IN THE TWENTY-EIGHTH JUDICIAL DISTRICT
DISTRICT COURT OF SALINE COUNTY, KANSAS

UNITED KANSAS INC. et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. SA 2024-CV-000152
	)	
SCOTT SCHWAB, et al.,	)	consolidated with
	)	
	)	Case No. RN 2024-CV-000184
Defendants,	)	
	)	

MEMORANDUM DECISION AND ORDER

On December 3, 2023, the above captioned case proceeded to hearing on Defendant's Motion to Dismiss Plaintiffs' Petition and Plaintiffs' Motion for Summary Judgment. Counsel of record appeared and after oral argument, the Court ordered both parties to file proposed findings of fact and conclusions of law. The parties timely filed the same on January 31, 2025, and the Court took the matter under advisement.

The Court, having reviewed the court file, arguments of counsel, and being duly apprised of the evidence presented, enters the following findings of fact and conclusions of law.

I. HISTORY OF FUSION VOTING

This case scrutinizes Kansas Statutes that prohibit fusion voting. *See* K.S.A. 25-306, K.S.A. 306e, and K.S.A. 25-613. "Fusion" voting is the common vernacular used to describe a voting procedure allowing the same individual to appear on a ballot as a candidate for more than one party. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, Syl, 117 S.Ct. 1364 (1997). It is an understatement to assert that fusion voting is an uncommon practice in the United

States of America. "[I]n this century, fusion has become the exception, not the rule. Today, multiple-party candidacies are permitted in just a few States." *See Timmons* at 357. Because of its rather obscure practice in the modern American political system a brief review of the history of fusion voting is in order.

Prior to the Presidential election of 1888, fusion voting "was a regular feature of Gilded Age American politics." *Id.* at 356. In different regions of the country each of the two major parties engaged in this practice for their own strategic reasons. *Id.* "Fusion was common in part because political parties, rather than local or state governments, printed and distributed their own ballots." *Id.* Apparently, the ballots "contained only the names of a particular party's candidates. . ." *Id.* Unlike today, where a voter fills out a paper or electronic ballot and affirmatively selects a candidate of their choice, "a voter could drop his party's ticket in the ballot box without even knowing that his party's candidates were supported by other parties as well." *Id.* The voting process for many Americans changed dramatically during the latter part of the 1800's. The 1888 election was "widely regarded as having been plagued by fraud." *Id.* Thereafter, many States, including Kansas, began using the "Australian ballot system" which meant that an official ballot, printed at the expense of the public, contained all the names of the legally nominated candidates. *Id.* "By 1896, use of the Australian ballot was widespread" and "many States enacted other election-related reforms, including bans on fusion candidacies." *Id.*

Kansas was one of the many States that followed suit and enacted a ban on fusion voting in 1901. *See* K.S.A. 25-306. In the nearly 135 years since the onset of States banning fusion voting, courts across the country have, by and large, upheld these laws. *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025); *State v. Anderson*, 100 Wis. 52376 N.W. 482 (Wis. 1898); *People ex rel. McCormick v. Czarnecki*, 266 Ill. 372, 107 N.E. 625, 628 (Ill.

1914); *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 958 (Mo. 1914); *In re Street*, 499 Pa. 26, 451 A.2d 427, (Pa. 1982); *Ray v. State Election Bd.*, 422 N.E.2d 714 (Ind. Ct. App. 1981); *State v. Wileman*, 49 Mont. 436, 143 P. 565 (Mont. 1914); *State ex re. Shepard v. Superior Court of King County*, 60 Wash. 370, 111 P. 233 (Wash. 1910); *State ex rel. Fisk v. Porter*, 13 N.D. 406, 100 N.W. 1080 (N.D. 1904); and *State ex rel. Bateman v. Bode*, 55 Ohio St. 224, 45 N.E. 195 (1986); *but see In re Callahan*, 200 N.Y. 59, 93 N.E. 262 (N.Y. 1910). This Court is not aware of any on-point Kansas case that addresses constitutional challenges to anti-fusion laws.

II. PROCEDURAL HISTORY

A Petition for Declaratory and Injunctive Relief was filed by United Kansas Inc., Lori Blake, Jack Curtis, Sally Cauble, Adeline Ollenberger, and Scott Morgan in the Saline County District Court on July 10, 2024. That same day a Petition for Declaratory and Injunctive Relief was filed in Reno County by the named parties therein. All Petitioners from the Saline and Reno County cases will be referred to as "UKP." Saline County case 2024 CV 152 named Scott Schwab, Secretary of State, and Jamie Doss, County Clerk and Election Officer for Saline County as Defendants. Reno County case 2024 CV 184 named Scott Schwab, Secretary of State, and Donna Patton, County Clerk and Election Officer for Reno County as Defendants. All Defendants from the Saline and Reno County cases will be referred to as "the State." Both Petitions allege the statutory ban on fusion voting violates the Kansas Constitution. Specifically, the Petitions assert violations of the right to free speech, the right to association, and the right to equal protection. UKP seek declaratory relief pursuant to K.S.A. 69-1701 & 1703 as well as injunctive relief pursuant to K.S.A. 60-901 & 902. UKP filed a Motion to Expedite Proceedings in Reno County on July 15, 2024, and on July 18, 2024, in Saline County. In Saline County the first scheduling conference occurred on July 22, 2024, and the District Court set the matter for

status to determine if the County was represented by counsel. On July 25, 2024, the Reno County District Court denied Plaintiffs' Motion to Expedite. In Saline County, the Motion to Expedite was set to be heard on August 5, 2024. That same day the State filed a Motion to Dismiss alleging the District Court lacked jurisdiction and that the Petition failed to state a claim. For the reasons stated on the record, the Court denied the Motion to Expedite on August 7, 2024. Thereafter, counsel for UKP filed responsive pleadings to defendants' Motion to Dismiss including a Motion for Summary Judgment.

On August 23, 2024, the Kansas Supreme Court ordered that, in accordance with K.S.A. 60-242(c), Reno County District Court case number 2024 CV 184 transfer to the Saline County District Court and consolidate with Saline County Case 2024 CV 152. The cases were consolidated as ordered. After all responsive pleadings were filed and served, oral argument was set for December 3, 2024, and proceeded as scheduled. At the conclusion of oral argument, the Court ordered the parties to file proposed findings of facts and conclusions of law by January 31, 2025.

III. FINDINGS OF FACT

UKP is a political party recognized by the State of Kansas and granted ballot access in accordance with K.S.A. 25-302. Lori Blake and Jason Probst are both registered voters in the State of Kansas. Ms. Blake is registered in Saline County and Mr. Probst in Reno County. Both were candidates in the 2024 general election for the Kansas House of Representatives: Ms. Blake for the 69th District and Mr. Probst for the 102nd. Mr. Probst represented the 102nd District since 2017 in the House. UKP nominated Ms. Blake and Mr. Probst as its candidate in their respective Districts for the 2024 general election. Both candidates won the August 2024 Kansas

Democratic Party primary election and were certified as the Democratic Party's nominee by the State Board of Canvassers. Both were defeated in the November 2024 general election.

Plaintiff Jack Curtis is a registered Kansas voter and is UKP's Chair. Plaintiff Sally Cauble is a registered Kansas voter and is UKP's Vice Chair. Plaintiffs Adeline Ollenberger, Elizabeth Long, Scott Morgan, and Brent Lewis are Kansas registered voters who are affiliated with UKP and who prefer to vote for UKP candidates in the general election.

UKP is a political party founded in 2023 by a cross-partisan group of local leaders and concerned citizens, based on the belief that most Kansas want to reduce bitter partnership and rigid ideology in Kansas politics, promote more compromise and consensus, and place emphasis on real problem-solving. On March 12, 2024, UKP filed more than thirty-five thousand signatures from Kansas voters in support of its petition for party recognition. The Kansas Secretary of State recognized UKP as a formal political party twelve day later on May 24, 2024.

UKP's mission is clear. They believe that running a third candidate in a competitive two-way race against major parties is a recipe for loss and would undermine its own political goals and priorities by taking away votes from whichever viable candidate is more closely aligned with UKP's values of moderation and compromise. In short, UKP believes running a third-party candidate without fusion voting would help the candidate with whom UKP disagrees the most.

UKP concludes that to advance its political goals, in most races, it must recruit and nominate candidates who are also capable of securing the nomination of one of the two major parties. UKP pursued this strategy in 2024 by nominating Ms. Blake and Rep. Probst as its 2024 candidates for the 69th and 102nd District seats in the Kansas State House. UKP intends to continue this strategy in 2026, 2028, and beyond.

On June 21, 2024, the Kansas Secretary of State's Office sent written notice to UKP stating that, pursuant to K.S.A. 25-306e, a candidate may be nominated by only one political party on the general election ballot. The notice explained that, if Ms. Blake and Rep. Probst prevailed in their Democratic primary races, the Secretary would require each of them to "file within seven days" after the State Board of Canvassers' certification of the primary results "a written statement, signed and sworn . . . , designating which nomination [he/she] desires to accept": either the UKP or Democratic nomination. The Secretary added that, if Ms. Blake or Rep. Probst "refuse[d] or neglect[ed] to file such statement," the Secretary, "immediately upon the expiration of the seven-day period, shall make and file . . . an election of one nomination for [her/him]."

On August 28, 2024, Ms. Blake and Rep. Probst each received correspondence from the Secretary asking them which party's nomination they intended to keep pursuant to K.S.A. 25-306e. Although Ms. Blake and Rep. Probst wished to run as formal nominees of both UKP and the Democratic Party, because of the statutory prohibition against fusion voting, they each submitted a written statement informing the Secretary that they chose to retain their Democratic Party nominations, to retain the ballot line of a more established party with a larger current number of registered voters. Pursuant to K.S.A. 25-306e, submission of these statements meant that Ms. Blake and Rep. Probst were "deemed to have declined" the UKP nominations.

IV. CONCLUSIONS OF LAW

A. Standing

The State's Motion to Dismiss alleges that UKP lacks standing to pursue their claims. "Standing is 'a party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *See Gannon v. State*, 298 Kan. 1107, 1130 (2014)(quoting Black's Law Dictionary 1536

(9th ed.2009)). The State initially argued the Petition lacked sufficient allegations concerning subject matter jurisdiction. Specifically, the State claimed that UKP has not suffered a cognizable injury. The Motion to Dismiss was filed on August 5, 2024, prior to the Democratic nominations and prior to the candidates' decision to keep the Democratic nomination. The State argued any injuries were speculative at that time. The State also argued that Jack Curtis, Sally Cauble, and Scott Morgan failed to plead that they are eligible to vote in the 69th District House race.

The State asserted that there is not a causal connection between the injury and the challenged conduct because the injury is not caused by K.S.A. 25-306e but by Ms. Blake's own decision to decline the UKP nomination. UKP disagreed, arguing the injuries were not speculative as each candidate ran unopposed and "were all but guaranteed to win" and in fact won their respective primaries. UKP also argued that their injury was "fairly traceable to the challenged action of the defendant[s]." *See Kan. Bld. Indus. Workers Comp. Fund. v. State, 302 Kan. 656,* 681 (2015)(quoting *Gannon v. State*, 298 Kan. 1107, 1130 (2014)). Eventually, the State agreed UKP had standing. Their Reply stated: "[t]hese results triggered K.S.A. 25-306's prohibition on a candidate being nominated by more than one political party in a particular election. Given that Mr. Probst and Ms. Blake chose to eschew their respective nominations from the United Kansas Party and instead accept the competing nomination of the Democratic Party, Defendants no longer dispute Plaintiffs' standing."

Subject matter jurisdiction may be raised by the court or a party at any time. *See State v. Patton*, 287 Kan. 200, 205 (2008). UKP has the burden of establishing standing. *See Gannon*, 298 Kan. at 1123; *see also Davis v. FEC*, 554 U.S. 724, 734 (2008). To establish standing, UKP must demonstrate that (i) it has "suffered a cognizable injury" and (ii) there is "a causal

connection between the injury and the challenged conduct." *See League of Women Voters v. Schwab*, 317 Kan. 805, 813 (2023) ("*LWV I*"). The time for speculating whether either candidate would obtain both nominations has passed. The parties each obtained UKP and the Democratic parties' nominations triggering K.S.A. § 25-306e and the Secretary of State responded accordingly. The injuries are "fairly traceable" as required for standing. Absent enforcement of the anti-fusion laws, both candidates could have retained their UKP nominations, both nominations could have appeared on the ballot, and the alleged constitutional harms would not have materialized. *See Kan. Bld. Indus. Workers Comp. Fund*, 302 Kan. at 681-82. In addition, the individually named Plaintiffs are all registered Kansas voters and affiliated with UKP. Their status combined with the application of K.S.A. 25-306e is sufficient to demonstrate they "suffered a cognizable injury" and that there is "a causal connection between the injury and the challenged conduct." Plaintiffs have standing to proceed, and this Court has jurisdiction to review their claims.

B. The Petition fails to State a Claim Upon Which Relief Can Be Granted

The initial question raised by the State is whether the Petition states a valid claim for relief. In evaluating a motion to dismiss pursuant to K.S.A. 60-212(b)(6), the Court must "determine whether the petition state any valid claim for relief." *See Williams v. C-U-Out Bail Bonds*, 310 Kan. 775, 784 (2019). The Court assumes the truth of all well-pled facts and draws any reasonable inferences in the plaintiff's favor. *Id.* UKP raises three constitutional challenges to Kansas anti-fusion laws. Namely, that the Kansas anti-fusion laws violate the following rights protected by the Kansas Constitution: Freedom of Speech (Section 11 of the Bill of Rights); Freedom of Association (Section 3 of the Bill of Rights); and Equal Protection (Section 2 of the Bill of Rights).

i. Standard of Review

The parties dispute the appropriate standard of review: strict scrutiny; the *Anderson-Burdick* framework; or a "reasonableness" test similar to the one used by the Kansas Supreme Court in *League of Women Voters of Kansas v. Schwab, 318 Kan. 777 (2024)("LWV II")*. Under strict scrutiny, "the government's action is presumed unconstitutional," and the burden shifts to the State "to establish the requisite compelling interest and narrow tailoring of the law." *See Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 669 (2019). Whereas *Anderson-Burdick* requires the court to (1) "consider the character and magnitude of the asserted injury"; (2) identify and evaluate the precise interests put forward by the State" and "determine the[ir] legitimacy and strength"; and (3) consider the extent to which those interests make it necessary to burden the plaintiff's rights." *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); and *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Article 4, § 1 of the Kansas Constitution states "[a]ll elections by the people shall be by ballot or voting device, or both, as the legislature shall by law provide." The Court in *LWV II* made clear "[w]here popular elections are required—by either statute or by the Kansas Constitution in articles 1 and 2 (or elsewhere)—the mode, form, and rules governing those elections are constitutionally delegated from the people to their free government in concrete constitutional commands." *LWV II*, 318 Kan. at 378. Article 4, § 1 confers upon lawmakers the power to select *any reasonable* mode of voting for state elections. The Supreme Court referenced *State v. Butts*, 31 Kan. 537, 555-56 (1884), when discussing this very point in the context of Article 5, § 4 stating, "determining whether the article 5 right to suffrage has been violated is subject to our test set forth in *Butts*. . ." *Id.* at 380. In 1884, the Kansas Supreme Court addressed a constitutional challenge to a statute requiring registration to vote, thereby

placing "an additional qualification on the right to suffrage." *Butts*, 31 Kan. at 619. The Court held the registration law was reasonable and that the legislature has the "right to require proof of a man's qualification, it has a right to say when such proof shall be furnished, and before what tribunal and unless that power is abused the court may not interfere." *Id.* at 621. In the context of Article 5, the *LWV II* Court summarized the test as follows:

> In other words, the test pronounced in *Butts* provides that the Legislature may validly make registration (or the provision of other "proper proofs") a prerequisite to the act of voting, but in so doing, the Legislature cannot "under the pretext of securing evidence of voters' qualifications ... cast so much burden as really to be imposing additional qualifications" on the right to suffrage. 31 Kan. at 554, 2 P. 618. Accordingly, to prevail on a claim that the article 5 right to suffrage has been violated, a plaintiff must show that the Legislature has imposed what amounts to a new, extra-constitutional qualification on the right to be an elector—that is, the law must be shown to unreasonably burden the right to suffrage. Such unreasonable burdens, as a matter of law, bear no reasonable relationship to the Legislature's lawful role of providing proper proofs but instead amount to extra-constitutional and de facto qualifications on the right to suffrage. If a law is shown to violate the *Butts* test—i.e., if it imposes any additional de facto qualifications not expressly set forth in article 5 on the right to become an elector—the law is unconstitutional. *LWV II*, 318 Kan. at 380-81.

Contrary to UKP's argument, strict scrutiny is not the appropriate standard of review. Constitutional interpretation requires reading each provision "in the context of the Constitution as a whole," not as isolated protections and guarantees. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325-26 (2015). UKP argues that because they are not asserting right to vote claims under Articles 4 or 5, the "reasonableness" standard applied in *LWV II* is irrelevant. The Court does not agree. Although Plaintiffs invoke protections under the Bill of Rights, their claims involve a discrete mode of voting (i.e. fusion voting), a matter the Kansas Constitution expressly delegates broad discretion to the legislature to regulate in Article, 4, Section 1.

In addition, the United States Supreme analyzed similar challenges to a Minnesota anti-fusion ban using the *Anderson-Burdick* framework, not strict scrutiny. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). The *Timmons* Court summarized the structure of its analysis as follows:

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the " 'character and magnitude' " of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick, supra,* at 434, 112 S.Ct., at 2063–2064 (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's " 'important regulatory interests' " will usually be enough to justify " 'reasonable, nondiscriminatory restrictions.' " *Burdick, supra,* at 434, 112 S.Ct., at 2063 (quoting *Anderson, supra,* at 788, 103 S.Ct., at 1569–1570); *Norman, supra,* at 288–289, 112 S.Ct., at 704–706 (requiring "corresponding interest sufficiently weighty to justify the limitation"). No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms. *Storer, supra,* at 730, 94 S.Ct., at 1279 ("[N]o litmus-paper test ... separat[es] those restrictions that are valid from those that are invidious.... The rule is not self-executing and is no substitute for the hard judgments that must be made").

The United States Supreme Court noted that the "burdens Minnesota imposes on the party's First and Fourteenth Amendment associational rights—though not trivial—are not severe." *Id.* at 363. As the Court will discuss below, whether the Court evaluates the fusion voting ban using a "reasonableness" test, as the Kansas Supreme Court did in *LWV II* for assessing challenges to signature verification laws and ballot collection restrictions or invoke *Anderson-Burdick* balancing (as the United States Supreme Court did in *Timmons*) the challenged anti-fusion laws survive UKP's constitutional attack. The test outlined in *Butts*, and applied in *LWV II*, carries similarities to the *Anderson-Burdick* framework. UKP attempts to

steer focus away from *Timmons* and the Supreme Court's use of the *Anderson-Burdick* balancing test by focusing on distinctions with the Kansas State Constitution. However, the Court finds the three factors utilized by the *Anderson-Burdick* analysis are the appropriate standard of review in this case and are consistent with the reasonableness test from *LWV II.* The analysis below will focus on the *Anderson-Burdick* factors for this reason. *See Mazo v. New Jersey Secretary of State*, 54 F.4th 124, 143 (3rd Cir. 2022)(". . .the Supreme Court has been skeptical of efforts to assert an unqualified right to speech via the ballot, but it has nonetheless applied the *Anderson-Burdick* balance test to laws that regulate ballot speech."); *see also See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025).

iii. The State has strong and legitimate regulatory interests at stake

The first factor directs the Court to "consider[s] the character and magnitude of the asserted injury." However, because UKP asserts three separate constitutional challenges that each involve reviewing the State's precise interests and determining their legitimacy and strength, the Court will address the same before evaluating the character and magnitude of the asserted injuries.

As the *Timmons* Court noted, "[r]egulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's " 'important regulatory interests' " will usually be enough to justify " 'reasonable, nondiscriminatory restrictions.'" 520 U.S. at 358. "No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *See Id.* at 359. Each of the stated interests will be reviewed in turn.

First, the State has an obligation to ensure that the ballot remains free from manipulation. *See Timmons*, 520 U.S. at 364-65. Political party cross-nominations on a ballot potentially "undermine the ballot's purpose by transforming it from a means of choosing candidates to a billboard for political advertising." *Id.* at 365. The State has a legitimate interest in preventing candidates from exploiting fusion voting by associating his or her name with popular slogans and catchphrases. *Id.* The Supreme Court in *Timmons* addressed this point, stating:

> Petitioners contend that a candidate or party could easily exploit fusion as a way of associating his or its name with popular slogans and catchphrases. For example, members of a major party could decide that a powerful way of "sending a message" via the ballot would be for various factions of that party to nominate the major party's candidate as the candidate for the newly-formed "No New Taxes," "Conserve Our Environment," and "Stop Crime Now" parties. In response, an opposing major party would likely instruct its factions to nominate that party's candidate as the "Fiscal Responsibility," "Healthy Planet," and "Safe Streets" parties' candidate.
>
> *Whether or not the putative "fusion" candidates' names appeared on one or four ballot lines, such maneuvering would undermine the ballot's purpose by transforming it from a means of choosing candidates to a billboard for political advertising. Id.* (emphasis added).

Fusion voting incentivizes mischief by candidates and parties by allowing candidates to appear on the ballot multiple times as the nominee of different parties. For example, a major party could create multiple minor parties based on the 2% signature requirement of K.S.A. 25-302a to have its candidate appear multiple times utilizing valuable ballot real estate to promote their platform. *See People ex rel. McCormick v. Czarnecki*, 107 N.E. 625, 629 (1914). Similarly, a fringe candidate could obtain multiple minor party nominations by obtaining the threshold signatures suggesting, or by the number of minor party nominations, implying that they have more widespread support than exists.

The State has a strong interest in procedures that avoid, or at least minimize, the potential for gamesmanship at the nomination stage and improperly inflate their party's support. Rolling the clock back 125 years to a time when fusion voting was allowed would allow a minor party to circumvent the rule for obtaining the status of a major political party. K.S.A. 25-202(b) requires receipt of at least 5% of the total votes cast for all candidates in a primary election (versus having to convene a delegate or mass convention, which the party must fund itself), and avoid the loss of recognition rules. *See* K.S.A. 25-302b. The minor party could do this by cross nominating a major party's candidate. The *Timmons* Court addressed a similar concern and stated, "voters who might not sign a minor party's nominating petition based on the party's own views and candidates might do so if they viewed the minor party as just another way of nominating the same person nominated by one of the major parties." 520 U.S. at 366. The Court noted that "[t]he State surely has a valid interest in making sure that minor and third parties who are granted access to the ballot are bona fide and actually supported, on their own merits, by those who have provided the statutorily required petition or ballot support." *Id.*

Anti-Fusion laws also help to facilitate greater competition and choice. Like the analysis above regarding utilizing candidates already backed by major parties to circumvent certain nomination procedures, fusion voting disincentives minor parties from identifying new candidates to represent the party. Instead, the minor party can simply select already-popular candidates of major parties and thereby "decrease[] real competition." *See Swamp v. Kennedy*, 950 F.2d 383, 385 (7th Cir. 1991). The Court in *Swamp* summarized this point succinctly, stating: "[a]llowing minority parties to leech onto larger parties for support decreases real competition; forcing parties to choose their own candidates promotes competition." *Id.*

The State has "a strong interest in the stability of [its] political system." *See Timmons*, 520 U.S. at 366. *Timmons* made clear that the State cannot "completely insulate the two-party system" from the "competition and influence" of minor parties, but it may "enact reasonable election regulations that may, in practice, favor the traditional two-party system" and "temper the destabilizing effects of party-splitting and excessive factionalism." *Id.* at 367.

Fusion voting can also blur the distinction between the parties and their platforms, potentially diminishing accountability and voter confidence. Anti-fusion laws help safeguard the integrity of the nomination process by preventing a candidate from accepting nominations from multiple parties that may have competing platforms. Voters may believe that "one candidate is unlikely to be able, conscientiously and effectively, to represent more than one party in the same election." *See Swamp*, 950 F.2d at 388(concurring opinion). Multiple party nominations and inclusion on the ballot may come at the expense of voters' confidence in their knowledge of the candidate's stances and the political parties' platforms.

Finally, it is difficult for this Court to see a scenario where fusion voting would not cause voter confusion, at least for a time. Fusion voting has been banned in Kansas for over 120 years, and is the exception, not the rule, across the country. Common sense would dictate that voters are not used to seeing candidates endorsed by multiple parties during a campaign or on the ballot. Although the Court in *Timmons* did not rely on voter confusion in reaching its decision, it did recognize that it invites confusion. *See Timmons*, 520 U.S. at 364. Avoiding voter confusion is an important and legitimate regulatory interest held by the State.

The State is not required to show historical evidence that this kind of ballot manipulation or gamesmanship has occurred in Kansas in order to qualify as legitimate regulatory interests. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 194-96 (1986); *see also Timmons*, 520 U.S.

at 364 ("Nor do we require elaborate, empirical verification of the weightiness of the States' asserted regulatory interest need only be 'sufficiently weighty to justify the limitation' imposed on the party's rights.").

The State has both legitimate and strong regulatory interests justifying a ban on fusion voting. "States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." *See Timmons*, 520 U.S. at 364; *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025)(finding "the State has 'important [regulatory] interests in preventing voter fraud, ensuring public confidence in the integrity of the electoral process, and enabling voters to cast their ballots in an orderly fashion.'"). The Court finds that the interests articulated by the State qualify as "legitimate" and "important regulatory interests."

iv. The character and magnitude of the asserted injuries.

a. Freedom of Speech

UKP claims that the Kansas anti-fusion laws "revoke" UKP nominations and exclude them from the general election ballot preventing UKP, its candidates, and its voters from engaging in protected political speech. In addition, UKP claims enforcement of the anti-fusion laws not only restricts political speech during the campaign, but also "at the most crucial stage in the electoral process"—on "the ballot." *citing Anderson v. Martin*, 375 U.S. 399, 402 (1964). UKP routinely uses words and phrases such as "barred", "forced abdication", "strips candidates of their status" and other similar language to indicate the Kansas anti-fusion laws restrict political speech during the campaign and prevent its candidates from being the official nominees on the general election ballot. In support of their free speeach argument, UKP claims the Kansas

Supreme Court noted that the "ballot is the core political speech of the voter." *LWV II*, 318 Kan. at 810.

The Kansas Supreme Court has construed free speech protections under Section 11 of the State's Constitution as coextensive with the First Amendment. *See Prager v. State Dep't of Rev., 271 Kan. 1, 37 (2001); LWV I, 317 Kan. at 815(*citing *State v. Russell, 227 Kan. 897, 899 (1980); and LWV II*, 317 Kan. at 815. UKP argues that the Kansas Constitution protects free speech more robustly than the Federal Constitution and that [t]he historical context in which each provision was ratified illustrates why it would be especially inappropriate to impose the restrictive strain of federal case law . . . in this area of Kansas jurisprudence." (Pls.' Br. at 35). The language of Section 11 of the Kansas Constitution's Bill of Rights is not identical to the First Amendment. It reads:

> The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

Although Section 11 of the Kansas Constitution "may be worded more broadly" than the First Amendment of the U.S. Constitution, the Kansas Supreme Court has treated both as "coextensive." *See Prager*, 271 Kan. at 37; *LWV I*, 317 Kan. at 815, *LWV II*, 318 Kan. at 787 ("the speech protections afforded by section 11 are, at a minimum, coextensive with the First Amendment").

The First Amendment analysis in *Timmons* regarding Minnesota's anti-fusion law is instructive. The Court held that anti-fusion laws prevent a party "from using the ballot to communicate to the public that it supports a particular candidate who is already another party's candidate," and a party has no "right to use the ballot itself to send a particularized message, to

its candidate and to the voters, about the nature of its support for the candidate. Ballots serve primarily to elect candidates, not as forums for political expression." 520 U.S. at 362-63. To this point, UKP focuses on language from the *LWV II* opinion noting that the "ballot is the core political speech of the voter." 318 Kan. at 810. However, the Court in *LWV II* was addressing a very different question than faced here or in *Timmons* and UKP takes this sentence out of context. The Court in *LWV II* was distinguishing between the activities of the ballot collectors and the voters from whom the ballots are collected. *Id.* at 810. Specifically, the Court was highlighting the different positions occupied by a voter casting a ballot and individuals collecting and delivering them to the election office for First Amendment purposes. It is difficult to imagine that the Court intended to contradict the holding in *Timmons* (and nearly every other court to address the issue) that the ballot itself is not a forum of expression. The point was not even at issue in *LWV II.*

UKP also overstates the effect anti-fusion laws have on political speech. Nothing in the law prohibits or prevents Plaintiffs from expressing support—financial or otherwise—for UKP and its preferred candidates at every stage of the race. The full range of activities available to communicate such support is open to them, including identifying their preferred candidates as the endorsed nominees of the party. The United States Supreme Court rejected this same theory in *Timmons*, noting that anti-fusion laws do not contravene the First Amendment given that the party can still "communicate ideas to voters and candidates through its participation in the campaign, and party members may campaign for, endorse, and vote for their preferred candidate even if he is listed on the ballot as another party's candidate. *Id.* at 363; *accord Working Families Party v. Commonwealth*, 209 A.3d 270, 286 (Pa. 2019)(rejecting free speech challenge to an anti-fusion law under the Pennsylvania constitution where minor party and its supporters

"were able to meet and decide . . . the candidate who best represented their values," and "then had the opportunity to participate fully in the political process, culminating in casting their votes for the candidate of their choice"); and *In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 (N.J. App. 2025).

The ballot is a mechanism for choosing candidates, not a "billboard for political advertising." *See Timmons*, 520 U.S. at 365; *see also Mazo v. N.J. Sec'y of State,* 54 F.4th 124, 144 (3d Cir. 2022)(explaining that "[f]or ballots to be effective tools for selecting candidates and conveying the will of voters, they must be short, clear, and free from confusing or fraudulent content. This necessarily limits the degree to which the ballot may—or should—be used as a means of political communication). That is its primary function. As the United States Supreme Court noted in *Burdick v. Takushi*, "[a]ttributing to elections a more generalized expressive function would undermine the ability of the States to operate elections fairly and efficiently." 504 U.S. 428, 441-42 (1992). The Court noted that it has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity." *Id. (citing Munro v. Socialist Workers Party*, 479 U.S. 189, 199 (1986). Further, inclusion of a slogan or party name on the ballot is not speech by the candidate or party to the extent claimed by UKP. It is merely a "one-way communication confined to the electoral mechanic of the ballot." *See Mazo*, 54 F.4th at 145; citing *Burdick*, 504 U.S. at 438. The ballot itself, in contrast to public campaigning, "leafletting, petition circulating, or even the wearing of political clothing at the polling place, cannot inspire any sort of meaningful conversation regarding political change." *Id.*

Kansas anti-fusion laws do not restrict UKP's access to the ballot. UKP has a right to nominate the candidate of its choice on the general election ballot, and that candidate will appear on the ballot if (i) he/she has not already been nominated as the candidate of another party and

(ii) the candidate does not decline the minor party's (UKP's) nomination. A candidate's affirmative and strategic choice to forego the minor party's nomination does not translate into a free speech injury to the party, its candidate, the voters or anyone associated with the party.

Even if these statutes implicate free speech rights, the statutes are not unconstitutional. A poling place is not a public forum, and it is well established that the State is empowered, and does, impose content-based restrictions on speech in nonpublic forums, "including restrictions that exclude political advocates and forms of political advocacy." *See Minn. Voters All. V. Mansky*, 585 U.S. 1, 12 (2018). The government is granted wide latitude in regulating the ballot. *See Ramcharan-Maharajh v. Gilliland*, 48 Kan.App.2d 137, 143 (2012)("The state's important interest in regulating ballot access generally is sufficient by itself to justify reasonable, nondiscriminatory ballot-access restrictions."(citing *Timmons*, 520 U.S. at 364-65).

The fact that fusion voting was prevalent or common prior to 1888 is irrelevant. The evolution to the Australian ballot system and the national trend of banning fusion voting provides historical context for the evolution of our political system, but it does not advance UKP's theories. The United States Supreme Court has held that states are free to "enact reasonable election regulations that may, in practice, favor the traditional two-party system." *Timmons*, 520 U.S. at 367. The Kansas Supreme Court has also held that "the mode, form, and rules governing . . . elections are constitutionally delegated" to the Legislature. *See LWV II*, 318 Kan. at 797.

In terms of the *Anderson-Burdick* framework, the injury is not severe. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting are not an abuse of power.

b. Freedom of Association Claim

The Kansas Constitution provides "[t]he people have the right to assemble" and "consult for their common good." *Kan. Const. Bill of Rights*, § 3. Although the Kansas Supreme Court has not addressed the scope of this section in this context, the United States Supreme Court has held that the constitutional foundation of the "freedom of association" is found in the First Amendment. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also NAACP v. Ala. Ex rel. Patterson*, 357 U.S. 449, 460-61 (1958). And as discussed above, with respect to free speech rights, the Court in *LWV I* has construed Kansas free speech protections as coextensive with the First Amendment. 317 Kan. 805, 815 (2023)(citing *State v. Russell*, 227 Kan. 897, 899 (1980).

UKP claims the anti-fusion laws prevent the party, its candidates, and its voters from freely associating during the campaign and through the voting process itself. The United States Supreme Court in *Timmons* categorically rejected similar claims under the federal Constitution. 520 U.S. at 364-365. The Court noted that "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder." *Id.* at 358; citing *Burdick*, 504 U.S. at 433. As noted above, the Court held that a strict scrutiny analysis was not warranted because Minnesota's anti-fusion laws resulted in a relatively light impact on the minor party. *Id.* at 364. "Instead, the State's asserted regulatory interest need only be sufficiently weighty to justify the limitation imposed on the party's rights." *Id.*

Like Minnesota's laws, Kansas statutes prohibiting fusion voting apply to both major and minor parties alike. The anti-fusion restrictions are applied even-handedly. The law does not prevent a party from endorsing any candidate even though the candidate may be the nominee of another party. *See Timmons,* 520 U.S. at 360. Neither statute precludes minor parties from developing, organizing, or participating in the election process. *Id.* at 361. Indeed, the minor

party "remains free to endorse whom it likes, to ally itself with others, to nominate candidates for office, and to spread its message to all who will listen." *Id.* Ultimately, the candidate is the one deciding not to retain the nomination of the minor party. Any burden on the minor party's inability to have its first-choice candidate appear as its nominee on the ballot is a function of the candidate's choice to accept a different party's nomination. *Id.* at 359. The minor party, including UKP, remains "free to try to convince" its preferred candidate to accept their nomination instead of the major party's. *Id.*at 360. Kansas anti-fusion laws "do not directly limit the party's access to the ballot," and "are silent on parties' internal structure, governance, and policymaking." *Id.* The State "reduce[s] the universe of potential candidates who may appear on the ballot as the party's nominee only by ruling out those individuals who both have already agreed to be another party's candidate and also, if forced to choose, prefer that other party." *Id.*

Many features of the political system make it difficult for third parties to be successful in American politics. *Id.* at 362. The *Timmons* Court highlighted a few: single-member districts, 'first past the post' elections, and the high costs of campaigning . . ." *Id.* However, the "Constitution does not require States to permit fusion any more than it requires them to move to proportional-representation elections or public financing of campaigns." *Id.* In other words, the question is not merely whether anti-fusion laws make it difficult for third, or minor, parties to succeed at the polls as UKP suggests. While discussing the State's regulatory interest in a stable political system, the Supreme Court commented that while states cannot "completely insulate the two-party system from minor parties' or independent candidates' completion and influence," they are free "to enact reasonable election regulations that may, in practice, favor the traditional two-party system, and . . . temper the destabilizing effects of party-splintering and excessive

factionalism." *Id.* While the Kansas anti-fusion laws may, in practice, favor the two-party system that does not amount to amount to a "severe and unnecessary" burden on its associational freedom as claimed by UKP. Each candidate is ultimately the one faced with the decision regarding which party's nomination to retain. Even after that decision is made, Kansas law does not interfere with UKP, its candidates, or voters from continuing to campaign on behalf of the party. The Kansas anti-fusion laws do not interfere with UKP's freedom of association, they simply require the candidate to choose one party to list on the ballot.

In terms of the *Anderson-Burdick* framework, the injury is not severe, the States's regulatory interests are strong and greatly outweigh any burden it might have on political parties. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting and K.S.A. 25-306, 25-306e, and 25-613 are not an abuse of power. Nothing in the law prevents UKP, or any other political party, its candidates or its voters from associating with each other or nominating one of their own to appear on the ballot. Kansas does not forcibly revoke nominations and UKP nominated its candidates with no interference from the State. Each of these candidates secured additional nominations from a second party, the Democratic party. Pursuant to K.S.A. 25-306e, they then had the choice regarding which party to associate with, and each candidate voluntarily elected to remain on the Democratic party ticket, not UKP's. The Secretary did not make that choice for the candidates, nor did he abrogate UKP's right to nominate a candidate.

c. Equal Protection Claim

UKP claims they are denied the same opportunities for free association and political expression that other Kansas parties, voters, and candidates enjoy. They allege that Kansas laws prohibiting fusion voting result in disparate treatment that violates their "constitutionally

protected right to participate in [the electoral process] on an equal basis" with their fellow Kansas. *See Dunn. Blumstein*, 405 U.S. 330, 336 (1972). Specifically, that certain classes of citizens may not be denied the equal enjoyment of rights and benefits that, once conferred by the State, must be extended uniformly to all participants in the democratic process. UKP is not overtly claiming a violation of their right to vote protected by Article V. Instead, they argue that the Kansas anti-fusion laws denigrate a fundamental right; "the equal right to vote." *Id.* By prohibiting fusion voting the State permits voters of other recognized parties to freely cast ballots for their preferred candidates under their own party label all the while denying minor parties, like UKP, this same opportunity.

"Equal protection requires similarly situated individuals be treated alike." *See LWV II*, 549 P.3d at 383. "It does not require that all persons receive identical treatment, but only that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." *Id.* This case does not involve a suspect class. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985)(unless statue imposes classifications based on race, alienage, national origin, or gender, most laws are subject only to rational basis review, the least probing form of equal protection review). The Kansas Supreme has held that it is "guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal Constitution when . . . called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights." *See Rivera v. Schwab*, 315 Kan. 877, 894 (2022). The two provide identical rights. *Id.* Following the lead of the Kansas Supreme Court, this Court is guided by United States Supreme Court precedent when interpreting and applying equal protection guarantees. Plaintiffs bear the burden of establishing that the "statute treats 'arguably indistinguishable' individuals

differently." *See State v. LaPointe*, 309 Kan. 299, Syl. ¶¶ 5-6 (2019). When plaintiffs fail to meet this burden, the Court is precluded from proceeding with an equal protection claim. *See Huerta*, 291 Kan. 831, 834 (2011).

UKP asks this Court to "look beyond the statute" and find that the anti-fusion laws result in disparate treatment because candidates are unlikely to retain the minor party nomination. It strikes the Court that UKP's argument relies on the relative strength or support for their party. For example, the Republican and Democrat parties are historically established with significant voter support. Consequently, their candidates have a greater likelihood of success than would a candidate of a new, less established, party despite having the same right of access to the ballot and despite having the same opportunity to convince their candidate to retain their nomination. However, because of this power imbalance, UKP claims anti-fusion laws create a disparity in treatment and inevitably dilute the votes of UKP members. The Court is not persuaded by UKP's argument.

The few cases cited by UKP to support their equal protection challenge are factually distinct from the Kansas anti-fusion laws in question. For example, in *Working Families Party v. Commonwealth*, the Pennsylvania anti-fusion law had a 'loophole" allowing cross-nominations using write-in votes for certain seats which arguably imposed a more severe burden on a minor party attempting to cross-nominate a candidate with a major party as compared to a major party attempting to cross-nominate with another major party. 653 Pa. 41, 209 A.3d 270, 273-274, 283 (2019). The Pennsylvania Supreme Court rejected the equal protection claim because the loophole applied equally to political parties and political bodies alike. *Id.* at 283-286.

Similarly, UKP cites *Graveline v. Benson*, for this Court to determine if the anti-fusion laws "restrict political participation equally" or "fall unequally," and therefore unduly burden

their rights of equal protection. 992 F.3d 524, 535-536 (6th Circuit 2023). Unlike the Kansas anti-fusion laws that apply equally to all political parties, the *Graveline* case involved Michigan laws requiring independent party candidates to utilize a different process and timeframe for nomination than candidates from the three major political parties. *Id.* The other cases cited by Plaintiffs contain factual distinctions similar to *Graveline* or address ballot access laws that effectively precluded parties from accessing the ballot at all. *See Dunn*, 405 U.S. at 334-337; *Bullock v. Carter*, 405 U.S. 134, 143-144, 149 (1972); *Reform Party of Allegheny Cnty.*, 174 F.3d at 308; *Patriot Party of Allegheny Cnty.*, 95 F.2d at 268; *Williams*, 393 U.S. at 25-26.

Conversely, in over 125 years since the inception of anti-fusion laws courts have consistently rejected similar equal protection claims. *See, e.g. Working Families Party*, 209 A.3d 270; *Swamp v. Kennedy*, 950 F.2d 383, 385-86 (7th Cir. 1991); *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 960 (1914); *People ex rel. Schnackenberg v. Czarnecki*, 100 N.E. 283, 285-286 (1912); *State v. Anderson*, 76 N.W. 482, 485-486 (1898); *State v. Bode*, 45 N.E. 195,196-97; *Todd v. Board of Election Com'rs*, 64 N.W. 496, 498; *see also State ex rel. Mitchell v. Dunbar*, 230 P. 33 (1024)(as long as anti-fusion statute "operates . . . evenly and impartially upon all parties," it is constitutional); *Hayes v. Ross*, 127 P. 340, 342 (1912); *State ex rel. Shepard et al. v. Superior Ct. of King Cnty.*, 111 P. 233, 236-37 (1910). Plaintiffs failed to cite one case where a court struck down a facially non-discriminatory anti-fusion law on equal protection grounds despite their existence for over 125 years. In fact, on the eve of this Court rendering its decision, the New Jersey Superior Court, Appellate Division issued an opinion addressing very similar claims, including equal protection. *See In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21, pgs 28-29 (N.J. App. 2025). The New Jersey appellate court found that

its anti-fusion law did not contravene any provision of the New Jersey Constitution, including equal protection. *See Id.*

The Kansas statutes in question treat all political parties identically. Neither major party can cross-nominate candidates on the general election ballot. Anti-fusion laws do not limit access to the ballot based on a particular political viewpoint or based on an "associational preference." Neither Kansas statute makes any distinction between the major and minor parties, nor do they include "loopholes" that favor one party over another. UKP's Petition fails to establish that the "statute treats 'arguably indistinguishable' individuals differently." Kansas anti-fusion laws are facially non-discriminatory. In the words of the Supreme Court of Missouri, ""[t]he Legislature has provided a harmonious scheme whereby all fusion between political parties upon any candidate is prohibited." *See Dunn*, 168 S.W. at 957; *see also In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 at 28.

UKP intentionally chose the strategy of selecting candidates who can secure the nomination of one of the two major parties. Similarly, nothing prohibits UKP from convincing it's preferred candidates to retain their nomination as opposed to the major party's. *See Timmons*, 520 U.S. at 360 (explaining that a party remains "free to try to convince" a party to choose its nomination over another). Anti-fusion laws do not prevent UKP from educating Kansas voters regarding their platform, fundraising, advertising, or any other tool available to expand their base and thereby strengthen their position to convince their candidate to retain the UKP nomination. Instead, UKP asks this Court to "look beyond the statute" and accept their premise that candidates are unlikely to select minor party-nominations. This is the same "predictive judgment" argument that *Timmons* rejected. *Id.* at 361. Kansas anti-fusion laws do "reduce the universe of potential candidates who may appear on the ballot as the party's nominee

only by ruling out those few individuals who both have already agreed to be another party's candidate and also, if forced to choose, themselves prefer that other party." *See Timmons*, 520 U.S. at 363. However, they do so even-handedly and are applied equally to the major and minor parties alike.

Plaintiffs' assert that minor parties have not "won a statewide or federal election in Kansas" in more than a century and argue this demonstrates a disparate treatment and severe infringement on Section 2's guarantee of equal protection. The Court is not persuaded by this argument. Equal protection does not amount to the right to win, or likely win, an election. UKP has a "constitutional right to run for office and to hold office once elected", not a right to prevail. *See Flinn v. Gordon*, 775 F.2d 1551, 1554 (11th Cir. 1985).

Even if this Court applies the reasonableness test from *LWV II* or an *Anderson-Burdick* balancing test, the Kansas anti-fusion laws survive an equal protection claim. The burden on Plaintiffs' rights from the ban is not severe. *See Timmons*, 520 U.S. at 363. Because similar anti-fusion laws have survived constitutional attacks in both the United States Supreme Court and a significant majority of state supreme courts to address the issue, this Court does not find the law to be unreasonable.

v. The extent to which the State's interests make it necessary to burden the Plaintiffs rights.

This Court's conclusion as to the third *Anderson-Burdick* factor is clear; "given the burdens imposed, the bar is not so high." *See Timmons,* 520 U.S. at 364. According to *Timmons*, "lesser burdens . . . trigger less exacting review, and a State's "'important regulatory interests'" will usually be enough to justify "'reasonable, nondiscriminatory restrictions.'" 520 U.S. at 358 (quotations omitted). The Court's analysis concludes that the Kansas anti-fusion laws create a "lesser burden", if any, and the States's regulatory interests are strong. The State's

interests greatly outweigh any burden it might have on political parties. *See Timmons* at 364-67. Similarly, Kansas anti-fusion laws impose reasonable modes of voting and are not an abuse of power. Because Kansas anti-fusion laws do not create a severe burden on a minor party the State does not need to demonstrate that the ban is narrowly tailored to serve its compelling interests. *See Timmons,* 520 U.S. at 363-64 (". . .because the burdens the fusion ban imposes on the party's associational rights are not severe, the State need not narrowly tailor the means it chooses to promote ballot integrity.").

The United States Supreme Court's analysis in *Timmons* of the *Storer* and *Burdick* cases was instructive in reaching this conclusion. In both cases, one from California and the other Hawaii, the Supreme Court upheld ballot restrictions that were more burdensome than Minnesota's fusion ban. 520 U.S. at 368-369. While discussing *Storer*, the Court noted:

> After surveying the relevant case law, we "ha[d] no hesitation in sustaining" the party-disaffiliation provisions. *Id.,* at 733, 94 S.Ct., at 1280–1281. We recognized that the provisions were part of a "general state policy aimed at maintaining the integrity of ... the ballot," and noted that the provision did not discriminate against independent candidates. *Ibid.* We concluded that while a "State need not take the course California has, ... California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See The Federalist No. 10 (Madison). It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system." 415 U.S., at 736, 94 S.Ct., at 1282; see also *Lippitt v. Cipollone,* 404 U.S. 1032, 92 S.Ct. 729, 30 L.Ed.2d 725 (1972) (affirming, without opinion, district-court decision upholding statute banning party-primary candidacies of those who had voted in another party's primary within last four years). *Id.* at 368.

Similarly, in *Burdick*, the Supreme Court reviewed First and Fourteenth Amendment challenges to Hawaii's ban on write-in voting and noted that "we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activit[ies]

at the polls." *Id.* at 369, quoting *Burdick*, 504 U.S. at 437-438. This Court concludes that the burdens Kansas's fusion ban imposes on UKP are justified by "correspondingly weighty" valid state interests in ballot integrity and political stability. *See Timmons*, 520 U.S. at 369; *see also In Re Malinowski*, Docket Nos. A-3542-21, A-3543-21 at 28-29.

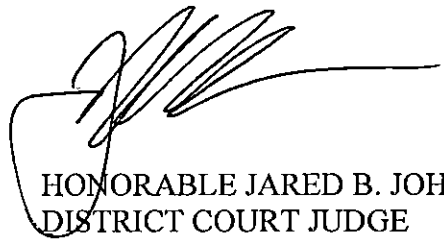
V. SUMMARY

UKP claims that the Kansas anti-fusion laws violate Freedom of Speech (Section 11 of the Bill of Rights); Freedom of Association (Section 3 of the Bill of Rights); and Equal Protection (Section 2 of the Bill of Rights) do not survive Defendants' Motion to Dismiss. Strict scrutiny is not the appropriate standard of review and whether this Court applies the reasonableness test from *LWV II* or an *Anderson-Burdick* balancing test, the Kansas anti-fusion laws survive constitutional challenge. The burden on UKP's rights from the ban is not severe. The State's strong regulatory interests include avoiding ballot manipulation; preventing parties from improperly inflating support; facilitating greater competition and choice; promoting stability of the political system; promoting candidate accountability and voter confidence; and avoiding voter confusion. The States's regulatory interests are strong and greatly outweigh any burden it might have on UKP. *See Timmons* at 364-67. Finally, Kansas anti-fusion laws impose reasonable modes of voting and are not an abuse of power.

Assuming the truth of all well pled facts and drawing any reasonable inferences in plaintiffs favor the Court has determined the Petition does not state a valid claim for relief. Dismissal is proper because the allegations in the Petition clearly demonstrate that UKP does not have a claim. The Motion to Dismiss is granted and the Motion for Summary Judgment is denied.

IT IS SO ORDERED.

This order is a final order and is effective as to the date and time shown on the electronic file stamp.



HONORABLE JARED B. JOHNSON
DISTRICT COURT JUDGE

On March 3, 2025, the original Order was efiled with the Saline County District Court Clerk and copies were emailed to:

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