ONE PERSON, NO VOTE

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IF THERE IS ANY SYSTEM THAT THE GUARANTEE CLAUSE FORBIDS, SHORT OF A MONARCHY OR DICTATORSHIP OR OTHER SUCH TOTALITARIAN SCENARIO, IT IS THE SYSTEM THAT ALLOWS UNOPPOSED CANDIDATES TO RUN FOR PUBLIC OFFICE.

Unopposed Candidate Laws — and the Courts Interpreting those Laws — All Deny People The Right To Vote For The Concerned Offices. Our incumbent legislators and judges, the former making the laws and the latter interpreting them, have let the voter down and have avoided the question of denial or dilution of the legal citizen’s right to vote!

LISTEN UP! NEW BALTIMORE VOTERS AND ANY OTHER VOTERS WHO ARE CONFRONTED WITH UNOPPOSED CANDIDATES! YOU ARE BEING DENIED YOUR RIGHT TO VOTE! HOW UNOPPOSED CANDIDATE STATUTES CUT OFF THE FEW AVAILABLE AVENUES BY WHICH VOTERS IN UNCONTESTED RACES CAN DECLARE WHOM THEY WANT TO GOVERN THEM AND HOW.

Unopposed Candidate Laws — and the Courts Interpreting those Laws — All Deny People The Right To Vote For The Concerned Offices.

Our incumbent legislators and judges, the former making the laws and the latter interpreting them, have let the voter down and have avoided the question of denial or dilution of the legal citizen’s right to vote!

In thirty-eight states and the District of Columbia, laws allow candidates running unopposed for certain offices to be “declared elected,” some without even appearing on the ballot. These “unopposed candidate provisions” come in many varieties, but all deny people the right to vote for the concerned offices.

The New York law reads:

“All persons designated for uncontested offices or positions at a primary election shall be deemed nominated or elected thereto, as the case may be, without ballot.”

(N.Y. Election Law, ELN § 6-160(2)) [emphasis provided]

So, the bottom line is this: If one party doesn’t have a candidate or chooses not to run a candidate, or by some backroom agreement the parties agree to run only one candidate, New York law denies YOU your right to vote for the candidate of your choice or not to vote for the candidate. That’s sweet little-known fact that you probably didn’t know about. But your legislators do know about it and so do your political party committees do and your board of elections officials!!!

My analysis views the unopposed candidate situation as an opportunity in which to examine several significant approaches to election law:

1. whether the purpose of voting is tabulative, that is, does voting answer the Question “How many?”
2. Does voting merely have a rallying purpose, showing solidarity either in political views or simply group-think?
3. Or is voting expressive or symbolic, that is, a form of speech protected by the First Amendment, and sending a message or expressing an idea, or support for, opposition against, etc. a candidate, a political agenda, or a party.

Another important question is: Whether our courts should focus on encouraging competitiveness in elections, rather than encouraging one-party systems that deny citizens a fundamental protected right.²

² I am not even going to try to discuss the attitudes of the courts on this subject. The discussion of the challenges to the unopposed candidate laws in our election legal system is very complicated and, at times contradictory, especially
Across both doctrine and theory, these unusual laws force us to reconsider our approach to the act of voting, *stripped of its ability to affect the outcome of an election*. After all, in the case of an unopposed candidate there is no electing, no choice, no selection from 2 or more candidates. There is one candidate and *whether you vote or not*, that candidate will be *declared “elected,”* even though to do so is a bare-faced lie.

Editor’s Sidebar:

The New Baltimore Democratic Party and its Democratic Committee are a complete failure and, like all failures, are arrogant and defensive. They don’t like questions and refuse to answer the ones that expose their incompetence or their treachery and lies.

Most of my readers do not realize that, buried deep within states’ election codes, a number of states accommodate a bizarre little provision of law, which is a very well-kept secret. That secret is that candidates who run unopposed for certain offices are simply “*declared elected*” *without having to appear on the ballot,* and even if they do appear on a ballot as unopposed, are *already in office regardless of what voters say*. If you find yourself shrugging your shoulders at this little tidbit of revelation, relax: You’re not alone.

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since most of the cases are decided at US Supreme Court Level, where there are 9 individuals asking questions and writing comments, some of them in the majority and some of them dissenting (the minority), add to that the fact that the language they use in their decisions is not the language of the Average American. Go figure!

A full list of these laws is as follows can be found in Lidell’s fine article; I am listing only the NewYork statutes here: N.Y. Elec. Law § 6-160(2) (McKinney 2017); (See the complete list in Lindell, ibid. fn 1 at 886)
For the past two elections the New Baltimore Democratic Party has been unable to produce an electable candidate, much less a competent public servant. This means that the so-called Democraps are so incompetent they can’t get their act together to provide voters with a choice, and fail to challenge Republicans with an opponent. So much for democracy. Not only is the New Baltimore Democrap Party and Committee a failure, they remain true to the Democraps’ history: they’re conniving and destructive!

Here’s an example: We recently contacted the New Baltimore Democrap Committee with some questions about candidates or the fact that the Democraps haven’t been able to come up with any candidates.

But they sure but the “greed” in democracy when they extend an invitation to meet the candidate (Yes, there’s only one, Jim Eckl, a recycled loser from past elections!) for $30 a head (includes appetizers and a cash bar! Wow!) at the Boathouse Grill in New Baltimore. No, Thank you!

Both Republicans And Democrats Play The Same Game, Pointing The Finger At Each Other, While Screwing The Voters.

These unopposed candidate provisions are so obscure, so uncontroversial and, because they are obscure they rarely attract attention, that no one really talks about them or thinks they have any real repercussions. Wrong! They are so political that no court has passed on their validity in four decades. Can that be because many of our judges are either appointed at the highest levels and become political party tools, or because they run unopposed? The answer is so obvious I won’t stoop to answering it. Not a single legal scholar has ever bothered to analyze the election law.
provisions dealing with unopposed candidates. The unopposed candidate statutes just sit there, shortening our ballots, and nobody pays them any mind. Why is that?

**EACH UNOPPOSED CANDIDATE “IS DEEMED TO HAVE VOTED FOR HIMSELF OR HERSELF”**

**But think about this:** in the Florida 2016 general election, more than one third of the Florida state legislature was “elected” without receiving a single vote? Fourteen state senators and forty-two of 120 representatives ran unopposed in the general election that year. Because Florida has an unopposed candidate statute, a significant portion of Florida’s population was denied their right to vote for its representatives in the state legislature. Each unopposed candidate “is deemed to have voted for himself or herself. All that these forty-four men and women had to do was file for office. Once the filing deadline passed — and no other candidate filed —, they were declared elected — without a single ballot being cast.

**UNOPPOSED CANDIDATES ARE “DEEMED TO HAVE BEEN NOMINATED OR ELECTED, AS THE CASE MAY BE.”**

And what about the case of Larry Glenn? Glenn, a Democrat, represented District Seven in the Oklahoma House of Representatives. In 2004, Glenn won a four-way primary after going through a runoff. However, Glenn had no Republican opponent, and so did not appear on the general election ballot; he never appeared on a ballot again. Glenn was “re-elected” four times — in 2006, 2008, 2010, and 2012 — but ran unopposed in both the primary and the general in all four elections. Under Oklahoma law, unopposed candidates are “deemed to have been nominated or elected, as the case may be,” and their names do not appear on the ballot.

**UNOPPOSED CANDIDATE STATUTES SEE ELECTIONS ONLY AS A METHOD OF OUTCOME-DETERMINATION**

Unopposed candidate statutes significantly affect the way in which people vote (rather, how they think they vote) in the United States, and how candidates can get into public office. People do not vote only when their vote matters, or only because it matters to the ultimate outcome — or so the great propaganda lie goes. All of the evidence suggests that voting is not a “rational” decision for most people, that is, most people don’t think about Why? they vote, they instead vote mainly because they believe they are expressing their beliefs or because it helps them feel like they are part of a larger community (I’m a Republican! I’m an Independent!).

But the unopposed candidate statutes see elections only as a method of outcome-determination, ignoring the main reasons why people actually vote.

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4 *Candidates and Races,* FLA. Dep’t St. Division Elections, http://election.dos.state.fl.us/candidate/Index.asp [https://perma.cc/RLH5-HBM5] In theory, each of the “candidates” received one vote; Florida’s unopposed candidate statute provides that each unopposed candidate “is deemed to have voted for himself or herself.” FLA. Stat. § 101.151(7) (2017).

THE HARM THESE LAWS DOING IS DIVERSE AND SIGNIFICANT BUT ALSO INSIDIOUS, BECAUSE VOTERS ARE UNAWARE OF THE DAMAGE THEY'RE DOING. THESE LAWS ARE TREACHEROUS, CRAFTY, AND THEY DO THEIR DAMAGE IN A GRADUAL, SUBTLE WAY, THEIR HARMFUL EFFECTS BARELY NOTICEABLE AT ANY GIVEN TIME. LIKE UNDIAGNOSED CANCER.

Thirteen To Sixteen Percent More Voters Cast Blank Ballots In Uncontested Races (“Unopposed Candidate”) Than In Races With Multiple Candidates.

For those who support an unopposed candidate, the statutes deprive them of their right to cast a vote for their chosen representative. For those who find the sole candidate unacceptable, the statutes likewise deprive them of their right not to vote for that person. Voters should take these deprivations seriously. Studies have shown that thirteen to sixteen percent more voters cast blank ballots in uncontested races than in races with multiple candidates.

In the last elections in New Baltimore, for example, more than 30% of voters who went to the polls abstained from voting for Jeff Ruso, who ran unopposed for Town Supervisor, and the same figure applies to the other unopposed candidates in that election (the exception was Barbara Finke, who ran for reelection as Town Clerk, and whom we supported, even if unopposed). Local figures support the studies and vice versa. (See our Smalbany blog articles: Congratulations, New Baltimore! You did good!: Complacency is a Bad Thing...Especially in Local Government; No Choice! Unopposed Candidates? Here's the Plan...; New Baltimore Elections: No Choice. The Sequel. (And Coeymans, too!); Today, Tuesday, November 7, 2017: Your To-Do List... )

UNOPPOSED CANDIDATE STATUTES CUT OFF THE FEW AVAILABLE AVENUES BY WHICH VOTERS IN UNCONTESTED RACES CAN DECLARE WHOM THEY WANT TO GOVERN THEM AND HOW.

These laws also eliminate the possibility of fusion candidacies, in which citizens can express their policy preferences by voting for the same candidate on one of multiple party lines. In states with fusion laws, votes on alternate party lines constitute up to a tenth of candidates’ vote totals. Unopposed candidate statutes cut off the few available avenues by which voters in uncontested races can declare whom they want to govern them and how.

UNOPPOSED CANDIDATE STATUTES DENY INDIVIDUALS THE RIGHT TO VOTE FOR THEIR SUPPOSEDLY “ELECTED” OFFICIALS, WHICH IN TURN DENIES THOSE OFFICIALS THE LEGITIMACY CONFERRED BY POPULAR ELECTION.

The laws on unopposed candidates also hurt candidates and parties. For one thing, they deprive candidates of vital knowledge about their constituents. Variations in blank ballot percentages, for example, provide information on the candidates’ popularity. Unsurprisingly, candidates and their potential future opponents look to this data for signs of voter dissatisfaction and weakness in their electability. Unopposed candidate statutes, by amputating the voting process, also eliminate this information source. The thinking behind this charade of unopposed candidates is that voters willing to accept existing party-political authority because they are able to participate

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6 With fusion voting, more than one political party can support or “endorse” a common candidate. Consequently, the name of a single candidate can appear on the same ballot multiple times under multiple party lines. Proponents maintain that fusion voting increases the influence of minor parties, enabling voters to voice their support for minor party platforms without sacrificing their ability to impact the election of candidates. Opponents, however, argue that fusion voting gives disproportionate power to minor parties, as major party candidates vie for their endorsements. (Source: https://ballotpedia.org/Fusion_voting, last accessed on September 1, 2018)
in free and fair elections. Unopposed candidate statutes **deny individuals the right to vote for their supposedly “elected” officials**, which in turn **denies those officials the legitimacy conferred by popular election**. And the parties conveniently do not use the campaign to provide voters with information about themselves or their candidate; the political parties fail to inform voters.

It is obvious that these laws operate in extreme circumstances, with extreme effect.

Supreme Court has an established traditional vote denial doctrine, under the balancing analyses described important Supreme Court cases like *Anderson v. Celebrezze* and fine-tuned in *Burdick v. Takushi* and *Crawford v. Marion County Election Board*. The Court has instructed judges to weigh the “character and magnitude” of the **harm to voting rights** against the state’s interest in **vote denial** cases, but — not in the least surprising — the SCOTUS Justices disagree on how, exactly, to apply this so-called burden analysis.

Whether unopposed candidate statutes survive or fall under the so-called Burdick test will likely **depend on how judges view the character of the harm they impose on voters**. And this inquiry itself depends largely on whether judges analyze voting.

That unopposed candidate statutes could impinge on rights provided by Article I, Section 2 and the Seventeenth Amendment; the one person, one vote doctrine; and the Guarantee Clause.

**THE SUPREME COURT HAS DECLARED THAT THE PURPOSE OF VOTING IS SOLELY TO WHITTLE DOWN THE NUMBER OF CANDIDATES UNTIL THERE IS A WINNER**

Unopposed candidate statutes throw this debate into stark relief because they translate lack of competition into a complete denial of the right to vote. The laws are uncontroverted because they appear harmless. But the logic underlying them—that we know who the winner will be, so holding an election for the office would be pointless—has potentially disturbing consequences if applied to uncompetitive elections more broadly. Unopposed candidate statutes also pose a challenge for those who would eschew competitiveness in favor of maximizing voter satisfaction, since creating politically homogenous districts could sound the death knell for elections in many instances.

**VOTING INCLUDES AN INFORMATIONAL AND EXPRESSION COMPONENT AND THAT VOTERS SHOULD BE ABLE TO “PARTICIPATE IN . . . ELECTIONS IN A MEANINGFUL MANNER.”**

What is the purpose of voting? The Supreme Court has declared that the purpose of voting is solely to whittle down the number of candidates until there is a winner. Voting includes an informational and expressive component and that voters should be able to “participate in . . . elections in a meaningful manner.” If this conception of voting is correct, then unopposed candidate statutes are more troublesome. **The laws prevent voters from expressing their preferences, whether through fusion voting, write-in voting, or simply voting for (or**

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7 460 U.S. 780 (1983)
8 504 U.S. 428 (1992)
9 553 U.S. 181 (2008)
10 As I mentioned above, I am going to avoid in-depth legal analysis of the Court’s rationale and will limit myself only to the essentials of the decisions.
11 For the sake of simplicity I will simply note that the two approaches are the fundamental rights strand or the suspect class strand of equal protection.
refusing to vote for) the candidate. They also prevent the voters and the candidates from gaining valuable information about one another through the ballot box. By studying these statutes, we can gain insight into the state of American election law.

IN THIRTY-EIGHT STATES AND THE DISTRICT OF COLUMBIA, CERTAIN CANDIDATES WHO RUN UNOPPOSED CAN SIMPLY BE “DECLARED ELECTED.”

These laws have one thing in common: when they apply, the voters have no say.

Unopposed candidates in everything from town council primaries, to congressional general elections, can be simply “declared elected.” For example, in Arkansas, Florida, Louisiana, and Oklahoma nobody even gets to vote in uncontested races, the candidate may not even appear on the ballot! They are simply presumed to have been elected!

The Arkansas election code explicitly stated that votes for unopposed candidates “shall not be counted or tabulated by the election officials.” Instead, it told individual jurisdictions to simply insert “[t]he word ‘UNOPPOSED’ . . . on the tally sheet.” And that’s that.

A much larger group of states keeps all of its unopposed candidates off the ballot, but only for primaries. Thirteen states have these “primary-only” unopposed candidate statutes. When combined with the four core-statute jurisdictions, approximately one-third of the states— with thirty-six percent of the nation’s registered voters — do not count primary votes for unopposed candidates.

Unopposed candidate statutes play an important if underappreciated role, since local or municipal races tend to be even less competitive than partisan state or federal races.

STATES UPDATE THEIR ELECTION CODES TO FURTHER ENTRENCHED THE UNIQUE PERKS OF RUNNING UNOPPOSED

Unopposed candidate statutes are not merely a set of quirky legal oddities, lying staid and dormant, to be safely ignored. These statutes haunt the legal codes of three-quarters of the states, with the potential to affect thousands of elections. Unopposed candidate statutes remain a dynamic part of the law, as states update their election codes to further entrench the unique perks of running unopposed.

Given the general lack of awareness of the harmful effects of unopposed candidate laws, the average voter and even the average local elected official could be almost forgiven for thinking of the laws as quaint products of a colonial town-meeting-style preference for consensus (New Baltimore), or of ruthless machine politics (Albany).¹²

Let’s not be mistaken: laws allowing unopposed candidates don’t have their harmful effects on their own. Rather, they operate within a larger web of legislative conspiracies that both create and regulate uncontested races, generally for political power reasons. One common example is

¹² For example, when Indiana passed an election reform package, into which one legislator slipped a provision that required county clerks to remove unopposed municipal candidates from the ballot, and when state legislative leaders found out about the provision, they raised hell, with the Speaker of the House calling it “terrible public policy.” The sponsor of the law defended it as an efficient measure that would save counties money. Didn’t anyone think of the fact that voters’ rights might have been protected? Of course not. The bottom line was to “save money.”
partisan gerrymandering, which packs voters from the minority party—or from both parties, in the case of *incumbent-protective gerrymandering*—into “safe districts.”\(^\text{13}\)

Unopposed candidate statutes have two things in common: *they prevent electors from voting for unopposed candidates*, and *they deny candidates the legitimacy of the voters’ sanction*.

**THE COURTS ARE ALWAYS STANDING READY TO COMPLICATE A MATTER, ESPECIALLY IF THERE’S POLITICAL CAPITAL TO BE GAINED.**

Anyone with eyes to see and ears to hear cannot help to admit that there is an obvious adverse effect of the unopposed candidate laws on the fundamental right to vote, and on the freedom to associate with candidates and fellow voters, as protected by the First and Fourteenth Amendments.

Unopposed candidate laws clearly take a toll on both the right to vote and the right to associate (or not to associate) with candidates through the ballot box. But any constitutional analysis under the First or Fourteenth Amendment becomes complicated by the standard that the courts, particularly the Supreme Court applies in right-to-vote cases that might be based on Constitutional questions. The standard focuses basically on the “character and magnitude” of the harm alleged to have been caused by a particular law. The courts are always standing ready to complicate a matter, especially if there’s political capital to be gained.\(^\text{14}\)

**THE UNOPPOSED CANDIDATE LAWS FLATLY DENY THE CONSTITUENTS OF UNOPPOSED CANDIDATES THE RIGHT TO VOTE FOR UNCONTESTED OFFICES**

Under the fundamental rights view, we have to focus on the voters whose officials were either directly or indirectly “declared elected,” since those voters would face a disproportionate harm. **The unopposed candidate laws flatly deny the constituents of unopposed candidates the right to vote for uncontested offices.** The effect is that no voter can cast ballots for anyone but the unopposed candidate(s); they may in some cases not even be able to cast blank ballots, or write in name! In other words, these laws prevent citizens from associating with their preferred candidates and their parties “at the crucial juncture at which the appeal to common

\(^{13}\) Another, less obvious, situation occurs with the so-called “sore loser” laws, which prevent candidates who do not win in a primary from appearing on the ballot as write-ins or minor party endorsements in the general election. These laws are reinforced by the unopposed candidate laws that apply to general elections. This eliminates the possibility of “spoiler” candidacies in the general election. It also tends to ensure that primary winners in one-party jurisdictions will run unopposed in the general election — and, with unopposed candidate laws in place — , that the primary winner will simply be declared elected. Strict ballot access laws — with the help of unscrupulous or corrupt board of election officials — may also help create unopposed candidacies. Even the courts have recognized that ballot access restrictions manipulate or limit the range of candidates from which voters can choose.

\(^{14}\) The standard for analyzing state right-to-vote claims was first heard in *Anderson v. Celebrezze* and *Burdick v. Takushi*, and was most recently fine-tuned in *Crawford v. Marion County Election Board*. When analyzing a constitutional challenge to a state’s unopposed candidate election law, the court is required to do a two-step analysis. First, the court must “consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.” Second, it “must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” The state’s interests are not simply taken at face value; the court “also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” (See Lindell at 908 and fn 122)
principles may be translated into concerted action.” Furthermore, unopposed candidate laws impose significant burdens on voting rights, and states must demonstrate compelling interests to justify the harm. But our legislators, political party puppets that they are, conveniently keep the situation under wraps. They have a vested interest in the survival of unopposed candidate laws, and there are obvious benefits in keeping the voting public ignorant of the harm these laws do.

In some cases, in which defendants invoke the fictional defense of electoral integrity interest, they claimed that they intended to prevent voter fraud or to ensure some sort of fairness in the political process. Unopposed candidate statutes do none of these things.

The Constitution originally allowed state legislatures to choose U.S. Senators; but, after a groundswell of support for reform, the states ratified the Seventeenth Amendment, which mandated that each state’s senators be “elected by the people thereof.” The Supreme Court has likewise read a voting requirement into these two provisions: it has long stated that Article I, Section 2, “like the parallel provision of the Seventeenth Amendment […] gives persons qualified to vote a constitutional right to vote and to have their votes counted” in congressional elections. So, we now have an established constitutional interpretation that might be used to invoke a constitutional “right to vote” and (2) a constitutional right to have one’s “vote counted,” even if, strictly speaking, those rights apply only to congressional elections. At least it’s a starting point.

Let’s now have a look at the so-called “one person, one vote doctrine.”

The one person, one vote doctrine itself can also be deployed as a powerful offensive weapon against these depraved laws. First, though, courts must be convinced to apply the doctrine in cases of vote denial and cases of vote dilution, even if the one can be considered an effect of the other.15

Unopposed candidate laws prevent those who live in some areas from voting for an office while those in other areas do get to vote.

In a typical one person, one vote case, the harm stems from a state’s decision to apportion districts using unequal populations. The claims apply either in voter equality, arguing that the people in one district have lower voting power than those in another; or in representational equality, arguing that legislators should represent the same number of people.

At the practical level, the Court’s one person, one vote cases are not actually limited to vote dilution. Rather, the Court has said, the doctrine “requires that each qualified voter must be given an equal opportunity to participate in [each] election.”

Unopposed candidate statutes allow the switch of elective office to be turned on and off based on how many people decide to run for election for a given public office.

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15 The “equipopulation principle,” is a rule that ensures “the equal weighting of votes” by requiring “that seats . . . be apportioned on a substantially equal population basis.” They thus treat one person, one vote as a doctrine of vote dilution, to be kept separate from vote denial. Legal scholars likewise treat vote denial and vote dilution as separate concepts, with the one person, one vote doctrine applying only to vote dilution. The Court’s cases have often characterized one person, one vote as a vote dilution rule.
UNOPPOSED CANDIDATE STATUTES CREATE OFFICIALS WHO ARE NOT ACCOUNTABLE TO ANYONE FOR THEIR POSITIONS

The Guarantee Clause\(^\text{16}\) is the next desperate attempt if the one person, one vote doctrine is not effective in voiding an unopposed candidate election law. The clause provides that “[t]he United States shall guarantee to every State in this Union a republican form of government.”\(^\text{17}\)

By almost any definition, a republican form of government includes state and municipal (local) officials who are accountable to the people. But unopposed candidate statutes create officials who are not accountable to anyone for their positions.

I can hopefully simplify an understanding of this scenario by using a fictional example: In the above example of the Florida debacle, over one-third of Florida’s state legislators were not actually elected to their current terms of office. Now, what if, sometime in the future, fifty-one percent of the legislators ran unopposed and were “declared elected?” as is already the reality for the current Louisiana House of Representatives! A majority of the legislature would then hold power without receiving a single vote. What if two-thirds of the legislators were so “elected” (as is already the case for the Arkansas State Legislature)? Seventy-five percent? All of them? At what point do unopposed candidate statutes, by removing voters from the electoral process, transform a state’s government from a republic into something else? Like A NoKo dictatorship or a Stalinist Russia?

The guarantee clause is not by any means a “dead letter,”\(^\text{18}\) and the political question doctrine\(^\text{19}\) still requires that courts develop “judicially enforceable standards of republicanism.” This raises the difficult question of which frame of reference should courts use when analyzing unopposed candidate statutes under the Guarantee Clause? The most obvious might be majoritarianism\(^\text{20}\): if enough candidates run unopposed that a majority of a legislative body is not elected by the people, then the body as a whole—and, by extension, the entire legislature or government—is no longer republican in form, as required by the Guarantee Clause.

What Justice Kennedy recently said of the Due Process Clause is also true of the Guarantee Clause: Kennedy writes:

“The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted

\[^{16}\text{For an “interpretation” of the Guarantee Clause see https://constitutionallawreporter.com/guarantee-clause/}\]

\[^{17}\text{A republican form of government has nothing to do with the repugnant Republican party as we know it today. Rather, a republican form of government is understood to be associated with the term "republic," and commonly means a system of government which derives its power from the people rather than from another source.}\]

\[^{18}\text{A dead letter as used here means a law or regulation that has not been repealed but is ineffectual or defunct in practice.}\]

\[^{19}\text{This doctrine refers to the idea that an issue is so politically charged that federal courts, which are typically viewed as the apolitical branch of government, should not hear the issue. The doctrine is also referred to as the justiciability doctrine or the nonjusticiability doctrine. (Source: Legal Information Institute, https://www.law.cornell.edu/wex/political_question_doctrine, last accessed on August 31, 2018)}\]

\[^{20}\text{Majoritarianism is a political agenda that asserts that a majority (sometimes religion, language, social class, or some other characterization) of the population is entitled to a certain degree of privilege in a given society, and has the right to make decisions on behalf of the entire society.}\]
One person, No vote!

...to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.”

Dynamic interpretation may be the most natural means of analyzing Guarantee Clause claims for the reasons given by Justice Kennedy.

Unopposed candidate statutes would likely violate the Guarantee Clause under either the Minor standard or the dynamic interpretation model. As James Madison wrote in Federalist, a republican government requires that “the persons administering it be appointed, either directly or indirectly, by the people.” Founding-era Americans “clearly believed that ‘the right of representing is conferred by the act of electing’” — that “the elected are not representatives in their own right, but [only] by virtue of their election.” The Founding Generation believed that “the process of voting was not incidental to representation but was at the heart of it.”

It quickly becomes clear that democratically elected state officials and local officials are a requirement for republicanism. The Federalist declared accountability to the people to be the very definition of a republic.

“The right of the people to choose their own officers for governmental administration” — so that power “is exercised by representatives elected by them” — is “the distinguishing feature of” the republican form.

The Court has explicitly acknowledged that “the right of the people to choose their own officers for governmental administration” — so that power “is exercised by representatives elected by them” — is “the distinguishing feature of” the republican form. This indicates a move toward direct elections, and away from using even an appointive system for key officials like state legislators and governors, and even at the local and municipal level.

“The right to vote freely for the candidate of one’s choice,” the Court declared, “is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”

Put simply, the Guarantee Clause guarantees a government accountable to the people.

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22 The Supreme Court ruling in Minor v. Happersett (88 U.S. (21 Wall.) 162 (1875)) was based on an interpretation of the Privileges or Immunities Clause of the Fourteenth Amendment. The Supreme Court readily accepted that Minor was a citizen of the United States, but it held that the constitutionally protected privileges of citizenship did not include the right to vote. The Nineteenth Amendment, which became a part of the Constitution in 1920, effectively overruled Minor v. Happersett by prohibiting discrimination in voting rights based on gender. Minor v. Happersett continued to be cited in support of restrictive election laws of other types until the 1960s, when the Supreme Court started interpreting the Fourteenth Amendment's Equal Protection Clause to prohibit discrimination among citizenry in voting rights. (see Briffault, Richard (2002). "The Contested Right to Vote". Michigan Law Review. 100: 1521–1522)
Elected officials — even those who are unopposed — ultimately owe their positions to, and are thereby accountable to, the people. Those who are appointed owe their positions to other government actors, who are then accountable for their choices of appointees come Election Day. Those who are “declared elected” thanks to the harmful unopposed candidate laws, on the other hand, are accountable to no one for their offices. If there is any system that the Guarantee Clause forbids, short of a monarchy or other such scenario, it is the system that allows unopposed candidates to run for public office.

**Editor’s Afterword**

People vote for a number of reasons, some of which traditional psychology would classify as irrational: the desire to participate in the democratic process, the feelings of civic duty and American-ness that voting engenders, and the pleasure of expressing one’s support for or opposition to particular partisan preferences. Voter satisfaction theory, premised on the idea of preexisting, immovable beliefs, denies this reality. Political competition theory, focused on the potential expressive benefits of hard-fought campaigns, ignores it. The Supreme Court’s approach to the electoral process, which limits voting to a winnowing function, rejects it. Regardless of the political and philosophical theories or the opinions of the judges, the act of voting does have meaning independent of the ultimate outcome. It is this fact for which unopposed candidate statutes fail to account—and for which they should be held to account.

**Epilogue**