

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

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I. INTRODUCTION

Since the end of World War II, and especially since the Help America Vote Act¹ passed in 2002, U.S. general election ballots have changed dramatically. In 1946, 31² states used party-column ballot format. The other 19³ states used an office-group format.

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

¹ 52 U.S.C. § 10101 et seq.

² See Erik J Engstrom & Jason M Roberts, State-level Data of Ballot Design, from 1888–2016 (2021) (on file with the SETON HALL J. LEGIS. & PUB. POL'Y) [hereinafter Ballot Data]. Alaska was not a state until 1958, and Hawaii was not until 1959. But they did have ballots for Delegate to Congress and territorial legislature, so for purposes of this article they are being treated as states for the entire Post World War II period. A special thanks to Professors Engstrom and Roberts, who provided their data set informing their excellent book, THE POLITICS OF BALLOT DESIGN: HOW STATES SHAPE AMERICAN DEMOCRACY (2020).

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

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Independently of that, 26⁴ states put straight-ticket devices on their general election ballots, and 24 did not.

But as of 2023, only five states still use a party-column ballot, whereas forty-five states now use an office-group format.⁵ Only six states still use a straight-ticket device.⁶ United States ballots have significantly changed since the end of World War II, and yet the subject has not attracted much scholarly attention.⁷

A party-column ballot organizes the ballot so that each party has its own column or row.⁸ All of that party's nominees are included in such column or row.⁹

States that do not use party-column ballots use office-group ballots.¹⁰ An office-group ballot organizes the ballot by each particular office. At the top of the ballot is the election's most important office, president in presidential years, and either Governor or U.S. Senator in mid-term years. For that particular office, each candidate running for that position is printed in a list.¹¹ Then, the ballot goes on to the next office, again with a list of each candidate running for that office.

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

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

⁵ See Ballot Data, *supra* note 2.

⁶ Ballot Data, *supra* note 2.

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

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

⁹ See Walker, *supra* note 8.

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

¹¹ See Walker, *supra* note 8, at 449 ("the Office Block (or Massachusetts) ballot lists candidates for each contest in blocks or groups, often alphabetically, and sometimes even without a party label. . . . The Office Block ballot does not prevent straight ticket

A straight-ticket device is a place near the top of the ballot, giving the voter the opportunity to vote for all of one particular party's nominees with a single act.¹² Sometimes, the device is called a "party circle."¹³ Typically, the device asks the voter if he or she wishes to shorten the voting process by marking in a circle for a particular party a single "X" to indicate support for all of a party's nominees. Usually, in states with a straight-ticket device, over half the voters use it, and thus never need to cast an eye over the remainder of the ballot, except of course for the part of the ballot reserved for ballot measures and non-partisan offices.¹⁴

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

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

voting, but since the voter must make a separate mark or pull a separate lever for each contest, it is thought to be less likely that he will follow party labels in all his choices.")

¹² For more on "Straight-ticket" voting, see Olga Gorelkina et al, *The Theory of Straight Ticket Voting*, 60 *SOCIAL CHOICE & WELFARE* 365 (2023).

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

¹⁴ See, e.g., Richard Winger, *Michigan Legislature Repeals Straight-Ticket Device*, *BALLOT ACCESS NEWS* (Jan. 27, 2016), <https://ballot-access.org/2016/01/27/january-2016-ballot-access-news-print-edition-2/> [<https://perma.cc/T2CJ-XLQP>] (discussing similar pitfalls of straight-ticket devices).

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

¹⁶ See, e.g., *CONN. GEN. STAT. § 9-437* (West 2015) (titled "Form of ballot. Position of candidates' names on ballot. Sample ballots. Voting instructions and information") (providing "At the top of each ballot shall be printed the name of the party holding the primary, and . . . The vertical columns shall be headed by the designation of the office or position."); *N.H. REV. STAT. ANN. § 656:5* (2022): "Party Columns"; *N.J. STAT. ANN. § 19:14-6* (titled "Column designations; accompanying instructions") (providing that "In the columns at the extreme left shall be printed the name of each of the political parties."); see also *Ballot Data*, *supra* note 2.

¹⁷ See generally, NATIONAL CONFERENCE OF STATE LEGISLATURES, *Straight-Ticket Voting* (Jan. 20, 2023), <https://www.ncsl.org/elections-and-campaigns/-straight-ticket-voting>.

States that have changed from party-column to office-group almost never reverse that change. Since the end of World War II, the only state that changed from party-column to office-group, and then changed back, is New Hampshire.¹⁸ Similarly, states almost never restore a straight-ticket device after they have abandoned it. Only Michigan repealed the device and then restored it, and the two changes were so close together in time that Michigan only ever conducted a single statewide election without the device, in November 2018.¹⁹

II. THE RISE OF SUCCESSFUL INDEPENDENT LEGISLATIVE CANDIDATES

During the last seventy-seven years, the number of independent candidates elected to state legislatures has grown, not dramatically, but significantly. These tables—compiled from each state’s published election returns from every election from 1946 to the present—show the number of independent candidates elected to state legislatures since World War II ended, in each state that elected any. States that have not elected an independent to the legislature since before World War II are not included. The tables only include regularly scheduled elections, not special elections. The tables only include independent candidates whose names were printed on the ballot, not write-in winners. An “independent” candidate is defined as a candidate without the nomination of any organized political party. Some minor party nominees for legislature have been elected in the period 1945 to the present in Alaska, Arkansas, California, Connecticut, Illinois, Louisiana, Maine, Minnesota, Montana, New Hampshire, New York, Vermont, and Wyoming, but they are outside the scope of this article.²⁰

¹⁸ See Ballot Data, *supra* note 2. A comparison between sample ballots from New Hampshire illustrates this point. Compare STATE OF N.H., Sample Ballot (1995) (using an office group ballot for the first time), with STATE OF N.H., Sample Ballot (2005) (reverting back to the party-column format) (each on file with author).

¹⁹ See *id.* (explaining a challenge to the law abolishing the party-column device and the resulting court cases). For the chronology of legislation and litigation, see Mich. S.B.13 (2016) (repealed, 2018); Mich. State A. Philip Randolph Inst. v. Johnson, 749 F. App’x 342, 354 (6th Cir. 2018) (staying the District Court’s order rejecting the legislature’s amendment); Mich. Ballot Proposal 18-3 (2018) (reinstating straight-party voting, among other things).

²⁰ See, e.g., Richard Winger, *166 Minor Party & Independent Nominees Have Been Elected to State Office in Last 30 Years*, BALLOT ACCESS NEWS (Dec. 1, 2007), <https://www.ballot-access.org/2007/120107.html>; Richard Winger, *Five Minor Parties Win Partisan Elections on November 5*, BALLOT ACCESS NEWS (Dec. 28, 2019), <https://ballot-access.org/2019/12/28/december-2019-ballot-access-news-print-edition/>; Richard Winger, *Minor Party and Independents Win Twenty-five Legislative Elections*, BALLOT ACCESS NEWS (Dec. 28, 2020), <https://ballot-access.org/2020/12/28/december-2020-ballot-access-news-print-edition/>.

The tables show that the only decades in which more than ten independent candidates were elected to legislatures in every even-year election have been the 2010s decade and, so far, the 2020s decade. The decade with the fewest independent wins was the 1980's. A handful of states hold all their regularly scheduled elections in odd years, and Table 3 and Table 4 show the results of those contests. Since the end of World War II, Kentucky moved its legislative elections from odd years to even years, but because no independents were elected in Kentucky during the odd-year period, Kentucky is only listed in the even-year tables. Also, New Jersey had even-year elections for its legislature in 1946, but again, because no independents were elected in New Jersey in 1946, New Jersey is only listed in the odd-year charts.

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

	4 6	4 8	5 0	5 2	5 4	5 6	5 8	6 0	6 2	6 4	6 6	6 8	7 0	7 2	7 4	7 6	7 8	8 0	8 2	
Al. ²¹																				
Ak. ²²							2	2							1	1				
Ark. ²³	1								1											
Cal. ²⁴																				
Conn. ²⁵				2																
Fla. ²⁶														1	1					
Ga. ²⁷										2	1	1								
Ill. ²⁸														1	3	1	1	2		
Ky. ²⁹																				

²¹ Compiled from STATE OF ALA., OFF. OF THE SEC'Y OF STATE, OFFICIAL & STATISTICAL REGISTER (1946–82).

²² Compiled from STATE OF ALASKA, OFF. OF THE LT. GOV., OFFICIAL RETURNS (1946–82) (previously Territory of Alaska).

²³ Compiled from STATE OF ARK., OFF. OF THE SEC'Y OF STATE, THE MANUSCRIPT GENERAL ELECTION RETURNS (1946–82).

²⁴ Compiled from STATE OF CAL., SEC'Y OF STATE: ELECTIONS DIV., STATEMENT OF VOTES (1946–82).

²⁵ Compiled from STATE OF CONN., SEC'Y OF THE STATE, STATEMENT OF VOTES (1946–82).

²⁶ Compiled from STATE OF FLA., SEC'Y OF STATE, TABULATION OF VOTES CAST (1946–82).

²⁷ Compiled from STATE OF GA., SEC'Y OF STATE, OFFICIAL TABULATION BY COUNTIES (1946–82).

²⁸ Compiled from STATE OF ILLINOIS, STATE BD. OF ELECTIONS, OFFICIAL VOTE (1946–82).

²⁹ Compiled from STATE OF KY., SEC'Y OF STATE, OFFICIAL PRIMARY AND GENERAL ELECTION RETURNS (1946–82).

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Me. 30			1											1		2		
Mas s. ³¹									1				2	3	3	2	2	
Min n. ³²								1	1									1
Mo. 33																		
Mt. 34	1	2					3											
Nev. 35	1								1									
N.H. 36	1		3	1		3		1										2
N.M. 37																		
N.Y. 38													1					
N.C. 39																		
N.D. 40										1								
Ohi o ⁴¹			1															
Or. 42														1				
R.I. 43													1					
S.C. 44																		

³⁰ Compiled from STATE OF ME., SEC'Y OF STATE, GENERAL ELECTION OFFICIAL VOTE (1946-82).

³¹ Compiled from STATE OF MASS., SEC'Y OF STATE, ELECTION STATISTICS (1946-82).

³² Compiled from STATE OF MINN., SEC'Y OF STATE, MINNESOTA OFFICIAL RESULTS (1946-82).

³³ Compiled from STATE OF MO., SEC'Y OF STATE, ROSTER OF OFFICIALS (1946-82).

³⁴ Compiled from STATE OF MONT., SEC'Y OF STATE, OFFICIAL GENERAL ELECTION RETURNS (1946-82).

³⁵ Compiled from STATE OF NEV., SEC'Y OF STATE, OFFICIAL RETURNS (1946-82).

³⁶ Compiled from STATE OF N.H., SEC'Y OF STATE, MANUAL FOR THE GENERAL COURT (1946-82).

³⁷ Compiled from STATE OF N.M., SEC'Y OF STATE, OFFICIAL RETURNS (1946-82).

³⁸ Compiled from STATE OF N.Y., SEC'Y OF STATE, LEGISLATIVE MANUAL (1946-82).

³⁹ Compiled from STATE OF N.C., SEC'Y OF STATE, NORTH CAROLINA MANUAL (1946-82).

⁴⁰ Compiled from STATE OF N.D., SEC'Y OF STATE, OFFICIAL ABSTRACT OF VOTES CAST (1946-82).

⁴¹ Compiled from STATE OF OHIO, SEC'Y OF STATE, OHIO ELECTION STATISTICS (1946-82).

⁴² Compiled from STATE OF OR., SEC'Y OF STATE, OFFICIAL ABSTRACT OF VOTES (1946-82).

⁴³ Compiled from STATE OF R.I., STATE BD. OF ELECTIONS, OFFICIAL COUNT OF THE BALLOTS (1946-82).

⁴⁴ Compiled from STATE OF S.C., ELECTION COMM., ANNUAL REPORT (1946-82).

S.D. 45										1									
Tenn. 46												1			1	1	1		1
Utah 47						1													
Vt. 48	9	5	8	5		1		6	8	1	2			2	3	2	2	3	1
Wis. 49																			
Wyo. 50													1	1	1	1			1
TOT	13	7	13	6	2	5	5	9	10	6	5	2	3	7	15	9	8	7	6

Table 2: 1984–2022 For States with Even-Year Legislative Elections

	84	86	88	90	92	94	96	98	00	02	04	06	08	10	12	14	16	18	20	22
Al. 51														1		1				
Ak. 52					2	1										1	2	1	2	6
Ark. 53			1		1															
Cal. 54		1		1	1	1													1	
Conn. 55																				
Fla. 56																				

45 Compiled from STATE OF S.D., SEC'Y OF STATE, OFFICIAL ELECTION RETURNS BY COUNTY (1946–82).

46 Compiled from STATE OF TENN., SEC'Y OF STATE, TENNESSEE DIRECTORY AND OFFICIAL VOTE (1946–82).

47 Compiled from STATE OF UTAH, LT. GOV., ABSTRACT OF THE RETURNS OF THE GENERAL ELECTION (1946–82).

48 Compiled from STATE OF VT., SEC'Y OF STATE, PRIMARY & GENERAL ELECTIONS (1946–82).

49 Compiled from STATE OF WIS., STATE ELECTIONS BD., VOTES CAST AT THE GENERAL ELECTION (1946–82).

50 Compiled from STATE OF WYO., SEC'Y OF STATE, OFFICIAL DIRECTORY & VOTES CAST (1946–82).

51 Compiled from STATE OF ALA., OFF. OF THE SEC'Y OF STATE, OFFICIAL & STATISTICAL REGISTER (1984–2022).

52 Compiled from STATE OF ALASKA, OFF. OF THE LT. GOV., OFFICIAL RETURNS (1984–2022).

53 Compiled from STATE OF ARK., OFF. OF THE SEC'Y OF STATE, THE MANUSCRIPT GENERAL ELECTION RETURNS (1984–2022).

54 Compiled from STATE OF CAL., SEC'Y OF STATE: ELECTIONS DIV., STATEMENT OF VOTES (1984–2022).

55 Compiled from STATE OF CONN., SEC'Y OF THE STATE, STATEMENT OF VOTES (1984–2022).

56 Compiled from STATE OF FLA., SEC'Y OF STATE, TABULATION OF VOTES CAST (1984–2022).

Ohi o ⁷¹																				
Or. 72							1													
R.I. 73	1						1		1			1	1	1	2	1				1
S.C. 74				1	1	1	1							6						
S.D. 75						1							1	1						
Ten n. ⁷⁶														1	1					
Uta h ⁷⁷																				
Vt. 78	1	1			4	1	1	2	1	3	1	2	2	2	4	5	7	5	5	3
Wis 79													1	1						
Wy o. ⁸⁰																		1	1	
TO T	2	3	1	3	9	6	4	7	6	9	3	5	7	1	1	1	1	1	1	1

Table 3: 1945–1983 For States with Odd-Year Legislative Elections

	4	4	4	5	5	5	5	5	6	6	6	6	6	7	7	7	7	7	8	8
	5	7	9	1	3	5	7	9	1	3	5	7	9	1	3	5	7	9	1	3
Ala 81																				5
La. 82																				1

71 Compiled from STATE OF OHIO, SEC’Y OF STATE, OHIO ELECTION STATISTICS (1984–2022).
 72 Compiled from STATE OF OR., SEC’Y OF STATE, OFFICIAL ABSTRACT OF VOTES (1984–2022).
 73 Compiled from STATE OF R.I., STATE BD. OF ELECTIONS, OFFICIAL COUNT OF THE BALLOTS (1984–2022).
 74 Compiled from STATE OF S.C., ELECTION COMM., ANNUAL REPORT (1984–2022).
 75 Compiled from STATE OF S.D., SEC’Y OF STATE, OFFICIAL ELECTION RETURNS BY COUNTY (1984–2022).
 76 Compiled from STATE OF TENN., SEC’Y OF STATE, TENNESSEE DIRECTORY AND OFFICIAL VOTE (1984–2022).
 77 Compiled from STATE OF UTAH, LT. GOV., ABSTRACT OF THE RETURNS OF THE GENERAL ELECTION (1984–2022).
 78 Compiled from STATE OF VT., SEC’Y OF STATE, PRIMARY & GENERAL ELECTIONS (1984–2022).
 79 Compiled from STATE OF WIS., STATE ELECTIONS BD., VOTES CAST AT THE GENERAL ELECTION (1984–2022).
 80 Compiled from STATE OF WYO., SEC’Y OF STATE, OFFICIAL DIRECTORY & VOTES CAST (1984–2022).
 81 Compiled from STATE OF ALA., OFF. OF THE SEC’Y OF STATE, OFFICIAL & STATISTICAL REGISTER (1945–1983).
 82 Compiled from STATE OF LA., SEC’Y OF STATE, REPORT OF THE SECRETARY OF STATE (1945–1983).

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Mi ss. 83														1		1		1		
N.J. 84														1						
Va. 85								1		1	1	1	4	1	5	3	1	2	1	
TO T	0	0	0	0	0	0	0	1	0	1	1	1	6	1	5	6	3	2	2	7

Table 4: 1985-2021 For States with Odd-Year Legislative Elections

	8	8	8	9	9	9	9	0	0	0	0	0	0	1	1	1	1	1	2	2
	5	7	9	1	3	5	7	9	1	3	5	7	9	1	3	5	7	9	1	3
La. 86		1		2								2		2						?
Mi ss. 87				1		3		3										1		?
N.J. 88																				?
Va. 89	2	1	1	1	1	1	1	1	2	2	3	2	2	1						?
TO T	2	2	1	4	1	4	1	4	2	2	3	4	2	3	0	0	0	1	0	?

Starting in 2010, in every even-numbered year, there have been at least ten independent winners, whereas there are no years earlier than 2010 with as many as ten, except for 1946, 1950, 1962, 1973, and 1974.⁹⁰ The year with the most independent wins was 2012, when there were seventeen.⁹¹

⁸³ Compiled from STATE OF MISS., SEC’Y OF STATE, OFFICIAL & STATISTICAL REGISTER (1945–1983).

⁸⁴ Compiled from STATE OF N.J., SEC’Y OF STATE, RESULTS OF THE GENERAL ELECTION (1945–1983).

⁸⁵ Compiled from STATE OF VA., STATE BD. OF ELECTIONS, OFFICIAL ELECTION RESULTS (1945–1983).

⁸⁶ Compiled from STATE OF LA., SEC’Y OF STATE, REPORT OF THE SECRETARY OF STATE (1985–2021).

⁸⁷ Compiled from STATE OF MISS., SEC’Y OF STATE, OFFICIAL & STATISTICAL REGISTER (1985–2021).

⁸⁸ Compiled from STATE OF N.J., SEC’Y OF STATE, RESULTS OF THE GENERAL ELECTION (1985–2021).

⁸⁹ Compiled from STATE OF VA., STATE BD. OF ELECTIONS, OFFICIAL ELECTION RESULTS (1985–2021).

⁹⁰ See *supra* Table 1 for even years and Table 3 for the 1973 election.

⁹¹ See *supra* Table 2.

III. HOW BALLOT DESIGN AFFECTS INDEPENDENT LEGISLATIVE CANDIDATES

It seems reasonable to assume that the decline of party-column ballots, and also the decline of straight-ticket devices, has helped independent candidates. In a party-column ballot, independents are usually relegated to being squeezed into a column, or row, that has the least advantageous spot on the ballot: either the far right or the bottom.⁹² Furthermore, because the offices are listed in order of importance, state legislative seats are never near the top (or the left-hand side). They are only on the top in odd-year elections preceding presidential election years in New Jersey and Virginia. In all other cases in regularly scheduled elections, U.S. House candidates are higher on the ballot; also, in even years, two-thirds of the time, any state has a U.S. Senate election. Generally, states have multiple statewide offices for state office on the ballot. Some states have more than ten such partisan offices, and they are almost in a higher position on the ballot. So, a column (or row) containing only a lonely independent candidate for the legislature will be a column (or row) that is mostly empty, making it especially likely voters won't pay any attention to it. They may not see the name of the independent legislative candidate.

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

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

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

⁹² New Jersey provides a helpful example. In 2003, Rep. Matt Ahern switched from the Democratic Party to the Green Party as an incumbent. He was dropped from the Democratic line and moved to the far right of the ballot. As a result, this incumbent Congressman received only 10.81% of the vote. See *BALLOT ACCESS NEWS, New Jersey Greens Lose a Legislator* (Dec. 1, 2003), <https://www.ballot-access.org/2003/1201.html#6>.

party-column ballot until 2005.⁹³ No independent had been elected to the legislature until 1983, when all the state's legislative seats were elected in November, in an election in which no other partisan offices were on the ballot.⁹⁴ This unusual election occurred because the 1982 legislative election had not been held because the U.S. Justice Department had rejected the redistricting plans three times. The 1983 election was also unusual because there were no legislative primaries; party meetings chose the nominees.⁹⁵ At the November 1983 election, five ballot-listed independents were elected, as well as a write-in winner.⁹⁶ Notably, with only two partisan offices on the ballot (State Senate and State Representative), the ballot was very short.⁹⁷ It is not known if the 1983 ballot used a straight-ticket device, and whether an office-group or party-column format was used, but with only two partisan offices on the ballot, it hardly matters. Some of the independent winners were incumbents who had not been nominated by their party (in all cases, the Democratic Party), so they ran as independents, which helps explain why so many independents were successful.⁹⁸ Setting aside this unusual election, no independent won until 2010, after the state was using an office-group ballot.⁹⁹ She was re-elected as an independent in 2014.

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

⁹³ See Ballot Data, *supra* note 2.

⁹⁴ See James Blacksher et al, *Voting Rights in Alabama 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 249, 271–273 (2008).

⁹⁵ See, e.g., William E. Schmidt, *Dominant Democratic Party in Alabama Takes Liberal Turn*, N.Y. TIMES (Oct 25, 1983), <https://www.nytimes.com/1983/10/25/us/dominant-democratic-party-in-alabama-takes-liberal-turn.html> (discussing the hand-picked Democratic nominees).

⁹⁶ See ALABAMA OFFICIAL STATISTICAL REGISTER, *supra* note 81.

⁹⁷ Sample Ballot, Montgomery Cnty., Ala. (Nov. 1983) (on file with author).

⁹⁸ See Schmidt *supra* note 95 (discussing the expected success of independent candidates given the shake up of the Democratic Party).

⁹⁹ See *supra* Table 2.

¹⁰⁰ See Ballot Data, *supra* page 2.

¹⁰¹ See Ballot Data, *supra* page 2.

¹⁰² See, e.g., *supra* Table 1 & Table 2.

¹⁰³ See *supra* Table 1.

¹⁰⁴ See *supra* Table 1.

1974;¹⁰⁵ one in 1976;¹⁰⁶ two in 1992¹⁰⁷; one in 1994¹⁰⁸; one in 2014¹⁰⁹; two in 2016¹¹⁰; one in 2018¹¹¹; two in 2020¹¹²; and six in 2022¹¹³

Arkansas: Arkansas has never had a straight-ticket device, and has always used an office-group ballot.¹¹⁴ One independent was elected in 1946,¹¹⁵ one in 1962,¹¹⁶ one in 1988,¹¹⁷ and one in 1992.¹¹⁸

California: California also has never had a straight-ticket device and has always used an office-group ballot.¹¹⁹ One independent was elected in 1986,¹²⁰ one in 1990,¹²¹ one in 1992,¹²² one in 1994,¹²³ and one in 2020.¹²⁴

Connecticut: Connecticut had a straight-ticket device until 1987 and has always had a party-column ballot.¹²⁵ Two independents were elected in 1954.¹²⁶

Florida: Florida has never had a straight-ticket device.¹²⁷ It had an office-group ballot during the period, except that in counties that used mechanical voting machines, it had a party-column ballot until 1969.¹²⁸ One independent was elected in 1972;¹²⁹ she was re-elected in 1974.¹³⁰

Georgia: Georgia repealed the straight-ticket device in 1993.¹³¹ It had a party-column ballot until 2005 for absentee ballots and for

¹⁰⁵ See *supra* Table 1.

¹⁰⁶ See *supra* Table 1.

¹⁰⁷ See *supra* Table 2.

¹⁰⁸ See *supra* Table 2.

¹⁰⁹ See *supra* Table 2.

¹¹⁰ See *supra* Table 2.

¹¹¹ See *supra* Table 2.

¹¹² See *supra* Table 2.

¹¹³ See *supra* Table 2.

¹¹⁴ See Ballot Data, *supra* note 2.

¹¹⁵ See *supra* Table 1.

¹¹⁶ See *supra* Table 1.

¹¹⁷ See *supra* Table 2.

¹¹⁸ See *supra* Table 2.

¹¹⁹ See Ballot Data, *supra* note 2.

¹²⁰ See *supra* Table 2.

¹²¹ See *supra* Table 2.

¹²² See *supra* Table 2.

¹²³ See *supra* Table 2.

¹²⁴ See *supra* Table 2.

¹²⁵ See Ballot Data, *supra* note 2.

¹²⁶ See *supra* Table 1.

¹²⁷ See Ballot Data, *supra* note 2.

¹²⁸ See Ballot Data, *supra* note 2.

¹²⁹ See *supra* Table 1.

¹³⁰ See *supra* Table 1.

¹³¹ See Ballot Data, *supra* note 2.

jurisdictions that used mechanical voting machines.¹³² But starting in 1963, it had an office-group ballot for jurisdictions that used punch card ballots, and (later) for electronic vote-counting systems.¹³³ Two independents were elected in 1964,¹³⁴ one was re-elected in 1966 and 1968,¹³⁵ two were elected in 2000,¹³⁶ one was re-elected in 2002,¹³⁷ and one was elected in 2010.¹³⁸ He was re-elected in 2012 and 2014.¹³⁹

Illinois: Illinois repealed the straight-ticket device in 1997.¹⁴⁰ It had a party-column ballot for jurisdictions that used paper (hand-counted) ballots and mechanical voting machines until 2005.¹⁴¹ But jurisdictions that used punch cards switched to office-group in the late 1960s, and those jurisdictions included Cook County.¹⁴² An independent was elected to the State House of Representatives in 1972,¹⁴³ three in 1974,¹⁴⁴ one in 1976,¹⁴⁵ one in 1978,¹⁴⁶ and two in 1980.¹⁴⁷ All of them were elected from districts in Cook County.¹⁴⁸ The ability of independent candidates to be elected to the State House was somewhat enhanced because from 1870 through 1980, Illinois used cumulative voting for State House elections.¹⁴⁹ Each district elected three members, but voters were free to either cast one vote for each of three candidates, or one and one-half votes for two candidates, or three votes for a single candidate.¹⁵⁰ The system was repealed effective 1982.¹⁵¹

¹³² See Ballot Data, *supra* note 2.

¹³³ See Ballot Data, *supra* note 2.

¹³⁴ See *supra* Table 1.

¹³⁵ See *supra* Table 1.

¹³⁶ See *supra* Table 2.

¹³⁷ See *supra* Table 2.

¹³⁸ See *supra* Table 2.

¹³⁹ See *supra* Table 2.

¹⁴⁰ See Ballot Data, *supra* note 2.

¹⁴¹ See Ballot Data, *supra* note 2.

¹⁴² See Ballot Data, *supra* note 2.

¹⁴³ See *supra* Table 1.

¹⁴⁴ See *supra* Table 1.

¹⁴⁵ See *supra* Table 1.

¹⁴⁶ See *supra* Table 1.

¹⁴⁷ See *supra* Table 1.

¹⁴⁸ See *supra* Table 1.

¹⁴⁹ See Data Table *supra* note 2.

¹⁵⁰ For general information on cumulative voting, see *Cumulative Voting*, LEGAL INFO. INST. https://www.law.cornell.edu/wex/cumulative_voting, [<https://perma.cc/HZ34-EMC8>] (last visited September 16, 2023).

¹⁵¹ *History of Cumulative Voting, 1870-1970*, ILLINOIS ISSUES: SPECIAL REPORT (J. Michael Lennon & Caroline A. Gherardini, eds. 1982),

Kentucky: Kentucky has always had a straight-ticket device.¹⁵² Ballot format was party-column in jurisdictions that used mechanical voting machines, and electronic vote-counting machines, until 2005.¹⁵³ Almost all counties used those systems. However, for jurisdictions that used punch cards, the format was office-block starting in 1983.¹⁵⁴ One independent was elected in 2006 and re-elected in 2010.¹⁵⁵

Louisiana: Louisiana eliminated the straight-ticket device in 1975 for state office, and eliminated it for federal office in 1977 (state offices were not elected in even years, so the two types of office were not on the same ballots).¹⁵⁶ The state switched from party-column to office-group for state office in 1975, and in 1977 for federal office.¹⁵⁷ In 1983 an independent was elected;¹⁵⁸ he was re-elected in 1987;¹⁵⁹ two independents were elected in 1991;¹⁶⁰ two independents were elected in 2007;¹⁶¹ two were elected in 2011.¹⁶² In recent years Louisiana has had a ballot-qualified party called the Independent Party, which has elected a legislator more than once, but those instances are not being included because this article is about independent candidates, not nominees of minor parties.¹⁶³

Maine: Maine repealed its straight-ticket device in 1967.¹⁶⁴ It also switched from party-column to office-group in 1967.¹⁶⁵ An independent was elected in 1950;¹⁶⁶ one was elected in 1974¹⁶⁷ two were elected in

<https://www.lib.niu.edu/1982/ijsr04.html> (describing the constitutional amendment ending cumulative voting in 1980, effective in the 1982 election).

¹⁵² Ballot Data, *supra* note 2.

¹⁵³ Ballot Data, *supra* note 2.

¹⁵⁴ Ballot Data, *supra* note 2.

¹⁵⁵ *See supra* Table 2.

¹⁵⁶ Ballot Data, *supra* note 2.

¹⁵⁷ Ballot Data, *supra* note 2.

¹⁵⁸ *See supra* Table 3.

¹⁵⁹ *See supra* Table 4.

¹⁶⁰ *See supra* Table 4.

¹⁶¹ *See supra* Table 4.

¹⁶² *See supra* Table 4.

¹⁶³ Richard Winger, *Independent Party Becomes a Ballot-Qualified Party in Louisiana*, *BALLOT ACCESS NEWS* (Jan. 10, 2017), <https://ballot-access.org/2017/01/10/independent-party-becomes-a-ballot-qualified-party-in-louisiana/> [<https://perma.cc/E956-MSFF>].

¹⁶⁴ Ballot Data, *supra* note 2.

¹⁶⁵ Ballot Data, *supra* note 2.

¹⁶⁶ *See supra* Table 1.

¹⁶⁷ *See supra* Table 1.

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1978,¹⁶⁸ one in 1994,¹⁶⁹ two in 1996,¹⁷⁰ two in 1998,¹⁷¹ two in 2000,¹⁷² three in 2002,¹⁷³ one in 2004,¹⁷⁴ two in 2006,¹⁷⁵ one in 2008,¹⁷⁶ one in 2010,¹⁷⁷ four in 2012,¹⁷⁸ four in 2014,¹⁷⁹ two in 2016,¹⁸⁰ five in 2018,¹⁸¹ four in 2020,¹⁸² and two in 2022.¹⁸³

Massachusetts: Massachusetts has not had a straight-ticket device and has always had an office-block ballot.¹⁸⁴ An independent was elected in 1966,¹⁸⁵ two in 1972,¹⁸⁶ three in 1974 and 1976,¹⁸⁷ two in 1978,¹⁸⁸ one in 1980,¹⁸⁹ one in 1986,¹⁹⁰ one in 2002,¹⁹¹ one in 2004,¹⁹² one in 2008,¹⁹³ one in 2018,¹⁹⁴ one in 2020,¹⁹⁵ and one in 2022.¹⁹⁶

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

¹⁶⁸ See *supra* Table 1.

¹⁶⁹ See *supra* Table 2.

¹⁷⁰ See *supra* Table 2.

¹⁷¹ See *supra* Table 2.

¹⁷² See *supra* Table 2.

¹⁷³ See *supra* Table 2.

¹⁷⁴ See *supra* Table 2.

¹⁷⁵ See *supra* Table 2.

¹⁷⁶ See *supra* Table 2.

¹⁷⁷ See *supra* Table 2.

¹⁷⁸ See *supra* Table 2.

¹⁷⁹ See *supra* Table 2.

¹⁸⁰ See *supra* Table 2.

¹⁸¹ See *supra* Table 2.

¹⁸² See *supra* Table 2.

¹⁸³ See *supra* Table 2.

¹⁸⁴ See Ballot Data, *supra* note 2.

¹⁸⁵ See *supra* Table 1.

¹⁸⁶ See *supra* Table 1.

¹⁸⁷ See *supra* Table 1.

¹⁸⁸ See *supra* Table 1.

¹⁸⁹ See *supra* Table 1.

¹⁹⁰ See *supra* Table 1.

¹⁹¹ See *supra* Table 1.

¹⁹² See *supra* Table 1.

¹⁹³ See *supra* Table 1.

¹⁹⁴ See *supra* Table 1.

¹⁹⁵ See *supra* Table 1.

¹⁹⁶ See *supra* Table 1.

¹⁹⁷ See Ballot Data, *supra* note 2.

2003.¹⁹⁸ An independent was elected in 1962,¹⁹⁹ one in 1964,²⁰⁰ one in 1982,²⁰¹ and one in 2000.²⁰²

Mississippi: Mississippi has not had a straight-ticket device and has always had an office-group ballot.²⁰³ An independent was elected in 1971,²⁰⁴ one in 1975,²⁰⁵ one in 1979,²⁰⁶ one in 1991,²⁰⁷ three in 1995,²⁰⁸ three in 1999,²⁰⁹ and one in 2019.²¹⁰

Missouri: Missouri repealed its straight-ticket device in 2005.²¹¹ It used party-column ballots for hand-counted paper ballots until 2005, but it used office-group ballots for jurisdictions that used punch cards, starting at least as early as 1981. An independent was elected in 1998.²¹²

Montana: Montana has not had a straight-ticket device and has always had an office-group ballot.²¹³ An independent was elected in 1946,²¹⁴ two in 1948,²¹⁵ and three in 1958.²¹⁶

Nevada: Nevada has not had a straight-ticket device and has always had an office-group ballot.²¹⁷ An independent was elected in 1946;²¹⁸ one was elected in 1964.²¹⁹

¹⁹⁸ John Reinan, *Minnesota to Let Computers Count All Votes in '06*, STAR TRIBUNE (Minn.) (Aug. 22, 2006).

¹⁹⁹ See *supra* Table 1.

²⁰⁰ See *supra* Table 1.

²⁰¹ See *supra* Table 1.

²⁰² See *supra* Table 2.

²⁰³ See Ballot Data, *supra* note 2.

²⁰⁴ See *supra* Table 3.

²⁰⁵ See *supra* Table 3.

²⁰⁶ See *supra* Table 3.

²⁰⁷ See *supra* Table 4.

²⁰⁸ See *supra* Table 4.

²⁰⁹ See *supra* Table 4.

²¹⁰ See *supra* Table 4.

²¹¹ See, e.g., David A Lieb, *Straight ticket no longer option in Mo.*, COLUMBIA MISSOURIAN (Oct. 26, 2008), https://www.columbiamissourian.com/news/state_news/analysis-straight-ticket-no-longer-option-in-mo [<https://perma.cc/8B8U-468J>].

²¹² See *supra* Table 2.

²¹³ See Ballot Data, *supra* note 2.

²¹⁴ See *supra* Table 1.

²¹⁵ See *supra* Table 1.

²¹⁶ See *supra* Table 1.

²¹⁷ See Ballot Data, *supra* note 2.

²¹⁸ See *supra* Table 1.

²¹⁹ See *supra* Table 1.

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New Hampshire: New Hampshire repealed its straight-ticket device in 2007.²²⁰ It used party-column format in jurisdictions that used paper (hand-counted) ballots and mechanical voting machines until 1997, but punch card jurisdictions used office-group starting in the 1970's.²²¹ The entire state switched to office-group in 1995, but then the entire state switched to party-column in 2005, after punch cards were gone.²²² An independent was elected in 1946;²²³ three were elected in 1950,²²⁴ one in 1952,²²⁵ three in 1956,²²⁶ one in 1960,²²⁷ two in 1982,²²⁸ one in 1990,²²⁹ and one in 2014.²³⁰

New Jersey: New Jersey has not had a straight-ticket device; it has always had a party-column ballot.²³¹ One independent was elected in 1971.²³²

New Mexico: New Mexico stopped using a straight-ticket device in 2011.²³³ The state used party column ballots until 1989, when it switched to office-group.²³⁴ One independent was elected in 2020.²³⁵

New York: New York doesn't have a straight-ticket device and has always had a party-column ballot.²³⁶ An independent was elected in 1970;²³⁷ another one was elected in 2020.²³⁸

²²⁰ Opinion, *Straight-ticket Voting May Soon be History in New Hampshire*, FOSTERS DAILY DEMOCRAT (Feb 2, 2007, 9:21 AM), <https://www.fosters.com/story/opinion/2007/02/02/straight-ticket-voting-may-soon/63069802007/> [<https://perma.cc/2FHF-RUG4>].

²²¹ See Ballot Data, *supra* note 2.

²²² See Ballot Data, *supra* note 2.

²²³ See *supra* Table 1.

²²⁴ See *supra* Table 1.

²²⁵ See *supra* Table 1.

²²⁶ See *supra* Table 1.

²²⁷ See *supra* Table 1.

²²⁸ See *supra* Table 1.

²²⁹ See *supra* Table 2.

²³⁰ See *supra* Table 2.

²³¹ See Ballot Data, *supra* note 2.

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

²³³ See Ballot Data, *supra* note 2.

²³⁴ See Ballot Data, *supra* note 2.

²³⁵ See *supra* Table 2.

²³⁶ See Ballot Data, *supra* note 2.

²³⁷ See *supra* Table 1.

²³⁸ See *supra* Table 2.

North Carolina: North Carolina stopped using a straight-ticket device in 2013.²³⁹ It used party-column for paper ballots counted by hand, and in jurisdictions that used mechanical voting machines.²⁴⁰ But it used office-group for jurisdictions that used punch card ballots, and mark-sense (“fill in the bubble”) ballots, which went into use in this state beginning in the late 1980’s. An independent was elected in 2010.²⁴¹

North Dakota: North Dakota didn’t use a straight-ticket device; and switched from party-column to office-group in 1981.²⁴² An independent was elected in 1966.²⁴³

Ohio: Ohio didn’t use a straight-ticket device; and switched from party-column to office-group in 1949.²⁴⁴ One independent was elected in 1950.²⁴⁵

Oregon: Oregon never used a straight-ticket device; always used an office-group ballot.²⁴⁶ An independent was elected in 1974;²⁴⁷ one was elected in 1998.²⁴⁸

Rhode Island: Rhode Island stopped using a straight-ticket device in 2014.²⁴⁹ It used party-column ballots for all jurisdictions with mechanical voting machines (which was almost the entire state) until those machines were phased out after the 2000 election, but it authorized office-group ballots for other jurisdictions starting in 1993.²⁵⁰ An independent was elected in 1970,²⁵¹ one in 1984,²⁵² one in

²³⁹ See Ballot Data, *supra* note 2.

²⁴⁰ See Ballot Data, *supra* note 2.

²⁴¹ See Ballot Data, *supra* note 2.

²⁴² See *supra* Table 2.

²⁴³ See Ballot Data, *supra* note 2.

²⁴⁴ See *supra* Table 1.

²⁴⁵ See Ballot Data, *supra* note 2.

²⁴⁶ See *supra* Table 1.

²⁴⁷ See Ballot Data, *supra* note 2.

²⁴⁸ See *supra* Table 2.

²⁴⁹ See Ballot Data, *supra* note 2.

²⁵⁰ See Ballot Data, *supra* note 2.

²⁵¹ See *supra* Table 1.

²⁵² See *supra* Table 2.

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1998,²⁵³ one in 2002,²⁵⁴ one in 2008,²⁵⁵ one in 2010,²⁵⁶ one in 2012,²⁵⁷ two in 2014,²⁵⁸ one in 2016,²⁵⁹ and one in 2022.²⁶⁰

South Carolina: South Carolina has only had government-printed ballots starting in 1950, and since then has always had a straight-ticket device.²⁶¹ It switched from party-column to office-group for jurisdictions that used punch card ballots starting in the late 1970's and for places that used touch-screen ballots in the 2000's decade.²⁶² It switched to office-group for hand-counted paper ballots in 2007.²⁶³ It had used party-column ballots for places that used mechanical voting machines, but they were phased out after 2000. An independent was elected in 1990 and re-elected in 1992;²⁶⁴ an independent was elected in 1994; an independent was elected in 1996; six were elected in 2012.²⁶⁵

South Dakota: South Dakota stopped using a straight-ticket device in 1997.²⁶⁶ The state switched from party-column to office-block in 2003, except those jurisdictions using punch card ballots had switched as soon as punch cards began to be used, in the late 1970's. An independent was elected in 1964;²⁶⁷ one was elected in 1994; one was elected in 2008 and re-elected in 2010.²⁶⁸

Tennessee: Tennessee never used a straight-ticket device and always had an office-group ballot.²⁶⁹ An independent was elected in 1968, one in 1974, one in 1976, one in 1978, one in 1982,²⁷⁰ and one in 2010 who was re-elected in 2012.²⁷¹

²⁵³ See *supra* Table 2.

²⁵⁴ See *supra* Table 2.

²⁵⁵ See *supra* Table 2.

²⁵⁶ See *supra* Table 2.

²⁵⁷ See *supra* Table 2.

²⁵⁸ See *supra* Table 2.

²⁵⁹ See *supra* Table 2.

²⁶⁰ See *supra* Table 2.

²⁶¹ See Ballot Data, *supra* note 2.

²⁶² See Ballot Data, *supra* note 2.

²⁶³ See Ballot Data, *supra* note 2.

²⁶⁴ See *supra* Table 2.

²⁶⁵ See *supra* Table 2.

²⁶⁶ See Ballot Data, *supra* note 2.

²⁶⁷ See *supra* Table 1.

²⁶⁸ See *supra* Table 2.

²⁶⁹ See Ballot Data, *supra* note 2.

²⁷⁰ See *supra* Table 1.

²⁷¹ See *supra* Table 2.

Utah: Utah stopped using a straight-ticket device in 2020.²⁷² Its jurisdictions that used punch card voting switched from a party-column to an office-group format when punch cards were first used in Utah in the early 1980s. The other jurisdictions switched from party-column to office-group in 1995.²⁷³ An independent was elected in 1956.²⁷⁴

Vermont: Before 1977, Vermont had separate ballots for most offices, which was completely different from ballots used in other states.²⁷⁵ There was one ballot for president, a separate ballot for U.S. Senate, another one for U.S. House, another one for State Senate, another one for State Representative, another one for the statewide state offices, and yet another one for county offices. The only ballots with multiple offices, those for statewide state office and county office, did have a straight-ticket device.²⁷⁶ In effect, for state legislative elections, the separate ballots for State Senate and State Representative have more in common with office-group ballots than party-column ballots, because with only one office, there obviously was no column. Nine independents were elected in 1946; five in 1948; eight in 1950; five in 1952; one in 1956; six in 1960; eight in 1962; one in 1964; two in 1966; two in 1972; three in 1974; two in 1976; two in 1978; three in 1980; one in 1982; one in 1984²⁷⁷; one in 1986; four in 1992; one in 1994; one in 1996; two in 1998; one in 2000; three in 2002; one in 2004; two in 2006; two in 2008; two in 2010; four in 2012; five in 2014; seven in 2016; five in 2018; five in 2020; three in 2022.²⁷⁸

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

²⁷² See Ballot Data, *supra* note 2; Bethany Rodgers, *Governor signs bill to end straight-party voting in Utah*, SALT LAKE TRIBUNE (Mar. 24, 2020, 10:22 PM), <https://www.sltrib.com/news/politics/2020/03/25/governor-signs-bill-end/>, [<https://perma.cc/2ZBC-BQX2>].

²⁷³ See Ballot Data, *supra* note 2.

²⁷⁴ See *supra* Table 1.

²⁷⁵ See *supra* note 3 for a fuller explanation.

²⁷⁶ See Ballot Data, *supra* note 2.

²⁷⁷ See *supra* Table 1.

²⁷⁸ See *supra* Table 2.

²⁷⁹ See Ballot Data, *supra* note 2.

²⁸⁰ See, e.g., Virginia Sample Ballot (1996) (on file with author).

²⁸¹ See *supra* Table 3.

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one in 1999; two in 2001; two in 2003; three in 2005; two in 2007; two in 2009; one in 2011.²⁸² Delegate Lacey Putney had been re-elected as an independent in every election from 1967 through 2011.²⁸³

Wisconsin: Wisconsin stopped using a straight-ticket device in 2011.²⁸⁴ It had a separate ballot for president, but otherwise used party-column until 2003.²⁸⁵ However, jurisdictions with punch card ballots used an office-group ballot starting in the 1980s when some parts of the state first used punch card ballots.²⁸⁶ An independent was elected in 2008; one was elected in 2010.²⁸⁷

Wyoming: Wyoming never used a straight-ticket device. It used party-column until 2001, when it switched to office-group.²⁸⁸ However, jurisdictions that used punch card ballots used an office-group, starting in the late 1970's when punch cards were first used in the state.²⁸⁹ An independent was elected in 1970 and re-elected in 1972, 1974, and 1976.²⁹⁰ An independent was elected in 1982; an independent was elected in 2018 and re-elected in 2020.²⁹¹

IV. CONCLUSION

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

Table 5: Independent Candidates Elected by Ballot Type

STATE	PTY-COL WITH DEVICE	PTY-COL BUT	OFFICE-GR WITH DEVICE	OFFICE-GR WITH	undetermined

²⁸² See *supra* Table 4.

²⁸³ BALLOTPEdia, *Lacey Putney* https://ballotpedia.org/Lacey_Putney (Last visited Oct 2, 2023). See also Tim Saunders, *Bedford's Lacey Putney, Longest Serving Member of General Assembly, Has Died*, WDBJ CHANNEL 7 (Aug 26, 2017) (explaining Putney's long tenure in Virginia's House of Delegates).

²⁸⁴ Louis Jacobson, *The Rise and Simultaneous Fall of Straight-Ticket Voting*, GOVERNING.COM (Jul. 12, 2016), <https://www.governing.com/archive/gov-straight-ticket-voting-states.html>.

²⁸⁵ See Ballot Data, *supra* note 2.

²⁸⁶ Mary Jo Wagner, *Few Punch Card Voting Systems Left*, WISC. PUB. RADIO (Sep. 9, 2002 12:00 AM), <https://www.wpr.org/few-punch-card-voting-systems-left>.

²⁸⁷ See *supra* Table 2.

²⁸⁸ See Ballot Data, *supra* note 2.

²⁸⁹ See INTERIM COMMITTEE REPORT, WYOMING LEG., (Jul. 2018), <https://wyoleg.gov/InterimCommittee/2018/07-20180521VotingEquipmentHistory.pdf>.

²⁹⁰ See *supra* Table 1.

²⁹¹ See *supra* Table 2.

		NO DEVICE		NO DEVICE	
Alabama	0	0	2	0	5
Alaska	0	2	0	19	0
Arkansas	0	0	0	4	0
California	0	0	0	5	0
Connecticut	2	0	0	0	0
Florida	0	0	0	2	0
Georgia	4	0	0	3	3
Illinois	8	0	0	0	0
Kentucky	0	2	0	0	0
Louisiana	0	0	0	8	0
Maine	1	0	0	39	0
Massachusetts	0	0	0	20	0
Minnesota	0	3	0	0	1
Mississippi	0	0	0	11	0
Missouri	0	0	0	0	1
Montana	0	0	0	6	0
Nevada	0	0	0	2	0
New Hamp.	12	1	0	0	0
New Jersey	0	1	0	0	0
New Mexico	0	0	0	1	0
New York	0	2	0	0	0
No. Carolina	0	0	0	0	1
No. Dakota	0	1	0	0	0
Ohio	0	0	0	1	0
Oregon	0	0	0	2	0
Rhode Island	4	0	3	4	0
So. Carolina	0	0	6	0	4
S. Dakota	1	0	0	2	1
Tennessee	0	0	0	7	0
Utah	1	0	0	0	0
Vermont	0	0	0	108	0
Virginia	0	0	0	56	0
Wisconsin	0	0	0	0	2
Wyoming	0	4	0	2	1
TOTAL	33	16	11	302	19

It does not take any sophisticated statistical analysis to observe that there is a strong correlation between states with an office-group

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ballot and no straight-ticket device, and independent candidate success in state legislative races.

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

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

²⁹² See *supra* Tables 1 & 2.

²⁹³ See *supra* Tables 1 & 2.