ballot Layouts

In a party-column layout, candidates are arranged in a grid. Each party is assigned a column (or, less traditionally, a row), and each office is assigned a row (or, less traditionally, a column).[159] A voter scanning across a row sees the same office contested by candidates from different parties, each in their respective party's column.

In an office-block layout, candidates are organized by the office they seek, not by party.[160] A candidate's party affiliation typically appears beneath their name. There are no party columns, and the ballot does not visually group candidates by partisan affiliation.

3. Current Practice Reveals a Consistent Pattern

A notable pattern emerges when one examines which states use which combination of fusion type and ballot layout:

- States with disaggregated fusion (Connecticut and New York) use party-column ballots.
- States with aggregated fusion (Oregon and Vermont) use office-block ballots.

This pattern is not coincidental. Disaggregated fusion fits naturally with a party-column layout: when each party has its own column, listing the same candidate in multiple columns presents no design difficulty. Conversely, aggregated fusion fits naturally with an office-block layout: listing multiple party endorsements beneath a single candidate name is straightforward when candidates are not sorted into party columns.

[159]Connecticut and New York State With the exception of New York City now typically assign a party to a row and an office to a column. Because it is functionally similar, we still refer to this as a "party-column" layout even though it is more literally a "party-row" layout.

[160]For primary elections with an office-block layout, candidates are typically grouped by party first and then by office. This remains distinct from a grid-like party-column layout.

4. Wisconsin Would Be an Outlier

Wisconsin uses an office-block layout.[161] The Plaintiffs seek disaggregated fusion. If the relief sought were granted without changing the ballot layout, Wisconsin would become the only state combining disaggregated fusion with an office-block ballot—an untested configuration.

Dr. Burden does not address this tension. His comparisons to Connecticut and New York implicitly assume that lessons from those states transfer directly to Wisconsin, but those states use a different ballot layout. As illustrated in Appendix A, the same candidate appearing twice on a party-column ballot has visual logic: the candidate occupies two cells in a grid, one in each nominating party's column.[162] The same candidate appearing twice on an office-block ballot lacks this organizing principle. A voter might reasonably wonder why a candidate is listed multiple times when the ballot is not organized by party.

5. The Evidence Base Does Not Cover Wisconsin's Proposed Configuration

The limitations of Dr. Burden's evidence base follow directly from this structural difference. The Loepp and Melusky study that Dr. Burden cites to support his conclusions about voter confusion employed a party-column ballot design, consistent with disaggregated fusion as practiced in New York. The study's findings about voter comprehension and ballot-marking errors may not generalize to an office-block layout, where the visual cues are different and the rationale for duplicate listings is less apparent.[163]

This is not to say that the combination has been shown to be unworkable—only that the evidence Dr. Burden marshals does not speak to it. The question of how voters and voting systems would handle disaggregated fusion on an office-block ballot remains empirically untested.

B. Voter Confusion Extends Beyond Ballot-Marking Errors

Dr. Burden argues that "confusion among voters about fusion candidacies is likely to be modest, to reduce over time with repeated use, and not to be consequential for generating voter error."[164] This conclusion rests primarily on the Loepp and Melusky study,[165] which found that experimental subjects who marked fusion ballots reported similar levels of ease and clarity as those who marked non-fusion ballots.

This evidence addresses one type of confusion: confusion about how to mark the ballot correctly. But it largely overlooks a more significant concern: confusion about the minor parties themselves.

1. Minor Party Labels Can Mislead Voters

Loepp and Melusky's study points to this problem. They report that "when a minor party does not send a clear ideological signal, voters tend to presume it is an ideologically centrist entity."

[161] During primary elections, candidates are grouped by party first and then by office, as is typical for primary-election ballots with an office-block layout.

[162] *See* Appendix A for more discussion and illustrations from past ballots.

[163] For example, voters might find the combination more confusing because an office-block layout provides no obvious visual rationale for why a candidate would be listed more than once.

[164] Burden Report at 1.

[165] Loepp and Melusky, *supra* note 93.

The "ideological signal" comes primarily from the party's name. As the authors observe, a label like "Conservative Party" conveys a recognizable ideological position because "conservative" is "a ubiquitous and widely understood term in contemporary political discourse." By contrast, "a name like 'Working Families Party' may be harder to decipher."

This creates an opportunity for strategic manipulation. Party names can send ideological signals that are unclear, misleading, or outright false—and fusion voting places these labels prominently on the ballot alongside major-party candidates.

2. New York's Experience Illustrates the Problem

New York's long experience with fusion voting offers several cautionary examples.

In its later years, the Liberal Party was criticized for no longer representing the liberal ideological positions its name implied. Voters who selected a candidate on the Liberal Party line believing that they were supporting a distinctively liberal platform may have been acting on a false signal.

The Women's Equality Party, created by Governor Andrew Cuomo and his allies "to rally—or, critics contend, to confuse—female voters in his Democratic primary race against Fordham Law School professor Zephyr Teachout."[166] Critics alleged that the party not only sought to mislead voters—in each Democratic gubernatorial primary, it endorsed Cuomo over a more progressive female opponent—but had chosen a name to create confusion confusion between itself and the Working Families Party through their similar initialisms—WEP and WFP.

Perhaps most strikingly, New York's Independence Party appears to have benefited from voter confusion between registering with the Independence Party and registering as an independent voter. A survey conducted by the *New York Daily News* suggested that a majority of the party's registered members did not intend to affiliate with the party at all.[167]

3. No Mechanism Prevents Misleading Party Names

Dr. Burden's analysis does not address these risks. There is no mechanism in Wisconsin—or, for that matter, in New York or Connecticut—that ensures party names accurately represent party ideology, prevents names that send misleading signals, or protects voters from strategic exploitation of ambiguous or deceptive labels.

Under fusion voting, these labels gain heightened salience. Without fusion, a minor party's name would not signal information about major party candidates. With fusion, a minor party can cross-nominate a major party candidate. Thus, the minor party's name can influence—or mislead—voters perceptions about the major party candidates.

The confusion at issue here is not about how to mark the ballot—it is about what the ballot means. This form of confusion is arguably more consequential than occasional marking errors, and the evidence Dr. Burden cites does not address it.

[166] Aaron Short, *The Women's Equality Party is More of a Casual Get-together*, City & State New York (July 10, 2018), https://www.cityandstateny.com/politics/2018/07/the-womens-equality-party-is-more-of-a-casual-get-together/178287/ (last visited Oct. 7, 2025).

[167] Voters are Vics: Registration Word Games Fool Even the High and Mighty, *supra* note 102.

C. Conclusion

Dr. Burden's report provides useful technical information about voting equipment and a fair summary of the academic literature on ballot-marking behavior. Where his analysis falls short is in two respects. First, it does not account for the fact that Wisconsin's ballot layout differs from the layouts used in states where disaggregated fusion is currently practiced. The Plaintiffs seek to introduce a combination—disaggregated fusion on an office-block ballot—that no state currently uses and for which no direct evidence of feasibility exists. Second, his treatment of voter confusion focuses on mechanical errors in ballot marking while largely ignoring the more significant risk that minor party labels may mislead voters about ideology, platform, or party identity.

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Appendix A. NATURAL PAIRINGS OF BALLOT LAYOUT AND FUSION VOTING

Ballot layout and fusion voting interact in predictable ways. Fusion voting allows multiple parties to nominate the same candidate, but how that shared nomination appears on the ballot depends on the ballot's structure. The two main layouts—party-column and office-block—each pair naturally with a different approach to displaying fusion candidates. This appendix examines examples from Connecticut and Oregon to illustrate these pairings, then applies this logic to the current ballot layout in Wisconsin if fusion voting were to be adopted.

1. Connecticut: Party-Column Layout with Disaggregated Fusion

Connecticut uses a party-column layout for its ballots.[168] It also uses disaggregated fusion, meaning that a candidate nominated by multiple parties appears on the ballot multiple times—once for each nominating party.

Figure A1 shows a sample Connecticut ballot organized as a grid. Each party occupies a row, and each office occupies a column. A nominee's name appears at the intersection of the nominating party's row and the office's column.

Consider Harry Arora, who was nominated by both the Republican Party and the Independent Party for "Representative in Congress." The Republican Party occupies Row B, and the Independent Party occupies Row D (highlighted in green). The Representative in Congress race appears in Column 3 (highlighted in blue). Arora's name therefore appears twice: once in Row B, Column 3, and once in Row D, Column 3 (highlighted in yellow).

This example illustrates why disaggregated fusion pairs naturally with party-column layouts. The grid structure has no obvious way to indicate multiple nominations without listing a candidate's name in each relevant cell. Aggregated fusion—where candidates appear only once with all their nominating parties listed together—is difficult to reconcile with this format. For this reason, every state that currently combines a party-column layout with fusion voting uses disaggregated fusion.

2. Oregon: Office-Block Layout with Aggregated Fusion

Oregon uses an office-block layout for its ballots along with aggregated fusion, meaning that a candidate nominated by multiple parties appears only once, with all nominating parties listed beneath their name.

Figure A2 shows a sample Oregon ballot organized into blocks, one per office. All candidates for a given office appear together in the same block, regardless of which parties nominated them. The nominating parties are simply listed under each candidate's name.

Consider Levi Leatherberry, who was nominated by both the Independent Party and the Libertarian Party for "US Representative, 4th District." All nominees for this office appear in a

[168] We use "party-column" to describe Connecticut's grid-based layout even though parties occupy rows rather than columns. The term originated with early ballots that placed parties in columns and offices in rows, known as "party-column" or "Indiana" ballots. Since transposing rows and columns does not affect how the ballot functions, we apply the term to both arrangements.

single block (highlighted in blue). Leatherberry's name appears just once (highlighted in yellow), with both nominating parties listed beneath it.

This example illustrates why aggregated fusion pairs naturally with office-block layouts. The format easily accommodates multiple party nominations under a single name, avoiding redundant listings. Disaggregated fusion—listing a candidate multiple times—would seem arbitrary without the grid structure that makes such repetition logical. For this reason, every state that currently combines an office-block layout with fusion voting uses aggregated fusion.

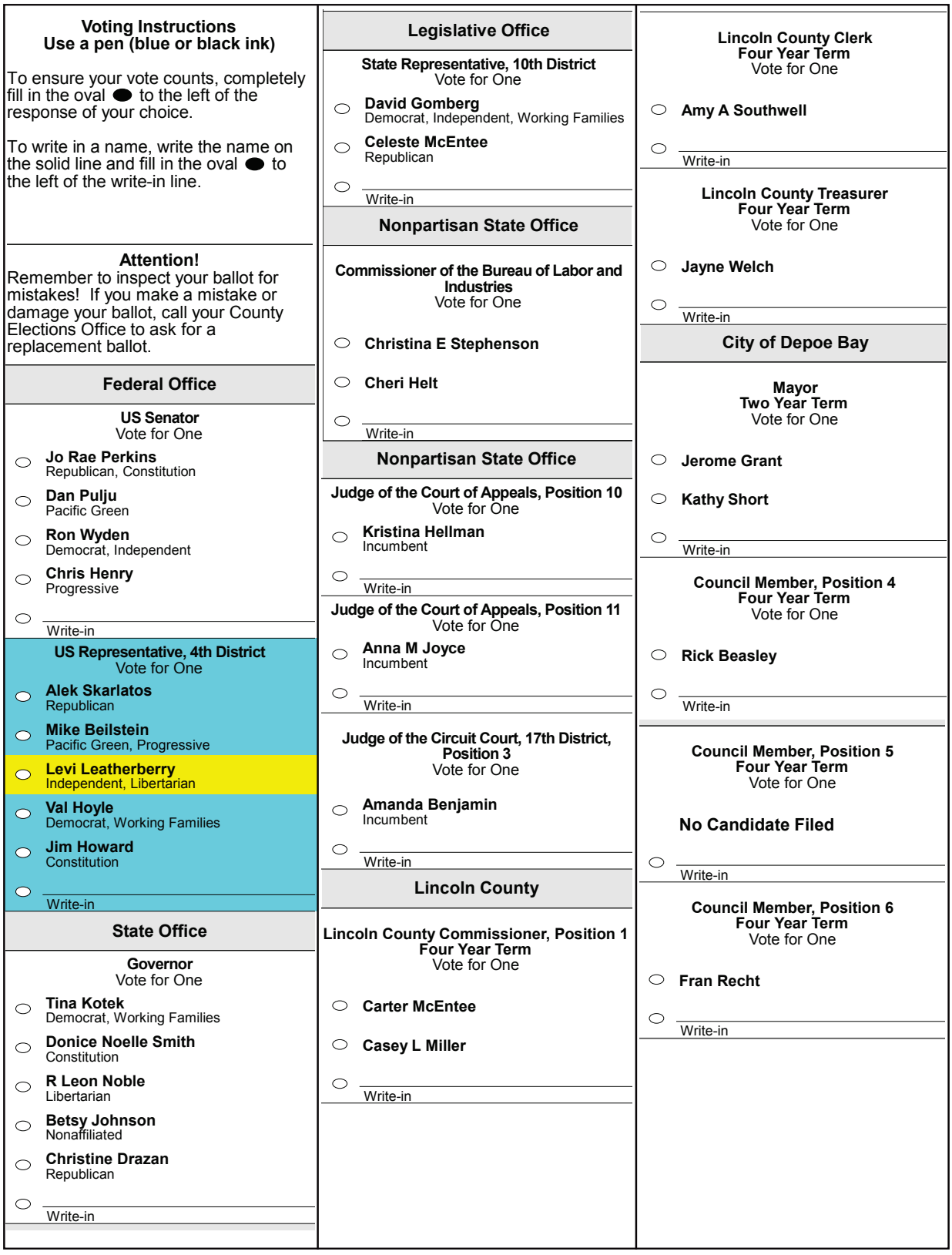
3. Wisconsin: Office-Block Layout without Fusion

Wisconsin also uses an office-block layout.[169] Figure A3 shows a sample Wisconsin ballot, which closely resembles Oregon's in organization and lacks Connecticut's grid structure. This similarity suggests that if Wisconsin were to adopt fusion voting, aggregated fusion would be the more natural choice—disaggregated fusion would be untested with this ballot format and would likely require redesigning the layout to work effectively.

[169]During primary elections, candidates are grouped by party first and then by office, as is typical for primary-election ballots with an office-block layout. Parties are not assigned a single column, and the layout remains different from a grid-like party-column layout.

OFFICE → / PARTY ↓	1 Governor and Lieutenant Governor Vote for One	2 United States Senator Vote for One	3 Representative in Congress Vote for One	4 State Senator Vote for One	5 State Representative Vote for One	6 Secretary of the State Vote for One
DEMOCRATIC PARTY	1A Ned Lamont and Susan Bysiewicz	2A Christopher S. Murphy	3A Jim Himes	4A Carlo Leone	5A David Michel	6A Denise W. Merrill
REPUBLICAN PARTY	1B Bob Stefanowski and Joe Markley	2B Matthew Corey	3B Harry Arora	4B Jerry Bosak	5B Dan Pannone	6B Susan Chapman
WORKING FAMILIES PARTY	1C Ned Lamont and Susan Bysiewicz	2C Christopher S. Murphy	3C	4C	5C	6C Denise W. Merrill
INDEPENDENT PARTY	1D Bob Stefanowski and Joe Markley	2D	3D Harry Arora	4D Jerry Bosak	5D	6D Susan Chapman
LIBERTARIAN PARTY	1E Rodney Hanscomb and Jeffrey Thibeault	2E Richard Lion	3E	4E	5E	6E Heather Lynn Sylvestre Gwynn
GREEN PARTY	1F	2F Jeff Russell	3F	4F Cora M. Santaguida	5F	6F S. Michael DeRosa
AMIGO CONSTITUTION LIBERTY PARTY	1G Mark Stewart Greenstein and John Demitrus	2G	3G	4G	5G	6G
GRIEBEL FRANK FOR CT PARTY	1H Oz Griebel and Monte E. Frank	2H	3H	4H	5H	6H
	1I	2I	3I	4I	5I	6I
WRITE-IN VOTES →	1J	2J	3J	4J	5J	6J

Figure A1: Portion of the ballot for the General Election in Stamford, Connecticut, on November 6, 2018, with highlighting for the nomination of Harry Arora.



Voting Instructions
Use a pen (blue or black ink)

To ensure your vote counts, completely fill in the oval ⬬ to the left of the response of your choice.

To write in a name, write the name on the solid line and fill in the oval ⬬ to the left of the write-in line.

Attention!
Remember to inspect your ballot for mistakes! If you make a mistake or damage your ballot, call your County Elections Office to ask for a replacement ballot.

Federal Office

US Senator
Vote for One
- **Jo Rae Perkins** — Republican, Constitution
- **Dan Pulju** — Pacific Green
- **Ron Wyden** — Democrat, Independent
- **Chris Henry** — Progressive
- Write-in

US Representative, 4th District
Vote for One
- **Alek Skarlatos** — Republican
- **Mike Beilstein** — Pacific Green, Progressive
- **Levi Leatherberry** — Independent, Libertarian
- **Val Hoyle** — Democrat, Working Families
- **Jim Howard** — Constitution
- Write-in

State Office

Governor
Vote for One
- **Tina Kotek** — Democrat, Working Families
- **Donice Noelle Smith** — Constitution
- **R Leon Noble** — Libertarian
- **Betsy Johnson** — Nonaffiliated
- **Christine Drazan** — Republican
- Write-in

Legislative Office

State Representative, 10th District
Vote for One
- **David Gomberg** — Democrat, Independent, Working Families
- **Celeste McEntee** — Republican
- Write-in

Nonpartisan State Office

Commissioner of the Bureau of Labor and Industries
Vote for One
- **Christina E Stephenson**
- **Cheri Helt**
- Write-in

Nonpartisan State Office

Judge of the Court of Appeals, Position 10
Vote for One
- **Kristina Hellman** — Incumbent
- Write-in

Judge of the Court of Appeals, Position 11
Vote for One
- **Anna M Joyce** — Incumbent
- Write-in

Judge of the Circuit Court, 17th District, Position 3
Vote for One
- **Amanda Benjamin** — Incumbent
- Write-in

Lincoln County

Lincoln County Commissioner, Position 1
Four Year Term
Vote for One
- **Carter McEntee**
- **Casey L Miller**
- Write-in

Lincoln County Clerk
Four Year Term
Vote for One
- **Amy A Southwell**
- Write-in

Lincoln County Treasurer
Four Year Term
Vote for One
- **Jayne Welch**
- Write-in

City of Depoe Bay

Mayor
Two Year Term
Vote for One
- **Jerome Grant**
- **Kathy Short**
- Write-in

Council Member, Position 4
Four Year Term
Vote for One
- **Rick Beasley**
- Write-in

Council Member, Position 5
Four Year Term
Vote for One

No Candidate Filed
- Write-in

Council Member, Position 6
Four Year Term
Vote for One
- **Fran Recht**
- Write-in

Figure A2: Portion of the ballot for the General Election in Depoe Bay, Oregon, on November 8, 2022, with highlighting for the nomination of Levi Leatherberry.

General Instructions

If you make a mistake on your ballot, or have a question, ask an election inspector for help. (Absentee voters: contact your municipal clerk).

To vote for a candidate on the ballot, fill in the oval next to the name like this: ●

To vote for a name that is not on the ballot, write the name on the line marked "write-in" and fill in the oval next to the name like this: ●

Statewide

*You may **fill in only 1 oval** for the office of Governor/Lieutenant Governor. A vote for only Lieutenant Governor will not be counted.*

Governor & Lieutenant Governor
Vote for 1

- ◯ Scott Walker / Rebecca Kleefisch (Republican)
- ◯ Tony Evers / Mandela Barnes (Democratic)
- ◯ Phillip Anderson / Patrick Baird (Libertarian)
- ◯ Michael J. White / Tiffany Anderson (Wisconsin Green)
- ◯ Maggie Turnbull / Wil Losch (Independent)
- ◯ Arnie Enz / No Candidate (The Wisconsin Party)
- ◯ _____ write-in (Governor)
- _____ write-in (Lieutenant Governor)

Attorney General
Vote for 1

- ◯ Brad Schimel (Republican)
- ◯ Josh Kaul (Democratic)
- ◯ Terry Larson (Constitution)
- ◯ _____ write-in

Continue voting at top of next column

Statewide

Secretary of State
Vote for 1

- ◯ Jay Schroeder (Republican)
- ◯ Doug La Follette (Democratic)
- ◯ _____ write-in

State Treasurer
Vote for 1

- ◯ Travis Hartwig (Republican)
- ◯ Sarah Godlewski (Democratic)
- ◯ Andrew Zuelke (Constitution)
- ◯ _____ write-in

Congressional

United States Senator
Vote for 1

- ◯ Leah Vukmir (Republican)
- ◯ Tammy Baldwin (Democratic)
- ◯ _____ write-in

Representative in Congress, District 6
Vote for 1

- ◯ Glenn Grothman (Republican)
- ◯ Dan Kohl (Democratic)
- ◯ _____ write-in

Legislative

State Senator, District 9
Vote for 1

- ◯ Devin LeMahieu (Republican)
- ◯ Kyle Whelton (Democratic)
- ◯ _____ write-in

Continue voting at top of next column

Legislative

Representative to the Assembly, District 27
Vote for 1

- ◯ Tyler Vorpagel (Republican)
- ◯ Nanette Bulebosh (Democratic)
- ◯ _____ write-in

County

Sheriff
Vote for 1

- ◯ Cory L. Roeseler (Republican)
- ◯ Philip Schaefer (Democratic)
- ◯ _____ write-in

Clerk of Circuit Court
Vote for 1

- ◯ Melody Lorge (Independent)
- ◯ _____ write-in

Figure A3: Portion of the ballot for the General Election in Sheboygan, Wisconsin, on November 6, 2018.

Nathan Atkinson

Updated: December 19, 2025

CONTACT INFORMATION

University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706

(608) 890-2461
natkinson@wisc.edu
www.nathanatkinson.com

AFFILIATIONS

University of Wisconsin Law School 2021-Present
Assistant Professor

ETH Zurich Center for Law & Economics
Research Affiliate 2021-Present
Postdoctoral Scholar of Law, Business, and Economics 2019-2021

EDUCATION

Stanford University 2013 - 2019
Ph.D Business, Stanford Graduate School of Business 2019
J.D., Stanford Law School 2018

Oregon State University 2008-2011
B.A. Economics and Philosophy (Honors)

PUBLISHED AND FORTHCOMING PAPERS

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(10) "Top-Two Runoff Elections (Uniquely) Dominate Plurality Rule" (with Ezra Friedman).
(11) "Profitable Misconduct, Corporate Governance, and Law Enforcement" (with Anat Admati and Paul Pfleiderer).

WORKS IN PROGRESS

(12) "Decomposing Reputational Harm and Economic Loss in Fraud-on-the-Market Litigation."
(13) "Fusion Voting" (with Alexander Tahk)
(14) "Supermajority Rules and Partisan Gerrymandering: An Equivalence Relation" (with Michael Gilbert).

RESEARCH REPORTS

(15) "A Simple Agent-Based Model for Simulating Single Winner Elections" (with Scott Ganz and John Mantus)

Teaching Interests

Business Associations, Deals, Contract Law, Contract Theory and Design, Securities Regulation, Corporate Finance.
Faculty advisor to the Wisconsin Law School Business and Tax Law Club.

Funding and Awards

Institute for Humane Studies (2025-2026)
Göran Skogh Award for the best paper by a young scholar at the 2020 European Association of Law and Economics Conference ("Corporate Liability, Collateral Consequences, and Capital Structure.").
ETH Career Seed Grant (SEED-22 20-1), 2020-2021
Graduate Fellowship, McCoy Family Center for Ethics in Society, 2017-2018
Gregory Terrill Cox Fellowship in Law and Economics, John M. Olin Program in Law and Economics, 2015-2019
Stanford Interdisciplinary Graduate Fellowship, 2015-2019 (full tuition)

Invited Presentations

2026: American Mathematical Society (D.C.), University of Pennsylvania Junior Faculty Business & Financial Law Workshop, Berkeley Law, Constitutional Law and Economics (UVA).
2025: American Mathematical Society (Seattle), Western Ontario Law and Economics, University of Kentucky Law, Stanford, American Law and Economics Association (NYU), NBER Summer Institute, Research Roundtable on Law and the Allocation of Risk (Nashville), Changing Landscape of Corporate Law (Duke).
2024: National Association of Clean Air Agencies, Constitutional Law and Economics Conference (Maryland), Northwestern Law and Economics, American Law and Economics Association (Michigan), Society for Institutional & Organizational Economics (Chicago), Society for Social Choice and Welfare (Paris), George Mason University Law and Economics Workshop, USC Law, AALS Financial Regulation Mid-Year Meeting (Wharton), Berkeley ESG Workshop, International Junior Scholars Forum in Law and Social Science (Zurich).

2023: University of Minnesota Law, University of Wisconsin MEAD, American Law and Economics Association (Boston University), NYU Law and Economics, Notre Dame Law and Economics.

2022: Public Choice Society (Nashville), Oxford Faculty of Law, University of Western Ontario Law and Economics, Berkeley Law and Economics, Marquette Law.

2021: AALS Annual Meeting, Northwestern Law and Economics Seminar, George Mason University Law and Economics Workshop.

2020: University of Texas Law and Economics Workshop, ETH Zurich Center for Law & Economics, European Law and Economics Association (Paris), University of Wisconsin Law School.

2019: Law and Economics Theory Conference (University of Texas), Journal of Law, Finance, and Accounting Conference (NYU), Oxford University Faculty of Law, Society for the Advancement of Economic Theory (Naples, Italy), George Mason University Law and Economics Workshop.

2018: ETH Zurich Center for Law & Economics, American Law and Economics Association (Boston University).

Professional Service

Referee: *American Law and Economics Review*; *Journal of Law, Economics, and Organization*; *Journal of Legal Studies*; *Journal of Mathematical Economics*; *International Review of Law and Economics*; *Proceedings of the National Academy of Science (PNAS)*.

Alexander M. Tahk

Department of Political Science, University of Wisconsin–Madison
1050 Bascom Mall, North Hall Room 212, Madison, Wisconsin 53706
atahk@wisc.edu ▪ +1 (608) 263-2297 ▪ www.tahk.us

EDUCATION

Stanford University, Palo Alto, California, USA

- Ph.D. in Political Science — September 2003 – August 2010
  - *Fields:* Methodology, American Politics
  - *Dissertation:* "Essays on the statistical analysis of roll-call votes and judicial citations"
  - *Committee:* Simon Jackman (chair), Jon Krosnick, John Ferejohn, Kevin Quinn
- M.S. in Statistics — September 2003 – June 2006

Massachusetts Institute of Technology, Cambridge, Massachusetts, USA

- S.B. in Mathematics — August 1998 – June 2002
- S.B. in Political Science — August 1998 – June 2002

EMPLOYMENT

University of Wisconsin–Madison

- Director, Tommy G. Thompson Center on Public Leadership — July 2021 – Present
- Associate Professor of Political Science — June 2018 – Present
  - Faculty Affiliate, University of Wisconsin Law School
  - Honorary Fellow, Institute for Legal Studies
- Assistant Professor of Political Science — August 2010 – June 2018

Ellington Management Group

- Portfolio Management Associate — April 2007 – January 2009

RESEARCH AND PUBLICATIONS

JOURNAL ARTICLES

Ranran Z. Mi, Ellie Fan Yang, Alexander Tahk, Adati Tarfa, Lynne M. Cotter, Linqi Lu, Sijia Yang, David H. Gustafson Sr, Ryan Westergaard, and Dhavan Shah. 2024. "mHealth Engagement for Antiretroviral Medication Adherence Among People with HIV and Substance Use Disorders: Observational Study." *Journal of Medical Internet Research* 26 (December): e57774. https://doi.org/10.2196/57774

Fan ("Ellie") Yang, Dhavan V. Shah, Alexander Tahk, Olivia Vjorn, Sarah Dietz, Klaren Pe-Romashko, Erika Bailey, Rachel E. Gicquelais, Juwon Hwang, David H. Gustafson, and Ryan Westergaard. 2023. "mHealth and Social Mediation: Mobile Support Among Stigmatized People Living with HIV and Substance Use Disorder." *New Media & Society* 25 (4): 702–31. https://doi.org/10.1177/14614448231158653

David H. Gustafson Sr, Rachel Kornfield, Marie-Louise Mares, Darcie C. Johnston, Olivia J. Cody, Ellie Fan Yang, David H. Gustafson Jr, Juwon Hwang, Jane E. Mahoney, John J. Curtin, Alexander Tahk, and Dhavan V. Shah. 2022. "Effect of an eHealth Intervention on Older Adults' Quality of Life and Health-Related Outcomes: A Randomized Clinical Trial." *Journal of General Internal Medicine* 37, no. 3 (February): 521–30. https://doi.org/10.1007/s11606-021-06888-1

David S. Yeager, Jon A. Krosnick, Penny S. Visser, Allyson L. Holbrook, and Alex M. Tahk. 2019. "Moderation of Classic Social Psychological Effects by Demographics in the U.S. Adult Population: New Opportunities for Theoretical Advancement." *Journal of Personality and Social Psychology* 117, no. 6 (December): e84–e99. https://doi.org/10.1037/pspa0000171

Alexander Tahk. 2018. "Nonparametric Ideal-Point Estimation and Inference." *Political Analysis* 26, no. 2 (April): 131–46. https://doi.org/10.1017/pan.2017.38

Alexander M. Tahk. 2015. "A Continuous-Time, Latent-Variable Model of Time Series Data." *Political Analysis* 23, no. 2 (Spring): 278–98. https://doi.org/10.1093/pan/mpu020

Ryan J. Owens, Alexander Tahk, Patrick C. Wohlfarth, and Amanda C. Bryan. 2015. "Nominating Commissions, Judicial Retention, and Forward-Looking Behavior on State Supreme Courts: An Empirical Examination of Selection and Retention Methods." *State Politics & Policy Quarterly* 15, no. 2 (June): 211–38. https://doi.org/10.1177/1532440014567858

Josh Pasek, Daniel Schneider, Jon A. Krosnick, Alexander Tahk, Eyal Ophir, and Claire Milligan. 2014. "Prevalence and Moderators of the Candidate Name-Order Effect: Evidence from Statewide General Elections in California." *Public Opinion Quarterly* 78, no. 2 (January): 416–39. https://doi.org/10.1093/poq/nfu013

Stephen A. Jessee and Alexander M. Tahk. 2011. "What Can We Learn About the Ideology of the Newest Supreme Court Justices?" *PS: Political Science & Politics* 44, no. 3 (July): 524–29. https://doi.org/10.1017/S1049096511000618

Neil Malhotra and Alexander Tahk. 2011. "Specification Issues in Assessing the Moderating Role of Issue Importance: A Comment on Grynaviski and Corrigan (2006)." *Political Analysis* 19, no. 3 (Summer): 342–50. https://doi.org/10.1093/pan/mpr015

Josh Pasek, Alexander Tahk, Yphtach Lelkes, Jon A. Krosnick, B. Keith Payne, Omair Akhtar, and Trevor Tompson. 2009. "Determinants of Turnout and Candidate Choice in the 2008 U.S. Presidential Election: Illuminating the Impact of Racial Prejudice and Other Considerations." *Public Opinion Quarterly* 73, no. 5 (January): 943–94. https://doi.org/10.1093/poq/nfp079

Daniel Schneider, Alexander Tahk, and Jon A. Krosnick. 2007. "Reconsidering the Impact of Behavior Prediction Questions on Illegal Drug Use: The Importance of Using Proper Analytic Methods." *Social Influence* 2, no. 3 (September): 178–96. https://doi.org/10.1080/13506280701396517

Robert Anderson IV and Alexander M. Tahk. 2007. "Institutions and Equilibrium in the United States Supreme Court." *American Political Science Review* 101, no. 4 (November): 811–25. https://doi.org/10.1017/S0003055407070591

BOOK CHAPTERS

Ryan C. Black, Ryan J. Owens, Patrick C. Wohlfarth, and Alexander M. Tahk. 2025. "Opinion Style." In *Cognitive Aging and the Federal Circuit Courts: How Senescence Influences the Law and Judges*, edited by Ryan C. Black, Ryan J. Owens, and Patrick C. Wohlfarth, 62–87. New York: Oxford University Press, April 15, 2025. https://doi.org/10.1093/oso/9780197747025.001.0001

Joanne M. Miller, Jon A. Krosnick, Allyson Holbrook, Alexander Tahk, and Laura Dionne. 2016. "The Impact of Policy Change Threat on Financial Contributions to Interest Groups." In *Political Psychology: New Explorations*, edited by Jon A. Krosnick, I.-Chant A. Chiang, and Tobias H. Stark, 172–202. Frontiers of Social Psychology. New York: Psychology Press, November 10, 2016. https://doi.org/10.4324/9781315445687

SOFTWARE

Alexander Tahk. 2019. "Bucky: Bucky's Archive for Data Analysis in the Social Sciences." R package version 1.0.6. http://github.com/atahk/bucky

Alexander Tahk. 2017. "CARMAgeddon: MONOCAR and Other CARMA Models." R package version 0.3.6. http://monocar.tahk.us/

Alexander Tahk. 2016. "Npideal: Nonparametric Ideal-Point Estimation and Inference." R package version 0.1.1. http://github.com/atahk/npideal

Stephen Jessee and Alexander Tahk. 2006. "Supreme Court Ideology Project." Last updated 2017. http://sct.tahk.us/

RESEARCH AND PUBLICATIONS IN PROGRESS

Nathan Atkinson and Alexander Tahk. "Fusion Voting"

Alexander Tahk. "Taking the Action Space Seriously: A Dirichlet-Process Ideal-Point Model"

Amanda McLean, Jon Krosnick, Alex Tahk, and Jared McDonald. "Accuracy of National and State Polls in the 2016 Election"

Christopher Krewson, Ryan J. Owens, and Alexander Tahk. "Lower Court (Non)Compliance with Supreme Court Jurisprudential Regimes"

Alexander Tahk. "Properties of Ideal-Point Estimators"

Margaret Peters and Alexander Tahk. "Are Policy Makers Out of Step with Their Constituency When It Comes to Immigration?"

Alexander Tahk. "What Roll-Call Data Can and Cannot Tell Us About Ideology"

Alexander Tahk and Susannah Camic Tahk. "Tax-Embedded Programs and the Politics of Public Policy"

Alexander M. Tahk, Jon A. Krosnick, Dean Lacy, and Laura Dionne. "Do the News Media Shape How Americans Think About Politics? New Statistical Procedures Cast New Light on an Old Hypothesis"

Jennifer Brookhart and Alexander Tahk. "Evolution of Public Discourse"

Alexander Tahk. "Nonparametric Estimation of Ideal Points Using Locally Linear Embedding"

Ryan J. Owens and Alexander Tahk. "Examining the Quality of Supreme Court Opinions"

Ryan J. Owens, Alexander M. Tahk, and Justin Wedeking. "Using Nominees' Words to Determine Their Ideologies"

Alexander M. Tahk. "Categorizing Judicial Opinions Using Citation Data"

Jon A. Krosnick and Alexander M. Tahk. "The Optimal Length of Rating Scales to Maximize Reliability and Validity"

TEACHING

PRINCIPAL AREAS

- Statistical Methods
- Amerian Politics
- Judicial Politics
- Formal Theory

COURSES TAUGHT

- Introduction to Statistics in Political Science
- Multivariate Statistical Inference
- Maximum Likelihood Estimation for the Social Sciences
- Bayesian Statistics for Social Science Models
- Game Theory and Political Analysis
- Formal Models of Domestic Politics
- Introduction to the American Judicial System
- The Judicial Process
- Introduction to Empirical Legal Research
- Bayesian Modeling for the Social Sciences II: Advanced Topics
- Directed Reading on Bayesian Statistics
- Directed Reading on Advanced Bayesian Statistics
- Directed Reading on Latent Variable Models

ADVISING

DISSERTATION COMMITTEE CHAIR

Evan Fleshman — Current

Blake Reynolds — Current

Sarah Bouchat — Ph.D. 2017

- *Placement:* Northwestern University

DISSERTATION COMMITTEE MEMBER

Veronica Judson — Current

Kyler Hudson — Ph.D. 2023
- *Placement:* Senior Data Analyst, Vera Bradley

Marcy Sheih — Ph.D. 2023
- *Placement:* Miami University

Devin Judge-Lord — Ph.D. 2021
- *Placement:* Postdoctoral Fellow, Harvard University

Evan Morier — Ph.D. 2021
- *Placement:* Mathematica

Michael DeCrescenzo — Ph.D. 2020
- *Placement:* DRW Holdings

Chris Krewson — Ph.D. 2018
- *Placement:* Claremont Graduate University

Zachary Barnett-Howell — Ph.D. 2018
- *Placement:* Postdoctoral Associate, MacMillan Center, Yale

Mike Wurm (Department of Statistics) — Ph.D. 2017
- *Placement:* Google

John Davis (Department of Statistics) — Ph.D. 2016
- *Placement:* Civis Analytics

Jennifer Brookhart — Ph.D. 2016
- *Placement:* Insight Data Science Fellow

Brad Jones — Ph.D. 2016
- *Placement:* Research Associate, Pew Research Center

Steven Wilson — Ph.D. 2016
- *Placement:* University of Nevada

Ruoxi Li — Ph.D. 2015
- *Placement:* California State University San Marcos

James Sieja — Ph.D. 2015
- *Placement:* St. Lawrence University

Kyle Marquardt — Ph.D. 2015
- *Placement:* Research Fellow, V-Dem Institute, University of Gothenburg

Pär Jason Engle — Ph.D. 2015
- *Placement:* Wisconsin Department of Public Instruction

Nick Judge — Ph.D. 2013
- *Placement:* Revolution Analytics

Marc Ratkovic — Ph.D. 2011
- *Placement:* Princeton University

LIST OF PRESENTATIONS

INVITED TALKS

Conference on U.S. State Policies, Population Health, and Aging (keynote presentation), University of Syracuse — May 2024

V-Dem Institute, University of Gothenburg — October 2016

Department of Statistics Seminar, University of Wisconsin–Madison — March 2015

Political Methodology Research Seminar, Princeton University — February 2013

United States Studies Centre, University of Sydney — November 2009

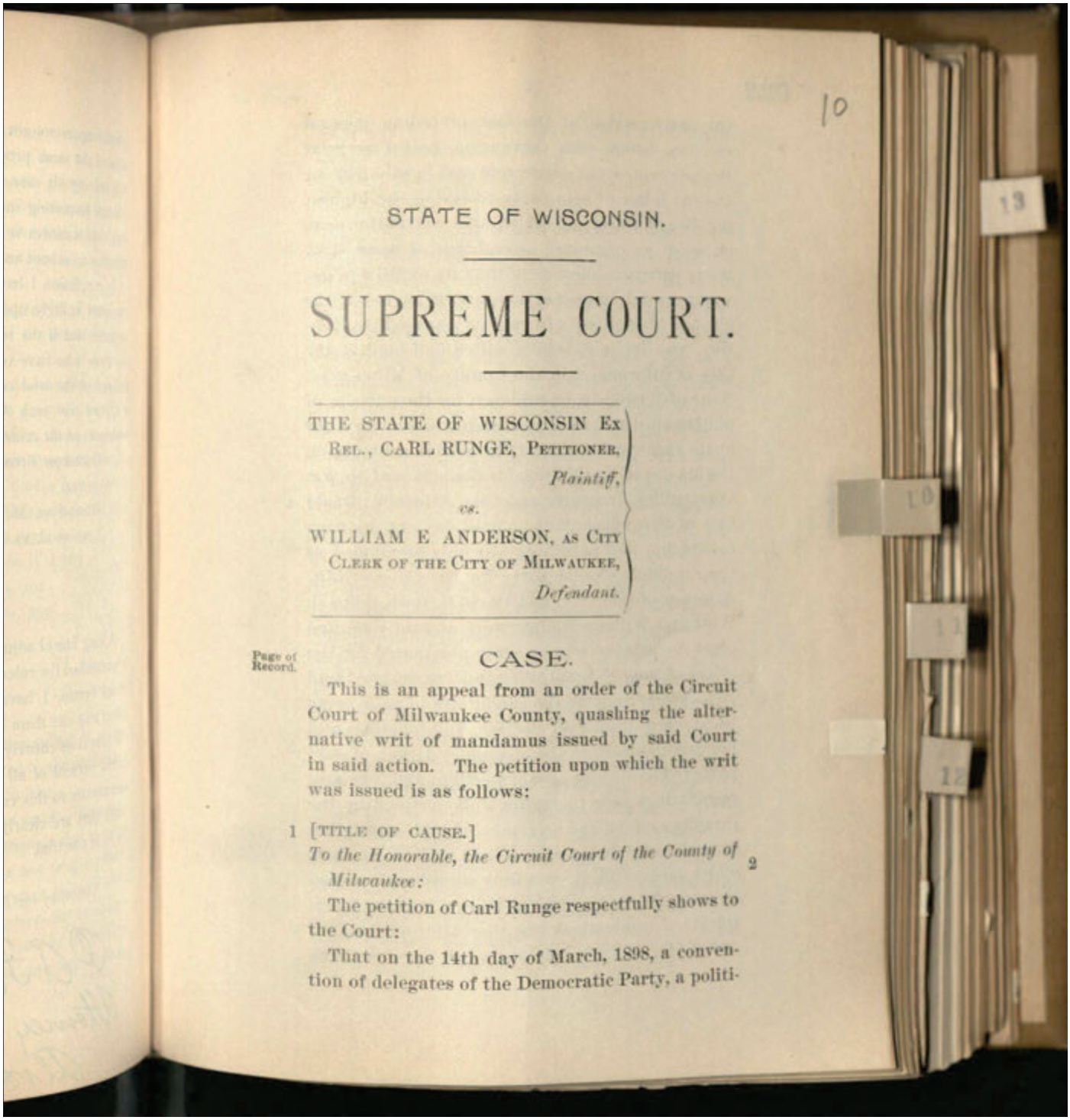
SERVICE

UNIVERSITY SERVICE

- Director, Tommy G. Thompson Center on Public Leadership — July 2021 – Present
- Senator, University of Wisconsin–Madison Faculty Senate — Fall 2023 – Present
- Member, Steering Committee, Wisconsin Exchange — October 2025 – Present
- Member, Advisory Board, Center for the Study of Liberal Democracy — January 2019 – Present
- Field chair, Political methodology — Fall 2019 – Spring 2023
- Member, Fall Research Committee — Fall 2019 – Fall 2021
- Coordinator, Models and Data reading group — Fall 2010 – Spring 2019
- Coordinator, American Politics Workshop — Fall 2012 – Spring 2013
- Member, Preliminary examination appeals committee — Fall 2011 – Spring 2013
- Member, Joel Dean Reading Room committee — Fall 2011 – Spring 2013, Fall 2017 – Spring 2018
- Member, Graduate program committee — Fall 2013 – Spring 2014, Fall 2019 – Spring 2020
- Member, Computer services committee — Fall 2014 – Spring 2016
- Member, Publicity and website committee — Fall 2014 – Spring 2016

PROFESSIONAL SERVICE

- Member, Wisconsin Alliance for Civic Trust — 2024 – Present
- Member, Wisconsin Host Committee for the American Bar Association Task Force on Democracy — 2024
  - Conference held July 9, 2024
- Member, Program Committee for the 35th Annual Meeting of the Society for Political Methodology — 2017 – 2018
  - Conference held July 19–21, 2018
- Member, Host and Program Committees for the 34th Annual Meeting of the Society for Political Methodology — 2016 – 2017
  - Conference held July 13–15, 2017
  - http://polmeth.polisci.wisc.edu/
- Member, Statistical Software Award Committee, Society for Political Methodology — 2015 – 2016
- Co-organizer, Conference on Ideal-Point Models — 2014 – 2015
  - Conference held May 1–2, 2015
  - http://idealpoint.tahk.us/
- *Grant reviewer:* National Science Foundation
- *Manuscript referee: American Journal of Political Science*; *American Political Science Review*; *American Politics Research*; *British Journal of Political Science*; *Comparative Political Studies*; *International Journal of Public Opinion Research*; *Journal of Law, Economics, and Organization*; *Journal of Politics*; *Journal of the American Statistical Association*; *Legislative Studies Quarterly*; *Public Choice*; *Public Opinion Quarterly*; *Quarterly Journal of Political Science*; *Political Analysis*; *Statistics and Public Policy*; Springer; Routledge



10

STATE OF WISCONSIN.

SUPREME COURT.

THE STATE OF WISCONSIN Ex Rel., CARL RUNGE, Petitioner, *Plaintiff,*

vs.

WILLIAM E ANDERSON, as City Clerk of the City of Milwaukee, *Defendant.*

Page of Record.

CASE.

This is an appeal from an order of the Circuit Court of Milwaukee County, quashing the alternative writ of mandamus issued by said Court in said action. The petition upon which the writ was issued is as follows:

1 [TITLE OF CAUSE.]

To the Honorable, the Circuit Court of the County of Milwaukee: 2

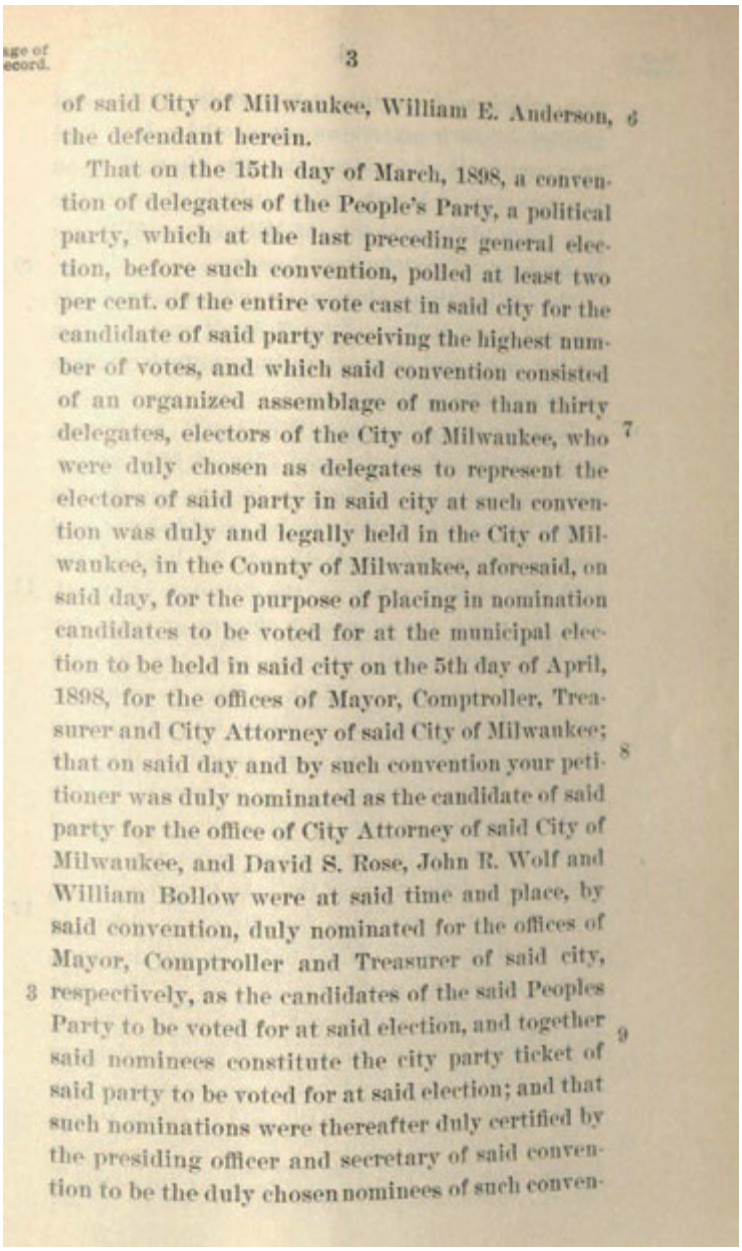
The petition of Carl Runge respectfully shows to the Court:

That on the 14th day of March, 1898, a convention of delegates of the Democratic Party, a politi-

Lodahl Decl. Ex. B:1

cal party, which at the last preceding general election, before such convention, polled at least two per cent. of the entire vote cast in said city for the candidate of said party receiving the highest number of votes, and which said convention consisted of an organized assemblage of more than 3
thirty delegates, electors of the City of Milwaukee, who were duly chosen as delegates to represent the electors of said party in said city at such convention, was duly and legally called and held in the City of Milwaukee, in the County of Milwaukee, State of Wisconsin, on said day, for the purpose of placing in nomination candidates to be voted for at the municipal election to be held in said city on the 5th day of April, 1898, for the offices of Mayor, Comptroller, Treasurer and City Attorney of said 4
City of Milwaukee; that on said day and by such convention your petitioner was duly nominated as the candidate of said party for the office of City Attorney of said City, and David S. Rose, John R. Wolf and William Bollow were at said time and place, by said convention, duly nominated for the
2 offices of Mayor, Comptroller and Treasurer of said city, respectively, as the candidates of said party to be voted for at said election, and together said nominees constitute the city party ticket of said 5
party to be voted for at said election; and that said nominations were thereafter duly certified by the presiding officer and secretary of said convention to be the duly chosen nominees of such convention, which said certificate was duly signed and verified by such officers as required by law, and such certificate of nominations was thereafter on the 28th day of March, 1898, duly filed with the City Clerk

Lodahl Decl. Ex. B:2



of said City of Milwaukee, William E. Anderson, 6
the defendant herein.

That on the 15th day of March, 1898, a convention of delegates of the People's Party, a political party, which at the last preceding general election, before such convention, polled at least two per cent. of the entire vote cast in said city for the candidate of said party receiving the highest number of votes, and which said convention consisted of an organized assemblage of more than thirty delegates, electors of the City of Milwaukee, who 7
were duly chosen as delegates to represent the electors of said party in said city at such convention was duly and legally held in the City of Milwaukee, in the County of Milwaukee, aforesaid, on said day, for the purpose of placing in nomination candidates to be voted for at the municipal election to be held in said city on the 5th day of April, 1898, for the offices of Mayor, Comptroller, Treasurer and City Attorney of said City of Milwaukee; 8
that on said day and by such convention your petitioner was duly nominated as the candidate of said party for the office of City Attorney of said City of Milwaukee, and David S. Rose, John R. Wolf and William Bollow were at said time and place, by said convention, duly nominated for the offices of Mayor, Comptroller and Treasurer of said city,
3 respectively, as the candidates of the said Peoples Party to be voted for at said election, and together 9
said nominees constitute the city party ticket of said party to be voted for at said election; and that such nominations were thereafter duly certified by the presiding officer and secretary of said convention to be the duly chosen nominees of such conven-

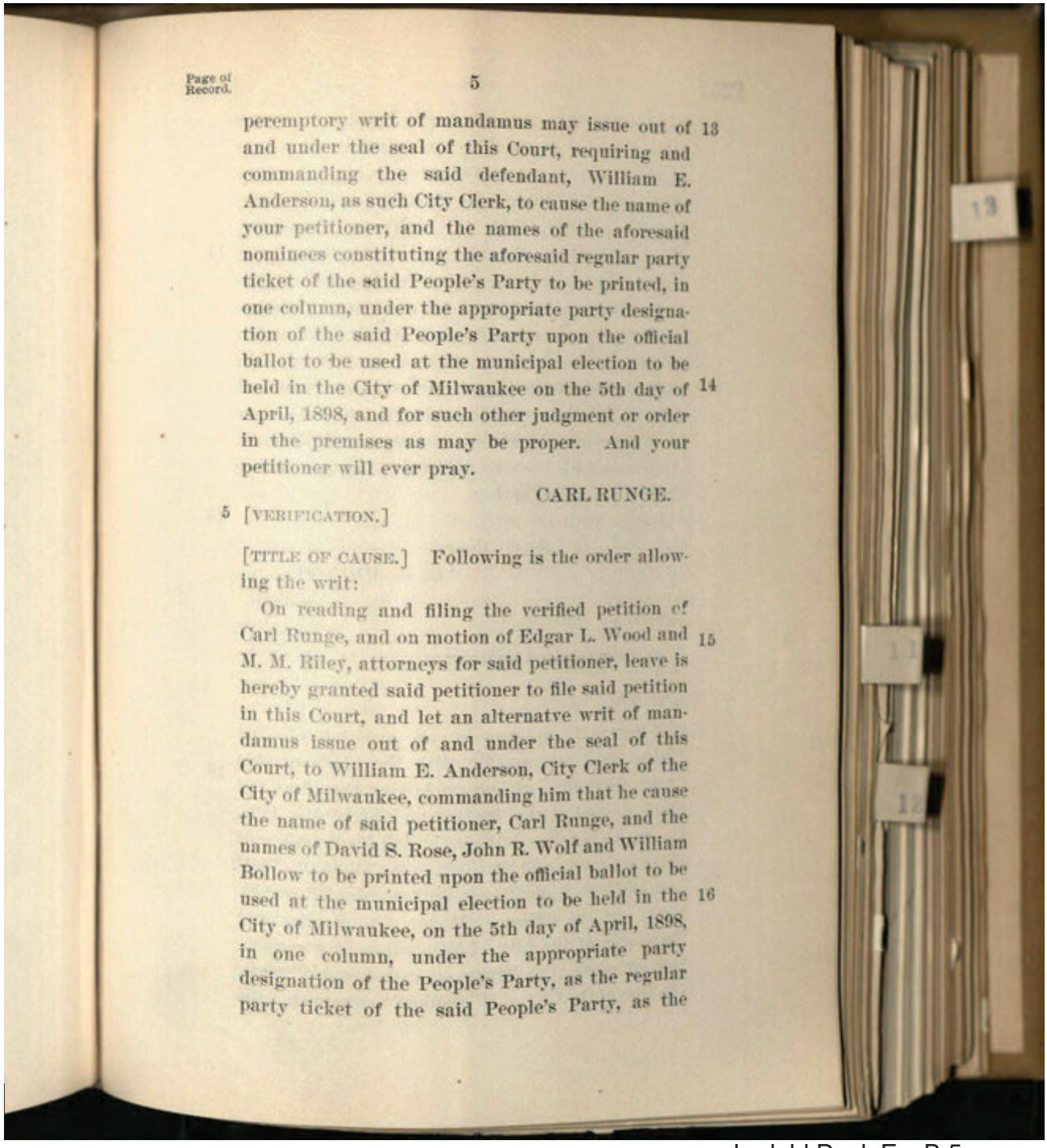
Lodahl Decl. Ex. B:3

tion, which said certificate was duly signed and verified by such officers as required by law, and such certificate of nominations was thereafter on the 28th day of March, 1898, duly filed with the City Clerk of the said City of Milwaukee, William E. Anderson, the defendant herein.

That at the times aforesaid your petitioner and the said David S. Rose, John R. Wolf and William Bollow were and now are duly qualified electors of the said City of Milwaukee.

That the said defendant, William E. Anderson, is the City Clerk of the said City of Milwaukee, and that as such City Clerk he is now engaged in preparing printed ballots to be provided for and used at the municipal election to be held in the said City of Milwaukee on the 5th day of April, 1898, at which the aforesaid officers of said city are to be voted for and elected; and that the said defendant as such City Clerk refuses to cause to be printed and to provide ballots to be used at such election with the regular party ticket of the said People's Party, so nominated as aforesaid by the said convention of the People's Party, printed upon said ballots, in one column, under the appropriate party designation of the said People's Party, and refuses to cause such regular party ticket to be printed upon said official ballot in any manner, except under the party designation of the said Democratic Party and in such Democratic column, and refuses to cause the name of your petitioner to be printed upon said ballot under the appropriate party designation of the said People's Party.

Wherefore, your petitioner prays that such proceedings may be had in due form of law that a



peremptory writ of mandamus may issue out of 13
and under the seal of this Court, requiring and
commanding the said defendant, William E.
Anderson, as such City Clerk, to cause the name of
your petitioner, and the names of the aforesaid
nominees constituting the aforesaid regular party
ticket of the said People's Party to be printed, in
one column, under the appropriate party designa-
tion of the said People's Party upon the official
ballot to be used at the municipal election to be
held in the City of Milwaukee on the 5th day of 14
April, 1898, and for such other judgment or order
in the premises as may be proper. And your
petitioner will ever pray.

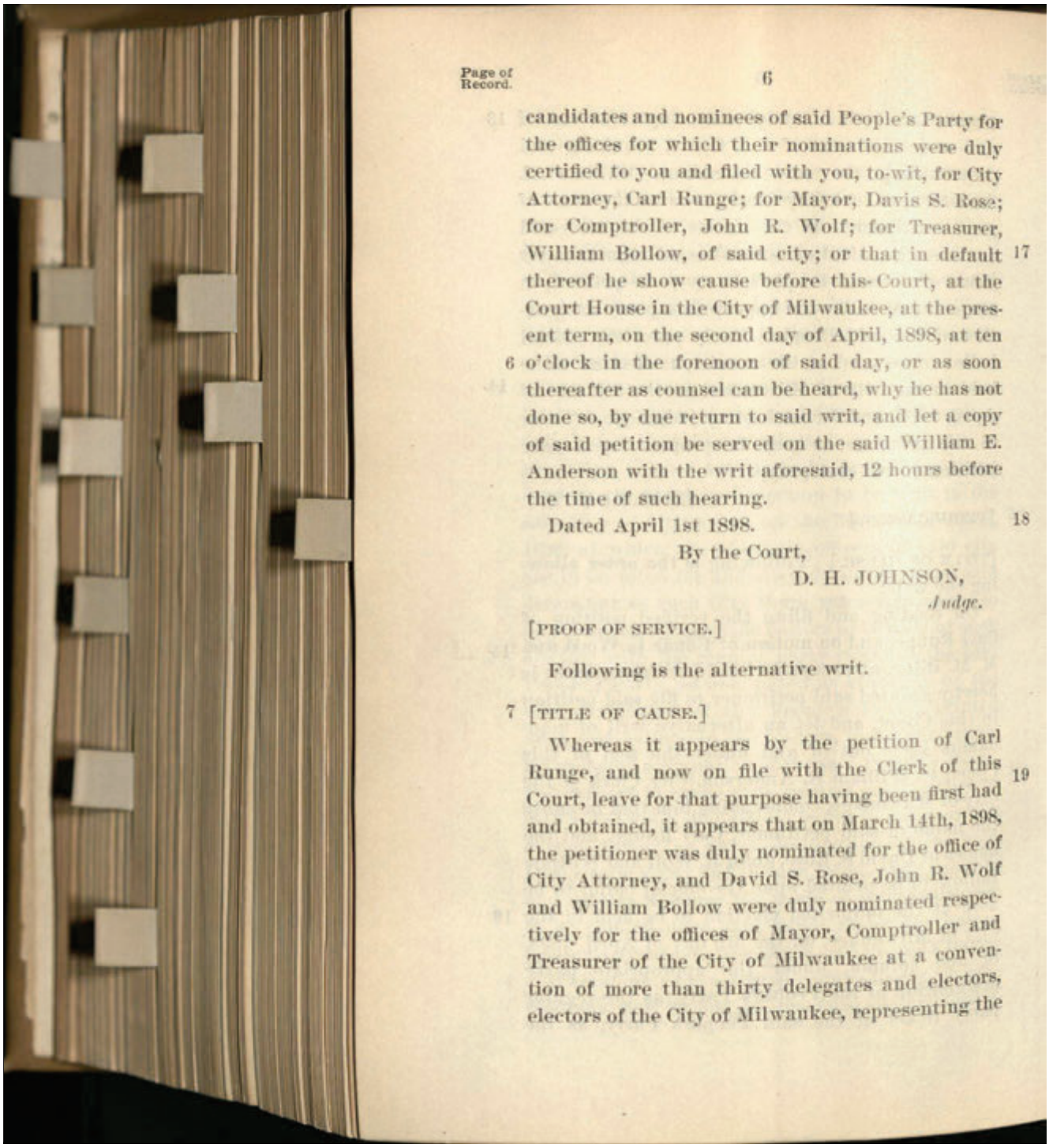
CARL RUNGE.

5 [VERIFICATION.]

[TITLE OF CAUSE.] Following is the order allow-
ing the writ:

On reading and filing the verified petition of
Carl Runge, and on motion of Edgar L. Wood and 15
M. M. Riley, attorneys for said petitioner, leave is
hereby granted said petitioner to file said petition
in this Court, and let an alternatve writ of man-
damus issue out of and under the seal of this
Court, to William E. Anderson, City Clerk of the
City of Milwaukee, commanding him that he cause
the name of said petitioner, Carl Runge, and the
names of David S. Rose, John R. Wolf and William
Bollow to be printed upon the official ballot to be
used at the municipal election to be held in the 16
City of Milwaukee, on the 5th day of April, 1898,
in one column, under the appropriate party
designation of the People's Party, as the regular
party ticket of the said People's Party, as the

Lodahl Decl. Ex. B:5



candidates and nominees of said People's Party for the offices for which their nominations were duly certified to you and filed with you, to-wit, for City Attorney, Carl Runge; for Mayor, Davis S. Rose; for Comptroller, John R. Wolf; for Treasurer, William Bollow, of said city; or that in default 17
thereof he show cause before this Court, at the Court House in the City of Milwaukee, at the present term, on the second day of April, 1898, at ten
6 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why he has not done so, by due return to said writ, and let a copy of said petition be served on the said William E. Anderson with the writ aforesaid, 12 hours before the time of such hearing.

Dated April 1st 1898. 18

By the Court,

D. H. JOHNSON,

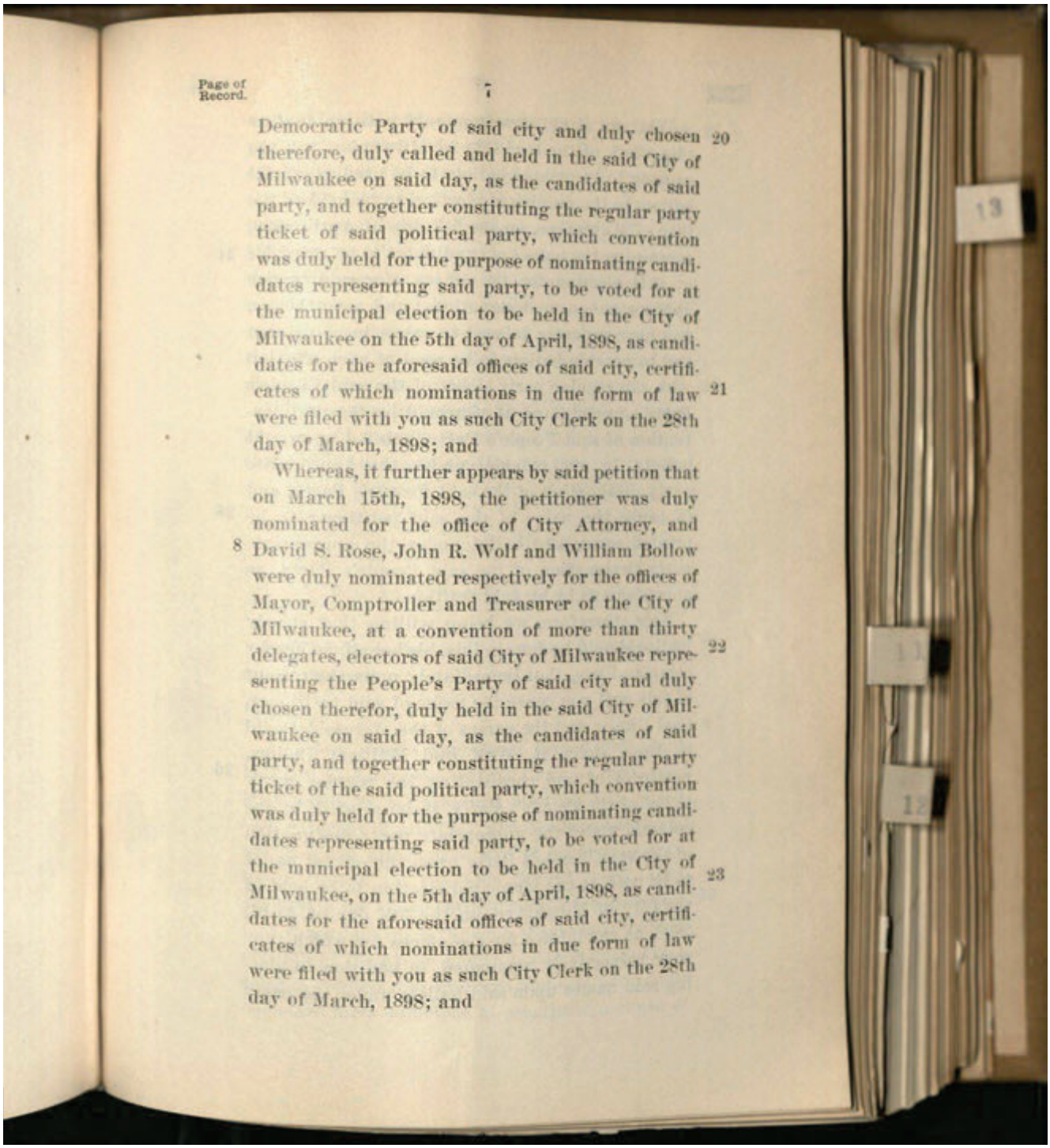
Judge.

[PROOF OF SERVICE.]

Following is the alternative writ.

7 [TITLE OF CAUSE.]

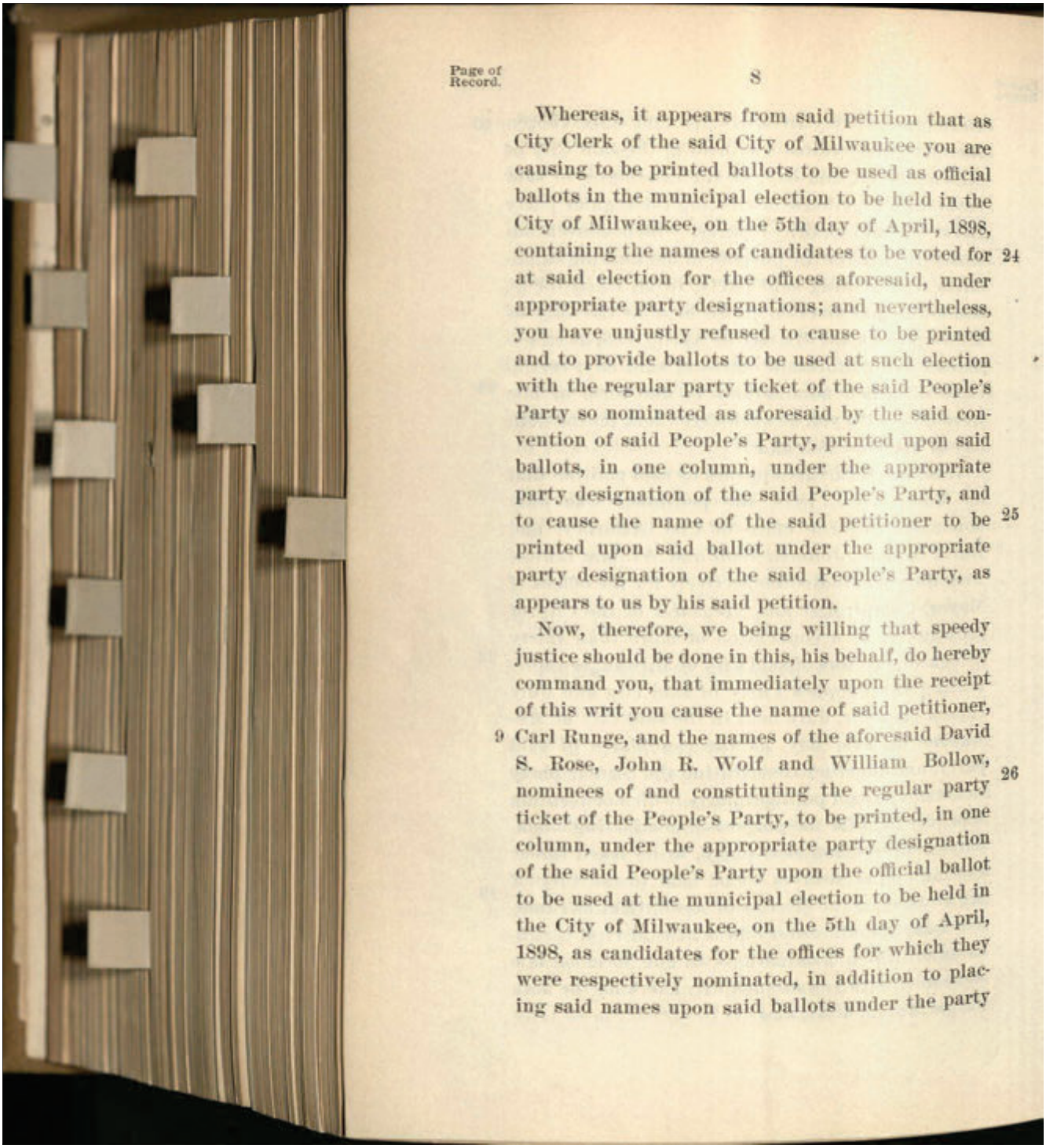
Whereas it appears by the petition of Carl Runge, and now on file with the Clerk of this 19
Court, leave for that purpose having been first had and obtained, it appears that on March 14th, 1898, the petitioner was duly nominated for the office of City Attorney, and David S. Rose, John R. Wolf and William Bollow were duly nominated respectively for the offices of Mayor, Comptroller and Treasurer of the City of Milwaukee at a convention of more than thirty delegates and electors, electors of the City of Milwaukee, representing the



Democratic Party of said city and duly chosen therefore, duly called and held in the said City of Milwaukee on said day, as the candidates of said party, and together constituting the regular party ticket of said political party, which convention was duly held for the purpose of nominating candidates representing said party, to be voted for at the municipal election to be held in the City of Milwaukee on the 5th day of April, 1898, as candidates for the aforesaid offices of said city, certificates of which nominations in due form of law were filed with you as such City Clerk on the 28th day of March, 1898; and

Whereas, it further appears by said petition that on March 15th, 1898, the petitioner was duly nominated for the office of City Attorney, and David S. Rose, John R. Wolf and William Bollow were duly nominated respectively for the offices of Mayor, Comptroller and Treasurer of the City of Milwaukee, at a convention of more than thirty delegates, electors of said City of Milwaukee representing the People's Party of said city and duly chosen therefor, duly held in the said City of Milwaukee on said day, as the candidates of said party, and together constituting the regular party ticket of the said political party, which convention was duly held for the purpose of nominating candidates representing said party, to be voted for at the municipal election to be held in the City of Milwaukee, on the 5th day of April, 1898, as candidates for the aforesaid offices of said city, certificates of which nominations in due form of law were filed with you as such City Clerk on the 28th day of March, 1898; and

Lodahl Decl. Ex. B:7



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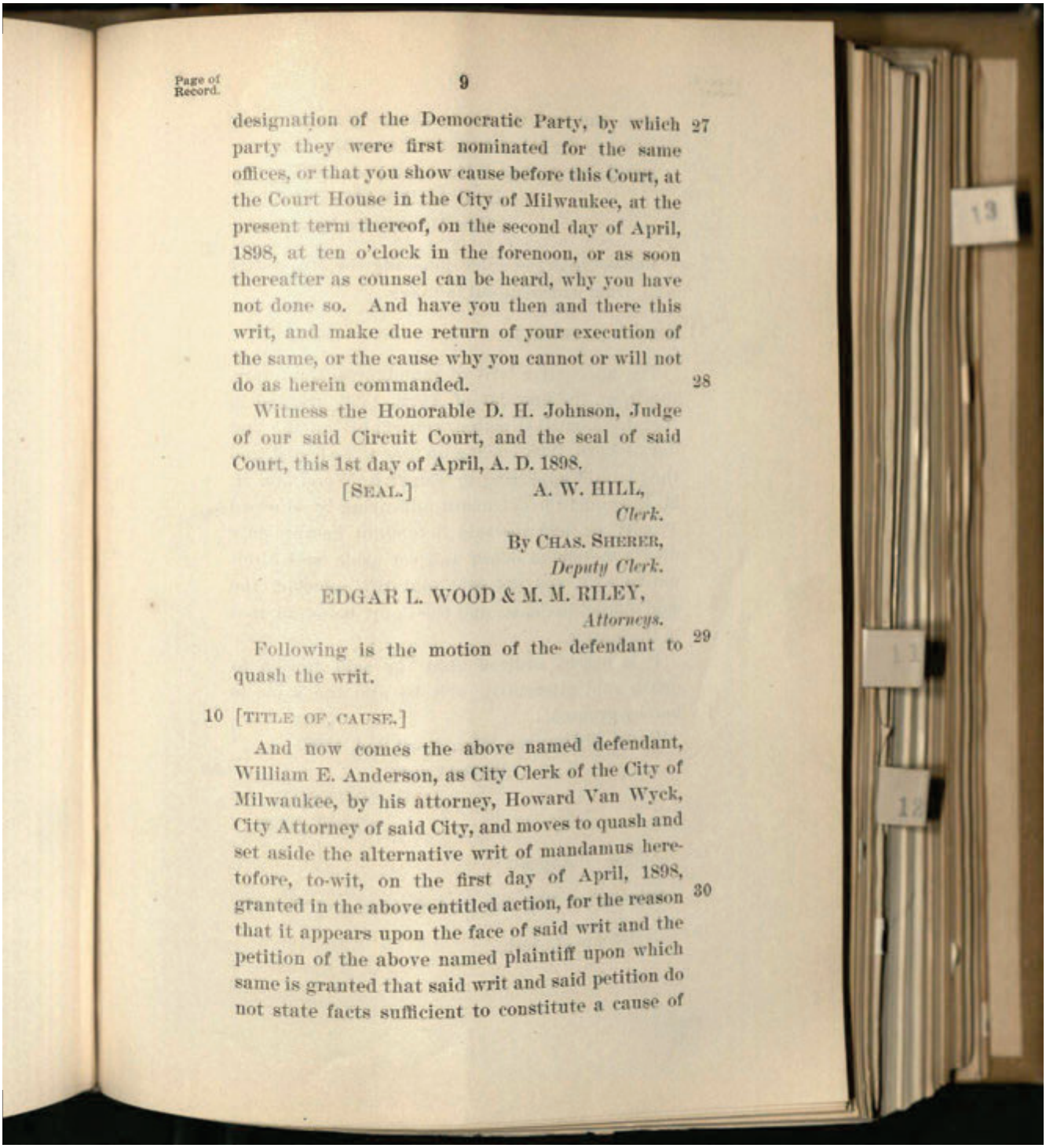
Whereas, it appears from said petition that as City Clerk of the said City of Milwaukee you are causing to be printed ballots to be used as official ballots in the municipal election to be held in the City of Milwaukee, on the 5th day of April, 1898, containing the names of candidates to be voted for 24
at said election for the offices aforesaid, under appropriate party designations; and nevertheless, you have unjustly refused to cause to be printed and to provide ballots to be used at such election with the regular party ticket of the said People's Party so nominated as aforesaid by the said convention of said People's Party, printed upon said ballots, in one column, under the appropriate party designation of the said People's Party, and to cause the name of the said petitioner to be 25
printed upon said ballot under the appropriate party designation of the said People's Party, as appears to us by his said petition.

Now, therefore, we being willing that speedy justice should be done in this, his behalf, do hereby command you, that immediately upon the receipt of this writ you cause the name of said petitioner,
9 Carl Runge, and the names of the aforesaid David S. Rose, John R. Wolf and William Bollow, 26
nominees of and constituting the regular party ticket of the People's Party, to be printed, in one column, under the appropriate party designation of the said People's Party upon the official ballot to be used at the municipal election to be held in the City of Milwaukee, on the 5th day of April, 1898, as candidates for the offices for which they were respectively nominated, in addition to placing said names upon said ballots under the party

Lodahl Decl. Ex. B:8



designation of the Democratic Party, by which party they were first nominated for the same offices, or that you show cause before this Court, at the Court House in the City of Milwaukee, at the present term thereof, on the second day of April, 1898, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why you have not done so. And have you then and there this writ, and make due return of your execution of the same, or the cause why you cannot or will not do as herein commanded.

Witness the Honorable D. H. Johnson, Judge of our said Circuit Court, and the seal of said Court, this 1st day of April, A. D. 1898.

[SEAL.] A. W. HILL,
Clerk.
By CHAS. SHERER,
Deputy Clerk.

EDGAR L. WOOD & M. M. RILEY,
Attorneys.

Following is the motion of the defendant to quash the writ.

[TITLE OF CAUSE.]

And now comes the above named defendant, William E. Anderson, as City Clerk of the City of Milwaukee, by his attorney, Howard Van Wyck, City Attorney of said City, and moves to quash and set aside the alternative writ of mandamus heretofore, to-wit, on the first day of April, 1898, granted in the above entitled action, for the reason that it appears upon the face of said writ and the petition of the above named plaintiff upon which same is granted that said writ and said petition do not state facts sufficient to constitute a cause of

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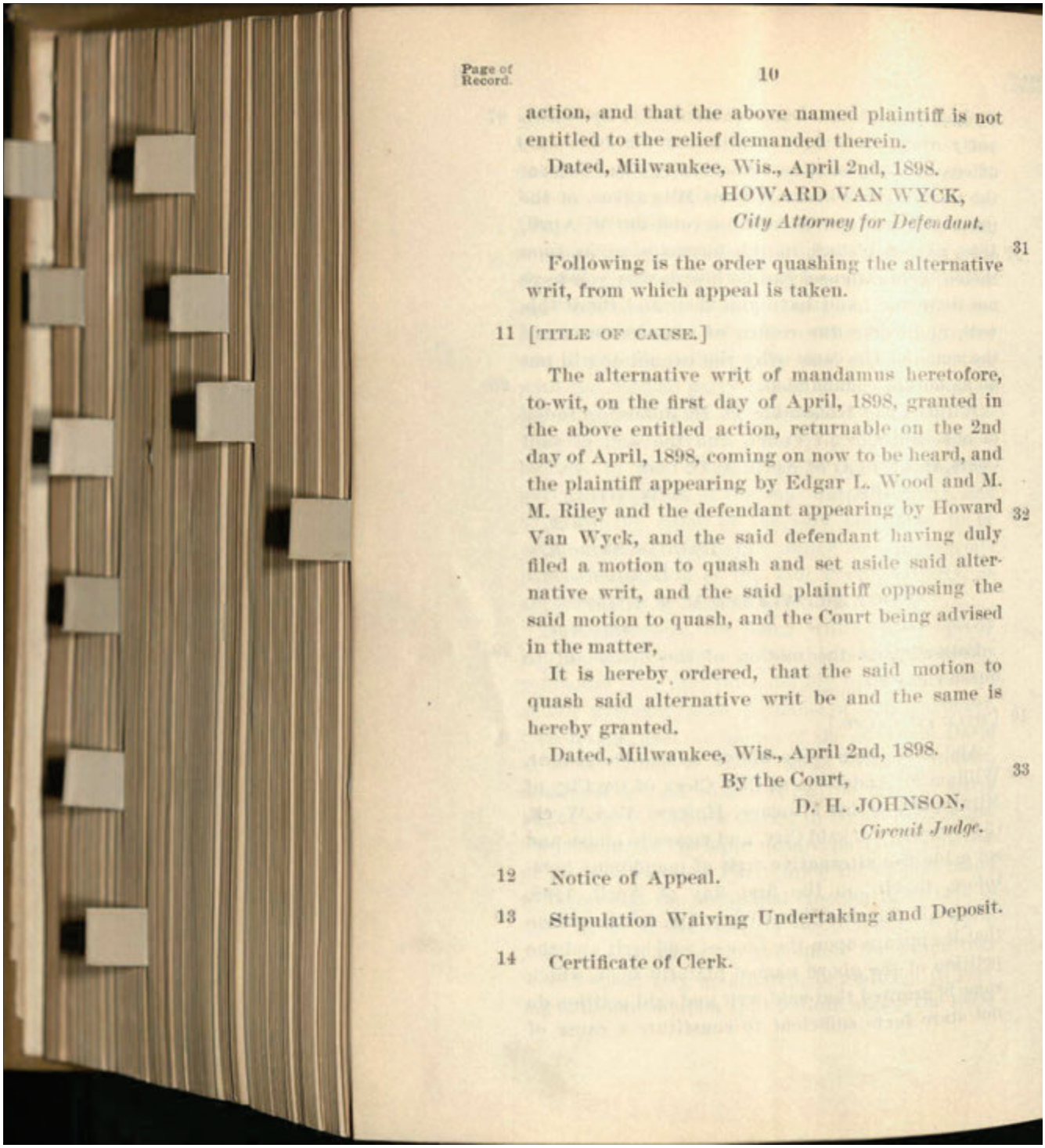


action, and that the above named plaintiff is not entitled to the relief demanded therein.

Dated, Milwaukee, Wis., April 2nd, 1898.

HOWARD VAN WYCK,
City Attorney for Defendant.

31 Following is the order quashing the alternative writ, from which appeal is taken.

11 [TITLE OF CAUSE.]

The alternative writ of mandamus heretofore, to-wit, on the first day of April, 1898, granted in the above entitled action, returnable on the 2nd day of April, 1898, coming on now to be heard, and the plaintiff appearing by Edgar L. Wood and M. M. Riley and the defendant appearing by Howard 32 Van Wyck, and the said defendant having duly filed a motion to quash and set aside said alternative writ, and the said plaintiff opposing the said motion to quash, and the Court being advised in the matter,

It is hereby ordered, that the said motion to quash said alternative writ be and the same is hereby granted.

Dated, Milwaukee, Wis., April 2nd, 1898.

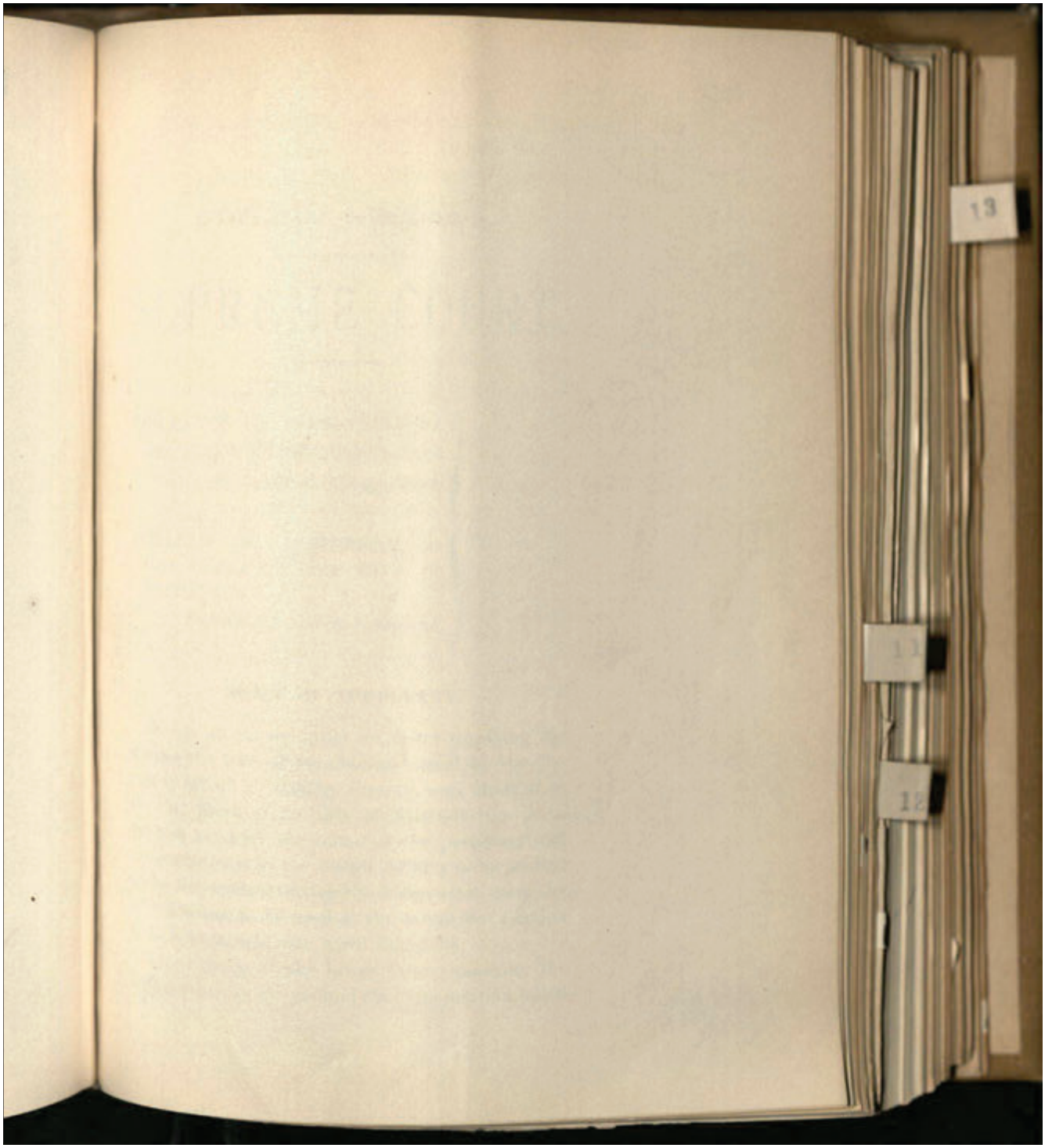
33 By the Court,

D. H. JOHNSON,
Circuit Judge.

12 Notice of Appeal.

13 Stipulation Waiving Undertaking and Deposit.

14 Certificate of Clerk.



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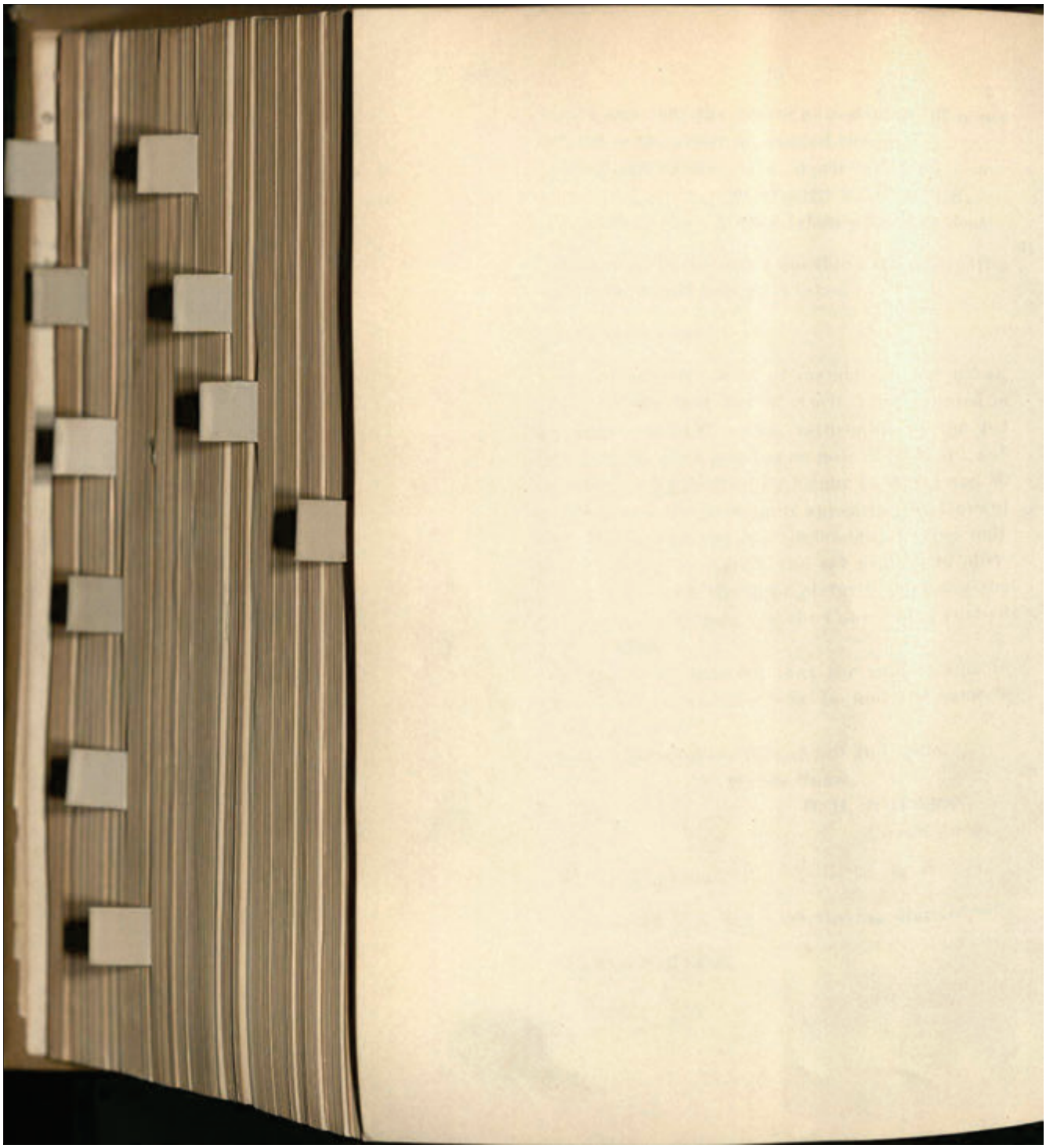

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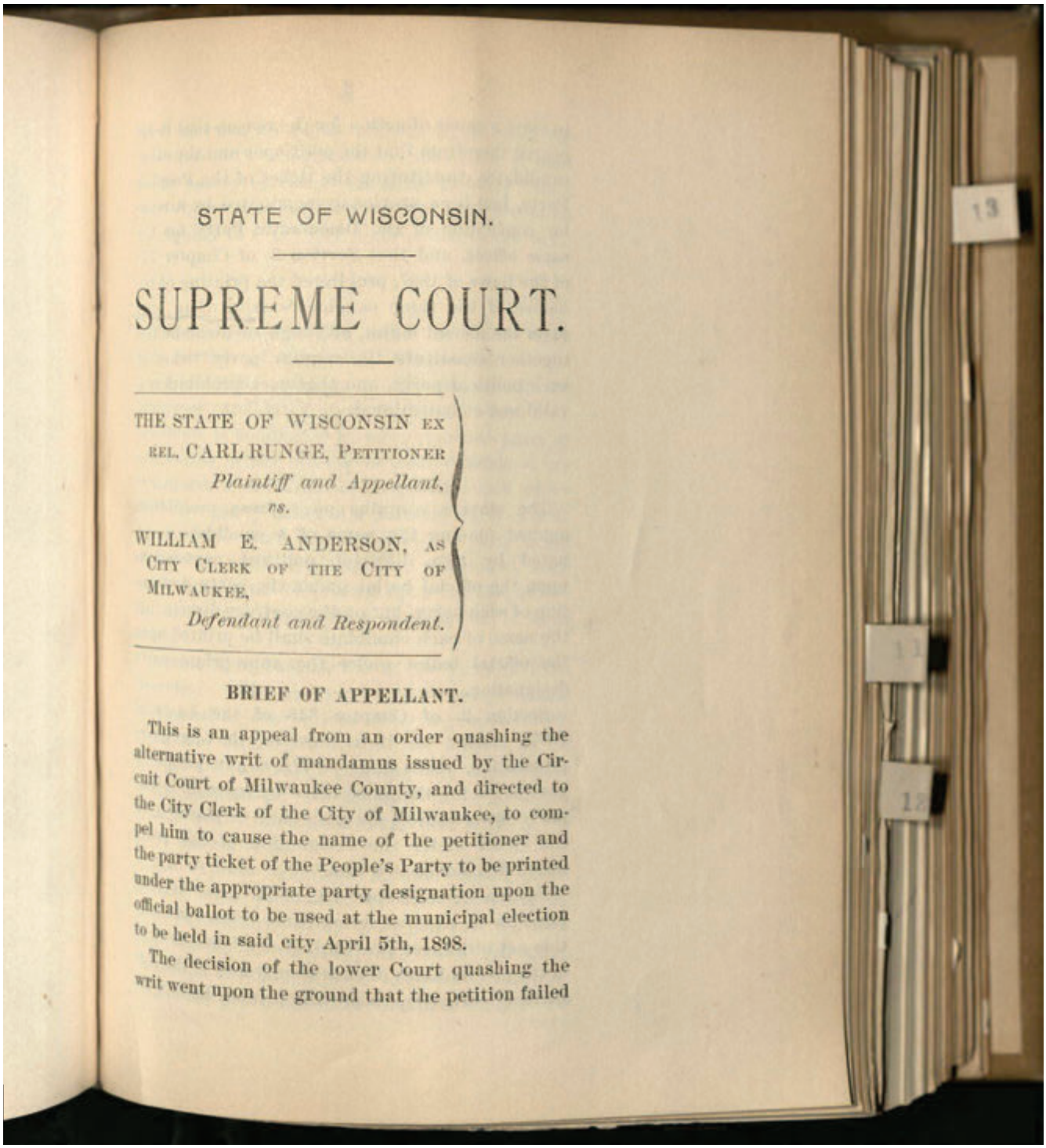


STATE OF WISCONSIN.

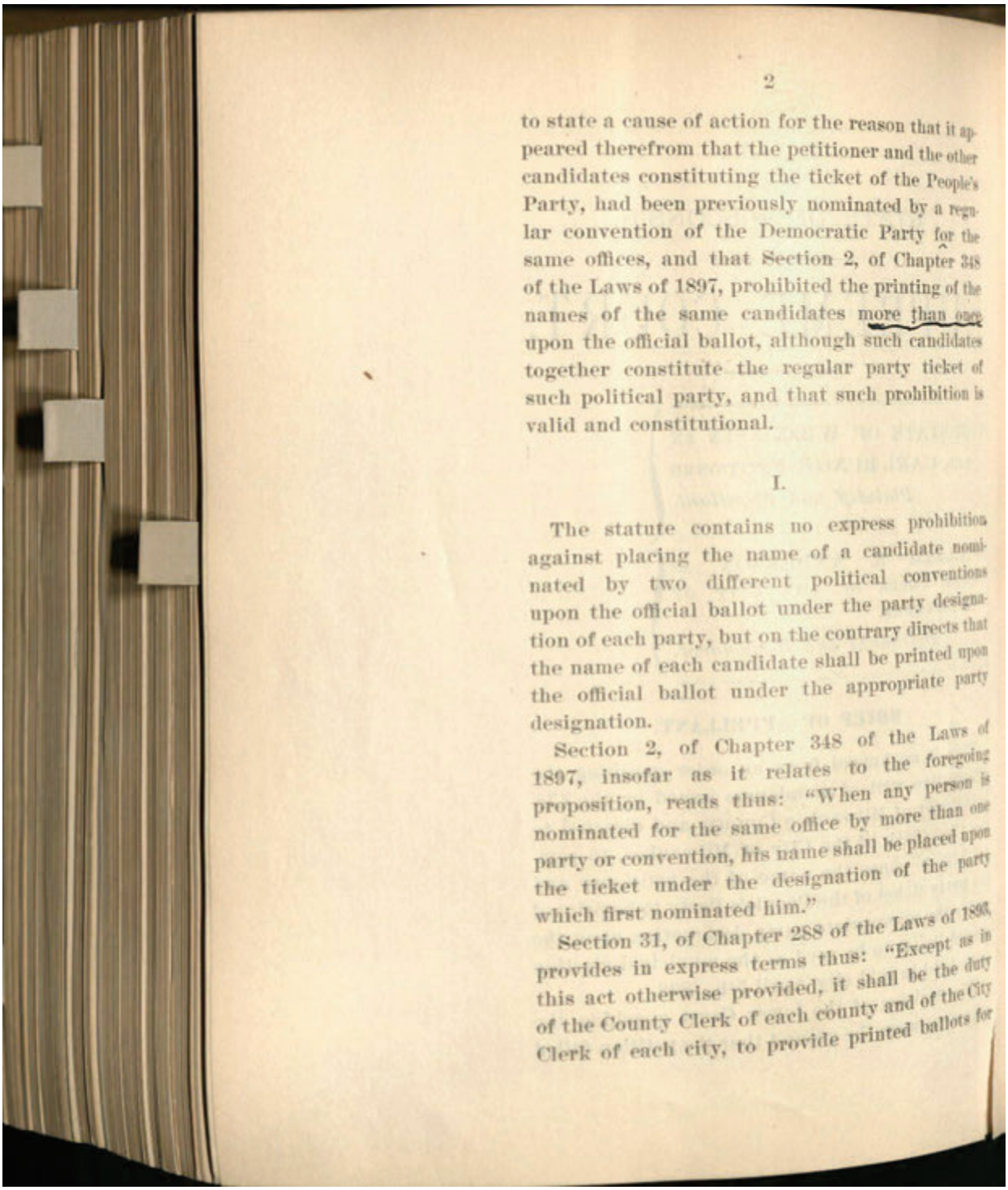
SUPREME COURT.

THE STATE OF WISCONSIN EX REL. CARL RUNGE, PETITIONER
Plaintiff and Appellant,
vs.
WILLIAM E. ANDERSON, AS CITY CLERK OF THE CITY OF MILWAUKEE,
Defendant and Respondent.

BRIEF OF APPELLANT.

This is an appeal from an order quashing the alternative writ of mandamus issued by the Circuit Court of Milwaukee County, and directed to the City Clerk of the City of Milwaukee, to compel him to cause the name of the petitioner and the party ticket of the People's Party to be printed under the appropriate party designation upon the official ballot to be used at the municipal election to be held in said city April 5th, 1898.

The decision of the lower Court quashing the writ went upon the ground that the petition failed



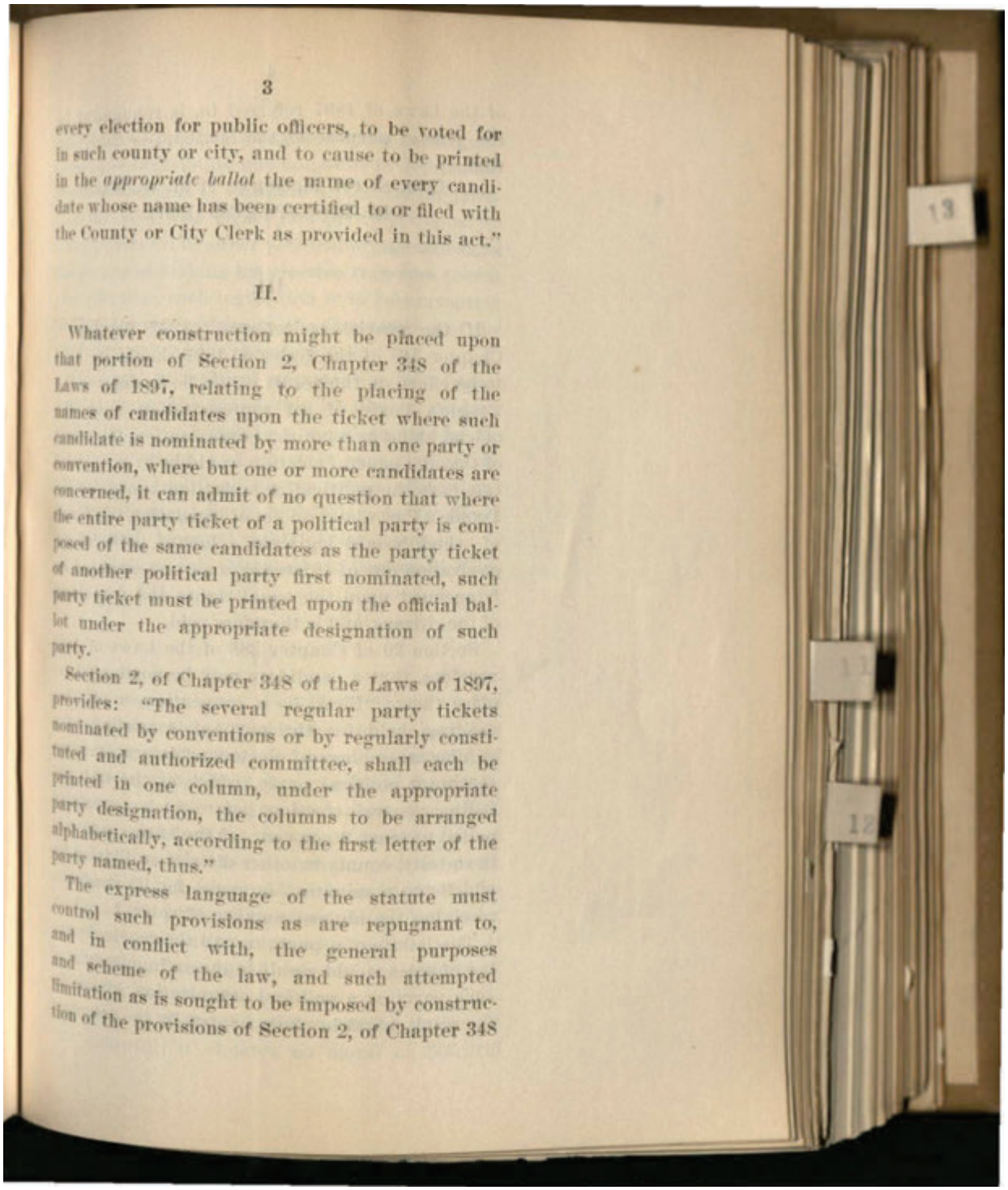
to state a cause of action for the reason that it appeared therefrom that the petitioner and the other candidates constituting the ticket of the People's Party, had been previously nominated by a regular convention of the Democratic Party for the same offices, and that Section 2, of Chapter 348 of the Laws of 1897, prohibited the printing of the names of the same candidates more than once upon the official ballot, although such candidates together constitute the regular party ticket of such political party, and that such prohibition is valid and constitutional.

I.

The statute contains no express prohibition against placing the name of a candidate nominated by two different political conventions upon the official ballot under the party designation of each party, but on the contrary directs that the name of each candidate shall be printed upon the official ballot under the appropriate party designation.

Section 2, of Chapter 348 of the Laws of 1897, insofar as it relates to the foregoing proposition, reads thus: "When any person is nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him."

Section 31, of Chapter 288 of the Laws of 1893, provides in express terms thus: "Except as in this act otherwise provided, it shall be the duty of the County Clerk of each county and of the City Clerk of each city, to provide printed ballots for



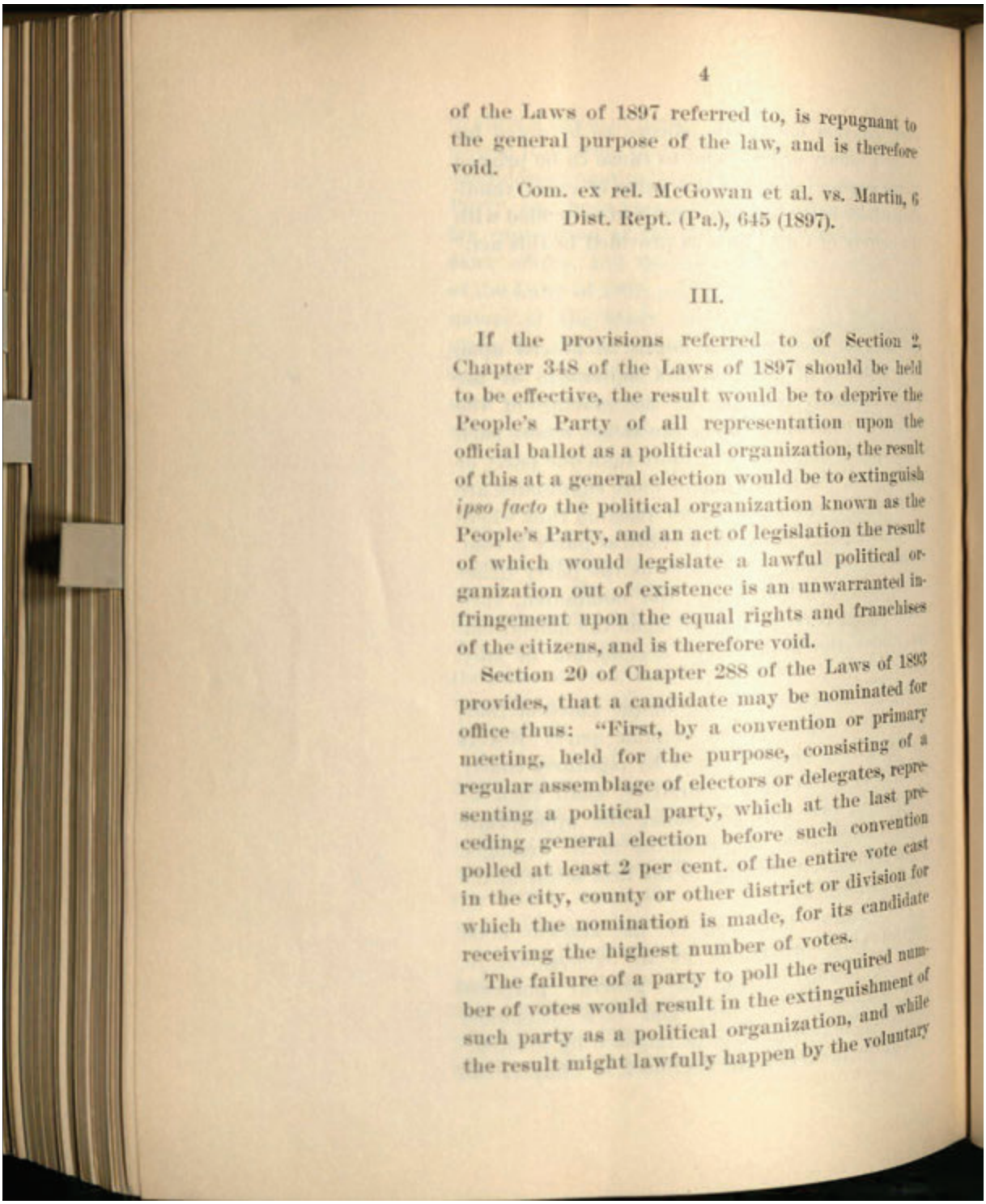
every election for public officers, to be voted for in such county or city, and to cause to be printed in the *appropriate ballot* the name of every candidate whose name has been certified to or filed with the County or City Clerk as provided in this act."

II.

Whatever construction might be placed upon that portion of Section 2, Chapter 348 of the Laws of 1897, relating to the placing of the names of candidates upon the ticket where such candidate is nominated by more than one party or convention, where but one or more candidates are concerned, it can admit of no question that where the entire party ticket of a political party is composed of the same candidates as the party ticket of another political party first nominated, such party ticket must be printed upon the official ballot under the appropriate designation of such party.

Section 2, of Chapter 348 of the Laws of 1897, provides: "The several regular party tickets nominated by conventions or by regularly constituted and authorized committee, shall each be printed in one column, under the appropriate party designation, the columns to be arranged alphabetically, according to the first letter of the party named, thus."

The express language of the statute must control such provisions as are repugnant to, and in conflict with, the general purposes and scheme of the law, and such attempted limitation as is sought to be imposed by construction of the provisions of Section 2, of Chapter 348



of the Laws of 1897 referred to, is repugnant to the general purpose of the law, and is therefore void.

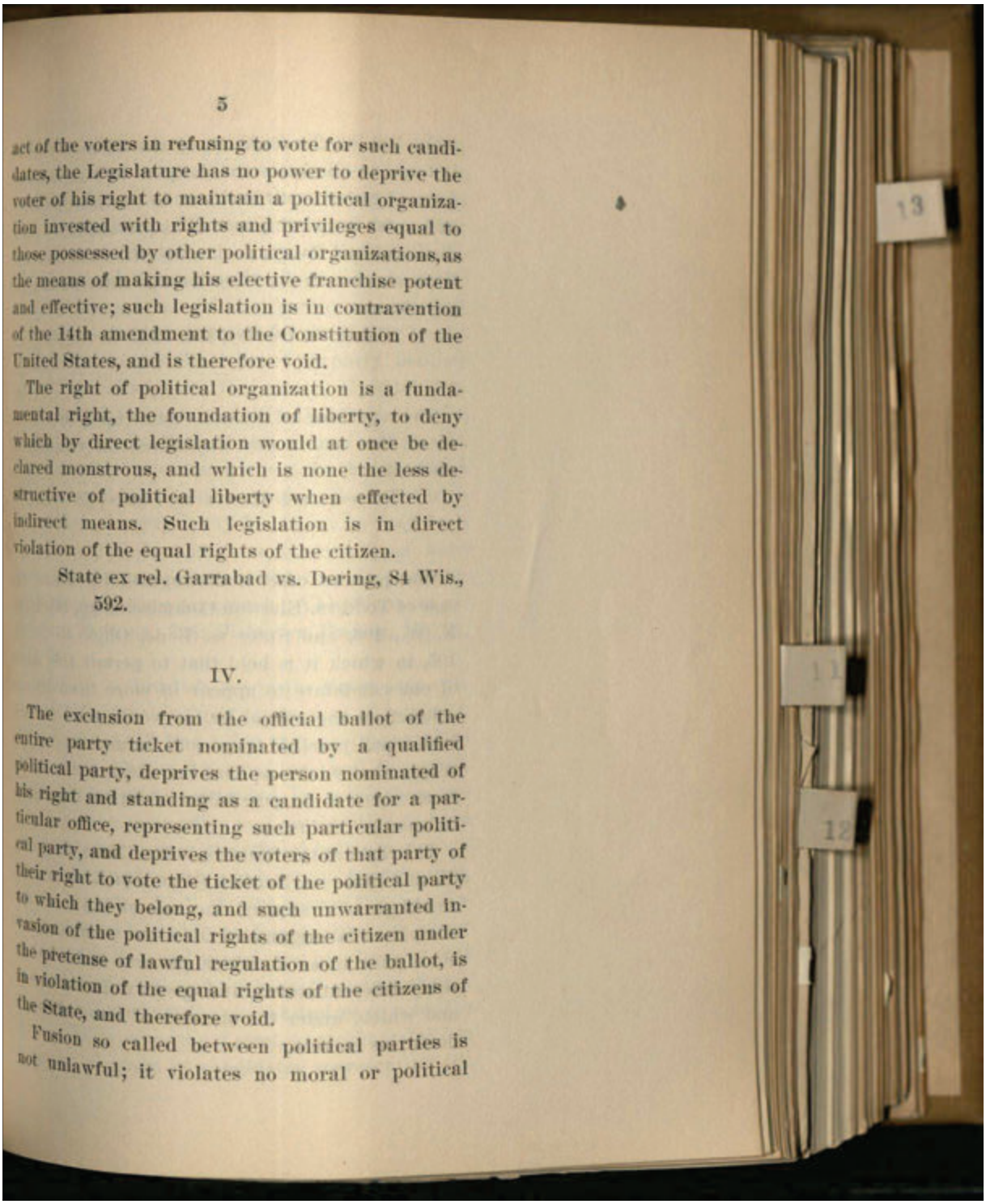
Com. ex rel. McGowan et al. vs. Martin, 6 Dist. Rept. (Pa.), 645 (1897).

III.

If the provisions referred to of Section 2, Chapter 348 of the Laws of 1897 should be held to be effective, the result would be to deprive the People's Party of all representation upon the official ballot as a political organization, the result of this at a general election would be to extinguish *ipso facto* the political organization known as the People's Party, and an act of legislation the result of which would legislate a lawful political organization out of existence is an unwarranted infringement upon the equal rights and franchises of the citizens, and is therefore void.

Section 20 of Chapter 288 of the Laws of 1893 provides, that a candidate may be nominated for office thus: "First, by a convention or primary meeting, held for the purpose, consisting of a regular assemblage of electors or delegates, representing a political party, which at the last preceding general election before such convention polled at least 2 per cent. of the entire vote cast in the city, county or other district or division for which the nomination is made, for its candidate receiving the highest number of votes.

The failure of a party to poll the required number of votes would result in the extinguishment of such party as a political organization, and while the result might lawfully happen by the voluntary



act of the voters in refusing to vote for such candidates, the Legislature has no power to deprive the voter of his right to maintain a political organization invested with rights and privileges equal to those possessed by other political organizations, as the means of making his elective franchise potent and effective; such legislation is in contravention of the 14th amendment to the Constitution of the United States, and is therefore void.

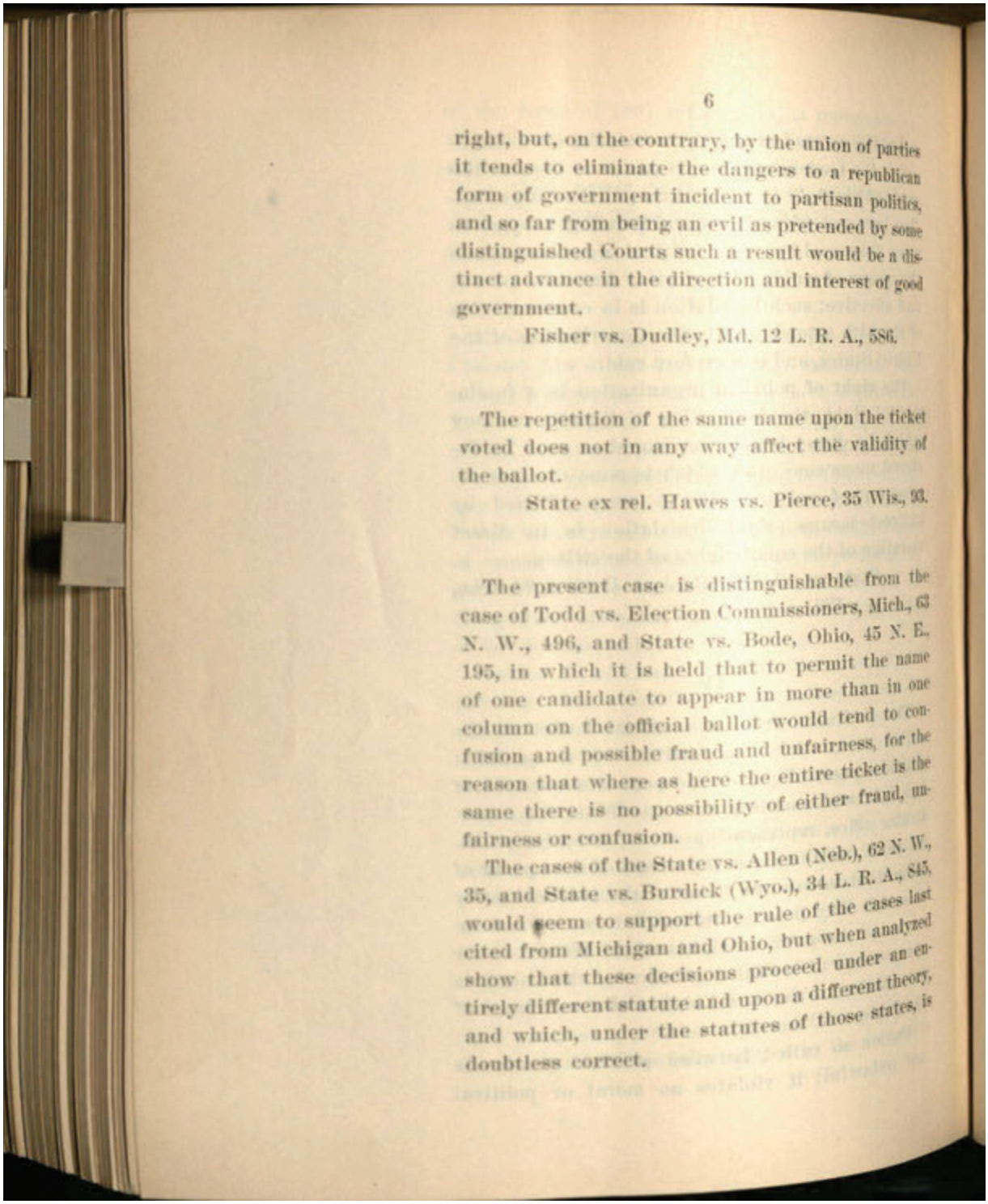
The right of political organization is a fundamental right, the foundation of liberty, to deny which by direct legislation would at once be declared monstrous, and which is none the less destructive of political liberty when effected by indirect means. Such legislation is in direct violation of the equal rights of the citizen.

State ex rel. Garrabad vs. Dering, 84 Wis., 592.

IV.

The exclusion from the official ballot of the entire party ticket nominated by a qualified political party, deprives the person nominated of his right and standing as a candidate for a particular office, representing such particular political party, and deprives the voters of that party of their right to vote the ticket of the political party to which they belong, and such unwarranted invasion of the political rights of the citizen under the pretense of lawful regulation of the ballot, is in violation of the equal rights of the citizens of the State, and therefore void.

Fusion so called between political parties is not unlawful; it violates no moral or political



right, but, on the contrary, by the union of parties it tends to eliminate the dangers to a republican form of government incident to partisan politics, and so far from being an evil as pretended by some distinguished Courts such a result would be a distinct advance in the direction and interest of good government.

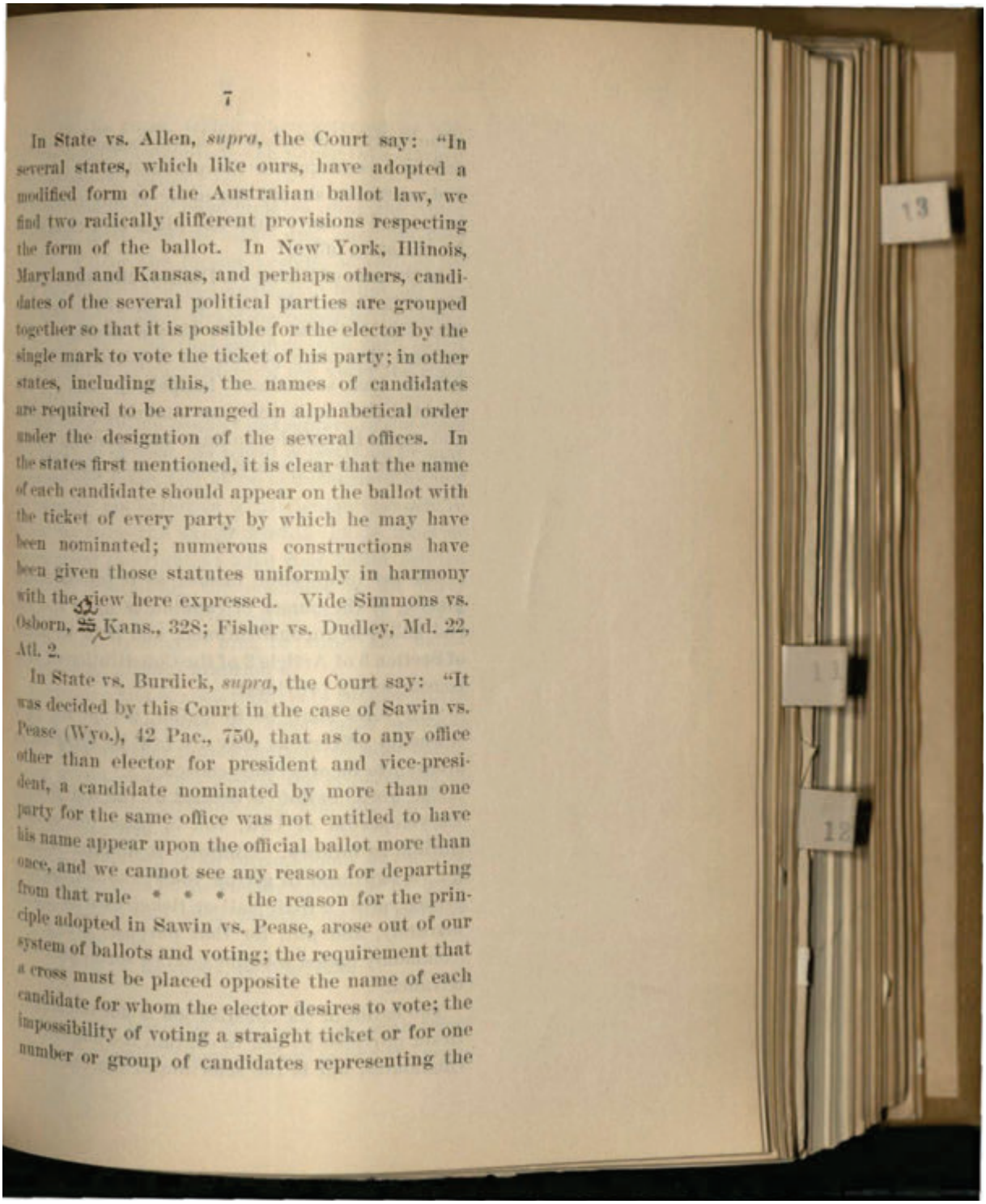
Fisher vs. Dudley, Md. 12 L. R. A., 586.

The repetition of the same name upon the ticket voted does not in any way affect the validity of the ballot.

State ex rel. Hawes vs. Pierce, 35 Wis., 93.

The present case is distinguishable from the case of Todd vs. Election Commissioners, Mich., 63 N. W., 496, and State vs. Bode, Ohio, 45 N. E., 195, in which it is held that to permit the name of one candidate to appear in more than in one column on the official ballot would tend to confusion and possible fraud and unfairness, for the reason that where as here the entire ticket is the same there is no possibility of either fraud, unfairness or confusion.

The cases of the State vs. Allen (Neb.), 62 N. W., 35, and State vs. Burdick (Wyo.), 34 L. R. A., 845, would seem to support the rule of the cases last cited from Michigan and Ohio, but when analyzed show that these decisions proceed under an entirely different statute and upon a different theory, and which, under the statutes of those states, is doubtless correct.



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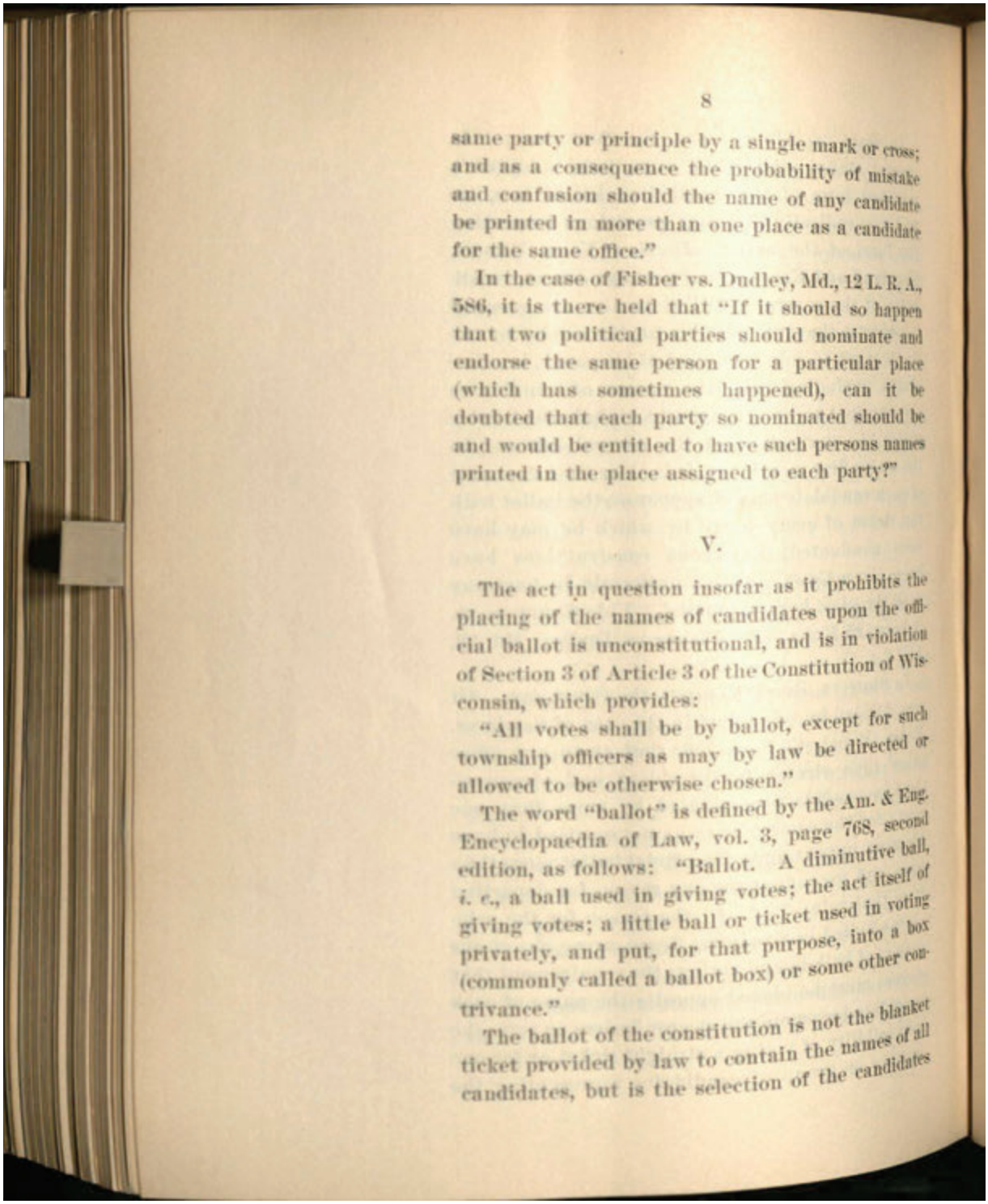
In State vs. Allen, *supra*, the Court say: "In several states, which like ours, have adopted a modified form of the Australian ballot law, we find two radically different provisions respecting the form of the ballot. In New York, Illinois, Maryland and Kansas, and perhaps others, candidates of the several political parties are grouped together so that it is possible for the elector by the single mark to vote the ticket of his party; in other states, including this, the names of candidates are required to be arranged in alphabetical order under the designtion of the several offices. In the states first mentioned, it is clear that the name of each candidate should appear on the ballot with the ticket of every party by which he may have been nominated; numerous constructions have been given those statutes uniformly in harmony with the view here expressed. Vide Simmons vs. Osborn, 25 Kans., 328; Fisher vs. Dudley, Md. 22, Atl. 2.

In State vs. Burdick, *supra*, the Court say: "It was decided by this Court in the case of Sawin vs. Pease (Wyo.), 42 Pac., 750, that as to any office other than elector for president and vice-president, a candidate nominated by more than one party for the same office was not entitled to have his name appear upon the official ballot more than once, and we cannot see any reason for departing from that rule * * * the reason for the principle adopted in Sawin vs. Pease, arose out of our system of ballots and voting; the requirement that a cross must be placed opposite the name of each candidate for whom the elector desires to vote; the impossibility of voting a straight ticket or for one number or group of candidates representing the



same party or principle by a single mark or cross; and as a consequence the probability of mistake and confusion should the name of any candidate be printed in more than one place as a candidate for the same office."

In the case of Fisher vs. Dudley, Md., 12 L. R. A., 586, it is there held that "If it should so happen that two political parties should nominate and endorse the same person for a particular place (which has sometimes happened), can it be doubted that each party so nominated should be and would be entitled to have such persons names printed in the place assigned to each party?"

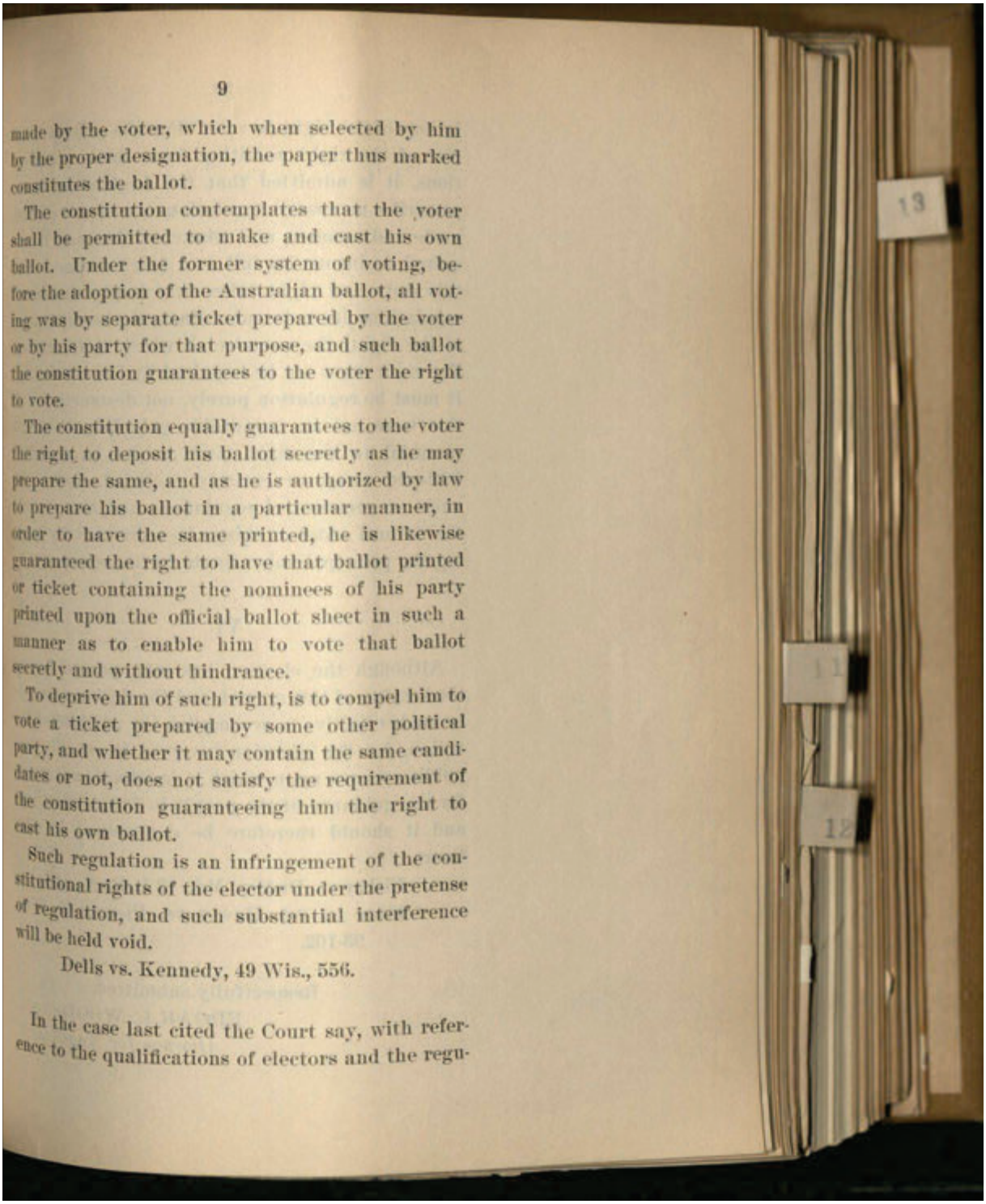
V.

The act in question insofar as it prohibits the placing of the names of candidates upon the official ballot is unconstitutional, and is in violation of Section 3 of Article 3 of the Constitution of Wisconsin, which provides:

"All votes shall be by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen."

The word "ballot" is defined by the Am. & Eng. Encyclopaedia of Law, vol. 3, page 768, second edition, as follows: "Ballot. A diminutive ball, *i. e.*, a ball used in giving votes; the act itself of giving votes; a little ball or ticket used in voting privately, and put, for that purpose, into a box (commonly called a ballot box) or some other contrivance."

The ballot of the constitution is not the blanket ticket provided by law to contain the names of all candidates, but is the selection of the candidates



made by the voter, which when selected by him by the proper designation, the paper thus marked constitutes the ballot.

The constitution contemplates that the voter shall be permitted to make and cast his own ballot. Under the former system of voting, before the adoption of the Australian ballot, all voting was by separate ticket prepared by the voter or by his party for that purpose, and such ballot the constitution guarantees to the voter the right to vote.

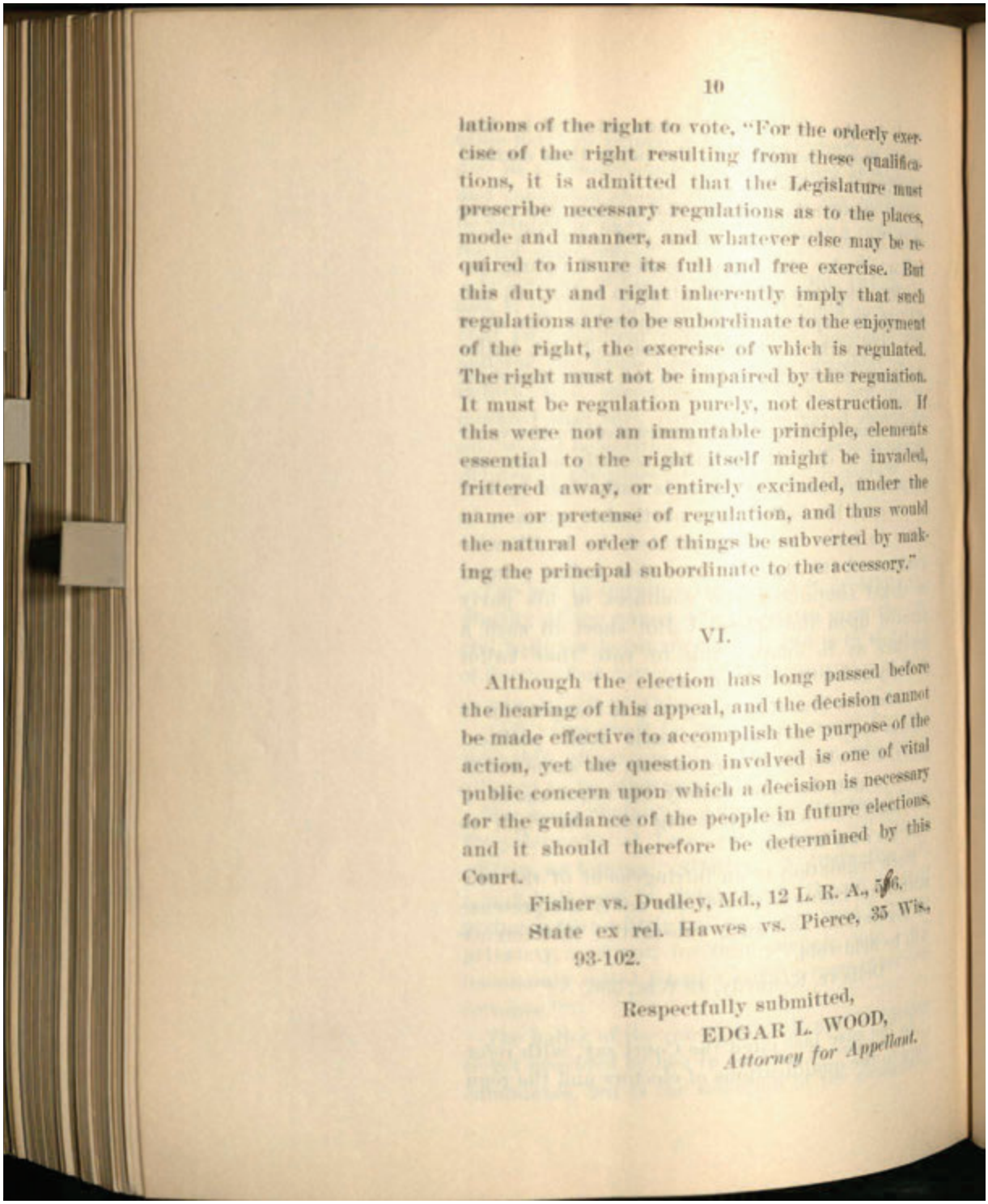
The constitution equally guarantees to the voter the right to deposit his ballot secretly as he may prepare the same, and as he is authorized by law to prepare his ballot in a particular manner, in order to have the same printed, he is likewise guaranteed the right to have that ballot printed or ticket containing the nominees of his party printed upon the official ballot sheet in such a manner as to enable him to vote that ballot secretly and without hindrance.

To deprive him of such right, is to compel him to vote a ticket prepared by some other political party, and whether it may contain the same candidates or not, does not satisfy the requirement of the constitution guaranteeing him the right to cast his own ballot.

Such regulation is an infringement of the constitutional rights of the elector under the pretense of regulation, and such substantial interference will be held void.

Dells vs. Kennedy, 49 Wis., 556.

In the case last cited the Court say, with reference to the qualifications of electors and the regu-



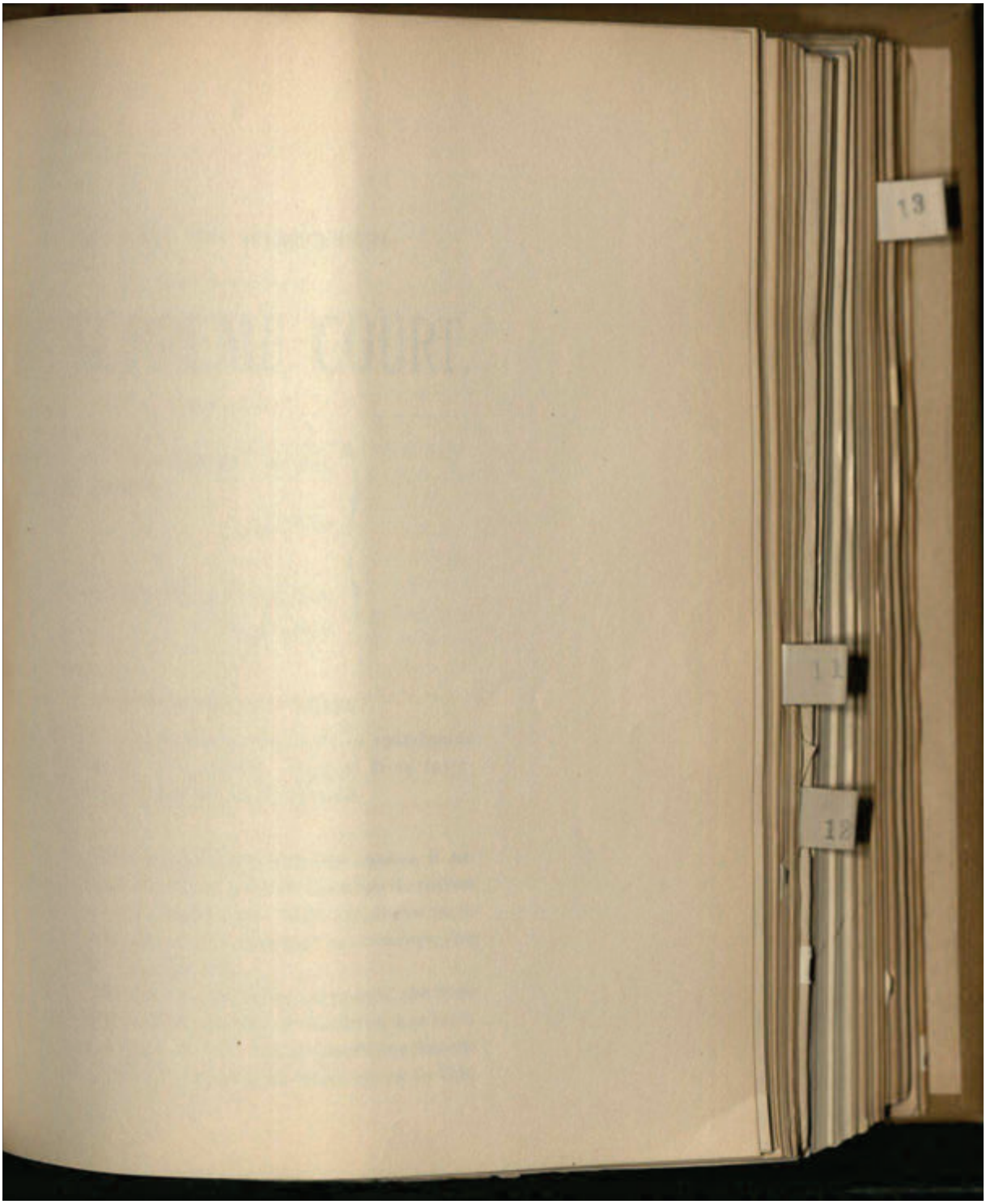
lations of the right to vote, "For the orderly exercise of the right resulting from these qualifications, it is admitted that the Legislature must prescribe necessary regulations as to the places, mode and manner, and whatever else may be required to insure its full and free exercise. But this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is regulated. The right must not be impaired by the regulation. It must be regulation purely, not destruction. If this were not an immutable principle, elements essential to the right itself might be invaded, frittered away, or entirely excinded, under the name or pretense of regulation, and thus would the natural order of things be subverted by making the principal subordinate to the accessory."

VI.

Although the election has long passed before the hearing of this appeal, and the decision cannot be made effective to accomplish the purpose of the action, yet the question involved is one of vital public concern upon which a decision is necessary for the guidance of the people in future elections, and it should therefore be determined by this Court.

Fisher vs. Dudley, Md., 12 L. R. A., 756.
State ex rel. Hawes vs. Pierce, 35 Wis., 93-102.

Respectfully submitted,
EDGAR L. WOOD,
Attorney for Appellant.



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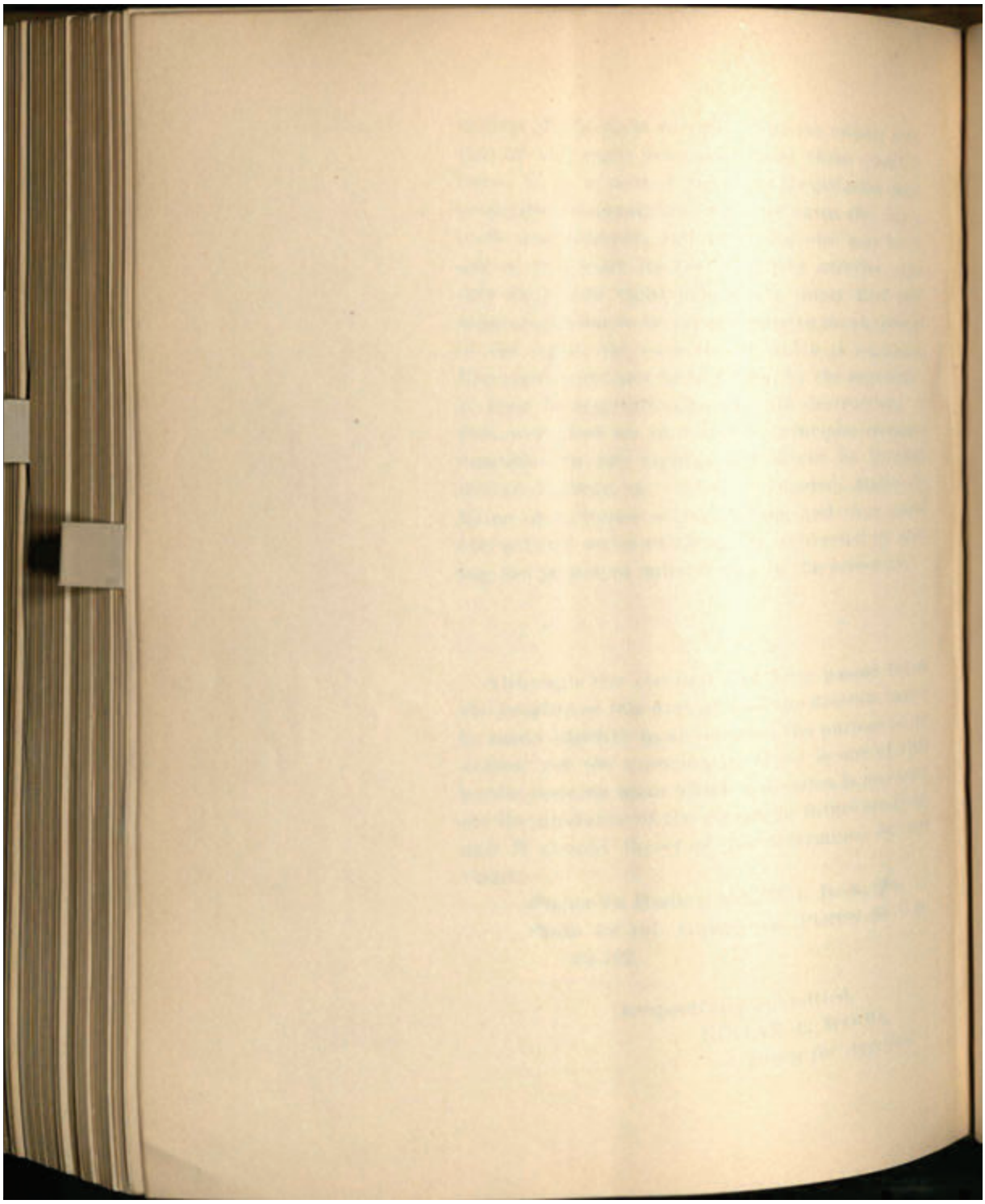

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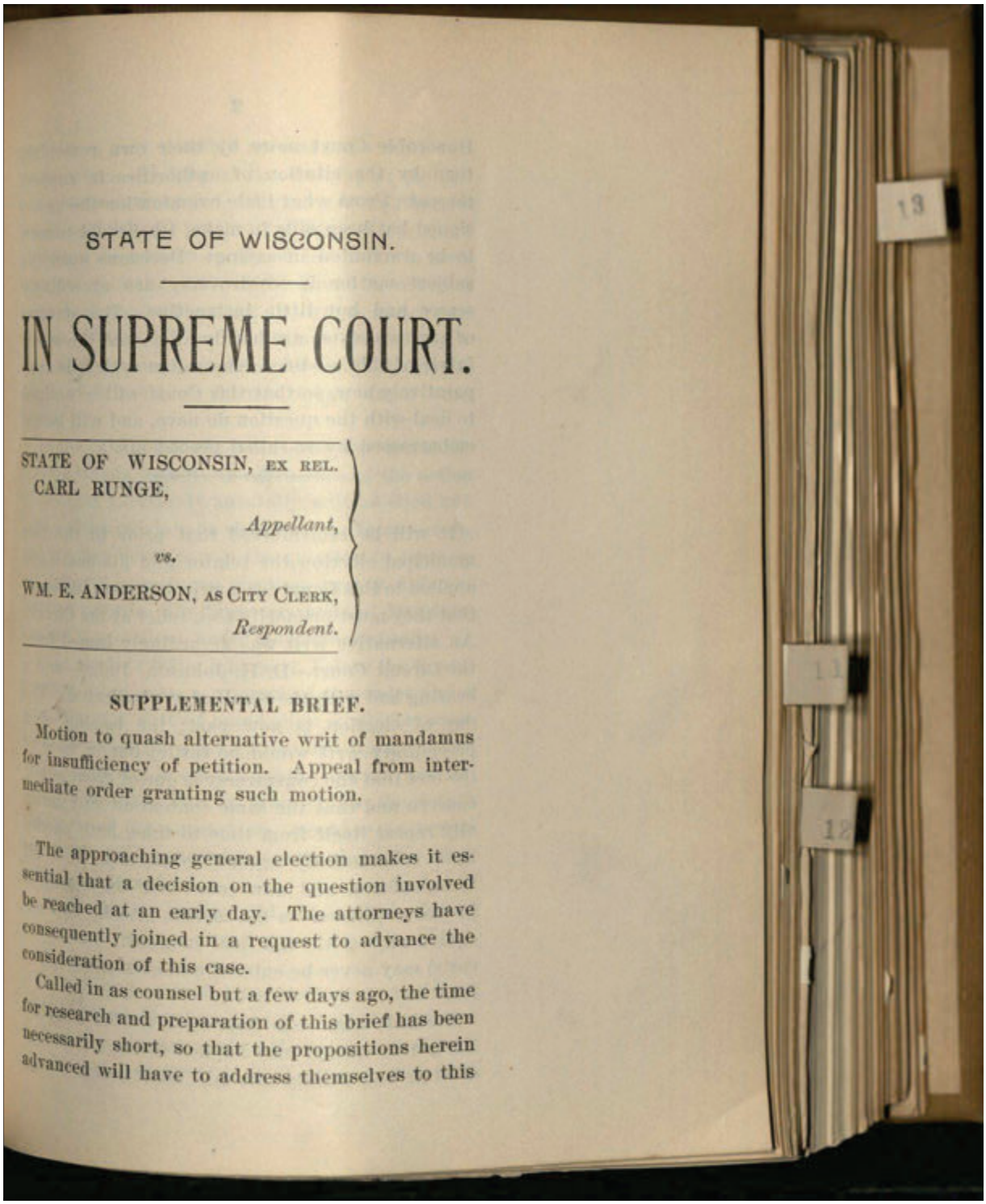


STATE OF WISCONSIN.

IN SUPREME COURT.

STATE OF WISCONSIN, EX REL. CARL RUNGE,

Appellant,

vs.

WM. E. ANDERSON, AS CITY CLERK,

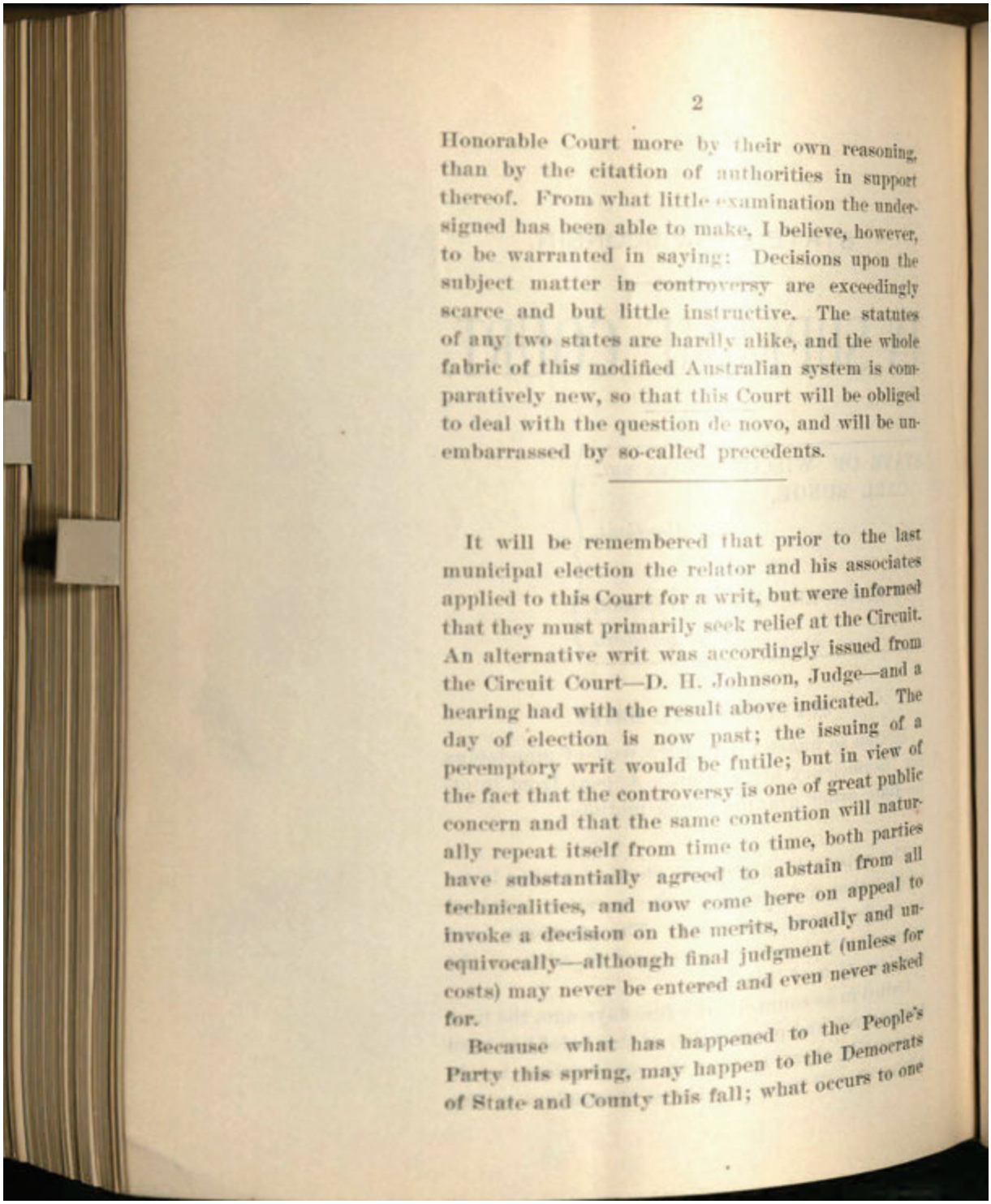
Respondent.

SUPPLEMENTAL BRIEF.

Motion to quash alternative writ of mandamus for insufficiency of petition. Appeal from intermediate order granting such motion.

The approaching general election makes it essential that a decision on the question involved be reached at an early day. The attorneys have consequently joined in a request to advance the consideration of this case.

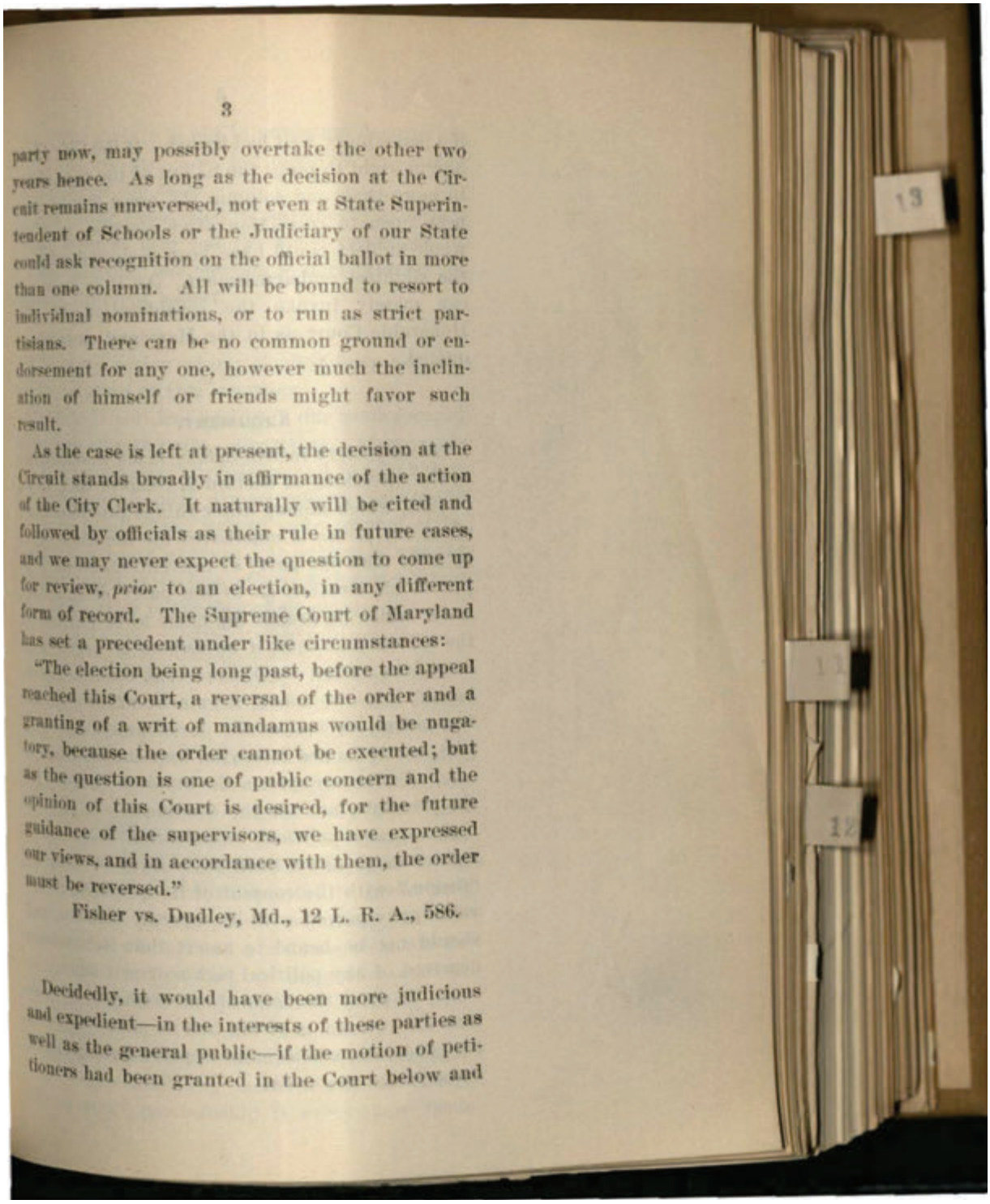
Called in as counsel but a few days ago, the time for research and preparation of this brief has been necessarily short, so that the propositions herein advanced will have to address themselves to this



Honorable Court more by their own reasoning, than by the citation of authorities in support thereof. From what little examination the undersigned has been able to make, I believe, however, to be warranted in saying: Decisions upon the subject matter in controversy are exceedingly scarce and but little instructive. The statutes of any two states are hardly alike, and the whole fabric of this modified Australian system is comparatively new, so that this Court will be obliged to deal with the question de novo, and will be unembarrassed by so-called precedents.

It will be remembered that prior to the last municipal election the relator and his associates applied to this Court for a writ, but were informed that they must primarily seek relief at the Circuit. An alternative writ was accordingly issued from the Circuit Court—D. H. Johnson, Judge—and a hearing had with the result above indicated. The day of election is now past; the issuing of a peremptory writ would be futile; but in view of the fact that the controversy is one of great public concern and that the same contention will naturally repeat itself from time to time, both parties have substantially agreed to abstain from all technicalities, and now come here on appeal to invoke a decision on the merits, broadly and unequivocally—although final judgment (unless for costs) may never be entered and even never asked for.

Because what has happened to the People's Party this spring, may happen to the Democrats of State and County this fall; what occurs to one



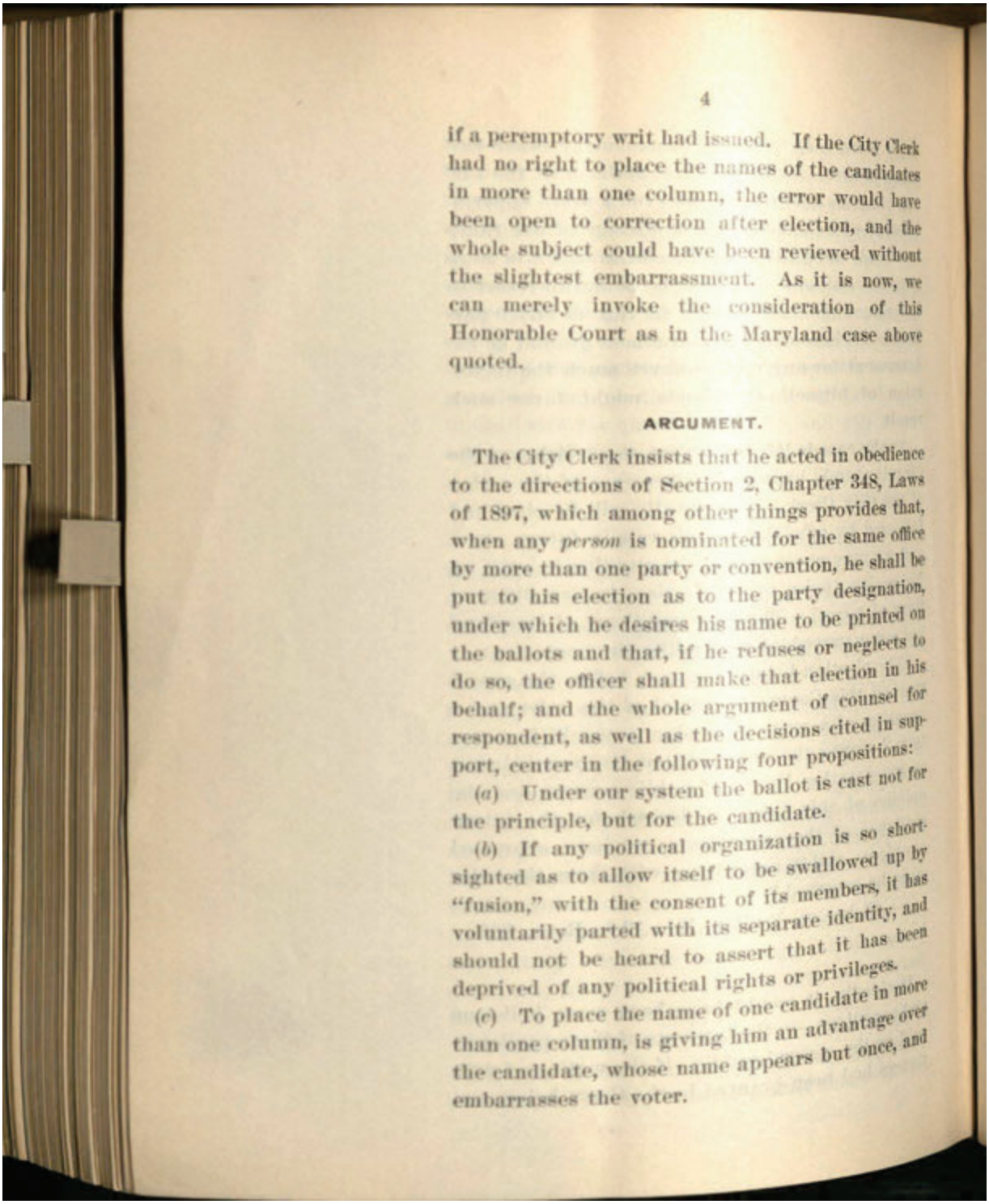
party now, may possibly overtake the other two years hence. As long as the decision at the Circuit remains unreversed, not even a State Superintendent of Schools or the Judiciary of our State could ask recognition on the official ballot in more than one column. All will be bound to resort to individual nominations, or to run as strict partisians. There can be no common ground or endorsement for any one, however much the inclination of himself or friends might favor such result.

As the case is left at present, the decision at the Circuit stands broadly in affirmance of the action of the City Clerk. It naturally will be cited and followed by officials as their rule in future cases, and we may never expect the question to come up for review, *prior* to an election, in any different form of record. The Supreme Court of Maryland has set a precedent under like circumstances:

"The election being long past, before the appeal reached this Court, a reversal of the order and a granting of a writ of mandamus would be nugatory, because the order cannot be executed; but as the question is one of public concern and the opinion of this Court is desired, for the future guidance of the supervisors, we have expressed our views, and in accordance with them, the order must be reversed."

Fisher vs. Dudley, Md., 12 L. R. A., 586.

Decidedly, it would have been more judicious and expedient—in the interests of these parties as well as the general public—if the motion of petitioners had been granted in the Court below and



if a peremptory writ had issued. If the City Clerk had no right to place the names of the candidates in more than one column, the error would have been open to correction after election, and the whole subject could have been reviewed without the slightest embarrassment. As it is now, we can merely invoke the consideration of this Honorable Court as in the Maryland case above quoted.

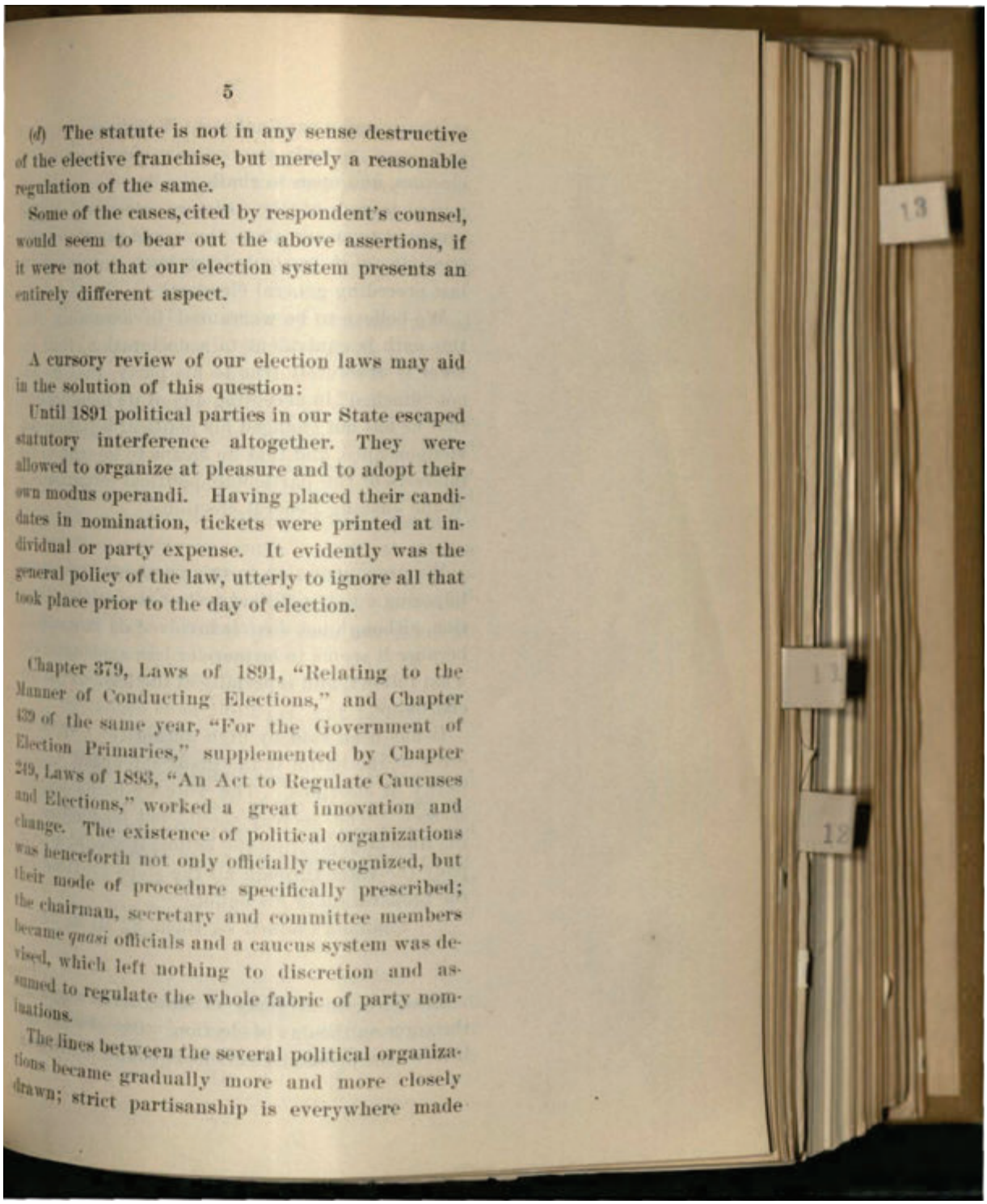
ARGUMENT.

The City Clerk insists that he acted in obedience to the directions of Section 2, Chapter 348, Laws of 1897, which among other things provides that, when any *person* is nominated for the same office by more than one party or convention, he shall be put to his election as to the party designation, under which he desires his name to be printed on the ballots and that, if he refuses or neglects to do so, the officer shall make that election in his behalf; and the whole argument of counsel for respondent, as well as the decisions cited in support, center in the following four propositions:

(*a*) Under our system the ballot is cast not for the principle, but for the candidate.

(*b*) If any political organization is so short-sighted as to allow itself to be swallowed up by "fusion," with the consent of its members, it has voluntarily parted with its separate identity, and should not be heard to assert that it has been deprived of any political rights or privileges.

(*c*) To place the name of one candidate in more than one column, is giving him an advantage over the candidate, whose name appears but once, and embarrasses the voter.



(d) The statute is not in any sense destructive of the elective franchise, but merely a reasonable regulation of the same.

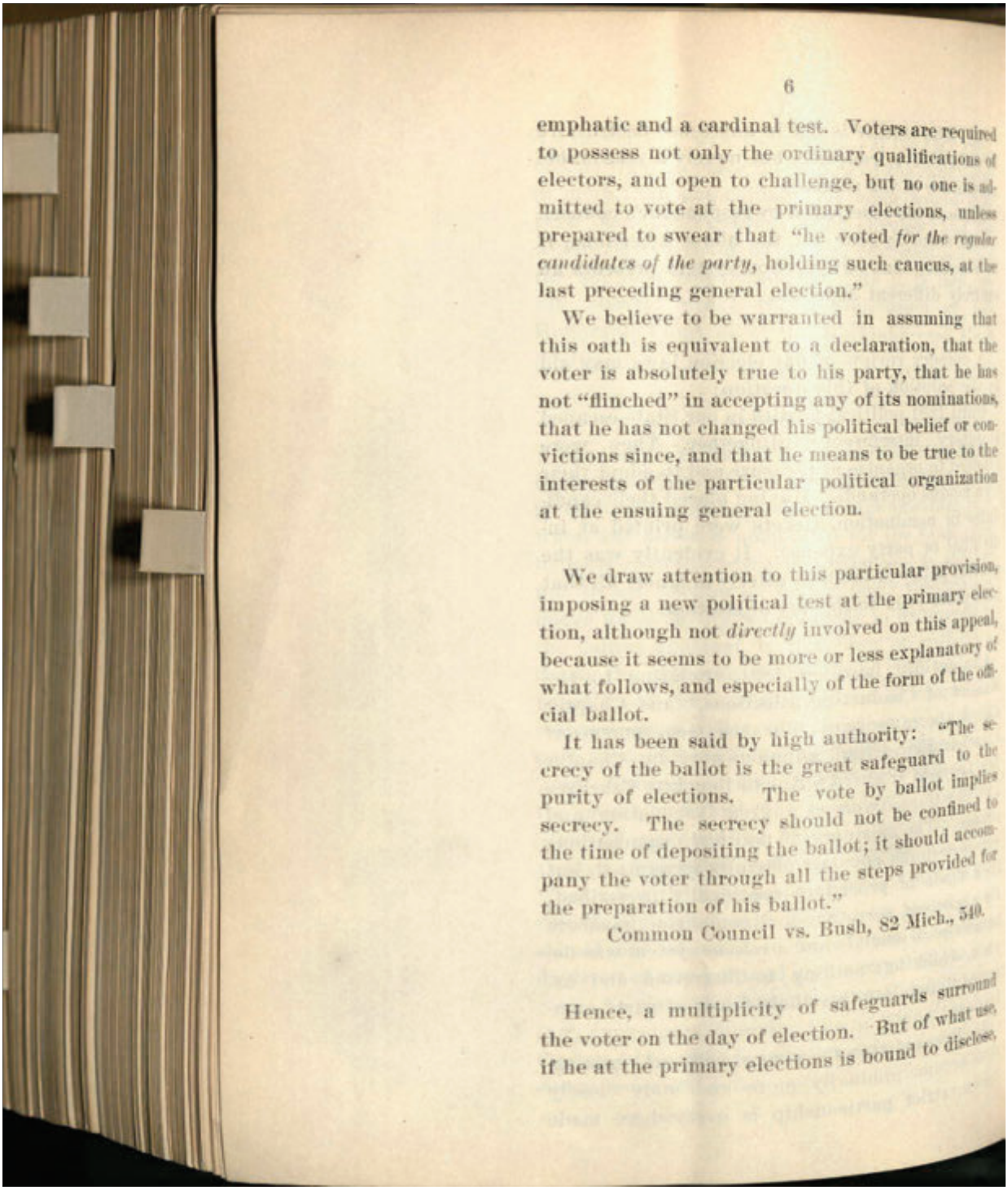
Some of the cases, cited by respondent's counsel, would seem to bear out the above assertions, if it were not that our election system presents an entirely different aspect.

A cursory review of our election laws may aid in the solution of this question:

Until 1891 political parties in our State escaped statutory interference altogether. They were allowed to organize at pleasure and to adopt their own modus operandi. Having placed their candidates in nomination, tickets were printed at individual or party expense. It evidently was the general policy of the law, utterly to ignore all that took place prior to the day of election.

Chapter 379, Laws of 1891, "Relating to the Manner of Conducting Elections," and Chapter 439 of the same year, "For the Government of Election Primaries," supplemented by Chapter 249, Laws of 1893, "An Act to Regulate Caucuses and Elections," worked a great innovation and change. The existence of political organizations was henceforth not only officially recognized, but their mode of procedure specifically prescribed; the chairman, secretary and committee members became *quasi* officials and a caucus system was devised, which left nothing to discretion and assumed to regulate the whole fabric of party nominations.

The lines between the several political organizations became gradually more and more closely drawn; strict partisanship is everywhere made



emphatic and a cardinal test. Voters are required to possess not only the ordinary qualifications of electors, and open to challenge, but no one is admitted to vote at the primary elections, unless prepared to swear that "he voted *for the regular candidates of the party*, holding such caucus, at the last preceding general election."

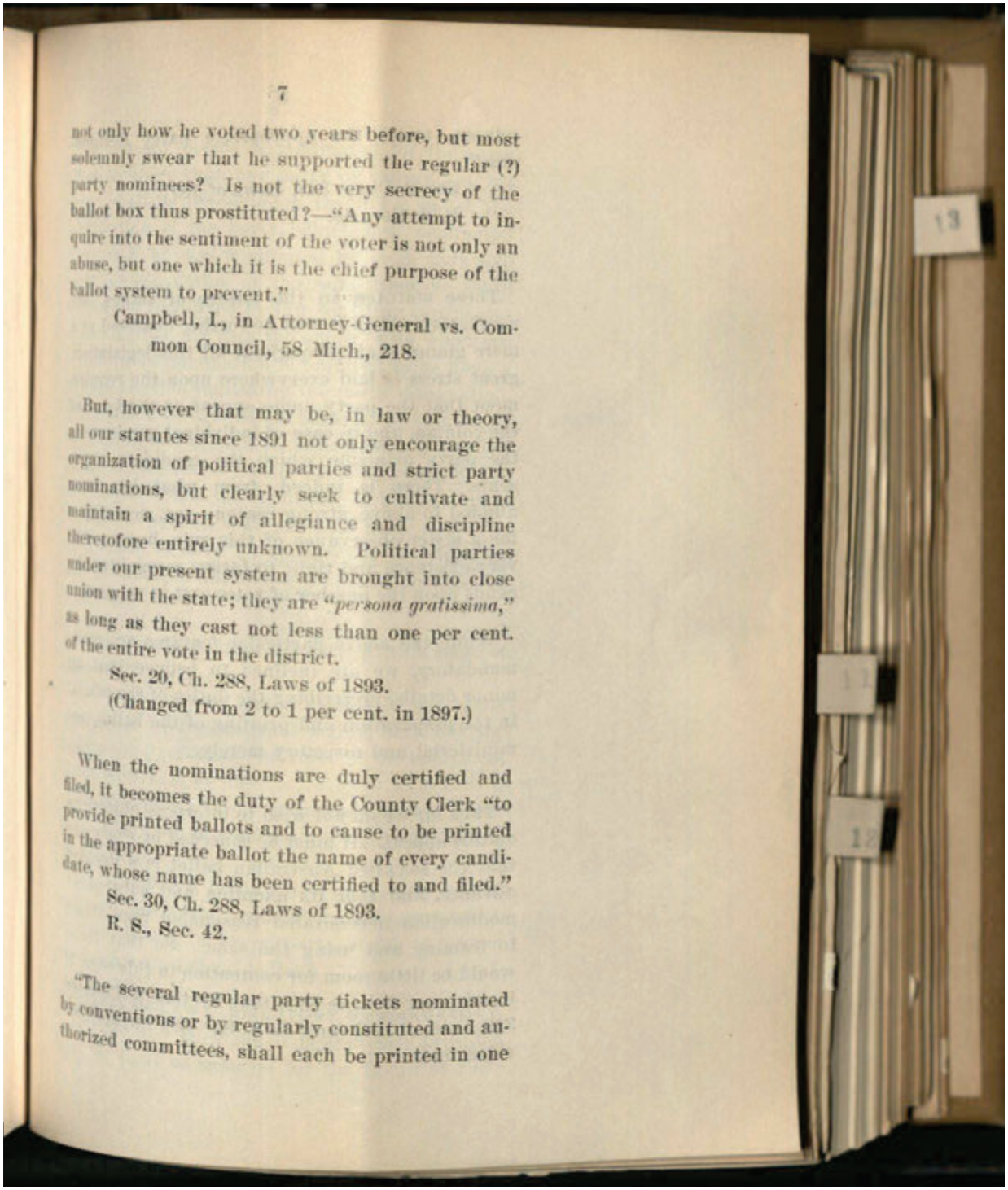
We believe to be warranted in assuming that this oath is equivalent to a declaration, that the voter is absolutely true to his party, that he has not "flinched" in accepting any of its nominations, that he has not changed his political belief or convictions since, and that he means to be true to the interests of the particular political organization at the ensuing general election.

We draw attention to this particular provision, imposing a new political test at the primary election, although not *directly* involved on this appeal, because it seems to be more or less explanatory of what follows, and especially of the form of the official ballot.

It has been said by high authority: "The secrecy of the ballot is the great safeguard to the purity of elections. The vote by ballot implies secrecy. The secrecy should not be confined to the time of depositing the ballot; it should accompany the voter through all the steps provided for the preparation of his ballot."

Common Council vs. Bush, 82 Mich., 540.

Hence, a multiplicity of safeguards surround the voter on the day of election. But of what use, if he at the primary elections is bound to disclose,



not only how he voted two years before, but most solemnly swear that he supported the regular (?) party nominees? Is not the very secrecy of the ballot box thus prostituted?—"Any attempt to inquire into the sentiment of the voter is not only an abuse, but one which it is the chief purpose of the ballot system to prevent."

Campbell, J., in Attorney-General vs. Common Council, 58 Mich., 218.

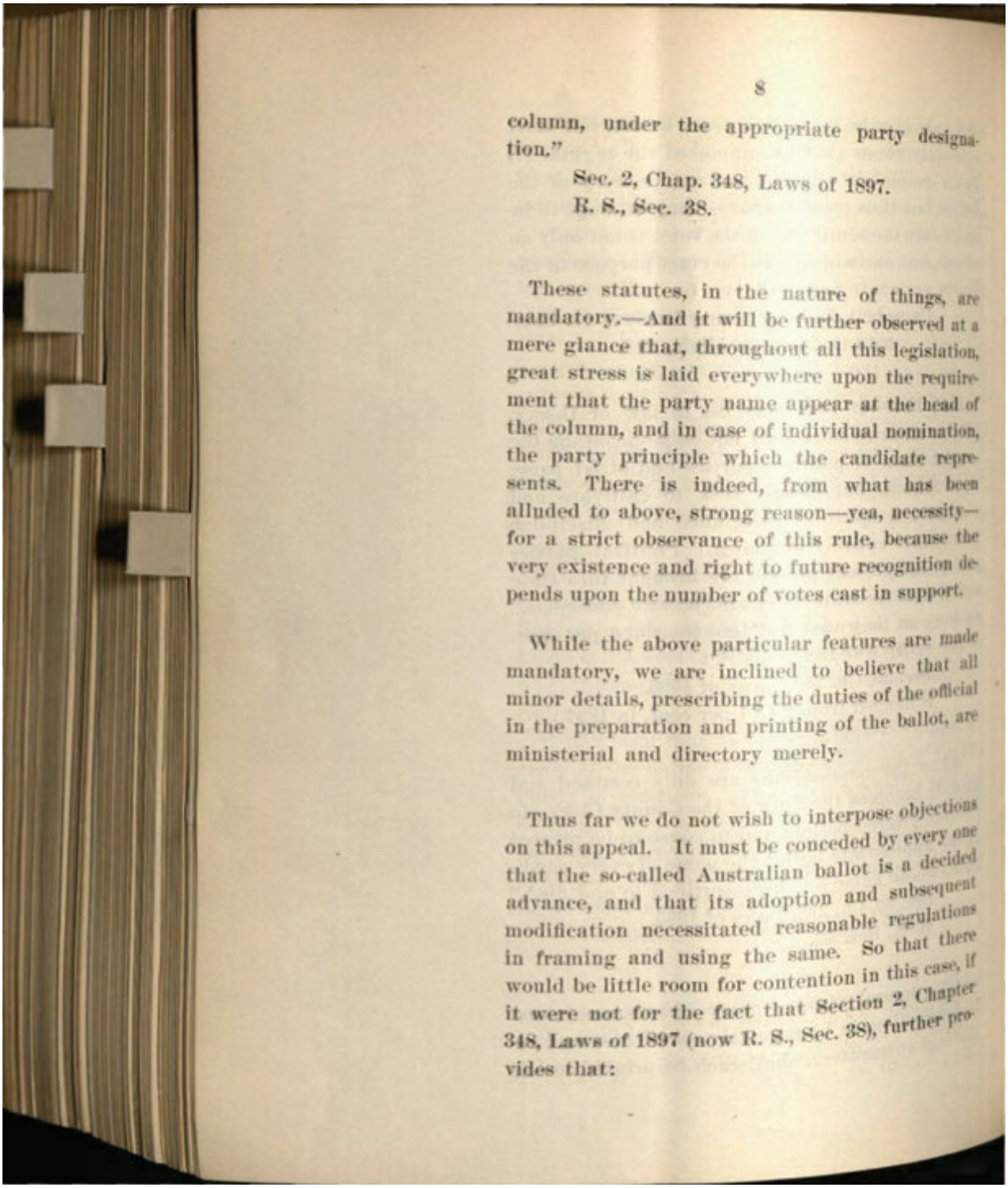
But, however that may be, in law or theory, all our statutes since 1891 not only encourage the organization of political parties and strict party nominations, but clearly seek to cultivate and maintain a spirit of allegiance and discipline theretofore entirely unknown. Political parties under our present system are brought into close union with the state; they are "*persona gratissima*," as long as they cast not less than one per cent. of the entire vote in the district.

Sec. 20, Ch. 288, Laws of 1893.
(Changed from 2 to 1 per cent. in 1897.)

When the nominations are duly certified and filed, it becomes the duty of the County Clerk "to provide printed ballots and to cause to be printed in the appropriate ballot the name of every candidate, whose name has been certified to and filed."

Sec. 30, Ch. 288, Laws of 1893.
R. S., Sec. 42.

"The several regular party tickets nominated by conventions or by regularly constituted and authorized committees, shall each be printed in one



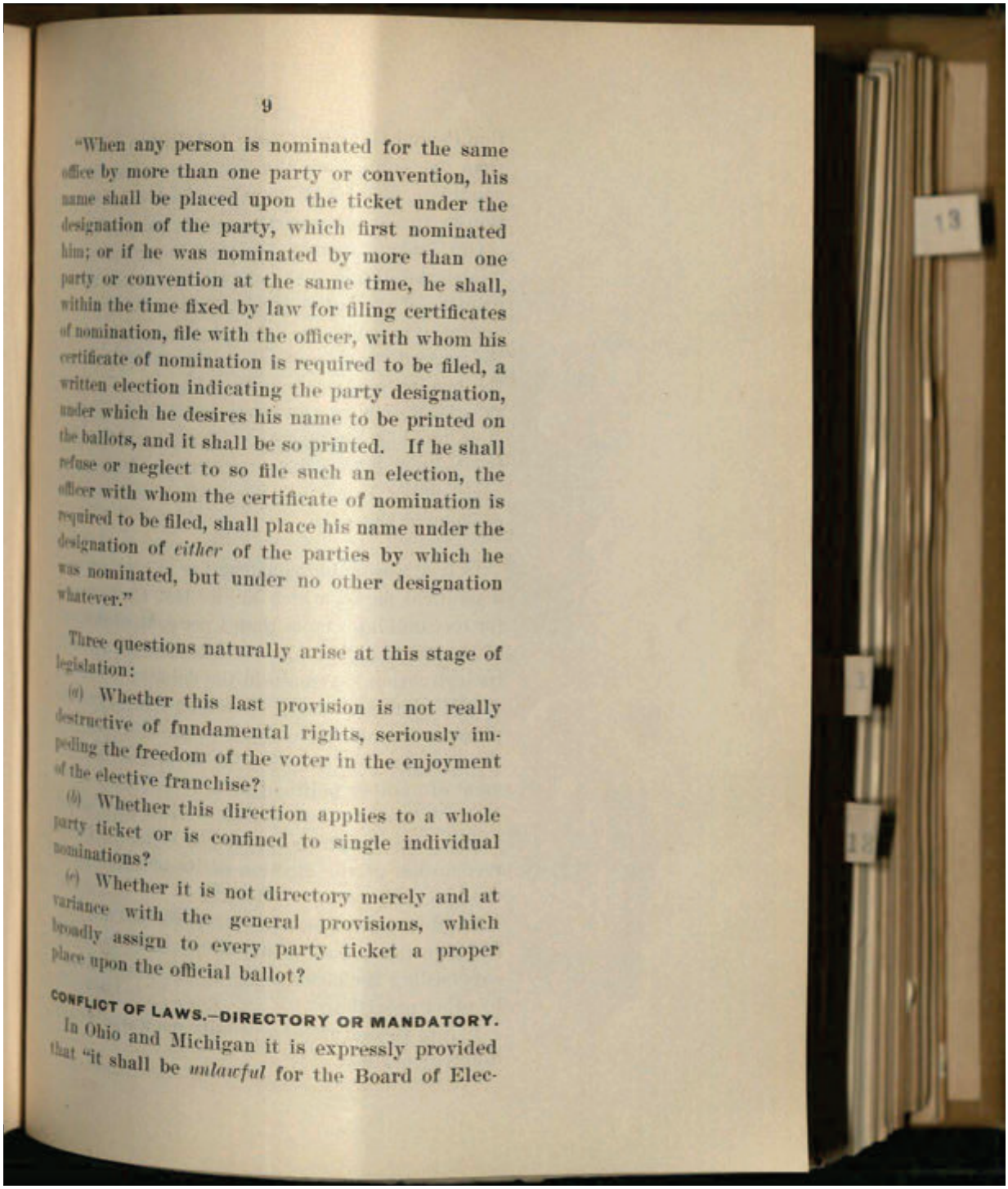
column, under the appropriate party designation."

Sec. 2, Chap. 348, Laws of 1897.
R. S., Sec. 38.

These statutes, in the nature of things, are mandatory.—And it will be further observed at a mere glance that, throughout all this legislation, great stress is laid everywhere upon the requirement that the party name appear at the head of the column, and in case of individual nomination, the party principle which the candidate represents. There is indeed, from what has been alluded to above, strong reason—yea, necessity—for a strict observance of this rule, because the very existence and right to future recognition depends upon the number of votes cast in support.

While the above particular features are made mandatory, we are inclined to believe that all minor details, prescribing the duties of the official in the preparation and printing of the ballot, are ministerial and directory merely.

Thus far we do not wish to interpose objections on this appeal. It must be conceded by every one that the so-called Australian ballot is a decided advance, and that its adoption and subsequent modification necessitated reasonable regulations in framing and using the same. So that there would be little room for contention in this case, if it were not for the fact that Section 2, Chapter 348, Laws of 1897 (now R. S., Sec. 38), further provides that:



"When any person is nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party, which first nominated him; or if he was nominated by more than one party or convention at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer, with whom his certificate of nomination is required to be filed, a written election indicating the party designation, under which he desires his name to be printed on the ballots, and it shall be so printed. If he shall refuse or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed, shall place his name under the designation of *either* of the parties by which he was nominated, but under no other designation whatever."

Three questions naturally arise at this stage of legislation:

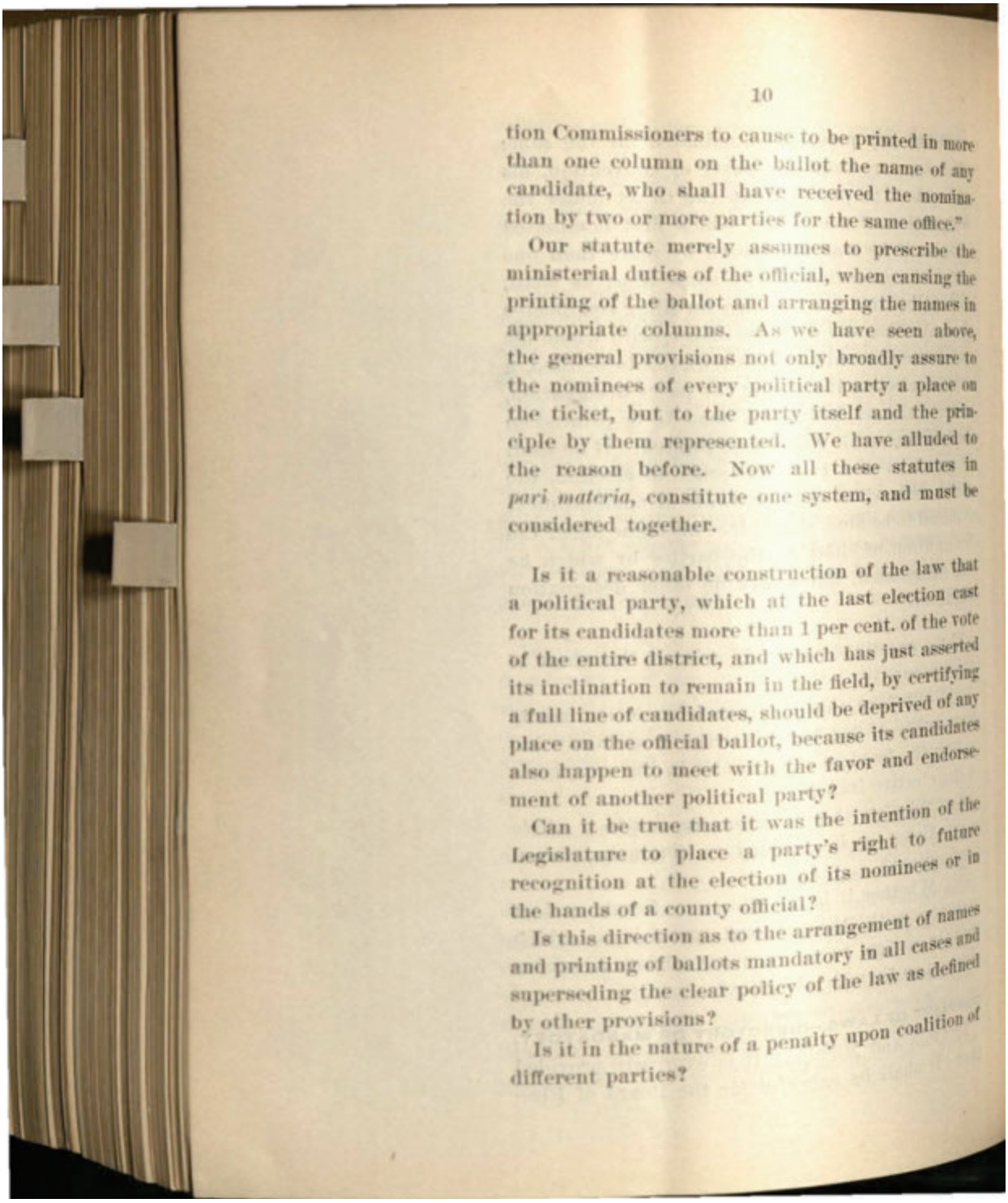
(*a*) Whether this last provision is not really destructive of fundamental rights, seriously impeding the freedom of the voter in the enjoyment of the elective franchise?

(*b*) Whether this direction applies to a whole party ticket or is confined to single individual nominations?

(*c*) Whether it is not directory merely and at variance with the general provisions, which broadly assign to every party ticket a proper place upon the official ballot?

CONFLICT OF LAWS.—DIRECTORY OR MANDATORY.

In Ohio and Michigan it is expressly provided that "it shall be *unlawful* for the Board of Elec-



tion Commissioners to cause to be printed in more than one column on the ballot the name of any candidate, who shall have received the nomination by two or more parties for the same office."

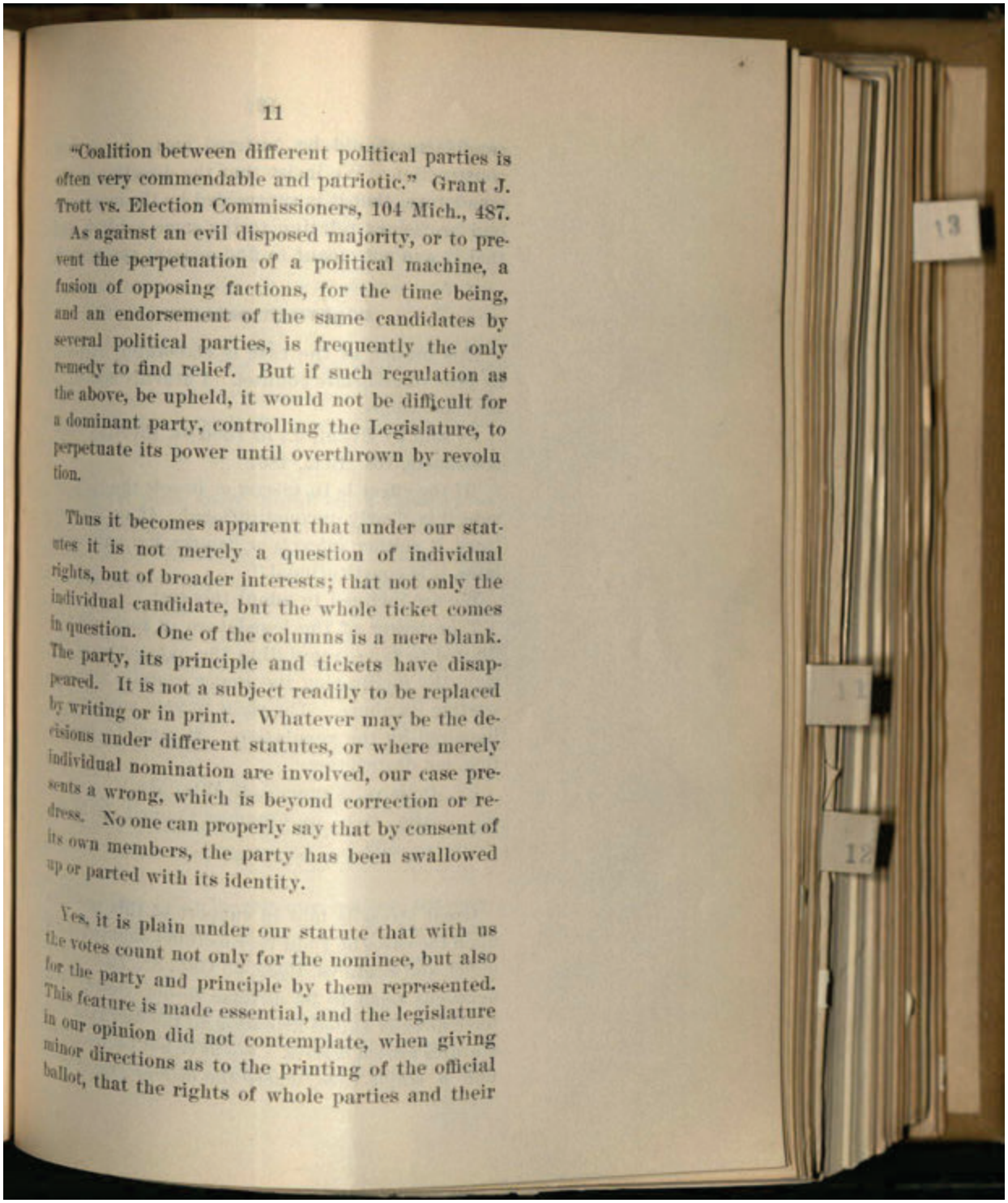
Our statute merely assumes to prescribe the ministerial duties of the official, when causing the printing of the ballot and arranging the names in appropriate columns. As we have seen above, the general provisions not only broadly assure to the nominees of every political party a place on the ticket, but to the party itself and the principle by them represented. We have alluded to the reason before. Now all these statutes in *pari materia*, constitute one system, and must be considered together.

Is it a reasonable construction of the law that a political party, which at the last election cast for its candidates more than 1 per cent. of the vote of the entire district, and which has just asserted its inclination to remain in the field, by certifying a full line of candidates, should be deprived of any place on the official ballot, because its candidates also happen to meet with the favor and endorsement of another political party?

Can it be true that it was the intention of the Legislature to place a party's right to future recognition at the election of its nominees or in the hands of a county official?

Is this direction as to the arrangement of names and printing of ballots mandatory in all cases and superseding the clear policy of the law as defined by other provisions?

Is it in the nature of a penalty upon coalition of different parties?

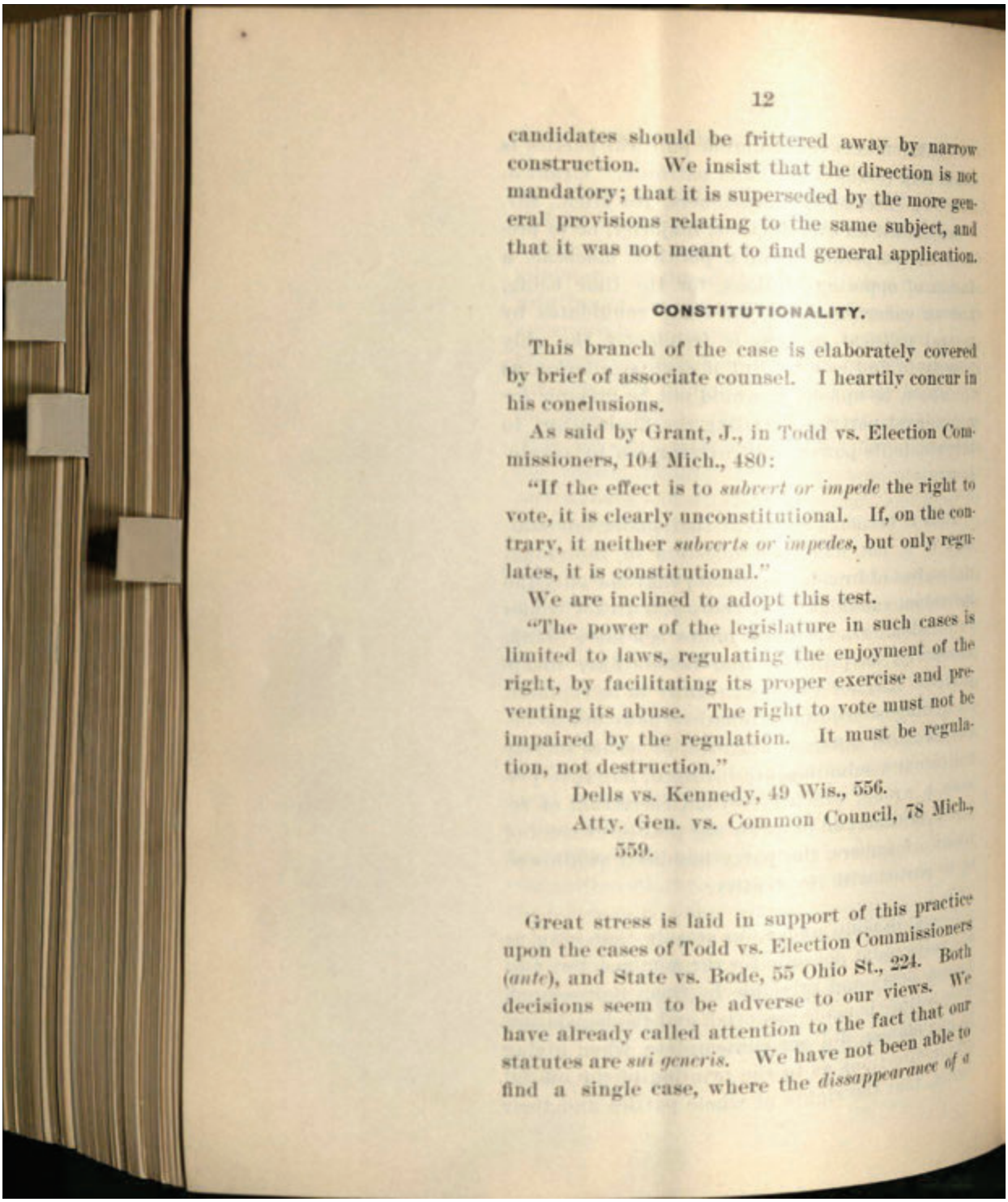


"Coalition between different political parties is often very commendable and patriotic." Grant J. Trott vs. Election Commissioners, 104 Mich., 487.

As against an evil disposed majority, or to prevent the perpetuation of a political machine, a fusion of opposing factions, for the time being, and an endorsement of the same candidates by several political parties, is frequently the only remedy to find relief. But if such regulation as the above, be upheld, it would not be difficult for a dominant party, controlling the Legislature, to perpetuate its power until overthrown by revolution.

Thus it becomes apparent that under our statutes it is not merely a question of individual rights, but of broader interests; that not only the individual candidate, but the whole ticket comes in question. One of the columns is a mere blank. The party, its principle and tickets have disappeared. It is not a subject readily to be replaced by writing or in print. Whatever may be the decisions under different statutes, or where merely individual nomination are involved, our case presents a wrong, which is beyond correction or redress. No one can properly say that by consent of its own members, the party has been swallowed up or parted with its identity.

Yes, it is plain under our statute that with us the votes count not only for the nominee, but also for the party and principle by them represented. This feature is made essential, and the legislature in our opinion did not contemplate, when giving minor directions as to the printing of the official ballot, that the rights of whole parties and their



candidates should be frittered away by narrow construction. We insist that the direction is not mandatory; that it is superseded by the more general provisions relating to the same subject, and that it was not meant to find general application.

CONSTITUTIONALITY.

This branch of the case is elaborately covered by brief of associate counsel. I heartily concur in his conclusions.

As said by Grant, J., in Todd vs. Election Commissioners, 104 Mich., 480:

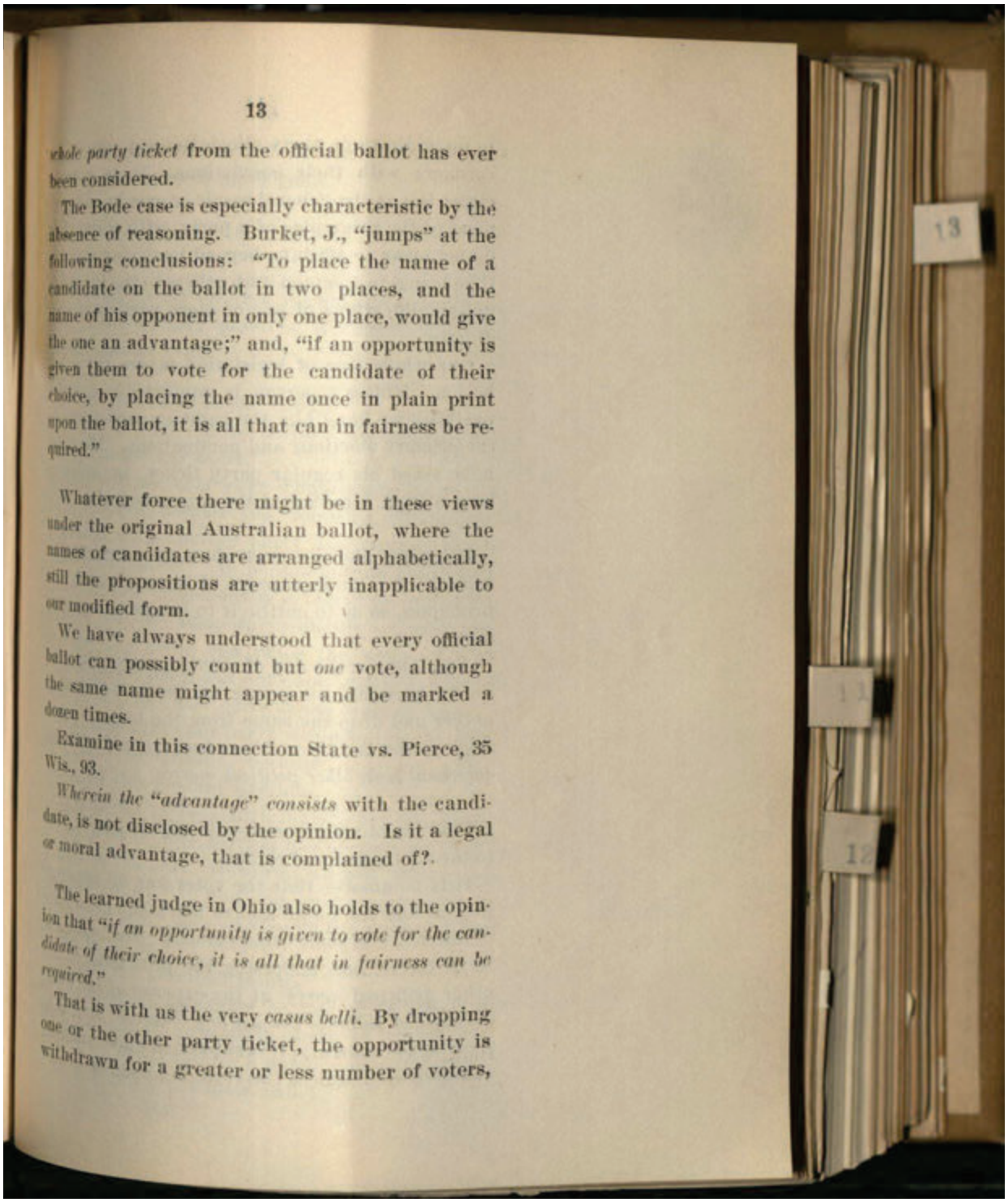
"If the effect is to *subvert or impede* the right to vote, it is clearly unconstitutional. If, on the contrary, it neither *subverts or impedes*, but only regulates, it is constitutional."

We are inclined to adopt this test.

"The power of the legislature in such cases is limited to laws, regulating the enjoyment of the right, by facilitating its proper exercise and preventing its abuse. The right to vote must not be impaired by the regulation. It must be regulation, not destruction."

Dells vs. Kennedy, 49 Wis., 556.
Atty. Gen. vs. Common Council, 78 Mich., 559.

Great stress is laid in support of this practice upon the cases of Todd vs. Election Commissioners (*ante*), and State vs. Bode, 55 Ohio St., 224. Both decisions seem to be adverse to our views. We have already called attention to the fact that our statutes are *sui generis*. We have not been able to find a single case, where the *dissappearance of a*



whole party ticket from the official ballot has ever been considered.

The Bode case is especially characteristic by the absence of reasoning. Burket, J., "jumps" at the following conclusions: "To place the name of a candidate on the ballot in two places, and the name of his opponent in only one place, would give the one an advantage;" and, "if an opportunity is given them to vote for the candidate of their choice, by placing the name once in plain print upon the ballot, it is all that can in fairness be required."

Whatever force there might be in these views under the original Australian ballot, where the names of candidates are arranged alphabetically, still the propositions are utterly inapplicable to our modified form.

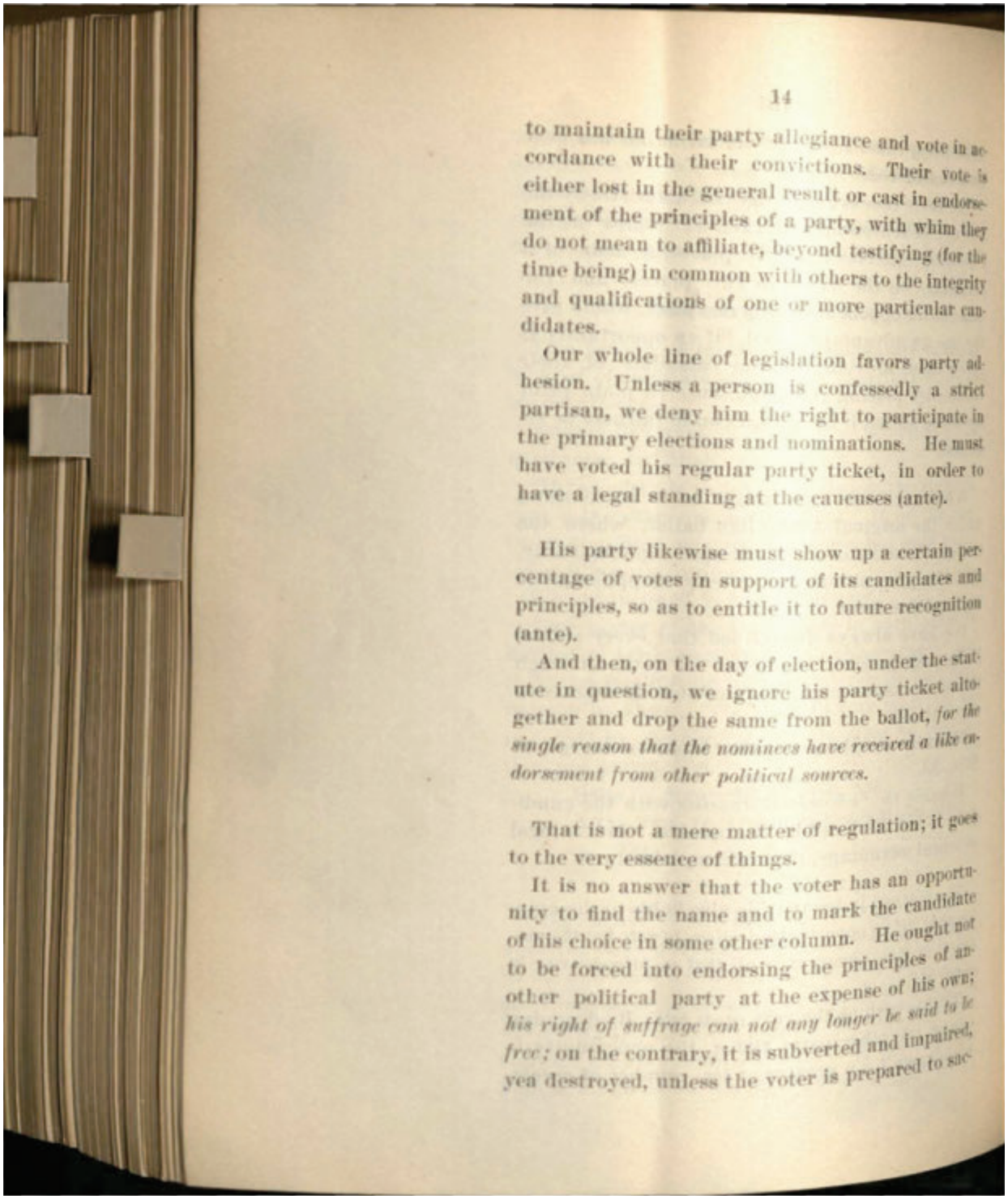
We have always understood that every official ballot can possibly count but *one* vote, although the same name might appear and be marked a dozen times.

Examine in this connection State vs. Pierce, 35 Wis., 93.

Wherein the "advantage" consists with the candidate, is not disclosed by the opinion. Is it a legal or moral advantage, that is complained of?

The learned judge in Ohio also holds to the opinion that "*if an opportunity is given to vote for the candidate of their choice, it is all that in fairness can be required.*"

That is with us the very *casus belli*. By dropping one or the other party ticket, the opportunity is withdrawn for a greater or less number of voters,



to maintain their party allegiance and vote in accordance with their convictions. Their vote is either lost in the general result or cast in endorsement of the principles of a party, with whim they do not mean to affiliate, beyond testifying (for the time being) in common with others to the integrity and qualifications of one or more particular candidates.

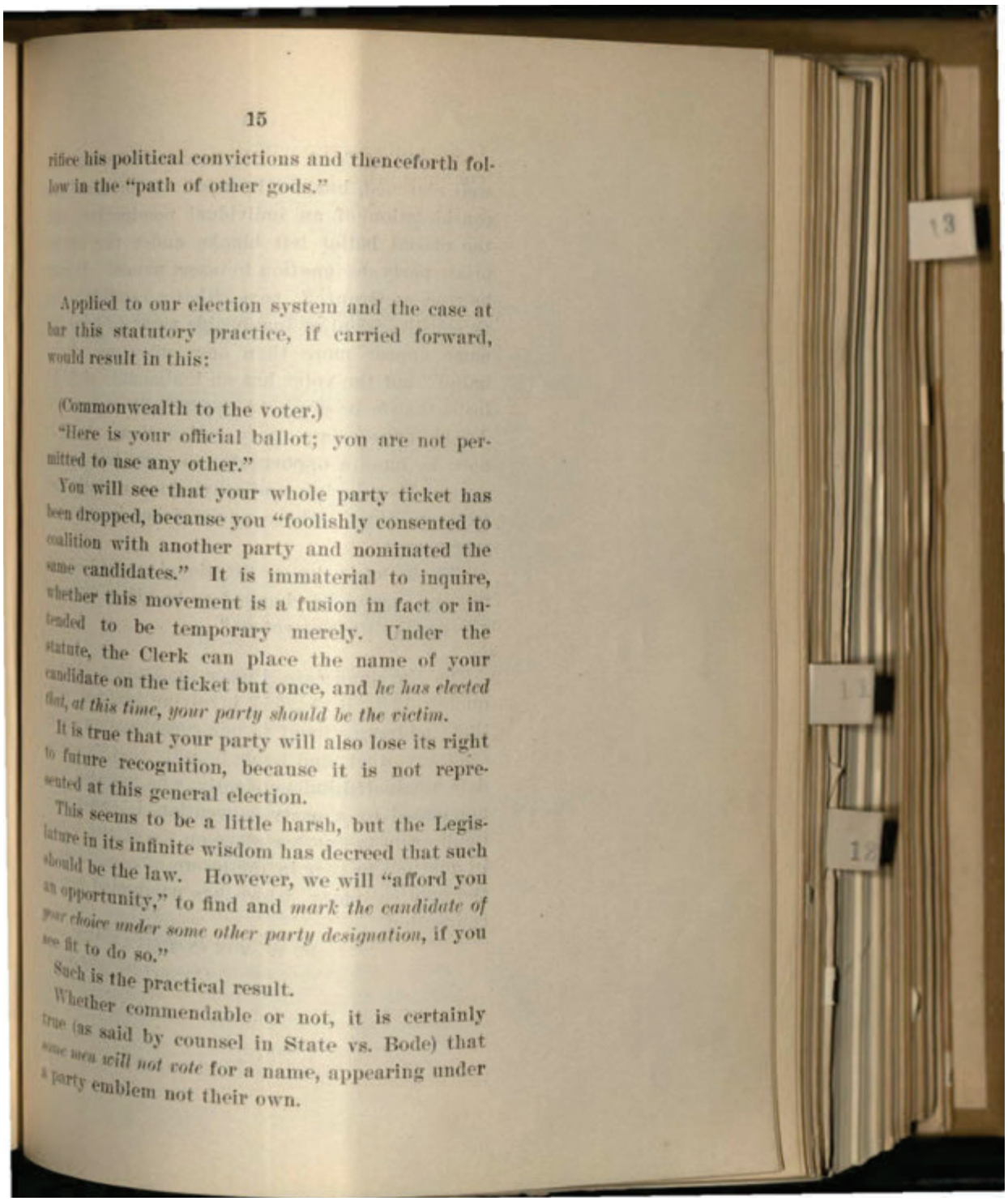
Our whole line of legislation favors party adhesion. Unless a person is confessedly a strict partisan, we deny him the right to participate in the primary elections and nominations. He must have voted his regular party ticket, in order to have a legal standing at the caucuses (ante).

His party likewise must show up a certain percentage of votes in support of its candidates and principles, so as to entitle it to future recognition (ante).

And then, on the day of election, under the statute in question, we ignore his party ticket altogether and drop the same from the ballot, *for the single reason that the nominees have received a like endorsement from other political sources.*

That is not a mere matter of regulation; it goes to the very essence of things.

It is no answer that the voter has an opportunity to find the name and to mark the candidate of his choice in some other column. He ought not to be forced into endorsing the principles of another political party at the expense of his own; *his right of suffrage can not any longer be said to be free;* on the contrary, it is subverted and impaired, yea destroyed, unless the voter is prepared to sac-



rifice his political convictions and thenceforth follow in the "path of other gods."

Applied to our election system and the case at bar this statutory practice, if carried forward, would result in this:

(Commonwealth to the voter.)

"Here is your official ballot; you are not permitted to use any other."

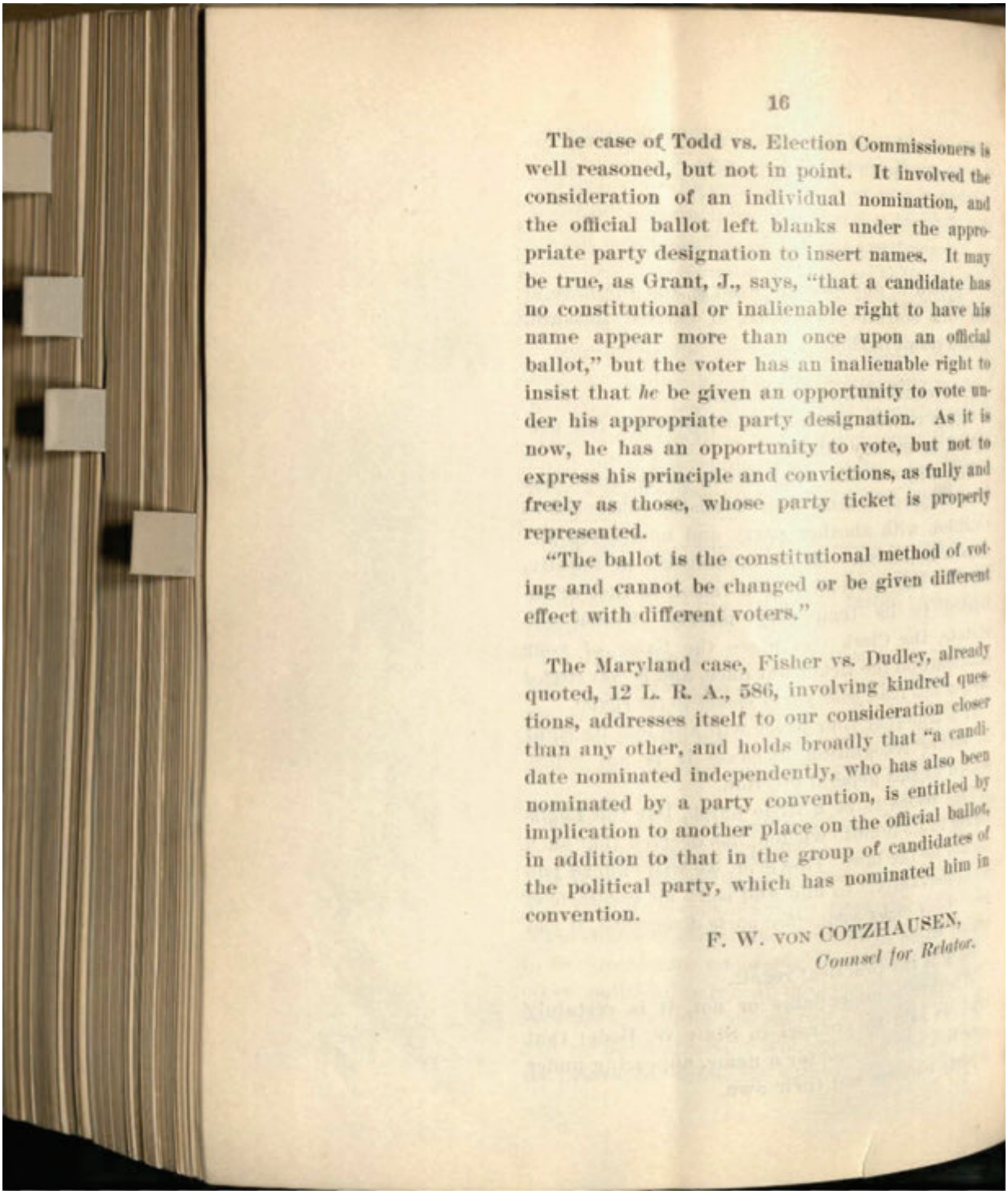
You will see that your whole party ticket has been dropped, because you "foolishly consented to coalition with another party and nominated the same candidates." It is immaterial to inquire, whether this movement is a fusion in fact or intended to be temporary merely. Under the statute, the Clerk can place the name of your candidate on the ticket but once, and *he has elected that, at this time, your party should be the victim.*

It is true that your party will also lose its right to future recognition, because it is not represented at this general election.

This seems to be a little harsh, but the Legislature in its infinite wisdom has decreed that such should be the law. However, we will "afford you an opportunity," to find and *mark the candidate of your choice under some other party designation*, if you see fit to do so."

Such is the practical result.

Whether commendable or not, it is certainly true (as said by counsel in State vs. Bode) that *some men will not vote* for a name, appearing under a party emblem not their own.

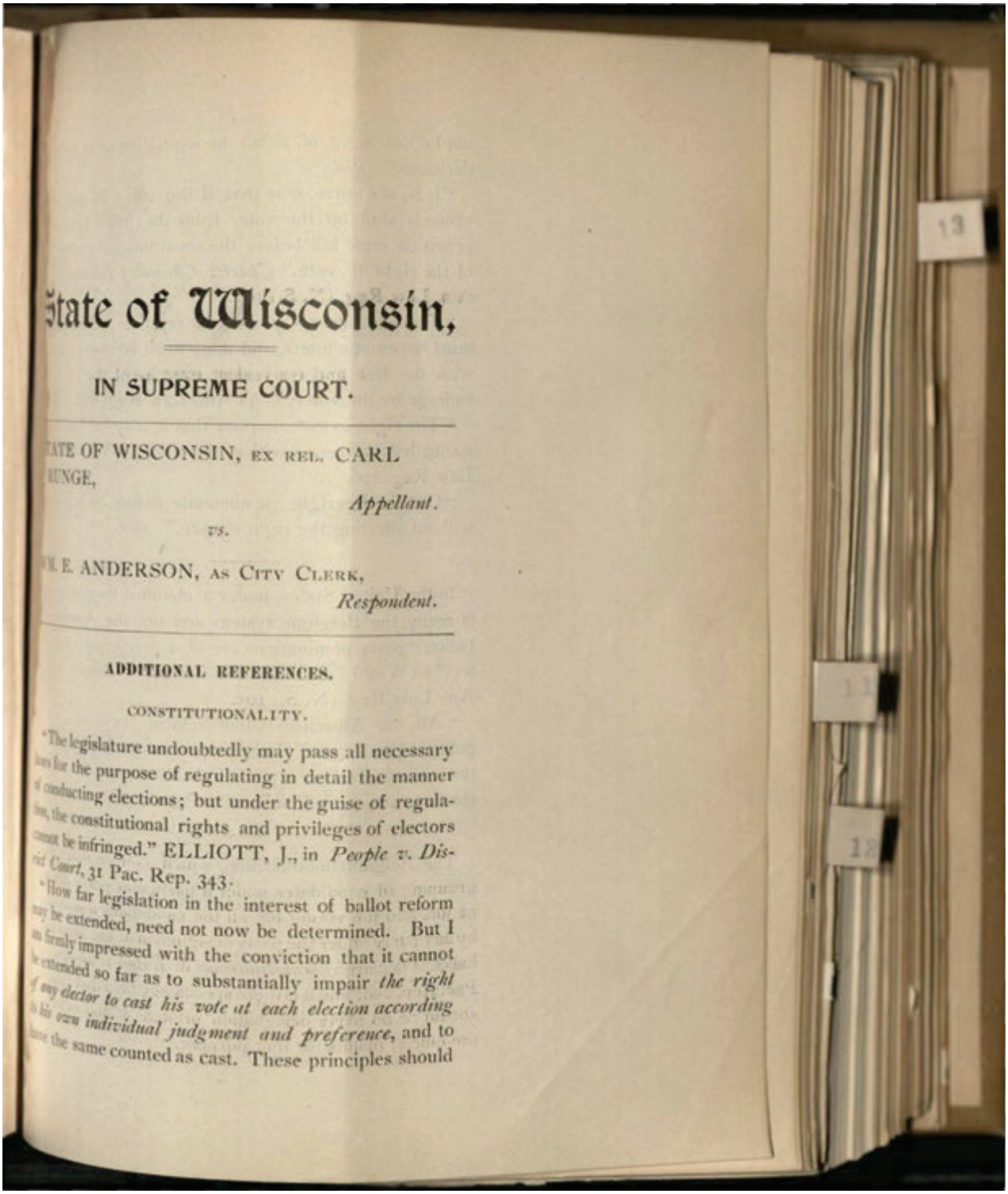


The case of Todd vs. Election Commissioners is well reasoned, but not in point. It involved the consideration of an individual nomination, and the official ballot left blanks under the appropriate party designation to insert names. It may be true, as Grant, J., says, "that a candidate has no constitutional or inalienable right to have his name appear more than once upon an official ballot," but the voter has an inalienable right to insist that *he* be given an opportunity to vote under his appropriate party designation. As it is now, he has an opportunity to vote, but not to express his principle and convictions, as fully and freely as those, whose party ticket is properly represented.

"The ballot is the constitutional method of voting and cannot be changed or be given different effect with different voters."

The Maryland case, Fisher vs. Dudley, already quoted, 12 L. R. A., 586, involving kindred questions, addresses itself to our consideration closer than any other, and holds broadly that "a candidate nominated independently, who has also been nominated by a party convention, is entitled by implication to another place on the official ballot, in addition to that in the group of candidates of the political party, which has nominated him in convention.

F. W. VON COTZHAUSEN,
Counsel for Relator.



State of Wisconsin,

IN SUPREME COURT.

TATE OF WISCONSIN, EX REL. CARL RUNGE,

Appellant.

vs.

M. E. ANDERSON, AS CITY CLERK,

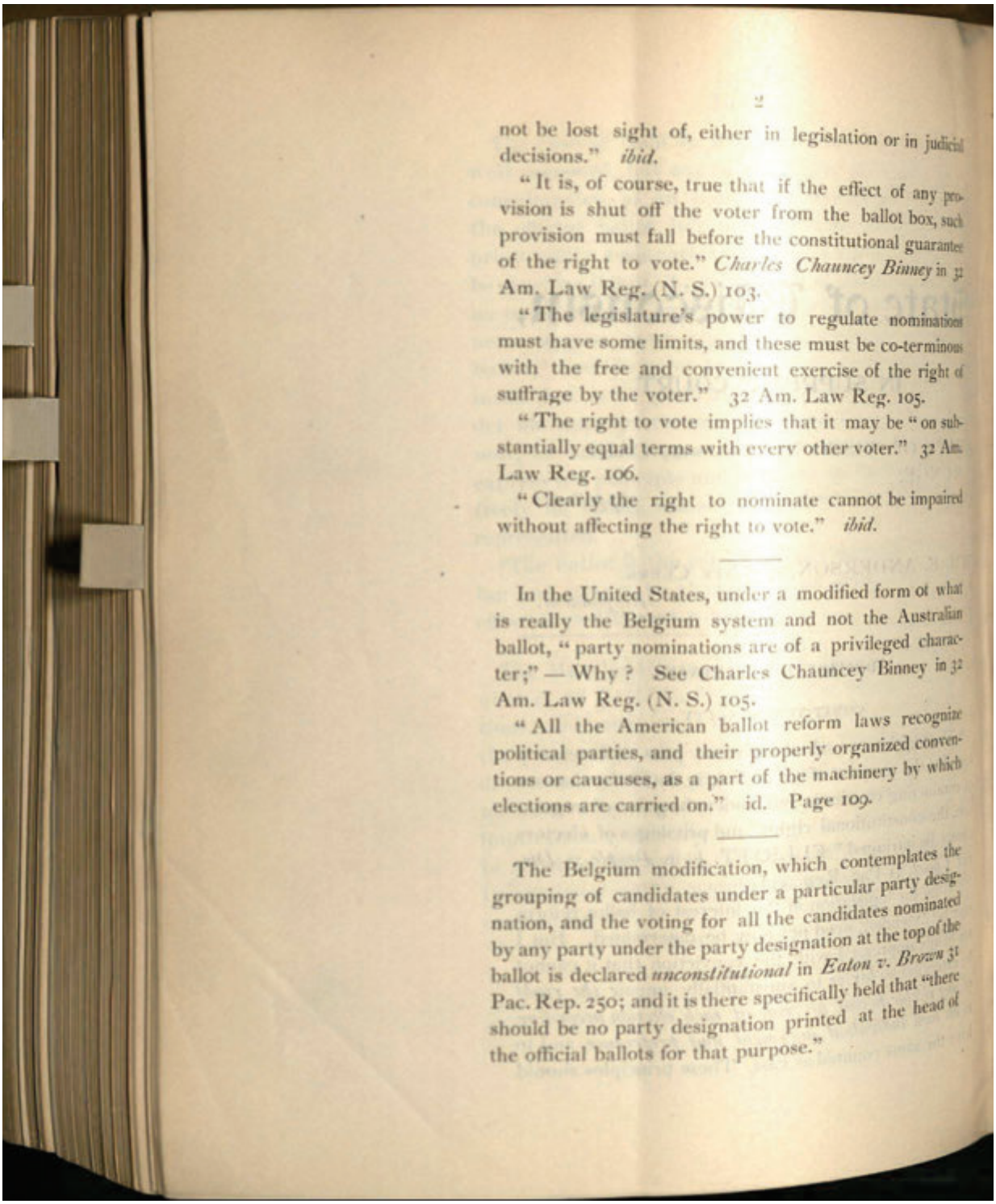
Respondent.

ADDITIONAL REFERENCES.

CONSTITUTIONALITY.

"The legislature undoubtedly may pass all necessary laws for the purpose of regulating in detail the manner of conducting elections; but under the guise of regulation, the constitutional rights and privileges of electors cannot be infringed." ELLIOTT, J., in *People v. District Court*, 31 Pac. Rep. 343.

"How far legislation in the interest of ballot reform may be extended, need not now be determined. But I am firmly impressed with the conviction that it cannot be extended so far as to substantially impair *the right of any elector to cast his vote at each election according to his own individual judgment and preference*, and to have the same counted as cast. These principles should



not be lost sight of, either in legislation or in judicial decisions." *ibid.*

"It is, of course, true that if the effect of any provision is shut off the voter from the ballot box, such provision must fall before the constitutional guarantee of the right to vote." *Charles Chauncey Binney* in 32 Am. Law Reg. (N. S.) 103.

"The legislature's power to regulate nominations must have some limits, and these must be co-terminous with the free and convenient exercise of the right of suffrage by the voter." 32 Am. Law Reg. 105.

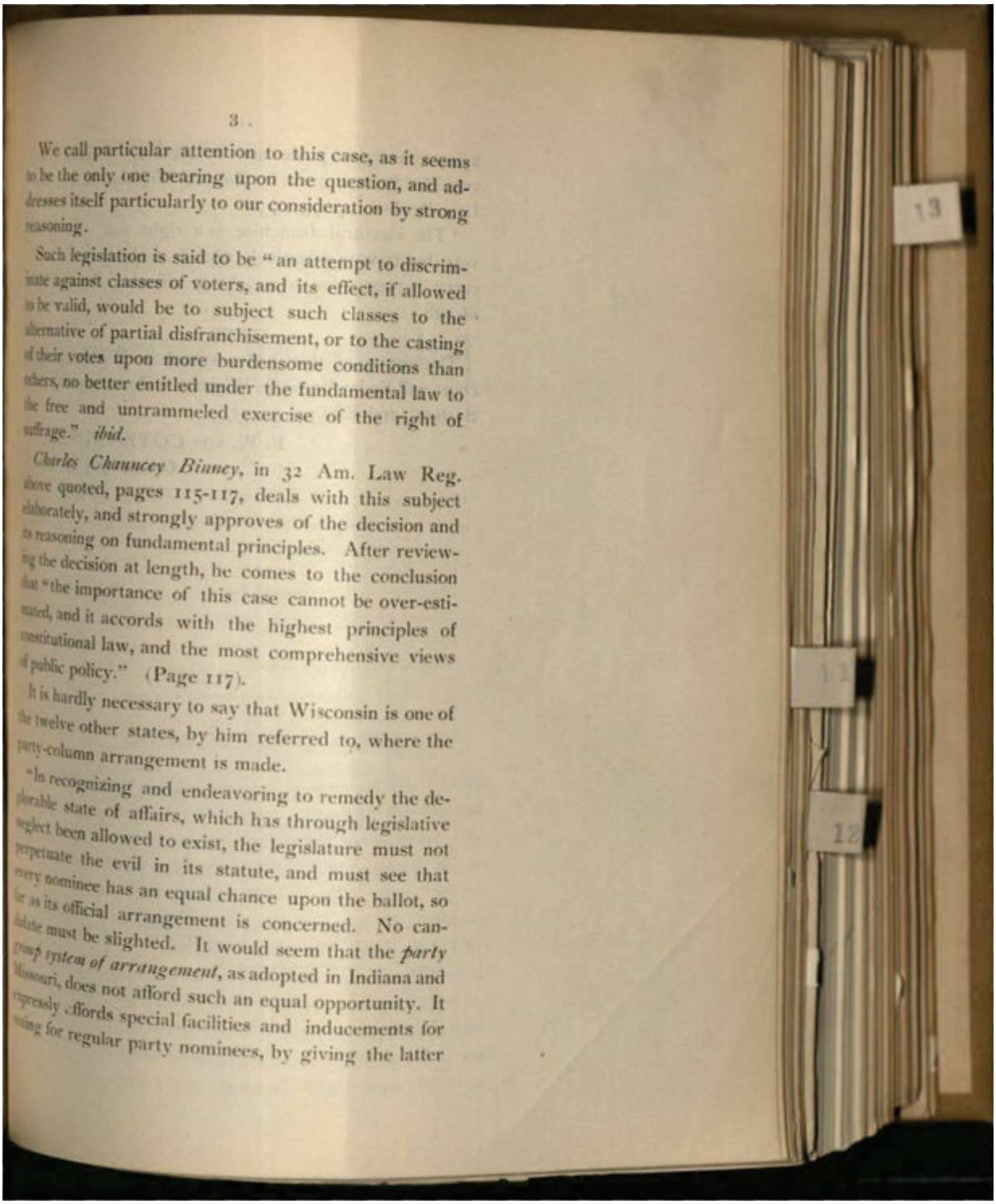
"The right to vote implies that it may be "on substantially equal terms with every other voter." 32 Am. Law Reg. 106.

"Clearly the right to nominate cannot be impaired without affecting the right to vote." *ibid.*

In the United States, under a modified form of what is really the Belgium system and not the Australian ballot, "party nominations are of a privileged character;" — Why? See Charles Chauncey Binney in 32 Am. Law Reg. (N. S.) 105.

"All the American ballot reform laws recognize political parties, and their properly organized conventions or caucuses, as a part of the machinery by which elections are carried on." id. Page 109.

The Belgium modification, which contemplates the grouping of candidates under a particular party designation, and the voting for all the candidates nominated by any party under the party designation at the top of the ballot is declared *unconstitutional* in *Eaton v. Brown* 31 Pac. Rep. 250; and it is there specifically held that "there should be no party designation printed at the head of the official ballots for that purpose."



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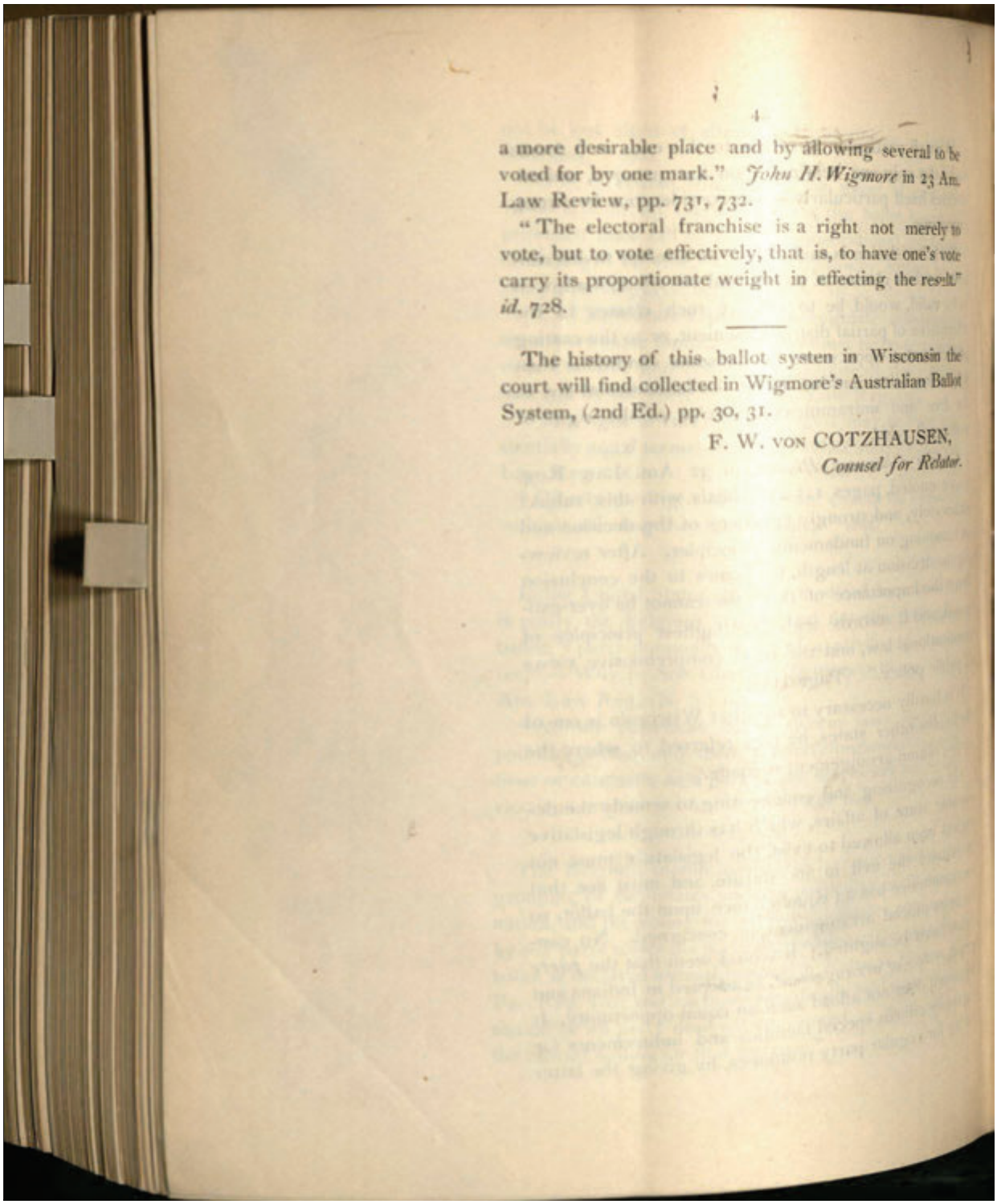
We call particular attention to this case, as it seems to be the only one bearing upon the question, and addresses itself particularly to our consideration by strong reasoning.

Such legislation is said to be "an attempt to discriminate against classes of voters, and its effect, if allowed to be valid, would be to subject such classes to the alternative of partial disfranchisement, or to the casting of their votes upon more burdensome conditions than others, no better entitled under the fundamental law to the free and untrammeled exercise of the right of suffrage." *ibid.*

Charles Chauncey Binney, in 32 Am. Law Reg. above quoted, pages 115-117, deals with this subject elaborately, and strongly approves of the decision and its reasoning on fundamental principles. After reviewing the decision at length, he comes to the conclusion that "the importance of this case cannot be over-estimated, and it accords with the highest principles of constitutional law, and the most comprehensive views of public policy." (Page 117).

It is hardly necessary to say that Wisconsin is one of the twelve other states, by him referred to, where the party-column arrangement is made.

"In recognizing and endeavoring to remedy the deplorable state of affairs, which has through legislative neglect been allowed to exist, the legislature must not perpetuate the evil in its statute, and must see that every nominee has an equal chance upon the ballot, so far as its official arrangement is concerned. No candidate must be slighted. It would seem that the *party group system of arrangement*, as adopted in Indiana and Missouri, does not afford such an equal opportunity. It expressly affords special facilities and inducements for voting for regular party nominees, by giving the latter

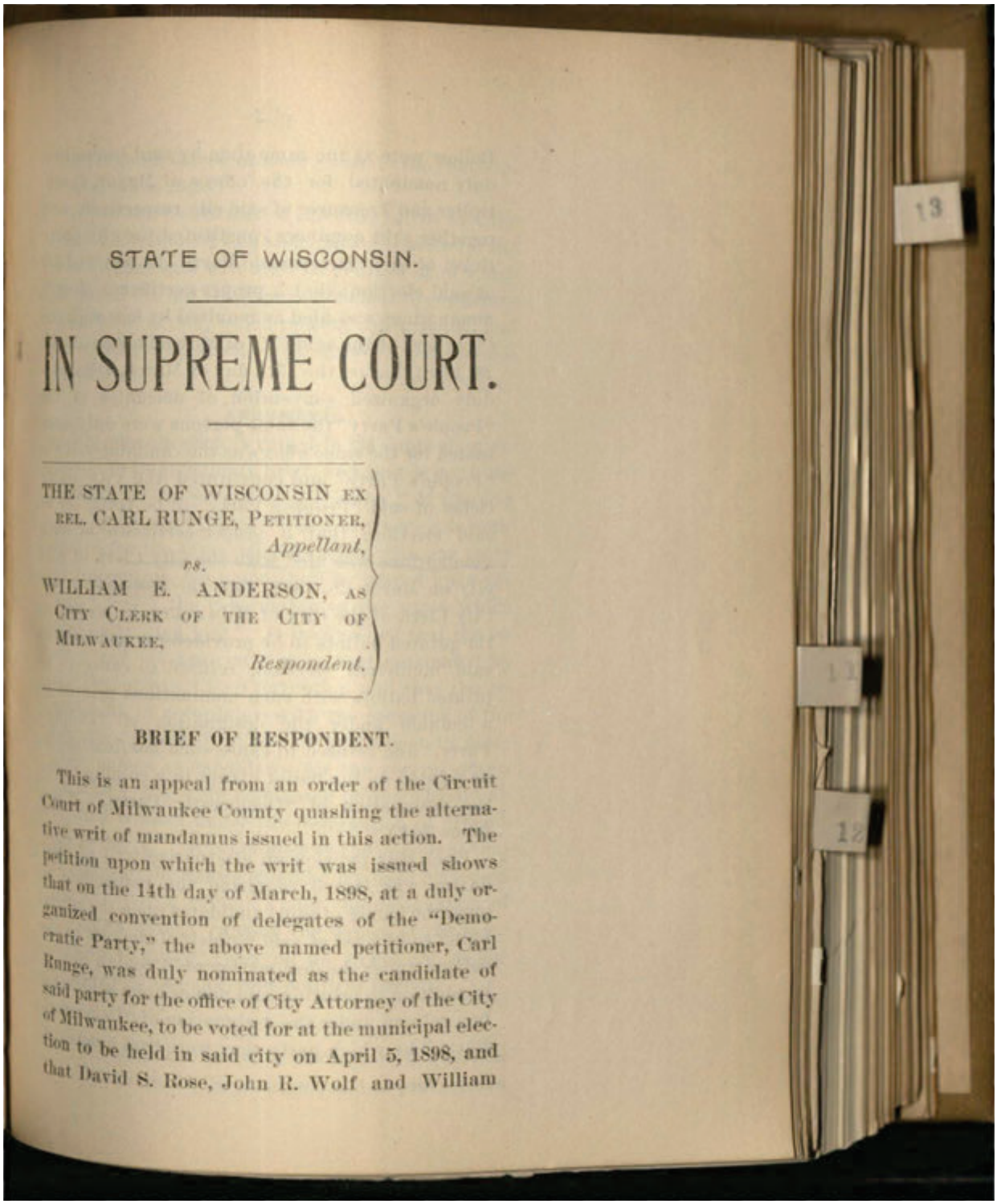


a more desirable place and by allowing several to be voted for by one mark." *John H. Wigmore* in 23 Am. Law Review, pp. 731, 732.

"The electoral franchise is a right not merely to vote, but to vote effectively, that is, to have one's vote carry its proportionate weight in effecting the result." *id.* 728.

The history of this ballot systen in Wisconsin the court will find collected in Wigmore's Australian Ballot System, (2nd Ed.) pp. 30, 31.

F. W. VON COTZHAUSEN,
Counsel for Relator.



STATE OF WISCONSIN.

IN SUPREME COURT.

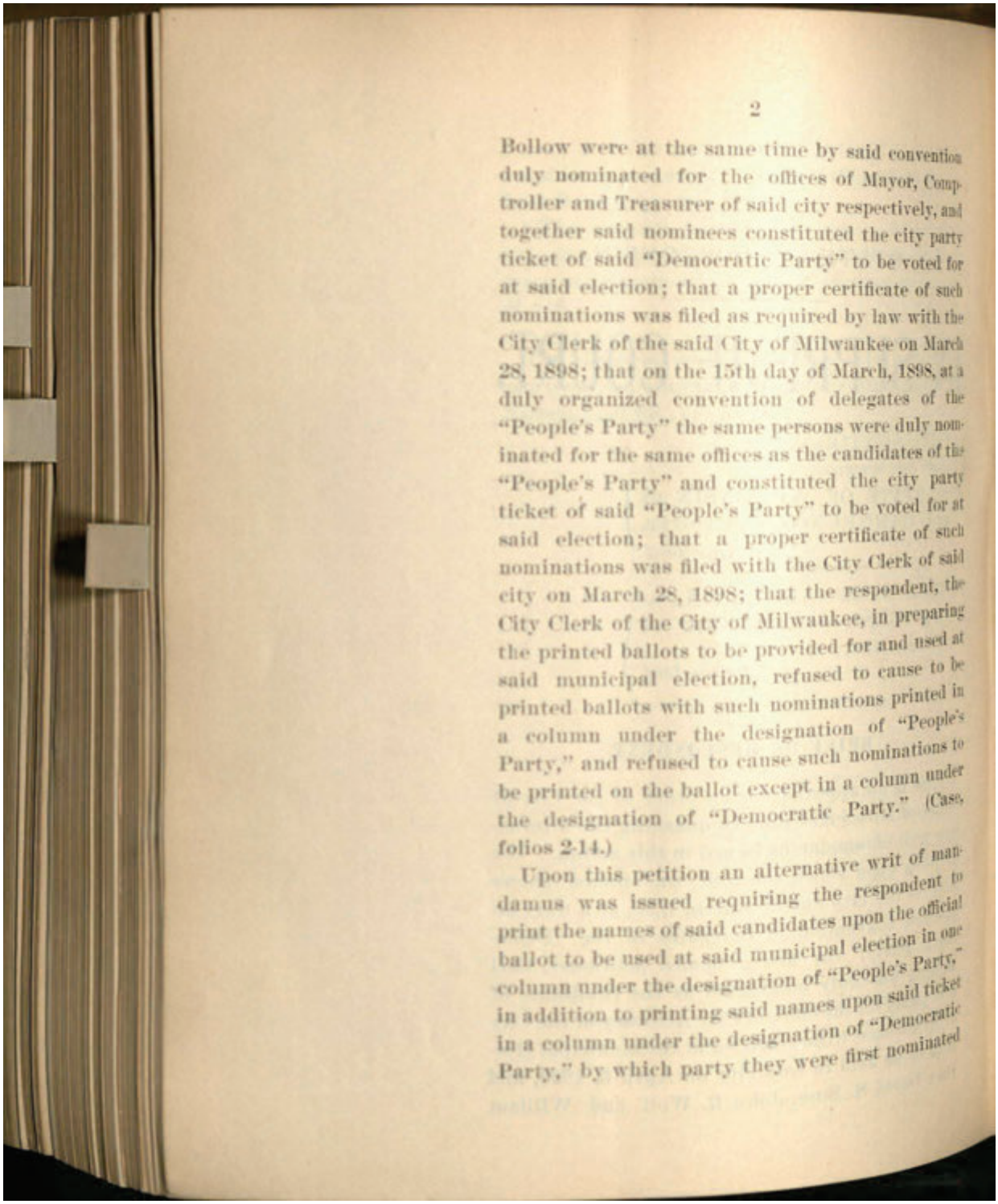
THE STATE OF WISCONSIN EX REL. CARL RUNGE, PETITIONER, *Appellant*,

vs.

WILLIAM E. ANDERSON, AS CITY CLERK OF THE CITY OF MILWAUKEE, *Respondent*.

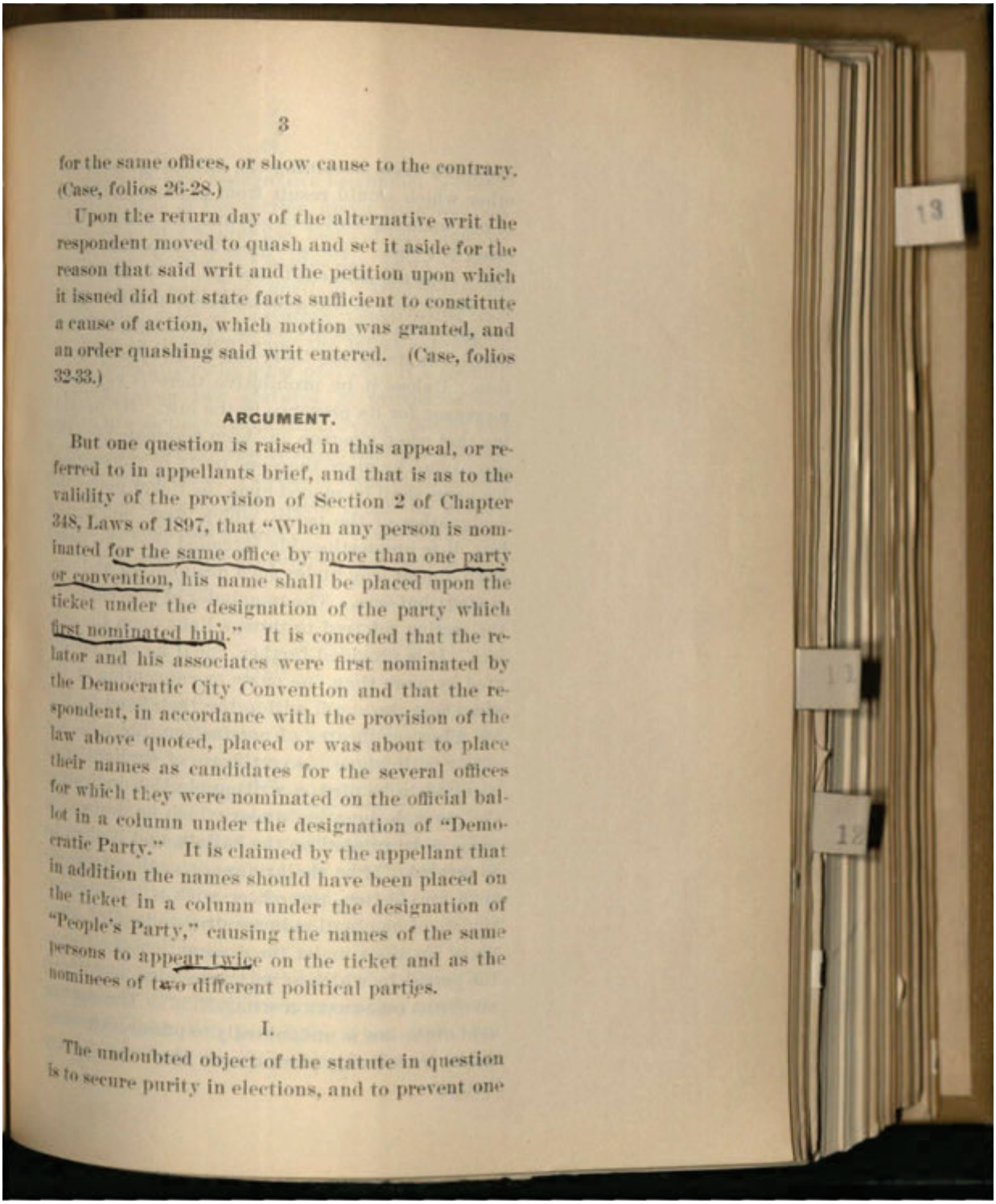
BRIEF OF RESPONDENT.

This is an appeal from an order of the Circuit Court of Milwaukee County quashing the alternative writ of mandamus issued in this action. The petition upon which the writ was issued shows that on the 14th day of March, 1898, at a duly organized convention of delegates of the "Democratic Party," the above named petitioner, Carl Runge, was duly nominated as the candidate of said party for the office of City Attorney of the City of Milwaukee, to be voted for at the municipal election to be held in said city on April 5, 1898, and that David S. Rose, John R. Wolf and William



Bollow were at the same time by said convention duly nominated for the offices of Mayor, Comptroller and Treasurer of said city respectively, and together said nominees constituted the city party ticket of said "Democratic Party" to be voted for at said election; that a proper certificate of such nominations was filed as required by law with the City Clerk of the said City of Milwaukee on March 28, 1898; that on the 15th day of March, 1898, at a duly organized convention of delegates of the "People's Party" the same persons were duly nominated for the same offices as the candidates of the "People's Party" and constituted the city party ticket of said "People's Party" to be voted for at said election; that a proper certificate of such nominations was filed with the City Clerk of said city on March 28, 1898; that the respondent, the City Clerk of the City of Milwaukee, in preparing the printed ballots to be provided for and used at said municipal election, refused to cause to be printed ballots with such nominations printed in a column under the designation of "People's Party," and refused to cause such nominations to be printed on the ballot except in a column under the designation of "Democratic Party." (Case, folios 2-14.)

Upon this petition an alternative writ of mandamus was issued requiring the respondent to print the names of said candidates upon the official ballot to be used at said municipal election in one column under the designation of "People's Party," in addition to printing said names upon said ticket in a column under the designation of "Democratic Party," by which party they were first nominated



for the same offices, or show cause to the contrary. (Case, folios 26-28.)

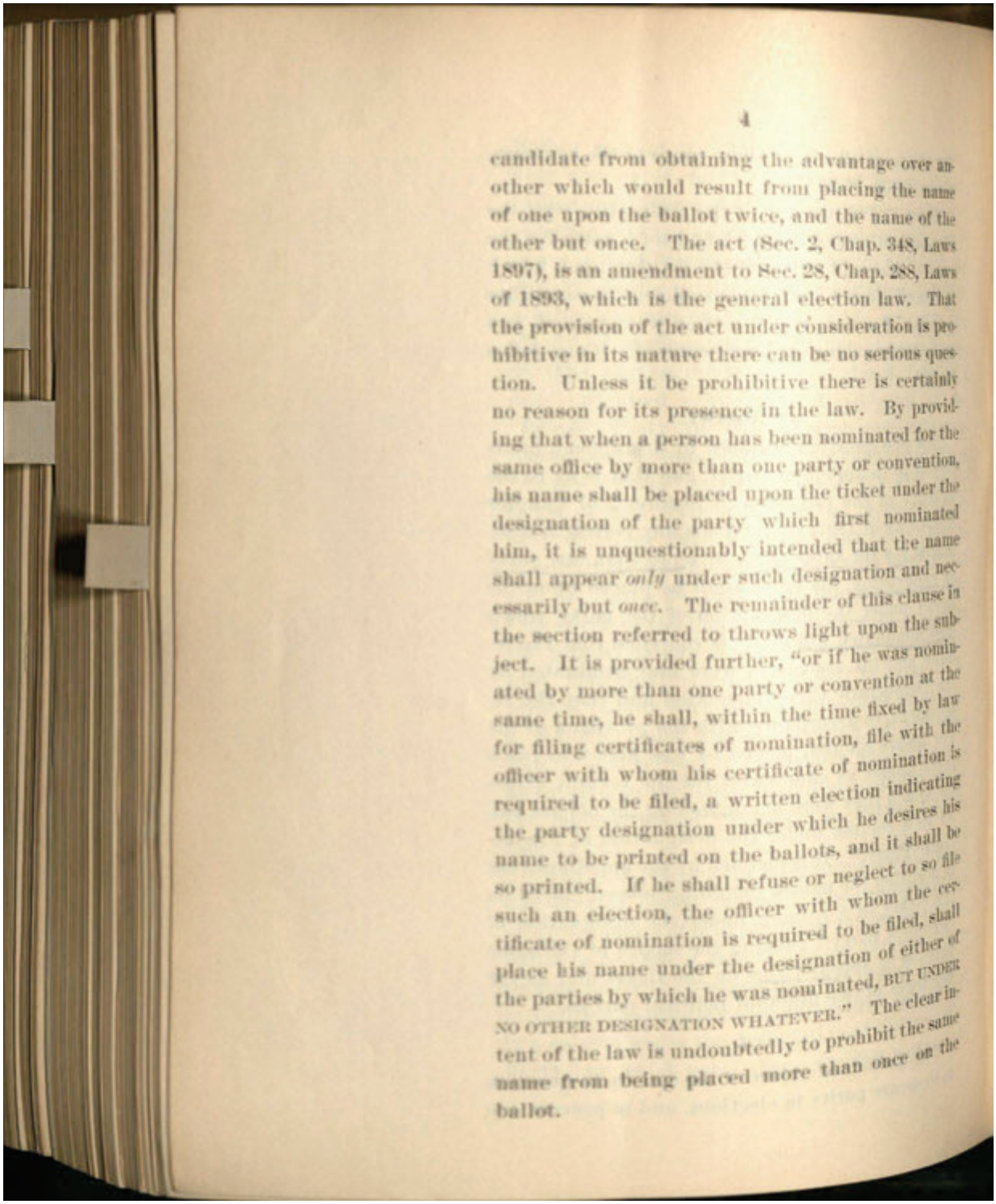
Upon the return day of the alternative writ the respondent moved to quash and set it aside for the reason that said writ and the petition upon which it issued did not state facts sufficient to constitute a cause of action, which motion was granted, and an order quashing said writ entered. (Case, folios 32-33.)

ARGUMENT.

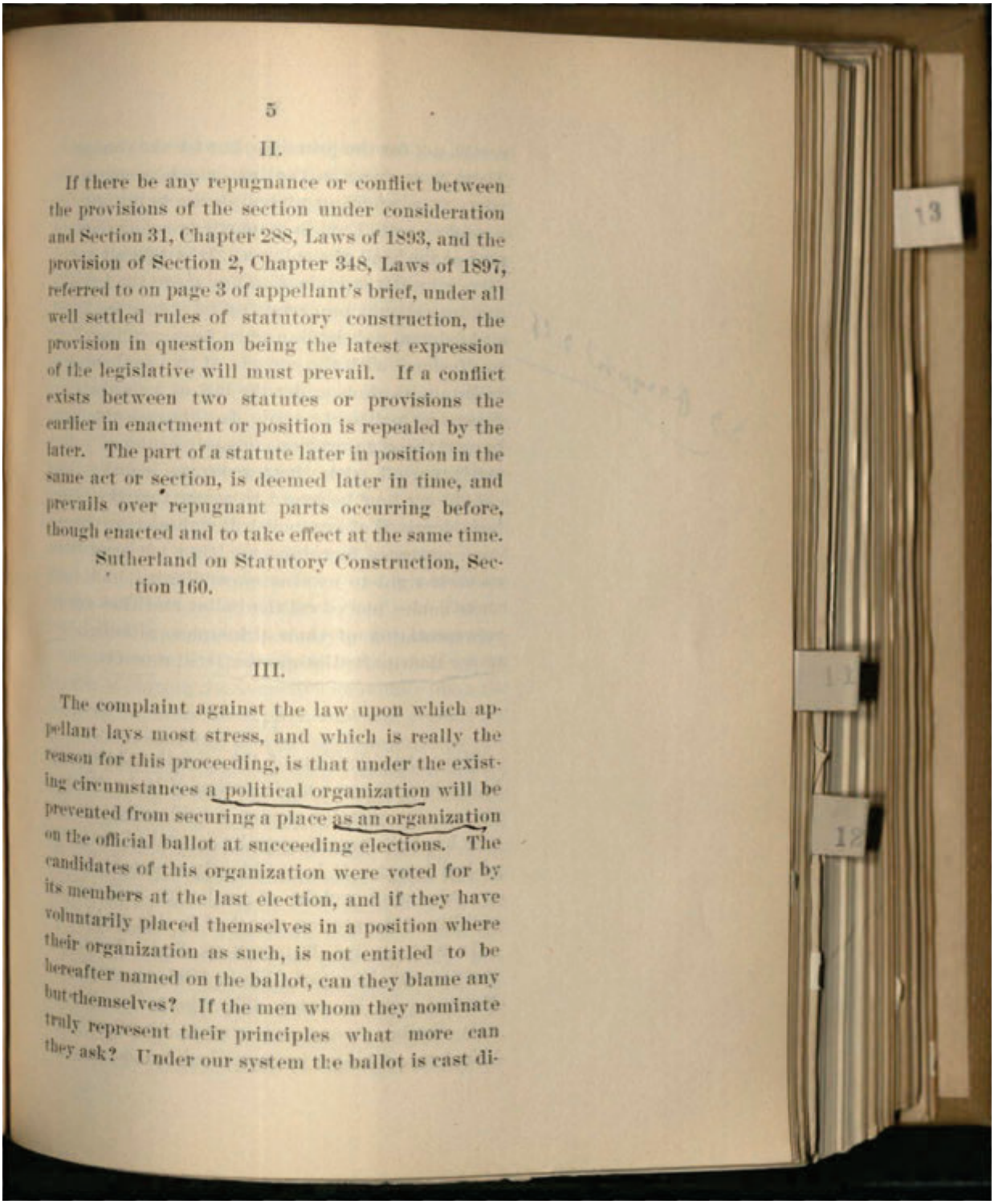
But one question is raised in this appeal, or referred to in appellants brief, and that is as to the validity of the provision of Section 2 of Chapter 348, Laws of 1897, that "When any person is nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him." It is conceded that the relator and his associates were first nominated by the Democratic City Convention and that the respondent, in accordance with the provision of the law above quoted, placed or was about to place their names as candidates for the several offices for which they were nominated on the official ballot in a column under the designation of "Democratic Party." It is claimed by the appellant that in addition the names should have been placed on the ticket in a column under the designation of "People's Party," causing the names of the same persons to appear twice on the ticket and as the nominees of two different political parties.

I.

The undoubted object of the statute in question is to secure purity in elections, and to prevent one



candidate from obtaining the advantage over another which would result from placing the name of one upon the ballot twice, and the name of the other but once. The act (Sec. 2, Chap. 348, Laws 1897), is an amendment to Sec. 28, Chap. 288, Laws of 1893, which is the general election law. That the provision of the act under consideration is prohibitive in its nature there can be no serious question. Unless it be prohibitive there is certainly no reason for its presence in the law. By providing that when a person has been nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him, it is unquestionably intended that the name shall appear *only* under such designation and necessarily but *once*. The remainder of this clause in the section referred to throws light upon the subject. It is provided further, "or if he was nominated by more than one party or convention at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written election indicating the party designation under which he desires his name to be printed on the ballots, and it shall be so printed. If he shall refuse or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed, shall place his name under the designation of either of the parties by which he was nominated, BUT UNDER NO OTHER DESIGNATION WHATEVER." The clear intent of the law is undoubtedly to prohibit the same name from being placed more than once on the ballot.



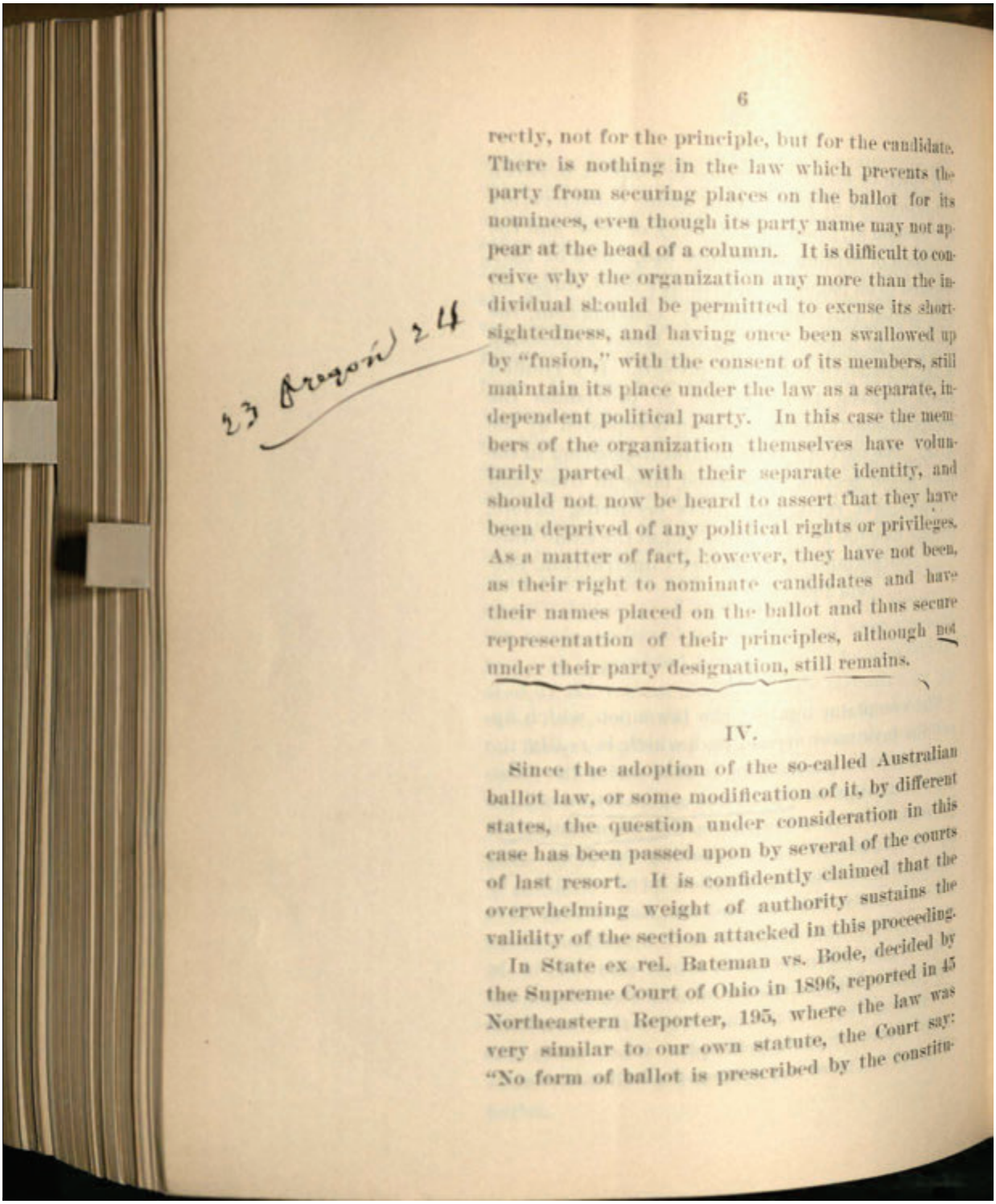
II.

If there be any repugnance or conflict between the provisions of the section under consideration and Section 31, Chapter 288, Laws of 1893, and the provision of Section 2, Chapter 348, Laws of 1897, referred to on page 3 of appellant's brief, under all well settled rules of statutory construction, the provision in question being the latest expression of the legislative will must prevail. If a conflict exists between two statutes or provisions the earlier in enactment or position is repealed by the later. The part of a statute later in position in the same act or section, is deemed later in time, and prevails over repugnant parts occurring before, though enacted and to take effect at the same time.

Sutherland on Statutory Construction, Section 160.

III.

The complaint against the law upon which appellant lays most stress, and which is really the reason for this proceeding, is that under the existing circumstances a political organization will be prevented from securing a place as an organization on the official ballot at succeeding elections. The candidates of this organization were voted for by its members at the last election, and if they have voluntarily placed themselves in a position where their organization as such, is not entitled to be hereafter named on the ballot, can they blame any but themselves? If the men whom they nominate truly represent their principles what more can they ask? Under our system the ballot is cast di-

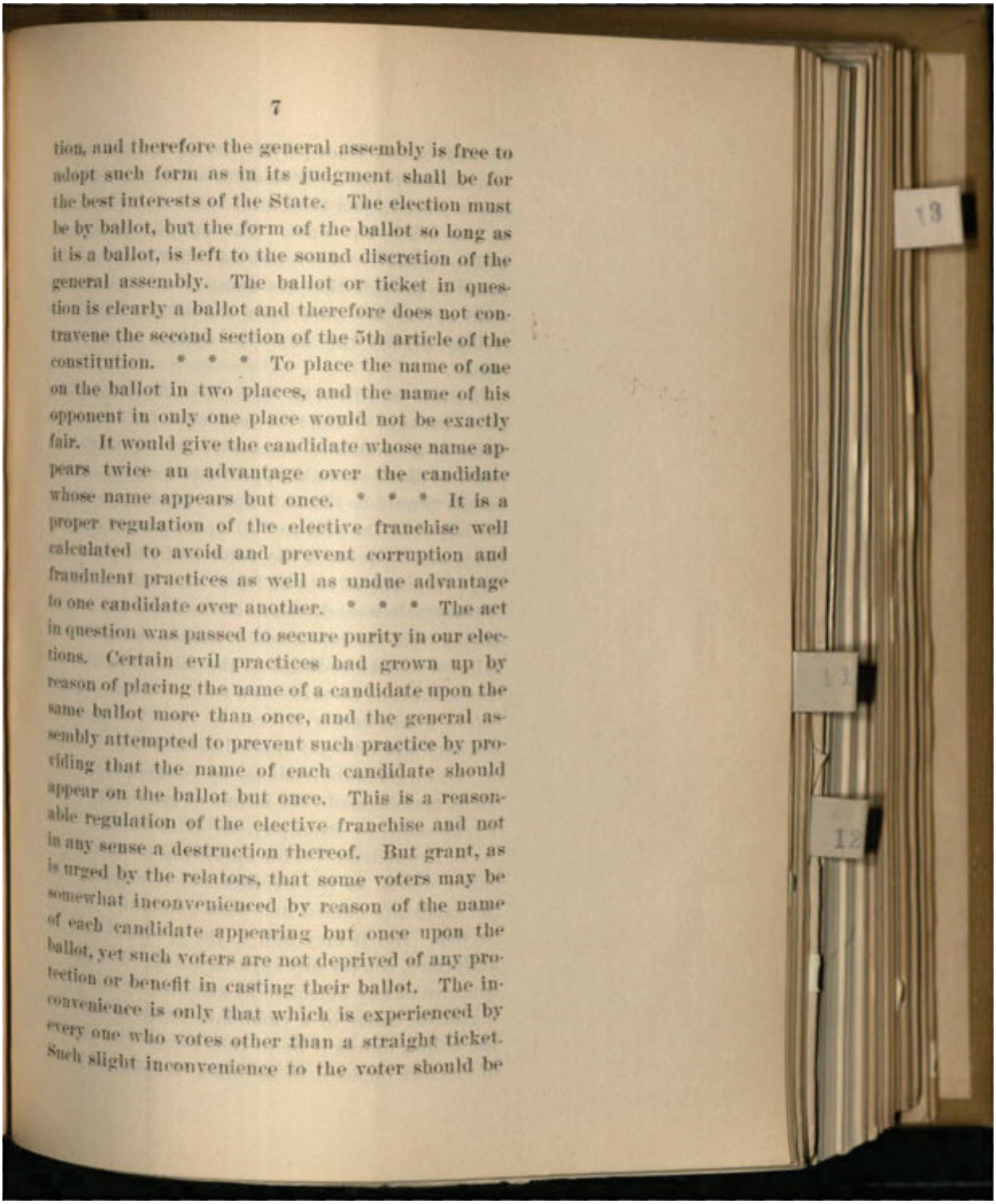


rectly, not for the principle, but for the candidate. There is nothing in the law which prevents the party from securing places on the ballot for its nominees, even though its party name may not appear at the head of a column. It is difficult to conceive why the organization any more than the individual should be permitted to excuse its short-sightedness, and having once been swallowed up by "fusion," with the consent of its members, still maintain its place under the law as a separate, independent political party. In this case the members of the organization themselves have voluntarily parted with their separate identity, and should not now be heard to assert that they have been deprived of any political rights or privileges. As a matter of fact, however, they have not been, as their right to nominate candidates and have their names placed on the ballot and thus secure representation of their principles, although not under their party designation, still remains.

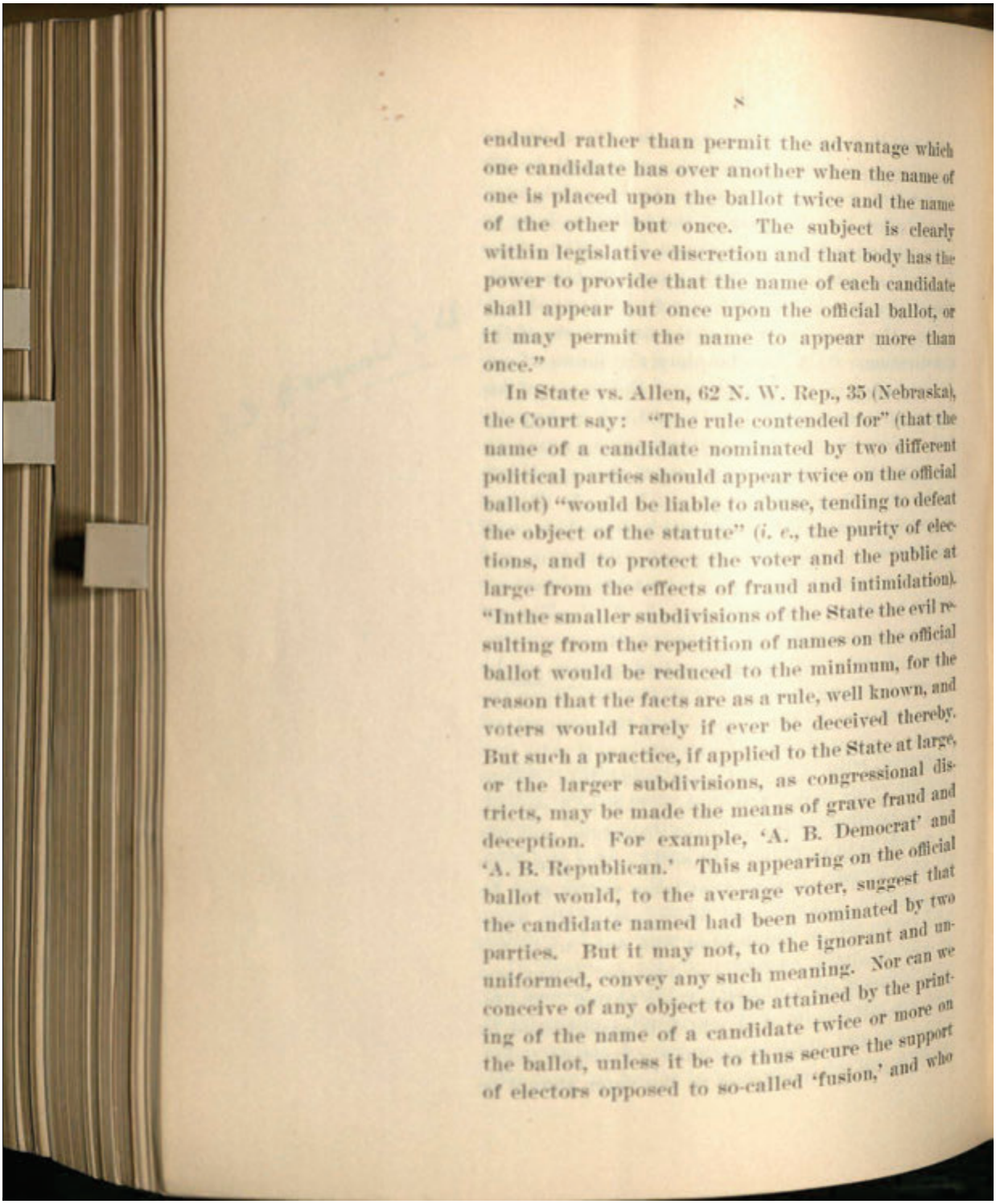
IV.

Since the adoption of the so-called Australian ballot law, or some modification of it, by different states, the question under consideration in this case has been passed upon by several of the courts of last resort. It is confidently claimed that the overwhelming weight of authority sustains the validity of the section attacked in this proceeding.

In State ex rel. Bateman vs. Bode, decided by the Supreme Court of Ohio in 1896, reported in 45 Northeastern Reporter, 195, where the law was very similar to our own statute, the Court say: "No form of ballot is prescribed by the constitu-

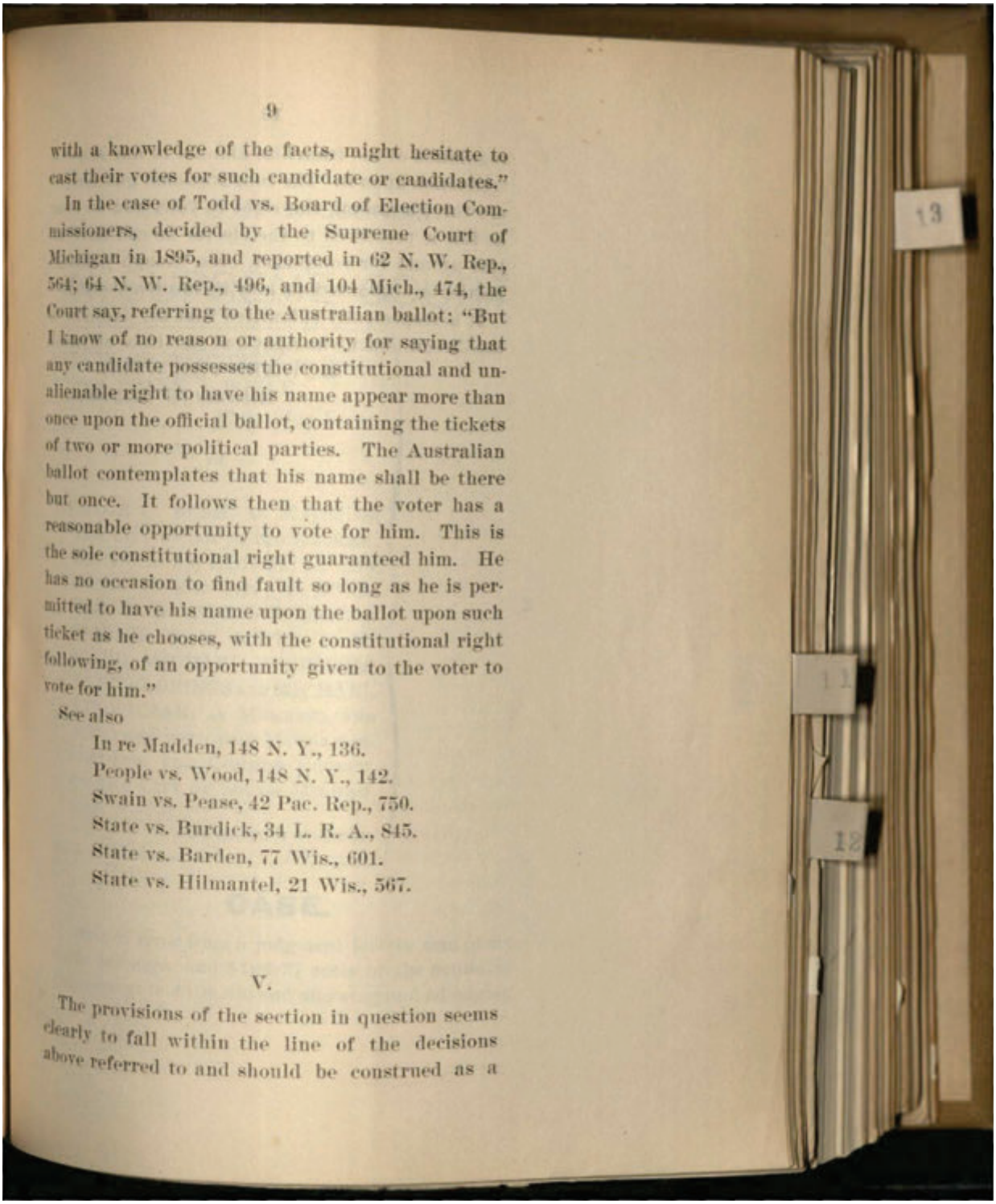


tion, and therefore the general assembly is free to adopt such form as in its judgment shall be for the best interests of the State. The election must be by ballot, but the form of the ballot so long as it is a ballot, is left to the sound discretion of the general assembly. The ballot or ticket in question is clearly a ballot and therefore does not contravene the second section of the 5th article of the constitution. * * * To place the name of one on the ballot in two places, and the name of his opponent in only one place would not be exactly fair. It would give the candidate whose name appears twice an advantage over the candidate whose name appears but once. * * * It is a proper regulation of the elective franchise well calculated to avoid and prevent corruption and fraudulent practices as well as undue advantage to one candidate over another. * * * The act in question was passed to secure purity in our elections. Certain evil practices had grown up by reason of placing the name of a candidate upon the same ballot more than once, and the general assembly attempted to prevent such practice by providing that the name of each candidate should appear on the ballot but once. This is a reasonable regulation of the elective franchise and not in any sense a destruction thereof. But grant, as is urged by the relators, that some voters may be somewhat inconvenienced by reason of the name of each candidate appearing but once upon the ballot, yet such voters are not deprived of any protection or benefit in casting their ballot. The inconvenience is only that which is experienced by every one who votes other than a straight ticket. Such slight inconvenience to the voter should be



endured rather than permit the advantage which one candidate has over another when the name of one is placed upon the ballot twice and the name of the other but once. The subject is clearly within legislative discretion and that body has the power to provide that the name of each candidate shall appear but once upon the official ballot, or it may permit the name to appear more than once."

In State vs. Allen, 62 N. W. Rep., 35 (Nebraska), the Court say: "The rule contended for" (that the name of a candidate nominated by two different political parties should appear twice on the official ballot) "would be liable to abuse, tending to defeat the object of the statute" (*i. e.*, the purity of elections, and to protect the voter and the public at large from the effects of fraud and intimidation). "Inthe smaller subdivisions of the State the evil resulting from the repetition of names on the official ballot would be reduced to the minimum, for the reason that the facts are as a rule, well known, and voters would rarely if ever be deceived thereby. But such a practice, if applied to the State at large, or the larger subdivisions, as congressional districts, may be made the means of grave fraud and deception. For example, 'A. B. Democrat' and 'A. B. Republican.' This appearing on the official ballot would, to the average voter, suggest that the candidate named had been nominated by two parties. But it may not, to the ignorant and uninformed, convey any such meaning. Nor can we conceive of any object to be attained by the printing of the name of a candidate twice or more on the ballot, unless it be to thus secure the support of electors opposed to so-called 'fusion,' and who



with a knowledge of the facts, might hesitate to cast their votes for such candidate or candidates."

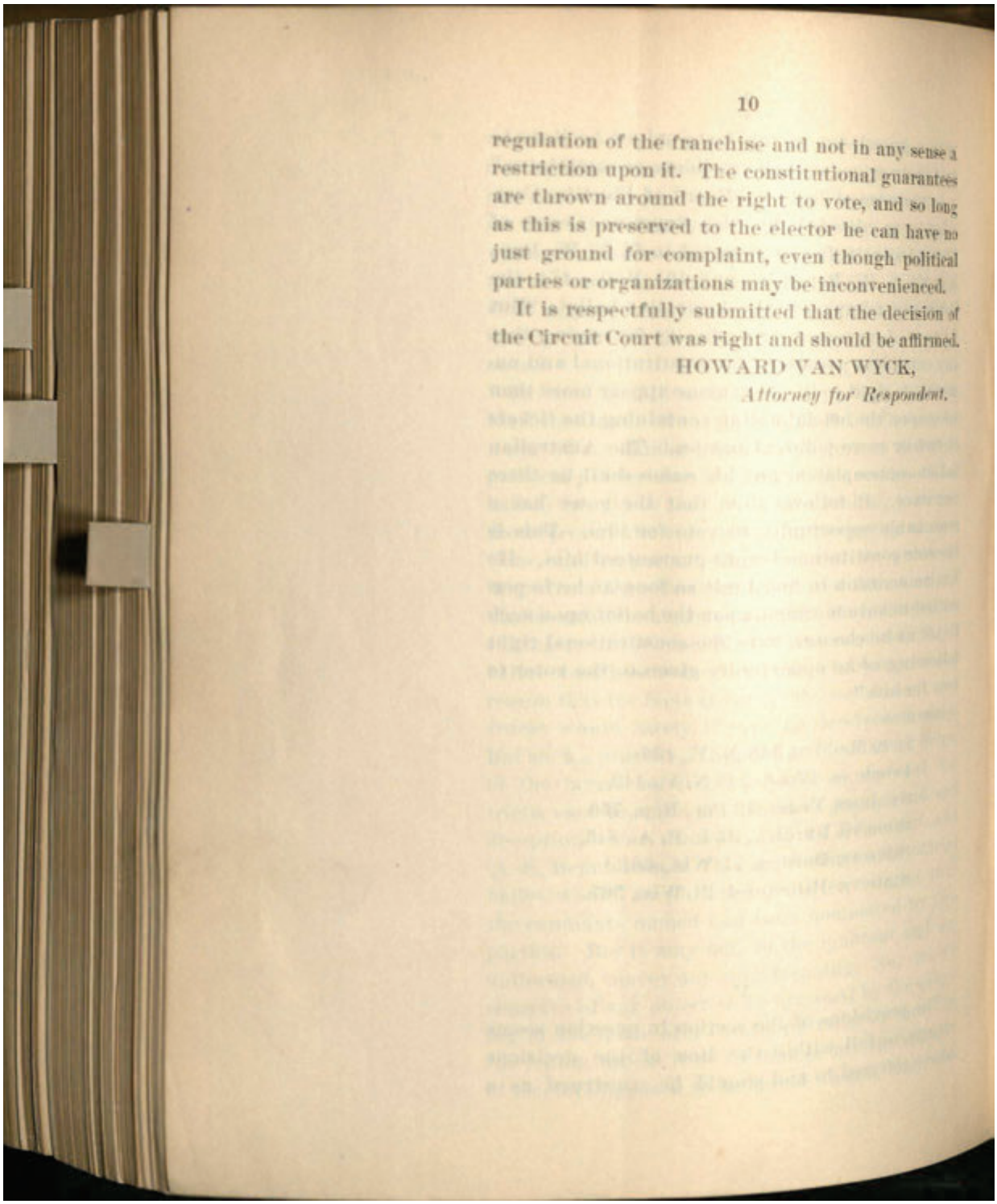
In the case of Todd vs. Board of Election Commissioners, decided by the Supreme Court of Michigan in 1895, and reported in 62 N. W. Rep., 564; 64 N. W. Rep., 496, and 104 Mich., 474, the Court say, referring to the Australian ballot: "But I know of no reason or authority for saying that any candidate possesses the constitutional and unalienable right to have his name appear more than once upon the official ballot, containing the tickets of two or more political parties. The Australian ballot contemplates that his name shall be there but once. It follows then that the voter has a reasonable opportunity to vote for him. This is the sole constitutional right guaranteed him. He has no occasion to find fault so long as he is permitted to have his name upon the ballot upon such ticket as he chooses, with the constitutional right following, of an opportunity given to the voter to vote for him."

See also

In re Madden, 148 N. Y., 136.
People vs. Wood, 148 N. Y., 142.
Swain vs. Pease, 42 Pac. Rep., 750.
State vs. Burdick, 34 L. R. A., 845.
State vs. Barden, 77 Wis., 601.
State vs. Hilmantel, 21 Wis., 567.

V.

The provisions of the section in question seems clearly to fall within the line of the decisions above referred to and should be construed as a



regulation of the franchise and not in any sense a restriction upon it. The constitutional guarantees are thrown around the right to vote, and so long as this is preserved to the elector he can have no just ground for complaint, even though political parties or organizations may be inconvenienced.

It is respectfully submitted that the decision of the Circuit Court was right and should be affirmed.

HOWARD VAN WYCK,
Attorney for Respondent.

IN THE TWENTY-EIGHTH JUDICIAL DISTRICT
DISTRICT COURT OF SALINE COUNTY, KANSAS

UNITED KANSAS INC. et al., Plaintiffs, vs. SCOTT SCHWAB, et al., Defendants,	Case No. SA 2024-CV-000152 consolidated with Case No. RN 2024-CV-000184

MEMORANDUM DECISION AND ORDER

On December 3, 2023, the above captioned case proceeded to hearing on Defendant's Motion to Dismiss Plaintiffs' Petition and Plaintiffs' Motion for Summary Judgment. Counsel of record appeared and after oral argument, the Court ordered both parties to filë proposed findings of fact and conclusions of law. The parties timely filed the same on January 31, 2025, and the Court took the matter under advisement.

The Court, having reviewed the court file, arguments of counsel, and being duly apprised of the evidence presented, enters the following findings of fact and conclusions of law.

I. HISTORY OF FUSION VOTING

This case scrutinizes Kansas Statutes that prohibit fusion voting. *See* K.S.A. 25-306, K.S.A. 306e, and K.S.A. 25-613. "Fusion" voting is the common vernacular used to describe a voting procedure allowing the same individual to appear on a ballot as a candidate for more than one party. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, Syl, 117 S.Ct. 1364 (1997). It is an understatement to assert that fusion voting is an uncommon practice in the United

States of America. "[I]n this century, fusion has become the exception, not the rule. Today, multiple-party candidacies are permitted in just a few States." *See Timmons* at 357. Because of its rather obscure practice in the modern American political system a brief review of the history of fusion voting is in order.

Prior to the Presidential election of 1888, fusion voting "was a regular feature of Gilded Age American politics." *Id.* at 356. In different regions of the country each of the two major parties engaged in this practice for their own strategic reasons. *Id.* "Fusion was common in part because political parties, rather than local or state governments, printed and distributed their own ballots." *Id.* Apparently, the ballots "contained only the names of a particular party's candidates. . ." *Id.* Unlike today, where a voter fills out a paper or electronic ballot and affirmatively selects a candidate of their choice, "a voter could drop his party's ticket in the ballot box without even knowing that his party's candidates were supported by other parties as well." *Id.* The voting process for many Americans changed dramatically during the latter part of the 1800's. The 1888 election was "widely regarded as having been plagued by fraud." *Id.* Thereafter, many States, including Kansas, began using the "Australian ballot system" which meant that an official ballot, printed at the expense of the public, contained all the names of the legally nominated candidates. *Id.* "By 1896, use of the Australian ballot was widespread" and "many States enacted other election-related reforms, including bans on fusion candidacies." *Id.*

Kansas was one of the many States that followed suit and enacted a ban on fusion voting in 1901. *See* K.S.A. 25-306. In the nearly 135 years since the onset of States banning fusion voting, courts across the country have, by and large, upheld these laws. *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025); *State v. Anderson*, 100 Wis. 52376 N.W. 482 (Wis. 1898); *People ex rel. McCormick v. Czarnecki*, 266 Ill. 372, 107 N.E. 625, 628 (Ill.

1914); *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 958 (Mo. 1914); *In re Street*, 499 Pa. 26, 451 A.2d 427, (Pa. 1982); *Ray v. State Election Bd.*, 422 N.E.2d 714 (Ind. Ct. App. 1981); *State v. Wileman*, 49 Mont. 436, 143 P. 565 (Mont. 1914); *State ex re. Shepard v. Superior Court of King County*, 60 Wash. 370, 111 P. 233 (Wash. 1910); *State ex rel. Fisk v. Porter*, 13 N.D. 406, 100 N.W. 1080 (N.D. 1904); and *State ex rel. Bateman v. Bode*, 55 Ohio St. 224, 45 N.E. 195 (1986); *but see In re Callahan*, 200 N.Y. 59, 93 N.E. 262 (N.Y. 1910). This Court is not aware of any on-point Kansas case that addresses constitutional challenges to anti-fusion laws.

II. PROCEDURAL HISTORY

A Petition for Declaratory and Injunctive Relief was filed by United Kansas Inc., Lori Blake, Jack Curtis, Sally Cauble, Adeline Ollenberger, and Scott Morgan in the Saline County District Court on July 10, 2024. That same day a Petition for Declaratory and Injunctive Relief was filed in Reno County by the named parties therein. All Petitioners from the Saline and Reno County cases will be referred to as "UKP." Saline County case 2024 CV 152 named Scott Schwab, Secretary of State, and Jamie Doss, County Clerk and Election Officer for Saline County as Defendants. Reno County case 2024 CV 184 named Scott Schwab, Secretary of State, and Donna Patton, County Clerk and Election Officer for Reno County as Defendants. All Defendants from the Saline and Reno County cases will be referred to as "the State." Both Petitions allege the statutory ban on fusion voting violates the Kansas Constitution. Specifically, the Petitions assert violations of the right to free speech, the right to association, and the right to equal protection. UKP seek declaratory relief pursuant to K.S.A. 69-1701 & 1703 as well as injunctive relief pursuant to K.S.A. 60-901 & 902. UKP filed a Motion to Expedite Proceedings in Reno County on July 15, 2024, and on July 18, 2024, in Saline County. In Saline County the first scheduling conference occurred on July 22, 2024, and the District Court set the matter for

status to determine if the County was represented by counsel. On July 25, 2024, the Reno County District Court denied Plaintiffs' Motion to Expedite. In Saline County, the Motion to Expedite was set to be heard on August 5, 2024. That same day the State filed a Motion to Dismiss alleging the District Court lacked jurisdiction and that the Petition failed to state a claim. For the reasons stated on the record, the Court denied the Motion to Expedite on August 7, 2024. Thereafter, counsel for UKP filed responsive pleadings to defendants' Motion to Dismiss including a Motion for Summary Judgment.

On August 23, 2024, the Kansas Supreme Court ordered that, in accordance with K.S.A. 60-242(c), Reno County District Court case number 2024 CV 184 transfer to the Saline County District Court and consolidate with Saline County Case 2024 CV 152. The cases were consolidated as ordered. After all responsive pleadings were filed and served, oral argument was set for December 3, 2024, and proceeded as scheduled. At the conclusion of oral argument, the Court ordered the parties to file proposed findings of facts and conclusions of law by January 31, 2025.

III. FINDINGS OF FACT

UKP is a political party recognized by the State of Kansas and granted ballot access in accordance with K.S.A. 25-302. Lori Blake and Jason Probst are both registered voters in the State of Kansas. Ms. Blake is registered in Saline County and Mr. Probst in Reno County. Both were candidates in the 2024 general election for the Kansas House of Representatives: Ms. Blake for the 69th District and Mr. Probst for the 102nd. Mr. Probst represented the 102nd District since 2017 in the House. UKP nominated Ms. Blake and Mr. Probst as its candidate in their respective Districts for the 2024 general election. Both candidates won the August 2024 Kansas

Democratic Party primary election and were certified as the Democratic Party's nominee by the State Board of Canvassers. Both were defeated in the November 2024 general election.

Plaintiff Jack Curtis is a registered Kansas voter and is UKP's Chair. Plaintiff Sally Cauble is a registered Kansas voter and is UKP's Vice Chair. Plaintiffs Adeline Ollenberger, Elizabeth Long, Scott Morgan, and Brent Lewis are Kansas registered voters who are affiliated with UKP and who prefer to vote for UKP candidates in the general election.

UKP is a political party founded in 2023 by a cross-partisan group of local leaders and concerned citizens, based on the belief that most Kansas want to reduce bitter partnership and rigid ideology in Kansas politics, promote more compromise and consensus, and place emphasis on real problem-solving. On March 12, 2024, UKP filed more than thirty-five thousand signatures from Kansas voters in support of its petition for party recognition. The Kansas Secretary of State recognized UKP as a formal political party twelve day later on May 24, 2024.

UKP's mission is clear. They believe that running a third candidate in a competitive two-way race against major parties is a recipe for loss and would undermine its own political goals and priorities by taking away votes from whichever viable candidate is more closely aligned with UKP's values of moderation and compromise. In short, UKP believes running a third-party candidate without fusion voting would help the candidate with whom UKP disagrees the most.

UKP concludes that to advance its political goals, in most races, it must recruit and nominate candidates who are also capable of securing the nomination of one of the two major parties. UKP pursued this strategy in 2024 by nominating Ms. Blake and Rep. Probst as its 2024 candidates for the 69th and 102nd District seats in the Kansas State House. UKP intends to continue this strategy in 2026, 2028, and beyond.

On June 21, 2024, the Kansas Secretary of State's Office sent written notice to UKP stating that, pursuant to K.S.A. 25-306e, a candidate may be nominated by only one political party on the general election ballot. The notice explained that, if Ms. Blake and Rep. Probst prevailed in their Democratic primary races, the Secretary would require each of them to "file within seven days" after the State Board of Canvassers' certification of the primary results "a written statement, signed and sworn . . . , designating which nomination [he/she] desires to accept": either the UKP or Democratic nomination. The Secretary added that, if Ms. Blake or Rep. Probst "refuse[d] or neglect[ed] to file such statement," the Secretary, "immediately upon the expiration of the seven-day period, shall make and file . . . an election of one nomination for [her/him]."

On August 28, 2024, Ms. Blake and Rep. Probst each received correspondence from the Secretary asking them which party's nomination they intended to keep pursuant to K.S.A. 25-306e. Although Ms. Blake and Rep. Probst wished to run as formal nominees of both UKP and the Democratic Party, because of the statutory prohibition against fusion voting, they each submitted a written statement informing the Secretary that they chose to retain their Democratic Party nominations, to retain the ballot line of a more established party with a larger current number of registered voters. Pursuant to K.S.A. 25-306e, submission of these statements meant that Ms. Blake and Rep. Probst were "deemed to have declined" the UKP nominations.

IV. CONCLUSIONS OF LAW

A. Standing

The State's Motion to Dismiss alleges that UKP lacks standing to pursue their claims. "Standing is 'a party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *See Gannon v. State*, 298 Kan. 1107, 1130 (2014)(quoting Black's Law Dictionary 1536

(9th ed.2009)). The State initially argued the Petition lacked sufficient allegations concerning subject matter jurisdiction. Specifically, the State claimed that UKP has not suffered a cognizable injury. The Motion to Dismiss was filed on August 5, 2024, prior to the Democratic nominations and prior to the candidates' decision to keep the Democratic nomination. The State argued any injuries were speculative at that time. The State also argued that Jack Curtis, Sally Cauble, and Scott Morgan failed to plead that they are eligible to vote in the 69th District House race.

The State asserted that there is not a causal connection between the injury and the challenged conduct because the injury is not caused by K.S.A. 25-306e but by Ms. Blake's own decision to decline the UKP nomination. UKP disagreed, arguing the injuries were not speculative as each candidate ran unopposed and "were all but guaranteed to win" and in fact won their respective primaries. UKP also argued that their injury was "fairly traceable to the challenged action of the defendant[s]." *See Kan. Bld. Indus. Workers Comp. Fund. v. State, 302 Kan. 656,* 681 (2015)(quoting *Gannon v. State*, 298 Kan. 1107, 1130 (2014)). Eventually, the State agreed UKP had standing. Their Reply stated: "[t]hese results triggered K.S.A. 25-306's prohibition on a candidate being nominated by more than one political party in a particular election. Given that Mr. Probst and Ms. Blake chose to eschew their respective nominations from the United Kansas Party and instead accept the competing nomination of the Democratic Party, Defendants no longer dispute Plaintiffs' standing."

Subject matter jurisdiction may be raised by the court or a party at any time. *See State v. Patton*, 287 Kan. 200, 205 (2008). UKP has the burden of establishing standing. *See Gannon*, 298 Kan. at 1123; *see also Davis v. FEC*, 554 U.S. 724, 734 (2008). To establish standing, UKP must demonstrate that (i) it has "suffered a cognizable injury" and (ii) there is "a causal

connection between the injury and the challenged conduct." *See League of Women Voters v. Schwab*, 317 Kan. 805, 813 (2023) ("*LWV I*"). The time for speculating whether either candidate would obtain both nominations has passed. The parties each obtained UKP and the Democratic parties' nominations triggering K.S.A. § 25-306e and the Secretary of State responded accordingly. The injuries are "fairly traceable" as required for standing. Absent enforcement of the anti-fusion laws, both candidates could have retained their UKP nominations, both nominations could have appeared on the ballot, and the alleged constitutional harms would not have materialized. *See Kan. Bld. Indus. Workers Comp. Fund*, 302 Kan. at 681-82. In addition, the individually named Plaintiffs are all registered Kansas voters and affiliated with UKP. Their status combined with the application of K.S.A. 25-306e is sufficient to demonstrate they "suffered a cognizable injury" and that there is "a causal connection between the injury and the challenged conduct." Plaintiffs have standing to proceed, and this Court has jurisdiction to review their claims.

B. The Petition fails to State a Claim Upon Which Relief Can Be Granted

The initial question raised by the State is whether the Petition states a valid claim for relief. In evaluating a motion to dismiss pursuant to K.S.A. 60-212(b)(6), the Court must "determine whether the petition state any valid claim for relief." *See Williams v. C-U-Out Bail Bonds*, 310 Kan. 775, 784 (2019). The Court assumes the truth of all well-pled facts and draws any reasonable inferences in the plaintiff's favor. *Id.* UKP raises three constitutional challenges to Kansas anti-fusion laws. Namely, that the Kansas anti-fusion laws violate the following rights protected by the Kansas Constitution: Freedom of Speech (Section 11 of the Bill of Rights); Freedom of Association (Section 3 of the Bill of Rights); and Equal Protection (Section 2 of the Bill of Rights).

i. Standard of Review

The parties dispute the appropriate standard of review: strict scrutiny; the *Anderson-Burdick* framework; or a "reasonableness" test similar to the one used by the Kansas Supreme Court in *League of Women Voters of Kansas v. Schwab, 318 Kan. 777 (2024)("LWV II")*. Under strict scrutiny, "the government's action is presumed unconstitutional," and the burden shifts to the State "to establish the requisite compelling interest and narrow tailoring of the law." *See Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 669 (2019). Whereas *Anderson-Burdick* requires the court to (1) "consider the character and magnitude of the asserted injury"; (2) identify and evaluate the precise interests put forward by the State" and "determine the[ir] legitimacy and strength"; and (3) consider the extent to which those interests make it necessary to burden the plaintiff's rights." *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); and *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Article 4, § 1 of the Kansas Constitution states "[a]ll elections by the people shall be by ballot or voting device, or both, as the legislature shall by law provide." The Court in *LWV II* made clear "[w]here popular elections are required—by either statute or by the Kansas Constitution in articles 1 and 2 (or elsewhere)—the mode, form, and rules governing those elections are constitutionally delegated from the people to their free government in concrete constitutional commands." *LWV II*, 318 Kan. at 378. Article 4, § 1 confers upon lawmakers the power to select *any reasonable* mode of voting for state elections. The Supreme Court referenced *State v. Butts*, 31 Kan. 537, 555-56 (1884), when discussing this very point in the context of Article 5, § 4 stating, "determining whether the article 5 right to suffrage has been violated is subject to our test set forth in *Butts*. . ." *Id.* at 380. In 1884, the Kansas Supreme Court addressed a constitutional challenge to a statute requiring registration to vote, thereby

placing "an additional qualification on the right to suffrage." *Butts,* 31 Kan. at 619. The Court held the registration law was reasonable and that the legislature has the "right to require proof of a man's qualification, it has a right to say when such proof shall be furnished, and before what tribunal and unless that power is abused the court may not interfere." *Id.* at 621. In the context of Article 5, the *LWV II* Court summarized the test as follows:

> In other words, the test pronounced in *Butts* provides that the Legislature may validly make registration (or the provision of other "proper proofs") a prerequisite to the act of voting, but in so doing, the Legislature cannot "under the pretext of securing evidence of voters' qualifications ... cast so much burden as really to be imposing additional qualifications" on the right to suffrage. 31 Kan. at 554, 2 P. 618. Accordingly, to prevail on a claim that the article 5 right to suffrage has been violated, a plaintiff must show that the Legislature has imposed what amounts to a new, extra-constitutional qualification on the right to be an elector—that is, the law must be shown to unreasonably burden the right to suffrage. Such unreasonable burdens, as a matter of law, bear no reasonable relationship to the Legislature's lawful role of providing proper proofs but instead amount to extra-constitutional and de facto qualifications on the right to suffrage. If a law is shown to violate the *Butts* test—i.e., if it imposes any additional de facto qualifications not expressly set forth in article 5 on the right to become an elector—the law is unconstitutional. *LWV II*, 318 Kan. at 380-81.

Contrary to UKP's argument, strict scrutiny is not the appropriate standard of review. Constitutional interpretation requires reading each provision "in the context of the Constitution as a whole," not as isolated protections and guarantees. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325-26 (2015). UKP argues that because they are not asserting right to vote claims under Articles 4 or 5, the "reasonableness" standard applied in *LWV II* is irrelevant. The Court does not agree. Although Plaintiffs invoke protections under the Bill of Rights, their claims involve a discrete mode of voting (i.e. fusion voting), a matter the Kansas Constitution expressly delegates broad discretion to the legislature to regulate in Article, 4, Section 1.

In addition, the United States Supreme analyzed similar challenges to a Minnesota anti-fusion ban using the *Anderson-Burdick* framework, not strict scrutiny. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). The *Timmons* Court summarized the structure of its analysis as follows:

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the " 'character and magnitude' " of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick, supra,* at 434, 112 S.Ct., at 2063–2064 (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's " 'important regulatory interests' " will usually be enough to justify " 'reasonable, nondiscriminatory restrictions.' " *Burdick, supra,* at 434, 112 S.Ct., at 2063 (quoting *Anderson, supra,* at 788, 103 S.Ct., at 1569–1570); *Norman, supra,* at 288–289, 112 S.Ct., at 704–706 (requiring "corresponding interest sufficiently weighty to justify the limitation"). No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms. *Storer, supra,* at 730, 94 S.Ct., at 1279 ("[N]o litmus-paper test ... separat[es] those restrictions that are valid from those that are invidious.... The rule is not self-executing and is no substitute for the hard judgments that must be made").

The United States Supreme Court noted that the "burdens Minnesota imposes on the party's First and Fourteenth Amendment associational rights—though not trivial—are not severe." *Id.* at 363. As the Court will discuss below, whether the Court evaluates the fusion voting ban using a "reasonableness" test, as the Kansas Supreme Court did in *LWV II* for assessing challenges to signature verification laws and ballot collection restrictions or invoke *Anderson-Burdick* balancing (as the United States Supreme Court did in *Timmons*) the challenged anti-fusion laws survive UKP's constitutional attack. The test outlined in *Butts*, and applied in *LWV II*, carries similarities to the *Anderson-Burdick* framework. UKP attempts to

steer focus away from *Timmons* and the Supreme Court's use of the *Anderson-Burdick* balancing test by focusing on distinctions with the Kansas State Constitution. However, the Court finds the three factors utilized by the *Anderson-Burdick* analysis are the appropriate standard of review in this case and are consistent with the reasonableness test from *LWV II*. The analysis below will focus on the *Anderson-Burdick* factors for this reason. *See Mazo v. New Jersey Secretary of State*, 54 F.4th 124, 143 (3rd Cir. 2022)(". . .the Supreme Court has been skeptical of efforts to assert an unqualified right to speech via the ballot, but it has nonetheless applied the *Anderson-Burdick* balance test to laws that regulate ballot speech."); *see also See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025).

iii. The State has strong and legitimate regulatory interests at stake

The first factor directs the Court to "consider[s] the character and magnitude of the asserted injury." However, because UKP asserts three separate constitutional challenges that each involve reviewing the State's precise interests and determining their legitimacy and strength, the Court will address the same before evaluating the character and magnitude of the asserted injuries.

As the *Timmons* Court noted, "[r]egulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's " 'important regulatory interests' " will usually be enough to justify " 'reasonable, nondiscriminatory restrictions.'" 520 U.S. at 358. "No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *See Id.* at 359. Each of the stated interests will be reviewed in turn.

First, the State has an obligation to ensure that the ballot remains free from manipulation. *See Timmons*, 520 U.S. at 364-65. Political party cross-nominations on a ballot potentially "undermine the ballot's purpose by transforming it from a means of choosing candidates to a billboard for political advertising." *Id.* at 365. The State has a legitimate interest in preventing candidates from exploiting fusion voting by associating his or her name with popular slogans and catchphrases. *Id.* The Supreme Court in *Timmons* addressed this point, stating:

> Petitioners contend that a candidate or party could easily exploit fusion as a way of associating his or its name with popular slogans and catchphrases. For example, members of a major party could decide that a powerful way of "sending a message" via the ballot would be for various factions of that party to nominate the major party's candidate as the candidate for the newly-formed "No New Taxes," "Conserve Our Environment," and "Stop Crime Now" parties. In response, an opposing major party would likely instruct its factions to nominate that party's candidate as the "Fiscal Responsibility," "Healthy Planet," and "Safe Streets" parties' candidate.
>
> *Whether or not the putative "fusion" candidates' names appeared on one or four ballot lines, such maneuvering would undermine the ballot's purpose by transforming it from a means of choosing candidates to a billboard for political advertising. Id.* (emphasis added).

Fusion voting incentivizes mischief by candidates and parties by allowing candidates to appear on the ballot multiple times as the nominee of different parties. For example, a major party could create multiple minor parties based on the 2% signature requirement of K.S.A. 25-302a to have its candidate appear multiple times utilizing valuable ballot real estate to promote their platform. *See People ex rel. McCormick v. Czarnecki*, 107 N.E. 625, 629 (1914). Similarly, a fringe candidate could obtain multiple minor party nominations by obtaining the threshold signatures suggesting, or by the number of minor party nominations, implying that they have more widespread support than exists.

The State has a strong interest in procedures that avoid, or at least minimize, the potential for gamesmanship at the nomination stage and improperly inflate their party's support. Rolling the clock back 125 years to a time when fusion voting was allowed would allow a minor party to circumvent the rule for obtaining the status of a major political party. K.S.A. 25-202(b) requires receipt of at least 5% of the total votes cast for all candidates in a primary election (versus having to convene a delegate or mass convention, which the party must fund itself), and avoid the loss of recognition rules. *See* K.S.A. 25-302b. The minor party could do this by cross nominating a major party's candidate. The *Timmons* Court addressed a similar concern and stated, "voters who might not sign a minor party's nominating petition based on the party's own views and candidates might do so if they viewed the minor party as just another way of nominating the same person nominated by one of the major parties." 520 U.S. at 366. The Court noted that "[t]he State surely has a valid interest in making sure that minor and third parties who are granted access to the ballot are bona fide and actually supported, on their own merits, by those who have provided the statutorily required petition or ballot support." *Id.*

Anti-Fusion laws also help to facilitate greater competition and choice. Like the analysis above regarding utilizing candidates already backed by major parties to circumvent certain nomination procedures, fusion voting disincentives minor parties from identifying new candidates to represent the party. Instead, the minor party can simply select already-popular candidates of major parties and thereby "decrease[] real competition." *See Swamp v. Kennedy*, 950 F.2d 383, 385 (7th Cir. 1991). The Court in *Swamp* summarized this point succinctly, stating: "[a]llowing minority parties to leech onto larger parties for support decreases real competition; forcing parties to choose their own candidates promotes competition." *Id.*

The State has "a strong interest in the stability of [its] political system." *See Timmons*, 520 U.S. at 366. *Timmons* made clear that the State cannot "completely insulate the two-party system" from the "competition and influence" of minor parties, but it may "enact reasonable election regulations that may, in practice, favor the traditional two-party system" and "temper the destabilizing effects of party-splitting and excessive factionalism." *Id.* at 367.

Fusion voting can also blur the distinction between the parties and their platforms, potentially diminishing accountability and voter confidence. Anti-fusion laws help safeguard the integrity of the nomination process by preventing a candidate from accepting nominations from multiple parties that may have competing platforms. Voters may believe that "one candidate is unlikely to be able, conscientiously and effectively, to represent more than one party in the same election." *See Swamp*, 950 F.2d at 388(concurring opinion). Multiple party nominations and inclusion on the ballot may come at the expense of voters' confidence in their knowledge of the candidate's stances and the political parties' platforms.

Finally, it is difficult for this Court to see a scenario where fusion voting would not cause voter confusion, at least for a time. Fusion voting has been banned in Kansas for over 120 years, and is the exception, not the rule, across the country. Common sense would dictate that voters are not used to seeing candidates endorsed by multiple parties during a campaign or on the ballot. Although the Court in *Timmons* did not rely on voter confusion in reaching its decision, it did recognize that it invites confusion. *See Timmons*, 520 U.S. at 364. Avoiding voter confusion is an important and legitimate regulatory interest held by the State.

The State is not required to show historical evidence that this kind of ballot manipulation or gamesmanship has occurred in Kansas in order to qualify as legitimate regulatory interests. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 194-96 (1986); *see also Timmons*, 520 U.S.

at 364 ("Nor do we require elaborate, empirical verification of the weightiness of the States' asserted regulatory interest need only be 'sufficiently weighty to justify the limitation' imposed on the party's rights.").

The State has both legitimate and strong regulatory interests justifying a ban on fusion voting. "States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." *See Timmons*, 520 U.S. at 364; *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025)(finding "the State has 'important [regulatory] interests in preventing voter fraud, ensuring public confidence in the integrity of the electoral process, and enabling voters to cast their ballots in an orderly fashion.'"). The Court finds that the interests articulated by the State qualify as "legitimate" and "important regulatory interests."

iv. The character and magnitude of the asserted injuries.

a. Freedom of Speech

UKP claims that the Kansas anti-fusion laws "revoke" UKP nominations and exclude them from the general election ballot preventing UKP, its candidates, and its voters from engaging in protected political speech. In addition, UKP claims enforcement of the anti-fusion laws not only restricts political speech during the campaign, but also "at the most crucial stage in the electoral process"—on "the ballot." *citing Anderson v. Martin*, 375 U.S. 399, 402 (1964). UKP routinely uses words and phrases such as "barred", "forced abdication", "strips candidates of their status" and other similar language to indicate the Kansas anti-fusion laws restrict political speech during the campaign and prevent its candidates from being the official nominees on the general election ballot. In support of their free speeach argument, UKP claims the Kansas

Supreme Court noted that the "ballot is the core political speech of the voter." *LWV II*, 318 Kan. at 810.

The Kansas Supreme Court has construed free speech protections under Section 11 of the State's Constitution as coextensive with the First Amendment. *See Prager v. State Dep't of Rev., 271 Kan. 1, 37 (2001); LWV I, 317 Kan. at 815(*citing *State v. Russell, 227 Kan. 897, 899 (1980); and LWV II*, 317 Kan. at 815. UKP argues that the Kansas Constitution protects free speech more robustly than the Federal Constitution and that [t]he historical context in which each provision was ratified illustrates why it would be especially inappropriate to impose the restrictive strain of federal case law . . . in this area of Kansas jurisprudence." (Pls.' Br. at 35). The language of Section 11 of the Kansas Constitution's Bill of Rights is not identical to the First Amendment. It reads:

> The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

Although Section 11 of the Kansas Constitution "may be worded more broadly" than the First Amendment of the U.S. Constitution, the Kansas Supreme Court has treated both as "coextensive." *See Prager*, 271 Kan. at 37; *LWV I*, 317 Kan. at 815, *LWV II,* 318 Kan. at 787 ("the speech protections afforded by section 11 are, at a minimum, coextensive with the First Amendment").

The First Amendment analysis in *Timmons* regarding Minnesota's anti-fusion law is instructive. The Court held that anti-fusion laws prevent a party "from using the ballot to communicate to the public that it supports a particular candidate who is already another party's candidate," and a party has no "right to use the ballot itself to send a particularized message, to

its candidate and to the voters, about the nature of its support for the candidate. Ballots serve primarily to elect candidates, not as forums for political expression." 520 U.S. at 362-63. To this point, UKP focuses on language from the *LWV II* opinion noting that the "ballot is the core political speech of the voter." 318 Kan. at 810. However, the Court in *LWV II* was addressing a very different question than faced here or in *Timmons* and UKP takes this sentence out of context. The Court in *LWV II* was distinguishing between the activities of the ballot collectors and the voters from whom the ballots are collected. *Id.* at 810. Specifically, the Court was highlighting the different positions occupied by a voter casting a ballot and individuals collecting and delivering them to the election office for First Amendment purposes. It is difficult to imagine that the Court intended to contradict the holding in *Timmons* (and nearly every other court to address the issue) that the ballot itself is not a forum of expression. The point was not even at issue in *LWV II*.

UKP also overstates the effect anti-fusion laws have on political speech. Nothing in the law prohibits or prevents Plaintiffs from expressing support—financial or otherwise—for UKP and its preferred candidates at every stage of the race. The full range of activities available to communicate such support is open to them, including identifying their preferred candidates as the endorsed nominees of the party. The United States Supreme Court rejected this same theory in *Timmons*, noting that anti-fusion laws do not contravene the First Amendment given that the party can still "communicate ideas to voters and candidates through its participation in the campaign, and party members may campaign for, endorse, and vote for their preferred candidate even if he is listed on the ballot as another party's candidate. *Id.* at 363; *accord Working Families Party v. Commonwealth*, 209 A.3d 270, 286 (Pa. 2019)(rejecting free speech challenge to an anti-fusion law under the Pennsylvania constitution where minor party and its supporters

"were able to meet and decide . . . the candidate who best represented their values," and "then had the opportunity to participate fully in the political process, culminating in casting their votes for the candidate of their choice"); and *In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025).

The ballot is a mechanism for choosing candidates, not a "billboard for political advertising." *See Timmons*, 520 U.S. at 365; *see also Mazo v. N.J. Sec'y of State,* 54 F.4th 124, 144 (3d Cir. 2022)(explaining that "[f]or ballots to be effective tools for selecting candidates and conveying the will of voters, they must be short, clear, and free from confusing or fraudulent content. This necessarily limits the degree to which the ballot may—or should—be used as a means of political communication). That is its primary function. As the United States Supreme Court noted in *Burdick v. Takushi*, "[a]ttributing to elections a more generalized expressive function would undermine the ability of the States to operate elections fairly and efficiently." 504 U.S. 428, 441-42 (1992). The Court noted that it has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity." *Id.* (*citing Munro v. Socialist Workers Party*, 479 U.S. 189, 199 (1986). Further, inclusion of a slogan or party name on the ballot is not speech by the candidate or party to the extent claimed by UKP. It is merely a "one-way communication confined to the electoral mechanic of the ballot." *See Mazo*, 54 F.4th at 145; citing *Burdick*, 504 U.S. at 438. The ballot itself, in contrast to public campaigning, "leafletting, petition circulating, or even the wearing of political clothing at the polling place, cannot inspire any sort of meaningful conversation regarding political change." *Id.*

Kansas anti-fusion laws do not restrict UKP's access to the ballot. UKP has a right to nominate the candidate of its choice on the general election ballot, and that candidate will appear on the ballot if (i) he/she has not already been nominated as the candidate of another party and

(ii) the candidate does not decline the minor party's (UKP's) nomination. A candidate's affirmative and strategic choice to forego the minor party's nomination does not translate into a free speech injury to the party, its candidate, the voters or anyone associated with the party.

Even if these statutes implicate free speech rights, the statutes are not unconstitutional. A poling place is not a public forum, and it is well established that the State is empowered, and does, impose content-based restrictions on speech in nonpublic forums, "including restrictions that exclude political advocates and forms of political advocacy." *See Minn. Voters All. V. Mansky*, 585 U.S. 1, 12 (2018). The government is granted wide latitude in regulating the ballot. *See Ramcharan-Maharajh v. Gilliland*, 48 Kan.App.2d 137, 143 (2012)("The state's important interest in regulating ballot access generally is sufficient by itself to justify reasonable, nondiscriminatory ballot-access restrictions."(citing *Timmons*, 520 U.S. at 364-65).

The fact that fusion voting was prevalent or common prior to 1888 is irrelevant. The evolution to the Australian ballot system and the national trend of banning fusion voting provides historical context for the evolution of our political system, but it does not advance UKP's theories. The United States Supreme Court has held that states are free to "enact reasonable election regulations that may, in practice, favor the traditional two-party system." *Timmons*, 520 U.S. at 367. The Kansas Supreme Court has also held that "the mode, form, and rules governing . . . elections are constitutionally delegated" to the Legislature. *See LWV II*, 318 Kan. at 797.

In terms of the *Anderson-Burdick* framework, the injury is not severe. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting are not an abuse of power.

b. Freedom of Association Claim

The Kansas Constitution provides "[t]he people have the right to assemble" and "consult for their common good." *Kan. Const. Bill of Rights*, § 3. Although the Kansas Supreme Court has not addressed the scope of this section in this context, the United States Supreme Court has held that the constitutional foundation of the "freedom of association" is found in the First Amendment. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also NAACP v. Ala. Ex rel. Patterson*, 357 U.S. 449, 460-61 (1958). And as discussed above, with respect to free speech rights, the Court in *LWV I* has construed Kansas free speech protections as coextensive with the First Amendment. 317 Kan. 805, 815 (2023)(citing *State v. Russell*, 227 Kan. 897, 899 (1980).

UKP claims the anti-fusion laws prevent the party, its candidates, and its voters from freely associating during the campaign and through the voting process itself. The United States Supreme Court in *Timmons* categorically rejected similar claims under the federal Constitution. 520 U.S. at 364-365. The Court noted that "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder." *Id.* at 358; citing *Burdick*, 504 U.S. at 433. As noted above, the Court held that a strict scrutiny analysis was not warranted because Minnesota's anti-fusion laws resulted in a relatively light impact on the minor party. *Id.* at 364. "Instead, the State's asserted regulatory interest need only be sufficiently weighty to justify the limitation imposed on the party's rights." *Id.*

Like Minnesota's laws, Kansas statutes prohibiting fusion voting apply to both major and minor parties alike. The anti-fusion restrictions are applied even-handedly. The law does not prevent a party from endorsing any candidate even though the candidate may be the nominee of another party. *See Timmons,* 520 U.S. at 360. Neither statute precludes minor parties from developing, organizing, or participating in the election process. *Id.* at 361. Indeed, the minor

party "remains free to endorse whom it likes, to ally itself with others, to nominate candidates for office, and to spread its message to all who will listen." *Id.* Ultimately, the candidate is the one deciding not to retain the nomination of the minor party. Any burden on the minor party's inability to have its first-choice candidate appear as its nominee on the ballot is a function of the candidate's choice to accept a different party's nomination. *Id.* at 359. The minor party, including UKP, remains "free to try to convince" its preferred candidate to accept their nomination instead of the major party's. *Id.*at 360. Kansas anti-fusion laws "do not directly limit the party's access to the ballot," and "are silent on parties' internal structure, governance, and policymaking." *Id.* The State "reduce[s] the universe of potential candidates who may appear on the ballot as the party's nominee only by ruling out those individuals who both have already agreed to be another party's candidate and also, if forced to choose, prefer that other party." *Id.*

Many features of the political system make it difficult for third parties to be successful in American politics. *Id.* at 362. The *Timmons* Court highlighted a few: single-member districts, 'first past the post' elections, and the high costs of campaigning . . ." *Id.* However, the "Constitution does not require States to permit fusion any more than it requires them to move to proportional-representation elections or public financing of campaigns." *Id.* In other words, the question is not merely whether anti-fusion laws make it difficult for third, or minor, parties to succeed at the polls as UKP suggests. While discussing the State's regulatory interest in a stable political system, the Supreme Court commented that while states cannot "completely insulate the two-party system from minor parties' or independent candidates' completion and influence," they are free "to enact reasonable election regulations that may, in practice, favor the traditional two-party system, and . . . temper the destabilizing effects of party-splintering and excessive

factionalism." *Id.* While the Kansas anti-fusion laws may, in practice, favor the two-party system that does not amount to amount to a "severe and unnecessary" burden on its associational freedom as claimed by UKP. Each candidate is ultimately the one faced with the decision regarding which party's nomination to retain. Even after that decision is made, Kansas law does not interfere with UKP, its candidates, or voters from continuing to campaign on behalf of the party. The Kansas anti-fusion laws do not interfere with UKP's freedom of association, they simply require the candidate to choose one party to list on the ballot.

In terms of the *Anderson-Burdick* framework, the injury is not severe, the States's regulatory interests are strong and greatly outweigh any burden it might have on political parties. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting and K.S.A. 25-306, 25-306e, and 25-613 are not an abuse of power. Nothing in the law prevents UKP, or any other political party, its candidates or its voters from associating with each other or nominating one of their own to appear on the ballot. Kansas does not forcibly revoke nominations and UKP nominated its candidates with no interference from the State. Each of these candidates secured additional nominations from a second party, the Democratic party. Pursuant to K.S.A. 25-306e, they then had the choice regarding which party to associate with, and each candidate voluntarily elected to remain on the Democratic party ticket, not UKP's. The Secretary did not make that choice for the candidates, nor did he abrogate UKP's right to nominate a candidate.

c. Equal Protection Claim

UKP claims they are denied the same opportunities for free association and political expression that other Kansas parties, voters, and candidates enjoy. They allege that Kansas laws prohibiting fusion voting result in disparate treatment that violates their "constitutionally

protected right to participate in [the electoral process] on an equal basis" with their fellow Kansas. *See Dunn. Blumstein*, 405 U.S. 330, 336 (1972). Specifically, that certain classes of citizens may not be denied the equal enjoyment of rights and benefits that, once conferred by the State, must be extended uniformly to all participants in the democratic process. UKP is not overtly claiming a violation of their right to vote protected by Article V. Instead, they argue that the Kansas anti-fusion laws denigrate a fundamental right; "the equal right to vote." *Id.* By prohibiting fusion voting the State permits voters of other recognized parties to freely cast ballots for their preferred candidates under their own party label all the while denying minor parties, like UKP, this same opportunity.

"Equal protection requires similarly situated individuals be treated alike." *See LWV II*, 549 P.3d at 383. "It does not require that all persons receive identical treatment, but only that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." *Id.* This case does not involve a suspect class. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985)(unless statue imposes classifications based on race, alienage, national origin, or gender, most laws are subject only to rational basis review, the least probing form of equal protection review). The Kansas Supreme has held that it is "guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal Constitution when . . . called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights." *See Rivera v. Schwab*, 315 Kan. 877, 894 (2022). The two provide identical rights. *Id.* Following the lead of the Kansas Supreme Court, this Court is guided by United States Supreme Court precedent when interpreting and applying equal protection guarantees. Plaintiffs bear the burden of establishing that the "statute treats 'arguably indistinguishable' individuals

differently." *See State v. LaPointe*, 309 Kan. 299, Syl. ¶¶ 5-6 (2019). When plaintiffs fail to meet this burden, the Court is precluded from proceeding with an equal protection claim. *See Huerta*, 291 Kan. 831, 834 (2011).

UKP asks this Court to "look beyond the statute" and find that the anti-fusion laws result in disparate treatment because candidates are unlikely to retain the minor party nomination. It strikes the Court that UKP's argument relies on the relative strength or support for their party. For example, the Republican and Democrat parties are historically established with significant voter support. Consequently, their candidates have a greater likelihood of success than would a candidate of a new, less established, party despite having the same right of access to the ballot and despite having the same opportunity to convince their candidate to retain their nomination. However, because of this power imbalance, UKP claims anti-fusion laws create a disparity in treatment and inevitably dilute the votes of UKP members. The Court is not persuaded by UKP's argument.

The few cases cited by UKP to support their equal protection challenge are factually distinct from the Kansas anti-fusion laws in question. For example, in *Working Families Party v. Commonwealth*, the Pennsylvania anti-fusion law had a 'loophole" allowing cross-nominations using write-in votes for certain seats which arguably imposed a more severe burden on a minor party attempting to cross-nominate a candidate with a major party as compared to a major party attempting to cross-nominate with another major party. 653 Pa. 41, 209 A.3d 270, 273-274, 283 (2019). The Pennsylvania Supreme Court rejected the equal protection claim because the loophole applied equally to political parties and political bodies alike. *Id.* at 283-286.

Similarly, UKP cites *Graveline v. Benson*, for this Court to determine if the anti-fusion laws "restrict political participation equally" or "fall unequally," and therefore unduly burden

their rights of equal protection. 992 F.3d 524, 535-536 (6th Circuit 2023). Unlike the Kansas anti-fusion laws that apply equally to all political parties, the *Graveline* case involved Michigan laws requiring independent party candidates to utilize a different process and timeframe for nomination than candidates from the three major political parties. *Id.* The other cases cited by Plaintiffs contain factual distinctions similar to *Graveline* or address ballot access laws that effectively precluded parties from accessing the ballot at all. *See Dunn*, 405 U.S. at 334-337; *Bullock v. Carter*, 405 U.S. 134, 143-144, 149 (1972); *Reform Party of Allegheny Cnty.*, 174 F.3d at 308; *Patriot Party of Allegheny Cnty.*, 95 F.2d at 268; *Williams*, 393 U.S. at 25-26.

Conversely, in over 125 years since the inception of anti-fusion laws courts have consistently rejected similar equal protection claims. *See, e.g. Working Families Party*, 209 A.3d 270; *Swamp v. Kennedy*, 950 F.2d 383, 385-86 (7th Cir. 1991); *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 960 (1914); *People ex rel. Schnackenberg v. Czarnecki*, 100 N.E. 283, 285-286 (1912); *State v. Anderson*, 76 N.W. 482, 485-486 (1898); *State v. Bode*, 45 N.E. 195,196-97; *Todd v. Board of Election Com'rs*, 64 N.W. 496, 498; *see also State ex rel. Mitchell v. Dunbar*, 230 P. 33 (1024)(as long as anti-fusion statute "operates . . . evenly and impartially upon all parties," it is constitutional); *Hayes v. Ross*, 127 P. 340, 342 (1912); *State ex rel. Shepard et al. v. Superior Ct. of King Cnty.*, 111 P. 233, 236-37 (1910). Plaintiffs failed to cite one case where a court struck down a facially non-discriminatory anti-fusion law on equal protection grounds despite their existence for over 125 years. In fact, on the eve of this Court rendering its decision, the New Jersey Superior Court, Appellate Division issued an opinion addressing very similar claims, including equal protection. *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21, pgs 28-29 (N.J. App. 2025). The New Jersey appellate court found that

its anti-fusion law did not contravene any provision of the New Jersey Constitution, including equal protection. *See Id.*

The Kansas statutes in question treat all political parties identically. Neither major party can cross-nominate candidates on the general election ballot. Anti-fusion laws do not limit access to the ballot based on a particular political viewpoint or based on an "associational preference." Neither Kansas statute makes any distinction between the major and minor parties, nor do they include "loopholes" that favor one party over another. UKP's Petition fails to establish that the "statute treats 'arguably indistinguishable' individuals differently." Kansas anti-fusion laws are facially non-discriminatory. In the words of the Supreme Court of Missouri, ""[t]he Legislature has provided a harmonious scheme whereby all fusion between political parties upon any candidate is prohibited." *See Dunn*, 168 S.W. at 957; *see also In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 at 28.

UKP intentionally chose the strategy of selecting candidates who can secure the nomination of one of the two major parties. Similarly, nothing prohibits UKP from convincing it's preferred candidates to retain their nomination as opposed to the major party's. *See Timmons*, 520 U.S. at 360 (explaining that a party remains "free to try to convince" a party to choose its nomination over another). Anti-fusion laws do not prevent UKP from educating Kansas voters regarding their platform, fundraising, advertising, or any other tool available to expand their base and thereby strengthen their position to convince their candidate to retain the UKP nomination. Instead, UKP asks this Court to "look beyond the statute" and accept their premise that candidates are unlikely to select minor party-nominations. This is the same "predictive judgment" argument that *Timmons* rejected. *Id.* at 361. Kansas anti-fusion laws do "reduce the universe of potential candidates who may appear on the ballot as the party's nominee

only by ruling out those few individuals who both have already agreed to be another party's candidate and also, if forced to choose, themselves prefer that other party." *See Timmons*, 520 U.S. at 363. However, they do so even-handedly and are applied equally to the major and minor parties alike.

Plaintiffs' assert that minor parties have not "won a statewide or federal election in Kansas" in more than a century and argue this demonstrates a disparate treatment and severe infringement on Section 2's guarantee of equal protection. The Court is not persuaded by this argument. Equal protection does not amount to the right to win, or likely win, an election. UKP has a "constitutional right to run for office and to hold office once elected", not a right to prevail. *See Flinn v. Gordon*, 775 F.2d 1551, 1554 (11th Cir. 1985).

Even if this Court applies the reasonableness test from *LWV II* or an *Anderson-Burdick* balancing test, the Kansas anti-fusion laws survive an equal protection claim. The burden on Plaintiffs' rights from the ban is not severe. *See Timmons*, 520 U.S. at 363. Because similar anti-fusion laws have survived constitutional attacks in both the United States Supreme Court and a significant majority of state supreme courts to address the issue, this Court does not find the law to be unreasonable.

v. The extent to which the State's interests make it necessary to burden the Plaintiffs rights.

This Court's conclusion as to the third *Anderson-Burdick* factor is clear; "given the burdens imposed, the bar is not so high." *See Timmons,* 520 U.S. at 364. According to *Timmons*, "lesser burdens . . . trigger less exacting review, and a State's "'important regulatory interests'" will usually be enough to justify "'reasonable, nondiscriminatory restrictions.'" 520 U.S. at 358 (quotations omitted). The Court's analysis concludes that the Kansas anti-fusion laws create a "lesser burden", if any, and the States's regulatory interests are strong. The State's

interests greatly outweigh any burden it might have on political parties. *See Timmons* at 364-67. Similarly, Kansas anti-fusion laws impose reasonable modes of voting and are not an abuse of power. Because Kansas anti-fusion laws do not create a severe burden on a minor party the State does not need to demonstrate that the ban is narrowly tailored to serve its compelling interests. *See Timmons,* 520 U.S. at 363-64 (". . .because the burdens the fusion ban imposes on the party's associational rights are not severe, the State need not narrowly tailor the means it chooses to promote ballot integrity.").

The United States Supreme Court's analysis in *Timmons* of the *Storer* and *Burdick* cases was instructive in reaching this conclusion. In both cases, one from California and the other Hawaii, the Supreme Court upheld ballot restrictions that were more burdensome than Minnesota's fusion ban. 520 U.S. at 368-369. While discussing *Storer*, the Court noted:

> After surveying the relevant case law, we "ha[d] no hesitation in sustaining" the party-disaffiliation provisions. *Id.*, at 733, 94 S.Ct., at 1280–1281. We recognized that the provisions were part of a "general state policy aimed at maintaining the integrity of ... the ballot," and noted that the provision did not discriminate against independent candidates. *Ibid.* We concluded that while a "State need not take the course California has, ... California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See The Federalist No. 10 (Madison). It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system." 415 U.S., at 736, 94 S.Ct., at 1282; see also *Lippitt v. Cipollone,* 404 U.S. 1032, 92 S.Ct. 729, 30 L.Ed.2d 725 (1972) (affirming, without opinion, district-court decision upholding statute banning party-primary candidacies of those who had voted in another party's primary within last four years). *Id.* at 368.

Similarly, in *Burdick*, the Supreme Court reviewed First and Fourteenth Amendment challenges to Hawaii's ban on write-in voting and noted that "we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activit[ies]

at the polls." *Id.* at 369, quoting *Burdick*, 504 U.S. at 437-438. This Court concludes that the burdens Kansas's fusion ban imposes on UKP are justified by "correspondingly weighty" valid state interests in ballot integrity and political stability. *See Timmons*, 520 U.S. at 369; *see also In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 at 28-29.

V. SUMMARY

UKP claims that the Kansas anti-fusion laws violate Freedom of Speech (Section 11 of the Bill of Rights); Freedom of Association (Section 3 of the Bill of Rights); and Equal Protection (Section 2 of the Bill of Rights) do not survive Defendants' Motion to Dismiss. Strict scrutiny is not the appropriate standard of review and whether this Court applies the reasonableness test from *LWV II* or an *Anderson-Burdick* balancing test, the Kansas anti-fusion laws survive constitutional challenge. The burden on UKP's rights from the ban is not severe. The State's strong regulatory interests include avoiding ballot manipulation; preventing parties from improperly inflating support; facilitating greater competition and choice; promoting stability of the political system; promoting candidate accountability and voter confidence; and avoiding voter confusion. The States's regulatory interests are strong and greatly outweigh any burden it might have on UKP. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting and are not an abuse of power.

Assuming the truth of all well pled facts and drawing any reasonable inferences in plaintiffs favor the Court has determined the Petition does not state a valid claim for relief. Dismissal is proper because the allegations in the Petition clearly demonstrate that UKP does not have a claim. The Motion to Dismiss is granted and the Motion for Summary Judgment is denied.

IT IS SO ORDERED.

This order is a final order and is effective as to the date and time shown on the electronic file stamp.

HONORABLE JARED B. JOHNSON
DISTRICT COURT JUDGE

On March 3, 2025, the original Order was efiled with the Saline County District Court Clerk and copies were emailed to:

Scott B. Poor
Sarah Foster
HARTENSTEIN POOR & FOSTER LLC
200 West Douglas Ave., Suite 600
Wichita, KS 67202
scottpoor@gmail.com
sarah@smfosterlaw.com

Rex Sharp
Ruth Anne French-Hodson
SHARP LAW LLP
4820 W. 75th St.
Prairie Village, Kansas 66208
rsharp@midwest-law.com
rafrenchhodson@midwest-law.com

Beau C. Tremitiere
Farbod K. Faraji
UNITED TO PROTECT DEMOCRACY
2020 Pennsylvania Ave., N.W., Suite 163
Washington, DC 20006
Beau.tremitiere@protectdemocracy.org
Farbod.faraji@protectdemocracy.org

John F. Wood
Brendon H. Connors
HOLLAND & KNIGHT LLP
560 Mission St., Suite 1900
San Francisco, CA 94105
Zachary.watterson@hklaw.com

Bradley J. Schlozman
Garrett R. Roe
HINKLE LAW FIRM LLC
8711 Penrose Lane, Suite 400
Lenexa, Kansas 66219
bschlozman@hinklaw.com
groe@hinklaw.com

Michael A. Montoya
256 South Santa Fe
P.O. Box 1220
Salina, KS 67402-1220
admin@montoyalaw.kscoxmail.com