



School of Law

## **Faithless Electors of 1912: Appendix**

A supplement to Ross E. Davies, “Faithless Electors of 1912”,  
*4 Green Bag 2d 179* (2001)

**Ross E. Davies,  
George Mason University School of Law**

*Green Bag 2d*, Forthcoming

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# Faithless Electors of 1912: Appendix

A SUPPLEMENT TO ROSS E. DAVIES, *FAITHLESS ELECTORS OF 1912*, 4 GREEN BAG 2D 179 (2001)

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FROM FOOTNOTE 2

IN THE SUPREME COURT  
OF THE UNITED STATES.

S.A. Marks, et al.,

vs.

Samuel A. Davis, et al.

BEFORE JUSTICES VAN DEVANTER  
AND PITNEY.

This is an application for a writ of error and an order like unto a supersedeas in a primary election case determined adversely to the plaintiffs by the District Court of Harvey County, Kansas, and by the Supreme Court of that state. The date fixed for the election is August 6th 1912. The record discloses that the plaintiffs specially and clearly asserted in the state courts certain rights claimed to arise under the Constitution and laws of the United States, and that these rights, by necessary implication and intendment, were denied by the two state courts.

Whether the rights asserted have a real basis in the constitution and laws of the United States is the criterion by which we must determine whether the writ of error shall be allowed. Under the settled practice, if the justices to whom the application is made believe that the existence or non-existence of the rights asserted is involved in serious doubt, the writ should be allowed. We think that is the situation here.

The questions raised do not seem to be

determined or settled by any previous decision of the United States Supreme Court. Some of the opinions of the court contain expressions which tend to sustain the contentions of the plaintiffs. Whether in view of the facts in the cases in which these expressions occur they should be regarded as deliberate and controlling ought not to be determined otherwise than by the court itself. It is conceded that the questions are important and of large public concern, and we have concluded that those who present them are fairly entitled to the judgment of the court which by the constitution is made the final arbiter of all controversies arising under that instrument. In this situation we think the writ of error should be allowed.

But as courts are reluctant to interfere with the ordinary course of elections, whether primary or otherwise, as the rights asserted are not clear but doubtful, and as the injury and public inconvenience which would result from a supersedeas or any like order, if eventually the judgment of the state court should be affirmed, or the writ of error dismissed, would equal the injury which otherwise would ensue, we think no supersedeas or kindred order should be granted.

[date stamp:]

Filed Aug. 23, 1912, D.A. Valentine, Clerk,  
[Kansas] Supreme Court

FROM FOOTNOTE 3

IN THE SUPREME COURT OF KANSAS.

R.A. Marks et al., Appellants,

vs.

No. 18363.

Samuel A. Davis et al., Appellees.

APPELLANTS' ABSTRACT.

On July 17, 1912, the Appellants commenced an action in the District Court of Harvey County, Kansas, against the defendants for the redress of certain injuries to their rights as electors of the State of Kansas. Appellants' petition is as follows:

IN THE DISTRICT COURT OF  
HARVEY COUNTY, KANSAS.

R.A. Marks, E.S. Dean, F.B. Patten, Lew E. Darrow, G.C. Allen, S.B. Keiser, H.O. Douglass, H.W. Demuth, and R.D. Strain, All of Decatur County, and C.E. Lynn, E.D. George, and J.H. Wollen, All of Jewell County, Plaintiffs,

vs.

Samuel A. Davis, Robert M. Armstrong, Dorsey Green, L.A. Millspaugh, J.A. Lister, John Stewart, Robert C. Postelwaite, and E.S. Rule; John A. Hunter, County Clerk of Harvey County; R.E. Culbertson, County Clerk of Allen County; C.B. Spradlin, County Clerk of Anderson County; Edward Iverson, County Clerk of Atchison County; S.W. Ireland, County Clerk of Barber County; C.F. Younkin, County Clerk of Barton County; Fred G. Swartz, County Clerk of Bourbon County; Miss Jessie Campbell, County Clerk of Brown County; M.L. Arnold, County Clerk of Butler County; Albert Harder, County Clerk of Chase County; Edgar Randall, County Clerk of Chautauqua County; W.H. Shaffer, County Clerk of Cherokee County; B.B. Hedrick, County Clerk of Clark County; W.S. Booth, County Clerk of Chey-

enne County; J.W. Nordstrom, County Clerk of Clay County; Rial A. Short, County Clerk of Cloud County; Geo. Throckmorton, County Clerk of Coffey County; Eyman Phebus, County Clerk of Comanche County; W.M. Rencenberger, County Clerk of Cowley County; D.C. Noel, County Clerk of Crawford County; C.J. Raymond, County Clerk of Decatur County; H.W. King, County Clerk of Dickinson County; Marg't Schletzbaum, County Clerk of Doniphan County; W.R. Green, County Clerk of Douglas County; Florence Irwin, County Clerk of Edwards County; F.L. Barbour, County Clerk of Elk County; P.V. Gottschalk, County Clerk of Ellis County; W.F. Sekavee, County Clerk of Ellsworth County; Guy B. Norris, County Clerk of Finney County; H.N. Kinkead, County Clerk of Ford County; Fred Baldwin, County Clerk of Franklin County; W.B. Spurlock, County Clerk of Geary County; Geo. H. Thomas, County Clerk of Gove County; Benj. J. Smith, County Clerk of Graham County; J.E. Tarbet, County Clerk of Grant County; H.N. Hildebrand, County Clerk of Gray County; Guy G. Adams, County Clerk of Greeley County; W.O. Blackburn, County Clerk of Greenwood County; Ford Crittenden, County Clerk of Hamilton County; R.P. Chevraux, County Clerk of Harper County; J.L. Brown, County Clerk of Haskell County; L.C. Kroontz, County Clerk of Hodgeman County; W.H. Webster, County Clerk of Jackson County; Dwight A. Bliss, County Clerk of Jefferson County; Joseph Finch, County Clerk of Jewell County; J.T. Kincaid, County Clerk of Johnson County; Emanuel Bixler, County Clerk of Kearny County; W.E. Hart, County Clerk of Kingman County; Harry Paxton, County Clerk of Kiowa County; W.A. Blair, County Clerk of Labette County; E.B. Emerson, County Clerk of Lane County; Jesse A.

Hall, County Clerk of Leavenworth County; C.E. Booze, County Clerk of Lincoln County; Geo. Waymire, County Clerk of Linn County; V.H. Nolind, County Clerk of Logan County; O.K. Miller, County Clerk of Lyon County; B.B. Reimer, County Clerk of Marion County; A.A. Bork, County Clerk of Marshall County; Gust. Nyquist, County Clerk of McPherson County; W.W. Pressly, County Clerk of Meade County; Carson Lane, County Clerk of Miami County; H.L. Petterson, County Clerk of Mitchell County; Gerald A. Otwell, County Clerk of Montgomery County; Geo. A. Parker, County Clerk of Morris County; W.D. Thompson, County Clerk of Morton County; J.L. Sourk, County Clerk of Nemaha County; W.E. Neal, County Clerk of Neosho County; Claude Miler, County Clerk of Ness County; Arthur Saum, County Clerk of Norton County; George E. McGrath, County Clerk of Osage County; John Doane, County Clerk of Osborne County; W.M. Truitt, County Clerk of Ottawa County; W.C. Ware, County Clerk of Pawnee County; N.C. Bracken, County Clerk of Phillips County; W.S. Plummer, County Clerk of Pottawatomie County; S.J. Allmon, County Clerk of Pratt County; D.S. Marietta, County Clerk of Rawlins County; Howard M. Payne, County Clerk of Reno County; Henry Douglass, County Clerk of Republic County; Jos. Pulliam, County Clerk of Rice County; Geo. H. Hungerford, County Clerk of Riley County; S.S. Sinclair, County Clerk of Rooks County; M.M. Wilson, County Clerk of Rush County; F.J. Smith, County Clerk of Russell County; Amos W.W. Godfrey, County Clerk of Saline County; S.W. Wilson, County Clerk of Scott County; J.L. Leland, County Clerk of Sedgwick County; E.D. Cooper, County Clerk of Seward County; S.G. Zimmerman, County Clerk of Shawnee County; A.S. McLeod, County Clerk of Sheridan County; C.W. Jupe, County Clerk of Sherman County; John

A. Merriam, County Clerk of Smith County; R.C. Audrey, County Clerk of Stafford County; James Herrick, County Clerk of Stanton County; C.F. Bell, County Clerk of Stevens County; C.E. Crosen, County Clerk of Sumner County; A.B. Sargent, County Clerk of Thomas County; W.N. Larabee, County Clerk of Trego County; C.C. Stotler, County Clerk of Wabaunsee County; E.R. Ellison, County Clerk of Wallace County; J.A. Maxwell, County Clerk of Washington County; Geo. R. Ballard, County Clerk of Wichita County; Frank Crum, County Clerk of Wilson County; John E. Barrett, County Clerk of Woodson County; Frank M. Holcomb, County Clerk of Wyandotte County, Defendants.

PETITION.

The Plaintiffs say they are residents of Decatur County, Kansas, where they have resided for more than one year last past, and bring this action in behalf of themselves and all other Republican electors of the State of Kansas similarly situated and who may join herein or become parties hereto; that during all of said time and for a long time previous thereto, the plaintiffs and each of them have been and now are, qualified electors and members of a certain political party known as the Republican party and have affiliated therewith and embraced and carried out the principles of said party; that heretofore on or about the 23rd day of May, 1912, the defendants Samuel A. Davis, Robert M. Armstrong, Dorsey Green, L. A. Millspaugh, J. A. Lister, John Stewart, Robert C. Postlethwaite, and E. S. Rule, caused to be circulated in the county of Decatur and in other counties in the State of Kansas, a certain form of petition which said defendants and each of them sought to procure members of said Republican party to subscribe and thereby procure the said defendants (hereinafter called pretended Republicans) to be nominated under the laws of the

State of Kansas as Republican presidential electors to be voted for at the ensuing primary election of candidates for the Republican nomination of presidential electors to be held in the State of Kansas on Tuesday, August 6, 1912. A copy of said petitions as presented in behalf of said defendants are hereto attached and marked respectively exhibits 1 to 8 inclusive; that at the time the said petitions were so presented to the plaintiffs herein the said pretended Republicans seeking such nominations pretended to the plaintiffs, and each of them, through their duly authorized agents that said pretended Republicans, and each of them, were members in good standing of said Republican party and that if the plaintiffs would subscribe their names to said petitions, they and each of them, would act according to the principles of said Republican party; be bound by its rules, regulations and customs; and, would support the candidates of said Republican party for the offices of President and Vice-President of the United States nominated by the National Republican Convention, which at the time said petitions were so presented to the plaintiffs had been duly called pursuant to the practices, regulations and customs of said Republican party; that the plaintiffs as qualified electors of said counties and members of said political party relied upon the said representations and believing in the good faith and loyalty of said pretended Republicans that they would in good faith represent the principles of said party, signed said petitions as more particularly shown in said exhibits attached hereto, and in and by their said signatures declared that the plaintiffs and each of them intended to support the said pretended Republicans as bona fide Republican candidates for the said offices of presidential electors, and as representing the principles of said party; that after having procured by the means aforesaid the signatures of the plaintiffs to said petitions the said pretended Republicans, and each of them, caused said petitions

to be filed in the office of the Secretary of State of the State of Kansas, and thereafter on or before July 1, 1912, caused their names to be certified by the Secretary of State of the State of Kansas to the county clerks of each of the counties in said State as Republican candidates for the office of presidential elector to be voted for by the members of the Republican party of the State of Kansas, with the intent, purpose and design of having their names placed upon the Republican primary ballots which it was and is the duty of said county clerks to have printed pursuant to the election laws of the State of Kansas regulating primary elections.

## II.

The plaintiffs further say that said pretended Republicans and each of them caused said petitions to be prepared and circulated also in the counties of Greely, Geary, Ness, Lane, Chautaugua, Meade, Sheridan, Cowley, Wallace, Linn, Republic, Hodgeman, Smith, Jewell, Rawlins, Harvey, Graham, Thomas and Pottawatomie, in the State of Kansas, and procured members of the Republican party to sign the same with the deliberate intention, design and purpose of perpetrating a fraud upon the members of said Republican party; that said pretended Republicans at the time of the preparation and circulation of said petitions and the signing of the same had no intention of representing the principles of said Republican party, but on the contrary had then fully determined that they would not abide by the action of the National Republican Convention, soon thereafter to be convened in regular session, unless said convention should nominate as the republican candidate for the office of President of the United States *and* Theodore Roosevelt; that said pretended Republicans did not, nor did either of them, disclose to the plaintiffs or either of them, their intention not to represent the principles of the Republican party; and did not disclose their intent and design to deny the

right and authority of Said National Republican Convention to nominate the Republican candidates for President and Vice-President of the United States; and did not disclose to the plaintiffs that they and each of them reserved to themselves the right to determine who should be candidates of the Republican party for President and Vice-president of the United States; nor did said pretended republicans, or either of them, disclose to the plaintiffs their intention not to abide by the action of said National Republican Convention in nominating republican candidates for President and Vice-president; but on the contrary the said pretended Republicans and each of them, through their duly authorized agents engaged by them to circulate said petitions and procure these plaintiffs to sign the same, represented and led plaintiffs to believe that said pretended Republicans, and each of them, would do everything in their power to uphold the principles, rules, regulations and customs of said republican party; and that they and each of them were members of the Republican party; that they and each of them had in the past and would in the future abide by the action of the duly constituted authorities of said Republican party; and particularly that they and each of them, being such republicans and representing the principles of said party, would loyally support the candidates of said party nominated by said Republican National Convention. The plaintiffs aver that the aforesaid intentions of said pretended Republicans not to abide by the action of said Republican National Convention, and not to represent the principles of said party and otherwise to act in opposition to said principles of said party and its candidates were concealed from the plaintiffs and each of them, and that said plaintiffs were induced by said false representations and concealments so made by said pretended Republicans, and in their behalf, to sign said petitions, that if the plaintiffs had been informed of said intentions and designs of said

pretended republicans not to represent the principles of said party, and not to abide by the action of the duly constituted authorities and National Convention of said party, and not to support the candidates of said party of President and Vice-president of the United States nominated by said National Republican Convention, neither of the plaintiffs would have signed said petitions, but on the contrary would have refused to do so; and the plaintiffs aver that by reason of the aforesaid false and fraudulent representations made to them by said pretended Republicans and in their behalf, and by the aforesaid fraudulent concealments practiced upon the plaintiffs and each of them the plaintiffs were induced to sign said petitions which if the plaintiffs had known the facts and intentions of the said pretended Republicans the plaintiffs would not have signed. Plaintiffs further aver that without the signature of the plaintiffs and other republicans similarly situated in other counties above mentioned procured as aforesaid by the fraudulent conduct of said pretended Republicans, they nor either of them, lawfully could have procured the certification of their names to the county clerks of this State to be placed upon Republican primary ballots as Republican candidates for presidential electors.

### III.

The plaintiffs further say that the said Republican party has a National organization known as the National Republican Committee; that ever since the organization of said party it has been the invariable practice, rule, and custom for said National Republican Committee every four years to issue a call for a delegate national republican convention with authority to nominate candidates of said republican party for President and Vice-president of the United States, and to adopt a party platform of principles; that pursuant to said invariable practices, customs, rules and regulations, which has been in continuous

force and effect for more than fifty years, the said National Republican Committee duly called a National Delegate Republican Convention to be held in the City of Chicago on June 18, 1912; that pursuant to said call said Delegate Convention duly assembled and thereafter on the 22d day of June, 1912, said National Republican Convention duly nominated as candidates of said republican party for the offices of President and Vice-president of the United States, Wm. H. Taft to be president, and James S. Sherman to be Vice-president; that thereafter and on or about the 9th day of July 1912, the said Samuel H. Davis, one of the said pretended Republicans answering a letter addressed to him by F. B. Stanley, Kansas Republican National Committeeman, stated:

Newton, Kansas, *July 10, 1912.*

"Mr. Fred B. Stanley, Wichita, Kansas.

Dear Sir: In reply to yours of the 8<sup>th</sup> inst., asking me how I will stand if nominated and elected to the position of elector. I do not believe Taft the legal nominee of the Republican Party. I believe and I think you believe the nomination was stolen. And any man to support Taft believing as I do would have to be a rabbit against his own conscience. This I absolutely refuse to do. If Mr. Taft had received the nomination honestly I would have supported and voted for him, but under the conditions I cannot and will not give my personal vote, nor an electoral vote if I am given the authority to cast one, to Mr. Taft. I will vote for Roosevelt if elected because if I am nominated it will be by a majority of voters that believe as I do, and I propose to carry out their instructions if nominated and elected, and not be like Mulvane and others who by misrepresentating their states caused all this muss. And for them to talk about an electors being honor bound to vote for a fraudulent nominee, the idea of them talking about any man's honor. Well it is up to the voters to decide. If you want Taft vote for the other fellow because you will never get him through me. As President of the United States I respect him, but as the nominee of the Republican party for reelection I will not recog-

nize him. This is the last statement I will make. I hope I have made it plain.

Yours truly, S.A. Davis."

And each of the other pretended Republicans have given public notice that they would not abide by the action of said National Convention and that if elected as presidential electors of the state of Kansas that they would not vote, in the electoral college, for said candidates so nominated by said Republican National Convention but would cast their votes for another person not a member of the Republican party and who repudiated the action of said National Republican Convention; refused to be bound thereby or by the principles of said Republican party as announced in the platform of principles adopted by said convention, to wit, one Theodore Roosevelt, who since said convention has adjourned has announced himself as a candidate of a new political party to be in no manner connected or associated with said Republican party; that said pretended Republicans publicly and otherwise have announced and announce that, if elected to the offices of presidential electors they and each of them will cast their votes in the electoral college for the said Theodore Roosevelt, will knowing that he, the said Roosevelt, is now and has been for some time, engaged in an attempt to organize a new political party with the avowed purpose of antagonizing and, if possible defeating, the said Republican party and its candidates not only for president and Vice-president of the United States, but for all other offices to which the said Republican party by convention and otherwise has nominated candidates. The plaintiffs say that said announcements and declarations so made by said pretended Republicans and the declarations now made by them and each of them of their intentions express the fraudulent design and purpose conceived by them but sedulously concealed by them from the time of the

preparation of said petitions to the present time; that by such concealment the plaintiffs and each of them were fraudulently induced to aid said pretended Republicans to get themselves into a position where by their fraudulent designs they might injure the said republican party and secure the votes of the Plaintiffs herein pledged to them by the terms of said petitions; and fraudulently to procure the votes of the members of said republican party devoted to its principles and its candidates; that said pretended Republicans and each of them, persist in asserting that notwithstanding their refusal to abide by the rightful authority of said Republican National Convention and their refusal to support the candidates of said National Republican party for the office of President and Vice-president of the United States and their avowed purpose to support the prospective candidates of a new political party opposed to the principles of the Republican party, they and each of them, are entitled to have their names appear as Republican and representatives of the principles of the Republican party on the Republican primary ballot about to be printed according to the statutes of this State, by the various County clerks of the State of Kansas, defendants herein; and, unless restrained by the orders of this court the said pretended Republicans will cause their names to be printed on said ballots as candidates of said Republican party for nominations to the office of presidential electors and as representing the principles of said party; and, at the same time the said defendants and each of them announce and boast that they intend to and will refuse to support the candidates of said National Republican party, refuse to represent its principles, and will support the candidate of another different and distinct political party antagonistic to said Republican party and otherwise do all in their power to defeat the election of candidates of said republican party for said offices and jeopardize the success of said

Republican party in this state and elsewhere; and thereby not only attempt to defeat the candidates duly nominated by said Republican National Convention, but aid and assist in the election of a candidate of another party opposing to said Republican party, and to its principles.

#### IV.

The plaintiffs further say that the defendants above named as county clerks of the various counties of the State of Kansas, are the duly elected, qualified and acting county clerks of their respective counties and are by law charged with the duty of causing to be printed, primary ballots to be used in the primary election to be held in the State, August 6, 1912; that by means of the false and fraudulent representations and the fraudulent concealments practiced upon the plaintiffs by the said pretended Republicans herein before stated and before the plaintiffs or either of them had any knowledge or suspicion of the predetermined and malicious treachery of the said pretended Republicans and each of them, the said pretended Republicans caused the Secretary of State to rectify their names as candidates of the Republican party for the offices of Presidential electors of the State of Kansas, to each of the defendant county clerks; that said county clerks and each of them threatened to and will unless restrained by the orders of this court place the names of said pretended Republicans on the Republican primary ballots soon to be printed under the direction of said county clerks and thereby great and irreparable injury will be inflicted upon the plaintiffs herein and upon all members of said party similarly situated who desire the success thereof and who advocate its principles and intend to support the candidates nominated by the National Republican Convention as aforesaid for the offices of president and vice-president of the United States.

The plaintiffs further aver that it was the

purpose, intention and design of said pretended Republicans to deceive large numbers of the republican voters of the state of Kansas by so contriving that their names should appear on the Republican primary ballot as persons affiliated with said party, representing its principles, and intending to support its candidates; that if the said pretended republicans do carry out the aforesaid fraudulent scheme large numbers of republican voters in the state of Kansas will be deceived into believing that said pretended republicans procured the plaintiffs and others similarly situated to sign the petitions in good faith; that said petitions are valid; that said nomination papers so certified by the Secretary of the State of Kansas are valid; that said defendants intend to support the regularly nominated candidates of said republican party for the offices of president and Vice-president of the United States, and intend to represent the principles of the said party, and thereby said voters so deceived by said pretended Republicans, innocently will aid and abet the carrying out of the scheme and design of said pretended republicans to procure the votes of Republicans in the State of Kansas under false and fraudulent pretenses and said votes will be used by said pretended republicans as a means for defeating the candidates of said republican party and of defeating the objects and purpose of said party and its candidates generally.

V.

The plaintiffs aver that by reason of the frauds practiced upon them and each of them by said defendants, the petitions obtained by said pretended Republicans, and in their behalf, are fraudulent and void, and constitute no authority for the certification by the Secretary of State to said county clerks of their names as candidates representing the principles of said republican party; and the plaintiffs deny that said pretended Republicans or any of them have been at any of the times mention herein

or are now bona fide Republicans honestly intending to represent the principles of said party or support candidates duly nominated by said Republican party or otherwise to assist in accomplishing the purposes and objects of said party; and that at all of the said times have been members of and engaged in a fraudulent conspiracy having for its object the defeating of the candidates of said party and of its principles of the said false and fraudulent practices, conduct and misrepresentation. The plaintiffs further say that, each of said petitions is void and of no effect because of said fraudulent practices; that the certificates obtained by the meant aforesaid from the Secretary of the State of the State of Kansas are fraudulent, illegal and void; and that the placing of the names of said defendants or any of them on the Republican primary ballots would, if permitted, constitute a fraud upon the plaintiffs as well as upon large numbers of other members of the Republican party in the State of Kansas.

The premises considered the plaintiffs pray that pending a final determination of this action this court issue a temporary injunction directed to said pretended candidates for the nomination of presidential electors, defendants herein, and to the county clerks of the various counties of the State of Kansas, defendants herein, strictly injoining them and each of them from directly or indirectly causing the names of said pretended Republicans from being placed on the Republican party primary ballots, and from in any manner whatsoever, directly or indirectly recognizing any of the said pretended Republicans as members of the National Republican party or affiliated where-with, or as entitled to appear on the Republican primary ballots as candidates representing the principles of said party, and from in any manner whatsoever permitting, or causing their names or the names of any of them to be printed upon or appearing on said republican primary ballot as republican candidates for the offices of presidential electors.

And the plaintiffs further pray that upon final hearing it be ordered and adjudged by this court that the petitions to which the plaintiffs subscribed and attached hereto as exhibits and each of them – and always have been wholly null and void, and that the certification of the names of the defendants' candidates was obtained by misrepresentations and fraud practiced by said pretended Republicans and that neither said petitions nor said certifications constitute any lawful authority to said county clerks or to any of them for placing the names of said pretended Republicans upon the Republican primary ballots to be printed under the direction of said county clerks to be used at the ensuing primary election to be held in the State of Kansas on August 6, 1912; and that said county clerks and all other persons whomsoever acting in their behalf, be restrained and strictly enjoined from in any manner whatsoever recognizing said pretended Republicans or either of them as entitled to have their names appear on said Republican primary ballots as representing the principles of said party, or as candidates of said party for said offices of presidential electors.

The plaintiffs pray for such other and further relief as to the court may seem just.

/s/ F.B. Stanley,  
/s/ Fred Dumont Smith,  
/s/ Chester I. Long,  
/s/ D.W. Mulvane,  
/s/ D.R. Hite,  
*Attorneys for Plaintiffs.*

**PRECIPE.**

The Clerk of the above entitled court will please issue a summons for each of the above named defendants directed to the sheriff of the county of their residence and make the same returnable according to law.

/s/ D.R. Hite,  
*Of Counsel for Plaintiff.*

NOTE. – Attached to the foregoing petitions are exhibits consisting of copy of nomination papers all of which are of the following tenor except as to names and places of residences of the respective candidates named therein:

I, the undersigned, a qualified elector of the County of Harvey, and the State of Kansas, and a member of the Republican party, hereby nominate Samuel A. Davis, who resides in the city of Newton, in the county of Harvey, and the State of Kansas, as a candidate for the office of Presidential elector, to be voted for at the primary to be held on the 6th day of August, 1912, as representing the principles of said party; and I further declare that I intend to support the candidate herein named and that I have not signed and will not sign any petition or nomination papers for any other person for said office at the next ensuing election.

<i>Names of signers.</i>	<i>Postoffice.</i>	<i>Date of signing.</i>
E.S. Dean	Oberlin	May 22, 1912.
D.G. Adleman	"	May 22, 1912.
C.S. Maddox	"	May 22, 1912.
R.D. Strain	"	May 22, 1912.
R.A. Marke	"	May 22, 1912.
H.W. Demuth	"	May 22, 1912.
G.H. Lippelmann	"	May 22, 1912.
S.B. Keiser	"	May 22, 1912.
Lew E. Darrow	"	May 22, 1912.
C.O. Morris	"	May 22, 1912.
F.B. Patton	"	May 22, 1912.
H.A. Douglass	"	May 23, 1912.
G.C. Allen	"	May 23, 1912.

**State of Kansas,  
Decatur County, ss:**

G.C. Allen, being duly sworn, says that he is a qualified elector of the Oberlin City precinct of the township of Oberlin, County of

Decatur, State of Kansas; that to the best of his knowledge and belief all the signers upon the foregoing nomination paper are electors of the precinct named at the top thereof; that he knows that they signed the same with full knowledge of the contents thereof; and that their respective residences are correctly stated therein; and that each of said signers signed said nomination paper on the date stated therein opposite his name; and that affiant

intends to support the candidate therein named.

G.C. Allen.

Subscribed and sworn to before me this, 23d day of May, 1912.

[seal] G.H. Lippelmann.

(My commission expires Nov. 1, 1913.)

#### FROM FOOTNOTE 4

SUPREME COURT OF KANSAS.

The State of Kansas,  
ex rel. John S. Dawson,  
as Attorney-general, etc., et al.,  
Plaintiffs,

v.

C.E. Branine, as District Judge,  
etc., et al., Defendants.

No. 18,351.

Original proceeding in mandamus.  
Opinion filed July 22, 1912. Dismissed.

*Fred S. Jackson*, of Eureka, *C.W. Trickett*, of Kansas City, *W.L. Huggins*, of Emporia, *C.A. Matson*, of Wichita, *E.L. Martin*, and *Howard Lewis*, both of Hutchinson, for the plaintiffs.

*F. Dumont Smith*, of Hutchinson, *Fred Stanley*, and *Chester I. Long*, both of Wichita, *D.R. Hite*, and *D.W. Mulvane*, both of Topeka, for the defendants.

PER CURIAM.

The court is of the opinion that the district court of Harvey county had jurisdiction to entertain the petition filed therein and to issue a restraining order pending its examination of the case. It is further of the opinion that such petition does not state a cause of action for a kind of fraud cognizable by a court of law or equity. Assuming the facts stated to be true, they are political in their nature and the remedy of the plaintiffs is by political methods. The courts can not be called upon to decide political matters further than the statutes clearly require, and the statutes of Kansas do not, expressly or by implication, authorize the granting of the relief asked of the district court of Harvey county.

It is assumed that the district court of Harvey county will reach the same conclusion and dismiss the action pending before it. Upon such dismissal the occasion for the proceeding in this court will be removed, and consequently this proceeding is dismissed.

**FROM FOOTNOTE 5**

IN THE DISTRICT COURT OF  
HARVEY COUNTY, KANSAS.

R. A. Marks et al., Plaintiffs,

vs.

S. A. Davis et al., Defendants.

JUDGMENT AND ORDER.

And now on this July 23, 1912, this cause comes on to be heard upon the application of the plaintiffs herein for a temporary injunction, pending the final determination of this action and the plaintiffs appeared by their counsel, F. B. Stanley, Esq.; F. Dumont Smith, Esq.; D. W. Mulvane, Esq.; and D. R. Hite, Esq.; and the defendants, except the respective county clerks, appeared by their counsel, Howard Lewis, Esq.; and W. G. Fairchild, Esq.; and the said county clerks, defendants herein, came not neither in person nor by counsel; and thereupon the individual defendants so represented by the said Lewis and the said Fairchild, duly presented to the court and asked that the same be made a part of the record, a copy of the opinion of the Supreme Court of Kansas, in the case of the State of Kansas upon the relation of John S. Dawson, Attorney General, vs. R. A. Marks, et al., and thereupon said individual defendants move the court to dismiss this action on the ground that the allegations of the petition are insufficient to confer jurisdiction upon any court in this State, either at law or in equity and thereupon pending the ruling of the court upon said motion to dismiss, the plaintiffs herein duly presented and read to the court, their objection and protest to any action of this court denying redress for the matters and things set out in their petition and ask that the said motion, objection and protest be filed and made a part of the record herein, which request was by the court granted and said objection and protest ordered filed as of this July 23, 1912, and thereupon the court hav-

ing heard argument of counsel and being duly advised concerning the said opinion of the Supreme Court of Kansas, finds that said objection, protest and claim of right under the Constitution and laws of the United States should be, and the same is hereby denied; and thereupon the Court further finds that the plaintiffs herein have not stated a case by their petition cognizable in any court of law or equity, now therefore

It is by the court ordered and adjudged. That this action be, and the same is dismissed; and thereupon it appears to the Court that the status of the parties hereto should be preserved in their present condition pending an appeal by the plaintiffs herein from said order, ruling and judgment, dismissing this action, and said plaintiffs thereupon make application to the court for an order continuing the restraining order heretofore on July 17, 1912, issued herein, until their appeal from said order and judgment dismissing this action can be heard and determined by the Supreme Court of the State of Kansas; and thereupon, having heard the argument of the counsel and being fully advised in the premises, the court finds that it is in the interest of justice that said restraining order should be, and the same hereby is continued in full force and effect until the appeal to be taken by the plaintiffs as hereinafter provided, shall be heard and determined by the Supreme Court of Kansas, provided however that unless the plaintiffs herein shall take an appeal, as provided by law, from said judgment and order dismissing this case and on or before 12 o'clock noon on July 25, 1912, cause said appeal to be filed in said Supreme Court the said restraining order, shall, without further action by this or any other court, cease and be of no further force or effect but if the plaintiffs herein shall on or before noon of July 25, 1912, take an appeal, from said judgment and order dismissing this

action, to the Supreme Court of Kansas, then and in that event the said restraining order shall be and remain in full force and effect until said appeal shall have been determined by said Supreme Court; and it is further provided that the continuance in effect of said restraining order beyond noon of July 25, 1912, is upon the express condition that counsel for plaintiffs herein shall on or before noon of Friday, July 26, 1912, file in the Supreme Court of Kansas, their consent for the hearing of said

appeal at any time after the filing of said consent as may be ordered by said Supreme Court. The individual defendants appearing as above stated, duly excepted to the order of this court continuing said restraining order in force, pending said appeal as hereinbefore ordered.

/s/ C.E. Branine,  
Judge of the District Court of  
Harvey County, Kansas.

### FROM FOOTNOTE 6

SUPREME COURT OF KANSAS.

R.A. Marks et al., Appellants,

v.

No. 18,363.

Samuel A. Davis et al., Appellees.

Appeal from Harvey district court.  
Opinion filed July 27, 1912. Affirmed.

*E. Dumont Smith*, of Hutchinson, *Fred Stanley*, and *Chester I. Long*, both of Wichita, *D.R. Hite*, and *D.W. Mulvane*, both of Topeka, for the appellants.

*Fred S. Jackson*, of Eureka, *C.W. Trickett*, of Kansas City, *C.A. Matson*, of Wichita, *F.L. Martin*, and *Howard Lewis*, both of Hutchinson, for the appellees.

PER CURIAM.

The court adheres to its ruling in the case of *The State, ex rel., v. Branine*, ante, p. 795, and since the questions involved in the present case are political and moral in their nature, and the wrongs complained of are of a kind for which the courts are not authorized to grant relief, the judgment of the district court dismissing the action and denying the injunction must be affirmed. The court refrains from the expression of any opinion respecting the regu-

larity or irregularity of the conduct of any political faction or organization.

JOHNSTON, C.J., BURCH, MASON,  
AND PORTER, J.J., CONCURRING.

WEST, J. (CONCURRING SPECIALLY):  
This case is now here regularly and properly on appeal, and presents a situation heretofore unheard of. This being so, there are no decisions arising out of similar facts by which we may be guided, and the question is one of vital and far-reaching importance.

By the Australian Ballot Act and the primary election law the legislature has made party organization, machinery, discipline and control no less possible and certain at primary elections than at general elections. Whether wisely or unwisely, the lawmaking department of the government has determined that through political parties the public servants are to be chosen, and has made it impossible for citizens who are dissatisfied with existing parties to accomplish anything until they have drawn to themselves sufficient numbers to constitute a new organization, then to be governed exactly in the same way as other parties are now governed.

As I view this case, it is this: The plaintiffs charge that their names were procured

upon the nominating papers of certain candidates by false pretenses. Were the charge made that the names were forged, a crime made a felony by the statutes would be alleged. Whatever moral distinction there may be between false pretenses and forgery need not be discussed. Upon our hearing of the recent mandamus case my brethren felt convinced that this injunction suit presented no legal but only a political question. I was not so convinced, but not being sure of the contrary, I did not dissent. Since giving the matter further thought and attention, I am willing to join with my brethren in saying that the mere announcement of a candidate for presidential elector that he will not vote for the nominee of the party would not be a sufficient ground to enable the signers of his petition to maintain this suit. But to my mind the right of the signers, before the primary ballot is printed, to have their names removed, if procured by false pretenses, is probably a legal right which under the Anglo-Saxon system of law should not be a right without a legal remedy. It is also apparent that incidentally involved in this proceeding is the right of thousands of voters in this state to vote for the nominee of their party, and in my opinion the result is likely to be, to this extent, their political disfranchisement at the coming election. True, they may have a right at the primaries to select electors of their own faith, but in the inevitable

confusion of names and locations on the ticket every sensible man knows that it will be difficult to cast an intelligent and effective ballot. The gentlemen in question, not following the example of the new national committeeman and withdrawing because out of harmony with the decree of the party, reply through their counsel to the claim of fraud that the nomination at Chicago was fraudulently procured. But certainly the law can not deem one fraud a justification for another, whatever the facts as to fraud may be. To my mind, the legal right to remain upon the ticket, if based alone on false pretenses, is a right too slender to be regarded with judicial favor. I may say frankly that I am not convinced by any means that the charges of false pretenses could be established upon trial, but for the purposes of this case the verified and undenied allegations must be taken as true.

The exigencies are such that sufficient time can not be taken to come to a final conclusion based on irrefragable authority and logic, and while my inclinations are as already indicated, both out of deference to the judgment of the other members of the court and because a dissent would be futile, I concur, but express the hopes that the legislature, which has so thoroughly guarded primary and general elections by statutory restrictions, both civil and criminal, will make it possible for the wrong now complained of for the first time in our history to be speedily avoided or remedied.

FROM FOOTNOTE 9

IN THE SUPREME COURT  
OF THE UNITED STATES.

R. A. Marks, et al., Plaintiffs in Error.

vs.

S. A. Davis, et al. Defendants in Error.

Be it remembered that on this 29th day of July, 1912, the above named Plaintiffs in Error duly applied to Honorable Mahlon Pitney, Associate Justice of the United States Supreme Court for a writ of error to the Supreme Court of Kansas to review the judgment of that court entered in the above entitled cause on July 27th, 1912; and thereupon the said Defendants in Error applied to said Justice for a hearing before said writ was allowed; and thereupon at the suggestion of said Justice that the status of said parties and of this cause be preserved the parties hereto by their respective counsel, duly entered into the following stipulation in writing to wit:

The Defendants in Error agree to prevent any further progress in printing the following names of electors on the Republican Primary ballot to be used at the primary election of August 6, 1912, to wit: Samuel A. Davis, Robert M. Armstrong, Dorsey Green, L. A. Millspaugh, J.A. Lister, John Stewart, Robert C. Postlethwaite, and E. S. Rule, and to prevent any other preparations of said primary ballots prejudicial to the rights of Plaintiffs in Error, until the Plaintiffs in Error's application for a writ of error can be heard not later than Thursday, August 1, 1912; Provided the county clerks, Defendants in Error herein, may print such names on said ballots and proceed with the distribution thereof with such names thereon immediately upon the decision of such application should

the application for supersedeas or stay of any kind be refused, without waiting for the formality of mandates or other process; and, in the event such supersedeas shall be granted then said clerks shall immediately proceed to print and distribute said ballots without said names thereon.

This Agreement not to prejudice either party or parties, in presenting said application as to any rights of any of said parties at the time of actually presenting said application to Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, for allowance.

Signed at Topeka, July 28, 1912, Seven p.m.

C.W. Trickett  
F.S. Jackson  
*Attorneys for Defendants in Error.*

D.R. Hite  
*Attorney for Plaintiffs in Error.*

In deference to the suggestion of Justice Pitney the foregoing stipulation is ratified this July 29, 1912.

D.R. Hite,  
F.S. Jackson.

And thereupon on July 29, 1912, pursuant to said stipulation it was ordered by said Justice that the hearing of said application be and the same was set down for Thursday, August 1, 1912 at the Federal Court Room in the City of New York; and thereupon it was further ordered that said application and said stipulation be filed herein and made a part of the record of this cause in the above entitled court as of the above mentioned dates.

/s/ Mahlon Pitney  
*Associate Justice, United States Supreme Court.*

FROM FOOTNOTE II

IN THE SUPREME COURT  
OF THE UNITED STATES.

R. A. Marks et al., Plaintiffs in Error,  
vs.

S. A. Davis et al., Defendants in Error.

PETITION FOR THE ALLOWANCE OF A  
WRIT OF ERROR TO THE SUPREME  
COURT OF THE STATE OF KANSAS.

To the Honorable the Justices of the  
Supreme Court of the United States:

And now comes R. A. Marks and the other persons named as plaintiffs in a certain action heretofore commenced by them in the District Court of Harvey County, Kansas, and thereafter removed by appeal to the Supreme Court of Kansas, being the highest court of said State, where on July 27, 1912, a final judgment against said petitioners was made and entered by said Supreme Court of Kansas denying claims made and specially set up by said petitioners of rights and privileges secured by them by the Constitution of the United States and laws passed in pursuance thereof, which claims are more particularly set out in the certified transcript of the record and in the assignments of errors presented herewith; and

most respectfully pray for the allowance of a writ of error to the Supreme Court of the State of Kansas for the purpose of removing said cause to this court where the errors of said Supreme Court of Kansas more particularly referred to in the assignments of errors presented herewith may be corrected and justice done in the premises, and said petitioners present herewith a good and sufficient bond properly conditioned as for a supersedeas and respectfully ask that the writ of error may be allowed as prayed; and that a citation issue to said defendants in error.

And your petitioners will ever pray,

/s/ M.E. Olmsted,

/s/ D.R. Hite,

Attorneys for Plaintiffs in Error.

Writ of error allowed, but without supersedeas of continuance of restraining order.

August 1st, A. D. 1912.

/s/ Willis Van Devanter,

/s/ Mahlon Pitney,

Associate Justices of the  
Supreme Court of the United States.



[Writ of Error]

United States of America, ss:

The President of the United States of  
America to the Honorable the Judges of the  
Supreme Court of the State of Kansas,  
Greeting:

[Seal of the Supreme Court of the United  
States.]

Because in the record and proceedings, as also

in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. A. Marks and others, appellants, and S.A. Davis and others, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the

validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission: a manifest error hath happened to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together

with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of August, in the year of our Lord one thousand nine hundred and twelve.

/s/ James H. McKenney,  
*Clerk of the Supreme Court of the United States.*

Allowed but without supersedeas or continuance of restraining order.

/s/ Willis Van Devanter,  
/s/ Mahlon Pitney,  
*Associate Justices of the  
Supreme Court of the United States.*

**FROM FOOTNOTE 25**

LAW OFFICES  
OLMSTED & STAMM  
M.E. OLMSTED  
A.C. STAMM  
-----  
W.S. SNYDER  
G.M. WHITNEY

John D. Maher, Esq.,  
Office of the Clerk of the Supreme Court of the U.S.  
Washington, D.C.

My Dear Mr. Maher:

When does your Court meet? There are a couple of cases which I intend to have dismissed, but I suppose that it is not absolutely necessary for me to be there on the opening day.

Sincerely Yours,

/s/ M.E. Olmsted



SUPREME COURT OF THE UNITED STATES

No. 773, October Term, 1912.

**R. A. Marks et al., Plaintiffs in Error.**

vs.

**S. A. Davis et al.**

IN ERROR TO THE SUPREME COURT OF  
THE STATE OF KANSAS.

Come now the above-named plaintiffs in error, by counsel, and move the Court to dismiss the writ of error in this cause.

/s/ Marlin E. Olmsted  
*Counsel for Plaintiff in Error.*

FROM FOOTNOTE 26

SUPREME COURT OF  
THE UNITED STATES

No. 773, October Term, 1912.

R. A. Marks et al.

vs.

File No. 23,348.

S. A. Davis et al.

MANDATE.

United States of America, ss:

The President of the United States of America,  
To the Honorable Judges of the Supreme  
Court of the State of Kansas, Greeting:

(Seal).

Whereas, lately in the Supreme Court of the State of Kansas, before you, or some of you, in a cause between R. A. Marks et al., appellants, and Samuel A. Davis et al., appellees, No. 18,363, wherein the judgment of the said Supreme Court, entered in said cause on the 27th day of July, A.D. 1912, was in favor of the said appellees, Samuel A. Davis et al., and against the said appellants.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twelve of the said Supreme

Court of the United States this cause having been called to the attention of the Court by Mr. Marlin E. Olmsted, of counsel for the plaintiffs in error, and he having moved the Court to dismiss the writ of error in this cause,

Therefore, in pursuance of said motion, It is now here ordered and adjudged by this Court that the writ of error in this cause be, and the same is hereby dismissed with costs, and that the said appellees recover against the said appellants, R. A. Marks et al., for their costs herein expended, and have execution therefor.

January 23, 1913.

And the same is hereby remanded to you the said Judges of the said Supreme Court of the State of Kansas, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to the right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Edward D. White, Chief of Justice of the United States, the 14th day of August, in the year of our Lord one thousand nine hundred and thirteen. 