

Judge

ESTABLISHED IN 1844 BY GEORGE AUGUSTUS JONES, NEW YORK. PUBLISHED WEEKLY BY J. EDGAR SHERMAN, NEW YORK.



A PARTY OF PATCHES.
Grand Balloon Ascension—Chicago, May 20th, 1891.

A Party of Patches, Judge Magazine, June 6, 1891

This political cartoon from the satirical magazine Judge presents the Republican perception of the People's (Populist) Party. The unidentified artist depicts the People's Party as a hot air balloon made up of a patchwork of pieces, with each piece labeled with the name of the political organization or party that has been subsumed under the banner of the Populists. Some of the more recognizable "patches" include the Prohibition Party, the Greenback Party, the Farmer's Alliance, and the Knights of Labor Party. Inside the balloon's basket are two leading Populists from Kansas, William Peffer and "Sockless" Jerry Simpson. Courtesy of Kansas Memory: Kansas Historical Society.

Anti-Fusion Election Laws in Populist Kansas

By
R. Alton Lee

During the presidential campaign of 1896, William Allen White, editor of the *Emporia Gazette*, penned a vitriolic editorial entitled "What's the Matter With Kansas" that won him national fame and lasting notoriety in Kansas. In it he noted that we have an old mossback Jacksonian who snorts and howls because there is a bathtub in the state house; we are running that old jay for governor. We have another shabby, wild-eyed, rattle-brained fanatic who has said openly in a dozen speeches. . . the rights of the user are paramount to the rights of the owner; we are running him for chief justice so that capital will come tumbling over itself to get into the state. We have raked the old ash heap of failure. . . and found an old hoop-skirt who has failed as a preacher, and we are going to run him for congressman at large . . . then we have discovered a kid without a law practice and have decided to run him for attorney general. Editor White further described the brilliant Frank Doster, who was running for chief justice of the Kansas supreme court, as a "shabby wild-eyed, rattle-brained fanatic."¹

Conservative editors and politicians in Kansas were frightened by the dedication and ideology of the Populist movement and, as the political successes of farmers mounted, the Old Guard Republicans, and many Democrats, referred to them variously as "anarchists, misfits, loafers, idiots, jays, harpies, communists, and demagogues." Kansas newspaper editors even went to the ridiculously extreme denigration of refusing to capitalize the term Populists in their political news

¹ *Emporia Gazette*, 1 October 1896; O. Gene Clanton, *A Common Humanity: Kansas Populism and the Battle for Justice and Equality 1854-1903* (Manhattan, Ks.: Sunflower University Press, 2004): 103.

stories. Seeking success and a positive response to their demands, these agrarian dissidents formed the People's or Populist party in Kansas in July 1890. They soon discovered that, although immensely powerful when organized as a political entity, they also lacked experience, both in politics and in governing, to minimize these shortcomings. As Charles Postel notes, "party campaigns required leaders with special skills in political tactics, debate, and agitation." The idea of fusion, or combining with one of the major parties, while often helpful in this sense, often split the reformers disastrously. When Republicans periodically returned to power they sought to defuse fusion through the election laws.²

The constitution of Kansas limited voting privileges to "white males, twenty-one years or older" and citizens or those who had declared their intentions of becoming citizens. They had to live in their township for thirty days to qualify. The 15th amendment eliminated the "white" restriction, of course, nine years later. Overall, the election laws in Kansas were primitive by modern standards throughout the nineteenth century. Three election judges, or "a trustee and two justices of the peace," would supervise the election proceedings. "Each elector (voter) shall, in full view, deliver to one of the judges of the election," the statute read, "a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a proper designation of the office which he or they may be intended to fill." One of the judges would "pronounce in an audible voice," the name of the elector and if no one objected (to his casting a vote), he shall immediately put the ticket in the (ballot) box." In some cases, parties provided their own ballots, which were colored and easily recognizable to spectators.³

"On the Friday next," the Kansas law continued, "the county clerk and commissioners will meet in the clerk's office" and count the votes.

² See R. Alton Lee, "Principle Over Party: The Farmers' Alliance and Populism in South Dakota, 1880-1900" (Pierre: *South Dakota State Historical Society Press*, 2011), especially for this concept; Charles Postel, *The Populist Vision* (New York: Oxford University press, 2007): 157.

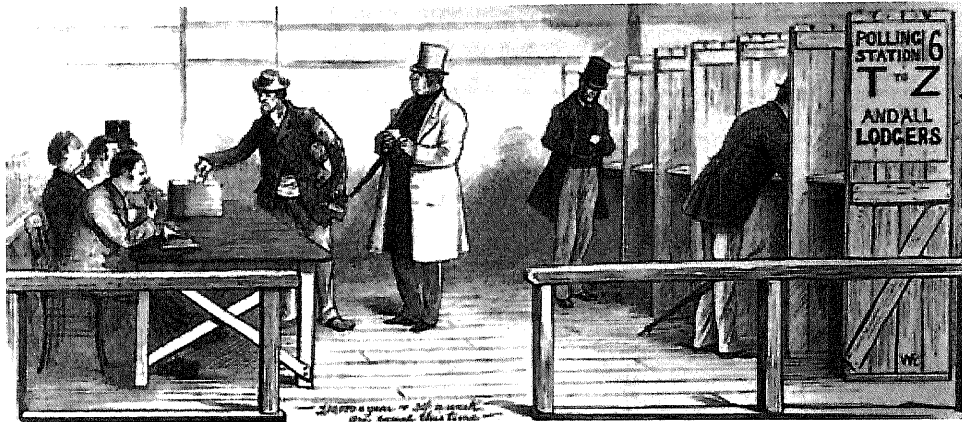
³ Peter H. Argersinger, "Regulating Democracy: Election Laws and Dakota Politics, 1889-1902," *Midwest Review*, V (Spring 1983): 2.

The statute provided that "all judges, clerks, shall be free from arrest, except for felony and breach of peace, in going to, attending on, and returning from, elections." The law specified "a woman may vote for school-district treasurer" but "female persons are not legally entitled to vote in Kansas for either a state or county superintendent of public instruction." Women finally received the privilege of voting in 1912 by a constitutional amendment. The provisions further stipulated that "no vinous, fermented, or other intoxicating liquors" could be obtained at the polling place.⁴

Picture in your mind, if you would, a typical voting scene in rural Kansas in 1890. It is an all-male activity that takes place in the local country school-house. There are several rowdy farmers, some of whom may have had a touch of John Barleycorn before leaving home, to celebrate the special day. Also present is the local banker who holds a mortgage on the farms of many of the celebrating participants. He checks closely on those whose paper he owns in regard to their political preference and his conversation with them previously about the coming election and his choices for office. In addition to potential financial repercussions, there was always present the possibility of other fraudulent activities. This was the age-old American voting process and Populists insisted on the adoption of the Australian Ballot to protect themselves in exercising this privilege, which they managed to enact in 1893.

Similarly, party caucuses were often rowdy affairs. Parties imported "specialists" to address their followers and to harass the gatherings of opponents. Meetings were frequently held in country schoolhouses and it was easy for forgetful school board members to schedule two meetings for the same evening, one for Populists and one for Republicans. When members of the two antagonistic groups arrived at the same time, physical clashes could occur with both sides sincerely believing the other purposely had invaded their legitimate scheduled

⁴ *Ibid.*



The Australian Ballot System. Courtesy Hulton Archive – Getty Images

meeting to create a crisis. The situation could be exasperated if another school board member was present for one of the party's caucuses and took it upon himself to validate his party's reservation. This could lead to a strained situation. The ballot law did not address the details of party caucus procedures and these crises continued to arise. When the Populists founded the People's party in 1890, they soon discovered they were unable to succeed by themselves and many turned to cooperation with the minority Democrats. Even by the election of 1890, though, the Populists were sufficiently attractive to win control of the lower house in the state legislature and non-Republicans won five of the seven congressional seats, including the notorious Jeremiah "Sockless Jerry" Simpson. In this legislative session, Populists in the lower house enacted the Australian, or secret, ballot, which they expected would "facilitate ticket splitting, or 'fusion,' between Populists" and the minority Democrats. Republicans retained control of the upper house and rejected this plan. By 1891 there were a sufficient number of reformers to send Stalwart Republican John J. Ingalls home and replace him in the U.S. Senate with William Peffer. When time for the next election rolled around in 1892, the Populists entered their own slate of national candidates with James Weaver for president and James Field as his running mate. They offered Lorenzo D. Lewelling for governor and the Democrats endorsed the Populist ticket instead of nominating their own choices. On the state level, the Populists won the gubernatorial contest, control of the upper house, and they were rather evenly split in the House of Representatives, leading to the "Legislative War," where little was achieved that session.⁵

When he assumed office in 1893, Populist Governor Lorenzo Lewelling recommended a "purification of the election laws" and Populist Speaker of the House George Douglass, the *Topeka Daily*

⁵ Peter H. Argersinger, "'A Place on the Ballot,' Fusion Politics and Fusion Laws," *American Historical Review*, 85 (April 1980): 288; Robert W. Richmond: *Kansas A Land of contrasts* (Wheeling, Ill.: Forum Press, 3rd ed., 1989):191-94; Postel, *Populist Vision*, p. 162, for the Australian ballot.

Capital noted, came to the capital “loaded with a bill to this effect.” During the “war” the reformers were able to achieve enactment of the Australian ballot, which revolutionized voting procedures in the Sunflower State. The general election laws of Kansas in 1890 provided that the county sheriff give a fifteen-day notice of a coming general election, or ten days for a special election, and post a public notice of the time and officers to be elected. Such notice must be posted at the polling place and published in “some newspaper” in the county. The polls must be open from 8:00 am to 6:00 pm, with no lunch hour.⁶

When they decided on the secret ballot system, reformers were forced to consider factors other than secrecy. They had to decide “the structure of the ballot, the question of who could be listed on the ballot, the rules for registering nominees, and printing the ballots”—all of which had hitherto been determined by the political parties. They had to provide voting booths and determine the time allowed an individual to vote, and provisions for nominations to office, whether by party or by petition, and the rules governing these petitions. As Peter Argersinger notes, in establishing these procedures, politicians “manipulated the rules to achieve partisan ends.”⁷

Even election law changes failed to come to grips with questionable practices of third party executives. The election of 1896 witnessed the elevation to office of Popocrat Chief Justice Frank Doster and many conservatives expected him and other “radicals” to begin to demolish capitalism in the state and substitute socialism in its stead. But the process did not wait for the installation of these people in office. Early in November, shortly after the elections, newspapers headlined the story that recently-elected Popocrat Judge Frank A. Myers of Oskaloosa had appointed recently-elected Charles F. Johnson as receiver of all Santa Fe railroad property in Kansas. The Kansas Alien Land Act of 1891 prohibited foreigners from possessing land in the Sunflower State and

⁶ *Topeka Daily Capital*, 15 March 1893; *General Statutes of Kansas*, 1889, vol. 1, chap 33.

⁷ Argersinger, “Regulating Democracy,” p. 2.

this included corporations where 20 percent of their security holders were foreigners. Thus, the Oskaloosa court could possibly “divide the \$200,000 worth of Kansas land owned by the Santa Fe into 160-acre plots to be sold at auction.” Santa Fe officials sprang into action and convinced Judge Myers to rule in December that the Alien Land Law did not apply to railroads. But conservatives were unnerved by this scary development prompted by “anarchists,” even before Doster and other “radical Popocrats” elected in 1896 had taken office.⁸

The Topeka *Advocate*, the leading Populist newspaper in Kansas, urged early in the legislative session of 1893 that the election laws “be carefully revised and amended.” The editor especially believed that, as the law currently stood, election judges “may utterly disregard the plain provisions of the statute respecting the rights of candidates and electors to be present at the counting and canvassing of the votes. . . .” The editor was further concerned that the requirement for living in the precinct for thirty days was insufficient time as this encouraged the use of “floaters” in the larger cities to vote more than once in an election. This issue was not the main concern of the Australian ballot law, though, that the Populist house enacted in 1891 and that served as a model for the election law of 1893.⁹

The issue of the secret ballot was not to be taken lightly, especially in the midst of the “legislative war.” It was introduced in early January, debated, and passed the senate in early March by vote of 24-0, with 16 not voting as an escape from the onus of voting against a popular measure they disliked. The proposal won the approval of 67 solons in the lower house, with 14 voting nay and 42, mostly Republicans, not voting. The *Advocate* noted its passage with its objective being “to guarantee the secrecy to the voter, to avoid bribery and intimidation” and not unimportant to many impoverished Populists, “to provide for

⁸ H. Craig Miner, “The Oskaloosa Octopus: Jobbers, ‘Popocrats’. And the Santa Fe Railways’ False Receivership, 1896,” *Kansas Historical Quarterly*, 38 (Winter 1972).

⁹ *Topeka Advocate*, 18 January 1893.

distribution of ballots at popular expense.” Thus election procedures in Kansas were altered profoundly. The editor of the *Topeka Daily Capital* noted that voters could now “have the chance to wrestle with the kangaroo system of conducting elections.”¹⁰

The new statute provided for the township or city to print official ballots with the names of the candidates and their party affiliation arranged according to the number of votes the parties received in the last election. The ballots were printed on “plain white paper” with a box beside each name. The voter was instructed to mark carefully an “X” in the box of the candidate of his choice. If the prospective voter was illiterate or “physically disabled,” he could request the assistance of two officials from “different parties” in casting his vote. No elector could vote unless he pledged to defend the constitution and government of the United States and of the state of Kansas. Employees were guaranteed the right to take two hours off from work to cast their ballot. Candidates would be nominated by a “primary, caucus, or meeting of qualified voters,” or by petition nomination of “not less than five hundred (500) qualified voters of the state.”¹¹

This 1893 law contained several provisions aimed at preventing corrupt practices. It forbade giving or lending money to influence voting choices or, on the other hand, to persuade voters to remain away from the polls. Bribing a person working at the polls to promote “the interest of any party, or any ticket, or any candidate or candidates” was unlawful. Candidates for public office could not distribute cigars or intoxicating liquor on election day. All political committees promoting candidates must have a treasurer, keep a detailed account of all financial transactions, and file a detailed report with the county clerk within twenty days after the election. These returns must be “substantially verified” by “some officer authorized to administer oaths.” A filing of

¹⁰ *Senate Journal*, 1893, p. 821; *House Journal*, 1893, p. 1111; *Topeka Daily Capital*, 10 March 1893.

¹¹ *Senate Journal*, 1893, pp. 134, 507; *House Journal*, 1893, p. 482; *Topeka Advocate*, 15 March 1893. *General Statutes of Kansas*, 1893, chap. 78.

false statements constituted perjury punishable by a fine of not more than \$500 or less than \$10 or imprisonment of ten days to one year. The law also contained the disclaimer that it did not prohibit voluntary work for candidates nor necessary expenditures for meetings, postage, or other bona fide expenditures.¹²

In case of death or declining of nomination of a candidate, the vacancy could be filled by the political party or persons that made the original nomination. City mayors and township clerks would appoint election judges and clerks from different political parties and “qualify” them at least twenty-four hours before the polls opened. When a “public measure” came up for a vote in a general election, it must appear on the ballot preceded by “Shall the following amendment be adopted?” Soliciting of votes was prohibited within 100 feet of “the polling place.” The prospective voter “shall give his name and, if required to do so, his residence” to the judges and one of them would “announce the same in a loud and distinct tone of voice.” If found to be a legal voter, he would “enter the space behind the guardrail” and cast his vote.

The candidates on the ballot would be grouped according to party and office and the voter was instructed to “X” the ballot in the box beside the candidate’s name. He must not erase or otherwise “mutilate” the ballot and, when completed, fold it in half to conceal all writing and printing inside. He could remain inside the guardrail no longer than ten minutes and five minutes in the voting booth. Prospective voters had ballots available of a color other than white, for instruction purposes in order to help them cast their vote “correctly and promptly” when they entered the voting booth. Prospective voters who could not read English or had physical disabilities would be assisted by two officers of different parties; intoxication would not be regarded as a physical disability. The law specified the number, size, and placement of voting booths, and the amount of time the voter was permitted to be in one. Voters in the

¹² *Ibid.*, chap. 77.

election of 1894 followed these procedures and conservatives quickly challenged the new election law in the courts.¹³

At this time judges ran for their positions the same as for a political office. They vigorously campaigned, nailed up posters on telephone poles, shook hands, kissed babies, and performed all the functions of candidates for governor or congressman, and they ran on party tickets. Populists scored their first victory on the supreme court when they elected Stephen Haley Allen in the election of 1892. Expecting the worst from this “Jacobin,” conservatives were pleasantly surprised when Justice Allen delivered an opinion involving the secretary of state refusing to certify the nomination of a district judge to the proper county clerk, thus precluding his name from the ballot. In delivering the high court’s opinion, Allen observed that the purpose of the Australian ballot was to allow the voter to express his political desires free from intimidating influences. If officials could withhold nominations, a candidate “might be wholly deprived of his rights under the law.” He further envisioned no harm if two or more political parties chose the same candidate for the same office, a point that was vital for fusion. In another case Allen, with Populist-endorsed Justice David Martin participating, determined that a ballot was void if not marked precisely as the law required, very safe and sane interpretations the Republicans had not expected from anarchistic Populist justices.¹⁴

The legality of the house of representatives during the “Legislative War” also came before the high court. Both Populists and Republicans, insisting they had received a legal majority in 1892, organized their own assemblies, elected separate speakers, called out the militia which placed a Gatling gun on the Capitol grounds, deputized several hundred Republican sympathizers, and appealed to the supreme court for an

¹³ *Instructions to Voters* pamphlet, 1893, Kansas State Historical Society Archives, Topeka.

¹⁴ R. Douglas Hurt, “The Populist Judiciary: Election Reform and Contested Offices,” *Kansas History: A Journal of the Great Plains*, 4 (Summer 1981): 130-31.

opinion on legitimacy. The Republican majority on the court, of course, ruled in favor of the Republican house and Justice Allen dissented in support of Frank Doster, counsel representing the Populists and the Douglass house in the case. Allen, and Doster, rightfully believed the court should restrict itself to judicial questions and refrain from hearing political issues. They lost as the decision was made by the majority on a political basis.¹⁵

Frank Doster, who was elected chief justice in 1896, had previously unburdened himself of part of his economic philosophy by observing that “the rights of the user are paramount to the owner.” This was an accurate summary of the U.S. Supreme Court’s opinion in *Munn v. Illinois* in 1877, but when taken out of context by conservatives, the decision horrified many who were certain this “communist” would use his position to devastate the capitalist system in Kansas. Chief Justice Doster wrote the opinion on a case the court heard charging the president and the treasurer of the Kansas State Agricultural College regents with malfeasance in office. The Republican majority on the court sustained the charges, but Doster wrote a strong dissent, noting that the accusations against the pair were “trivial” and brought for the purpose of “gaining political control of the educational institutions of the state.”¹⁶

In their eagerness to gain public office, Kansas Populists went all the way in denying their basic principles and fusing with the Democrats on both the national and state levels in 1896. Peter Argersinger defines fusion as “the electoral support of a single set of candidates by two or more parties.” In 1896 Populists endorsed the national ticket of William Jennings Bryan for president, but rejected the Democratic choice of Arthur Sewall of Maine as a running mate because he was a banker and a railroad man, both of which were anathema to Populists. Instead, they chose the questionable route of nominating Thomas E. Watson of

¹⁵ *Ibid.*, pp. 134-35.

¹⁶ Michael Brodhead, “Visions of a Better World: Comparisons of Jurists David Brewer and Frank Doster,” *Kansas History: A Journal of the Great Plains*, 16 (Spring 1993): 44-46; Hurt, “Populist Judiciary,” p. 138.

Georgia for the vice presidency. Watson was unhappy over this unusual political arrangement and asked the Kansas secretary of state to keep his name off the ballot because voters supporting him would be “deceived into voting for Democratic electors who would cast their ballots for the Bryan-Sewall ticket.” When the secretary of state refused, Watson appealed this rejection to the state supreme court, which ruled that presidential electors were under no legal obligation to support either Watson or Sewall. The former’s letter requesting withdrawal had not been filed within the required fifteen days before election and the court held that his name must remain on the ticket.¹⁷

Argersinger perceptively draws attention to the fact that adopting the Australian ballot provided either for the party-column format or, in the case of Kansas law, the office-bloc grouping. Kansas lawmakers added the device of party circles at the top of the ticket to facilitate straight-ticket voting. This further assisted Republican opportunities to “eliminate fusion politics and thereby alter political behavior.” Fusion led to candidates being listed twice for the office they pursued, once on the Populist list and again for the Democratic ticket. The alternative to this “double attraction” was to limit the listing of candidates to a single party nomination.¹⁸

Fusion had been successful in many ways for Kansas Populists in 1892 so they decided to try it again four years later. It worked little better in 1896 on the national level, with William Jennings Bryan going down to defeat against William McKinley, but they were more successful with the state offices. Populist John Whitnah Leedy was elected governor and the new senate was composed of 27 Populists, 11 Republicans, and 2 lonely Democratic Populists, or Popocrats as they were known. The more splintered house had 62 Populists, 48 Republicans 8 Popocrats, 4 Democrats, and 3 Silver Republicans. Nominally, though, this was a reform legislature, especially after the “legislative war” of the previous

¹⁷ Hurt, “Populist Judiciary,” pp. 140-41.

¹⁸ Argersinger, “A Place on the Ballot,” pp. 191, 200.

period. This legislature by-passed Senator Peffer and elected in his place fusionist William A. Harris. It also made a few minor changes in the Australian Ballot law of 1893 early in this session.¹⁹

In January 1897, Governor John Leedy sent a message to the opening legislative session, calling attention to the fact that the cost of printing ballots had been “more expensive than is absolutely necessary.” He further believed that the county committee of the political parties “should be entitled to name” their election judges. The upper house passed these proposed changes on 5 March 1897 by vote of 29-0, with 10 not voting and the lower house followed suit six days later by vote of 93-2, with the extraordinary number of 42 not voting. Governor Leedy signed his approval on 13 March.²⁰

Based on four years of experience, the new law altered many of the clauses of the statute of 1893, most of them sparingly, some significantly. The first two clauses relegating the printing of ballots to the precincts or cities was scarcely changed. Sections 4 and 5 raised the requirement of 500 qualified voters for nomination to office to 2,500 and these nomination forms must be filed not less than forty days before the election. Section 15 spelled out the process of printing ballots and specified the price to be paid for said printing to prevent inflating on costs. Sections 31 and 32 were added to the statute to provide for election of township road overseers and to fix the fees for clerks and judges serving at election time. In other words, the law was changed primarily for provisions for nomination to office and to protect against excessive payment for printing ballots and serving at election time.²¹

The Republicans returned to power after the final collapse of the Populists and fusionists in the election of 1900, recapturing control of the major state offices when the fusionists failed. The more dedicated,

¹⁹ Clanton, *Common Humanity*, 258; see also Lee A. Drew, “Populist Fusion Movements as an Instrument of Political Reform,” (M.S. thesis Kansas State Teachers College, Pittsburg, 1957): 94-95.

²⁰ Senate *Journal*, 1897, pp. 884-5; House *Journal*, 1897, pp. 32, 1225.

²¹ *General Statutes of Kansas*, 1897, chap. 129.

or anti-fusionist, Populists turned to the rapidly emerging Socialist party being created by former Populist leader G.C. Clemens. The Republicans gained even tighter control over the state government in the election of 1900 and proceeded to revise the election law in 1901 to curb the activities more strictly and to preclude any possibilities of success of third parties. In the legislature that met in January 1901 there were 82 Republicans in the 125-seat house, 39 Fusionists, 3 Democrats, and 1 Silver Republican and 31 Republicans, and 9 Fusionists, in the 40-seat senate. Republican Governor William Eugene Stanley sent a message to the solons, requesting a law prohibiting any man's name from appearing on the ballot "more than once for the same office." Fusion, he stated, "is a fraud and should not be tolerated." The senate approved numerous changes in the election laws on 12 February 1901. The lower house accepted these alterations 78-0, with an astounding 47 not voting.²²

With almost a decade of experience behind them, Republicans had discovered that the election laws could be written to their partisan advantage. Based on their sometimes bitter experience with Populists, the Republicans enacted a stringent anti-fusionist law in 1901 that proved to be a handicap for third parties throughout the twentieth century. Section one of the new law spelled out the Tuesday after the first Monday in November in even-numbered years for a general election to be held in each county. The first five sections of chapter 177 detailed how candidates would be nominated. Each party could name one candidate for each office by a certificate signed by the presiding officer or secretary of the convention. Other, or "independent," candidates could be named through the same process, signed by 5 percent of the qualified voters. This would restrict candidates to party designations and would limit write-ins to the "blank column" section of the ballot.²³

Party nominations must carry the name of the party over the party's emblem, chosen by the chairman of the party's state committee. These

²² *Senate Journal*, 1901, p. 655; *House Journal*, 1901, p. 714.

²³ *General States of Kansas*, 1901, chap. 177.

emblems could not contain the coat of arms or seal of any state or the United States, the national flag, religious symbols, portrait of a person, or currency of the United States. Parties were limited to nominating one candidate for each office and no person could accept two or more nominations for an office. If nominated more than once, the candidate must file a statement designating which one he accepted. Petitions for Independent candidates must be signed by "not less than 15 percent of the qualified voters of each county, district or division." Votes must be cast with a black lead pencil in either the circle designated for a straight ticket or a cross in the square for each individual candidate for office. When the ballot was folded over, it must show the words "official ballot," or "township," or "city," whichever was accurate. Separate ballots must be used for amendments or special questions. These sections would assist Republicans immensely by facilitating straight ticket voting.²⁴

Persons desiring to vote must give their name and, if requested, their residence in a clear voice, and if their name was found on the register of voters, they would enter the voting space. Upon receiving a ballot, they would retire to one of the voting booths and mark the ballot within five minutes. They could not mark the ballot other than with proper crosses made with a lead pencil. If they spoiled a ballot they could obtain another one up to a maximum of three. When completed, the ballot must be folded to conceal the names of candidates and an election judge would clip the ballot number on the corner and deposit it in the ballot box. The ballots must be counted immediately after the polls closed and the results submitted to the election judges. The same fines and penalties were carried over from the 1897 law. Procedures for voting at the Old Soldiers Home were spelled out separately, as were those for railroad workers who were "absent from home" while working. Chapter 184 allowed the use of voting machines.²⁵

The law provided for precincts to use the machines that were

²⁴ *Ibid.*

²⁵ *Ibid.*

currently coming into vogue, especially in the larger cities in the East, and it made provision for a committee to “investigate” their use. At a cost of \$500 each, they were expensive but could be re-used for years, rather than printing new ballots for each election. Reformers argued that their introduction could reduce the number of precincts from twenty-one to twelve in Topeka alone and this would allow for the “dispensing” of two clerks in each precinct, the costs of printing ballots, etc. for a one-time total savings of \$936.21. The machines had the great advantage, Laurence W. Luellin of Olathe argued in trying to sell his product, of giving an accurate count of the vote within one hour after the polls closed and “would preserve the record” indefinitely. The promoters promised that the voter, “cannot make a mistake” and “the absolute secrecy of the ballot would obtain.”²⁶

Republicans, in writing the new election law, made certain that election judges and clerks would come from the ranks of the two major parties by specifying that no more than two judges and one clerk, of the five, could come from the same party. These officials would be chosen by mayors and township trustees who would use the rolls of the party that received the highest number of votes for governor in the last election.²⁷

The new law was quickly brought to the state supreme court for tests. The provision for annual elections for county commissioners did not violate the constitutional provisions for these officers, the justices concluded, because the statute was not an attempt to abrogate the fundamental law. Also, the high court decided that any excessive allowances for printing ballots was recoverable by the local agency.²⁸

Republicans demonstrated that they had learned their election lessons

²⁶ *Topeka Daily Capital*, 14, 17 February 1901.

²⁷ G.C. Clemens, Socialist candidate for governor in 1900, took time from a busy schedule to compile a 72-page booklet listing current election provisions in *The General Election Laws of Kansas* (Topeka: Crane & Co., 1901).

²⁸ *Wilson v. Clark*, 63 Kan 505 (1901); *Honey v. Jewell County*, 65 Kan 428 (1902).

well from the Populists. There would be no further multiple listing of candidates and there would be a thorough discouragement of third party developments. Straight party ticket voting would be encouraged and the new anti-fusion law would discourage write-in voting. The Populists made a great contribution to Kansas political history with their insistence on use of the Australian ballot. Henceforth the voting procedures would be more formalized, regulated, and restrictive than during the first three decades of statehood. The experience of fusion and anti-fusion voting laws confirmed the old adage “beware of what you wish for.” Populists achieved their secret ballot wish in 1893, but ended up with far more stringent regulations that made Populists or other third political parties much less likely to succeed in the future. This was a great setback to the state as third parties serve the important function of exploring and calling attention to the public of new issues, problems, and solutions. The dominant Republican party further entrenched itself in power and created the probability that it would perpetuate its dominance indefinitely in the Sunflower State.