

**IN THE 27TH JUDICIAL DISTRICT
DISTRICT COURT, RENO COUNTY, KANSAS
CIVIL DEPARTMENT**

UNITED KANSAS INC., JASON PROBST,)
JACK CURTIS, SALLY CAUBLE,)
ELIZABETH LONG, and BRENT LEWIS,)

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity)
as Secretary of State for the)
State of Kansas, and)

DONNA PATTON, in her official capacity)
as County Clerk and Election Officer)
for Reno County, Kansas,)

Defendants.

Case No. _____

Division

Pursuant to K.S.A. Chapter 60

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiffs United Kansas Inc., Jason Probst, Jack Curtis, Sally Cauble, Elizabeth Long, and Brent Lewis bring this Petition for Declaratory and Injunctive Relief pursuant to K.S.A. Chapter 60 against Defendants Scott Schwab, in his official capacity as Kansas Secretary of State, and Donna Patton, in her official capacity as County Clerk and Election Officer for Reno County, Kansas, and allege the following:

INTRODUCTION

1. Plaintiff United Kansas Inc. (“UK”), a moderate political party recognized by the State of Kansas, nominated Plaintiff Jason Probst as its candidate for the State House in the 102nd District.

2. Probst eagerly welcomes UK’s support, and UK voters in the 102nd District like Plaintiff Elizabeth Long want to vote for Probst this November on the UK’s ballot line as their chosen nominee.

3. However, the forthcoming application of “anti-fusion” statutes will abrogate Probst’s UK nomination and exclude it from the November ballot. Why? Because Probst, an independent-minded candidate who rejects partisan orthodoxy, appeals to a broad swath of the electorate and will earn the Democratic nomination too. Codified at K.S.A. §§ 25-306e and 25-613, the contemporary application of the “Anti-Fusion Laws” adopted more than a century ago to limit political participation will impair and infringe Plaintiffs’ rights to free speech, association, and equal protection guaranteed in the Kansas Constitution.

4. The notion that the state could prevent two groups of voters from supporting the same candidate under their respective party labels would have been unfathomable when the Kansas Constitution was ratified in 1859—such “fusion” had long been a common and indivisible part of electoral politics throughout the country. Fusion had been a defining feature of the antislavery movement’s rise from political obscurity to national dominance, and it would occur more frequently in ensuing decades—especially in Kansas, where “cross-nominations” allowed minor parties and their voters to play a constructive role in politics and give voice to those who felt ill-served by the dominant two parties.

5. Yet in 1901, the legislature adopted the state’s first anti-fusion laws precisely in order to suppress these dissenting voices and prevent the collaborative and competitive political dynamics they facilitated. Barring a candidate from keeping more than one party nomination placed an extraordinary burden on political participation: because competitive

candidates understandably choose a majority party nomination over a minor party nomination when forced to pick one, a minor party and its voters were systematically denied the chance to associate with one another and their nominees to advance shared political goals.

6. As the Kansas Supreme Court recently affirmed, the ballot is the single most important forum for political speech. *See League of Women Voters of Kansas et al. v. Schwab*, Nos. 124,378, 125,084, 2024 WL 2789304, at *20 (Kan. May 31, 2024) (noting that the “ballot is the core political speech of the voter”). Yet, application of the Anti-Fusion Laws will negate the duly-earned nomination from a ballot-qualified party and force one party’s voters to express “core political speech” in support of *another* party in order to vote for their *own* nominee. This is the troubling reality facing the UK, its voters, and its nominees.

7. The Kansas Constitution does not permit such encroachments on free speech, association, and equal protection. Because the constitutional burdens are severe and do not advance compelling state interests in a narrowly tailored manner, the abrogation of Probst’s UK nomination is unconstitutional regardless of the standard of review applied. Settled precedent requires strict scrutiny, but even under a less exacting standard of review, the ultimate outcome is the same.

8. This matter requires urgent adjudication. At issue is whether a valid party nomination will appear on the 2024 general election ballot. Companion litigation has been initiated simultaneously in Saline County relating to the nomination of another UK candidate.

JURISDICTION AND VENUE

9. This action is authorized by K.S.A. §§ 60-1701 and 1703 (declaratory relief) and K.S.A. §§ 60-901 and 902 (injunctive relief).

10. This Court has general jurisdiction pursuant to K.S.A. § 20-301.

11. This Court has personal jurisdiction over each Defendant in their official capacities as officers of the State of Kansas.

12. Venue exists and is proper in this Court under K.S.A. § 60-602(2) because this action seeks an injunction regarding “acts done or threatened to be done by each Defendant in this district.” Venue is also proper in that Probst and Long are residents of this county and district and the place of the Plaintiffs’ cognizable injury is within this county and district.

13. This court is the appropriate forum for this case as the claims arise exclusively under the Kansas Constitution.

PARTIES

14. Plaintiff UK is a domestic not-for-profit corporation with a registered address at 1743 Fairchild Ave, Manhattan, Kansas 66502. On May 24, 2024, UK was granted ballot access by recognition as a political party in accordance with K.S.A. § 25-302a.

15. Plaintiff Jack Curtis has registered with UK, and he serves as the party’s Chair. He was previously registered unaffiliated and has played an active role in Kansas civic life, including years of service in the American Legion Boys State. He intends to remain a registered UK voter and the party’s Chair for the foreseeable future.

16. Plaintiff Sally Cauble has registered with UK, and she serves as the party's Vice Chair. She was previously registered as a Republican, and she served on the State Board of Education for twelve years, winning election in 2006 and re-election in 2010 and 2014. She intends to remain a registered UK voter and the party's Vice Chair for the foreseeable future.

17. Plaintiff Brent Lewis has registered with UK, and he intends to remain a registered UK voter for the foreseeable future. Lewis is a U.S. Army veteran and public school educator who had been registered "unaffiliated" for a number of years prior to the formation of UK because "neither [major] party here in Kansas consistently represents people like me." Micah Sifry, *A New Third Party Hope in Kansas*, CONNECTOR (June 3, 2024), <https://perma.cc/5KUF-EX2T>.

18. Plaintiff Elizabeth Long is a qualified elector and resident of Reno County. She has registered with UK, and she intends to remain a registered UK voter and resident of Reno County for the foreseeable future.

19. Plaintiff Jason Probst is a qualified elector and resident of Reno County. He has served in the State House since 2017. He has been nominated by the UK as its candidate for the State House in the 102nd District. Additionally, he is an unopposed candidate for Democratic nomination. He intends to remain a resident of Reno County for the foreseeable future.

20. Defendant Scott Schwab is the duly-elected Secretary of State of the State of Kansas and, as such, is the Chief Election Official of the State, responsible for carrying out the State's election laws, including the Anti-Fusion Laws.

21. Defendant Donna Patton is the duly-elected County Clerk for Reno County, Kansas, and, as such, serves as Election Officer and supervises the administration of elections in Saline County. She will be responsible for administering the upcoming primary and general elections in Reno County.

ADDITIONAL FACTS

A. UK Gives Voice to Those Who Want to Restore Compromise and Moderation in Kansas Politics

22. Most Kansans want to turn down the temperature in Topeka: less bitter partisanship and rigid ideology, more compromise and consensus. There is an urgent need for principled governance to promote investment and entrepreneurship, create a level playing field for farmers and small businesses, modernize infrastructure, and protect the environment.

23. In 2023, a cross-partisan group of local leaders and concerned citizens founded a new party to fight for this reality. Led by Curtis and Cauble, UK was formed to provide a political home for those who believe that there is wisdom on the left and the right but that both major parties must stop indulging extreme and fringe views on their respective sides. *See Jack Curtis & Sally Cauble, Here's How Fusion Voting Helps to Elevate Diverse Voices in Kansas*, TOPEKA CAPITAL-JOURNAL (Apr. 20, 2024), <https://perma.cc/4X2G-EKFY>.

24. On March 12, 2024, UK filed more than thirty-thousand signatures from Kansas voters in support of their petition for formal party recognition. On May 24, 2024, Secretary Schwab recognized UK as a formal political party after his office and county

election officials reviewed the petition and confirmed that an adequate number of valid signatures had been submitted in accordance with K.S.A. § 25-302a.

25. With nearly 30% of Kansas voters registered as unaffiliated, much of the state's electorate likely shares the core concerns and priorities that inspired the formation of this new party. *See* Kan. Sec'y of State, *Election Statistics Data*, <https://perma.cc/A8M7-E2QL>. A paradigmatic example is Lewis, a U.S. Army veteran and public school educator who welcomes UK as “a home for common-sense voters who value collaboration, compromise and being solutions-oriented over fighting ideological battles with the other side.” Sifry, *supra*.

26. Yet, running a third candidate in a competitive two-way race is a recipe for disaster. A third candidate is virtually guaranteed to lose: since the first anti-fusion laws were adopted in Kansas in 1901, zero independent or minor party candidates have won a statewide or federal election. *See* Joel Rogers, *Kansas & Fusion Voting: The Expansion and Retraction of Democratic Participation & Responsive Representation in the Sunflower State*, NEW AM. (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4867863. Major party candidates have won 99.8% of all state legislative races since 1912. *Id.* A number of factors explain why, but the pattern is unmistakable: a third candidate is almost always uncompetitive. *See* Lee Drutman, *The Case for Fusion Voting and a Multiparty Democracy in America*, NEW AM. (Sept. 2022), <https://perma.cc/P7VC-RTTJ>.

27. The problem is not simply that a third candidate is futile, but that they directly undermine their supporters' political goals and priorities by taking away votes from the

more closely aligned competitive candidate and therefore helping the candidate who they disagree with most. The result can be splitting the majority vote in two and helping elect an extreme opponent with minority support. A third UK candidate would therefore frustrate the entire purpose of the party by making it harder for a moderate to win, and easier for someone from the far-right or far-left to take office despite opposition from a clear majority of voters.

28. UK was founded with a clear understanding that the only way it could advance its goals of political moderation and sensible governance is to navigate the reality that only two candidates will be viable in a given election. This means that in most races, UK must therefore recruit candidates who are also interested in and capable of securing the nomination of one of the two major parties—candidates like Probst.

29. UK has also nominated two other, similarly situated candidates this cycle. Former Republican Rep. J.C. Moore is the UK’s nominee in the 26th Senate District; he is also competing in the August 6 Republican primary. Lori Blake is the UK’s nominee in the 69th House District and is unopposed in the Democratic primary.

30. Consistent with its founding principles, UK intends to pursue this same strategy for upcoming elections in 2026, 2028, and beyond: nominate moderate candidates who share UK’s collaborative and inclusive approach to politics, eagerly embrace UK’s support, and can also secure a major party’s nomination, so as to avoid producing three-candidate races that increase the chances of electing far-left and far-right extremists.

B. UK Nominated Probst, and He Eagerly Accepted Their Support

31. Probst has proudly represented the 102nd District since 2017 and is an ideal standard-bearer for the UK ethos. Jason Probst, *Can a new political party boost Kansas moderates? This state representative thinks so*, WICHITA EAGLE (June 8, 2024), <https://perma.cc/9PZU-NYVV>. He shares UK’s concern that voters “in the middle tend to get ignored both in politics and when it comes to policymaking in Topeka,” as elected officials are often “punished for being more moderate and open to compromise.” *Id.* He is eager to “change the incentives in Topeka and make it more likely that different political factions would look for ways to find common ground . . . [b]ecause now is the time for good people from all sides of the aisle to come to the aid of their country.” *Id.*

32. On May 1, 2024, Probst filed a Declaration of Intention for the August 6 Democratic primary. No other candidates filed for the Democratic nomination in the 102nd House District prior to the June 3 deadline. *See Candidates for the 2024 Primary*, Kansas Sec’y of State, https://www.sos.ks.gov/elections/elections_upcoming_candidate.aspx. As an unopposed candidate in the August 6 primary, he is virtually guaranteed to win the Democratic nomination.

33. On May 30, UK nominated Probst as its candidate in the 102nd House District. Probst was honored to receive the UK nomination because he shares the party’s commitment “to reach[ing] across the aisle to collaborate and get things done.” Probst, *supra*. Long, a longtime independent in the district who is “tired of all the battles between the two [major] parties,” wants to vote for Probst on the UK ballot line because “when people like me vote on the United Kansas ballot line, we can send a message with our vote.

Whether the candidate is on the Democratic or Republican side, they'll know a big share of their votes came from voters like me fed up with partisan politics.” Sifry, *supra*.

34. Probst submitted his UK Certificate of Nomination on May 31, and the Secretary’s website promptly listed Probst as the UK’s candidate for the 102nd House District. *See Candidates for the 2024 General*, Kansas Sec’y of State, https://www.sos.ks.gov/elections/elections_upcoming_candidate.aspx.

35. As of the date of the filing of this action, Probst has, for more than a month, been listed on the Secretary’s website as UK’s candidate for the 102nd House District.

C. The UK Nomination Will be Abrogated and Excluded From the November Ballot

36. On June 21, 2024, Secretary Schwab’s General Counsel issued a letter stating that Sections 25-306e and 25-613 require Probst to forfeit one of his nominations and prohibit him from keeping the UK and Democratic nominations for the November election. *See Ex. A.*

37. The General Counsel did not raise any questions as to the validity of the existing UK nomination or the forthcoming Democratic nomination; rather, he confirmed that no objections had been filed challenging their legitimacy. *Id.*

38. Rather, the General Counsel explained that the Secretary is required to apply Section 25-306e if Probst, as expected, prevails in his uncontested Democracy primary. *Id.* The Secretary will have Probst “file within seven days . . . a written statement, signed and sworn . . . , designating which nomination [he] desires to accept”: the UK or Democratic nomination. *Id.* (quoting K.S.A. § 25-306e). If Probst “refuses or neglects to file such

statement,” the Secretary, “immediately upon the expiration of the seven-day period, shall make and file . . . an election of one nomination for [him].” *Id.* (quoting K.S.A. § 25-306e). County Clerk Patton then “shall print [Probst’s] name upon the official ballot under the designation so selected, and under no other designation.” *Id.* (quoting K.S.A. § 25-306e).

39. The General Counsel explained that these procedures were the required means of effectuating the restrictions set forth in Section 25-613 that “the name of each candidate shall be printed on the ballot only once and no name that is printed on the ballot shall be written elsewhere on the ballot.” *Id.* (quoting K.S.A. § 25-613).

40. The General Counsel further explained that this process would occur in “early September” once “the state board of canvassers . . . certif[ies] the results of the [Democratic] primary election” in accordance with K.S.A. § 25-3205. *Id.*

41. Thus, application of the Anti-Fusion Laws will result in the abrogation of one of Probst’s duly-earned nominations and the exclusion of that nomination from the November ballot. Application of these statutory restrictions will coerce Probst into abandoning one of his nominations—either by selecting himself which one to forfeit, or leaving that decision to the discretion of the Secretary. Any rational candidate in Probst’s position would keep the ballot line of the more established party with a larger current number of registered voters.

42. Prompt action is required by this court to prevent these irrevocable injuries. Probst is unopposed in the Democratic August 6 primary, so it is a virtual certainty that he will win and the state board of canvassers will certify his Democratic nomination “no later

than September 1.” *Id.* The Anti-Fusion Laws will be applied shortly thereafter, in “early September.” *See* Ex. A.

43. Delaying the pursuit of judicial relief until that point is improper, given that federal and state law require County Clerk Patton to finalize general election ballots by September 20, 2024. *See* K.S.A. § 25-1220; 52 U.S.C. § 20302(a)(8). Such delay would accomplish nothing but prejudicing the court in its administration of justice—and creating a substantial likelihood that County Clerk Patton administers an election in a manner later deemed to have been in violation of the Kansas Constitution.

D. Candidates Routinely Earned Two Nominations in the Past

44. The cross-nomination of a single candidate by two parties representing two groups of voters was unremarkable for much of U.S. history. In the 1840s and 1850s, anti-slavery politicians often sought a Democratic or Whig nomination in addition to the nomination from the Free Soil Party or another abolitionist minor party. *See* Corey Brooks & Beau Tremitiere, *Fusing to Combat Slavery: Third-Party Politics in the Pre-Civil War North*, ST. JOHN’S L. REV. (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4831091. This allowed anti-slavery voters to work together to elect allied officials and elevate their cause—without having to support major parties beholden to, or unwilling to challenge, the slave power. *Id.* Similar tactics featured prominently in the presidential elections of 1860 and 1864. *Id.*

45. The same was true in the first gubernatorial election after Kansas achieved statehood in 1861. Rogers, *supra*. In Kansas and elsewhere, candidates continued to receive nominations from two parties, and by the 1890s, this practice was widespread. *Id.* Many

laborers, farmers, and other working class voters had become disillusioned with both the Democratic and Republican Parties for neglecting economic, monetary, and labor reforms they cared about. *Id.* The Populist Party gave voice to these concerns and emerged as a powerful force. In the South, Republicans and Populists agreed to support many of the same candidates in the hopes of together challenging Democratic dominance; this collaboration succeeded in North Carolina in the mid-1890s, a rare interruption of Jim Crow rule in the former Confederacy during the century following Reconstruction. *Id.*

46. The dynamic was inverted in Kansas, where Republicans had dominated since statehood. *Id.* By cross-nominating the same candidates, Populists and Democrats twice won the governorship and won control of the legislature. *Id.* Their elected officials prioritized key issues from the Populist platform that had received scant attention from either major party in the preceding sessions: “railroad regulation, usury and interest regulation, labor legislation, tax reform, stockyard regulation,” and “unemployment relief,” among others. *Id.*

E. The Kansas Legislature Enacted Anti-Fusion Laws to Limit Political Participation and Stifle Competition

47. In 1897, the first effort to adopt anti-fusion restrictions failed. *Id.* However, by the end of the decade, Republicans regained unified control of state government, and one of their top priorities was to foreclose future opportunities for cross-partisan collaboration that might again threaten their political dominance. *Id.* The governor’s 1901 address to the legislature insisted that “[f]usion of principles is impossible” and “should not be tolerated.” *Kansas Senate Journal*, 24–25 (1901). Shortly thereafter, the legislature

adopted the state’s first anti-fusion laws, requiring that “[n]o person shall accept more than one nomination for the same office,” Ch. 177, sec. 5 1901 Kan. Sess. Laws 316, and that “[t]he name of each candidate shall be printed on the ballot once and no more.” Ch. 177, sec. 6 1901 Kan. Sess. Laws 318.

48. These restrictions mirrored the wave of anti-fusion laws adopted around the country at this time by Republican and Democratic majorities fearful of a unified opposition. A state legislator in Michigan captured the motivating sentiment: “We don’t propose to let the Democrats make allies of the Populists, Prohibitionists, or any other party, and get up combination tickets against us. We can whip them single-handed, but don’t intend to fight all creation.” DETROIT FREE PRESS, Feb. 1, Jan. 5, 1893. Just as the sponsors of the anti-fusion laws had hoped, minor parties in Kansas—barred from nominating competitive candidates—became electorally irrelevant, offering voters few opportunities to associate outside of the two major parties or to meaningfully express their preference for a new direction. Rogers, *supra*.

49. The 1901 anti-fusion laws, along with several subsequent amendments, are codified in Section 25 of the Kansas Statutes. Section 25-306e states that “[i]f any person receives two or more nominations for the same office, such person shall” designate “which nomination such person desires to accept”; if no choice is made, an election official shall select “one nomination for such candidate.” The “candidate’s name” shall be printed “upon the official ballot under the designation so selected, and under no other designation.” K.S.A. § 25-306e. Section 25-613 requires that “the name of each candidate shall be printed on the ballot only once and no name that is printed on the ballot shall be written elsewhere

on the ballot.” These provisions therefore presuppose that a candidate can successfully be nominated by two parties—as will occur with Probst’s nominations from UK and the Democratic Party.

50. There are other anti-fusion laws meant to limit the ability of candidates like Probst to have two party nominations on the general election ballot. *See* K.S.A. §§ 25-213, 25-306. Enforcement of these restrictions would likely present the same fundamental constitutional problems as the application of the Anti-Fusion Laws in this case, but the Secretary’s course of conduct and recent correspondence suggests that these other provisions are not implicated here.

CLAIMS FOR RELIEF

Count I – Violation of Kansas Constitution, Bill of Rights, Section 11 (Right to Free Speech)

51. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

52. The Kansas Constitution guarantees that “all persons may freely speak, write or publish their sentiments on all subjects.” Kan. Const. Bill of Rights, § 11.

53. The expression of support for a candidate for public office is core political speech requiring the greatest constitutional protection. So is a candidate’s expression of support for a political party, its platform, and its priorities.

54. A party’s nomination is a critical means through which the party, its voters, and its nominees engage in this core political speech, throughout the electoral campaign and “at the most crucial stage in the electoral process”—on “the ballot.” *Anderson v.*

Martin, 375 U.S. 399, 402 (1964). In “the instant before the vote is cast,” UK and its supporters are barred from expressing support for Probst, their nominee, and he is barred from expressing his support for and from UK. *Id.*

55. Application of the Anti-Fusion Laws here directly impairs and infringes the freedom of speech by abrogating Probst’s UK nomination and excluding it from the general election ballot notwithstanding that UK is a recognized political party with ballot access, no issues with the nomination’s validity have been raised, and Probst desires to keep the nomination.

56. Abrogation and exclusion of the UK nomination prevents Curtis, Cauble, Lewis, Long, and others who support UK from freely engaging in political speech through the formal and public designation of Probst as a standard bearer for their party, their platform, and their priorities. As a result, Curtis, Cauble, Lewis, Long, and others who support UK are unable to freely advocate on behalf of their party’s nominee. They are instead compelled to express support for a different party in order to advocate for Probst’s election, as the only way to vote for him is on the other party’s ballot line.

57. In addition, Long, as a qualified voter registered with UK in the 102nd House District, is restricted from casting his vote for Probst this November under Long’s chosen party label. It is settled law in Kansas that the “ballot is the core political speech of the voter,” *League of Women Voters*, 2024 WL 2789304, at *20, and Long is compelled to express support for a different party with her ballot in order to vote for her party’s nominee. This is a clear and direct infringement on her freedom of speech.

58. Abrogation of the Anti-Fusion Laws in September, three months after Probst received the UK nomination, will cause particular harm because it will create the mistaken impression within the electorate that, after months of expressing support for one another, Probst wants to abandon the UK nomination, UK wants to rescind its support for Probst, or both. That is, application of the Anti-Fusion Laws will amount to a prominent and incorrect message of disunity between Probst and UK—while both sides instead embrace the nomination as a means of communicating their alignment.

59. Under Kansas precedent, this court uses strict scrutiny to assess the constitutionality of abrogating and excluding Probst’s UK nomination. There are no compelling state interests to justify these direct infringements on the freedom of speech. Nor is the abrogation and exclusion of Probst’s UK nomination narrowly tailored to advance such interests. Thus, the abrogation and exclusion of Probst’s UK nomination is unconstitutional under Section 11 of the Kansas Constitution’s Bill of Rights.

60. The end result is the same even if an alternative standard of review were applied, such as a burden-interest balancing test that weighs the severity of the constitutional burden against the importance of the state interests and narrow tailoring of the restriction. Because the burden on the freedom of speech is severe, there are no adequately compelling or important state interests, and the restriction fails to narrowly advance any such interest, the abrogation and exclusion of Probst’s UK nomination is unconstitutional under such a balancing test as well.

**Count II – Violation of Kansas Constitution, Bill of Rights, Section 3
(Right to Association)**

61. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

62. The Kansas Constitution guarantees that “[t]he people have the right to assemble” and “consult for their common good.” Kan. Const. Bill of Rights, § 3. This language guarantees Kansans “a protected right to associate themselves with others of like-mind, and to voice their political opinions at the ballot box.” *See Rivera v. Schwab*, 315 Kan. 877, 949 (2022) (Biles, J., concurring in part and dissenting in part).

63. The right “of individuals to associate for the advancement of political beliefs rank[s] . . . among our most precious freedoms.” *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). A political party’s nomination has long been a crucial point for a party, its voters, and its nominees to associate with one another in the democratic process and advance their shared political goals. That is why the “[f]reedom of association means not only” that a party can nominate someone, but that it has the “right to . . . select a standard bearer who best represents the party’s ideologies and preferences.” *Eu v. San Francisco Cnty. Dem. Cent. Comm.*, 489 U.S. 214, 224 (1989) (internal quotation marks and citation omitted). Indeed, nominating candidates for public office is a central associational purpose of any political party.

64. Application of the Anti-Fusion Laws here directly impairs and infringes the freedom of association by abrogating Probst’s UK nomination and excluding it from the general election ballot notwithstanding that UK is a recognized political party with ballot

access, no issues with the nomination's validity have been raised, and Probst desires to keep the nomination. "[S]uch restrictions" on "the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group" are particularly troubling because they "reduce diversity and competition in the marketplace of ideas." *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983).

65. Through its nomination process, UK concluded that Probst is the "standard bearer who best represents the party's ideologies and preferences" in the 102nd House District. *Eu*, 489 U.S. at 224. Yet, abrogation of the UK nomination and its exclusion from the ballot prevents the party, Curtis, Cauble, Lewis, Long, and others who support UK from associating with Probst through the party's formal and public designation of Probst as the UK standard bearer in this election. Depriving UK of the "ability to perform the 'basic function' of choosing [its] own leaders" imposes a "severe and unnecessary" burden on their associational freedom. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 580, 586 (2000).

66. Probst is likewise inhibited from associating with a like-minded party and like-minded voters in pursuit of their shared political goals.

67. The associational injury is particularly acute here because Plaintiffs are thwarted in their effort to associate with one another during the most important parts of the political process: in the final two months of the electoral campaign and on the ballot itself. The political salience of a nomination is especially pronounced in final weeks of the campaign, when many voters are finally turning to the election and the choices before them;

abrogation of the nomination during this period therefore substantially hinders the efforts of Plaintiffs to work together in pursuit of their shared goals.

68. Further, the ballot has long been recognized as “the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.” *Tashjian*, 479 U.S. at 216. Exclusion of Probst’s UK nomination from the ballot erases their associational link at the critical point when a statutorily-recognized party’s ballot line should permit its voters to affirm their associational bond with their party and its nominees. Instead, UK voters are forced to associate with a different political party—a party many of them might strongly dislike—in order to register their vote for Probst, their own party’s nominee.

69. The abrogation of Probst’s UK nomination and its exclusion from the ballot directly thwarts UK’s “attempt to broaden the base of public participation in and support for its activities,” which “is conduct undeniably central to the exercise of the right of association.” *Tashjian v. Republic Party of Conn.*, 479 U.S. 208, 214 (1986). That is, every UK nomination that is abrogated and excluded from the ballot hinders the efforts to develop and grow as a political party. Viewed in light of the abrogation and exclusion of two other UK nominations this cycle and UK’s ongoing commitment to nominating candidates whose nominations would not increase the likelihood of electing far-left and far-right extremists, consistent application of the Anti-Fusion Laws could make it effectively impossible for UK to develop and grow—despite a platform and priorities that resonate with a broad swath of the Kansas electorate.

70. Under Kansas precedent, this court uses strict scrutiny to assess the constitutionality of abrogating and excluding Probst's UK nomination. There are no compelling state interests to justify these direct infringements on the freedom of association. Nor is the abrogation and exclusion of UK's nomination narrowly tailored to advance such interests. Thus, the abrogation and exclusion of Probst's UK nomination is unconstitutional under Section 3 of the Kansas Constitution's Bill of Rights.

71. The end result is the same even if an alternative standard of review were applied, such as a burden-interest balancing test that weighs the severity of the constitutional burden against the importance of the state interests and narrow tailoring of the restriction. Because the burden on the freedom of speech is severe, there are no adequately compelling or important state interests, and the restriction fails to narrowly advance any such interest, the abrogation and exclusion of Probst's UK nomination is unconstitutional under such a balancing test as well.

**Count III – Violation of Kansas Constitution, Bill of Rights, Section 2
(Right to Equal Protection)**

72. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

73. The Kansas Constitution recognizes that “all free governments are founded on [the people's] authority, and are instituted for their equal protection and benefit.” Kan. Const. Bill of Rights, § 2.

74. The constitutional guarantee of “[e]qual protection requires [that] ‘similarly situated individuals . . . be treated alike.’” *League of Women Voters*, 2024 WL 2789304, at *18 (quoting *State v. Gaudina*, 284 Kan. 354, 372 (2007)).

75. Application of the Anti-Fusion Laws here denies Plaintiffs equal protection by abrogating Probst’s UK nomination and excluding it from the general election ballot notwithstanding that UK is a recognized political party with ballot access, no issues with the nomination’s validity have been raised, and Probst desires to keep the nomination.

76. Abrogation of Probst’s UK nomination and its exclusion from the ballot requires Curtis, Cauble, Lewis, Long, and others who support UK to express support for another political party in order to advocate on behalf of the UK nominee, as voting on the Democratic Party line will be the only way to register a vote for Probst this November. Long and other UK voters in the 102nd District will have to vote in favor of a different party in order to support the UK nominee. Supporters of other statutorily-recognized parties are treated differently: because their parties’ nominees do not have their nominations abrogated and excluded from the ballot, they are free to advocate on behalf of their nominees without encouraging support for a rival party. And each of them may cast their votes freely for their party’s nominees on their own party’s ballot line.

77. Application of the Anti-Fusion Laws here abrogates UK’s valid nomination of its qualified candidate for the final weeks of the campaign, while other statutorily-recognized parties are treated differently: their valid nominations of qualified candidates remain undisturbed through the election. UK’s qualification as a statutorily-recognized political party entitles its nominees to appear on the ballot under the party’s label, yet Probst

will not appear under the UK label, and UK will be omitted entirely from the ballot in Reno County. Other statutorily-recognized parties are treated differently: their nominees will appear on the ballot under the party's label.

78. Under Kansas precedent, this court uses strict scrutiny to assess the constitutionality of abrogating and excluding Probst's UK nomination. There are no compelling state interests to justify these direct infringements on the freedom of association. Nor is the abrogation and exclusion of UK's nomination narrowly tailored to advance such interests. Thus, the abrogation and exclusion of Probst's UK nomination is unconstitutional under Section 2 of the Kansas Constitution's Bill of Rights.

79. The end result is the same even if a less exacting form of scrutiny were applied, given that there are no adequately compelling, important, or legitimate state interests that are actually and narrowly advanced by application of the Anti-Fusion Laws. Thus, the abrogation and exclusion of Probst's UK nomination is unconstitutional under such less exacting scrutiny as well.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants as follows:

- a. Declare that application of the Anti-Fusion Laws to require Probst to forfeit one of his two nominations, or upon his refusal, to abrogate one nomination at the Secretary's selection violates the Kansas Constitution and is therefore invalid and unlawful;

b. Declare that application of the Anti-Fusion Laws to refuse to certify an otherwise valid party nomination violates the Kansas Constitution and is therefore invalid and unlawful;

c. Declare that application of the Anti-Fusion Laws to exclude a party nomination that Probst has accepted from the general election ballot violates the Kansas Constitution and is therefore invalid and unlawful;

d. Enjoin Defendants and their agents, officers, employees, designees and all persons acting on the behalf or their direction and in concert with any of them from applying the Anti-Fusion Laws to require Probst to forfeit one of his two nominations, or upon his refusal, to abrogate one of the nominations at the Secretary's selection;

e. Enjoin Defendants and their agents, officers, employees, designees and all persons acting on the behalf or their direction and in concert with any of them from applying the Anti-Fusion Laws to refuse to certify one of Probst's two nominations;

f. Enjoin Defendants and their agents, officers, employees, designees and all persons acting on the behalf or their direction and in concert with any of them from applying the Anti-Fusion Laws to exclude a party nomination that Probst has accepted from the general election ballot;

g. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees;
and

h. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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*Motion and application for admission pro hac vice forthcoming

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STATE OF KANSAS

June 21, 2024

SENT VIA E-MAIL ONLY

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Scott & Sarah:

This acknowledges that on May 31, 2024, the Secretary of State received certificates of nomination from United Kansas Party, a recognized political party, for:

- J.C. Moore Kansas Senate 26
- Lori C. Blake Kansas House 69
- Jason Probst Kansas House 102

These three individuals each had already filed a Declaration of Intent, with the appropriate filing fee, to become a candidate in a party primary election. This means their name will appear on the appropriate party primary ballot for the August 6, 2024, primary election.

- J.C. Moore Kansas Senate 26 Republican Filed on May 29, 2024
- Lori C. Blake Kansas House 69 Democrat Filed on April 12, 2024 • Jason Probst Kansas House 102 Democrat Filed on May 1, 2024

No objection pursuant to KSA 60-308 was filed contesting any of their nominations or filings.

Once the state canvas meets pursuant to KSA 25-3205 it will certify the primary election results and the Secretary of State will send each winner a party certificate of nomination. At that time, those individuals become their party's nominee.

If an individual has received two certificates of nomination, that is, the individual is the nominee for two different recognized political parties, KSA 25-613 provides that, other than an exception that does not apply to your inquiry, "the name of each candidate shall be printed on the ballot only once and no name that is printed on the ballot shall be written elsewhere on the ballot." That has been the law in Kansas since 1901.

The legislature enacted KSA 25-306e to specify a method to implement the restriction of KSA 25- 613. It provides, in pertinent part, that:

EXHIBIT A

If any person receives two or more nominations for the same office, such person shall file within seven days, including Saturday, Sunday and holidays, after the last nomination is received, a written statement, signed and sworn to by such person, designating which nomination such person desires to accept.

....

If such person refuses or neglects to file such statement, the [Secretary of State], immediately upon the expiration of the seven-day period, shall make and file in such officer's office an election of one nomination for such candidate. The county election officer shall print such candidate's name upon the official ballot under the designation so selected, and under no other designation.

Pursuant to KSA 25-3205, the state board of canvassers will meet no later than September 1 to certify the results of the primary election and party certificates of nomination will be mailed to appropriate individuals immediately thereafter. At that time, if a person has received two or more party nominations, the person will also receive notice to contact our office within seven days to designate the party nomination under which their name will appear on the general election ballot.

Given the unpredictability of election dynamics, until early September no action can be taken by our office on the possibility of an individual receiving two nominations. The mechanisms set forth in KSA 25-306b, 25-3905, and 25-3906 attest to the wide range of possible outcomes and opportunity for unexpected vacancies that may occur in the next three months.

/Clayton Barker

Clayton L. Barker
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