Does Ballot Format Help Determine Whether Independent Candidates Get Elected to State Legislatures?

Richard Winger

I. INTRODUCTION

Since the end of World War II, and especially since the Help America Vote Act passed in 2002, U.S. general election ballots have changed dramatically. In 1946, 31 states used party-column ballot format. The other 19 states used an office-group format.

1 Starting in high school, Richard Winger studied election returns for minor party candidates. I quickly came to realize that their vote often depended on ballot format. To understand that better, I started sending for copies of ballots from every state. Over the decades I have worked out the percentage of the vote in every county, for every minor party presidential candidate of any significance at all, and mapped the results. Some of my maps appear in the Encyclopedia of Third Parties in America, Volume One, lead author Immanuel Ness, published 2000. I also have maps for all midterm years, for the office at the top of the ballot, generally Governor. I have also studied the history of each state’s ballot access laws, and since 1985 I have been editor of Ballot Access News. Currently I am co-editor, along with Bill Redpath.

2 52 U.S.C. § 10101 et seq.

3 See id. Until 1977, Vermont had separate paper ballots for President, U.S. Senate, U.S. House, State Senate, and State House of Representatives. A voter preparing to vote was not handed a single ballot, but multiple pieces of paper, one for each office. See, e.g., Vermont Official Sample Ballot (1974) (on file with author). This system has the characteristics of an office-group ballot, so Vermont is counted as an office-group state, at least concerning legislative elections. The statewide state offices, and the county
Independently of that, 26 states put straight-ticket devices on their general election ballots, and 24 did not.

But as of 2023, only five states still use a party-column ballot, whereas forty-five states now use an office-group format. Only six states still use a straight-ticket device. United States ballots have significantly changed since the end of World War II, and yet the subject has not attracted much scholarly attention.

A party-column ballot organizes the ballot so that each party has its own column or row. All of that party's nominees are included in such column or row.

States that do not use party-column ballots use office-group ballots. An office-group ballot organizes the ballot by each particular office. At the top of the ballot is the election’s most important office, president in presidential years, and either Governor or U.S. Senator in mid-term years. For that particular office, each candidate running for that position is printed in a list. Then, the ballot goes on to the next office, again with a list of each candidate running for that office.

executive positions, were on a single piece of paper that was arranged in party columns, but that is irrelevant for legislative elections.

4 See Ballot Data, supra note 2. South Carolina did not have government-printed ballots until 1950. Instead, political parties prepared ballots and handed them out to any voter who wanted one. South Carolina, for purposes of this article, is being treated as a state with a party-column ballot and a straight-ticket device, for the years 1946-1949.

5 See Ballot Data, supra note 2.

6 Ballot Data, supra note 2.

7 Readers will note the excellent and recent work by Professors Engstrom and Roberts. Their study of ballot design substantially informs this Article. See, e.g., ERIK J. ENGSTROM AND JASON M. ROBERTS, THE POLITICS OF BALLOT DESIGN (2021) [https://doi.org/10.1017/9781108904254]. Additionally, Professors Wang and Dean Sass Rubin’s scholarly work as part of this symposium, along with the public policy work by the New Jersey Institute for Social Justice, do much to advance the scholarship of this subject. See, Samuel S.-H. Wang, Hayden Goldberg, & Julia Sass Rubin, Three Tests for Bias Arising from the Design of Primary Election Ballots in New Jersey, 48 SETON HALL J. LEGIS. & PUB. POL’Y (forthcoming 2023); Julia Sass Rubin, The Impact of New Jersey’s County Line Primary Ballot on Election Outcomes: A Multi-Year Analysis, 48 SETON HALL J. LEGIS. & PUB. POL’Y (forthcoming 2023); Ryan P. Haygood et al, The End of the Line: Abolishing New Jersey’s Antidemocratic Primary Ballot Design, 48 SETON HALL J. LEGIS. & PUB. POL’Y (forthcoming 2023).

8 See Jack L. Walker, Ballot Forms and Voter Fatigue: An Analysis of the Office Block and Party Column Ballots, 10 MIDWEST J. OF POL. SCI. 448, 448–49 (1966) (“The Party Column (or Indiana) ballot lists candidates in rows by party affiliation, usually with a single circle or lever to facilitate straight ticket voting . . .”)

9 See Walker, supra note 8.

10 See Walker, supra note 8, at 449 (defining the “Office Block” ballot).

11 See Walker, supra note 8, at 449 (“the Office Block (or Massachusetts) ballot lists candidates for each contest in blocks or groups, often alphabetically, and sometimes even without a party label. . . . The Office Block ballot does not prevent straight ticket
A straight-ticket device is a place near the top of the ballot, giving the voter the opportunity to vote for all of one particular party’s nominees with a single act.\textsuperscript{12} Sometimes, the device is called a “party circle.”\textsuperscript{13} Typically, the device asks the voter if he or she wishes to shorten the voting process by marking in a circle for a particular party a single “X” to indicate support for all of a party’s nominees. Usually, in states with a straight-ticket device, over half the voters use it, and thus never need to cast an eye over the remainder of the ballot, except of course for the part of the ballot reserved for ballot measures and non-partisan offices.\textsuperscript{14}

Whether a state uses a party-column ballot or an office-group ballot, and whether a state has a straight-ticket device, are independent variables. A state may elect either type of ballot with or without a straight-ticket device.\textsuperscript{15}

As of 2023, the only states with a party-column ballot are Connecticut, Delaware, New Hampshire, New Jersey, and New York.\textsuperscript{16} The only states with straight-ticket devices are Alabama, Indiana, Kentucky, Michigan, Oklahoma, and South Carolina.\textsuperscript{17}

\textsuperscript{12} For more on “Straight-ticket” voting, see Olga Gorelkina et al, \textit{The Theory of Straight Ticket Voting}, 60 \textit{SOCIAL CHOICE & WELFARE} 365 (2023).

\textsuperscript{13} Before the name “straight-ticket” caught on, this device would have been known as a “party circle” device. See, e.g., Karl F. Geiser, \textit{Review: Unpopular Government in the United States by Albert M. Kales}, 1 MISS. VALLEY HIST. REV. 117–19 (1914) [https://doi.org/10.2307/1896951].


\textsuperscript{15} See Erik J. Engstrom & Jason M. Roberts, \textit{The Politics of Ballot Choice}, 77 OHIO ST. L. J. 839, 853 (2016) (Describing the key independent variables in their study: “The four types of ballots included are: party column with a straight ticket option, office bloc with a straight ticket option, party column without a straight ticket option, and office bloc without a straight ticket option.”).

\textsuperscript{16} See, e.g., CONN. GEN. STAT. § 9-437 (West 2015) (titled “Form of ballot. Position of candidates’ names on ballot. Sample ballots. Voting instructions and information”) (providing “At the top of each ballot shall be printed the name of the party holding the primary, and ... The vertical columns shall be headed by the designation of the office or position.”); N.H. REV. STAT. ANN. § 656:5 (2022) (“Party Columns”); N.J. STAT. ANN. § 19:14-6 (titled “Column designations; accompanying instructions”) (providing that “in the columns at the extreme left shall be printed the name of each of the political parties.”);

States that have changed from party-column to office-group almost never reverse that change. Since the end of World War II, the only state that changed from party-column to office-group, and then changed back, is New Hampshire.\footnote{See Ballot Data, supra note 2. A comparison between sample ballots from New Hampshire illustrates this point. Compare STATE OF N.H., Sample Ballot (1995) (using an office group ballot for the first time), with STATE OF N.H., Sample Ballot (2005) (reverting back to the party-column format) (each on file with author).} Similarly, states almost never restore a straight-ticket device after they have abandoned it. Only Michigan repealed the device and then restored it, and the two changes were so close together in time that Michigan only ever conducted a single statewide election without the device, in November 2018.\footnote{See \textit{id.} (explaining a challenge to the law abolishing the party-column device and the resulting court cases). For the chronology of legislation and litigation, see Mich. S.B.13 (2016) (repealed, 2018); Mich. State A. Philip Randolph Inst. v. Johnson, 749 F. App’x 342, 354 (6th Cir. 2018) (staying the District Court’s order rejecting the legislature’s amendment); Mich. Ballot Proposal 18-3 (2018) (reinstating straight-party voting, among other things).}

II. THE RISE OF SUCCESSFUL INDEPENDENT LEGISLATIVE CANDIDATES

During the last seventy-seven years, the number of independent candidates elected to state legislatures has grown, not dramatically, but significantly. These tables—compiled from each state’s published election returns from every election from 1946 to the present—show the number of independent candidates elected to state legislatures since World War II ended, in each state that elected any. States that have not elected an independent to the legislature since before World War II are not included. The tables only include regularly scheduled elections, not special elections. The tables only include independent candidates whose names were printed on the ballot, not write-in winners. An “independent” candidate is defined as a candidate without the nomination of any organized political party. Some minor party nominees for legislature have been elected in the period 1945 to the present in Alaska, Arkansas, California, Connecticut, Illinois, Louisiana, Maine, Minnesota, Montana, New Hampshire, New York, Vermont, and Wyoming, but they are outside the scope of this article.\footnote{See, e.g., Richard Winger, 166 Minor Party & Independent Nominees Have Been Elected to State Office in Last 30 Years, BALLOT ACCESS NEWS (Dec. 1, 2007), https://www.ballot-access.org/2007/120107.html; Richard Winger, Five Minor Parties Win Partisan Elections on November 5, BALLOT ACCESS NEWS (Dec. 28, 2019), https://ballot-access.org/2019/12/28/december-2019-ballot-access-news-print-edition/; Richard Winger, Minor Party and Independents Win Twenty-five Legislative Elections, BALLOT ACCESS NEWS (Dec. 28, 2020), https://ballot-access.org/2020/12/28/december-2020-ballot-access-news-print-edition/.
The tables show that the only decades in which more than ten independent candidates were elected to legislatures in every even-year election have been the 2010s decade and, so far, the 2020s decade. The decade with the fewest independent wins was the 1980’s. A handful of states hold all their regularly scheduled elections in odd years, and Table 3 and Table 4 show the results of those contests. Since the end of World War II, Kentucky moved its legislative elections from odd years to even years, but because no independents were elected in Kentucky during the odd-year period, Kentucky is only listed in the even-year tables. Also, New Jersey had even-year elections for its legislature in 1946, but again, because no independents were elected in New Jersey in 1946, New Jersey is only listed in the odd-year charts.

Table 1: 1946–82 For States with Even-Year Legislative Elections

|   | 4 | 6 | 8 | 5 | 2 | 5 | 0 | 5 | 6 | 8 | 0 | 6 | 2 | 6 | 4 | 6 | 6 | 8 | 0 | 7 | 2 | 7 | 6 | 7 | 8 | 0 | 8 | 2 |
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| FL | 26 | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| GA | 27 | 2 | 1 | 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| IL | 28 | 1 | 3 | 1 | 1 | 2 | | | | | | | | | | | | | | | | | | | | | | | |
| KY | 29 | | | | | | | | | | | | | | | | | | | | | | | | | | | |

26 Compiled from State of Fla., Sec’y of State, Tabulation of Votes Cast (1946–82).
27 Compiled from State of Ga., Sec’y of State, Official Tabulation by Counties (1946–82).
29 Compiled from State of Ky., Sec’y of State, Official Primary and General Election Returns (1946–82).
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30 Compiled from State of Me., Sec’y of State, General Election Official Vote (1946–82).
32 Compiled from State of Minn., Sec’y of State, Minnesota Official Results (1946–82).
33 Compiled from State of Mo., Sec’y of State, Roster of Officials (1946–82).
34 Compiled from State of Mont., Sec’y of State, Official General Election Returns (1946–82).
36 Compiled from State of N.H., Sec’y of State, Manual for the General Court (1946–82).
37 Compiled from State of N.M., Sec’y of State, Official Returns (1946–82).
38 Compiled from State of N.Y., Sec’y of State, Legislative Manual (1946–82).
40 Compiled from State of N.D., Sec’y of State, Official Abstract of Votes Cast (1946–82).
41 Compiled from State of Ohio, Sec’y of State, Ohio Election Statistics (1946–82).
42 Compiled from State of Or., Sec’y of State, Official Abstract of Votes (1946–82).
Table 2: 1984–2022 For States with Even-Year Legislative Elections

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45 Compiled from State of S.D., Sec'y of State, Official Election Returns by County (1946–82).
46 Compiled from State of Tenn., Sec'y of State, Tennessee Directory and Official Vote (1946–82).
48 Compiled from State of Vt., Sec'y of State, Primary & General Elections (1946–82).
49 Compiled from State of Wis., State Elections Bd., Votes Cast at the General Election (1946–82).
50 Compiled from State of Wyo., Sec'y of State, Official Directory & Votes Cast (1946–82).
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Table 3: 1945–1983 For States with Odd-Year Legislative Elections

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82 Compiled from State of La., Sec’y of State, Report of the Secretary of State (1945–1983).
Starting in 2010, in every even-numbered year, there have been at least ten independent winners, whereas there are no years earlier than 2010 with as many as ten, except for 1946, 1950, 1962, 1973, and 1974. The year with the most independent wins was 2012, when there were seventeen.

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84 Compiled from State of N.J., Sec’y of State, Results of the General Election (1945–1983).
90 See supra Table 1 for even years and Table 3 for the 1973 election.
91 See supra Table 2.
III. HOW BALLOT DESIGN AFFECTS INDEPENDENT LEGISLATIVE CANDIDATES

It seems reasonable to assume that the decline of party-column ballots, and also the decline of straight-ticket devices, has helped independent candidates. In a party-column ballot, independents are usually relegated to being squeezed into a column, or row, that has the least advantageous spot on the ballot: either the far right or the bottom. Furthermore, because the offices are listed in order of importance, state legislative seats are never near the top (or the left-hand side). They are only on the top in odd-year elections preceding presidential election years in New Jersey and Virginia. In all other cases in regularly scheduled elections, U.S. House candidates are higher on the ballot; also, in even years, two-thirds of the time, any state has a U.S. Senate election. Generally, states have multiple statewide offices for state office on the ballot. Some states have more than ten such partisan offices, and they are almost in a higher position on the ballot. So, a column (or row) containing only a lonely independent candidate for the legislature will be a column (or row) that is mostly empty, making it especially likely voters won’t pay any attention to it. They may not see the name of the independent legislative candidate.

Straight-ticket devices also injure independent candidates because there is no straight-ticket device on the ballot for independent candidates. A voter using a straight-ticket device very likely doesn’t notice the name of an independent candidate for the legislature because the voter need only look at the top of the ballot to find the device for their preferred party, and that area of the ballot doesn’t give any notice that there may be an independent candidate.

To determine whether ballot format affects independent legislative candidates, each state in which at least one independent was elected to the legislature 1945-present is listed below, giving the incidence of independent victories and listing the years in which the ballot design changed. The statements refer to the period 1945 to the present, so when the word “always” is used, that just means that period.

Alabama: Alabama has always used a straight-ticket device but switched from a party-column ballot to an office-group ballot in 1999, although counties with mechanical voting machines continued to use a

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92 New Jersey provides a helpful example. In 2003, Rep. Matt Ahern switched from the Democratic Party to the Green Party as an incumbent. He was dropped from the Democratic line and moved to the far right of the ballot. As a result, this incumbent Congressman received only 10.81% of the vote. See BALLOT ACCESS NEWS, New Jersey Greens Lose a Legislator (Dec. 1, 2003), https://www.ballot-access.org/2003/1201.html#6.
party-column ballot until 2005.\textsuperscript{93} No independent had been elected to the legislature until 1983, when all the state’s legislative seats were elected in November, in an election in which no other partisan offices were on the ballot.\textsuperscript{94} This unusual election occurred because the 1982 legislative election had not been held because the U.S. Justice Department had rejected the redistricting plans three times. The 1983 election was also unusual because there were no legislative primaries; party meetings chose the nominees.\textsuperscript{95} At the November 1983 election, five ballot-listed independents were elected, as well as a write-in winner.\textsuperscript{96} Notably, with only two partisan offices on the ballot (State Senate and State Representative), the ballot was very short.\textsuperscript{97} It is not known if the 1983 ballot used a straight-ticket device, and whether an office-group or party-column format was used, but with only two partisan offices on the ballot, it hardly matters. Some of the independent winners were incumbents who had not been nominated by their party (in all cases, the Democratic Party), so they ran as independents, which helps explain why so many independents were successful.\textsuperscript{98} Setting aside this unusual election, no independent won until 2010, after the state was using an office-group ballot.\textsuperscript{99} She was re-elected as an independent in 2014.

\textbf{Alaska:} Alaska never had a straight-ticket device.\textsuperscript{100} It always used an office-group format, except in 1960, when it had a party-column format.\textsuperscript{101} Alaska elected many independents to its legislature starting with statehood.\textsuperscript{102} Two were elected in 1958;\textsuperscript{103} two in 1960;\textsuperscript{104} one in

\begin{footnotesize}
\textsuperscript{93} See Ballot Data, supra note 2.
\textsuperscript{96} See ALABAMA OFFICIAL STATISTICAL REGISTER, supra note 81.
\textsuperscript{97} Sample Ballot, Montgomery Cnty., Ala. (Nov. 1983) (on file with author).
\textsuperscript{98} See Schmidt supra note 95 (discussing the expected success of independent candidates given the shake up of the Democratic Party).
\textsuperscript{99} See supra Table 2.
\textsuperscript{100} See Ballot Data, supra page 2.
\textsuperscript{101} See Ballot Data, supra page 2.
\textsuperscript{102} See, e.g., supra Table 1 & Table 2.
\textsuperscript{103} See supra Table 1.
\textsuperscript{104} See supra Table 1.
\end{footnotesize}
1974, one in 1976; two in 1992; one in 1994; two in 2016; one in 2018; two in 2020; and six in 2022.

Arkansas: Arkansas has never had a straight-ticket device, and has always used an office-group ballot. One independent was elected in 1946, one in 1962, one in 1988, and one in 1992.

California: California also has never had a straight-ticket device and has always used an office-group ballot. One independent was elected in 1986, one in 1990, one in 1992, one in 1994, and one in 2020.

Connecticut: Connecticut had a straight-ticket device until 1987 and has always had a party-column ballot. Two independents were elected in 1954.

Florida: Florida has never had a straight-ticket device. It had an office-group ballot during the period, except that in counties that used mechanical voting machines, it had a party-column ballot until 1969. One independent was elected in 1972; she was re-elected in 1974.

Georgia: Georgia repealed the straight-ticket device in 1993. It had a party-column ballot until 2005 for absentee ballots and for

105 See supra Table 1.
106 See supra Table 1.
107 See supra Table 2.
108 See supra Table 2.
109 See supra Table 2.
110 See supra Table 2.
111 See supra Table 2.
112 See supra Table 2.
113 See supra Table 2.
114 See Ballot Data, supra note 2.
115 See supra Table 1.
116 See supra Table 1.
117 See supra Table 2.
118 See supra Table 2.
119 See Ballot Data, supra note 2.
120 See supra Table 2.
121 See supra Table 2.
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123 See supra Table 2.
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125 See Ballot Data, supra note 2.
126 See supra Table 2.
127 See Ballot Data, supra note 2.
128 See Ballot Data, supra note 2.
129 See supra Table 1.
130 See supra Table 1.
131 See Ballot Data, supra note 2.

jurisdictions that used mechanical voting machines. But starting in 1963, it had an office-group ballot for jurisdictions that used punch card ballots, and (later) for electronic vote-counting systems. Two independents were elected in 1964, one was re-elected in 1966 and 1968, two were elected in 2000, one was re-elected in 2002, and one was elected in 2010. He was re-elected in 2012 and 2014.

Illinois: Illinois repealed the straight-ticket device in 1997. It had a party-column ballot for jurisdictions that used paper (hand-counted) ballots and mechanical voting machines until 2005. But jurisdictions that used punch cards switched to office-group in the late 1960s, and those jurisdictions included Cook County. An independent was elected to the State House of Representatives in 1972, three in 1974, one in 1976, one in 1978, and two in 1980. All of them were elected from districts in Cook County. The ability of independent candidates to be elected to the State House was somewhat enhanced because from 1870 through 1980, Illinois used cumulative voting for State House elections. Each district elected three members, but voters were free to either cast one vote for each of three candidates, or one and one-half votes for two candidates, or three votes for a single candidate. The system was repealed effective 1982.

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132 See Ballot Data, supra note 2.
133 See Ballot Data, supra note 2.
134 See supra Table 1.
135 See supra Table 1.
136 See supra Table 2.
137 See supra Table 2.
138 See supra Table 2.
139 See supra Table 2.
140 See Ballot Data, supra note 2.
141 See Ballot Data, supra note 2.
142 See Ballot Data, supra note 2.
143 See supra Table 1.
144 See supra Table 1.
145 See supra Table 1.
146 See supra Table 1.
147 See supra Table 1.
148 See supra Table 1.
149 See Data Table supra note 2.
151 History of Cumulative Voting, 1870-1970, ILLINOIS ISSUES: SPECIAL REPORT (J. Michael Lennon & Caroline A. Gherardini, eds. 1982),
Kentucky: Kentucky has always had a straight-ticket device. Ballot format was party-column in jurisdictions that used mechanical voting machines, and electronic vote-counting machines, until 2005. Almost all counties used those systems. However, for jurisdictions that used punch cards, the format was office-block starting in 1983. One independent was elected in 2006 and re-elected in 2010.

Louisiana: Louisiana eliminated the straight-ticket device in 1975 for state office, and eliminated it for federal office in 1977 (state offices were not elected in even years, so the two types of office were not on the same ballots). The state switched from party-column to office-group for state office in 1975, and in 1977 for federal office. In 1983 an independent was elected; he was re-elected in 1987; two independents were elected in 1991; two independents were elected in 2007; two were elected in 2011. In recent years Louisiana has had a ballot-qualified party called the Independent Party, which has elected a legislator more than once, but those instances are not being included because this article is about independent candidates, not nominees of minor parties.

Maine: Maine repealed its straight-ticket device in 1967. It also switched from party-column to office-group in 1967. An independent was elected in 1950; one was elected in 1974; two were elected in 1983; one was elected in 1987; two independents were elected in 1991; two independents were elected in 2007; two were elected in 2011. In recent years Louisiana has had a ballot-qualified party called the Independent Party, which has elected a legislator more than once, but those instances are not being included because this article is about independent candidates, not nominees of minor parties.


152 Ballot Data, supra note 2.
153 Ballot Data, supra note 2.
154 Ballot Data, supra note 2.
155 See supra Table 2.
156 Ballot Data, supra note 2.
157 See supra Table 2.
158 See supra Table 3.
159 See supra Table 4.
160 See supra Table 4.
161 See supra Table 4.
162 See supra Table 4.
164 Ballot Data, supra note 2.
165 Ballot Data, supra note 2.
166 See supra Table 1.
167 See supra Table 1.
1978,\textsuperscript{168} one in 1994,\textsuperscript{169} two in 1996,\textsuperscript{170} two in 1998,\textsuperscript{171} two in 2000,\textsuperscript{172} three in 2002,\textsuperscript{173} one in 2004,\textsuperscript{174} two in 2006,\textsuperscript{175} one in 2008,\textsuperscript{176} one in 2010,\textsuperscript{177} four in 2012,\textsuperscript{178} four in 2014,\textsuperscript{179} two in 2016,\textsuperscript{180} five in 2018,\textsuperscript{181} four in 2020,\textsuperscript{182} and two in 2022.\textsuperscript{183}

**Massachusetts:** Massachusetts has not had a straight-ticket device and has always had an office-block ballot.\textsuperscript{184} An independent was elected in 1966;\textsuperscript{185} two in 1972,\textsuperscript{186} three in 1974 and 1976,\textsuperscript{187} two in 1978,\textsuperscript{188} one in 1980,\textsuperscript{189} one in 1986,\textsuperscript{190} one in 2002,\textsuperscript{191} one in 2004,\textsuperscript{192} one in 2008,\textsuperscript{193} one in 2018,\textsuperscript{194} one in 2020,\textsuperscript{195} and one in 2022.\textsuperscript{196}

**Minnesota:** Minnesota has not had a straight-ticket device.\textsuperscript{197} All jurisdictions used an office-block format except for those that used mechanical voting machines, which ceased to be used in the state in

\textsuperscript{168} See supra Table 1.
\textsuperscript{169} See supra Table 2.
\textsuperscript{170} See supra Table 2.
\textsuperscript{171} See supra Table 2.
\textsuperscript{172} See supra Table 2.
\textsuperscript{173} See supra Table 2.
\textsuperscript{174} See supra Table 2.
\textsuperscript{175} See supra Table 2.
\textsuperscript{176} See supra Table 2.
\textsuperscript{177} See supra Table 2.
\textsuperscript{178} See supra Table 2.
\textsuperscript{179} See supra Table 2.
\textsuperscript{180} See supra Table 2.
\textsuperscript{181} See supra Table 2.
\textsuperscript{182} See supra Table 2.
\textsuperscript{183} See supra Table 2.
\textsuperscript{184} See Ballot Data, supra note 2.
\textsuperscript{185} See supra Table 1.
\textsuperscript{186} See supra Table 1.
\textsuperscript{187} See supra Table 1.
\textsuperscript{188} See supra Table 1.
\textsuperscript{189} See supra Table 1.
\textsuperscript{190} See supra Table 1.
\textsuperscript{191} See supra Table 1.
\textsuperscript{192} See supra Table 1.
\textsuperscript{193} See supra Table 1.
\textsuperscript{194} See supra Table 1.
\textsuperscript{195} See supra Table 1.
\textsuperscript{196} See supra Table 1.
\textsuperscript{197} See Ballot Data, supra note 2.
An independent was elected in 1962, one in 1964, one in 1982, and one in 2000.

Mississippi: Mississippi has not had a straight-ticket device and has always had an office-group ballot. An independent was elected in 1971, one in 1975, one in 1979, one in 1991, three in 1995, three in 1999, and one in 2019.

Missouri: Missouri repealed its straight-ticket device in 2005. It used party-column ballots for hand-counted paper ballots until 2005, but it used office-group ballots for jurisdictions that used punch cards, starting at least as early as 1981. An independent was elected in 1998.

Montana: Montana has not had a straight-ticket device and has always had an office-group ballot. An independent was elected in 1946, two in 1948, and three in 1958.

Nevada: Nevada has not had a straight-ticket device and has always had an office-group ballot. An independent was elected in 1946; one was elected in 1964.

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199 See supra Table 1.
200 See supra Table 1.
201 See supra Table 1.
202 See supra Table 2.
203 See Ballot Data, supra note 2.
204 See supra Table 3.
205 See supra Table 3.
206 See supra Table 3.
207 See supra Table 4.
208 See supra Table 4.
209 See supra Table 4.
210 See supra Table 4.
212 See supra Table 2.
213 See Ballot Data, supra note 2.
214 See supra Table 1.
215 See supra Table 1.
216 See supra Table 1.
217 See Ballot Data, supra note 2.
218 See supra Table 1.
219 See supra Table 1.
New Hampshire: New Hampshire repealed its straight-ticket device in 2007. It used party-column format in jurisdictions that used paper (hand-counted) ballots and mechanical voting machines until 1997, but punch card jurisdictions used office-group starting in the 1970's. The entire state switched to office-group in 1995, but then the entire state switched to party-column in 2005, after punch cards were gone. An independent was elected in 1946; three were elected in 1950, one in 1952, three in 1956, one in 1960, two in 1982, one in 1990, and one in 2014.

New Jersey: New Jersey has not had a straight-ticket device; it has always had a party-column ballot. One independent was elected in 1971.

New Mexico: New Mexico stopped using a straight-ticket device in 2011. The state used party column ballots until 1989, when it switched to office-group. One independent was elected in 2020.

New York: New York doesn’t have a straight-ticket device and has always had a party-column ballot. An independent was elected in 1970; another one was elected in 2020.


221 See Ballot Data, supra note 2.

222 See Ballot Data, supra note 2.

223 See supra Table 1.

224 See supra Table 1.

225 See supra Table 1.

226 See supra Table 1.

227 See supra Table 1.

228 See supra Table 1.

229 See supra Table 1.

230 See supra Table 2.

231 See Ballot Data, supra note 2.

232 See Table 3 supra page 10; see also, e.g., Colleen O'Dea, Lawsuit Challenges 'Party Line’ Ballots that ‘Stack the Deck’ in Some NJ Counties, N.J. SPOTLIGHT (Jan. 27, 2021), https://www.njspotlightnews.org/2021/01/new-nj-lawsuit-over-party-line-ballots-alleges-preferential-treatment-party-endorsed-candidates/ [https://perma.cc/754H-MRC7].

233 See Ballot Data, supra note 2.

234 See Ballot Data, supra note 2.

235 See supra Table 2.

236 See Ballot Data, supra note 2.

237 See supra Table 1.

238 See supra Table 2.
North Carolina: North Carolina stopped using a straight-ticket device in 2013. It used party-column for paper ballots counted by hand, and in jurisdictions that used mechanical voting machines. But it used office-group for jurisdictions that used punch card ballots, and mark-sense ("fill in the bubble") ballots, which went into use in this state beginning in the late 1980’s. An independent was elected in 2010.

North Dakota: North Dakota didn’t use a straight-ticket device; and switched from party-column to office-group in 1981. An independent was elected in 1966.

Ohio: Ohio didn’t use a straight-ticket device; and switched from party-column to office-group in 1949. One independent was elected in 1950.

Oregon: Oregon never used a straight-ticket device; always used an office-group ballot. An independent was elected in 1974; one was elected in 1998.

Rhode Island: Rhode Island stopped using a straight-ticket device in 2014. It used party-column ballots for all jurisdictions with mechanical voting machines (which was almost the entire state) until those machines were phased out after the 2000 election, but it authorized office-group ballots for other jurisdictions starting in 1993. An independent was elected in 1970, one in 1984, one in 1970, one in 1984.

South Carolina: South Carolina has only had government-printed ballots starting in 1950, and since then has always had a straight-ticket device. It switched from party-column to office-group for jurisdictions that used punch card ballots starting in the late 1970’s and for places that used touch-screen ballots in the 2000’s decade. It switched to office-group for hand-counted paper ballots in 2007. It had used party-column ballots for places that used mechanical voting machines, but they were phased out after 2000. An independent was elected in 1990 and re-elected in 1992; an independent was elected in 1994; an independent was elected in 1996; six were elected in 2012.

South Dakota: South Dakota stopped using a straight-ticket device in 1997. The state switched from party-column to office-block in 2003, except those jurisdictions using punch card ballots had switched as soon as punch cards began to be used, in the late 1970’s. An independent was elected in 1964; one was elected in 1994; one was elected in 2008 and re-elected in 2010.

Tennessee: Tennessee never used a straight-ticket device and always had an office-group ballot. An independent was elected in 1968, one in 1974, one in 1976, one in 1978, one in 1982, and one in 2010 who was re-elected in 2012.
Utah: Utah stopped using a straight-ticket device in 2020.\textsuperscript{272} Its jurisdictions that used punch card voting switched from a party-column to an office-group format when punch cards were first used in Utah in the early 1980s. The other jurisdictions switched from party-column to office-group in 1995.\textsuperscript{273} An independent was elected in 1956.\textsuperscript{274}

Vermont: Before 1977, Vermont had separate ballots for most offices, which was completely different from ballots used in other states.\textsuperscript{275} There was one ballot for president, a separate ballot for U.S. Senate, another one for U.S. House, another one for State Senate, another one for State Representative, another one for the statewide state offices, and yet another one for county offices. The only ballots with multiple offices, those for statewide state office and county office, did have a straight-ticket device.\textsuperscript{276} In effect, for state legislative elections, the separate ballots for State Senate and State Representative have more in common with office-group ballots than party-column ballots, because with only one office, there obviously was no column. Nine independents were elected in 1946; five in 1948; eight in 1950; five in 1952; one in 1956; six in 1960; eight in 1962; one in 1964; two in 1966; two in 1972; three in 1974; two in 1976; two in 1978; three in 1980; one in 1982; one in 1984\textsuperscript{277}; one in 1986; four in 1992; one in 1994; one in 1996; two in 1998; one in 2000; three in 2002; one in 2004; two in 2006; two in 2008; two in 2010; four in 2012; five in 2014; seven in 2016; five in 2018; five in 2020; three in 2022.\textsuperscript{278}

Virginia: Virginia never had a straight-ticket device, and always used office-group ballots.\textsuperscript{279} Except for president, there were no party labels on those ballots until 2000 (although parties did have nominees).\textsuperscript{280} An independent was elected in 1961; one in 1965; one in 1967; one in 1969; four in 1971; fifteen in 1973; five in 1975; three in 1977; one in 1979; two in 1981; one in 1983;\textsuperscript{281} two in 1985; one in 1987; one in 1989; one in 1991; one in 1993; one in 1995; one in 1997;

\begin{footnotes}
\footnotetext[272]{See Ballot Data, supra note 2; Bethany Rodgers, Governor signs bill to end straight-party voting in Utah, SALT LAKE TRIBUNE (Mar. 24, 2020, 10:22 PM), https://www.sltrib.com/news/politics/2020/03/25/governor-signs-bill-end/, [https://perma.cc/2ZBC-BQX2].}
\footnotetext[273]{See Ballot Data, supra note 2.}
\footnotetext[274]{See supra Table 1.}
\footnotetext[275]{See supra note 3 for a fuller explanation.}
\footnotetext[276]{See Ballot Data, supra note 2.}
\footnotetext[277]{See supra Table 1.}
\footnotetext[278]{See supra Table 2.}
\footnotetext[279]{See Ballot Data, supra note 2.}
\footnotetext[280]{See, e.g., Virginia Sample Ballot (1996) (on file with author).}
\footnotetext[281]{See supra Table 3.}
\end{footnotes}
one in 1999; two in 2001; three in 2003; two in 2005; two in 2007; two in 2009; one in 2011.\textsuperscript{282} Delegate Lacey Putney had been re-elected as an independent in every election from 1967 through 2011.\textsuperscript{283}

**Wisconsin:** Wisconsin stopped using a straight-ticket device in 2011.\textsuperscript{284} It had a separate ballot for president, but otherwise used party-column until 2003.\textsuperscript{285} However, jurisdictions with punch card ballots used an office-group ballot starting in the 1980s when some parts of the state first used punch card ballots.\textsuperscript{286} An independent was elected in 2008; one was elected in 2010.\textsuperscript{287}

**Wyoming:** Wyoming never used a straight-ticket device. It used party-column until 2001, when it switched to office-group.\textsuperscript{288} However, jurisdictions that used punch card ballots used an office-group, starting in the late 1970’s when punch cards were first used in the state.\textsuperscript{289} An independent was elected in 1970 and re-elected in 1972, 1974, and 1976.\textsuperscript{290} An independent was elected in 1982; an independent was elected in 2018 and re-elected in 2020.\textsuperscript{291}

### IV. Conclusion

Since the end of World War II, there are 381 instances in which an independent candidate was elected to a state legislature in a regularly scheduled election, excluding write-in winners. This table shows the number of such wins in each type of ballot format:

**Table 5:** Independent Candidates Elected by Ballot Type

<table>
<thead>
<tr>
<th>STATE</th>
<th>PTY-COL WITH DEVICE</th>
<th>PTY-COL BUT</th>
<th>OFFICE-GR WITH DEVICE</th>
<th>OFFICE-GR WITH</th>
<th>undetermined</th>
</tr>
</thead>
</table>

\textsuperscript{282} See supra Table 4.


\textsuperscript{285} See Ballot Data, supra note 2.

\textsuperscript{286} Mary Jo Wagner, Few Punch Card Voting Systems Left, WISC. PUBLIC RADIO (Sep. 9, 2002 12:00 AM). https://www.wpr.org/few-punch-card-voting-systems-left.

\textsuperscript{287} See supra Table 2.

\textsuperscript{288} See Ballot Data, supra note 2.


\textsuperscript{290} See supra Table 1.

\textsuperscript{291} See supra Table 2.
### Table

<table>
<thead>
<tr>
<th>State</th>
<th>NO DEVICE</th>
<th>NO DEVICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Alaska</td>
<td>0</td>
<td>19</td>
</tr>
<tr>
<td>Arkansas</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>California</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Florida</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Georgia</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Illinois</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Kentucky</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
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<td>8</td>
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<td>20</td>
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</tr>
<tr>
<td>Nevada</td>
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<td>2</td>
</tr>
<tr>
<td>New Hamp.</td>
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<td>1</td>
</tr>
<tr>
<td>New Jersey</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>New York</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>No. Carolina</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No. Dakota</td>
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<td>0</td>
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<td>Ohio</td>
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<td>1</td>
</tr>
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<td>2</td>
</tr>
<tr>
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<td>3</td>
</tr>
<tr>
<td>So. Carolina</td>
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<td>6</td>
</tr>
<tr>
<td>S. Dakota</td>
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<td>2</td>
</tr>
<tr>
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<td>7</td>
</tr>
<tr>
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<td>0</td>
</tr>
<tr>
<td>Vermont</td>
<td>0</td>
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</tr>
<tr>
<td>Virginia</td>
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<td>56</td>
</tr>
<tr>
<td>Wisconsin</td>
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<td>2</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>33</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

It does not take any sophisticated statistical analysis to observe that there is a strong correlation between states with an office-group
ballot and no straight-ticket device, and independent candidate success in state legislative races.

Furthermore, one can intuitively note the correlation by considering the New England states. Presumably, the political culture of all six New England states is relatively similar. Yet the New England state that has always used a party-column ballot and has used a straight-ticket device for most of its history, Connecticut, has only elected two independents to its legislature since the end of World War II.292 The other five New England states have accounted for almost exactly half the instances of independent candidate success in the nation, during the same period.293

Correlation does not necessarily mean causation. It may be that the states with office-group ballots and no straight-ticket device have chosen those ballot formats because political parties in those states have less power and prestige. Conversely, where parties have more power and prestige, they have the ability to maintain a ballot format that bolsters them, and in that climate, regardless of ballot format, viable independent candidates are less likely to emerge. But my hunch is that ballot format itself is a strong determinant of whether independent candidates get elected to state legislatures.

292 See supra Tables 1 & 2.
293 See supra Tables 1 & 2.