

FILED
08-07-2026
CIRCUIT COURT
DANE COUNTY, WI
2025CV001438

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

UNITED WISCONSIN, et al.,

Plaintiffs,

v.

Case No. 2025CV1438

Code: 30701

Declaratory Judgment

WISCONSIN ELECTIONS COMMISSION,

Defendant.

SUPPLEMENTAL DECLARATION OF JEFFREY A. MANDELL

I, Jeffrey A. Mandell, hereby declare as follows:

1. I am an attorney licensed to practice law in Wisconsin.
2. I am one of the counsel representing Plaintiffs in this action.
3. Plaintiffs' Consolidated Opposition Brief to Defendant's Cross-Motion for Summary Judgment and Reply Brief in Support of Their Motion for Summary Judgment cites two materials from the *Swamp v. Kennedy* litigation that are not readily available, and those sources are attached as exhibits to this declaration for the Court's convenience.
4. A true and correct copy of the proposed findings of fact and conclusions of law submitted by the plaintiffs in *Swamp v. Kennedy*, No. 90-C-504-S, Dkt. 5 (W.D. Wis., filed July 24, 1990), is attached as Exhibit A.
5. A true and correct copy of the hearing transcript, including an oral order denying the plaintiffs' motion for emergency injunctive relief and summary judgment, in *Swamp v. Kennedy*, No. 90-C-504-S, Dkt. 21 (W.D. Wis., Aug. 9, 1990), is attached as Exhibit B.
6. Pursuant to Wis. Stat. § 887.015, I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 7th day of August, 2026, at Madison, Wisconsin.

Electronically Signed By Jeffrey A. Mandell
Jeffrey A. Mandell

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DOCKET NUMBER	5
U.S. DISTRICT COURT WEST. DIST. OF WISCONSIN	
JUL 24 1990	
FILED	
JOSEPH W. SKUPNIEWITZ, CLERK	
CASE NUMBER	

GEORGE SWAMP, JOHN HENDRICK, AND
LABOR-FARM PARTY/PARTIDO LABORISTA-
AGRARIO,

Plaintiffs,

v.

KEVIN KENNEDY, individually and
as Executive Director,
Wisconsin State Board of Elections,
and PETER R. DOHR, THOMAS P. GODAR,
MARK E. SOSTARICH, ROBERT L.
TURNER, JOHN NIEBLER, DAVID W.
OPITZ, BRENT SMITH AND KIT
SORENSEN, individually, and as
Members, Wisconsin State
Board of Elections

Case Number: 90 C 0504 S

Defendants.

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN SUPPORT OF MOTION
FOR EMERGENCY INJUNCTIVE RELIEF AND SUMMARY JUDGMENT

Pursuant to Rules 56 and 65 of the Federal Rules of Civil Procedure, and the Rules of this Court, plaintiffs hereby set forth the facts as to which they contend there is no genuine factual dispute, and on the basis of which they seek both emergency injunctive relief and summary judgment. Plaintiffs also set forth their proposed conclusions of law.

Proposed Findings of Fact

1. Plaintiff Labor-Farm is a small third party, the political convictions of whose members, as reflected in the Party's

platform and activities, generally fall outside the range of political views dominant within the Democratic and Republican parties. (Affidavit of Mary Kay Baum, Ex. A, par. 2)

2. The 1986 Labor-Farm party platform announces the party as an "anti-monopoly" party dedicated to an ambitious agenda of fundamental social restructuring. Among other goals, Labor-Farm sought affirmation of a range of comprehensive "economic and social rights," including the "right of every person" to "work that is socially useful and remunerative and in which workers have input or control," to "quality health care and the opportunity to achieve and enjoy good health," to "life-long access to an education that allows each individual to develop to her/his full potential," and to "live in a society free of racism, sexism, and other forms of social stereotyping and intimidations which hinder our creative and cooperative potential." ("Wisconsin Labor-Farm/Laborista-Agrario Party Platform," appended to Ex. A, at 830-831. Such positions differ substantially from those reflected in the platforms of the Wisconsin Democratic and Republican parties.

3. Labor-Farm engages in (substantial) electoral efforts in Wisconsin. In recent years it has regularly run candidates for statewide office, as well as fielding a number of candidates in partisan and non-partisan local elections. (Ex. A, par. 3)

4. Labor-Farm's success in statewide electoral efforts has led to its certification, since 1982, as a "recognized political party" (Wis. Stat. s. 5.02[16m]). That is, having demonstrated

the requisite level of support in statewide elections, Labor-Farm has been accorded "ballot status." This gives Labor-Farm the same right as the Democratic and Republican parties to run candidates in state elections on a specifically designated party line. Id.

5. The Election Board has certified Labor-Farm candidates for the upcoming September primary for nomination in the gubernatorial and attorney general races. (Id.)

6. Labor-Farm's purposes in engaging in electoral activity are typical of those of any established party. Labor-Farm seeks to promote candidates whose views best represent its members views, to use the electoral process to publicize its own political commitments, and to widen its popular base. (Ex. A, par. 4)

7. Labor-Farm has taken the position in its public platform that the Wisconsin ban against multiple-party nominations should be abolished, but has not heretofore sought to challenge the state ban directly. La Follette is the first candidate nominated to run in a Labor-Farm primary who is also competing in the primary of another political party. (Id., par. 7)

8. In May 1990, Douglas La Follette, the incumbent Secretary of State, announced his intention to run for reelection on the Democratic ticket. (Affidavit of John Hendrick, Ex. B, par. 2)

9. Plaintiff Hendrick, a member of Labor-Farm and its Treasurer, believed that La Follette's stated positions and record on a range of issues, including environmental, national

defense, and economic development concerns, qualified him as an appropriate Labor-Farm candidate. Ex. B, pars. 2-3)

10. Hendrick also thought that a Labor-Farm nomination of La Follette would further the party's ongoing efforts to publicize its views and build its popular base -- that it would in particular contribute to coalition-building between Labor-Farm and more liberal elements in the Wisconsin Democratic Party, and permit voters sympathetic to Labor-Farm but unwilling to "waste" their votes on marginal candidates an opportunity to vote their convictions without sacrificing their prudence. (Id., pars. 4-5) In brief, given an attractive candidate who simply happened to be a member of another party, Hendrick saw no good reason why Labor-Farm should not also support that candidate.

11. Hendrick therefore asked La Follette in late May whether he would object to an effort to gain him a Labor-Farm nomination for the position of Secretary of State, and whether he would accept such nomination should the effort be successful. (Id., par. 6)

12. La Follette answered that he would not object and that he would accept the support. He made it clear, however, that he did not wish to compromise his identity as a Democratic candidate for the Democratic nomination for Secretary of State, and therefore that neither he nor his campaign would provide any direct support for Hendrick's effort. This position was fully acceptable to Hendrick. (Id.)

13. With La Follette's assurance in hand, Hendrick proceeded

to Labor-Farm's annual convention, held June 3, where he asked his fellow party-members for their support of his efforts to gain La Follette a position on the Labor-Farm primary ballot. (Id., par. 7)

14. After debate of the issue, party members voted to allow the use of their ballot line for La Follette's candidacy, and to support the right of Labor-Farm to nominate a candidate already running in another party's primary, should that right be contested. (Ex. A, at 5-6; Ex. B, par. 7)

15. The reasons for this support were again straightforward. First, Labor-Farm is committed to advancing the interests of its members, assuming such advance violates no letter or spirit of Labor-Farm's rules and platform, and the interests of Hendricks and associated members did not so conflict. Second, the actions of Hendrick and others associated with the effort to secure La Follette the party's nomination, undertaken in knowledge of his likely securing a place on the Democratic Party primary ballot, were seen as furthering the party's longstanding advocacy of contesting the state ban on multiple party nominations. (Ex. A, par. 7; Ex. B, par. 8)

16. In anticipation of a possible court challenge, party members and leaders at the convention voted to offer party support for such a challenge, should it materialize. (Ex. A, par. 6; Ex. B, par. 7)

17. In early July, La Follette filed nomination papers with the Elections Board, containing in excess of the requisite 2,000

signatures supporting his nomination on the Democratic Party ticket. These papers were accepted by the Board, thus qualifying him as a candidate in the Democratic primary. (Letter attached to Affidavit of George Swamp, Ex. C)

18. On July 10 plaintiff George Swamp, a member of Labor-Farm, accompanied by Hendrick and others associated with them, filed papers with the Elections Board supporting La Follette's nomination on the Labor-Farm primary ballot as well. These papers also contained in excess of the 2,000 required signatures. (Ex. B, par. 9; Ex. C, par. 10)

19. On July 12, the Elections Board staff rejected these papers on the sole ground that their acceptance would constitute violation of the Wisconsin ban on multiple nominations. Board staff stated that:

Based on the clear directives of the Wisconsin Statutes, our office will not accept the nomination papers which you have offered for filing... Mr. La Follette will be certified for placement on the September 11, 1990 primary ballot as a candidate for Secretary of State in the Democratic Party primary. His name will not be placed on the Labor-Farm Party ... primary ballot.

(Letter attached to Ex. C)

20. Plaintiffs filed this action on July 13, but appeared before the Elections Board on July 19 to assert their position that the Wisconsin law was unconstitutional. The Board members voted to confirm the decision of the staff in refusing to certify La Follette as a candidate of Labor-Form as well as the Democratic Party. (Ex. B, par. 1)

21. Wisconsin's election law requires that the primary ballot

be distributed by August 10. Wis. Stat. S. 7.10(3)(a).

22. Absent emergency relief directing the defendants to place La Follette on the labor-Farm as well as the Democratic ballot, plaintiffs will be irreparably harmed. First, Labor-Farm members and others will be irrevocably denied the opportunity to vote for La Follette and vote the Labor-Farm ticket. Either (if they do not vote in the Labor Farm primary) they will forced to be silent on the broader set of political convictions that leads them to be members of Labor-Farm, or (if they do vote in the Labor-Farm primary) they will not be able to vote for La Follette, despite the fact that he is the candidate of their, and their party's choice. (Ex. A, par. 10; Ex. B, par. 14; Ex. C, par. 6)

23. Second, since La Follette is the only candidate whose nomination papers were filed for the Labor-Farm nomination for Secretary of State, Labor-Farm will not have a candidate for that important statewide office on the primary ballot. This will hurt Labor-Farm's credibility as a viable party in Wisconsin, and could also threaten its ability to maintain its standing as a "ballot status" political party. (Ex. A, par. 10)

24. As a third party with a loyal but small base of support, Labor-Farm has been prevented by the multiple party nominations ban from recruiting candidates who would better get its message across and attract a wider range of voters. Many credible candidates will not gamble on a sole third-party candidacy, even though they are in general agreement with the principles of the party. And although some voters are willing to vote for Labor-

Farm candidates as a symbolic expression of their political views, most voters, even those who share Labor-Farm's views, will not gamble on supporting a candidate solely supported by a third party. Voters frequently inform Labor-Farm officer Mary Kay Baum that they do not want to "waste" their votes on someone who has no little or no serious chance of getting elected. (Ex. A, par. 8)

25. As a small third party, Labor-Farm is distinctly a minority party. As such it lacks a credible threat of winning state-wide elections on its own, without coalition with others. This is not true (almost by definition) of the major parties. The ban on multiple party nominations, then, while formally applied to all parties equally, has a disproportionate impact on the electoral success of third parties. The ban has therefore hurt Labor-Farm's efforts to compete in electoral arenas, publicize its views, and widen its popular base of support. (Id., at par. 9)

Proposed Conclusions of Law

26. Consistent with other constitutional requirements (e.g., those barring invidious discrimination), the activities of political parties enjoy the highest degree of protection by the First and Fourteenth Amendment. Constitutional law accords parties autonomy from state and judicial regulation in their selection of candidates and other matters of internal party governance and electoral strategy. Cousins v. Wigoda, 419 U.S. 477 (1975); Democratic Party of the United States v. Wisconsin ex

rel. La Follette, 450 U.S. 107 (1981); Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986); Eu v. San Francisco County Democratic Central Committee, 109 S.Ct. 1013 (1989).

27. Constitutional law holds that the system of state party competition should be open, and that dominant parties must not be permitted to use their effective monopoly on legislative power to restrict the effective electoral competition of minority parties. Anderson v. Celebrezze, 460 U.S. 780 (1983); Williams v. Rhodes, 393 U.S. 23 (1968).

28. In assessing constitutional challenges to state laws governing party activity and ballot access, the reviewing court must:

first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justification for the burden imposed by its rule. In passing judgment the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is constitutional.

Anderson, 460 U.S. at 789; see also, Eu, 109 S.Ct. at 1019-20; Tashjian, 479 U.S. at 214, 222.

29. If the challenged law burdens a "core" or "fundamental" associational right of political parties or their members, it can survive constitutional scrutiny only if the state demonstrates a compelling state interest to justify it. Eu, 109 S.Ct., at 1019; Tashjian, 479 U.S., at 222. Moreover, the state has the

additional burden of showing that the relevant regulation furthers this compelling interest in the least burdensome way possible. Tashjian, 479 U.S. at 214; Eu, 109 S.Ct. at 1020.

30. The rights plaintiffs assert -- the rights of plaintiffs Hendrick and Swamp, as party members, to associate with the political party of their choice, and through that party select -- as their party's candidate -- the strongest candidate whose views they believe most closely reflect their own in order to achieve electoral success, publicize their party's views, and build its popular base, and the rights of plaintiff Labor-Farm as a political party, to facilitate the political ends of the members who collectively constitute it, to attract others to participate in its efforts, and thus to build strength as a political force within the electoral arena, to form its own rules governing what persons may run as Labor-Farm candidates, and thus represent their views, and to devise its own strategy for best representing its members, broadening its constituency, and achieving electoral success -- (are core First Amendment rights and warrant the highest degree of constitutional solicitude.) Tashjian, 479 U.S. at 214-6, 235-6 (Scalia, J., dissenting); Eu, 109 S.Ct. at 1020-2.

31. In order to justify the state's multiple party nominations ban, defendants' must demonstrate a compelling, and narrowly tailored state interest in its enforcement. Eu, 109 S.Ct., at 1019-20; Tashjian, 479 U.S., at 214, 222.

32. A burden that falls unequally on new or small political

parties impinges on associational choices protected by the First Amendment, and discriminates against those voters whose political preferences lie outside the existing political parties. Anderson, 460 U.S. at 793-4.

33. The motivation and intended effect of Wisconsin's legislation against multiple party nominations was to prevent fusion between two parties, and limit the effectiveness of third party competition. State v. Anderson, 76 N.W. 482, 487 (1987) (dissenting opinion).

34. The multiple party nominations ban cannot be justified by a compelling state interest, and is therefore unconstitutional.

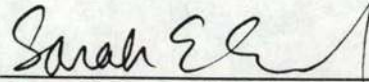
35. Plaintiffs will suffer irreparable injury if the defendants are not ordered to place La Follette on the Labor-Farm ballot, as well as the Democratic ballot, in time for the September 1990 primary.

36. Given their likely success on the merits, and the certainty of irreparable harm if relief is not granted, plaintiffs are entitled to emergency injunctive relief pending disposition of this lawsuit.

37. There being no genuine issues of material fact, plaintiffs are entitled to summary judgment against the defendants, a declaration that the Wisconsin ban against multi-party nominations violates the First and Fourteenth Amendment, a

permanent injunction against enforcement of those statutes, and their costs and fees pursuant to 42 U.S.C. Sec. 1988.

Respectfully submitted,



Sarah E. Siskind
Attorney for the Plaintiffs

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

GEORGE SWAMP, JOHN HENDRICK, AND
LABOR-FARM PARTY/PARTIDO LABORISTA-
AGRARIO,

Plaintiffs,

v.

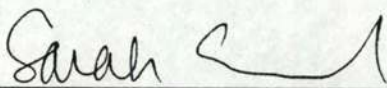
KEVIN KENNEDY, individually and
as Executive Director,
Wisconsin State Board of Elections,
and PETER R. DOHR, THOMAS P. GODAR,
MARK E. SOSTARICH, ROBERT L.
TURNER, JOHN NIEBLER, DAVID W.
OPITZ, BRENT SMITH AND KIT
SORENSEN, individually, and as
Members, Wisconsin State
Board of Elections

Case Number

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of
the attached Plaintiffs' Proposed Findings of Fact and
Conclusions of Law in Support of Plaintiffs' Motion for Emergency
Injunctive Relief and Summary Judgment to be served upon Alan
Lee, Esq., Justice Building, 123 East Washington Street,
Madison, Wisconsin 53703 by hand delivery, this 23rd day of July,
1990.



Sarah E. Siskind

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EXHIBIT B

appears

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DOCKET
NUMBER 21
U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN
AUG 10 1990
FILES
CLERK
CASE
NUMBER

GEORGE SWAMP, et al.,

Plaintiffs,

v.

Case No. 90 C 504 S

KEVIN KENNEDY, et al.,

Defendants.

90-2781

HEARING
BEFORE THE HONORABLE JOHN C. SHABAZ

Madison, Wisconsin

Thursday

August 9, 1990

U.S.C.A. = 7th Circuit

FILED

APPEARANCES

AUG 16 1990

THOMAS F. STRUBBE

CLERK
DOC. # 186129

For the Plaintiffs:

David, Miller, Barnhill & Galland

BY: SARAH E. SISKIND

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Madison, Wisconsin 53701
(608) 256-7197

August 9, 1990

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1 For the Defendants:
2 Wisconsin Attorney General
3 BY: ALAN LEE
4 123 West Washington Avenue
5 Madison, Wisconsin 53703
6

7 THE CLERK: All rise. This Honorable Court is now in
8 session. Please be seated and come to order.

9 Case No. 90-C-504S, George Swamp versus Kevin Kennedy
10 called for a preliminary injunction, pretrial conference and
11 motion hearing. May I have your appearances, please.

12 MS. SISKIND: Sarah Siskind of Davis, Miner, Barnhill
13 & Galland for the plaintiffs.

14 MR. LEE: Assistant Attorney General Alan Lee for the
15 defendants. With me at counsel table is Kevin Kennedy, a
16 defendant and the executive director of the State of Wisconsin
17 Elections Board.

18 THE COURT: Kind of like walking up Bascom Hill with
19 all the books for the classes that you're about to attend,
20 isn't it?

21 All right. We have a number of matters that you may wish
22 to address and I'm not going to do it seriatum; I'll have you
23 do it in your initial presentations, the burden being on the
24 plaintiff -- plaintiffs in this matter. But those items which
25 you may wish to cover in addition to your argument as it

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1 relates to the request for a preliminary injunction, those
2 being the Rule 19 motion as it relates to Mr. LaFollette, the
3 filing of the amicus brief, additional briefing schedules which
4 either of you anticipate as they may concern the motion for
5 summary judgment of the plaintiffs and the motion to dismiss of
6 the defendants, the Court being in receipt of the reply brief
7 filed yesterday by the plaintiffs. That, then, resolves what I
8 believe to be all of those matters which the Court will address
9 today, and I'll hear from the plaintiffs' counsel at this time,
10 Ms. Siskind.

11 MS. SISKIND: Good afternoon, Your Honor. Do you --
12 I'm not familiar with your courtroom. Shall I stand or sit?
13 Do you --

14 THE COURT: Whatever -- however you're comfortable.

15 MS. SISKIND: May I reserve some time for reply in
16 this matter?

17 THE COURT: Yes. You do have the burden so you'd
18 have opening and close.

19 MS. SISKIND: Thank you. I represent the plaintiffs,
20 as I've said, the Labor Farm Party and two of its members, who
21 are trying to secure a place on their September primary ballot
22 for candidate Doug LaFollette, who has already been certified
23 as a candidate on that ballot for the Democratic party. The
24 defendants, the Wisconsin Elections Board members and Mr.
25 Kennedy, have barred Labor Farm's efforts to nominate Mr.

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Swamp vs. Kennedy

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1 LaFollette for this ballot because of a 93-year old statute,
2 which bans multiple-party nominations; that is, the nomination
3 of one candidate for the same office in the same election by
4 more than one party. Plaintiffs contend that that ban is un-
5 constitutional under the First and Fourteenth Amendments and
6 move for preliminary injunction. Since there are no contested
7 issues of fact, we believe the record is complete and we also
8 ask for summary judgment.

9 Our first burden is to show that the ban infringes on the
10 First Amendment rights of the plaintiffs and that it does so in
11 a fundamental way. Our doing so, of course, doesn't end the
12 case; it merely shifts the burden to the state then to demon-
13 strate that it has compelling, legitimate and narrowly tailored
14 interests that make the ban a necessity.

15 First, then, it's evident, we believe, that the ban
16 infringes on plaintiffs' First Amendment rights, it being well
17 established in the case law, which has had much involvement at
18 the Supreme Court level, that a political party and its members
19 have a First Amendment right to choose their candidates and
20 that their rights in this regard are what the Court calls core
21 associational rights. The Supreme Court decisions in Tashjian
22 v. The Republican Party of Connecticut in 1986 and Eu v. The
23 San Francisco County Democratic Central Committee in 1989
24 confirm this principle, though they, of course, don't address
25 the multiple-party nomination issue, and they also confirm the

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1 supporting principle, that the First Amendment requires as a
2 background matter that parties be left autonomous from state
3 regulation.

4 Furthermore, in 1983, in *Anderson v. Celebrezze*, the
5 Supreme Court held that election restrictions that place a
6 disproportionate burden on the First Amendment rights of third
7 parties -- I've misstated. What the Court held was that elec-
8 tion restrictions that place a disproportionate burden on small
9 third parties, even if those rules are neutral on their face,
10 infringe on those parties' First Amendment rights. In effect,
11 the Court has held that the major parties cannot exploit their
12 de facto monopoly on state legislative power in order to
13 further that monopoly by limiting third-party competition in
14 the electoral process.

15 These are the background principles against which we make
16 our challenge. It is our contention, Your Honor, that the ban
17 in this case violates both principles; that is, the principle
18 of party autonomy from state regulation and the principle of --
19 the anti-monopoly principle, as we call it. It infringes on
20 the right of the political party and of its members to candi-
21 date selection, and it places a disproportionate burden on
22 small third parties.

23 Now, in our briefs, we have gone to some lengths to
24 situate the ban in its history because the history, we believe,
25 bears out the contention that the multiple-party nomination ban

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1 and like bans passed by other state legislatures around the
2 turn of the century were designed as means of depressing
3 third-party activity. What the history shows is that the
4 enactment of these bans was a successful partisan effort by
5 what was then the dominant party. That was, at the time, the
6 Republican Party. That -- the history also shows that before
7 the bans were passed, the practice of multiple-party nomina-
8 tions which, to people today in Wisconsin seems like a foreign
9 concept, was widespread, that there was tremendous practice of
10 multiple-party nomination, that at the time third-party activi-
11 ty was high and that the period witnessed the success of many
12 important third-party candidacies that were, in fact, the prod-
13 uct of multiple nomination.

14 After the ban swept the country, the product -- after the
15 ban swept the country, the experience we have had shows that
16 third-party activity dropped precipitously. This experience is
17 not limited to the nineteenth century. The example of New York
18 State, where multiple-party nomination is an established part
19 of electoral politics and where third parties play a highly
20 influential part in the electoral process, the practice has
21 been salutary. It is not just at the margin that it plays a
22 role. As two examples of successful "fusion" politics show,
23 third -- multiple-party nominations were critical in the
24 victories of Presidents Roosevelt and Kennedy and others.
25 Those presidents would not have carried New York State without

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1 endorsement and nomination by third parties.

2 The third point on the history and on the institutional
3 structure is that it is a matter of common sense that bans on
4 multiple-party nominations infringe on third parties more than
5 on the dominant parties, here the Democratic party. Given the
6 fundamental structure of the American electoral process, where
7 simple winner-take-all plurality rules candidate selection,
8 third parties place an exceptional barrier to their advancing
9 their associational ends. They don't have the advantage of
10 third parties in other capitalist democracies of proportional
11 representation, where parties can win proportionate numbers of
12 seats in government without actually winning pluralities. In
13 this context, multiple-party nomination has been, in the
14 nineteenth century and in current examples such as New York, a
15 way for third parties to participate in the electoral process
16 in a meaningful way to overcome voters' fears of "wasting their
17 votes" at the same time without disturbing the simple plurality
18 rules which are inherent in our American system.

19 Thus, what we think we've shown is that first party -- is,
20 first, that parties have fundamental rights to candidate selec-
21 tion and that this is a long-standing principle established by
22 the Supreme Court and reaffirmed in the last few years, and,
23 second, that the ban in question places a disproportionate
24 burden on third parties. It is our position that the law is
25 quite clear that the state cannot justify the rule unless it

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1 can show a compelling, narrowly tailored reason for doing so.
2 It has not done so.

3 As we have shown in our reply or attempted to show in our
4 reply, the defendants assert various interests in their brief
5 which are all either illegitimate state concerns, for example,
6 the state's interest or asserted interest in protecting the
7 Democratic party from third-party competition, or interests
8 which are not compelling, for example, the state's asserted
9 interest in increasing write-in voting, or interests which are
10 susceptible of being addressed by much more narrowly tailored
11 regulation, for example, allowing candidates the right to
12 decline unwelcome nominations, or, finally, interests which
13 would not be harmed by eliminating the multiple-party nomina-
14 tions ban because multiple-party nominations do not contribute
15 to the problem, for example, the state's interest in preventing
16 raiding and in reducing voter confusion.

17 We submit that the record is clear. We've moved for
18 preliminary injunction because, quite evidently, if it becomes
19 too late to place Mr. LaFollette on the ballot as the Labor
20 Farm Party's candidate in September, the Labor Farm Party will
21 irreparably suffer infringement of their First Amendment right
22 to have him there. We urge the Court to grant our motion for
23 preliminary relief and, since the government's papers have
24 raised no factual issues in responding to our motion for
25 summary judgment, to declare the statute unconstitutional and

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1 permanently enjoin its enforcement. Although we may be shown
2 that we're wrong by the government's argument here, we don't
3 see, and this addresses the Court's question at the outset, we
4 don't see any need for further briefing on the matter.

5 The one point I have not addressed is the issue of joinder
6 of Mr. LaFollette. We think the matter is simple and frankly
7 do not understand why the defendants insist that Mr. LaFollette
8 should be joined. Mr. LaFollette's position is quite clear.
9 He is not asserting his rights as a candidate to participate in
10 the lawsuit, nor are thousands of voters or thousands of other
11 candidates or other people asserting their rights to vindicate
12 the statute. Either the statute is constitutional or it is
13 not. We do not see where the state will be subject to incon-
14 sistent obligations if the Court declares the statute unconsti-
15 tutional. Mr. LaFollette has clearly stated, although for some
16 reason the government has not acknowledged this, Mr. LaFollette
17 has clearly stated that he is willing to be a candidate on the
18 Labor Farm Party ballot if the Court declares the provision
19 unconstitutional or grants our motion for preliminary injunc-
20 tion, and, under Rule 19, none of the requirements have there-
21 fore been met. Mr. LaFollette need not do anything further
22 than what he's done, which is to say that he's willing to
23 accept the nomination, and therefore his presence in the
24 lawsuit is not necessary.

25 We have argued in our brief that it is true that given the

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1 defendants' efforts to cast this case as a case which asserts
2 candidate First Amendment rights as opposed to the First
3 Amendment rights of political parties and their members, it is
4 understandable, then, why the state would seek to bring Mr.
5 LaFollette into the lawsuit, but it is our lawsuit and we
6 submit that given the fact that Mr. LaFollette is not a neces-
7 sary party, that we are not asserting his rights, and that, in
8 fact, if we -- in fact, as the state argues, candidate rights
9 are lesser than parties' and party members' rights, we think
10 that as a practical matter there is no reason at all to burden
11 Mr. LaFollette by bringing him into the lawsuit.

12 Thank you.

13 THE COURT: We'll hear now from the defendants at
14 this time, Counsel.

15 MR. LEE: Thank you, Your Honor.

16 For the housekeeping matters first, the defendants have no
17 objection to the Court receiving the amicus brief, the plain-
18 tiffs' reply brief either, and we do not believe there will be
19 any need for further briefing.

20 The plaintiffs have a strange view of the First Amendment
21 right of association. They claim that their right to associate
22 with Douglas LaFollette, who has chosen to associate with the
23 Democratic party, doesn't involve the rights of Douglas
24 LaFollette or the Democratic party. That is, at best, an ego-
25 centric view of the right to associate. This is not a question

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1 of a fusion candidacy or a question of fusion at all. Fusion,
2 like the right to association, is mutual. A fusion candidacy
3 implies, and probably necessarily implies, mutual consent, a
4 coalition of parties around a candidate. This is not a coali-
5 tion. This is, at best, a usurpation. There is nothing in the
6 record to reflect any acquiescence by the Democratic party in
7 this lawsuit or in the fact that a candidate who's on their
8 ballot is attempting to also appear on another party's ballot.

9 The case does not involve the right of a party to have
10 access to the ballot. The Labor Farm Party is on the ballot.
11 It doesn't involve the right of a candidate to have access to
12 the ballot. Doug LaFollette is on the ballot. The statutes at
13 question only say that if a candidate picks a party, chooses a
14 party to associate with, another party cannot choose him or her
15 and he or she cannot choose another party in that election.
16 That's all the statute says.

17 The issue is not whether they can choose Douglas
18 LaFollette as their candidate for secretary of state. They
19 could have. More accurately, he could've chosen them, and he
20 chose not to. The issue is once he chooses, once the candidate
21 chooses the party in which he will run in the primary election,
22 can another party claim that candidate as their candidate.
23 Does that candidate have the right to also run in another
24 party's primary?

25 The statute restricts candidates on its face and in

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1 practice. It is directed at candidates. The word parties does
2 not appear. In Wisconsin, as in most states, primary elections
3 are candidate events, not party events. The candidate or his
4 or her supporters circulate nomination papers. The candidate
5 files a declaration of candidacy. The candidate files a
6 registration statement, and the candidate picks the party in
7 which he or she will run in the primary. The statute says to
8 that candidate once you've picked that party, or actually once
9 you've picked even an independent slot, you can't run in
10 another party in the same election. That is a disaffiliation
11 statute. It is a minor disaffiliation statute, of the same
12 type of statute that was upheld in Storer v. Brown, in Lippett,
13 going back to cases as early as Bullett v. Carter. All of those
14 cases hold that the state can legitimately require a candidate
15 to pick. Wisconsin doesn't even require a candidate to pick
16 early. In fact, Wisconsin says at the eleventh hour you can
17 still switch.

18 Does a candidate's choice of a party affect other individ-
19 uals' or groups' associational interests? Of course it does,
20 because it means that once Douglas LaFollette picked the Demo-
21 cratic party ballot he couldn't be on any other parties'
22 ballots. He couldn't be on the Labor Farm Party ballot. He
23 couldn't be on the Republican ballot. He couldn't choose to be
24 on all three ballots, which raises an interesting question,
25 tangentially perhaps. If there were another minor party on the

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1 ballot and they asked Douglas LaFollette to be their candidate
2 for secretary of state and he was true to his affidavit, which
3 says that he wants to foster choice among parties, and he said
4 yes, would that party have the same rights to have Douglas
5 LaFollette as their candidate as the Labor Farm Party claims?
6 What if the Democratic party and the Republican party claim the
7 same right? Could all four parties have Douglas LaFollette
8 running for secretary of state in their primary? And could
9 Doug LaFollette do that? I think quite clearly the answer is
10 that the State of Wisconsin can decide that that's not the kind
11 of election process we want to have and can make a candidate
12 choose in that primary election.

13 The Supreme Court has said that whenever we consider
14 restrictions on ballots, we have to look at the rights in-
15 volved, principally the right of the voters because their
16 rights are primary. And what is the nature of the right
17 involved here? What right is being restricted? Which of the
18 plaintiffs' rights is at issue? They can vote for Douglas
19 LaFollette; he's on the ballot. They can vote for the Labor
20 Farm Party; it's on the ballot. The one thing they cannot do
21 is vote for the Labor Farm Party and vote for Douglas
22 LaFollette, but that happens all the time in primary elections.
23 It is hardly unusual that a voter walks into the booth and
24 wants to vote in a gubernatorial primary in the Democratic
25 party and would prefer at the same time to vote, for example,

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1 in the presidential primary in the Republican Party, because
2 those are interesting races, and the voter, he or she has some
3 distinct feelings about those two races and has definite views
4 on which candidates, both Democrat and Republican, he or she
5 wants to be in the general election. But the voter's not given
6 that choice. You pick your party when you throw that lever.
7 No one is suggesting that that's improper. Certainly the state
8 can require you to stay in one party's primary. This statute
9 is the equivalent for candidates. As mentioned in the brief,
10 the right of a candidate is much subservient and of less
11 concern than the right of the voters.

12 In Tashjian, in a case upon which the plaintiffs rest much
13 of their case, the Republicans -- Republican Party in Connecti-
14 cut wanted to allow independent voters to vote in their primary
15 and the state said they couldn't do that. The court said the
16 party had that right to allow independent voters to vote, but
17 there's no suggestion in that case that a voter should be able
18 to jump around on that ballot, to walk into the booth and vote
19 Republican in some races and Democrat in another and Indepen-
20 dent in another and Labor Farm Party in a fourth. And that is
21 essentially what the Labor Farm Party and the plaintiffs are
22 asking to do. They want to be able to vote for Douglas
23 LaFollette and the Labor Farm Party. That's all. And Doug
24 LaFollette has made the choice to be in a different column.

25 Sooner or later choices have to be made by the candidate

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1 and by the voters in a primary election. The candidate's
2 choices come sooner, when he or she is filing and deciding
3 which primary ballot, which party's ballot to be on. The
4 voter's choice comes later, when he or she walks into the
5 voting booth, at least in Wisconsin, because we don't have
6 party registration at all. But those choices have to be made.
7 Otherwise, there would be chaos. There would be no such thing
8 as a primary election.

9 Under Wisconsin's law, as most other states, you can only
10 sign nomination papers as -- or circulate nomination papers for
11 two candidates for the same office -- excuse me, for one candi-
12 date in the same office in the same election. In other words,
13 the person circulating the nomination papers or the person
14 signing those papers has to make a choice. In, for example,
15 the secretary of state's race, is he or she going to sign for
16 Douglas LaFollette or somebody else? That's another choice
17 that the state imposes upon voters and electors. No one
18 suggests that that somehow deprives the elector of the right to
19 associate with the second candidate.

20 Storer v. Brown very clearly says that the state can make
21 a candidate choose and declare party affiliation. Wisconsin is
22 not even doing that much. We're only saying you have to pick a
23 spot on the ballot and stay there. The effect on the parties'
24 rights is virtually insignificant.

25 The plaintiffs claim they can't understand why the state

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1 believes, the defendants believe, that Douglas LaFollette is a
2 necessary party. The right to be on the ballot more than once
3 is, first and foremost, the candidate's right. The statute
4 says it's the candidate that must make that choice, and the
5 statute prohibits the candidate from being on the ballot more
6 than once. One person is primarily affected by this law this
7 time, and that's Douglas LaFollette. He's not here. He's not
8 in the lawsuit. His affidavit says that he has been and always
9 will be a Democrat, that he is wedded to the Democratic party,
10 but he would consider essentially a marriage of convenience
11 with the Labor Farm Party, a liaison with the Labor Farm Party.
12 The state can say no, we don't permit marriages of convenience.
13 We don't permit liaisons. We don't permit bigamy or adultery
14 in our political campaigns. That is what the constitution
15 allows the state to say, and that is what the election process
16 demands.

17 If the Court rules in the state's favor in this case and
18 Mr. LaFollette is not a party to this lawsuit, Mr. LaFollette
19 could choose to try to vindicate his rights in state or federal
20 court and would not be bound by this Court's holding. The
21 state would therefore have to go through this procedure again
22 and potentially face an inconsistent judgment. Mr.
23 LaFollette's rights are necessarily affected by any ruling this
24 Court makes, and the only way to make sure that those rights
25 are protected and the defendants' rights are protected is to

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1 make him a party to the lawsuit.

2 Mr. LaFollette's absence from this lawsuit also speaks
3 eloquently to the issue of harm. The statute prohibits his
4 double candidacy, and he doesn't care enough to be a party to
5 the lawsuit. He apparently doesn't care enough to come to the
6 courtroom. That is how much harm Mr. LaFollette thinks there
7 is. If there is an emergency in this case, it is of the plain-
8 tiffs' making. If Mr. LaFollette is not a necessary party, it
9 was hardly necessary to wait, for the plaintiffs to wait, to
10 file nomination papers on his behalf and wait until the Elec-
11 tions Board rejected that filing before bringing the lawsuit.
12 If he's not a necessary party, nominating him was not a neces-
13 sary part of this lawsuit in order to have ripeness. The
14 lawsuit could've been brought weeks or months ago.

15 The balance of harm here clearly works against the plain-
16 tiffs. Their harm, as I have mentioned, is that they cannot
17 simultaneously vote the Labor Farm Party and vote for Douglas
18 LaFollette for secretary of state. Other candidates have fol-
19 lowed the rules of the Wisconsin election laws. It's too late
20 for them to take advantage of whatever ruling might come from
21 this lawsuit. It's too late for the other parties to protect
22 themselves from this sort of chicanery, and it's too late for
23 them to take advantage. It is too late for the legislature to
24 enact any kind of safeguards for this election, and it is too
25 late, as I have said, for the political parties to protect

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1 themselves and their candidates, and, finally and quite impor-
2 tantly, absentee ballots are already out. I think some of them
3 might already be coming in. It is too late to stop that
4 process. That cannot be changed.

5 One thing should be clear. The defendants' interests are
6 not on behalf of the Democratic Party, the Republican Party or
7 any other party. It happens that this case involves the Labor
8 Farm Party, Douglas LaFollette and the Democratic Party.
9 That's why they're mentioned in the brief. The state's concern
10 is the integrity of its election process. As plaintiffs'
11 counsels mention, this law has been on the books for 93 years.
12 Those are the rules that everybody is used to playing by.
13 Those are the rules that they started out this election playing
14 by, and the plaintiffs are now asking the Court to change those
15 rules after the process is well underway.

16 Politics involves choices and elections involve choices,
17 and the state can require that choices be made because ulti-
18 mately they have to be made. Sections 815 and 803 require
19 candidates to make choices, simply to choose which party's
20 ballot or independent ballot they'll appear on in a primary
21 election. Under Storer v. Brown and the other cases, the state
22 can require that choice quite clearly. Mr. LaFollette chose
23 the Democratic Party ballot. This is necessarily a rejection
24 of any other party's ballot, including the Labor Farm Party's
25 ballot. The plaintiffs may prefer the New York or Vermont

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1 system. They may prefer a parliamentary system. They may
2 prefer a system that fosters third parties. Other people might
3 agree with them on all or most of that. But the decision here
4 is a legislative decision made by the State of Wisconsin
5 speaking through its legislature and its governor. They make
6 the choices for Wisconsin, consistent with the United States
7 Constitution. And the United States Constitution says they can
8 choose this system. They can make people pick the party
9 they're going to run in in a primary election.

10 Multiple candidacies certainly should not be permitted
11 without safeguards of some sort. The plaintiffs admit as much
12 when they talk about the safeguards in their reply brief from
13 New York and some of the statutes they suggest or laws they
14 suggest might be necessary or less restrictive than Wisconsin's
15 choice. But there are no safeguards in place. Wisconsin has
16 relied on, for 93 years, on these laws to protect the integrity
17 of its ballot and to bring some, as the Supreme Court said,
18 order out of chaos in the primary election system.

19 The effect on the plaintiffs' rights is insignificant.
20 They have to choose either a party to vote for in the primary
21 election or a person to vote for. That's hardly unusual; it
22 happens to people all the time. The effect of declaring the
23 law is very serious. As I have said, the absentee ballots are
24 already out, are probably filled out and coming back in. The
25 legislature is unable at this time to implement any kind of

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1 remedial legislation to put in place any kind of safeguards.
2 No party is able to adopt any kind of rules, internal rules of
3 governance to protect itself and its candidates from this kind
4 of raiding.

5 The injunction should be denied. Mr. LaFollette should be
6 joined as a defendant, and the case should be dismissed.

7 Thank you.

8 THE COURT: Anything in reply?

9 MS. SISKIND: Yeah, I have a couple things to say.
10 I'll try to be quick.

11 First of all, we are not challenging the prohibition of
12 splitting tickets. We are not challenging Wisconsin's open
13 primary. All we're asking is for political parties to have a
14 larger freedom to nominate candidates whom they think will best
15 effectuate their associational purposes as a legitimate politi-
16 cal party.

17 I have listened to the defendants' argument and attempted
18 to enumerate the "compelling interests" that the state is
19 asserting in that argument, and what I've made out is the
20 following. One is the party objects -- the state objects that
21 this could hurt the Democrats because the Democrats have not
22 acquiesced in Mr. LaFollette's candidacy. We know that some
23 parties or some putative parties have appeared in this lawsuit.
24 There are only three legitimate ballot-status parties presently
25 on the ballot in Wisconsin. The Wisconsin Greens have sought

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1 to participate in this lawsuit. It is known that this lawsuit
2 is ongoing. The state is asserting the Democrats' concerns,
3 but the Democrats have not made any objection. Certainly the
4 Republicans have not made any objection to this candidacy. We
5 don't see -- now that the primary process is underway, we don't
6 see who would be hurt by Mr. LaFollette being placed on the
7 ballot.

8 Number two, and this is a sensitive point, the state con-
9 tinues to insist that in Wisconsin parties have nothing to do
10 with the nomination process; that the candidate picks the
11 party. Anyone more familiar with the nomination process than
12 I, and almost anyone is more familiar with the nomination pro-
13 cess than I, knows that when a candidate runs for election,
14 what is required of that candidate is to submit a declaration
15 of candidacy, which the defendants acknowledge does not require
16 or permit or make any place for designation of a party affilia-
17 tion. At that point, circulators circulate nomination papers.
18 Those circulators can be anyone. They can be the candidate,
19 they can be the members of another party, they can be inde-
20 pendent voters. It is widely acknowledged, and, in fact,
21 defendant Kennedy acknowledged to the press, that whoever gets
22 to the Elections Board with the appropriate number of signa-
23 tures first picks the party in which that candidate will run.
24 Mr. LaFollette could have announced his candidacy, which he
25 did, and the Republican Party could've nominated him before he

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1 had filed his nomination papers. It is simply not true that
2 candidates have control over which party they will run in in
3 Wisconsin. Maybe it should be true, but that is not the case,
4 and it's disingenuous, I say respectfully, for the state to
5 continue to insist that it is.

6 The state is concerned about fusion between the Republican
7 and Democratic Parties. That is a widely shared concern. The
8 plaintiffs, if this were truly an issue in this case, might
9 well support a law which prohibited multiple-party nomination
10 by the major parties. Vermont has such a law. Vermont, as the
11 defendants themselves pointed out in their brief, has a law in
12 which a person may be named on two ballots but not on two major
13 party ballots. We're not asking the Court to legislate. We
14 leave that to the Wisconsin legislature, but the fact is that
15 the Supreme Court says that an infringement on First Amendment
16 rights may be sustained only if the state shows that it is the
17 least intrusive means of addressing a problem. The problem of
18 avoiding the monopoly effect that could arise from fusion be-
19 tween Republicans and Democrats is one that is susceptible to a
20 simple exception to multiple-party nominations, which would be
21 to say that the major parties cannot engage in such.

22 Finally, with respect to the question of harm, we would
23 say this to the Court. The timing of this lawsuit is designed
24 so as not to waste the Court's time on a controversy which is
25 not real. The plaintiffs have considered that absent the

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1 successful circulation of petitions for a candidate and absent
2 the securing of a candidate's agreement and acquiescence to be
3 on the Labor Farm ballot as well as the Democratic Party or
4 some other party's ballot was essential to creating a contro-
5 versy which would present the issues clearly to the Court.

6 We have done our best to and worked very hard to get all
7 the issues before the Court in time for a decision to be made
8 in time for this September's ballot. The defendants complain
9 that there are no safeguards in place but doesn't identify what
10 kinds of safeguards he's talking about. The Republicans
11 certainly are not complaining or would not complain with
12 LaFollette being on the ballot. The Democrats have not come
13 forward to complain that it would hurt them in this election
14 for LaFollette to be on the ballot. There are no other parties
15 who will be on the ballot who could be hurt. We have -- it is
16 our position that it is for the legislature to design a regula-
17 tion if they wish to do so which addresses legitimate concerns
18 of the state but that an absolute ban on multiple-party nomina-
19 tions is overbroad and therefore unconstitutional.

20 In his closing, the defendants' counsel refers to raiding
21 and calls this practice a practice of raiding, and it should be
22 very clear that this is not raiding. Raiding refers to a
23 manipulative process by which party loyalists in one party vote
24 outside their party at their own party's primary for candidates
25 whom, in fact, they oppose, and they do that to achieve the

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1 result that the party being raided ends up with a weaker
2 candidate than it would have had the raiders not voted in the
3 primary.

4 Multiple-party nominations has the opposite effect. What
5 it does is it encourages party loyalists to stay within their
6 own primary by -- and it does that by eliminating the wasted
7 vote syndrome and by widening the range of candidates that
8 party members can select for their own primary. The fact that
9 a voter who might otherwise vote in the Democratic primary will
10 now vote in the Labor Farm primary because he can do so without
11 fearing wasting his vote does not constitute raiding. The
12 Democrats may lose his vote or whatever party in question may
13 lose his vote; that's true, but that's competition. That's not
14 raiding.

15 We don't believe that any interest the state has raised
16 justifies the ban. The fear of chaos is belied by the success-
17 ful operation of multiple-party nomination regimes in other
18 states. We submit that we have successfully demonstrated a
19 serious infringement of the rights of the Labor Farm Party, not
20 of Mr. LaFollette, but of the Labor Farm Party and their
21 members to follow their strategic decision, exercise their
22 preference in voting for their preferred candidate without
23 losing their ability to identify themselves as Labor Farm
24 members.

25 We ask the Court to grant our motion.

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1 THE COURT: The Court at this time will accept the
2 amicus brief which was filed in this matter. The Court also
3 refers to a letter from Mr. Boyer recently received advising
4 that he'd be unable to be with us this afternoon. The Court
5 has examined the memorandum of the Wisconsin Greens, a
6 multi-issue ecology group, and has considered portions thereof
7 in its decision.

8 The Court denies the Rule 19 motion which has been offered
9 by the defendants and believes that neither Mr. LaFollette nor
10 any other candidate who may wish to run on two parties, whoever
11 they may be, need be present in court to determine the
12 constitutionality of that ban which has been brought to the
13 Court's attention.

14 The Court also accepts the affidavit of Mr. LaFollette,
15 determines that he is not an indispensable party and determines
16 that he need not be joined.

17 The Court will also determine, then, that briefs have been
18 completed. At this time it will make findings of fact and con-
19 clusions of law as it concerns the motion for emergency injunc-
20 tive relief. It reserves the right to supplement its remarks
21 from the bench when reducing to a written document its memo-
22 randum and order relating to the motion for summary judgment
23 and the motion to dismiss.

24 As it concerns those facts to be found, they are not in
25 substantial dispute, except, of course, for the word

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1 substantial, which does show up in one of the paragraphs to
2 which the defendants object, but, in any event, rather than to
3 place the entire findings on the record at this time, suffice
4 it to say that the Court refers to them by reference as pro-
5 posed by the plaintiffs, particularly items 1, 2 and 3, delet-
6 ing the word substantial from paragraph 3, accepting item 4
7 through 9 and 10 through 14.

8 The Court further finding that paragraph 15 is also a
9 finding which the Court considers to be appropriate as well as
10 16 through 21.

11 The Court further finding that if Douglas J. LaFollette is
12 not on the Labor Farm ballot, the voters will not be able to
13 vote for Mr. LaFollette and vote the Labor Farm ticket.

14 The Court will further determine that Mr. LaFollette has
15 been a Democrat all of his life and will be one for the rest of
16 his life because he believes in the principles of that party.

17 The Court further determines and finds that Mr. LaFollette
18 is the only candidate whose nomination papers have been filed
19 for the Labor Farm nomination for secretary of state and there-
20 fore Labor Farm will not have a candidate for that office on
21 the primary ballot if Mr. LaFollette's name is on the ballot.

22 There is nothing in the record which would allow this
23 Court to find that the law banning Mr. LaFollette from the
24 Labor Farm Party ballot has in any way chilled the efforts of
25 the Labor Farm Party to recruit candidates for the office which

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1 Mr. LaFollette seeks and, further, the Labor Farm Party has
2 been free to choose for that ballot the person that they
3 believe best exemplifies the principles articulated and sup-
4 ported by the Labor Farm Party.

5 As to conclusions of law, the Court believes that they
6 are, at paragraphs 27, 28 and 29, adequately stated as far as
7 they go in the plaintiffs' proposed conclusions of law and
8 those are adopted in full as if set forth herein.

9 At this time the Court will address itself to further con-
10 clusions of law, beginning with the excerpt from Bullock
11 against Carter, 405 U.S. 134 at page 145. The Court has
12 recognized that the state has a legitimate interest in regulat-
13 ing the number of candidates on the ballot. In so doing, the
14 state understandably and properly seeks to prevent the clogging
15 of its election machinery, avoid voter confusion and assure
16 that the winner is the choice of a majority or at least a
17 strong plurality of those voting without the expense of runoff
18 elections. The Court concludes that this last portion of the
19 paragraph read into the record is most appropriate in this
20 case. A candidate could finish second on both parties' ballot
21 and not receive sufficient votes to be on the ballot. A
22 candidate could receive 99,000 votes on one ballot to the
23 winner's 100,000, 19,000 on another ballot to the winner's
24 20,000. That candidate with the most votes, having the strong-
25 est plurality, wouldn't be on any ballot. The Court believes

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1 that although that has not been discussed by counsel, that is
2 the overriding reason for the ban to assure that the candidate
3 with the most votes get on the final ballot. Eliminating the
4 ban would not provide for that, and Bullock against Carter, a
5 1971 decision by the United States Supreme Court specifically
6 refers to assuring that the winner is the choice of a majority
7 or at least a strong plurality of those voting.

8 The Court, having considered that, next, then, turns to
9 the brief excerpt in Rosario against Rockefeller, 410 U.S. 752
10 at 761. It is clear that preservation of the integrity of the
11 electoral process is a legitimate and valid state goal, and it
12 refers to Bullock against Carter at specifically page 145, the
13 case to which this Court has specifically referred as to the
14 proposition which this Court has not found to be anything other
15 than correct, that the winner ought to, indeed, be the winner
16 and that the person with the most votes ought, indeed, to be
17 the winner. I believe that the State of Wisconsin has recog-
18 nized that and, accordingly, has attempted to legislate.

19 Proceeding then to Storer against Brown, the court in that
20 case, 415 U.S. 724 at page 729, states that, again, looking at
21 Bullock against Carter, there are substantial burdens on the
22 right to vote or to associate for political purposes and where
23 there are substantial burdens on the right to vote or to
24 associate for political purpose is constitutionally suspect and
25 invalid under the First and Fourteenth Amendment and under the

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1 equal protection law they must be reviewed with the necessity
2 to serve a compelling state interest. And that is what we're
3 here, of course, to discuss.

4 The court, at page 732, in Storer against Brown, again
5 refers specifically to Bullock against Carter, in which the
6 state understandably and properly seeks to prevent the clogging
7 of its election machinery, avoid voter confusion and, surpris-
8 ingly enough, that the winner is the choice of a majority or at
9 least a strong plurality of those voting. And as you will both
10 recall from your comments in the memoranda submitted to the
11 Court, at page 734, the court briefly discusses California's
12 experience, particularly as it refers to the 1946 election for
13 governor in California, where the candidate was on both the
14 Republican and the Democrat ballots. The Supreme Court states
15 that moreover after long experience with permitting candidates
16 to run in the primaries of more than one party, California
17 forbade the cross filing practice in 1959. A candidate in one
18 party primary may not now run in that of another. The Court
19 used that in passing reference and, although did not articulate
20 its reasons as to whether or not that ban was appropriately
21 constitutionally or not, it would appear that the very refer-
22 ence thereto provided tacit approval for such a ban.

23 Tashjian against the Republican Party of Connecticut, 479
24 U.S. 208, again talks about Storer, which was designed to
25 protect the parties and the party system against the

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1 disorganizing effect, here it says, of independent candidates
2 launched by unsuccessful putative party nominees. This protec-
3 tion like that accorded to parties is undertaken to prevent the
4 disruption of the political parties from without and not, as in
5 this case, to prevent the parties from taking internal steps
6 affecting their own process for the selection of candidates.

7 The government is not so benign and intrusive that it is
8 to regulate party activities as to the manner in which the
9 party should function, and the Court has no difficulty in
10 understanding how a Supreme Court could reach the decision it
11 did in Connecticut and Eu against San Francisco. It's to look
12 at those forces which attempt to disrupt from without rather
13 than from within.

14 Finally, the Court will conclude with its comments set
15 forth in Eu, E-U, v. San Francisco County Democratic Central
16 Committee, 109 Sup Ct. 1013, a 1989 decision at page 1021. It
17 was incredulous to the court when this decision came down that
18 there actually was that type of regulation of parties, even in
19 the State of California, but the language at page 1020 and
20 1021, "Barring political parties from endorsing and opposing
21 candidates not only burdens their freedom of speech but also
22 infringes upon their freedom of association. It is well
23 settled that partisan political organizations enjoy freedom of
24 association protected by the First and Fourteenth Amendments.
25 Freedom of association means not only that an individual voter

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1 has the right to associate with the political party of her
2 choice, but also that a political party has a right to identify
3 the people who constitute the association and to select a
4 'standard bearer' who best represents the party's ideologies
5 and preferences."

6 It certainly would appear and the Court would so find that
7 the Labor Farm Party is indeed a deeper and more sincere and
8 dedicated party than it would be necessary for this Court to
9 allow a lifting of the ban so that it would select as its
10 standard bearer a lifelong Democrat who for the rest of his
11 life believes in the principles of that party to best represent
12 the party's ideologies and preferences. The Court does not
13 believe that this ban in any way burdens the Labor Farm Party
14 as to its rights to free speech and free association, and
15 certainly it can long survive without picking as its standard
16 bearer a lifelong Democrat to best represent its ideologies.
17 It seems to the Court that there is not that violation of
18 either the First or the Fourteenth Amendment in this particular
19 case as it relates to the statute which is being questioned as
20 to its constitutionality.

21 The Court must determine that 8.05 -- strike that, 8.03,
22 multiple nominations, is not violative of those constitutional
23 provisions to which this Court has referred nor is 8.15(7),
24 where a candidate may not run in more than one party primary at
25 the same time. No filing official may accept nomination papers

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1 for the same person in the same election for more than one
2 party, and the Court would determine that, even were this ban a
3 burden on the plaintiffs' right to free speech and free associ-
4 ation, which it has found it is not in view of the facts and
5 circumstances examined by the Court and which are to be exam-
6 ined, each fact and each circumstance as it relates to each
7 case which is presented to the Court. They're not found here.
8 But even if, indeed, there was that constitutional deprivation,
9 the Court would have to decide, contrary to the arguments made
10 by the nonprevailing party in Eu, that here the state does have
11 at stake stable government, and I don't like to use the word
12 protecting but that's what the court says, protecting the
13 voters from confusion and undue influence. Certainly it is to
14 provide that there be no confusion and that the voter should
15 have the understanding that the person receiving the most votes
16 is going to be the winner and going to be on the ballot eventu-
17 ally. You don't get that by removing the ban. It unquestion-
18 ably does not -- it does not bode for a stable political
19 system. It unquestionably is a compelling state interest to
20 have some type of assurance that the person with the most votes
21 will be the victor. That has not here been shown to exist in
22 the event the ban should be removed, and that's the reason that
23 it's not necessary for Mr. LaFollette or any other candidate
24 who wishes to contest the ban to be present in court. It's a
25 government of laws rather than of persons and we need not

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1 consult each and every candidate and name each and every
2 potential candidate and make those candidates a party to this
3 suit to determine that the state has indeed a compelling state
4 interest to have a stability of the electoring process.

5 Finally, the Court will conclude by indicating at this
6 point for the purpose of preliminary injunction there has not
7 been presented to the Court a reasonable likelihood of success,
8 nor is there irreparable harm. 750, 7.50, as we all know, I
9 think it's (2)(g), does allow for write-ins, and there is no
10 irreparable harm, only that this strong and viable party can
11 write in any person it wishes except this lifelong Democrat
12 that would best represent its ideologies because that person is
13 on another party ballot. But there's certainly no irreparable
14 harm in pursuing the associations, the ideologies, the princi-
15 ples, the beliefs upon which this party is founded by writing
16 in under 7.50(2)(g). "In partisan primaries, if an elector
17 writes in the name of an individual on a ballot other than the
18 one on which that individuals' name is shown as a candidate,
19 the write-in vote may not be counted." I would say if we look
20 at the O'Mansky decisions and those other decisions which are
21 either directory or mandatory, you might even convince the
22 voting officials that may means you can count the votes for
23 anyone you write in, although I wouldn't suggest as a matter of
24 law that we hang on our hat on those dicta comments from the
25 Court.

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1 The Court, then, determines that there is not the reason-
2 able likelihood of success, that there is not the irreparable
3 harm for those reasons suggested and that I believe the balanc-
4 ing of the public interest necessarily follows that it is
5 weighed heavily on behalf of the ban for those reasons articu-
6 lated than on the side that would suggest that it be removed
7 and, accordingly, the Court does reserve the right to supple-
8 ment this decision, as I've previously noted, when preparing
9 the order for summary judgment and motion to dismiss both. The
10 Court, however, believing your concern with August 10 has
11 attempted to examine this as expeditiously as time would allow,
12 and you do have the decision at this point that the request for
13 preliminary injunction is denied.

14 MS. SISKIND: I understood the Court at the outset
15 also to be denying the motion for summary judgment; is that
16 incorrect?

17 THE COURT: I didn't say that. I said that my
18 remarks would be reduced to writing as it relates to that, but,
19 yes, it would naturally follow that if there is no further
20 briefing based upon the reasoning which I have placed upon the
21 record that the motion for summary judgment offered by the
22 plaintiffs would be necessarily denied.

23 MS. SISKIND: The reason I ask is that if we are --
24 we would consider expediting an appeal. If we were to do that,
25 we would need an order from the Court in order to do so. I

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1 suppose the order denying the preliminary injunction would be
2 sufficient.

3 THE COURT: Well, it would except then the case is up
4 there without the opportunity for the Court to supplement its
5 remarks, and I don't have any pride in authorship but I do
6 believe there should be a finality, at least at this level, to
7 that decision, and I do plan to have a written order prepared
8 as a result of the hearing which has been held today.

9 MS. SISKIND: Is there any possibility that a simple
10 order stating memorandum opinion to follow would be possible
11 for the Court to enter today or tomorrow morning?

12 THE COURT: It might be. It might be a way to handle
13 it.

14 MS. SISKIND: Thank you.

15 THE COURT: All right.

16 MS. SISKIND: Thank you for your expedition of the
17 matter as well, Your Honor.

18 THE COURT: Anything further?

19 MR. LEE: Nothing further here, Your Honor.

20 MS. SISKIND: Nothing further.

21 THE CLERK: All rise. This Honorable Court stands
22 adjourned.

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CERTIFICATION

I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.



Frank J. Wiener
August 10, 1990