

END OTTAWA ELECTIONS GAMBLING

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End the practice of forcing Ottawa electors to gamble with a \$4 billion budget through:

- a) Advocate for constituents' right to know candidates for Council position on this Mayoral platform, so that constituents do not gamble by electing a secret status quo Councillor.
- b) A draft bylaw affirming Ottawa electors Canadian Charter of Rights, United Nations "UN" and Organization of American States "OAS" treaty rights to freedom of election, association, expression, political opinion, employment to elect a municipal political party representative to City Council so as to achieve the fulfillment of a specific election platform.

Voters (not individual councillors) have the constitutional and treaty freedom of election, association, expression, political opinion, employment rights to choose the best ideas through a free vote on a cohesive group of candidates who have endorsed a specific platform. If people elect a mayor that does not belong to a political party or a political party that is in the minority, there is a potential that the mayor will be limited by the platform of the municipal political party with the majority number of Councillors, this may have ended Mayor O'Brien zero means zero promise.

Like any human being, Mayor Watson has strong and weak points; however, the media incorrectly blamed him for learning from the challenges of Mayor O'Brien by forming an informal political party of Councillors who are willing to work together on certain issues and or trade voting favours. The people of Ottawa never got a chance to vote on the agenda of a trading favours political party. In any political party system of government, the political party with the majority always has the unfettered right to hire and fire committee chairs, therefore the replacement of the Chair of the Police Board is part of a mayor's job.

Some suggest that political parties are not needed because the best ideas will rise to the top, but trading favours to get votes in Council cannot always lead to the best interests of Ottawa residents. Another perceived drawback of a political party is that Councillors will not be able to vote their conscience for fear of being expelled from a nomination or caucus (withdraw the whip), this fear will end with a City bylaw requiring that any political party that endorses a candidate on a ballot may not expel any member without complying with the Supreme Court of Canada s1 Charter "criminal, corrupt, profoundly immoral" test for expulsion from parliament.

Draft Bylaw To End Ottawa Elections Gambling (Any Candidate For Council That Did Not Get Elected By Providing Voters A Campaign Website Objection To The Legality Of This Bylaw Should Vote Yes)

OTTAWA S52(1) CONSTITUTION ACT POSITIVE OBLIGATION

1. TAKE NOTICE of an open Notice of Constitutional Question to the Prime Minister of Canada, Premier of Ontario, Mayor of Ottawa and leaders of parties with seat in the House of Commons and the Ontario Legislature. Except by **non-arbitrary legal objections to each paragraph** of this bylaw, the Ontario Legislature is hereby requested to amend the Municipal Act in the manner described below, if this request is not granted, the City will assert voter rights to the option of a party platform by seeking the same through a court.

2. Whereas the vote for a Mayor or Councillor is akin to gambling, because it may inadvertently not mirror the city wide vote for City Council, and the only s1 Charter globally accepted method for electors to exercise the freedom of election, association, expression right to freely choose a **City Wide election platform**

is through municipal political parties. [There are 15 countries \(194 million people\) living without political parties](#), 97.2% of about 7 billion people, exercise a right to political parties.

3. Whereas the City of Ottawa has **jurisdiction to refuse compliance with unconstitutional legislation** and lacks jurisdiction to dictate a solution the Province:

- a) Nova Scotia (Workers' Compensation Board) v. Martin; [2003] 2 SCR 504 ... by virtue of s52(1) of the Constitution Act 1982..Canadians should be entitled to assert ... the Constitution guarantees them in the **most accessible forum** available, without the need for parallel proceedings before the courts.
- b) Talos v. Grand Erie District School Board, 2018 HRTO 680 [9] ...cannot issue a general declaration of invalidity: ... It can, however, **refrain from applying the impugned section .. if it offends the Charter...**

4. Whereas a solution to election gambling, could be to **restrict councillor votes on issues** affecting other wards, avoid the risk of a dictatorship, a free and democratic society frowns at a unilateral party leader power to without the voting consent of caucus, change the party platform that was communicated to electors.

5. Whereas a solution to election gambling, could be **electing all councillors through a citywide vote**, but this may dilute the elected members responsiveness to constituent needs. The world prefers political party platforms rather than all elected members contest elections nationally.

6. Whereas Canadian Charter of Rights and Freedoms s1 “prescribed by law” “demonstrably justified in a free an democratic society” s2 **freedom of association, belief, opinion, expression, conscience**, s“3 "representation in government" "meaningfully participate" "qualified for membership” “integrity of election result”, s12 cruel treatment or punishment, s15 to equality under the law.

7. Whereas the rule of law against unconstitutionally arbitrary (contrary to the **anti gambling** electorate representation objects of the Municipal Election Act), overbroad (without a legislated right to an s1 charter compliant reason for not naming a political party on the ballot).

8. Whereas ([Figueroa v Canada,\[2003\]](#)) [23] s3 Charter “entitled to be represented in government” and “**meaningfully participate**” cannot be removed without an s1 Charter compliant reason. A vote for an elected government representative is also a freedom of expression on the parties’ freedom of association platform.

9. Whereas just as the rule of law against overbroad public power prohibits Elections Ottawa from refusing a party candidate endorsement (defacto state withdraw the whip of party candidates) without providing an s1 Charter compliant reason, the s2 s3 Charter principles of **pluralism of party candidates** in a free and democratic society, prohibits a party from withdrawing the whip for a state election without an s1 Charter compliant reason.

10. Whereas American Declaration XIV work, under proper conditions, follow vocation freely, UN International Covenant On Civil and Political Rights 17 “unlawful attacks on his honour and reputation” as explained by UN Declaration (non self-executing) 1,5,12, 23 “right to work, to **free choice of employment**, to just and favourable conditions of work” prohibit any unfettered political party power to withdraw the whip without providing a reason that can be tested by a tribunal that is independent from a party.

11. Whereas the prohibition of municipal political parties cannot pass the **minimal impairment** test; ([Allard v Canada,\[2016\]](#)) [223] Under s. 1, the government bears the burden of showing that a law that breaches an individual’s rights can be justified having regard to the law’s goal, which must be pressing and substantial. whether the law was a rational means for its objective. “Minimal impairment” asks whether the legislature

could have designed a law that infringes rights to a lesser extent; court is required to weigh the negative impact of the law on people's rights against the greater public good,

12. Whereas [Universal Declaration of Human Rights 'UDHR'](#) Article 21, [International Covenant on Civil and Political Rights 'ICCPR'](#) Article 25, [Convention on the Elimination of All Forms of Discrimination Against Women 'CEDAW'](#) Articles 7 & 8, [Convention/Committee on the Elimination of Racial Discrimination 'CERD'](#) Article 5, [Convention on the Rights of Persons with Disabilities 'CRPD'](#) Article 29 confirm **5 rights**:

- a) UDHR 21 / ICCPR General Comment 25- 15,16 / ICCPR Preamble,1,2,5,25- voters' and members' representative democracy election rights,
- b) UDHR 20 / ICCPR 22- members' freedom of association representation rights,
- c) UDHR 1,5,12,23 / ICCPR 7,17- candidate freedom of employment, cruel or degrading and unlawful attack on reputation, arbitrary dismissal, loyalty to constituents and party members trumps loyalty to party leadership, general interests, reasonable limits, prescribed by law, legitimate aim, justified in a free and democratic society, pressing and substantial objective, rational connection, minimal impairment,
- d) ICCPR 2,7,19 / ICCPR General Comment 25- 8 / UDHR 18- freedom of expression, conscience, political opinion, philosophical belief and the doctrine of parliamentary privilege freedom of speech,
- e) UDHR 28,29,30 / ICCPR 2,5,18(2),19(3),22(2) / ICCPR General Comment 25- 16- state positive obligations to amend any electoral acts that permit political party professional associations AND legislative government employment recruitment agencies, unfettered power to withdraw the whip or cross the floor.

13. Whereas 1) universal 2) equal 3) **freely chosen political party representatives** 4) secret 5) direct suffrage 6) regular intervals party nomination elections rights are codified in ['UDHR'](#) Article 1,5,12,21,23,28,29,30 / ['ICCPR'](#) Articles 2,5,18(2),19(3),20(2),22(2),25 / ['CEDAW'](#) Articles 1(1), 2(1,c,d,e)(2), 4, 5(c,e(i),d(viii)), 6, 7, 8, / ['CERD'](#) Article 5 / ['CRPD'](#) Article 29 / Organization of American States "OAS" [American Declaration](#) IV, XIV, XX, XXI, XXII, XXVIII, XXXIV / [Commonwealth Charters](#) I,IV,XVI.

14. Whereas unlike CEDAW and CERD and CRPD; ICCPR does not expressly name the State, therefore it applies to whomever it may concern that has the power to violate or uphold the rights which includes political parties and **electoral commissions like Elections Ottawa**.

15. Whereas If successful in the 1st interview (political party employment agency and professional association) and 2nd interview (general electorate), the employer is the Alberta Legislature which pays the salary. ICCPR is binding on the State as the ultimate guarantor of freedom of election, association, expression, political opinion, employment AND since the **state sets the criteria by which a political party can endorse a candidate on a state ballot**, the state is liable for a positive obligation to pass laws to expressly end the unfettered power of political parties to withdraw the whip and cross the floor:

16. Gosselin v. Québec (Attorney General), [2002] 4 SCR 429, 2002 SCC 84... By enacting the ... Act, .. government **triggered a state obligation**...rights include a **positive dimension**, such that they are not merely rights of non-interference but also what might be described as **rights of "performance"**, then they may be **violable by mere inaction**...state can properly be held accountable for the claimants' inability to exercise .. rights... claimants **need not establish** that the state can be held **causally responsible** for ... environment in which .. rights were threatened, nor do they need to establish that the government's **inaction worsened their plight**.. "The rights to vote (s. 3) .. **impose positive obligations** of performance on the state and are therefore

best viewed as positive rights in order to make a fundamental freedom meaningful, a posture of restraint would not be enough, and **positive governmental action might be required**” ... they stand for the proposition that the Charter’s fundamental freedoms can be infringed **even absent overt state action**. Mere restraint on the part of government from actively interfering with protected freedoms is not always enough to ensure Charter compliance; sometimes **government inaction can effectively constitute such interference**.

17. Whereas it is **political opinion discrimination** to withdraw the caucus whip as punishment for the philosophical belief that loyalty to constituents and party members trumps loyalty to party leadership. Without a legislative protection of the right of party members to freely choose their representative to government, Ottawa would be violating a common law test for expose to, increase risk of, incite political opinion discrimination.

18. Whereas the following, s3 Charter freedom of election for any elections act registered political party nomination election leading to a general or by-election **includes s2 Charter** freedom of association, expression, conscience, political opinion and philosophical belief:

- a) [EU Regulation,2014](#) (1) 10(4) Treaty on the EU “[TEU](#)” and 12(2), [EU Charter](#) political will of citizens; (2) 11 [EU Charter](#) freedom of association at all levels in political matters, 12 [EU Charter](#) freedom of expression, right to participate fully in the democratic life of the Union; (15) respect for the values expressed in 2 [TEU](#) (dignity, freedom, democracy, equality, rule of law, human rights, pluralism, non-discrimination, tolerance, justice),
- b) [UN Committee, General Comment 25,1996](#) 8 public affairs by exerting influence through representatives by ensuring freedom of expression, assembly and association,
- c) [American Declaration,1948](#) XXI. assemble peaceably in connection with common interest XXII associate with others to promote, protect legitimate interests of a political, professional nature,
- d) ([Tănase V. Moldova,\[2010\]](#)) links the right to stand, to freedom of expression and association 154 “effective democracy, free elections, freedom of expression, freedom of political debate”,
- e) ([UK Commonwealth Charter,\[2013\]](#)) II respect for political rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively through political belief discrimination V freedom of expression and open dialogue strengthens democratic processes,
- f) ([R v Keegstra \[1990\]](#)) ‘The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature’,
- g) ([Fletcher v Manitoba,\[2018\]](#)) [18] ..court confirmed that freedom of association includes the freedom to associate in a political party. ...Joining a political party "is an associative activity protected by s. 2(d)",
- h) [United States v. Classic,\[1941\]](#) ‘associational rights would be toothless if party bosses could dictate how candidates can qualify’,
- i) [Donna Awatere Huata V Richard William Prebble \[2004\]](#) [96] An expansive interpretation could chill freedom of expression by members of Parliament, freedom of association,
- j) [Utah Republican Party v. Cox,\[2018\]](#) the state may not violate the party’s freedom of association rights by permitting non-members to vote in a party nomination, however state interests in guaranteeing freedom of election permit legislating an alternative path for prospective candidates to obtain direct signature from members so as to bypass the party convention selection process to contest a primary,

- k) [Tashjian v Republican Party of Connecticut,\[1986\]](#) 1(a) freedom of association includes limits upon the group of registered voters whom the Party may invite to participate in selecting the Party's candidates. The State thus incorrectly limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community,
- l) [California Democratic Party v Jones,\[2000\]](#) (a) The First Amendment protects the freedom to join together to further common political beliefs, which presupposes the freedom to identify those who constitute the association, and to limit the association to those people. In no area is the political association's right to exclude non members from voting, more important than in its candidate-selection process.
- m) ([Ahmed v. United Kingdom,\[1998\]](#))⁷⁵ ‘41...Article 10 of the Convention... applicants’ rights to freedom of expression ..was unable to stand for elected office; ...had to resign their respective positions and could no longer canvas for their wives in local elections; ...could no longer act as Parliamentary Chairman of his political party... to impart information and ideas to third parties in the political context.’
- n) ([Communist Party of Russia v. Russia,\[2012\]](#))⁷⁶ ‘107... The interrelation between free elections and freedom of expression was also emphasised ...“it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely”’
- o) ([TV Vest AS v. Norway,\[2008\]](#))⁷⁷ ‘61...concerning certain electoral law limitations on pre-election expenditure... it was necessary to consider the right to freedom of expression under Article 10 in the light of the right to free elections protected by...’
- p) ([Selahattin Demirtaş v. Turkey,\[2020\]](#))⁷⁸ ‘242...“While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament ... call for the closest scrutiny...”’

19. Whereas the USA state of Nebraska and the Canadian Territories of Nunavut and Northwest Territories **chose not to register political parties** that can endorse a candidate on a ballot. Any elections act registered political party withdraw the whip or floor-crossing; is an exercise of public power on behalf of any elected government and any electoral commission that processes the prescribed form for candidates endorsed by a party, prints the party name on the ballot, prepares the writ of summons to any elected government office, based upon an election result that is determined by counting the number of ballot votes received by a candidate that is endorsed by a political party.

20. **BE IT RESOLVED THAT;** s41(2)(1) Ontario Municipal Elections Act “*Only the names of certified candidates shall appear on the ballot*” is contrary to the following Charter and treaty rights, it should include Ontario Elections Act 44(5) “*The official name of the registered party that endorses the candidate shall be shown after his or her name if, i. an instrument in writing signed by the party leader is filed ...*” 44(8) “... “*Independent / Indépendant*” shall be shown after his or her name, if no statement of endorsement was filed”, consequently s52(1) Constitution Act 1982 “**of no force or effect**” precludes the City from implementing s41(2)(1) Ontario Municipal Elections Act. It is an s380(1a) Criminal Code offence to by “deceit, falsehood or other fraudulent means”, knowingly defraud a mandatory s52(1) “service”.

OTTAWA PRESCRIBED BY LAW TEST FOR WITHDRAW THE WHIP OR FLOOR CROSSING

21. Whereas the municipal government positive obligation to enforce the fact that any registered political party withdraw the whip rule that exceeds the **government legislated test for qualification** or disqualification

of a candidate: Municipal Elections Act “17 Qualifications (2) .. elector ... (a) resides .. (b) .. Canadian citizen; (c) .. 18 years old.. (d) is not prohibited from voting .. (3) ... prohibited from voting: 1. A person who is serving a sentence .. 2. A corporation. 3. .. representative capacity, except as a voting proxy .. 4. .. convicted of the corrupt practice ...”; is a violation of 6 constitutional rules of law:

- a) arbitrary (contrary to **party members and electorate representative democracy objects** of an election act) application of public power,
- b) abuse of process by doing indirectly (political party leaders of states permitting political party leaders to remove electorate and members right to freely elect their government representative / candidate right to be elected / rights against changes to an election result without voter consent) **what cannot be done directly**,
- c) abuse of right (registered political party leadership use of withdraw the whip party **rules to destroy candidate and members** freedom of election, association, expression, employment rights),
- d) overbroad (without the legislated right to a withdraw the whip reason, **without a legislated lest** that is similar to the test for qualification to parliament and expulsion from parliament) political party power,
- e) grossly disproportionate (acts which harm democracy itself by producing effects that are contrary to the objective of an election) political party power, for example **creating a deterrent to party membership** and contesting a nomination and other forms of “meaningful participation in the democratic process,
- f) disproportionate (in comparison to minimal impairment alternatives to withdraw the whip / floor crossing) party power. Proportionality stricto sensu (deleterious impact disproportionate to a law’s purpose). **Minimal impairment alternatives include:** party leadership direct or proxy endorsement of preferred candidates and or based on party rule procedures, provide a truthful reason why a candidate is not preferred, so that the final decision would rest with a members free vote, expulsion from cabinet or committee assignments, fines, endorse or donation to a nomination challenger, censor motion or public message to members or media, restricting access to membership or volunteer or donor databases or speaking opportunities or other party or riding resources, resignation and by election or staying in the party caucus until the next election and voting contrary to the party whip.

22. Whereas “UDHR” 21(3), CEDAW 7,8, CERD 5c- ‘government’, / ICCPR 5c, UDHR 21(2), CERD 5c- ‘public service’, / ICCPR 25a, CERD 5c, CRPD 29b ‘public affairs’, / CEDAW 7a ‘publicly elected bodies’, / CEDAW 7b, CRPD 29a,ii ‘all levels of government’, / CEDAW 7, CRPD 29a ‘political and public life’, / CEDAW 7b, CRPD 29a,ii ‘all public functions’, / CEDAW 7c, CRPD 29b,i ‘non-governmental organizations and associations concerned with the public and political life’ CRPD 29b,i **‘political parties’**.

23. Whereas Canada and by extension Ottawa are signatories to the OAS American Declaration and Commonwealth Charter & [UN International Covenant on Civil and Political Rights “ICCPR”](#), 2, 5, 18(2), 19(3), 22(2) “**necessary in a democratic society**”, “prescribed by law”, rights of others, morality, public order, general welfare in a democratic society, 25 without unreasonable restrictions participate in public affairs directly or through freely chosen representatives. In light of [Convention on the Elimination of All Forms of Discrimination Against Women ‘CEDAW’](#) 7c, [Convention on the Rights of Persons with Disabilities ‘CRPD’](#) 29b,i ‘non-governmental organizations and associations concerned with the public and political life’ CRPD 29b,i ‘political parties’

24. Whereas the above-mentioned express mentions of political parties indicate that ‘public’ includes the public power of political parties to endorse or refuse to a candidate on an election ballot, therefore a party process for making that ballot endorsement decision is subject to judicial review. Therefore no person has

jurisdiction to find that ‘public affairs’ does not include political party public power to **endorse a candidate on a state ballot**.

25. Whereas ICCPR does not expressly prescribe the meaning of ‘public affairs’ or ‘public service’, CEDAW and CRPD expressly state that **‘all levels of government’** are affected, further any definition of ‘public affairs’ or ‘public service’ that excludes political party nomination elections, would violate the rule of law against arbitrary (contrary to objects of ICCPR Article 25) and rule of law against unconstitutionally narrow statutory interpretation.

26. Whereas UDHR 21(1), ICCPR 25a, CRPD 29a ‘directly’, / ICCPR 25, CEDAW 8, CRPD 29a ‘opportunity’, / ICCPR 25b ‘to be elected’, / CEDAW 7a ‘eligible for election’, / CERD 5c, CRPD 29a,ii ‘stand for election’ / ICCPR 25 **without unreasonable restrictions**, UDHR 21, ICCPR 25a, CRPD 29a ‘freely chosen representatives’, / ICCPR 25b, CRPD 29a,iii ‘free expression, without intimidation’ re loyalty to constituents.

27. Whereas ‘unreasonable’ is synonymous with a judicial review test, but without a reason for excluding a municipal political party representative, it would be **impossible to test for ‘unreasonable’**. States or political parties do not have unfettered power to decide what is ‘unreasonable’, they are limited by ICCPR Articles 2, 5(1)(2), 17, 19(2)(3), 22(1)(2).

28. Whereas **‘Directly’** means that any party member has the right to nominate themselves or be nominated by other members in any nomination election that will determine the ‘freely chosen’ choices on a state election ballot.

29. Whereas ‘Free’ or ‘freely chosen’ includes a political party endorsed candidate or an independent candidate. It also means that any decisions to exclude a candidate from being nominated or the veto of a candidate after they have won or party leadership designation of the names on list or the top of the list (proportional representation constituency MPs) or the order of names on the list must be decided by a **free vote of party members**.

30. Whereas UDHR 21(2), CERD 5c ‘equal access’, / ICCPR 25 ‘without any of the distinctions’, / ICCPR 25c **‘access, on general terms of equality’**, / CRPD 29a ‘equal basis’, / UDHR 29(3), ICCPR 25b, / CERD 5c ‘equal suffrage’; that some members can contest a nomination election and others cannot, is a social condition or political opinion differential treatment that leads to un’equal access’.

31. Whereas ICCPR 25 ‘without any of the distinctions’ also applies to political opinion discrimination which includes withdrawing the whip because a candidate believes that **loyalty to party grassroots** members is more important than loyalty to party leadership.

32. Whereas UDHR 21(3) ‘will of the people’, / UDHR 21(3), ICCPR 25b, CERD 5c ‘universal suffrage’, / ICCPR 25b **‘will of the electors’**, / UDHR 21(3), ICCPR 25b ‘genuine elections’, / UDHR 21(3), ICCPR 25b, CEDAW 7a, CERD 5c, CRPD 29a,iii ‘vote’, / CERD 5c ‘right to participate in elections’, / ICCPR 25a ‘to take part in’, / CRPD 29a,b ‘effectively and fully participate’.

33. Whereas **‘Genuine’** means an authentic effort to identify the will of the electorate, consequently excluding candidates from party nominations without a legislated test, cannot lead to a genuine election result.

34. Whereas freedom of election includes freedom of association and expression, therefore ‘universal’ in a political party context is **all members**, allowing nonmembers to vote in a party nomination would violate freedom of association and the objects of the electoral act registration of political parties.

35. Whereas ‘**Fully**’ means that an election is not one event, it starts from a party nomination election and ends with the state election result. Excluding party nominations can be half participate, it cannot be ‘fully participate’, this is consistent with [Australia Victoria Electoral Act, 1856](#) I “election” shall mean and apply as well to the nomination as to the election, “candidate at an election” shall include any person nominated with his consent as a candidate or who shall have declared himself a candidate at any meeting held for the nomination of candidates for election for the Legislative Council or Legislative Assembly whether such person shall be subsequently elected or not, XXX. Every writ for the election and place of nomination for such election.

36. Whereas the vote for an individual on a state election ballot, **cannot be separated** from the vote for the registered party that endorsed the individual, without violating case law tests for lawful, arbitrary, legitimate aim, identifying the will of the people through a universal suffrage, proportional nomination election.

37. Whereas the **elections act registered political party distribution** of any political party legislative level of government is determined by the election result AND political science research like from 2019 “[fewer than half of one percent of those elected to Parliament since 1993 won as Independents](#)” and a constituent may decide to vote 80% for a party and 20% for an individual; UN, OAS laws prohibit political party jurisdiction to change an election result without voters’ consent by withdraw the caucus whip or floor crossing.

38. Whereas floor-crossing violates a right to receive a **service that was bought** by volunteers, private donors, government funding, government salary for the writ of summons to the elected party caucus. The only lawful solution is a resignation and by-election.

39. Whereas an elected councillor can remain in the elected party caucus and vote contrary to the party whip, there is **no floor-crossing test that can comply** with UN, OAS, prescribed by law test to limit freedom of election; lawful, arbitrary, legitimate aim, general interests, reasonable limits, prescribed by law, demonstrably justified in a free and democratic society, pressing and substantial objective, rational connection, minimal impairment, proportional.

40. Whereas party members and party leadership are **different persons**, even if party members were informed that the unfettered political party power to withdraw the whip was unlawful (*there is no evidence that Canadian party members know that without the legislated right to a withdraw the whip reason and without a legislated test for withdraw the whip, ALL withdraw the whip are unlawful*); the electorate lack jurisdiction to eliminate universal suffrage reasonable interval elections by voting to replace ‘people’ in ‘free expression of the opinion of the people’ with council or parliament.

41. Whereas there is no material difference between the case law test for the lawfulness of limiting universal suffrage voting human right to **freely choose a representative** in government through elections at reasonable intervals AND the test for the lawfulness of the unlimited political party leadership power to limit party members universal suffrage voting human right to freely choose a representative in government through nomination elections at reasonable intervals by withdrawing the whip without a reason or for any reason.

42. Whereas there is no material difference between the case law test for the right to be an independent or party endorsed **election candidate** (state withdraw the nomination whip) OR **expulsion from parliament** (state withdraw the caucus whip) OR refusing to register or dissolving a party or **rejecting a party’s list** of candidates (state withdraw the nomination whip) for endorsement on a state election ballot AND the lawfulness of the unlimited political party leadership power to withdraw the whip the nomination or caucus whip without a reason or for any reason.

43. Whereas there is no material difference between the case law test for the lawfulness of removing **effective democracy (freedom of election, expression, association, political opinion, employment, equality,**

transparency, accountability, impartiality, effective remedy) rights to meaningfully participate in election affairs AND the lawfulness of the unlimited political party leadership power to withdraw the whip without a reason or for any reason.

44. Whereas no s1 Charter reason that is compatible with the 6 rules of law above, can justify a prescribed by law test for fettering the unfettered party power to withdraw the whip that is materially different from European Court of Human Rights **party dissolution** tests: *legislation, necessary in a democratic society, proportional, pressing social need, relevant and sufficient, not incite ethnic, social, or religious hatred and use of the threat of violence, right to criticize, demonstrate and advance lawful ideas even when they annoy or give offence or unfavorable or unpopular, no democracy without pluralism of opinions on highly controversial issues, never completely extinguish the right or encroach on its essence, promotes self-determination of a regional, religious or minority party, or related identity, advocates a peaceful change of the constitution, call into question the way currently organised, provided no harm to democracy.*

45. Whereas no s1 Charter reason that is compatible with the 6 rules of law above, can justify a prescribed by law test for fettering the unfettered party power to withdraw the whip that is materially different from the following European Court of Human Rights legitimate aims for European Convention Article 3 Protocol 1 **limits to rights to stand as a candidate**: *rule of law, Convention objectives, not arbitrary, not disproportionate, not contrary to free expression of the opinion of the people, , not impair essence of rights, not run counter to integrity and effectiveness of identifying the will of the people through universal and equal suffrage, transparent impartial independence process that leads to sufficiently reasoned decisions, not curtail rights like freedom of expression and association, democratic society, rights and freedoms of others, reasonable age requirements to ensure maturity, sufficient stake in the country through minimum length of residency before an election, to prevent crime, previously abused a public position, has made threat to undermine the rule of law or democracy, to create incentives for citizen like conduct, mental capability to assess the consequences of their decisions, language requirements for parliament to function normally, to defend electors' legitimates interests like loyalty to the state (not government) laws and territorial integrity, prevention of disorder, disqualifications related to the separation of powers, conflict of interest from other duties, recover the electorate's trust in public institutions, to ensure representation of the party's candidate, to avoid over fragmentation of the party system, to inform voters with truthful information on qualification, employment and party affiliation, to fulfill equality of treatment in the right to stand for election, equality of the sexes, correct factual inequalities, to protecting the reputation of others.*

46. Whereas the positive obligation to prevent pre-election fraud (an unlawful change to the free expression of the will of the electorate through ballot counting or other fraud) is an applicable case law test for deciding whether there is a positive obligation to prevent **post election fraud** (a withdraw the caucus whip or floor crossing unlawful change to the free expression of the ballot will of the electorate).

47. Whereas the constitutional job of an elected representative is to represent constituents in government, consequently allowing **loyalty to the party leadership** to exclude all other considerations necessary to good judgement is mal-representation, loyalty to a party can violate a law, blind loyalty to the government or the party leadership is not a legitimate aim for withdraw the whip.

48. Whereas **only party members and the electorate have jurisdiction** to withdraw the whip due to disloyalty to the party or mal-representation or any other reason, through a nomination election or general election or by-election or recall election.

49. Whereas the objects of the right to elect are the same as the objects of the right to be elected, there is no non-arbitrary (contrary to the representative democracy objects of voting rights) reason to deny that European Court of Human Rights decision re voting rights of UK public power to punish prisoners with voting rights

‘**indiscriminate restriction**... irrespective of the ...gravity of ...offence’ is incompatible with ICCPR 25 ‘without unreasonable restrictions’; should apply to political party public power to punish candidates with withdraw the whip ‘indiscriminate restriction... irrespective of the nature or gravity of their offence’ or for no offence, is also incompatible with ICCPR 25 ‘without unreasonable restrictions’.

50. Whereas the rule of law against arbitrary (contrary to representative democracy objects of any electoral act) application of public power, requires that: 1) **party members win** the floor-crossing contest re freedom of election, association, expression, conscience, opinion of party members and electorate VS freedom of association, expression, conscience, opinion of an elected member 2) party members and electorate win the withdraw the caucus whip contest re electorate VS party caucus 3) party members win the withdraw the nomination whip contest re party members VS party leadership.

51. Whereas the employer of an elected representative are the constituents and government, **not political party leadership**, who do not have jurisdiction to fire representatives that were hired by constituents’ free vote. It is political opinion discrimination to withdraw the caucus whip as punishment for the philosophical belief that loyalty to constituents and party members trumps loyalty to party leadership:

- a) ([Tănase V. Moldova,\[2010\]](#)) found that the primary job of an elected representative, is loyalty to constituents;
- b) ([Liverpool City Council V Local Commissioner,\[2000\]](#)) found that while party loyalty is a relevant consideration, the vote becomes unlawful when party loyalty excludes considerations necessary for balanced judgment. The court also found that the weight to be given to party loyalty “must depend on the nature of the decision to be taken”, and that an unreasonable weight for party loyalty is maladministration;
- c) ([Utah Republican Party v. Cox,\[2018\]](#)) found that ‘to be sure, we have permitted states to set their faces against “party bosses” by requiring party-candidate selection through process more favourable to insurgents ... associational rights would be toothless if party bosses could dictate how candidates can qualify’.

52. Whereas a **legislated recall vote procedure** is the only lawful means to withdraw the caucus whip for disloyalty to party leadership.

53. Whereas research like “Samara Centre for Democracy [confirmed](#) ..of the 6,600 partisan parliamentary candidates..between 2003 and 2015, “**only 17% arrived there through a competitive nomination**” “[The vast majority were either directly installed by their party’s boss or appointed through a sham election... sole candidate](#)”; shows that the constitutional rule of law against abuse of process by doing indirectly (violating s2 s3 Charter, UN, OAS, laws), what cannot be done directly, preclude party ballot endorsement of an election candidate without a democratic vote by party members, and preclude party leadership from appointing a candidate because they prefer a candidate that is different from the democratic result of a nomination election.

54. Whereas in light of the following, excluding any registered political party nomination election leading to an election from s3 Charter, UN, OAS Laws “election” violate the constitutional **rule of law against arbitrary** (contrary to laws and charter representative democracy objects) statutory interpretation:

- a) ([Morse V Republican Party Of Virginia,\[1996\]](#)) - We have consistently construed the Act to require preclearance of any change in procedures or practices that may bear on the "effectiveness" of a vote cast in "any primary, special", "or general election". The significance of the nominating convention to the outcome in the general election was recognized. The ultimate choice of the mass of voters is predetermined when the nominations decisions by the major political parties have been made.

- b) ([United States v. Classic,\[1941\]](#)) - the right to vote in a nomination is part of the right to choose representatives and these rights are just as protected just as the right to vote at the election, therefore unless protection of the integrity of elections extend to party nominations, the freedom of choice of representatives is stripped of protection. A “corrupt failure” to include “acts which, in their direct or indirect effect, impair the integrity of Congressional elections” is beyond a court’s jurisdiction.
- c) [USA Voting Rights Act,1965](#) - 13(c)(1) effectiveness of "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including...
- d) [USA Public Law,1972](#) - 106(a) Criminal Code Amendment, 'election' means "(2) a convention or caucus of a political party held to nominate a candidate,
- e) [USA Civil Rights Act,1964](#) - 101(3c) "'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate“,
- f) [52 U.S. Code §10301](#) - (b) ‘political processes leading to nomination or election’,
- g) [52 U.S. Code §30101](#) - ‘(B) a convention or caucus of a political party which has authority to nominate’

55. Whereas the following legal ratios and UN, OAS, EU, European, laws right to an **effective remedy** from an impartial tribunal for violation of freedom of election, association, expression, opinion, conscience, employment by a government employment agency (registered political party) and political professional association, means that no political party body can have the final say on the lawfulness of any withdraw whip.

- a) ([Carter v. Ahsan,\[2004\]](#)) [2]“body which can confer an authorization or qualification” that can deprive of present and future employment opportunities, for ”engagement in a particular profession or trade”. “Authorization or qualification” includes, recognition, registration, enrolment, approval and certification” ”needed for ...particular profession” in which A (political party) confers on B (nomination contestant or caucus member) a qualification which will enable B to render services for C (government). [6]“The Labour Party was conferring on a candidate an "authorisation or qualification" ... and that such recognition or approval was "needed" for engagement in the 'particular' occupation of being a Labour councillor”.
- b) ([Williamson v Formby,\[2019\]](#)) [20] suspension from the Labour Party does not prevent an MP from sitting in Parliament until the next election or standing for re-election either as an independent or for any other party, very few independents succeed in general elections. There is therefore a significant risk that disqualification from selection as a Labour Party candidate would end Mr Williamson's parliamentary career.. the practical effect of suspension is to put at risk Mr Williamson's ability to continue to earn his living as MP for Derby North. Accordingly, this case falls far closer to the domestic tribunal cases than those concerning exclusion from sports and social clubs.

56. Whereas the following show that it in light of the difference between political party **power that affects the integrity of a government election ballot** and all other political party powers, Trost is correct for a leadership contest political party discipline, but incorrect for political party discipline affecting a political party endorsement on a government election ballot. If a political party did not have the public power to endorse a candidate on a state ballot, then it would be similar to other 3rd party organizations like public or private sector unions or professional associations which are sometimes active during election campaigns.

- a) ([New Zealand Judicature Amendment Act,1972](#)) 3 **Statutory power** means Elections Act power or right of a political party to endorse the candidate that won a nomination election ballot (b) To exercise a statutory power of decision to endorse; or (c) To require any person to do or refrain from contesting a nomination despite laws (d) To do any act or thing like change the election result by withdrawing the caucus whip or crossing the floor (e) To make any investigation or inquiry into the rights, powers, privileges, duties of any person challenging the removal of the freedom of election, expression, association statutory rights to contest a democratic vote to decide which party candidate shall be endorsed on the election ballot, **Statutory power of decision** means a power or right conferred by or under the Elections Act to make a decision deciding or prescribing or affecting (a) The rights, powers, privileges, duties, of any person seeking party endorsement on the state election ballot or (b) The eligibility of any person to receive, or to continue to receive, a benefit or license to remain in a party caucus or apply for a government job, whether he is legally entitled to it or not,
- b) ([Utah Republican Party v. Cox,\[2018\]](#)) A political party First Amendment right are circumscribed when a State gives certain parties the right to have their candidates appear with party endorsement on the general-election ballot, a party's action may become state action. Even pre-primary party activity were sufficiently 'state action', that affects profoundly the election, so as not to deprive a voter's constitutional rights to choice. A government that refused its interest in protecting representative democracy during primary would be ignoring its solemn obligation. A State has a compelling interest in ensuring that the governed have an effective voice in the process of deciding who will govern them,
- c) ([United States v. Classic,\[1941\]](#)) in a party nomination leading to an election, party agents become state actors which engages s20 USA Criminal Code 'under color of any law' deprives any rights, privileges secured by the USA Constitution,
- d) ([Terry v. Adams,\[1953\]](#)) a party takes its character as a state agency from the duties imposed by state statutes; duties do not become private law just because they are by a political party,
- e) ([Smith v. Allwright,\[1944\]](#)) if the state requires an electoral procedure, it endorses, adopts and enforces the process practiced by a party and the opportunity for choice is not to be nullified by an electoral process that a State permits a private organization to practice. Constitutional rights would be of little value if they could be thus indirectly denied,
- f) ([Barron v. Warkentin,\[2004\]](#)) [41] In view of a profound impact on the democratic right to elect a candidate of their choice to the Provincial Legislature, this court has the jurisdiction [44] a drastic decision impacting the democratic rights, not only of the applicant, but all residents in the constituency, must be subject to judicial review. To conclude otherwise would be to invite mischief and even corruption and infringement of democratic rights,
- g) ([Lubin v. Panish,\[1974\]](#)) 'interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both... The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters',
- h) Romania Political Parties Law,2003 Article 1 'Political parties .. citizens that are able to vote, participating freely..public mission guaranteed by the Constitution. They are legal entities of public law',
- i) ([Roger John Payne V New Zealand National Party,\[2008\]](#)) [44] ..as most voters are expressing a preference for a party rather than an individual candidate, it is the parties' prior selection of candidates which, especially in safe seats, effectively determines the electorate's representative, voters' power of choice is seriously curtailed by this process,

- j) ([Prebble V Huata,\[2004\]](#)) [77] party system enables the electors to decide who shall govern them. Majority of constituencies elections are fought mainly and increasingly on party issues. The great majority of electors, vote not for the candidate himself but for his party,
- k) ([Mohan -v- Ireland & Anor,\[2016\]](#)) 29 .. The nomination process is sometimes called ‘the secret garden of nomination’, refers to voters may be able to choose, only after political parties have limited the options. Thus, parties are the gatekeepers to public decision-making,
- l) ([Trost v. Conservative Party,\[2018\]](#)) [13] ..Those factors are: the character of the matter for which review is sought; the nature of the decision-maker and its responsibilities; the extent to which a decision is founded in and shaped by law as opposed to private discretion; the body’s relationship to other statutory schemes or other parts of government; the extent to which a decision-maker is an agent of government or is directed, controlled or significantly influenced by a public entity; the suitability of public law remedies; the existence of a compulsory power; an “exceptional” category of cases where the conduct has attained a serious public dimension. [14]..conclusion that the discipline decision of the CPC is not a decision to which a public law remedy can be applied.

57. **BE IT RESOLVED THAT:** any candidate that is elected to a party caucus, shall remain in that party caucus and vote with or without compliance to the party whip or resign the seat. A political party that endorses a candidate on a municipal government ballot lacks jurisdiction to exercise an unfettered power to withdraw the whip without providing a reason or providing a reason that does not meet the s1 Charter or treaty test for removing freedom of election, association, expression, political opinion and employment. The test for expulsion shall not exceed [Canada House Of Commons Procedure And Practice](#) 3 “misconduct” or Canada Supreme Court, Harvey [1996](#) [77]“**criminal, corrupt, profoundly immoral**”, which is similar to other [case law or legislative tests](#) for expulsion. This will not end party unity, Weber, T., & Parsons, C. (2016). Dynamic party unity: The US Congress in comparative perspective; showed that the difference in party voting unity between the USA (87.25% no expulsions) and UK (99.25% unfettered power to expel) was only about 15%.

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FLOOR CROSSING / EXPULSION FROM CAUCUS IN CANADA

<u>Pre-confederation</u> 1866: Andrew Rainsford Wetmore	Ernest Racicot	<u>1920s</u> William George Baker Charles Agar
<u>1860s</u> Stewart Campbell Alfred William Savary Archibald Woodbury McLellan James Charles McKeagney Hugh McDonald Edmund Mortimer McDonald Joseph Howe Thomas Coffin and Hugh Cameron James William Carmichael William Henry Chipman James Fraser Forbes William Ross William Hallett Ray Patrick Power Alfred Gilpin Jones Richard John Cartwright	<u>1880s</u> 1887 Guillaume Amyot	<u>1930s</u> Henry Herbert Stevens
<u>1870s</u> Newton LeGayet MacKay Samuel McDonnell Alexandre Chauveau Edmund James Flynn Louis Napoléon Fortin Étienne-Théodore Pâquet	<u>1910s</u> 1911: Louis-Joseph Papineau Louis-Joseph Papineau Robert Lorne Richardson Honoré Achim William Andrew Charlton John Gillanders Turriff Alphonse Verville Levi Thomson Frederick Forsyth Pardee Edward Walter Nesbitt Hugh Havelock McLean Thomas MacNutt Alexander Kenneth MacLean William Stewart Loggie Hugh Guthrie William Stevens Fielding James McCrie Douglas Michael Clark Frank Broadstreet Carvell William Ashbury Buchanan Andrew Knox George William Andrews	<u>1950s</u> Tilly Rolston Ross Thatcher Sam Drover
		<u>1960s</u> Hazen Argue Bud Olson René Lévesque Robert N. Thompson Perry Ryan
		<u>1970s</u> Paul Hellyer Raymond Rock Garde Gardom Pat McGeer Alan Williams Hugh Curtis Frank Calder

JackHorner
ColinThatcher
JamesArmstrongRichardson

1980s

ThomasRideout
DickCollver
DennisHam
PeterIttinuar
AlPassarell
GrahamLea
GillesRoch
DavidRamsay
TonyLupusella

1990s

LucienBouchard
DavidKilgour
JeanLapierre
RichardHolden
DennisDrainville
GordonWilson
JudiTyabji
GlenMcPherson
JagBhaduria
RichardNeufeld
LyallHanson
LenFox
JackWeisgerber
JohnNunziata
RichardNeufeld
GordonWilson
BobBjornerud
JuneDraude
KenKrawetz
RodGantefoer
BillBoyd
DonToth
BenHeppner
DanD'Autremont
JackGooshen
ArleneJulé
AlexCullen
BuckleyBelanger
ArleneJulé
AngelaVautour
Anna-MarieCastrilli

2000s

AndréHarvey
DavidPrice
DianeSt-Jacques
RickLaliberte
Jean-GuyCarignan
JimMelenchuk
RonOsika

ArtHanger
ChuckStrahl
GaryLunn
JimPankiw
ValMeredith
GrantMcNally
JayHill
JimGouk
MonteSolberg
AndyBurton
BrianFitzpatrick
DeborahGrey
InkyMark
JimPankiw
LDennisFentie
JoePeschisolido
GhislainLebel
PierreBrien
ScottBrison
RobertLanctôt
JohnBryden
KeithMartin
AnneCools
GaryMasyk
CarolynParrish.
DavidKilgour
BelindaStronach
PatO'Brien
BevDesjarlais
FrankBranch
DavidEmerson
MichaelMalley
WajidKhan
TimPeterson
JoanMacAlpine-Stiles
WallyStiles
BlairWilson
AndréRiedl
Pierre-MichelAuger
ÉricCaire
MarcPicard

2010s

RobAnderson
HeatherForsyth
BlairLekstrom
GuyBoutilier
LouiseBeaudoin
PierreCurzi
LisetteLapointe
Jean-MartinAussant
BenoitCharette
RenéGauvreau.
FrançoisRebello
LiseSt-Denis
JohnvanDongen

BruceHyer
TomOsborne
ClaudePatry
BrentRathgeber
DeanDelMastro
HalPerry
ChristopherMitchelmore
DaleKirby
PaulLane
Jean-FrançoisFortin
SanaHassainia
AndréBellavance
Jean-FrançoisLarose
KerryTowle
DanielleSmith
EveAdams
SandraJansen
JackMacLaren
MichelBoudrias
RhéalFortin
SimonMarcil
MoniquePauzé
LouisPlamondon
GabrielSte-Marie
LucThériault
MaximeBernier
LeonaAlleslev
RhéalFortin
MoniquePauzé
CatherineFournier

2020s

AmandaSimard
JenicaAtwin