IN RE TOM MALINOWSKI, PETITION FOR NOMINATION FOR GENERAL ELECTION, NOVEMBER 8, 2022, FOR UNITED STATES HOUSE OF REPRESENTATIVES NEW JERSEY CONGRESSIONAL DISTRICT 7	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-3542-21T2 On appeal from final agency action in the Department of State Sat below: Hon. Tahesha Way, Secretary of State (CONSOLIDATED)
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REPLY BRIEF AND SUPPLEMENTAL APPENDIX OF APPELLANTS

WEISSMAN & MINTZ
Flavio Komuves, Esq. (018891997)
fkomuves@weissmanmintz.com
Brett M. Pugach, Esq. (032572011)
bpugach@weissmanmintz.com
Steven P. Weissman, Esq. (024581978)
sweissman@weissmanmintz.com
220 Davidson Avenue, Suite 410
Somerset, New Jersey 08873
732.563.4565

BROMBERG LAW LLC
Yael Bromberg, Esq. (036412011)
ybromberg@bromberglawllc.com
43 West 43rd Street, Suite 32
New York, New York 10036
212.859.5083

Professor Joel Rogers (Admitted Pro Hac Vice)
University of Wisconsin Law School
jrogers60@gmail.com
975 Bascom Mall
Madison, Wisconsin 53706
609.347.9889

Professor Nate Ela (Admitted Pro Hac Vice)
Temple University Beasley School of Law
nate.ela@gmail.com
1719 North Broad Street
Philadelphia, Pennsylvania 19122
215.204.7861

Counsel and on the Brief for Appellants Moderate Party and Richard A. Wolfe

UNITED TO PROTECT DEMOCRACY
Farbod K. Faraji, Esq. (263272018)
farbod.faraji@protectdemocracy.org
Beau C. Tremitiere, Esq. (Admitted Pro Hac Vice)
beau.tremitiere@protectdemocracy.org
2020 Pennsylvania Avenue NW, Suite 163
Washington, D.C. 20006
202.579.4582

Counsel and on the Brief for Appellants Michael Tomasco and William Kibler

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PRELIMINARY STATEMENT

This appeal presents a simple question: whether Secretary Way's refusal to place the Moderate Party's nomination on the November 2022 ballot violates Appellants' fundamental rights guaranteed in the State Constitution. The constitutional text, precedent, history, and record all point to the same answer: the rejection under the anti-fusion laws was unconstitutional. Neither Respondents nor Intervenor dispute that these laws were passed with the discriminatory purpose of excluding minor parties from the political process and pushing voters to support the two major parties. Nor do they dispute that New Jersey is the most hostile state in the U.S. for minor parties. Nor do their briefs grapple with the history, case law, and evidence that all lead to the unmistakable conclusion that the Secretary's rejection violated the rights to vote, free speech and association, assembly, and equal protection. Instead, they rely on three faulty premises: (1) this case bringing state constitutional claims should be guided by federal law; (2) a little-known proposal during the 1947 constitutional convention controls every legal decision in this case; and (3) cross-nominations are somehow permitted already (though that has not been true for more than a century). These arguments defy state law, precedent, and (at times) common sense. For the reasons set forth below, and those set forth in Appellants' merits brief, this Court should hold that the Secretary's rejection was unconstitutional.

LEGAL ARGUMENT

I. THE THREE MAIN POINTS DRIVING THE OPPOSITION BRIEFS ARE WRONG

A. This Case Is About the State—Not the Federal—Constitution

Rather than engage with the text, history, and structure of the State Constitution, Intervenor and Respondents spend most of their briefs discussing federal law. (Db17-34; Ib12-25.)[1] In so doing, they raise irrelevant federal issues;[2] ignore unique features of state law—including the plain language of the State Constitution; ignore the record; and trivialize this Court's "obligation and . . . ultimate responsibility to interpret the meaning of the Constitution" and apply it to the facts presented. N.J. Republican State Comm. v. Murphy, 243 N.J. 574, 591 (2020) (citation omitted). Federal rulings might provide useful guidance—but they are "not controlling on state courts." State v. Hunt, 91 N.J. 338, 363 (1982) (Handler, J., concurring). New Jersey courts have repeatedly recognized that the State Constitution "goes beyond federal minimum standards." ROBERT F. WILLIAMS, THE N.J. STATE CONSTITUTION 52-53 (2012).

[1] "Pb_" refers to Appellants' merits brief; "Pa_" refers to Appellants' appendix; "Psa_" refers to Appellants' supplemental appendix filed herewith; "Db_" refers to Respondents' merits brief; and "Ib_" refers to Intervenor's merits brief.

[2] Intervenor repeatedly insists that state laws restricting nominations qualify as "time, place, and manner" restrictions under the Elections Clause. (Ib11, 13, 25, 29.) Whether they do or not is irrelevant to whether those laws nonetheless violate fundamental rights guaranteed under the State Constitution.

Timmons v. Twin Cities Area New Party is neither "dispositive" nor "definitive" (Db22), and the Court should reject the invitation to surrender its independence to adopt conclusions reached on different facts construing different constitutional text.[3]

Independent analysis is not only justified, but necessary when, as here, the State Constitution provides an express and affirmative right unenumerated in the U.S. Constitution (e.g., right to vote) or where the State Constitution provides a right without a federal analogue (e.g., right to assemble to "make [] opinions known to [] representatives"). Hunt, 91 N.J. at 364 (Handler, J., concurring). It is up to this Court to decide whether laws that exclude minor parties from real political participation and ensure that an electorate eager for more choice has only two real options on the ballot comport with the New Jersey Constitution.

B. Any Interpretative Inferences from 1947 Constitutional Convention Actually Support Appellants' Position

Respondents insist that the anti-fusion laws comply with fundamental rights long-guaranteed under the State Constitution merely because an eleven-member committee in the 1947 constitutional convention declined to adopt certain proposed language in a closed-door executive session. This sweeping

[3] Even under Respondents' reading of federal law—statutes designed to protect the "two-party system" are lawful "so long as third parties have opportunities to develop and flourish" (Db52)—Appellants must prevail because the anti-fusion laws suffocate the Moderate Party and other minor parties. (See infra p.29.)

assertion collapses upon the slightest scrutiny—Respondents are wrong about the facts and the law, and any inferences run the other direction. Indeed, if accepted, Respondents' interpretive theory would mean that a convention's failure to override a statute in place at the time of a convention would be a defense against a future constitutional challenge, even when the stated purpose of the convention was to remain focused on high-level principles.

On June 12, 1947, Governor Driscoll opened the convention with an address instructing delegates to remain focused on foundational principles and avoid ensconcing specific policy decisions into the revised constitution:

> [I]t [is] all the more important that the organic law under which our State may live for the next century be restricted to the establishment of a sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people . . . . We can best insure against the pressures of our age and the vicissitudes of the future by limiting our State Constitution to a statement of basic fundamental principles . . . . The State Constitution is an organic document – a basis for government. <u>It should not be a series of legislative enactments</u> . . . . <u>The longer a constitution, the more quickly it fails to meet the requirements of a society that is never static.</u>

(Psa2 (emphasis added).) This approach was appropriate, Governor Driscoll explained, because the courts are empowered with applying broad constitutional principles to judge the validity of challenged laws and practices:

> [J]udicial review of the acts of the Legislature and Executive, giving power to courts to set aside laws and executive action where the judges determine that they violate the written constitution, has come

> to make the quality of our justice synonymous with the values of democracy held by the average citizen.

(Psa3.) Several months later, the convention adjourned after successfully executing the Governor's call to action.[4] In November, voters overwhelmingly approved the revised constitution.[5] Aside from the modernization of the right to vote—guaranteeing the right to vote for "[e]very citizen" rather than just "white male citizen[s]"—the text of the provisions at issue here were unchanged.[6]

Respondents' brief leaves the impression that the question of whether to enshrine a right to cross-nomination was a prominent issue in the proceedings. Not so. For years, advocates had sought a convention to strengthen the power of the state Executive and modernize and unify the state Judiciary. Bebout & Harrison, supra at 339-53. These issues, along with several other fundamental questions, predominated the convention proceedings. Id.

Buried in thousands of pages of hearing transcripts, minutes, reports, and other records are a few scattered references to cross-nominations. Amidst the months of convention proceedings, there was one mention in a Legislative

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[4] John E. Bebout & Joseph Harrison, The Working of the New Jersey Constitution of 1947, 10 WM. & MARY L. REV. 337, 338 (1968) (commending this "strictly constitutional document, not a code of laws, which establishes a simple governmental system based upon the separation of powers principle").
[5] See State of N.J. Dep't of State, Result of the General Election, Held November 4th, 1947, https://perma.cc/RUY3-R223.
[6] N.J. CONST. OF 1844, art. II, ¶ 1; N.J. CONST. OF 1947, art. II, § 1, ¶ 3.

Committee hearing: witness testimony by a labor representative who advocated several different constitutional amendments, including a constitutional prohibition on laws preventing cross-nominations. (Da14-16.) The record consists of a single question a delegate then asked the witness on whether the 1844 Constitution prohibited state laws authorizing cross-nominations. Id. The Legislative Committee records also contain a corresponding, one-page, itemized list of policy recommendations from the same union, though it is unclear when this was submitted, to whom, and whether it was ever reviewed. (Da19.)[7]

The day before this testimony, a delegate had introduced "Proposal 25." (Da10.) The proposal, which would have added this new provision to Article IV, Section VII, was summarily referred to the Legislative Committee without debate. Id.[8] The next week, in a closed-door executive session, the Committee declined to adopt Proposal 25 and nine other proposals. (Psa17-18.) There is no transcript from the meeting or any other record explaining the Committee's (or any individual delegate's) rationale. The minutes simply state for each proposal: "On motion made, seconded and carried, Proposal No. [x] was rejected." Id.

[7] The identical list was submitted by a second public interest group. (Da18.) These pages are found scattered among dozens of other written submissions from community stakeholders, public interest groups, and civic leaders in a catchall miscellaneous appendix in the convention records.

[8] Respondents erroneously state that Proposal 25 was referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. (See Db13.)

Two weeks later, the Committee submitted its report to the convention explaining the rationale for its proposed amendments and rejection of two proposals to constitutionalize rules for lobbying and periodic statutory revisions. (Psa5-15.) The report then simply listed the nine proposals that had been considered and rejected in the executive session, noting that "the principles of some were incorporated into the Committee's proposal." (Psa14.)[9]

That's it. No discussion of the anti-fusion laws, how those laws interact with fundamental rights,[10] or Proposal 25.[11] Nor do Respondents cite any debate over fusion during or before the convention. Yet, in their view, "[t]here can be little doubt that the Framers were aware of . . . the policy debate over the bar on fusion" and there is "ample evidence" that fundamental rights must be construed as condoning the anti-fusion laws. (Db13, 23.) They are wrong.

First, Respondents fundamentally mischaracterize the core issue on

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[9] The report simply stated: "All received careful consideration and although none was adopted in whole or in part, as submitted, the principles of some were incorporated in the Committee's proposal." (Da12.)

[10] Notably, Proposal 25 sought to add a new provision to Article IV (focusing on the Legislature), while the constitutional provisions at issue here are in Article I (rights and privileges) and Article II (suffrage and elections).

[11] The authoritative study on the convention makes no mention of Proposal 25 or fusion. See RICHARD J. CONNORS, THE PROCESS FOR CONSTITUTIONAL REVISION IN NEW JERSEY: 1940-1947, National Municipal League 150-55, 170-72 (1970). Neither does the first study authored in 1952 by a researcher who served the convention. See Richard N. Baisden, Charter for New Jersey: The New Jersey Constitutional Convention of 1947, Division of the State Library, Archives and History, N.J. Dep't of Educ. (1952).

appeal—it is not, as they intimate, whether the State Constitution contains a free-standing, affirmative right to participate in fusion voting. (See Db22.) Rather, the issue is much more circumscribed: whether prohibiting the Moderate Party from cross-nominating its preferred candidate—viewed, as it must be, in the context of other restrictions set forth in the state election code—violates fundamental political rights long guaranteed under the State Constitution. The 1947 proceedings are of little use in resolving this narrow question.

Second, Respondents' implied intent theory rests upon an unsupported factual premise: that Proposal 25 was not adopted because delegates believed the anti-fusion laws in place at the time should be deemed constitutional. In reality, the record is completely silent as to why any particular delegate declined to support Proposal 25, let alone the prevailing view within the Legislative Committee or the full convention. Any number of alternate motivations are equally (if not more) plausible: addressing cross-nominations was inconsistent with the Governor's command to remain focused on broad, foundational principles; the interplay with fundamental political rights could be better addressed by the Judiciary; the Judiciary had already settled this question in noting the probable unconstitutionality of prior anti-fusion laws in In re City Clerk of Paterson, 88 A. 694 (N.J. Sup. Ct. 1913); and so forth. See, e.g., State v. Gelman, 195 N.J. 475, 486 (2008) ("competing plausible interpretations"

make legislative history "unenlightening in resolving the textual ambiguity"). Without evidence as to the convention's views on the anti-fusion laws or why Proposal 25 was not adopted, no intent can be inferred.[12]

Third, Respondents' approach cannot be reconciled with the lodestar of state constitutional interpretation: discerning the "voice of the people," not parsing potentially conflicting motives of delegates. Vreeland v. Byrne, 72 N.J. 292, 302 (1977). "[T]he Constitution derives its force, not from the Convention which framed it, but from the people who ratified it; and the intent to be arrived at is that of the people." Gangemi v. Berry, 25 N.J. 1, 16 (1957); see also State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 527 (1999).[13]

Here, there is zero evidence that the 1947 electorate intended to insulate the anti-fusion laws from challenge under the expanded provision guaranteeing the right to vote to all adult citizens, or the unchanged provisions guaranteeing freedom of association, the right to assemble to make opinions known to representatives, and equal protection. Neither Proposal 25 nor any question

[12] See Robinson v. Cahill, 62 N.J. 473, 513 (1973) (that 1947 convention "did not act upon a recommendation of the [NJ] Federation of Labor that education be funded out of State revenues" was "inaction . . . of doubtful import" in adjudicating scope of state's duty to finance public schools) (citation omitted).

[13] The preeminent state constitutional scholar Robert Williams has discussed this doctrine's use in New Jersey and other states. E.g., Robert F. Williams, The Brennan Lecture: Interpreting State Constitutions as Unique Legal Documents, 27 OKLA. CITY U. L. REV. 189 (2002); ROBERT F. WILLIAMS & LAWRENCE FRIEDMAN, THE LAW OF AMERICAN STATE CONSTITUTIONS 355-56 (2023).

about fusion was presented to the voters, and there is no indication that this was a topic of public debate. Rather, given how difficult it is to find any references to these issues in the voluminous convention records, it is safe to conclude that voters had no idea that these issues appeared (even if scantly) in the proceedings.

Fourth, using the Committee's decision not to adopt Proposal 25 to narrow these fundamental rights would contravene the long-settled approach to interpreting the "great ordinances of the Constitution." Atl. City Racing Ass'n v. Att'y Gen., 98 N.J. 535, 170 (1985) (defining these as "the due process clause, the equal protection clause, the free speech clause, all or most of the other sections of the Bill of Rights" (quoting Vreeland, 72 N.J. at 304)). "The task of interpreting most if not all of these 'great ordinances' is an evolving and on-going process," as these are "flexible pronouncements constantly evolving responsively to the felt needs of the times." Id. To forever limit the scope of fundamental rights because a proposal to amend a different part of the Constitution was briefly considered in a latter convention is incompatible with this approach. Respondents cannot cite a single case in which our Supreme Court has invoked subsequent conventions or amendments to narrow its interpretation of a fundamental right originally set forth in the 1844 Constitution.[14]

[14] Our Supreme Court instead interprets fundamental rights in keeping with evolving norms and circumstances. E.g., Garden State Equality v. Dow, 216 N.J. 314 (2013); Lewis v. Harris, 188 N.J. 415 (2006); Planned Parenthood of Cent.

Fifth, Respondents' interpretative approach is impossible to reconcile with New Jersey Supreme Court decisions confronting textual "silence." Under their theory, New Jersey courts could never invoke and apply the exclusionary rule because the 1947 convention included a robust debate on a proposal to amend Article I, Paragraph 7 to expressly adopt the exclusionary rule, and a full convention floor voted down the proposal. See State v. Novembrino, 105 N.J. 95, 147-48 (1987). Yet despite the 1947 convention's full public debate of that proposal, the New Jersey Supreme Court subsequently held (and repeatedly affirmed) that the guarantees set forth in Article I, Paragraph 7 required application of the exclusionary rule. Id. This case alone proves the incongruity—and novelty—of Respondents' proposed treatment of the 1947 proceedings here.

This is just one example. In Worden v. Mercer Cty. Bd. of Elections, the New Jersey Supreme Court again reached a holding incompatible with the notion that when fundamental rights provisions are "silent" on a specific application of those rights, that application lacks constitutional protection. 61 N.J. 325 (1972). Worden acknowledged that "the 1947 Constitution contains provisions in Article II for voting by residents but makes no reference to domicil or student

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N.J. v. Farmer, 165 N.J. 609 (2000); Right to Choose v. Byrne, 91 N.J. 287 (1982). As noted, the purpose of the 1947 convention was to "insure against the pressures of our age and the vicissitudes of the future by limiting our State Constitution to a statement of basic fundamental rights." (Psa2.)

voting" and that under common law, a student was "domiciled" at their parents' home, not their college residence. Id. at 345. Under Respondents' interpretative approach, the Court should have interpreted the constitutional "silence" as rejecting the argument that students were entitled to vote in their college community, because convention delegates would have known the long-standing domicile rules and, by remaining silent on the matter, they were placing them beyond the Court's reach—in perpetuity. But the Court reached the opposite conclusion, holding that the State Constitution's right to vote required that students be permitted to register and vote in their college community. Id. at 348-49. This holding is irreconcilable with Respondents' interpretative approach.

Nor has their approach prevailed in other appeals before our Supreme Court.[15] Respondents' principal case, State v. Buckner (Db17, 23, 24), provides little support, as the Court expressly said its discussion of convention history was dicta. 223 N.J. 1, 20 (2015) (finding "no need to turn to extrinsic sources" because "the language of the Constitution" resolved the interpretive inquiry).

[15] E.g., Moynihan v. Lynch, 250 N.J. 60, 79-91 (2022); Farmer, 165 N.J. at 629-43; State v. Gerald, 113 N.J. 40, 75-90 (1988); Byrne, 91 N.J. at 299-310; In Re Quinlan, 70 N.J. 10, 34-52 (1976); Robinson, 62 N.J. at 492-521. The U.S. Supreme Court has taken a similar approach when interpreting fundamental federal rights. E.g., Frontiero v. Richardson, 411 U.S. 677, 687-88 (1973) (the Equal Protection Clause prohibits sex-based discrimination, despite textual "silence" on this issue and contemporaneous consideration, and eventual rejection, of the Equal Rights Amendment).

There, the issue was whether a new provision adopted in 1947 setting a judicial retirement age precluded the state from temporarily recalling judges above that age. Judicial reform was extensively debated prior to and during the convention,[16] and the recall question received considerable attention. Id. at 20-25; see id. at 24 (concluding that "the issue of recall was squarely before the framers at the Convention"). Thus, the dense historical record compelled the conclusion that, by omitting any mention of recall in the retirement age provision, delegates and the voting public must have intended to defer the question of whether judges may be temporarily recalled to the Legislature. Id. Here, fusion was in no way a prominent issue before or during the convention, and the few references permit a number of plausible inferences as to why Proposal 25 was not adopted. (Supra pp.8-9.) To wit, Buckner was interpreting the scope of a provision added in 1947 by looking at contemporaneous context; here, the few references to a provision not adopted in the 1947 proceedings offer little insight into the meaning of rights ratified in 1844.[17]

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[16] For example, draft constitutions produced by a state commission (1942) and legislative committee (1944) focused on judicial reform and embraced different positions on the recall issue. Buckner, 223 N.J. at 20-21. During the 1947 convention, "[t]he Committee on the Judiciary heard from dozens of people at ten open meetings" on judicial reform and "[t]estimony at the open meetings and public hearing appears in the historical record." Id. at 21.

[17] Respondents' invocation of State v. Murzda, 116 N.J.L. 219, 223 (E. & A. 1936) (Db23), is unavailing because the "great ordinances of the Constitution" at issue here do not list "explicit" prohibitions on specific topics—they outline

Sixth, to the extent any inferences can be drawn from the 1947 convention, they run the other direction. If we presume that those who adopted and ratified the 1947 convention were generally aware of the state of the law, they therefore knew that the constitutionality of anti-fusion regulations were (at the very least) called into question in Paterson. Thus, their failure to repudiate Paterson should mean that textual "silence" in fact signals acquiescence to the conclusion that such laws are constitutionally infirm. Moreover, an overarching purpose of the revised constitution was to create a more equitable balance of power between the three branches. Bebout & Harrison, supra at 339-53. The state Judiciary was overhauled so it could more effectively and efficiently perform "judicial review of the acts of the Legislature and Executive" and "set aside laws and executive action where the judges determine that they violate the written constitution." (Psa3.) If anything, these structural adjustments reflect an understanding that the Judiciary should be less inclined to unquestioningly defer to acts of the Legislature, especially self-serving measures to entrench power and stifle democratic competition, like the anti-fusion laws.

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general limits on the exercise of state power and entrust the Judiciary to apply those principles in each case. Vreeland, 72 N.J. at 304. And reliance on Rutgers Univ. Student Assembly v. Middlesex Cty. Bd. of Elections, 446 N.J. Super. 221 (App. Div. 2016) ("RUSA II") (Db24-25), is likewise misplaced, as the Appellate Division simply makes a passing reference to the 1947 convention while adopting the incorrect standard of review. (See infra p.19 n.23.)

C. Current Law Does Not Allow Cross-Nominations on the Ballot

Respondents are also wrong, both as a matter of law and reality, to insist that the constitutional burdens imposed by the anti-fusion laws are minimal because state law permits the Moderate Party to place its cross-nominations on the ballot—and that it did so last fall. (See Db2, 35, 44-45, 60-62.)

Under N.J.S.A. 19:14-9, "a candidate who receives more than one nomination for the same office" may accept one nomination and, under the candidate's name in that party's ballot "column," note that they are "Indorsed By" the other nominating group. This is no cure for the issues before the Court: the plain text makes clear that the Moderate Party is still barred from placing its nomination[18] on the ballot. And the Party and its voters would suffer the same constitutional injuries imposed by the anti-fusion laws in this scenario. See Arthur Ludington, Ballot Legislation of 1911, 6 AM. POL. SCI. REV. 54, 57 (1912) (concluding that relegating one party's nomination to an endorsement within another party's column is "grossly unfair and discriminatory"). It is still true that (i) the Moderate Party would lack its own column in which voters could vote for its nominees; (ii) appearing within a major party's column would inextricably associate the Moderate Party with and subordinate it to that party;

[18] Hand v. Larason, 163 N.J. Super. 68, 76 (Law Div. 1978) ("The court notes that the permitted word is 'Indorsed' not 'Nominated.'").

(iii) Moderate Party voters would have no way to register support for their party; (iv) all votes cast for the Moderate Party's nominees would instead be credited to the major party; (v) the Moderate Party would have to urge its members and other voters to support this rival party in order to elect its nominees; and (vi) Moderate Party voters who oppose that other party would have to support it to vote for their own nominees. Not only does this process impermissibly compel and constrain speech and association, but it forces the Moderate Party to aid a rival party in maintaining statutory status (and the corresponding advantages) while ensuring it will never itself meet the 10% threshold to gain statutory status. (See Pb14-15, 89.)

Even so, this is a theoretical exercise—N.J.S.A. 19:14-9 did not apply in this case,[19] nor will it apply in future elections. Why? Because other provisions in the election code limit a candidate to (i) formally entering only one major party primary or (ii) submitting only one minor party nominating petition.

[19] Notwithstanding Respondents' odd claim that "Malinowski was permitted to indicate his affiliation with the Moderate Party on the [2022] ballot" (Db61), the Moderate Party was not, in fact, on the ballot. E.g., County of Morris, Official General Election Sample Ballot (Nov. 2022), https://perma.cc/SXK9-BDLN. After all, this appeal arose from the Secretary's denial of the Moderate Party's nominating petition. (Pa1-2.) In support of this strange assertion, Respondents cite to an exhibit in the record showing the "[e]xpected appearance of . . . a ballot if fusion was legal." (See Db61; Pa294-95 (emphasis added).) Unlike a ballot under N.J.S.A. 19:14-9, this hypothetical ballot lists Malinowski twice, once on the Democratic Party line and again on the Moderate Party line, with separate boxes allowing a (hypothetical) voter to clearly register their support.

N.J.S.A. 19:13-4, 19:13-8, 19:23-15. These restrictions thus prevent candidates from "receiv[ing] more than one nomination" in the first instance. N.J.S.A. 19:14-9. There is one possible exception: a candidate who wins a major party primary exclusively through write-in votes eludes these statutory limits and may also receive a second nomination (from another major party or a minor party).[20] But this is an exception in name only: winning a major party primary with only write-in votes is virtually impossible in a state or federal election, and it would be irrational for a candidate to deliberately exclude themselves from the primary ballot in order to wage a write-in campaign. Tellingly, Respondents do not identify a single candidate who has ever qualified under N.J.S.A. 19:14-9.[21]

Accordingly, N.J.S.A. 19:14-9 offers no reprieve for the constitutional violations at issue here: it imposes constitutional burdens no less onerous than the anti-fusion laws themselves, and, due to other restrictions in the election code, its scope is so narrow as to render any imagined benefits illusory.

* * *

These three errors—trivializing the role of state constitutionalism;

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[20] N.J.S.A. 19:14-9 would then reduce one of these nominations into the "Indorsed By" designation in the other party's ballot column, as described above. Notably, a candidate may theoretically utilize N.J.S.A. 19:14-9 with two major party nominations, but not with two minor party nominations.

[21] While not cited by Respondents, this seemingly occurred once in the 1970s: a candidate for town mayor won the Republican nomination and the Democratic primary with write-in votes. Hand, 163 N.J. Super. at 75-76.

misapprehending the relevance, if any, of the 1947 convention; and highlighting and misconstruing an unhelpful provision in the election code—are reiterated throughout Respondents' and Intervenor's briefs and therefore undermine nearly every argument raised therein. The following sections respond to additional errors specific to each of the precise constitutional provisions at issue.

II. THE ANTI-FUSION LAWS VIOLATE THE RIGHT TO VOTE

Respondents and Intervenor cannot wish away binding precedent requiring strict scrutiny when, as here, a regulation burdens the right to vote guaranteed in the State Constitution. N.J. CONST. art. II, § 1, ¶ 3(a). None of the asserted interests can justify these onerous restrictions, and even under a burden-balancing standard, excluding this cross-nomination was unconstitutional.

A. Strict Scrutiny Is Required Under Binding Precedent

Respondents and Intervenor may prefer federal cases applying Anderson-Burdick, but Worden provides the controlling standard of review for laws that burden core political rights guaranteed by the State Constitution. 61 N.J. at 346. In that "right to vote" case, the New Jersey Supreme Court plainly held: "we adopt the compelling state interest test in its broadest aspects . . . for purposes of our own State Constitution and legislation." Id.[22] Notably, Worden applied

[22] Worden adopted this standard after finding it "so patently sound and so just in its consequences," Worden, 61 N.J. at 346, not, as Respondents contend, "precisely because" it was the standard used in federal courts. (Db29.)

strict scrutiny even though the key issue was not whether people could vote, but rather, where. Id. at 327-28. While the U.S. Supreme Court's subsequent adoption of the Anderson-Burdick test now governs federal challenges, the New Jersey Supreme Court has never called into question that strict scrutiny is required for claims under the New Jersey Constitution. (See Db39 (acknowledging that our Supreme Court has never "adopt[ed] the Anderson-Burdick test to review election laws" under the State Constitution).)[23]

B. These Laws Clearly Impose a Severe Burden on the Right to Vote

Respondents urge the Court to adopt new limitations on the right to vote, insisting that so long as a voter's preferred candidate is on the general election ballot, nothing the state does can be construed as burdening that right. (Db42-44.) Yet, case law makes clear that the right to vote envisions real and meaningful choice on the ballot, beyond the bare options of voting on the Democratic or Republican lines. See, e.g., Williams v. Rhodes, 393 U.S. 23, 31 (1968) ("[T]he right to vote is heavily burdened if that vote may be cast only for

[23] One of the Appellate Division cases cited in Respondents' opposition is unpublished, and two others correctly apply Anderson-Burdick to federal constitutional challenges. (Db38-39.) The fourth, RUSA II, failed to follow Worden and is therefore not instructive authority. See Lake Valley Assocs., LLC v. Twp. of Pemberton, 411 N.J. Super. 501, 507 (App. Div. 2010) ("Because we are an intermediate appellate court, we are bound to follow the law as it has been expressed by . . . our Supreme Court."). Even on its own terms, RUSA II's use of Anderson-Burdick would not apply here because, unlike RUSA II, "similarly situated citizens were treated differently" in this case. 446 N.J. Super. at 234.

one of two parties at a time when other parties are clamoring for a place on the ballot."); Munro v. Socialist Workers Party, 479 U.S. 189, 193 (1986) ("Restrictions upon the access of political parties to the ballot impinge upon . . . the rights of qualified voters to cast their votes effectively."). "When an election law reduces or forecloses the opportunity for electoral choice, it restricts a market where a voter might effectively and meaningfully exercise his choice between competing ideas or candidates, and thus severely burdens the right to vote." Common Cause Ind. v. Individual Members of the Ind. Election Comm'n, 800 F.3d 913, 920 (7th Cir. 2015) (emphasis added). New York's high court has therefore held that state laws may not "prevent a qualified elector from exercising his constitutional right to vote for a candidate and party of his choice." Devane v. Touhey, 304 N.E.2d 229, 230 (N.Y. 1973).

These principles motivated the conclusion in Paterson that "the right of suffrage" means that "the Legislature has no right to pass" laws excluding a party's otherwise qualified cross-nomination from the ballot. 88 A. at 695. Paterson has been repeatedly cited as good law, including since ratification of the 1947 Constitution (Pb36), and the other side identifies no superseding authority to the contrary.[24] The only state case cited in opposition, Smith v. Penta

[24] Recent legislative action meant Paterson "did not need to take the formal step of striking down the 1907 law as unconstitutional." (Pb36 n.33.) But this was no "stray dicta" (Rb54)—Paterson engaged in a rigorous analysis of the issues

(Db44), is irrelevant: the question there was whether the state can stop voters from one party from participating in another party's nomination process, not whether the state can force one party's voters to vote for another party in order to support their own nominee. 81 N.J. 65, 73 (1979).

Respondents' reliance on several decisions from the late 18th and early 19th centuries is misplaced. (See Db42, 50.) When those cases "were decided, the compelling state interest [i.e., strict scrutiny] test was of course unheard of, as was the current judicial approach which recognizes the right to vote as very precious and fundamental and carefully and meticulously scrutinizes efforts to restrict it." Worden, 61 N.J. at 346. Rather, courts often applied rational basis review to laws burdening fundamental rights. E.g., Anderson v. State, 76 N.W. 482, 486 (Wisc. 1898) ("[S]o far as legislative regulations are reasonable and bear on all persons equally so far as practicable . . . , they cannot be rightfully said to contravene any constitutional right."); State ex rel. Bateman v. Bode, 45 N.E. 195, 196 (Ohio 1896) (upholding anti-fusion law because it is "a reasonable regulation of the elective franchise"); State ex rel. Fisk v. Porter, 100 N.W. 1080, 1081 (N.D. 1904) (upholding anti-fusion law because it is "altogether

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before expressing "grave doubt as to the power of the Legislature to coerce the members of a political party or a group of citizens of a certain political faith into selecting for their nominee a man whom they do not want . . . or to say to them, 'you shall not select the man that you do want.'" 88 A. at 696.

reasonable"). Everyone agrees this is not the appropriate standard today.

Respondents themselves note that some states at the time recognized no constitutional interest in political association—a point universally rejected today. (See Db43 (quoting Anderson, 76 N.W. at 486 ("Mere party fealty and party sentiment, which influences men to desire to be known as members of a particular organization, are not the subjects of constitutional care.").) This historical context makes Paterson and the decisions in New York[25] particularly striking: in an era when courts largely abdicated their duty to protect political rights from legislative encroachment, these jurists were ahead of their time in rigorously examining electoral laws just as their successors would do years later.

As explained in the merits brief, anti-fusion laws do not simply implicate the right to vote—they impose onerous burdens on it. (Pb34-36, 41-42.)[26]

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[25] See Pb13-14, 37-38, 87-88 (discussing decisions by the New York Court of Appeals in 1910 and 1911 finding the state's anti-fusion laws unconstitutional).

[26] Respondents' insistence that this appeal presents only a "facial" challenge in which the record has "no bearing" is mistaken, factually and legally. (See Db5-6, 33.) The key question before the Court is whether the application of the anti-fusion laws to exclude the Moderate Party's nomination from the ballot is constitutional. In addition to demonstrating the general effects of anti-fusion laws, Appellants have centered their case on the particular impact on the Moderate Party and its voters. (E.g., Pb72; Pa40-82, 236-41.) Contrary to assertions raised by the other side, the state may not privilege one group of voters over another, meaning that the recognition of a constitutional injury here would likely produce a similar conclusion should some other party submit its own cross-nomination. And even in cases that clearly present facial challenges, the record is no less relevant for assessing the severity of constitutional injuries and potential justifications. E.g., Crawford v. Marion Cty. Election Bd., 553

C. None of the Asserted State Interests Withstand Scrutiny

None of the hypothetical interests identified by the other side justify these infringements, regardless of whether the burdens are deemed moderate or severe. (Db45-55; Ib24-26.) Rather, these interests are demonstrably undermined by the anti-fusion laws; are insubstantial or speculative; or could easily be advanced through less restrictive means. (See Pb42-53 (anticipating most of these interests and explaining why they cannot justify these burdensome laws).) Many of them are premised on the insidious idea that suppressing information is good for voters. See Eu v. S.F. Cty. Democratic Cent. Comm., 489 U.S. 214, 228 (1989) ("A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism."). Here are the proposed interests:

Ensure Majority Support (Ib25-26): Intervenor alleges that anti-fusion laws can "assure that the winner is the choice of a majority, or at least a strong plurality." (Ib25-26 (quoting Bullock v. Carter, 405 U.S. 134, 145 (1972)).) The opposite is true: by prohibiting more than one party from nominating the same candidate, anti-fusion laws make it harder for winners to secure broad, cross-

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U.S. 181, 194, 199 (2008); Free Speech Coal., Inc. v. Att'y Gen., 825 F.3d 149, 157 (3d Cir. 2016); United States v. Stevens, 533 F.3d 218, 233-34 (3d Cir. 2008), aff'd, 559 U.S. 460 (2010). Just because some facial challenges present purely legal questions, the often murky facial-versus-applied distinction itself never compels a court to categorically ignore relevant facts.

cutting support. Forcing minor parties to run protest candidates makes a spoiler effect—and winners with mere plurality support—much more likely.

Increase Voter Choice and Competition (Db48-49): Respondents contend that limiting the ballot to the major party nominees and various minor party protest candidates provides real "voter choice" and "real competition." (Db48.) Yet, minor parties are already forced to run protest candidates—and they receive few votes, despite widespread public desire for more electoral choice. (Pb5-6.) Since the anti-fusion laws went into effect, only one candidate has managed to win a state legislative race without major party support, and none have managed to do so in federal elections. (Pb6.) No minor parties have met the 10% vote threshold to earn statutory party status. (Pb16.) For generations, all state power has remained exclusively with the Democratic and Republican Parties. On the other hand, cross-nominations actually advance "voter choice" (by allowing voters to register support for their preferred party and priorities without wasting their vote) and "real competition" (by making fewer races safe for one side or the other and allowing other parties to compete for some political power).

Prevent Ballot Overcrowding (Ib25-26): Appellants' merits brief explains why this hypothetical concern is contradicted by historical and empirical evidence. (Pb47-49.) Moreover, the Legislature has ample discretion to impose reasonably higher signature requirements for minor party nominations (Pb49;

see also SAM Party of N.Y. v. Kosinski, 987 F.3d 267, 276 (2d Cir. 2021)), or a reasonable limit on the number of nominations that each candidate could accept, as Oregon has done. See Or. Rev. Stat. Ann. § 254.135(3)(a) (setting limit of three nominations, "selected by the candidate").[27]

Prevent Voter Confusion (Ib25-26; Db51-52): Neither form of "voter confusion" hypothesized by the other side withstands scrutiny: even Timmons declined to credit this "alleged paternalistic interest." 520 U.S. 351, 370 n.13 (1997). As to theoretical confusion over "how to cast a ballot or why a name appears twice" (Db51), there have been thousands of fusion elections, past and present, yet not a single authority is cited substantiating this concern. The citations in Appellants' merits brief—which make clear that confusion is not an issue—remain unrebutted. (Pb49-50.)[28] As to the potential confusion over party and candidate positions, Respondents hold voters in shockingly low regard. (Db52); see Eu, 489 U.S. at 228. And in no other context does the government assess, let alone police, the ideological alignment of candidates and parties. Any

[27] In the highly unlikely scenario that such a law had to be enforced to exclude a fourth nomination from the ballot, the law's narrow tailoring to this specific concern would place it on solid constitutional footing.

[28] Respondents fail to mention that the reason they did not "cross examine" witnesses or "submit . . . record evidence" (Db52) is that they waited nearly nine months after receiving record materials before raising evidentiary concerns. The Court appropriately denied their inexplicably belated request to transfer the entire matter to the Law Division. For discussion on their choice to not develop a record and its significance, see Appellants' Opp. Br., M-3846-22.

attempt to do so would, as in this instance, be clearly unconstitutional.

Prevent Ballot Manipulation and Political Gamesmanship (Db45-48; Ib23-24): There is nothing "manipulative" about two parties with distinct but overlapping views nominating the same candidate. Nor is it "gamesmanship" for a minor party to offer its nomination to a candidate who shares its sincerely-held priorities. Justices Stevens, Ginsburg, and Souter aptly dismissed as "farfetched" and "entirely hypothetical" the idea that "members of the major parties will begin to create dozens of minor parties with detailed, issue-oriented titles for the sole purpose of nominating candidates under those titles." Timmons, 520 U.S. at 376 (Stevens, J., dissenting). Nor has a "fringe candidate[]" ever "rack[ed] up multiple nominations from minor parties" to dupe the electorate and swindle his way into office. (Db46.) Despite nearly two centuries of cross-nominations, the other side does not cite a single instance of their imagined problems actually materializing.[29] And again, the Legislature has ample discretion to mitigate against these risks without categorically barring parties from nominating their preferred candidates: that is, by increasing

[29] That multiple parties supported Fiorello LaGuardia during his nearly three decades in politics hardly proves an "unbounded use of cross-nominations." (Db46 n.12.) And Intervenor's error-ridden complaint (Ib6-11) about an independent expenditure by a group unrelated to the Moderate Party has nothing to do with ballot nominations. Nor does Intervenor's spurious claim that the Moderate Party and individual Appellants, one of whom is a Republican officeholder (Pa41), are "puppets" of the "Democratic establishment." (Ib10.)

signature requirements for nominating petitions and/or imposing a reasonable limit on the number of nominations each candidate can accept.

Ensure Votes Reflect Bona Fide Support (Db47-48): Respondents' suggestion that banning cross-nominations is necessary so that vote tallies accurately reflect each party's public support is out of step with the reality in New Jersey. More than a third of New Jersey voters refuse to register as a Democrat or Republican, and more than two-thirds want more competitive parties—but the Democratic and Republican Parties nonetheless get nearly 100% of the votes cast every election. (Pb51 & n.49.) If candidates could accept each party nomination lawfully earned, then party vote totals would tell us something about each party's "bona fide" support in the electorate. Respondents' position rests upon an unsubstantiated and discriminatory premise: that any vote cast for a minor party is inherently suspect, the result of "something else" other than substantive agreement with the party's positions. And again, concerns about ensuring ballot access only for parties with bona fide support can be addressed easily through nominating petition signature requirements and/or a per-candidate limit on nominations.

Promote Distinctions Between Parties (Db49-51)[30]: Respondents make the empirical claim that "promot[ing] distinctions between parties" improves "voter

[30] Like several others proposed here, this interest was not credited in Timmons.

confidence and accountability" without any evidence. (Db49.) But the real problem is the Orwellian presumption underlying their assertion: that the state may lawfully decide which parties are allowed to hold which beliefs. In no other area may the state prohibit different groups of voters from espousing a shared view on a certain issue, yet by their logic, bipartisan legislation erodes voter trust in government and could be prohibited. In truth, today's ballots obscure existing and real distinctions in the political system by forcing candidates with substantial ideological differences (e.g., Joe Manchin and Elizabeth Warren) to appear under a single party label. Permitting these candidates to accept other nominations would allow for an accurate reflection of their distinct politics.

Respondents' reliance on the 1898 Anderson decision is again misplaced, given that court's assumption that two parties have "identical" candidates and represent "one platform of principles." (Db50 (quoting Anderson, 76 N.W. at 487).) Yet, the Moderate Party (like many others have over the years) plans to nominate candidates on both sides of the aisle. (Pa7 n.6.) The group was founded to advance moderate priorities neglected by the major parties and provide a home for centrist voters who are "politically homeless" in our hyper-polarized environment. (Pa4-9.) And unlike the candidate in Sadloch v. Allan, 25 N.J. 118, 124 (1957), who wanted to "assume the cloak of an independent candidate" after pretending to be a Republican, a cross-nominated candidate openly and

unequivocally embraces their affiliation with both supporting groups.

Protect Democratic and Republican Duopoly (Ib23; Db52-54): Neither Respondents nor Intervenor dispute that the Legislature adopted anti-fusion laws precisely because of their direct, exclusionary effects on minor parties. (See Pb12-16.) Nor do they dispute that the New Jersey Supreme Court has never recognized the perpetuation of an exclusionary two-party system as a legitimate, let alone compelling, interest to justify encroaching fundamental rights under the State Constitution. Appellants explain why it would be illogical to create new law embracing any such interest premised upon the false promise that political exclusion delivers "political stability." (Pb44-47.)

Even still, the anti-fusion laws fail to meet Respondents' proposed standard: the state may lawfully burden constitutional rights in the pursuit of "an overall two-party system, so long as third parties have opportunities to develop and flourish." (Db52 (emphasis added).) After a century under these laws, no minor parties have been able to "develop and flourish." New Jersey has become more hostile toward minor parties than any other state, as no minor parties have qualified for the ballot, and only one candidate without major party backing has won a state or federal race. (Pb6.)[31]

[31] By discouraging "factionalism," Intervenor apparently means excluding minor parties. (Ib24.) Reliance on FEDERALIST NO. 10 for this point is ironic, given that James Madison cautioned against "destroying the liberty which is essential

* * *

None of these asserted interests can justify the burden on Appellants' right to vote (or their other fundamental rights, as discussed below).

III. THE ANTI-FUSION LAWS VIOLATE THE RIGHT TO FREE SPEECH AND POLITICAL ASSOCIATION

In discussing these State Constitutional provisions, Respondents mostly focus on their erroneous assertion that state law already permits cross-nominations. (Db60-61.)[32] Intervenor simply says that Timmons is controlling. (Ib14.)[33] Appellants explain above why Respondents' contention is uncredible, and Appellants' merits brief explains the myriad reasons why Timmons offers little persuasive value and the Hunt framework clearly supports an independent analysis of state constitutional law. (Supra pp.15-17; Pb44-73.) Appellants

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to [the] existence" of "faction," because this "remedy . . . was worse than the disease." FEDERALIST NO. 10. Rather, it would be equally absurd "to abolish liberty, which is essential to political life, because it nourishes faction," as it would be "to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency." Id. To Madison, a "greater variety of parties" and the ensuing competition was the only solution. Id.

[32] In Respondents' view, today "a party may choose to affiliate with whatever candidate it wants [and] endorse that candidate on the ballot itself." (Db60.) They insist (incorrectly) that the only issue here is that "[t]he Fusion Statutes . . . prohibit the candidate from appearing on the ballot twice." Id.

[33] Intervenor also places considerable weight on Mazo v. N.J. Sec'y of State, 54 F.4th 124 (3d Cir. 2022), another federal First Amendment case with little relevance here. Not only were associational rights not in dispute there, but the key issue was whether consent could be required before the name of an individual or organization was used as a ballot slogan. Here, Malinowski readily consented to the Moderate Party's nomination. (Pb6 n.5.)

respond here to two notable points raised in the opposition briefs.

First, Respondents insist that the Court must interpret the State Constitution's speech and association rights as identical to those in the First Amendment, summarily dismissing contrary authority. (Compare Db26-27, with Pb 56-60; Hunt, 91 N.J. at 364 (differences in "textual language" and "phrasing" permit courts "to interpret our provision on an independent basis") (Handler, J., concurring). To justify their position, Respondents cite two cases about commercial speech, which noted that federal and state protections in that context are "generally interpreted as co-extensive." E&J Equities v. Bd. of Adjustment, 226 N.J. 549, 634 (2016); see Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 264-65 (1998). Neither case involved electoral issues or political speech, let alone associational rights. As in prior cases involving minor parties, core associational activity, and political speech, inapposite federal authority is no obstacle for the Court to recognize the true scope of state speech and association rights. See, e.g., Green Party v. Hartz Mt. Indus., 164 N.J. 127 (2000); N.J. Coal. Against War in the Middle E. v. J.M.B. Realty Corp., 138 N.J. 326 (1994).

Second, Intervenor itself cites a recent Second Circuit decision that provides a useful framework for conceptualizing associational burdens:

> Courts have identified three types of severe burdens on the right of individuals to associate as a political party. First are regulations meddling in a political party's internal affairs. Second are regulations restricting the 'core associational activities' of the party

> or its members. Third are regulations that 'make it virtually impossible' for minor parties to qualify for the ballot.

SAM Party, 987 F.3d at 275 (citations omitted). Qualifying under any of these categories would render a law unconstitutional; the anti-fusion laws meet all three. First, they clearly "meddl[e] in a political party's internal affairs" by limiting the candidates it may consider when selecting standard-bearers; that the state itself is meddling, as opposed to unwelcome non-members as in other cases (Db62), exacerbates the problem. Id. Second, nominating candidates is a party's most fundamental "associational activit[y]"—all else, from canvassing to fundraising to running ads is in service of electing party nominees. Id.[34] Finally, the laws here make it impossible for minor parties to achieve ballot status: no minor party has obtained ballot status in the century since the anti-fusion laws were adopted, and a group like the Moderate Party committed to nominating competitive candidates is systematically excluded from the ballot. Id. However one looks at the associational implications, the burdens are severe.[35]

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[34] That the Moderate Party may participate in other activities, such as providing their "endorsement or other channels of support" (Db59), is no substitute for this core function. (See Pb6-7, 64, 80-81.) That is particularly true because, without a Moderate Party line on the ballot, any such efforts would materially benefit the rival party whose nomination was not excluded. (Id.)

[35] That minor party voters are compelled to associate with another party to support their own nominee and minor parties are, in practice, barred from achieving statutory status are central problems with the anti-fusion laws. All Appellants ask is that the Court's ruling clearly identify these issues in the constitutional analysis. Because aggregating cross-nominations perpetuates

IV. THE ANTI-FUSION LAWS VIOLATE THE RIGHT TO ASSEMBLE AND MAKE OPINIONS KNOWN TO REPRESENTATIVES

Appellants' merits brief explains in detail why the fundamental rights protected by the State Constitution's Assembly/Opinion Clause are clearly violated by the anti-fusion laws. (Pb73-79.) Nothing in either opposition brief undermines that conclusion. (Db63-65.) The other side ignores the Clause's plain text, which guarantees that "[t]he people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." N.J. CONST. art. I, ¶ 18. While the First Amendment only references the first (assembly) and fourth (petition) of these rights, Respondents and Intervenor pretend the federal and state protections are coextensive.[36] But text guaranteeing New Jerseyans the separate right to "make opinions known to their representatives" must mean something. See Murphy, 243 N.J. at 592 ("Courts avoid interpretations that render language in the Constitution superfluous or meaningless.").

Interpreting this provision requires the historical context in which these

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these same associational harms (Pb89), a clear ruling on the issues squarely before the Court would provide the other branches with clear guidance for complying with their constitutional obligations. See, e.g., Lewis, 188 N.J. at 463 (specifying two options for Legislature to remedy unconstitutional statutes).

[36] Another key textual difference is that the Assembly/Opinion Clause grants rights in the affirmative, as opposed to the First Amendment's statement that "Congress shall make no law . . . abridging" the covered rights.

rights were enshrined in the State Constitution—context which the other side would prefer to ignore and says nothing to dispute. See State v. Schmid, 84 N.J. 535, 559 (1980). As discussed in the merits brief, this Clause ties directly back to 18th century disputes over self-government, unequal allocation of political power, and opportunities for citizens to collectively disagree with their leaders and meaningfully participate in the democratic process. (See Pb75-77.)[37]

V. THE ANTI-FUSION LAWS VIOLATE EQUAL PROTECTION

Despite the severe burdens on Appellants, and the corresponding advantages afforded to others, the other side has little to say about equal protection. (Pb79-88.) They instead insist that because everyone is barred from cross-nominating, there is no problem. (Db65-67.)[38] Yet, two parties nominated Malinowski, and only one was allowed to have its nomination on the ballot. And in practice, the anti-fusion laws produce two tiers of political participation and an extraordinary cumulative burden on Appellants' voting, speech, association,

[37] To be sure, in the few cases interpreting this Clause, the underlying facts have often involved "a physical assembly" of some sort. (Db63.) But recognizing that the Clause guarantees certain protections in that context does not, as Respondents contend, foreclose this Court from recognizing the Clause's clear application in this electoral context. Their position is not just illogical, but it flies in the face of the original understanding of this constitutional text.

[38] Their argument invokes the Ninth Circuit's wry observation that "[t]he law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread." Martin v. City of Boise, 920 F.3d 584, 603 (9th Cir. 2019) (quoting Anatole France, The Red Lily).

assembly, and expressive rights. See Patriot Party of Allegheny Cty. v. Allegheny Cty. Dep't of Elections, 95 F.3d 253, 269 (3d Cir. 1996).[39]

Whether these laws are "facially neutral" (Db65) is irrelevant, as no one disputes they were motivated by an "invidious purpose"—to limit minor party participation and influence. Greenberg v. Kimmelman, 99 N.J. 552, 580 (1985); see Pa14-16. Indeed, Respondents and Intervenor hold up the hurdles for minor party participation as justifying features—not bugs—of anti-fusion laws. As discussed supra pp.23-30, neither political protectionism nor any of the other asserted justifications qualify as "an appropriate governmental interest suitably furthered by the differential treatment." Borough of Collingswood v. Ringgold, 66 N.J. 350, 370 (1975) (citation omitted). All three factors under the Greenberg balancing test clearly point to a violation of Article I, Section 1. (See Pb79-88.)

CONCLUSION

The anti-fusion laws violate the New Jersey Constitution. Thus, the Court should reverse the Secretary's rejection of Appellants' nominating petition.

Respectfully submitted,

WEISSMAN & MINTZ
Flavio L. Komuves (018891997)
Brett M. Pugach (032572011)
Steven P. Weissman (024581978)

UNITED TO PROTECT DEMOCRACY
Farbod K. Faraji (263272018)
Beau C. Tremitiere (Admitted

[39] On the other hand, non-partisan elections affect all candidates equally by preventing everyone from having a partisan affiliation on the ballot. (See Db43.)

220 Davidson Avenue, Suite 410
Somerset, New Jersey 08873
732.563.4565

BROMBERG LAW LLC
Yael Bromberg (036412011)
43 West 43rd Street, Suite 32
New York, New York 10036
212.859.5083

Professor Joel Rogers (Admitted Pro Hac Vice)
University of Wisconsin Law School
975 Bascom Mall
Madison, Wisconsin 53706
609.347.9889

Professor Nate Ela (Admitted Pro Hac Vice)
Temple University Beasley School of Law
1719 North Broad Street
Philadelphia, Pennsylvania 19122
215.204.7861

Counsel for Appellants
Moderate Party and Richard A. Wolfe

Pro Hac Vice)
2020 Pennsylvania Avenue NW
Suite 163
Washington, D.C. 20006
202.579.4582

Counsel for Appellants
Michael Tomasco and William Kibler

By: */s/ Flavio L. Komuves*
Dated: July 10, 2023

By: */s/ Farbod K. Faraji*

APPELLANTS'

SUPPLEMENTAL APPENDIX

State of New Jersey

CONSTITUTIONAL CONVENTION

OF

1947

HELD AT

RUTGERS UNIVERSITY

The State University of New Jersey

NEW BRUNSWICK, NEW JERSEY

Volume I

CONVENTION PROCEEDINGS
RECORD

This kind of environment makes it all the more important that the organic law under which our State may live for the next century be restricted to the establishment of a sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people. To do less is to fail in your trust. To seek to do more is to impose upon the future.

We can best insure against the pressures of our age and the vicissitudes of the future by limiting our State Constitution to a statement of basic fundamental principles. Our Federal Constitution has the ageless virtue of simplicity. Its authors stated their fundamental concepts of government without compromise or complication. By way of contrast, our 1844 document imposes oppressive restrictions upon each branch of the government entirely apart from the historic philosophy of checks and balances between the legislative, executive and judicial branches. These cross-checks and restrictions within the basic divisions of government are the cause of many of our present day difficulties. They account for the cumbrous size of our court of last resort and the presence of so-called lay members on the court to check the activities of men trained in the law—to give but one illustration.

In the course of your debates you will, on many occasions, be tempted to adopt legislative enactments. You will be wise to guard against this natural temptation by the judicious and conscientious exercise of statesmanship and will power. The State Constitution is an organic document—a basis for government. It should not be a series of legislative enactments. Our search for a modern government in this State has all too frequently been frustrated by legislation enacted by our ancestors over a century ago and embalmed in our Constitution. When legislation is permitted to infiltrate a constitution, it shackles the hands of the men and women elected by the people to exercise public authority. The longer a constitution, the more quickly it fails to meet the requirements of a society that is never static. To quote one authority: "The more precise and elaborate" the provisions of a constitution, "the greater are the obstacles to the reform of abuses. Litigation thrives on constitutional verbosity."

Accordingly, I earnestly recommend that all proposals of a legislative character be rejected. If you deem it desirable, these may be incorporated in a supplemental report addressed to the Governor in the nature of a presentment. This report will be forwarded by me to the Legislature for consideration at either a special or general session. By this device, the Convention may confine its draftsmanship to the creation of a document restricted to principles, while permitting a natural outlet and expression for related legislative proposals either for the purpose of implement-

ing or supplementing the proposed Constitution.

Over a century ago your predecessors forged the handcuffs that today prevent your government from freely meeting the challenge of an industrialized society. Unhappily, the key to the handcuffs was thrown away by the framers of the 1844 document, by the adoption of a time-consuming and costly amendment process which has proved to be substantially unworkable.

It may well be said that the history of constitutional government everywhere has seen a constant advancement of the balance between the liberty of the individual and the interests of society. To serve this process, a written constitution must be flexible, must not impose excessively rigid conditions of government, must be open to reasonable amendment and adaptation to changing conditions and ways of life which none of us can foresee. It is this very characteristic of the Federal Constitution which has given it its enduring quality.

The highest trust in a constitutional government is imposed on the men who comprise the judiciary. It is in the judiciary that we find the balance-wheel of our whole constitutional system. Our unique institution of judicial review of the acts of the Legislature and Executive, giving power to courts to set aside laws and executive action where the judges determine that they violate the written constitution, has come to make the quality of our justice synonymous with the values of democracy held by the average citizen.

It is for this reason that we think of our courts not so much as a forum for the settlement of differences between private litigants, or as the peculiar working arena of professional adversaries and legal technicians, but rather as our principal instrument of individual liberty and political security. It is only in our courts that an individual of the lowliest estate can set himself up against his government by appealing to the kind of fundamental law which this Convention is about to formulate. Moreover, it is through the courts that the prerogatives of government may be asserted against the individual in an orderly and systematic manner. Accordingly, it is particularly important that our judicial system, by its performance and ability to adjust itself speedily to new requirements, merit the confidence and respect of our citizens.

We may look upon the Constitution as the vehicle of our life as a State. In your work of designing and building it you will have the advantage of many other minds and hands that have labored, particularly over the past five years. The report of the Commission on Revision of the New Jersey Constitution in 1942, the record of the public hearings on that report, the record of the hearings conducted by the legislative committees in 1944, and the proposed Constitution drafted by the Legislature in 1944

State of New Jersey

CONSTITUTIONAL CONVENTION

OF

1947

HELD AT

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NEW BRUNSWICK, NEW JERSEY

Volume II

CONVENTION PROCEEDINGS

APPENDIX AND INDEX
to Volumes I and II

COMMITTEE ON THE LEGISLATIVE

REPORT

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 31, 1947.

To The Constitutional Convention:

The Committee on the Legislative herewith submits its report of the result of its deliberations in connection with the subject matters within its consideration under the rules of the Convention and the proposals referred to it. The Commitee has held numerous meetings and has conducted three public hearings which all interested persons were invited to attend and express their views on the proper provisions of the Legislative Article. Prior to the last public hearing held by the Committee, a tentative draft of a proposed article was published and given the widest possible publicity. The public hearings were well attended and the Committee is grateful to the members of the public who, by their interest, helped it materially in its deliberations.

While each paragraph of the proposals does not reflect the unanimous opinion of all the members of the Committee, it does embody the opinion of the majority of the Committee thereon. For the convenience of the members of the Convention, the report will deal first with matters that differ in substance from the provisions of the existing Constitution.

TERMS AND SALARIES OF MEMBERS

The Committee proposes that the term of Senators be increased to four years and the terms of members of the General Assembly be increased to two years, and that the election of members of the Legislature be held in years when no national or congressional election is being held. It also proposes that the Senate be divided into two classes, so that as nearly as may be one-half of the members shall be elected every two years. This proposal represents a change from the provisions of the existing Constitution, under which Sena-

tors are elected for terms of three years, one-third of the Senate being elected every year, and members of the General Assembly are elected annually. This reflects the opinion of practically all organizations and members of the public who have made known their views on this subject to the Committee.

The Committee also proposes that the salaries of members of the Legislature shall be fixed by law rather than by constitutional provision, with the proviso that no change in the salary shall be effective until the legislative year following the next general election for members of the General Assembly. This, likewise, represents a departure from the existing Constitution, which fixes the salary of members of the Legislature at five hundred dollars per year. It is the opinion of the Committee that the question of proper compensation for members of the Legislature should be subject to more flexible treatment than a constitutional provision would permit. The salary provision in the existing Constitution was adopted in 1875. Manifestly, five hundred dollars represented far greater compensation in 1875 than it does in 1947. The result has been that in recent years members of the Legislature have been receiving grossly inadequate compensation for their services. It is to prevent the recurrence of such a situation that the Committee feels that the compensation should be fixed by law rather than by the Constitution. However, in line with Governor Driscoll's suggestion that the Convention should be free to make recommendations to the Legislature in regard to matters that in its judgment should not be included in the Constitution, it is the opinion of the Committee that the Convention should recommend to the Legislature that the salaries of Senators be fixed at three thousand dollars per year and of members of the General Assembly at two thousand five hundred dollars per year.

Special Sessions of the Legislature

Under the existing Constitution, special sessions of the Legislature may be called only by the Governor. The Committee proposes that, in addition to continuing this power in the Governor, special sessions of the Legislature shall also be called by the Governor upon petition of a majority of all of the members of the Senate and of all of the members of the General Assembly. It is considered that the present provision allowing only the Governor to call a special session is an unwarranted restriction on the legislative power.

Legislative Procedure

One of the most important proposals of the Committee is that there be a constitutional provision requiring the intervention of one

full calendar day between the second reading and third reading of all bills and joint resolutions. Such a constitutional provision will effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents. In recent sessions of the Legislature upwards of one thousand bills have been introduced. It is manifestly impossible for the legislators sufficiently to familiarize themselves with the provisions of all of these bills. In recent years, the practice has been all too common of rushing bills from second reading to third reading within a very short time, sometimes within a matter of minutes. This is particularly true on the closing day of the legislative session, when numerous bills are suddenly reported from committee, given a second reading, forthwith given a third reading and transmitted under suspension of the rules to the other house, where it receives three readings on the same day. This practice has contributed substantially to the custom of keeping the Legislature in session all night long on the day of its final adjournment, and has resulted in the passage of many bills without giving the members of the Legislature ample opportunity to consider or even to read their contents.

The results of this proposal would be that if a bill received its second reading on Monday, it could not be considered on third reading until Wednesday. It would also make it necessary that the two houses arrange their calendars in such a way that on the last day of the session each house would be limited to a consideration of bills and joint resolutions which had been approved previously by the other house. It is the confident expectation of the Committee that this provision will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading.

It is recognized that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies which might require immediate action. To guard against such a contingency, it is proposed that a resolution may be passed that a particular bill or joint resolution is an emergency measure by agreement of three-fourths of the members, the yeas and nays on the question of the existence of the emergency to be entered on the journal. In the event of the declaration of such an emergency, a bill or joint resolution may receive a third reading without the necessity of waiting the intervening day. In the judgment of the Committee, this is a necessary provision, and it is anticipated that a resolution declaring an emergency will be but infrequently adopted.

Disqualification of Members of Legislature for Election or Appointment to Certain Offices

The present Constitution provides that no member of the Legislature shall, during the time for which he was elected, be nominated or appointed by the Governor or by the Legislature in joint meeting to any civil office under the authority of this State which shall have been created or the emoluments whereof shall have been increased during such time. It is proposed that this provision be broadened so as to prohibit nomination, election or appointment to any State civil office or position of profit which shall have been created by law or the emoluments whereof shall have been increased by law during the term for which the member of the Legislature was elected. This would prevent not only appointment by the Governor and election by joint session but by any State agency, board or commission. It is the opinion of the Committee, however, that the Constitution should not prevent the nomination or election of any person as Governor or as a member of the Senate or General Assembly merely because of an increase in the emoluments of those offices, the theory being that such elections are by vote of the people, who should have the right to pass upon the candidacy of any person seeking election to such office.

It is also proposed that members of the Senate or General Assembly first constituted under the proposed new Constitution should not be prohibited from nomination, election or appointment to any office or position created by the new Constitution or created during the first term of service under the Constitution. This exemption is proposed because the purpose of the provision is to prohibit members of the Legislature from being appointed or elected to offices or positions of profit which either have been created by the Legislature or the emoluments of which have been increased by the Legislature. It is the opinion of the Committee that offices created by or pursuant to the new Constitution, if created immediately or shortly after the adoption thereof, should be open to members of the Legislature.

Limitation on Right of Legislature to Elect Executive, Administrative and Judicial Officers

There is no provision in the existing Constitution which prohibits the Legislature from providing for the election in joint session of executive, administrative and judicial officers. This has resulted in the Legislature exercising essentially executive functions by providing that certain offices be filled by election by joint session of the Legislature. It is proposed that a provision be included in the proposed Constitution that neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or ju-

dicial officer, except the State Auditor. An exception is made in the case of the State Auditor because, being charged with post-auditing of all State accounts, he is essentially an agent of the Legislature and, therefore, should be elected by the Legislature.

Zoning and Condemnation

It is proposed that the power of municipalities to adopt zoning ordinances under the general laws be extended so as to permit regulation according to the nature and extent of the use of land. The present zoning provision is limited to permitting municipalities to regulate and limit buildings and structures. It is considered that the existing provision is seriously deficient in this respect.

It has been suggested to the Committee that the right to enact zoning ordinances should be extended to counties. The Committee, however, is unwilling to recommend such an extension because it fears that it would eventually lead to a conflict between counties and municipalities with relation to the exercise of zoning powers.

It is also proposed that there be included in the Constitution a clause authorizing any agency or political sub-division of the State, or any agency of a political sub-division thereof, which is empowered to acquire private property for any public highway, parkway, airport, place, improvement or use to acquire a fee simple or any lesser interest in abutting property to preserve the public highway, parkway, airport, place, improvement or use, provided that such taking shall be with just compensation.

The Gambling Clause

Undoubtedly the most controversial problem with which the Committee was called upon to deal was that relating to the gambling clause. Five possible courses of action were presented to the Committee for consideration. They were:

(a) The elimination of any reference to gambling in the Constitution;
(b) The insertion of a clause prohibiting all gambling;
(c) The retention of the present constitutional provision, which prohibits the Legislature from legalizing all gambling except pari-mutuel betting at duly licensed race tracks;
(d) The liberalization of the present gambling clause to permit, in addition to pari-mutuel betting, the conduct of games of chance by charitable, religious, fraternal or veterans organizations;
(e) The liberalization of the present gambling clause to permit limited but specified games of chance, to be defined, regulated and subject to local referendum without reference to charitable, religious, fraternal or veterans organizations.

Many members of the Committee felt that logically gambling should not be mentioned in the Constitution, and that it was a problem for the Legislature. The majority of the Committee felt, however, that in view of the long history of constitutional restriction of the right of the Legislature to deal with gambling, the elimination of any such constitutional provision would create an unfortunate impression that all kinds of commercial gambling might some day be legalized by the Legislature, and thus there might be created a body of sentiment which would go far toward defeating any Constitution which might be adopted by the Convention.

The majority of the Committee is opposed to a provision prohibiting the Legislature from legalizing all forms of gambling. Such a provision would be a return to the constitutional restriction as it existed prior to the adoption of the horse racing amendment in 1939. In arriving at this conclusion, the Committee took into consideration the fact that the revenues derived by the State from race tracks are pledged to the retirement of State bonds issued to finance the veterans housing project, and the fact that the amendment authorizing pari-mutuel betting was adopted by popular vote only eight years ago.

While not much sentiment was expressed before the Committee for the elimination of race tracks, considerable opposition to any liberalization of the present gambling clause was expressed. Many expressed the view that, while they did not approve of horse racing, they would be satisfied if the present provision remain unchanged. On the other hand, a considerable group took the position that it was illogical and unfair for the State to permit gambling at race tracks, where an unlimited amount of money could be wagered, and at the same time to prohibit a person from playing such games as bingo or buying a ticket in a raffle, and that, therefore, the gambling clause should be liberalized so as to permit games of chance when conducted by charitable, religious, fraternal or veterans organizations. Some who took the latter position went to the extent of insisting that such a liberalizing clause should be self-executing, which would mean that the conduct of so-called charitable gambling would be unregulated by the Legislature.

The Committee recognizes that the issue created by the difference of opinion as to whether or not the present gambling clause should be liberalized is one which will excite great interest and discussion among the people of the State. It feels that, as to an issue which has created such divergence of opinion, the people should be permitted to express their preference. It, therefore, proposes that there be submitted at the November election alternative propositions on gambling; the first alternative being the retention of the present gambling clause; the second being a liberalized gambling clause

which would permit not only pari-mutuel betting, but would also permit the Legislature to authorize and regulate the conduct of specified games of chance by bona fide charitable, religious, fraternal and veterans organizations or associations, and volunteer fire companies, subject to local option. It is proposed that the referendum be framed in such a way that the clause which receives the greater number of votes as between the two should be inserted in the new Constitution.

Some members of the Committee were opposed to submitting alternative clauses and were of the opinion that the gambling clause in the present Constitution should be incorporated unchanged in the new Legislative Article; and that, if the two alternatives appearing in the Committee's proposal are to be submitted, a third alternative prohibiting all forms of gambling should also be submitted.

Passage of Private, Special or Local Laws under Certain Circumstances

The existing Constitution prohibits the passage of private, special or local laws regulating the internal affairs of towns and counties. It is proposed that this provision be changed so as to permit the Legislature, by two-thirds vote of all of the members of each house, to pass private, special or local laws regulating the internal affairs of any municipal corporation formed for local government or of any county, upon petition to the Legislature by the governing body of such municipal corporation or county, provided that the municipality or county concerned shall adopt such law either by ordinance of its governing body or by referendum after it has been enacted by the Legislature. The purpose of this change is to allow the Legislature to deal with situations which can only be remedied by private, special or local laws, as for instance, the changing of a provision in a charter of a specified municipality. The provision proposed by the Committee amply safeguards municipalities against discriminatory action, since the legislative process can only be initiated on petition of the municipality, and the law, when passed, must be adopted by the municipality by ordinance or referendum. Under this provision, a municipality could adopt a new charter, if it so desired, with the concurrence of the Legislature, of course.

Home Rule

The Committee proposes the insertion of a clause in the Constitution declaring that the provisions of the Constitution and of law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor, and that the powers of counties and municipal corporations shall include not merely those expressly or incidently conferred, specifically enumer-

ated, indispensable, essential, or merely implied, but also all powers reasonably convenient for the execution of such powers which are not inconsistent with or prohibited by the Constitution or by law. It is considered that this would be a salutary provision and would grant to counties and municipalities far greater latitude than they now enjoy in the performance of their local functions.

Mandatory Appropriations

The tentative draft of the Legislative Article contained a paragraph known as Section VII, Paragraph 11, which provided that no law should be passed which should make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government, unless such law should be applicable to all counties or to all such municipal corporations, or unless the moneys so to be appropriated or expended should be provided by the State, or the county or municipal corporation should be reimbursed by the State for the appropriation or expenditures thereof. By a divided vote, the Committee decided to delete this paragraph from its proposal.

Provisions of Existing Constitution Retained Without Substantial Change

The Committee proposes that the following provisions of the existing Constitution be retained without substantial change:

1. The provisions relating to the qualifications of members of the Legislature.
2. Annual sessions of the Legislature, without limit as to duration.
3. The present basis of representation of counties in both houses of the Legislature.
4. The provisions for filling vacancies occasioned by death, resignation or otherwise.
5. The provision that each house shall be the judge of the elections and qualifications of its own members.
6. The provision that each house shall choose its own officers.
7. The provision that each house may punish its members for disorderly behavior and, on two-thirds vote, may expel a member.
8. The provisions requiring each house to keep a journal of its proceedings, upon which the yeas and nays of the members on any question shall, at the desire of one-fifth of those present, be entered on the journal.
9. The provision prohibiting either house from adjourning for more than three days without the consent of the other.
10. The provision protecting members from arrest during their

attendance at the session, and protecting members against suits because of any statement, speech or debate (which privilege, however, has been broadened to apply to statements and during legislative committee meetings).

11. The provision that the seat of a member shall be vacated if he shall become a member of Congress or shall accept any federal or State office or position of profit.
12. The provision prohibiting a member of Congress, or person holding a federal or State office or position of profit, or judge of any court, from taking a seat in the Legislature.
13. The provision that bills for raising revenue shall originate in the House of Assembly.
14. The provision that the Legislature may not pass any bill of attainer, ex post facto law or law impairing the obligation of a contract.
15. The provision requiring that every law shall embrace but one object, which shall be expressed in its title.
16. The provision requiring that any act revised, or section or sections of acts amended, shall be inserted at length.
17. The provision designating the style in which laws shall begin.
18. The provision that individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owner.
19. The provision requiring notice of intention to apply for the passage of private, special or local laws.
20. The provision restricting the Legislature as to the types of private, special or local laws which may be passed (with the exception heretofore noted).
21. The provisions relating to the form of oaths of members and officers of the Legislature.

RECOMMENDATIONS TO THE LEGISLATURE

Lobbying

It was suggested to the Committee that a provision prohibiting lobbying in the legislative chambers be inserted in the Constitution. The Committee rejected this proposal for two reasons:

First: Because it did not consider the subject matter to be of such a nature as to be the proper subject of a constitutional provision; and

Second: Because of the difficulty of adequately defining lobbying within the proper limitation of a constitutional provision.

The Committee, however, agrees that lobbying should be curtailed and regulated and has voted to request the Convention to recommend to the Legislature that suitable restrictive laws concerning lobbying be enacted.

Continuous Revision of Statutory Law

It was also recommended to the Committee that a provision requiring periodic revision of the statutory law be inserted in the Constitution. The majority of the Committee is of the opinion that, while no such provision should be inserted in the Constitution, the Legislature should be advised by the Convention that it considers periodic revision of the statutory law important and that, in its opinion, the Legislature should make provision therefor.

Disposition of Proposals Referred to the Committee

The following proposals were referred by the Convention to this Committee:

Proposals No. 10, 23, 25, 31, 32, 33, 34, 39, 40 and 41.

All received careful consideration and although none was adopted in whole or in part, as submitted, the principles of some were incorporated in the Committee's proposal.

Schedule

The Schedule annexed to Proposal No. I of the Committee on the Legislative rearranges the terms of members of the Legislature so as to bring about biennial elections in years in which no presidential or congressional election will be held, and to further provide for the election of members of the General Assembly every other year and, as nearly as may be, of one-half of the Senate every two years. The method adopted in the Schedule is to provide that the terms of members of the General Assembly who are elected at the 1947 election shall be extended for one year, if the new Constitution is adopted. This will bring about the next election for members of the General Assembly in 1949.

As to the Senate, the Schedule provides that the terms of members of the Senate elected in 1947 shall be for four years; that of the Senators to be elected in the year 1948 (six in number) three would be elected for a term of one year and three for a term of three years; that the Senators to be elected in 1949 would be elected for a term of four years. The result would be that, in 1951 and every four years thereafter, eleven members of the Senate would be elected, and in 1953 and every four years thereafter, ten members of the Senate would be elected. This would accomplish the purpose of the clause in the Legislative Article requiring that, as nearly as may be, one-half of the Senate should be elected every two years. The result briefly would be as follows:

		Next Election	Number
1947	8 Senators four-year terms	1951	8: } 11
1948	6 Senators—three years....3	1951	3: }
	one year.....3	1949–53	3: } 10 in
1949	7 Senators four-year terms	1953	7: } 1953

The Committee desires to call to the attention of the Convention that there was a difference of opinion as to whether the Senators to be elected in 1948 should be elected for terms of one year and three years or for terms of three years and five years. The principles upon which the Committee resolved the difficulty were that all Senators shall be entitled to serve the complete term for which they were elected; that all Senators to be elected in 1947 shall be elected for a full four-year term; that the term of no Senator already elected shall be increased or diminished by reason of the adoption of this Constitution; and that no Senator shall be elected during the transition period for a term greater than that provided in the Constitution.

Respectfully submitted:

EDWARD J. O'MARA, *Chairman;*
ARTHUR W. LEWIS, *Vice-Chairman;*
LEON LEONARD, *Secretary;*
MYRA C. HACKER,
JOHN L. MORRISSEY,
OLIVE C. SANFORD,
DOMINIC A. CAVICCHIA,
WESLEY L. LANCE,
CHRISTIAN J. JORGENSEN,
HAYDN PROCTOR,
PERCY CAMP.

State of New Jersey.

CONSTITUTIONAL CONVENTION

OF

1947.

HELD AT

RUTGERS UNIVERSITY

The State University of New Jersey

NEW BRUNSWICK, NEW JERSEY

Volume III

COMMITTEE ON RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS

and

COMMITTEE ON THE LEGISLATIVE RECORD

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON THE LEGISLATIVE

Wednesday, July 16, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 10:30 A. M.

The following members were present: O'Mara, Chairman, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Camp, Morrissey and Proctor.

The Committee considered, informally and at length, the various provisions of the tentative Article drafted by Mr. Charles deF. Besore.[1]

Senator Proctor arrived shortly before the close of the morning session.

On motion, the meeting recessed until 2:15 P. M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:15 P. M., all members being present, including Senator Proctor and Mr. Morrissey, Judge Camp being the only absent member. Mr. Besore was also present.

The Committee further considered the provisions of the tentative Article drafted by Mr. Besore.

The Committee also considered and acted on various provisions to be added to the tentative draft prepared by Mr. Besore, among them a recommendation to the Convention that alternative propositions be submitted to the people for inclusion in the proposed Constitution in connection with the clause having to do with gambling.

The following proposals assigned to the Committee by the Convention were considered and action taken as noted:

On motion made, seconded and carried, Proposal No. 10 was rejected.

On motion made, seconded and carried, Proposal No. 23 was rejected.

On motion made, seconded and carried, Proposal No. 25 was rejected.

[1] The proceedings appear immediately after these minutes, under the caption "Conference Notes."

On motion made, seconded and carried, Proposal No. 31 was rejected.

On motion made, seconded and carried, Proposal No. 32 was rejected.

On motion made, seconded and carried, Proposal No. 33 was rejected.

On motion made, seconded and carried, Proposal No. 34 was rejected.

On motion made, seconded and carried, Proposal No. 39 was rejected.

On motion made, seconded and carried, Proposal No. 40 was rejected.

On motion made, seconded and carried, it was decided to defer for consideration Proposal No. 41, pending a conference with the proponent thereof.

On motion made, seconded and carried, it was decided to hold a public hearing on the tentative Article now being drafted, on Monday, July 28, 1947, at 10:00 A. M. in the Gymnasium, Rutgers University, New Brunswick.

On motion duly made, seconded and unanimously adopted, the meeting adjourned until Monday, July 21, 1947, at 10:00 A. M., after which the Chairman talked with members of the press and advised them as to the progress made by the Committee at this meeting.

COMMITTEE ON THE LEGISLATIVE

Wednesday, July 16, 1947

CONFERENCE NOTES

Further consideration of the Legislative Article (tentative) drafted for the Committee by Mr. Charles deF. Besore:

Section VI, paragraph 2:

It was agreed that the language of Section VI, paragraph 2 of the tentative draft be retained, with the exception that a comma be added after the word "structures" in the sixth line and after the word "use" in the eighth line; Mrs. Sanford and Mr. Cavicchia reserving their votes.

Paragraph 3:

The Committee agreed that the language of Section VI, paragraph 3 of the tentative draft be retained, except that the word "airport" be inserted after the word "parkway" on the sixth line, and also on the thirteenth line.

Section VII, paragraph 1:

The Committee agreed that the language of Section VII, paragraph 1 be retained.