

No. 25-128,896-A

IN THE SUPREME COURT OF THE STATE OF KANSAS

UNITED KANSAS, INC., *et al.*,

Plaintiffs-Appellants,

v.

SCOTT SCHWAB, *et al.*,

Defendants-Appellees.

PETITION FOR REVIEW

Appeal from the District Court of Saline County, Kansas
Honorable Jared B. Johnson, Judge
District Court Case Nos. SA-2024-CV-152, RN-2024-0184

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Prayer for Review

Plaintiffs request review and reversal of the Court of Appeals decision in *United Kansas, Inc. v. Schwab*, --- Kan. App. 2d ---, --- P.3d ---, 2026 WL 2357663 (Aug. 14, 2026), and remand to the District Court for adjudication of their claims pursuant to Sections 3 and 11 of the Kansas Bill of Rights under the appropriate standard of scrutiny.

Date of Decision

The Court of Appeals' opinion, filed on August 14, 2026, is attached at App. A1-27.

Statement of Issues

The Court of Appeals affirmed the District Court's dismissal of Plaintiffs' claims that Kansas' "anti-fusion" laws, which bar a candidate from accepting the nominations of more than one political party for the same office, violate Plaintiffs' freedom of speech and association guaranteed under Sections 3 and 11 of the Kansas Bill of Rights. The court relied principally on a precedent of the U.S. Supreme Court, *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), decided under the First Amendment to the Federal Constitution. In so doing, did the Court of Appeals err because the court:

- 1) failed to give weight to the greater protections that Sections 3 and 11 extend to free speech and association than does the U.S. Constitution;
- 2) failed to apply strict scrutiny, as required by Sections 3 and 11, and precedents of this Court, given the severe burdens that the anti-fusion laws impose on Plaintiffs' exercise of their rights; and
- 3) diminished the protection of fundamental rights assured to all Kansans by the Kansas Constitution, through the court's application of an analytical framework, heavily borrowed from *Timmons*, that improperly relied at the pleading stage on assumed facts and in other respects was far less demanding than the law requires.

Statement of Facts

The State Revokes UKP's Nominations of the Candidate Plaintiffs

“Fusion voting” (a.k.a. “cross-nomination”) refers to a candidate’s nomination for office by more than one political party, with the candidate’s name then appearing on each party’s separate ballot line. In the 19th and early 20th centuries, fusion was an inherent feature of American elections, including Kansas elections, allowing third parties to transcend stereotypes of “spoiler,” and “wasted votes,” and emerge as a potent force in U.S. politics. 1 ROA 12–14, ¶¶ 46-48. Fusion is still practiced in several States today. *Id.* 201 & n. 15. Yet in 1901 the Kansas Legislature—under one-party control—banned fusion “to foreclose future opportunities for cross-partisan collaboration that might again threaten” the dominant party’s position, *id.* 2, 14, ¶¶ 5, 49, disregarding this Court’s observation, in *Simpson v. Osborn*, 52 Kan. 328, 34 P. 747, 749 (1893), “that there is nothing ... in reason[] preventing two or more political parties ... from selecting the same individual[]” for office. To this day the State’s anti-fusion laws prohibit a candidate from accepting the nomination of more than one party, and from appearing on the ballot as more than one party’s candidate. K.S.A. 25-306, 25-306e. Since the laws’ enactment, Kansas governance has been dominated by the major-party duopoly. 1 ROA 7, 14-15, ¶¶ 26, 50.

This constitutional challenge to the anti-fusion laws was brought by (i) United Kansas, Inc. (“UKP”), a recognized political party formed in 2023 with the goal of reducing partisanship and promoting consensus and compromise in Kansas governance; (ii) two of UKP’s 2024 candidates for state office, who also obtained major-party nominations; and (iii) several UKP party officers and voters. 1 ROA 4-10, ¶¶ 14-35; 5 ROA 4-10, ¶¶ 14-34.

To achieve the party’s goals, UKP and its supporters do not seek to nominate futile third candidates, but rather competitive candidates, capable of also securing major-party nominations, who share UKP’s vision of responsible, practical governance. 1 ROA 7-9, ¶¶ 26–30. Accordingly, in May 2024, UKP nominated two such candidates for seats in the Kansas House of Representatives. *Id.* 10, ¶ 34; 5 ROA 9-10, ¶ 33. However, following their victories in the August 2024 Democratic Party primary, both candidates were advised by the Kansas Secretary of State that they must each choose to keep just one of their two nominations, and relinquish the other, pursuant to K.S.A. 25-306e. 1 ROA 209, ¶ 29. Although the candidates wished to retain both their UKP and Democratic Party nominations, they reluctantly chose to retain the latter, so as to keep the ballot line of the larger, more established party. *Id.* 209–10, ¶ 30. Pursuant to K.S.A. 25-306e, they were “deemed to have declined [the UKP] nomination[s],” and in accordance with K.S.A. 25-613, their UKP nominations were not included on the November 2024 general election ballot. 1 ROA 210, ¶ 31. Both candidates lost in the 2024 general election.¹

The Decisions Below

Plaintiffs filed two (now consolidated) actions seeking declaratory and injunctive relief against the abrogation of UKP’s 2024 nominations, alleging violations of Plaintiffs’ rights of free speech and association guaranteed by Sections 3 and 11. *E.g.*, 1 ROA 16–22, ¶¶ 53–73; *id.* 24-25 (Prayer for Relief). Following cross-briefing, 1 ROA 115–156, 272–

¹ On May 21, 2026, UKP nominated two additional candidates for the Kansas State House. Because they had already filed to run as candidates for those seats in the August 2026 Democratic Party primary, the Secretary declared their UKP nominations invalid pursuant to K.S.A. 25-306, and they will not appear on the November 2026 ballot as UKP candidates for office.

351, the District Court granted the State’s motion to dismiss, denied Plaintiffs’ motion for summary judgment, and dismissed Plaintiffs’ petitions. App. A57.

On review, the Court of Appeals concluded that Section 3 of the Bill of Rights “protect[s] a broader array” of associational rights, and that Section 11 also “may protect broader [rights of] speech [and] expression,” than the First Amendment. App. A17-21. It noted, accordingly, that federal court decisions under the First Amendment (including *Timmons*) are not binding on Kansas courts when construing the rights guaranteed under Sections 3 and 11. *Id.* 13-14, 24. Nevertheless, the court rejected strict-scrutiny review and instead adopted a federal court balancing test, known as the *Anderson-Burdick* framework, that the U.S. Supreme Court applied in *Timmons*. *Id.* 11-13.

Turning first to the burdens on Plaintiffs’ rights, the court acknowledged Plaintiffs’ allegations that Kansas’ fusion voting ban “make[s] it practically impossible for them to ... nominate their preferred candidate,” forcing them into a lose-lose situation of either nominating a second-choice candidate who is “all but ensure[d]” to be defeated, or instead supporting “another party’s nominee.” *Id.* 15. Yet, following *Timmons*’ example, the court concluded that the burdens on Plaintiffs’ rights “are not severe” because of “alternative avenues” left open for Plaintiffs to express their views and “communicate their support” for their preferred candidates, other than nominating them. *Id.* 14, 15, 24-26.

The court then identified two putative state interests that in its view justified those burdens. *Id.* 25-27. The first was “preserving the integrity of the election process” against “fraud” and “chaos” that marked the presidential elections of 1888 and 1896. *Id.* 26. The second was “avoiding voter confusion” that “may” arise if a candidate’s name appeared

twice on the ballot for the same office. *Id.* 26, 27. Declining to consider less restrictive measures available to promote these interests, the court held that they justify the anti-fusion laws' burdens, and affirmed the dismissal of Plaintiffs' claims. *Id.* 26-27.

Argument

I. Plaintiffs Are Entitled to Review as a Matter of Right

Kansas law provides that a party:

may appeal from a final decision of the court of appeals to the supreme court, as a matter of right, whenever a question under the constitution of ... the state of Kansas arises for the first time as a result of such decision.

K.S.A. 60-2101(b). As a result of the Court of Appeals' decision, at least three questions arise here under the Kansas Bill of Rights that have never been considered by this Court:

- (i) whether the Kansas anti-fusion laws, K.S.A. 25-306, 25-306e, and 25-613, violate rights of free speech and association guaranteed by Sections 3 and 11 of the Bill of Rights;
- (ii) whether the appropriate standard of review of Kansas election laws entrenching on rights protected by Sections 3 and 11 is strict scrutiny, or a balancing test akin to the federal courts' *Anderson-Burdick* test; and
- (iii) even if strict scrutiny is not required, whether the Court of Appeals' application of the *Anderson-Burdick* test adequately protects Kansans' rights free speech and association under the Kansas Constitution.

Under the straightforward terms of K.S.A. 60-2101(b), Plaintiffs are entitled to review of these novel and important questions by this Court.

II. Discretionary Review Is Also Called for to Ensure Vigorous Constitutional Protection of Kansans' Essential Political Freedoms

The Court's additional discretion to grant review is guided by the following factors:

- (1) the general importance of the question presented; (2) ... a conflict between the decision [below] and a prior decision of the supreme court ... ;

- (3) the need for exercising the supreme court's supervisory authority; and
- (4) the final or interlocutory character of the judgment [below].

K.S.A. 20-3018(b). The Court may also consider “[t]he presence of an issue of first impression” and whether “[t]he decision [below] reaches an incorrect result.” Kan. S. Ct. Rule 8.03(b)(6)(E). Review is warranted, indeed, imperative, under all these factors.

A. Public Importance of the Novel Constitutional Question Presented

The questions presented here concern not only the Plaintiffs’ rights, but those of the more than 35,000 Kansas voters who signed UKP’s petition for recognition, 1 ROA 204, ¶ 11, of the nearly one-third of Kansas voters who are disaffiliated from both major parties, *id.* 7, ¶ 25, and of all other Kansans who seek viable alternatives to the major-party duopoly. The issues are also recurrent. Consistent with its founding principles, UKP has twice attempted, *see supra* at 3 & n. 1, and intends again in 2028 and beyond, to cross-nominate competitive major-party candidates who share its aims, 1 ROA 205, ¶¶ 13-14. Failure to vindicate UKP’s right to nominate candidates of its choice could be devastating to its future as a viable political party, and its ability to give effective voice to Kansas voters who want to restore cooperation and compromise in Kansas governance. *Id.* 6.

More broadly, as discussed herein, the decision below does not provide for the robust protection of Kansans’ political liberties that our State Constitution demands. The prospect—in this and future cases—of licensing far-reaching intrusions on Kansans’ essential rights, without requiring any more of the State than the articulation of speculative justifications for laws restricting political freedoms, is a matter of great public concern and demands plenary review of the Court of Appeals’ decision.

Indeed, the questions here concern not only the citizens of Kansas, but, as the Court of Appeals recognized, are “fundamental to the core of our Republic.” App. A3. Across the Nation, traditional political norms of mutual toleration and bipartisan cooperation are vanishing, as the major parties increasingly polarize, challenge each other’s legitimacy, and resort to undemocratic tactics in pursuit of political victory.² “The result is legislative gridlock and ineffective governance,”³ and a political arms race that threatens a “breakdown of liberal democracy” by weakening Americans’ faith in the democratic process.⁴ Public surveys show that majorities of Americans are disaffected from our two-party political system and lack confidence in its future; many even “question our fundamental commitment to a pluralistic, liberal democratic order.”⁵

Fusion voting can play an important role in reversing these trends by enabling third parties like UKP to accrue and exercise meaningful political influence and thus disrupt the cycle of escalating polarization. *Reviving Fusion* (text near n. 43). A third party’s cross-nomination of a major-party candidate can engage disaffected voters by allowing them “to back a candidate with a feasible chance of winning ... under a [third-] party banner that

² L. Drutman et al., *Reviving the American Tradition of Fusion Voting* (ABA Task Force for Am. Democracy 2024) (text near nn. 5-9), <https://tinyurl.com/mw4aeyvm> (*Reviving Fusion*”); L. Drutman, “Escaping the Partisan Death Spiral,” *Cato Pol. Rep.*, Vol. XLII, No. 4, 1, 6-7 (July/Aug. 2020), <https://tinyurl.com/mwr7h4rt> (“Escaping the Partisan Death Spiral”); S. Levitsky & D. Ziblatt, *How Democracies Die* 8-10 (Crown 2018).

³ *2025 Report for the ABA Task Force for American Democracy* (2025) (text near n. 162), <https://tinyurl.com/4mch42n2> (“ABA Task Force Rpt.”); see also *Reviving Fusion* (text near n. 4).

⁴ Escaping the Partisan Death Spiral at 1, 6; *Reviving Fusion* (text near n. 2).

⁵ N. Ela, *A Path to Multiparty Democracy*, 86 Ohio St. L.J. 1, 3 (2025); J. Jones, *Satisfaction with U.S. Democracy Edges Up from Record Low* (Gallup Jan. 22, 2025), <https://tinyurl.com/49jcdafn>; *ABA Task Force Rpt.* (text near nn. 1-5); *Reviving Fusion* (text near n. 3).

better reflects [their] values.” *Id.* (text near n. 31); *ABA Task Force Rpt.* (text near n. 206). Fusion can also temper extremist behavior among candidates and officeholders if their third-party constituency is sizable enough to reduce their dependence on major-party support. *Reviving Fusion* (text near n. 37). These are not hypothetical aspirations, but lessons from fusion’s prior history and its continued practice in several States today.⁶

In times of deep public disillusionment with our democratic institutions and the major-party duopoly, emerging parties such as UKP seeking to instill new confidence in the democratic process should not have arbitrary and unconstitutional roadblocks strewn in their path. Yet the decision below, if undisturbed, would set a precedent enfeebling the protection of fundamental rights essential to the well-being of our democratic order.

B. Exercise of the Court’s Supervisory Authority Is Necessary to Correct Errors Below, Including Conflicts with Precedent, That Diminish Kansans’ Rights of Free Speech and Association

1. In affirming the dismissal of Plaintiffs’ claims the Court of Appeals erred in numerous respects. The court’s first misstep was rejecting strict scrutiny as the required standard of review, App. A11-13, despite its recognition that federal precedents construing the First Amendment do not put a ceiling on the rights protected by Sections 3 and 11, *see id.* 13-14, 17-21, 24. That error contravened precedents of this Court teaching that restrictions on “fundamental personal rights and liberties of the people”—such as the

⁶ 1 ROA 12–14, ¶¶ 46-48; *id.* 201 & n. 15; J. Rogers, *Kansas & Fusion Voting: Expansion & Shrinkage of Democratic Participation & Responsive Representation in the Sunflower State*, New Am., 4-9 (Aug. 21, 2024), <https://www.newamerica.org/insights/kansas-and-fusion-voting>; Hon. L. Adelman, *Misguided Rejection of Fusion Voting by St. Legislatures & the Supreme Court*, 56 Idaho L. Rev. 107, 109-10 (2020); *Multiparty Democracy*, 86 Ohio St. L.J. at 8; P. Argersinger, “A Place on the Ballot,” *Fusion Politics & Antifusion Laws*, 85 Am. Hist. Rev. 287, 288-90 (1980).

political freedoms guaranteed by Sections 3 and 11—must survive strict scrutiny, and “are valid “only where necessary to protect compelling public interests[.]” *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 227-28, 234, 689 P.2d 860, 865, 869 (1984); *accord Jurado v. Popejoy Constr. Co.*, 253 Kan. 116, 124, 853 P.2d 669, 676 (1993).

Underlying that unfounded departure from precedent was the court’s deprecation of the burdens on Plaintiffs as less than severe. App. A26. But the anti-fusion laws acutely interfere with rights of free association protected by Section 3. The selection of candidates who can best appeal to the voting public to advance a party’s goals is a party’s core associational function. *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222-24 (1989). Depriving UKP of its “ability to perform th[at] ‘basic function’” imposes a severe burden on Plaintiffs’ rights, *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575, 580-82 (2000), leaving Plaintiffs no alternative but to run second-choice, hopeless protest candidates, or be excluded from the ballot entirely, *see* 1 ROA 7-9, ¶¶ 26-30. In either case the fusion ban “directly hampers” the Party’s ability “to spread its message” during the campaign, *Eu*, 489 U.S. at 223, and to broaden its base of public support, *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 213-16 (1986).

The Court of Appeals also failed to appreciate the serious burden on Plaintiffs’ freedom of expression. As this Court held in *League of Women Voters of Kan. v. Schwab*, 318 Kan. 777, 810, 549 P.3d 363, 385 (2024) (“*LWV II*”), the “ballot is the core political speech of the voter.” When Kansans mark their ballots, they express support, not just for the candidates they choose, but for their nominating parties as well, and in aggregate, a party’s total vote is the collective public expression of support from its adherents.

Excluding a party's cross-nomination of a candidate from the ballot deprives its voters, individually and collectively, of this critical expressive opportunity, *Swamp v. Kennedy*, 950 F.2d 383, 388-89 (7th Cir. 1991) (Ripple, J., dissenting from denial of rehearing *en banc*), by compelling them, when marking a ballot for their party's preferred candidate, to express support for a *different* party than their own, whose values they may not share.

Given these manifest infringements on Plaintiffs' constitutionally protected rights, the Court of Appeals should have recognized that the anti-fusion laws trigger strict scrutiny under this Court's precedents, *see Jurado*, 253 Kan. at 124, 853 P.2d at 676, and closely examined whether the laws serve "compelling" state interests for which no less restrictive means are available, *Unified Sch. Dist. No. 503*, 236 Kan. at 227–28, 689 P.2d at 865. Even under the court's chosen *Anderson-Burdick* test, when, as here, fundamental rights "are subjected to 'severe' restrictions, the [challenged law] must be narrowly drawn to advance a state interest of compelling importance[,]" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), the functional equivalent of strict scrutiny.

As Plaintiffs explained in the Court of Appeals, at the pleading stage the State did not, and could not, make the legal and factual showing of compelling necessity required to sustain the anti-fusion laws under strict scrutiny. This Court's review is crucial, therefore, to remove any doubt that a proper regard for the rights of speech and association protected by our Bill of Rights, coupled with a grasp of the severe burdens at issue, demands strict scrutiny of the anti-fusion laws, based on a record to be developed by the parties on remand.

2.a. Second, even under the *Anderson-Burdick* test favored by the court below, by parroting the reasoning of *Timmons* the court’s analysis still clashes with precedent at every step, with serious consequences if the decision is not corrected by this Court.

The Court of Appeals first misjudged “the character and magnitude of the [] injury” inflicted on Plaintiffs by the anti-fusion laws. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). By denying Plaintiffs their Party’s choice of standard-bearer, the anti-fusion laws deprive them of “the most effective way in which [a] party can communicate to the voters what the party represents and, thereby, attract voter interest and support[.]” *Jones*, 530 U.S. at 575—all before a single ballot is cast. But the Court of Appeals dismissed this injury as nothing more than a claim of right to use the ballot as a platform for conveying the Party’s speech, which the court opined the State has no obligation to provide. App. A25.

That view of the matter not only ignores the essence and gravity of Plaintiffs’ *associational* injuries, but even on its own myopic terms it overlooks that the “ballot is the core political speech of the voter,” *LWV II*, 318 Kan. at 810, 549 P.3d at 385, serving as a critical channel of voter expression, *see supra* at 9-10, one that Plaintiffs seek to employ only in the same manner as other Kansas voters are permitted to do. Blocking access to this channel of expression, save on condition that voters “surrender [their] constitutional right” to nominate their candidates of choice, is incompatible with the guarantees of Sections 3 and 11. *See State v. J.L.J.*, 318 Kan. 720, 735, 547 P.3d 501, 512 (2024).

The Court of Appeals then further undersold Plaintiffs’ injuries as “not severe” because Plaintiffs may still endorse or otherwise express support for their preferred candidates, or nominate candidates of their own not already selected by another party. App.

A25-26. Here the court followed in lockstep the reasoning of *Timmons*, which concluded that the burdens of Minnesota’s fusion ban, “though not trivial,” were “not severe,” because a party and its members remain free to communicate their ideas and to “campaign for, endorse, and vote [on another party’s line] for their preferred candidate.” 520 U.S. at 363; *see* App. A24. But *Timmons*’ analysis is flawed, because none of these putative alternatives has expressive or associational value remotely comparable to a party’s nomination of its preferred candidate, for which there “is simply no substitute,” *Jones*, 530 U.S. at 580; *see Eu*, 489 U.S. at 229 n. 18. And *Timmons*’ approach contradicts the principle, vindicated in more recent and better-reasoned cases, that courts may not “overlook an unconstitutional restriction upon some” speech and associational “activity simply because it leaves other” such “activit[ies] unimpaired.” *Jones*, 530 U.S. at 581.

2.b. Next, although the Court of Appeals identified two state interests that it considered “sufficiently important” to justify Kansas’ fusion ban, App. A26-27, it failed to meaningfully evaluate their true “legitimacy and strength,” *Anderson*, 460 U.S. at 789.

The first of these interests the court called “protect[ing] the integrity of [state] elections,” explaining that the Legislature supposedly banned fusion in 1901 to prevent in Kansas the “fraud” and so-called “chaos” experienced in the presidential elections of 1888 and 1896. App. A26. The court did not describe, however, the nature or extent of the fraud and chaos that concerned it; how fusion voting (as opposed to any number of other causes) produced these problems; or how or in what way their occurrence, nearly 150 years ago, could pose a genuine threat to the sound administration of Kansas elections today. Under rational-basis review, a court may uphold a law based on “any reasonably conceivable state

of facts.” *State v. Genson*, 316 Kan. 130, 143, 513 P.3d 1192, 1201 (2022). But at any truly heightened level of scrutiny, such an “abstract” and “generic statement[] of government interest,” coupled with no more than speculation that the laws actually further the stated goal, is insufficient to justify infringements on fundamental liberties. *See Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 951-53, 551 P.3d 37, 47-48 (2024); *Farley v. Engelken*, 241 Kan. 663, 669, 674-78, 740 P.2d 1058, 1062-63, 1066-68 (1987).

On top of these deficiencies, the court’s endorsement of this “election integrity” rationale assumes facts that contradict Plaintiffs’ allegations, specifically, that the Legislature enacted the anti-fusion laws to insulate the dominant party of the time from political competition. 1 ROA 2-3, 14, ¶¶ 5, 49-50. But on a motion to dismiss, the Court of Appeals was required to “accept all allegations in the petition as true,” *LWV II*, 318 Kan. at 807, 549 P.3d at 383-84, and to render its decision “based only on [those] well-pled facts[.]” *Williams v. C-U-Out Bail Bonds, LLC*, 310 Kan. 775, 784, 450 P.3d 330, 338 (2019). The court’s disregard of this bedrock principle was additional reversible error.

The second state interest on which the Court of Appeals rested its decision was “preventing voter confusion,” the court’s concern that voters “*may* be unclear as to how they should proceed” if a candidate’s name appears more than once on the ballot. App. A26, 27 (emphasis added). This, too, was an assumed problem for which the court cited no evidence. And though this interest was “discussed” in *Timmons*, as the court noted, App. A26, the *Timmons* majority expressly *disavowed* voter confusion as a basis for its decision, 520 U.S. at 370 n. 13, and the dissenters scorned it as “theoretical” and “meritless,” *id.* at 375-76 (Stevens, J., dissenting). Indeed, the U.S. Supreme Court

routinely refuses to credit “sheer speculation” that “voters will be confused as to the meaning of” or “misled” by party labels on the ballot. *See Wash. St. Grange v. Wash. St. Republican Party*, 552 U.S. 442, 454 (2008); *Tashjian*, 479 U.S. at 220-21. So too, here, “[t]here is simply no basis to presume that a well-informed electorate” will be confused by a candidate with two nominations on the ballot, *Wash. St. Grange*, 552 U.S. at 454, only conjecture that cannot justify impositions on Plaintiffs’ fundamental rights. Once again, by relying at the pleading stage on a wholly speculative concern to sustain the anti-fusion laws, the Court of Appeals in effect applied no more than rational-basis review, *see Genson*, 316 Kan. at 143, 513 P.3d at 1201, an abdication of judicial responsibility where fundamental rights are at stake, and one that demands corrective action by this Court.

2.c. Third, although the Court of Appeals acknowledged that *Anderson-Burdick* also requires a court to consider “the extent” to which asserted state interests “make it necessary to burden the plaintiff’s rights”—even when the burden is deemed less than severe—*Anderson*, 460 U.S. at 789; App. A12-13, the court declined to do so. Though not a narrow tailoring requirement in the sense of strict scrutiny, *see Burdick*, 504 U.S. at 433-34, 440 n. 10, evaluating the necessity of burdens imposed on a plaintiff’s rights nevertheless entails consideration of other means by which the government might achieve its objectives, *see, e.g., Norman v. Reed*, 502 U.S. 279, 290 (1992) (rejecting a voter-confusion justification where “a simple expedient” was available to foster “an informed electorate without suppressing the growth of small parties”); *Wash. St. Grange*, 552 U.S. at 456-57. The Court of Appeals, however, refused to inquire whether the State “had other avenues available” to address its concerns that would make it unnecessary to inflict a

measure so heavy-handed as revoking a party’s nomination; instead the court abjured the inquiry as a “matter[] of policy for the legislature[.]” App. A26, 27.

Thus, under the Court of Appeals’ conception of the *Anderson-Burdick* balancing test (so thoroughly influenced by the misguided analysis in *Timmons*), the scales are tipped *against* the protection of fundamental rights. Alternative avenues of speech and association are deemed to lighten the burdens on a plaintiff’s rights, but alternative means of promoting the State’s interests are not taken to reduce the necessity of imposing those burdens in the first place. Such an approach illustrates why other state courts, as noted by the court below, have criticized the *Anderson-Burdick* framework as “overly deferential to state interests.” App. A13 (citing *Mont. Democratic Party v. Jacobsen*, 416 Mont. 44, 55, 63, 545 P.3d 1074, 1084-85, 1089 (2024)). This Court’s review is therefore needed to prevent the Court of Appeals’ overly deferential mode of analysis from taking root in Kansas constitutional law, even if the Court otherwise were to adopt a framework similar to *Anderson-Burdick*.

C. The Finality of the Judgment

The finality of the judgment below deprives Plaintiffs of their day in court to vindicate their rights, and sanctions severe, unjustified burdens on political rights of all Kansans that are essential to our democracy’s welfare. Review of that judgment is vital.

Conclusion

For the reasons given herein, Plaintiffs respectfully request that this Court review and reverse the decision below, and remand to the District Court for adjudication of Plaintiffs’ free speech and association claims, applying scrutiny commensurate with the severe burdens the anti-fusion laws impose on their constitutionally protected rights.

Respectfully submitted,

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**Pro hac vice*

***Applications for admission pro hac vice
forthcoming*

Certificate of Service

I certify that on the 11th day of September, 2026, the foregoing was electronically filed with the Clerk of the Court by using the Court's e-Filing system, which will send notification of electronic filing to counsel for all parties of record.

/s/ Rex A. Sharp
Rex A. Sharp