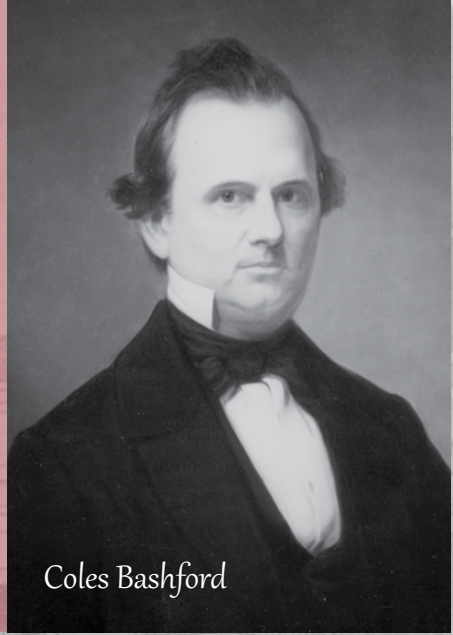




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ABOUT WISCONSIN



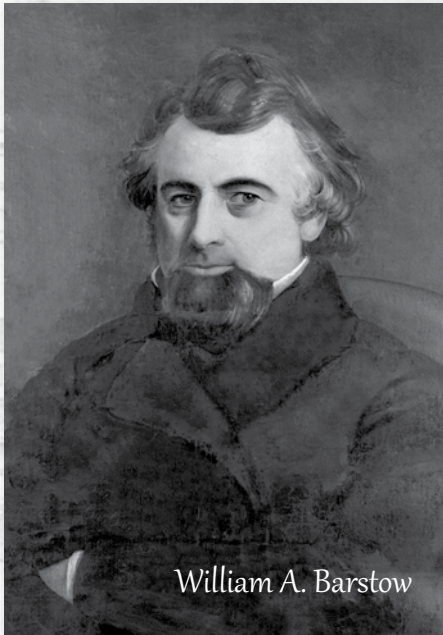
Coles Bashford

# DUELING GOVERNORS

HOW THE WISCONSIN SUPREME COURT RESOLVED THE STATE'S FIRST POLITICAL CRISIS

BY STACI DUROS, LOUISA KAMPS, AND JILLIAN SLAIGHT

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On January 7, 1856, Wisconsin held its third gubernatorial inauguration. It was a bitterly cold and snowy day in Madison. Nevertheless, people flocked to the capital city to join in the elaborate inaugural parade of Democratic Governor William A. Barstow, who was on his way to be sworn in for his second term. Waving from a carriage drawn by four black horses, Barstow led the parade down Washington Avenue, then around Capitol Square, to the thunderous accompaniment of brass bands, drums, and cannon fire. Later, inside the capitol, crowds packed into the senate chambers to witness Barstow take his oath of office.<sup>1</sup>

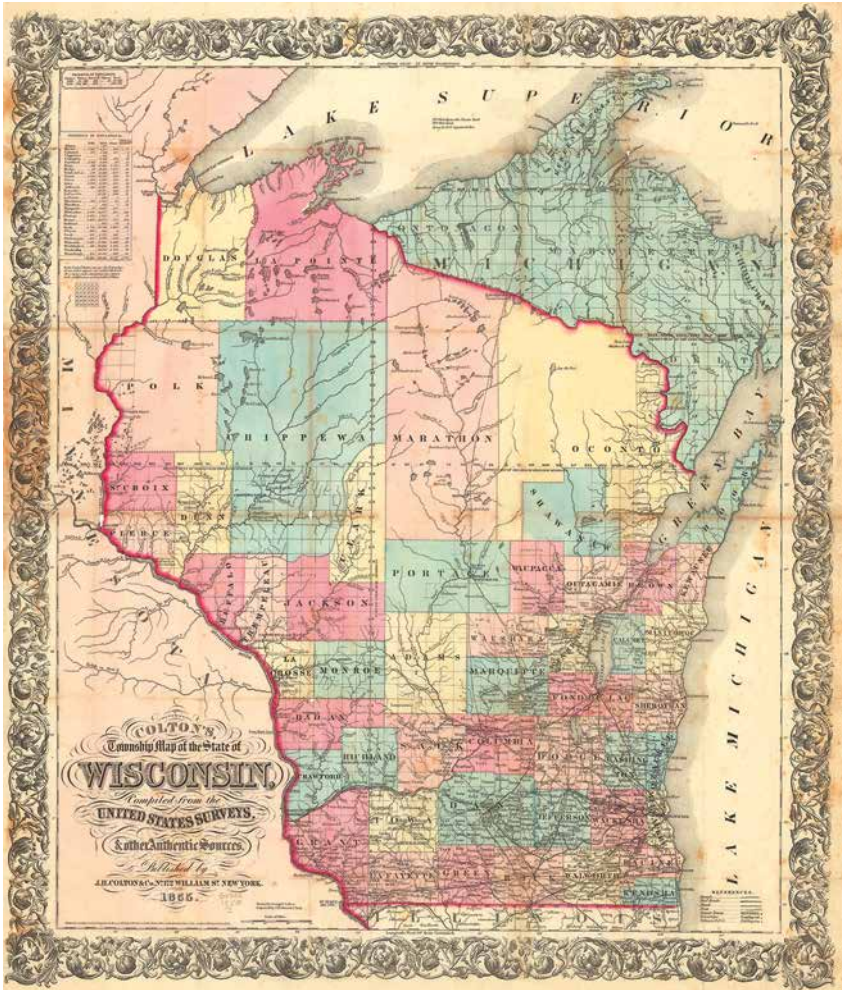
But was the oath of office really his to take? Earlier that day, Barstow's challenger in the race, Republican Coles Bashford, slipped into the capitol with a handful of his own close associates. In the Wisconsin Supreme Court Room, the chief justice administered the governor's oath of office to Bashford, who was sworn in without fanfare to serve as the state's third governor.<sup>2</sup>

Three weeks before Wisconsin acquired two governors, the State Board of Canvassers determined in mid-December that Barstow had defeated Bashford in the 1855 gubernatorial election, winning by a margin of only 157 votes out of more than 72,000 votes cast.<sup>3</sup> But even though Barstow had officially won, the election certification had occurred amid growing allegations of fraud and forgery as members of the board of canvassers—all Barstow’s political allies—accepted and counted a flurry of late-arriving votes that leaned felicitously (and suspiciously) in Barstow’s favor, pushing the incumbent to just over 50 percent. Barstow may have projected confidence during his inaugural parade and ceremony, but there was plenty of lingering doubt about the legitimacy of his reelection victory. And less than a week after both governors were sworn in, when Barstow refused to relinquish the governor’s office, Bashford enlisted the state attorney general to file a suit seeking to remove Barstow from the governorship.

With both William Barstow and Coles Bashford asserting their right to govern the state, Wisconsin faced its first major political crisis. The conflict, unfolding in the already fractious period leading up to the Civil War, could have thrown the young state’s government into chaos, or even resulted in violence—partisans for each side gathered arms while Bashford’s lawsuit advanced. But in a remarkable turn of events, the matter was peacefully resolved before the Wisconsin Supreme Court. This resolution not only spared the state from bloodshed, but also helped establish a clear separation of powers in the newly established state. Moreover, the incident guided legislators as they worked to establish elections procedures that safeguarded the integrity of the vote. In short, the dueling inaugurations of William Barstow and Coles Bashford set in motion a series of events that shaped governmental norms that we take for granted today. The 2021 feature article recounts those events.

Part I introduces readers to the social and political landscape of Wisconsin in the years leading up to the 1855 gubernatorial election. Beginning in the 1840s, the territory’s population surged as newcomers sought land and opportunity there. After Wisconsin achieved statehood in 1848, it achieved a measure of political stability—but contentious debate over slavery threatened to disrupt that stability. As Wisconsinites prepared to pick their third governor in 1855, this tension increased as new and old political parties jockeyed for power. In this charged environment, the stakes of the upcoming election were high.

Part II details the events of Election Day and describes the suspicion that mounted over the following weeks about Barstow’s slim margin of victory. On November 6, 1855, Wisconsinites arrived, ballots in hand, at saloons, barns, and country stores to cast their votes. When the polls closed at sundown, election officials began the official canvass of votes under a system prone to error and



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When the New York-based Colton map company published this map of Wisconsin townships in 1855, the new state teetered at the edge of political crisis. Two men both claimed to have won the 1855 gubernatorial election, setting off a legal battle.

abuse. It took until December 17 for the official results to be announced, by which time both political parties seemed poised to reject the results.

Part III returns to the two nearly simultaneous inaugurations that took place at the capitol on January 7, 1856, illustrating how partisan allies of each candidate depicted the day's events in radically different ways. It then outlines the charges laid out in Coles Bashford's lawsuit to unseat Governor Barstow.

Part IV delves into the tactics employed by Barstow's attorneys to quash the case. Instead of confronting allegations of elections tampering, they challenged

the authority of the Wisconsin Supreme Court to intervene in elections. The case quickly became a dispute over the authority of the judicial branch and the proper separation of powers under the Wisconsin Constitution.

Finally, Part V outlines the startling evidence of ballot tampering that ultimately helped the court determine the rightful winner of the gubernatorial election of 1855.

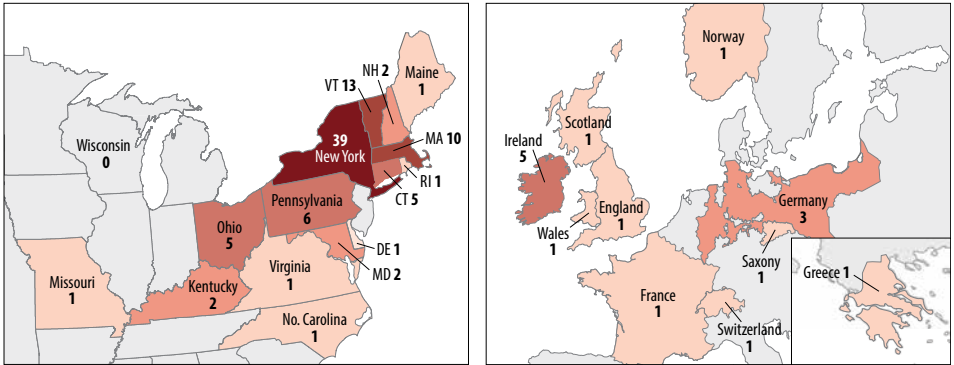
Elections are competitive by nature, and close elections can heighten tensions between people with opposing interests. The intensely partisan election of 1855 put Wisconsin's fledgling legal system through a hard test. However, the Wisconsin Supreme Court's ruling in *Bashford v. Barstow* did not just provide clarity about who had won the governor's race and put a stop to saber-rattling in the capital; it also restored faith in the security of elections in the frontier state. Critically, at a time when all eyes were glued to the still-young supreme court, the justices deciding *Bashford v. Barstow* helped the judicial branch assert itself as coequal to the executive and legislative branches. The decision demonstrated the supreme court's authority, provided in the state constitution, to independently interpret law in Wisconsin—and in doing so, it helped to transform the court into the durably powerful institution it remains today.

## I. THE YOUNG STATE'S POLITICAL LANDSCAPE

In the years following the establishment of statehood in 1848, Wisconsin was a place of change, where citizens witnessed a new system of government take shape and recognized their power to influence the unfolding path of politics. Waves of East Coast migrants and European immigrants arrived in the nation's thirtieth state, seeking land and the opportunities it provided. Lawyers followed close behind, eager to make their careers on the coattails of widespread land speculation. Many, in turn, became lawmakers and created code and courts to place the state on "sound legal footing."<sup>4</sup> Still, the terrain kept shifting underfoot. Politics transformed unpredictably around the issue of slavery, which dominated public debate and led to the creation (and collapse) of entire political parties. Wisconsinites also wrangled with nativist sentiments that challenged the cultural belonging and civic standing of new immigrants. This atmosphere of contention and uncertainty raised the stakes of the gubernatorial election of 1855. Would the newly formed state government coalesce or falter?

Between 1840 and 1860, Wisconsin's population multiplied 25 times.<sup>5</sup> By 1860, over a third of Wisconsinites hailed from foreign countries.<sup>6</sup> When economic and political instability drove many Europeans from home, they gravitated to

## BIRTHPLACES OF WISCONSIN STATE LEGISLATORS



SOURCE: *MANUAL FOR THE USE OF THE ASSEMBLY OF THE STATE OF WISCONSIN FOR THE YEAR 1853* (MADISON, WI: BROWN AND CARPENTER, 1853), 85, \*99.

Wisconsin for the promise of its ample, open land. As William Hodges of Pierce County wrote to a friend in June 1856, “There is a great many immigrants coming here this spring and a general rush for land.”<sup>7</sup> Where land was available, working it was far from easy, as newcomer Gunleik Asmundson Bondal told his family back in Norway in 1854. All the same, Bondal reported that his family was in such good health that “we do not want to go back even if we were the owners of the best farm.”<sup>8</sup>

Land also drew “Yankee settlers,” a term often referring to New Englanders

and New Yorkers of British descent. Lucy Hastings—who had moved to Oxford, Wisconsin, from Massachusetts—shared this assessment with her siblings back home: “We find it a very good way for poor folks out here, to go on to government land, make improvements, then sell, and after a while get to farming in good shape.”<sup>9</sup> For migrants and immigrants alike, social events like “barn raisings, candle dippings, quilting parties, and corn huskings” provided welcome relief from their hard work on remote farms.<sup>10</sup>



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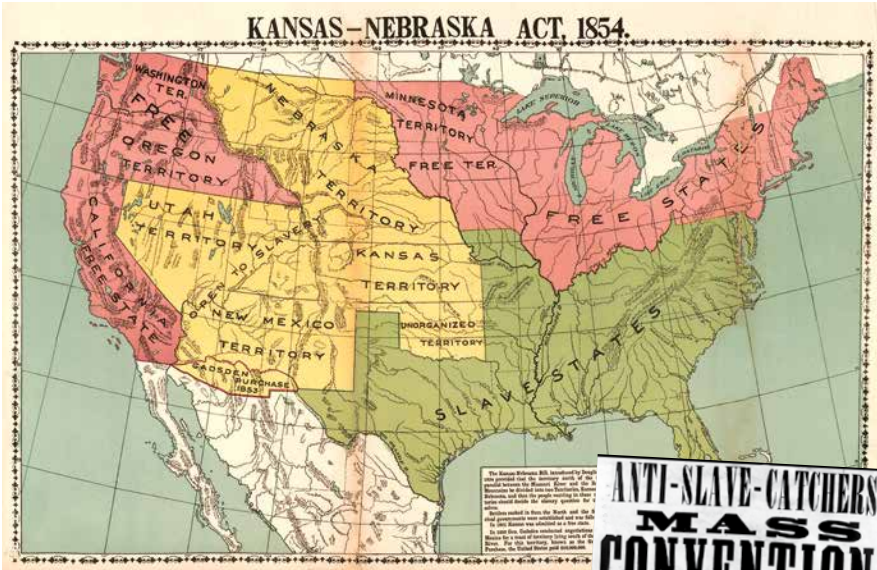
As new settlements dotted the state, law offices sprang up in cities like Madison to meet demand for land contracts, which became a “special niche” in Midwestern legal practice.<sup>11</sup> Lawyers accounted for a disproportionate share of Wisconsin’s population because business abounded and no formal training was required to practice the profession. Most lawyers lacked legal degrees but made up for this deficit with hands-on training they acquired while drafting contracts and arguing cases. A man needed only three things to be successful: the first two—proof of residency and “good moral character”—were required by the Wisconsin Statutes of 1849.<sup>12</sup> Clients and courtroom audiences demanded the third quality: the power to command attention. With little other entertainment at their disposal, Wisconsinites in sparsely settled areas attended trials as a form of diversion. “Court days were the event of the season at the county seat,” one lawyer later recalled, and “ability, learning and eloquence were exercised to serve clients and entertain spectators.”<sup>13</sup>

Oratory trumped knowledge of the law—in part because the law was still very much in flux. In most early nineteenth-century legislatures, legal scholar Joseph Ranney notes, bills were handwritten, “put on a shelf” after passage, and “pulled out only in case of immediate need and otherwise forgotten.”<sup>14</sup> Wisconsin legislators had only recently endeavored to organize enacted laws and make them accessible, completing the first compilation of territorial laws in 1839.<sup>15</sup>

With statehood, the courts—like the laws themselves—gained greater structure and continuity. The Wisconsin Constitution of 1848 created circuit courts whose judges served on a temporary state supreme court, and after a short “test period,” the Wisconsin Supreme Court was officially established in 1853.<sup>16</sup> An air of excitement and unpredictability pervaded the high court in the mid-1850s, as new lawyers argued new laws before new justices. As one jurist reminisced, “the profession was not yet overwhelmed with whole libraries of precedents, [and] argument based upon general principles was still possible.”<sup>17</sup> But the nascent court had yet to firmly establish its authority.

An opportunity came when the court placed itself at the center of contentious debates over slavery. Although few Wisconsinites had witnessed firsthand the horrors of human bondage, slavery had become an “explosive issue” that drove state politics.<sup>18</sup> Wisconsin’s status as a free state mattered deeply to settlers who feared that the expansion of slavery spelled the demise of small farms like their own.<sup>19</sup> In 1854, Congress passed the Kansas-Nebraska Act, allowing each Western territory to decide for itself whether slavery would be allowed when the territory became a state. Although not directly affected, historian Michael McManus explains, “many concerned Northerners grimly concluded that slavery would likely take root in the West and eventually spread into the free states.”<sup>20</sup> The March 1854 arrest of





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Federal laws like the Fugitive Slave Act and the Kansas-Nebraska Act raised concerns that slavery would spread to free states. In a landmark 1854 decision, the Wisconsin Supreme Court asserted states’ right to reject slavery.

Joshua Glover—a man enslaved in Missouri who had escaped and established a new life in Wisconsin—stoked fears like these. The Fugitive Slave Act of 1850 exposed men and women like Glover to capture and reenslavement, even in free states. But in July 1854, the Wisconsin Supreme Court declared this law unconstitutional in a bold assertion of states’ rights versus those of the federal government.<sup>21</sup> With this “act of defiance,” the court placed itself on the map.<sup>22</sup>

Still, the court’s rulings around this issue did little to quell anxieties about the fate of Wisconsin as a free state, and these anxieties in turn fueled political instability. At that time, the two main political parties—Democrats and Whigs—were constantly in flux. Democrats seemed to exercise a strong grip over the state, having elected more governors and members of Congress than the Whigs, but the party stumbled under the weight of internal divisions. Likewise, by 1855, the Whig Party had completely collapsed.<sup>23</sup> (See sidebar on page 298 for more on Wisconsin’s political scene in the 1850s.) In this opening, the Republican Party was founded on the basis of opposition to slavery.<sup>24</sup> The creation of this new party marked the start of a gradual shift in power. By the late 1850s, the Republican Party

**ANTI-SLAVE-CATCHERS' MASS CONVENTION!**

All the People of this State, who are opposed to their slave or SLAVE-CATCHERS, and in having the Free soil of Wisconsin made the hunting ground for African Slaves, we all are willing to unite in a

**STATE LEAGUE,**

to defend our State Sovereignty, our State Freedom, and our State and National Constitution, against the Depraved interpretation of U. S. Judges, Commissioners, and Marshals, and their Abominable and oppressive, cruel, and BLOOD THIRSTY, and DEGRADING OF TRAIL BY HAIL, and other who are perjured and in contempt to Wisconsin, by the signed and stamped of the Kidnapping Act of 1850, for the effect of sending a better being from the hands of Kidnappers, and receiving him in Bond and in Freedom, are invited to meet at

**YOUNG'S HALL,**  
IN THIS CITY.

**THURSDAY, APRIL 13th,**

At 11 o'clock A. M. to meet together and deliberate on the exigencies of the times, and the means of opposing U. S. Slaves and

**FREE SOIL OF WISCONSIN!** In the spirit of our Revolutionary Fathers, against the growth and sale of the African, and the fear of the working of a Free Heritage to the next generation. Let the Marchant Strike his Conscience, Let the Lawyer his Blood, and the Whig his Honor, and come up to meet us at the annual assembly of Liberty, on the 13th of April. Let us have ready for march, and Youth that make no reliance on fight, and have them in armed company — for they shall be in arms, and they shall be against us. Come, bring out the Free every body and every one, and while the Fugitive Act have no power here. Now is the time to settle for Freedom, and to give the nation's slaves a new home. For the sake of Liberty and our Country, we are invited to attend the above meeting.

**BY ORDER OF COMMITTEE OF ARRANGEMENTS.**  
MILWAUKEE, APRIL 7, 1854.

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## WISCONSIN'S EARLY POLITICAL PARTIES?



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**BIRTHPLACE  
OF THE  
REPUBLICAN PARTY**

In this School House March 20<sup>th</sup> 1854 was held the first Mass Meeting in this country that definitely and positively cut loose from old parties and advocated a new party under the name **Republican**.

On March 20, 1854, outraged Wisconsinites met at a Ripon schoolhouse and resolved to form a new political party to oppose the expansion of slavery.

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In the early days of statehood, Wisconsin parties bucked the policy positions of their corresponding national parties. Wisconsin Whigs courted immigrant votes despite the national Whig Party's reputation for nativism. And in contrast to the national Democratic Party, Wisconsin Democrats opposed the expansion of slavery and supported federal investment in infrastructure projects. Although they hailed from different parties, all members of Wisconsin's Congressional delegation voted against the Fugitive Slave Act of

1850. A group of Wisconsinites eventually formed a new party to cast off the baggage associated with the national parties: the Republican Party. As established in 1854, the Republican Party brought together former Democrats and Whigs around the antislavery cause.

Source: Richard N. Current, *The History of Wisconsin*, vol. 2, *The Civil War Era, 1848–1873* (Madison, WI: Wisconsin Historical Society Press, 2013), 197–230.

would become a major political force in the state.<sup>25</sup> But the party faced an uphill battle in the 1855 gubernatorial election, which was the first time a Republican challenged a Democrat in a statewide race.

Governor William Barstow, the Democratic incumbent, had moved from Connecticut to Prairieville (now known as Waukesha) in 1839, purchasing land and establishing a flour mill. Having cemented his reputation as a successful businessman—and “the handsomest man in Wisconsin” to boot—Barstow became active in local politics, serving as Prairieville's postmaster and a Milwaukee County Commissioner.<sup>26</sup> Barstow soon set his sights on higher office; he was elected as

Wisconsin's second secretary of state in 1849 and served in that office from 1850 to 1851.<sup>27</sup> Even in this short term, he faced allegations of bribery and corruption: specifically, Barstow was accused of not only awarding state printing contracts to his friends, but also underselling tracts of public lands to speculators without soliciting public bids. Lack of sufficient proof helped Barstow escape formal charges, but the allegations may have cost him his reelection bid in 1851.<sup>28</sup> Nevertheless, Barstow sought—and handily won—the governorship with 30,405 out of a total of 55,683 votes cast in November 1853.<sup>29</sup>

After Barstow began his two-year term in January 1854, the newly created Republican Party capitalized on Barstow's history of alleged malfeasance and eventually gained control of the assembly in the November 1854 election.<sup>30</sup> From there, the Republicans launched several legislative committees to investigate corruption within the Barstow administration. One such committee uncovered unfair bidding practices related to the state's contract for construction of a state insane asylum. Another investigation exposed grave mismanagement of certain state funds by members of Barstow's administration.<sup>31</sup> The leader of that particular investigation was the Republican who would challenge the governor in the 1855 election.

Like Barstow, Coles Bashford came to Wisconsin from the East Coast and rose quickly through the ranks of state politics. After he moved from New York to Oshkosh in 1850, Bashford attended the Whig state party convention as a delegate the following year, supporting the nomination of Leonard J. Farwell, who became the state's second governor. In 1852, Bashford ran successfully as a Whig candidate to represent Winnebago County in the state senate, where he served from 1853 to 1855.<sup>32</sup> As the issue of slavery in the West became increasingly charged, Bashford left the party to become a Republican, and nine months into his second term, he resigned from the senate to become the first Republican candidate for governor of Wisconsin.<sup>33</sup>

Republican prospects for the general election of 1855 looked promising. The party had performed well in the 1854 elections, despite being new to the political scene. Moreover, Bashford and his Republican senate colleagues had revealed the misdeeds of the Barstow administration, giving them fuel—or so they thought—to challenge incumbent Democrats in the upcoming election. But their embrace of prohibition, i.e., the strict curtailment of alcohol by law, exposed Republicans to charges of “Puritan bigotry.”<sup>34</sup> As historian Tyler Abinder explains, nativist politicians often denounced saloons in a “thinly veiled attack” on their presumed customers: German and Irish immigrants.<sup>35</sup> These claims were an affront to foreign-born settlers, who already contended with more direct—and violent—nativist attacks. In one shocking instance, the brutal assault of a Bavarian farmer

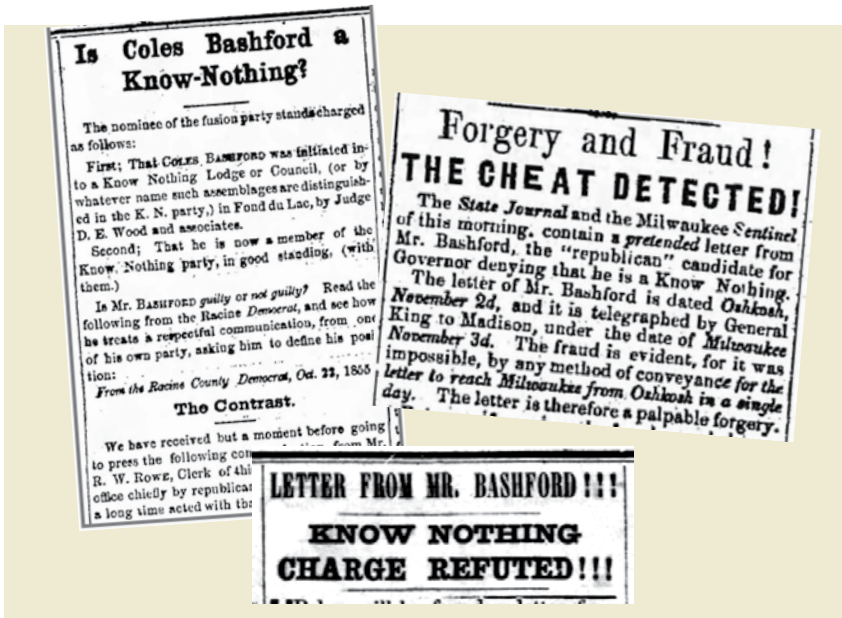
in West Bend, Wisconsin, pushed the man's community to exact violent retribution by lynching the perpetrator.<sup>36</sup> Against this backdrop, historian Richard Current notes, Wisconsin Democrats sprang at the opportunity “to exploit the resentment on the part of German and other immigrants.”<sup>37</sup>

With this goal in mind, the Democratic Party recruited immigrant candidates and attempted to paint the top of the Republican ticket, Coles Bashford, as a member of the Know-Nothings, a semisecret, anti-Catholic nativist organization.<sup>38</sup> The Know-Nothings had dramatically risen to national prominence in 1854 with calls for immigration restrictions and the exclusion of foreign-born residents from voting or holding public office.<sup>39</sup> Weeks before the election of 1855, Democrat-aligned newspapers claimed to hold unimpeachable proof “that COLES BASHFORD IS A KNOW NOTHING.”<sup>40</sup> One paper even alleged that Bashford also secretly disdained a core Republican constituency: abolitionists. According to the *Sauk Co. Democrat*, Bashford had purportedly remarked, “If there are any two creatures which I despise more than all others, they are the Irishmen and Abolitionists.”<sup>41</sup>

The papers never corroborated these claims, but Republican-aligned papers still fired back. The *Mineral Point Tribune* reminded its Republican readers that their party—and Bashford's—supported “the equal rights of *all men*” and “[opposed] all secret organizations that favor proscription on account of birth place, religion, or color.”<sup>42</sup> Taking a step further, the *Daily State Journal* charged that Barstow sought to win the election “with unrestrained and unmitigated whiskey on the one hand” and “midnight cabals on the other.”<sup>43</sup>

This war of words arguably created more confusion than clarity with respect to the candidates' supposed nativist tendencies. As one reporter noted with exasperation, “The Know Nothings have created considerable panic, and both parties disown them. . . . We are totally ignorant of which party, if either, they give their support to, nor care but little.”<sup>44</sup> Both candidates disavowed Know-Nothingism in letters later published in the press: Barstow wrote that “I do not now and never did belong to said order,”<sup>45</sup> and Bashford swore, “*I am not a member of the Order of Know Nothings and Never have been!*”<sup>46</sup>

These emphatic denials underscored the fact that both parties eyed immigrants as a crucial voting bloc in the upcoming election. Article III of the 1848 Wisconsin Constitution granted the right to vote to every white male who was at least 21 years old and who had resided in the state for at least one year prior to an election. In short, U.S. citizenship was not required.<sup>47</sup> On the one hand, immigrant support at the ballot box could tip elections in favor of a political party. On the other hand, parties that catered to foreign-born voters (and distanced themselves from nativism) ran the risk of potentially alienating their native-born bases.<sup>48</sup>



In an attempt to court immigrant votes, both Democrats and Republicans accused the opposing party's gubernatorial candidate of allying with the Know-Nothings, a semisecret nativist political organization. Shortly before the November 1855 election, the *Manitowoc Herald* (top left) and *Milwaukee Daily News* (top right) amplified rumors that Republican Coles Bashford was a Know-Nothing, whereas the *Mineral Point Tribune* published Bashford's letter rebutting these charges (above).

Whatever their strategic value, these accusations cultivated "an aura of intense paranoia" that persisted until the general election, as both parties encouraged Wisconsinites to doubt each gubernatorial candidate's true political allegiances.<sup>49</sup>

## II. THE CONTESTED ELECTION OF 1855

The bitter campaign for the governorship frayed the nerves of voters. Rather than lay the conflict to rest, the election results heightened tensions. Forty days passed between Election Day and the official statewide vote count that determined the winner. This delay was not unusual at the time, because ballots were counted by hand and tallies were transported to Madison on horseback from isolated areas. Counting the votes took several weeks, allowing time for politically motivated operatives to attempt to manipulate the results. In this interval, accusations of vote tampering accumulated and threatened to undermine confidence in the integrity of the election. These allegations illuminated vulnerabilities in Wisconsin's nascent elections process and raised the possibility that people would contest the outcome.

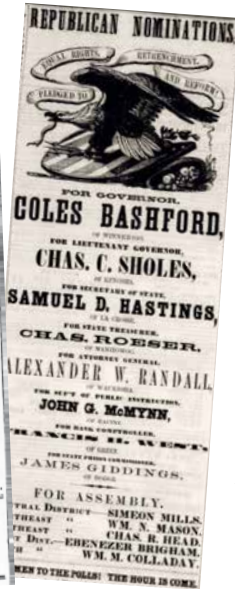
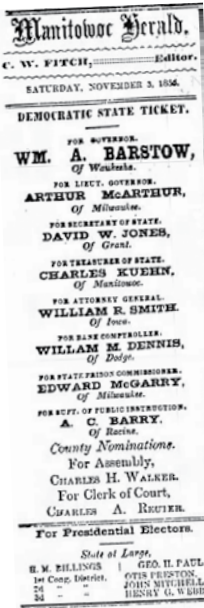


COURTESY OF REYNOLDS HOUSE MUSEUM OF AMERICAN ART, AFFILIATED WITH WAKE FOREST UNIVERSITY, GIFT OF BARBARA B. MILLHOUSE

This print depicts the boisterous atmosphere of an election day in nineteenth-century America, when it was common for voters to cast ballots in saloons or stables. John Sartain after George Caleb Bingham, *The Country Election*, 1854.

On Tuesday, November 6, 1855, the polls opened at nine o'clock in the morning. State law specified that they remain open “until sunset,” with an hour-long adjournment of the polls permitted at noon.<sup>50</sup> At the time, a variety of public and private buildings doubled as polling places. In rural or frontier towns, for example, Americans voted in stores, saloons, barns, or the homes of well-known residents. In more populous areas, people cast their ballots in courthouses, hotels, factories, stables, and also saloons, where “cloth sheets would be raised around the area in which voting was done so that patrons could drink while the election was held.”<sup>51</sup> As elections historian Richard Franklin Bensele notes, these circumstances rendered elections somewhat chaotic.

Rather than receive a ballot at the polls, each voter brought his own ballot, on which he wrote out the names of his preferred candidates in longform. (No voter submitted her ballot because the Wisconsin Constitution excluded women, as well as non-white men, from the franchise.) An eligible voter could also submit a printed “party ticket,” clipped from his local partisan newspaper,<sup>52</sup> or a ballot containing partially printed and partially written choices.<sup>53</sup> Then the voter entered the polling place, making his way past “the throng of chanting, jostling partisans”



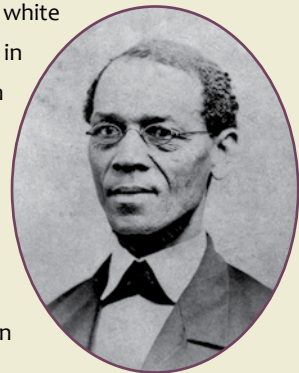
outside, and submitted his ballot.<sup>54</sup> Election officials then deposited the ballot into the ballot box.<sup>55</sup>

When the polls closed at sundown, some election officials faced a long night of counting ballots. They compared poll lists to correct mistakes, recorded the number of ballots the ballot box should contain, and counted sealed ballots in the ballot box to ensure they matched the number of voters on the poll list. Finally,

An eligible voter could either bring his own ballot to the polls or clip and submit a prefilled “party ticket” printed in the newspaper, like these tickets from the *Manistowic Herald* (Nov. 3, 1855) and the *Wisconsin State Journal* (Nov. 6, 1855).

## EXCLUDED AT THE POLLS: BLACK WISCONSINITES

While the Wisconsin Constitution of 1848 granted suffrage to white men, it took another 18 years before Black men could vote in the state. A referendum on extending suffrage to Black men appeared on the ballot in 1849. A majority of voters who responded approved the measure; however, the Board of Canvassers counted ballots that abstained on the referendum as votes against it, causing the measure to fail. Ezekiel Gillespie, a formerly enslaved man and a community leader in Milwaukee, attempted to vote in the 1865 general election and predictably was turned away at the polls. Gillespie and his attorneys took the matter to court, and in 1866, the state supreme court ruled that—regardless of how many voters responded to the 1849 referendum—Black men in Wisconsin had legally gained the right to vote in 1849.



Ezekiel Gillespie spearheaded the legal effort to enfranchise Black Wisconsinites.

WHS IMAGE ID 33364

Source: Christy Clark-Pujara, “Contested: Black Suffrage in Early Wisconsin,” *Wisconsin Magazine of History*, Summer 2017, 21–27.

election officials proceeded to conduct the “canvass”—the official tally—of every valid vote cast.<sup>56</sup>

After counting all of the votes, local election officials wrote an official statement of the results, which contained the total number of votes for each office, as well as the total number of votes each candidate received. Then they transcribed, signed, and sealed shut official copies of this statement. The local clerk retained one copy, and the other was delivered to the county clerk within seven days. From these copies, county canvassers prepared their own official documentation of the total votes cast for each candidate for office.<sup>57</sup> Finally, signed and sealed copies of these documents were sent to the State Board of Canvassers, an entity composed of the secretary of state, attorney general, and state treasurer that was responsible for determining election results and announcing them to the public.<sup>58</sup>

A long paper trail built up between the time when voters cast their ballots on voting day and the time when the State Board of Canvassers received official county canvass records in Madison.<sup>59</sup> The extensive documentation had some advantages: multiple layers of authentication might shield the canvass from fraud. But hand-writing and hand-delivering these official papers could invite mistakes or manipulation. Fatigue alone likely caused clerical errors, as local election officials conducted the initial canvass late into the night without pause. Moreover, each canvass relied on the labor of elected politicians, who might be tempted to nudge the results in their party’s favor. And most importantly, the gap between the election and official election results left plenty of time for rumors to circulate.

More than a month passed between election night and the last day permitted by law for filing of the official election results; no quicker pace was possible without cars, paved roads, or computers. The secretary of state received the first county canvass results on November 15, 1855, and announced the results on December 17.<sup>60</sup> But in the interim, unofficial and official election results circulated quickly by telegraph, mail, or gossip and were published in local newspapers. One week after the election, the *Daily State Journal* reported that election returns indicated that Democrats would hold the state assembly, but Republicans would control the senate.<sup>61</sup> Results in the gubernatorial race remained too close to call, and unofficial county tallies changed almost daily as new information was received and old information was corrected. Three weeks after the election, each party claimed that its candidate for governor won the election, resulting in statewide confusion.

With results uncertain, attention turned to the election returns for Waupaca County. In late November, rumors circulated that not one but *two* localities had claimed to be the county seat and thus issued county canvass results.<sup>62</sup> Reporting on the scuttlebutt, the Republican-leaning *Daily State Journal* initially acknowledged “the possibility of an unfair state canvass” but declined to entertain it.<sup>63</sup> The



## EXCLUDED AT THE POLLS: WISCONSIN WOMEN



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The issue of women's suffrage was raised during Wisconsin's 1846 constitutional convention only as a cruel joke. One member moved to eliminate the word "white" from a provision describing which persons could vote, whereupon another member moved to eliminate the word "male"—a proposal meant to mock Black and indigenous suffrage by leveling it with the "preposterous" notion of women's suffrage. Unsurprisingly, the issue of women's suffrage was not revived during the next constitutional convention in 1847. Later, in 1855, famed abolitionist and suffragist Lucy Stone lectured throughout the state and encouraged audience members to petition the legislature to amend the constitution to grant

women the right to vote. Some listeners answered her call, but the state senator who received their petitions during the 1856 legislative session took no action. Wisconsin women would not exercise full suffrage until 1920.

Sources: Louise Phelps Kellogg, "The Question Box," *Wisconsin Magazine of History*, December 1919, 227–30; Theodora W. Youmans, "How Wisconsin Women Won the Ballot," *Wisconsin Magazine of History*, September 1921, 3–32.

paper then reversed this position overnight after the newspaper's editors were denied their request to view the election returns. Where the *Journal* had dismissed suspicions, it now freely aired them: "Is not public suspicion justly aroused? It is an unheard of thing that citizens are refused a sight of public papers deposited in the state offices."<sup>64</sup> Days later, the *Journal* went further, suggesting that "notorious political intriguers" had produced a windfall of late-arriving election returns from Waupaca County that suspiciously favored the Democratic incumbent.<sup>65</sup> By December 6, the *Journal* openly alleged fraud, reporting that unnamed individuals had made "mysterious visits and midnight prowlings" to Waupaca County with the aim of "fixing things."<sup>66</sup>

Compounding Republicans' suspicions was the fact that the state canvass rested entirely in Democratic hands. Secretary of State Alexander Gray, Attorney General George Smith, and State Treasurer Edward Janssen were all Democrats and "warm personal and political friends" of Barstow.<sup>67</sup> Together, these three men would determine and announce a winner in the gubernatorial contest. With

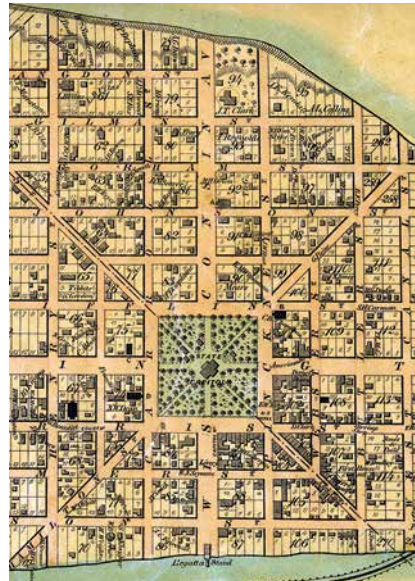
so much on the line, and with so much ill will between them, Democrats and Republicans eyed each other with considerable distrust by the time the State Board of Canvassers met in mid-December. Finally, on December 17, the board made its much-awaited announcement. The incumbent, Democrat William Barstow, had eked out a victory over Republican Coles Bashford by a mere 157 votes—a significant departure from his 8,500 vote margin in the 1853 gubernatorial race.<sup>68</sup> Out of a total of 72,553 votes cast, Barstow had won 36,355 votes against Bashford’s 36,198; Barstow had been duly elected governor for the ensuing term.<sup>69</sup> Would Wisconsinites—already alerted to the possibility of fraud—accept this result? And, if not, who had the power to resolve a disputed election?

### III. DUELING INAUGURATIONS

As suspicion about the legitimacy of Barstow’s reelection victory was spreading among Bashford’s Republican supporters, the Democratic State Central Committee arranged for a military escort to accompany Barstow to and from his second swearing-in at the capitol.<sup>70</sup> The committee called companies from Watertown and Milwaukee to Madison, an invitation that prompted even the Barstow-sympathizing *Daily State Journal* to note dryly that “if these warlike preparations are made lest a justly incensed people interfere with the progress of unblushing corruption and fraud, they are unnecessary.”<sup>71</sup> The troops rolled into the Milwaukee & Mississippi Railroad Company’s West Madison Depot shortly after four o’clock in the afternoon on January 7, 1856. Reports of what happened next varied widely between the partisan newspapers that described the events of inauguration day.

According to the *Argus and Democrat*, the troops marched gallantly up Washington Avenue (now West Washington Avenue) to collect Barstow from his house a few blocks from the capitol. Three military brass bands joined the procession as Barstow climbed into a luxurious carriage that carried him and

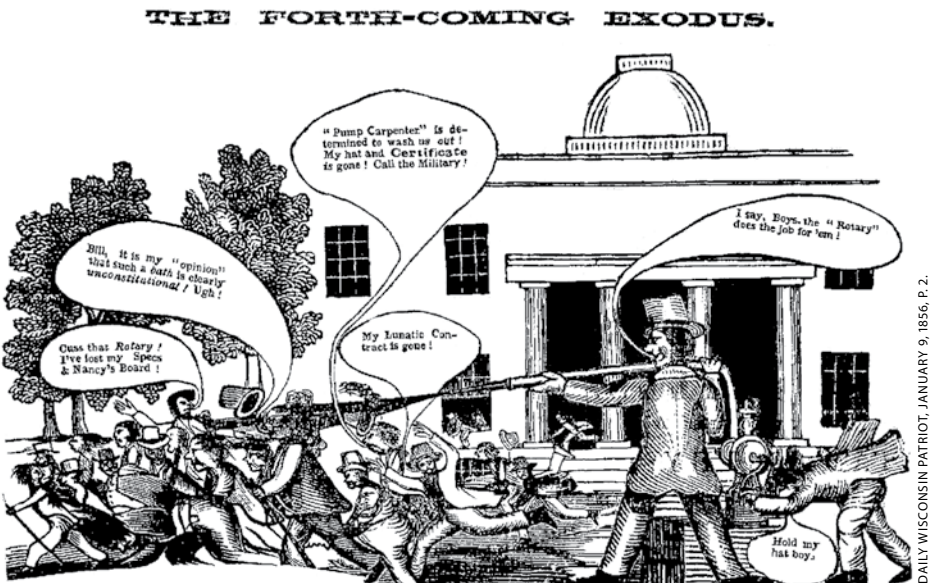
A military escort accompanied Barstow from his home to the capitol on the bitterly cold January day of his second swearing-in as governor.



several other state officers-elect back up to the capitol. Along the way, crowds of people stood at the roadside and raised cheer after cheer for their governor despite the bitter cold. In all, the *Argus* estimated that some 3,000 people had assembled to witness the spectacle.<sup>72</sup>

When Barstow and his party reached the capitol, cannons boomed in celebration. And after Barstow and his colleagues took turns being sworn in by a circuit court judge in the senate chambers, supporters crowded into the capitol called out loudly to each officer, asking him to say a few words. Governor Barstow's remarks were brief and unremarkable—he merely expressed gratitude for the honor of serving the people of Wisconsin in the executive office.<sup>73</sup> However, the state's new lieutenant governor, Arthur McArthur, was more expansive—and seemed ready to take aim at anyone doubting the election results. He and his fellow state officers came to the capitol that day “under the shadow of no intrigues” to assume the constitutional obligations that “the people had imposed upon them.”<sup>74</sup> McArthur added for good measure that the inauguration that night “celebrated the rule of THE PEOPLE, *their* freedom, and *their* power.”<sup>75</sup> After the officers were officially sworn into their seats, the capitol's stately halls remained open for hours, filled with people who danced and drank until well into the night.<sup>76</sup>

But papers that frequently sided with Republicans provided very different—and openly disdainful—accounts of Barstow's inauguration. According to the



In an example of newspaper partisanship, this cartoon, published in the Republican *Daily Wisconsin Patriot*, depicted Bashford flushing out Barstow's corrupt cronies with a hose.

*Daily Wisconsin Patriot*, the “frozen troops” who had accompanied Barstow to the capitol struggled through the streets “without order,” vigorously rubbing their ears to ward off the cold in a gesture that the *Patriot* considered to be “the most military of their motions.”<sup>77</sup> In its own biting account, the *Daily State Journal* described the soldiers pityingly, with “whiskers white with frost.”<sup>78</sup> And as Barstow progressed toward the capitol, people “hurrahed repeatedly” for Bashford—not Barstow.<sup>79</sup>

To the “rub-a-dub of a single drum,” the *Patriot* mocked, the “undisciplined rabble” made its way to the capitol.<sup>80</sup> And while Barstow took the governor’s oath of office “amid the petty roar” of a miniature cannon, his military escort seemed more interested in drinking beer. The *Patriot* referred to Barstow as “little Bonaparte”—evoking the military leader who seized power over France by decidedly undemocratic means—and noted that he concluded his “usurpation” with a dance.<sup>81</sup> And by the end of the night, men with “rubicund countenances” who had come to the capitol to celebrate Barstow’s inauguration “after copious drains upon the lager . . . slid down stairs on the bannisters.”<sup>82</sup>

Given the highly partisan nature of newspapers in the mid-1800s, it is impossible to say with certainty whether Barstow’s inauguration was a glorious celebration of the will of Wisconsin-ites or a cold and unruly affair. The truth may lie somewhere in between. But whatever the case, several hours before Barstow’s inauguration, Coles Bashford slipped into the capitol for his own swearing-in ceremony. Only a few of Bashford’s close associates had known that he would also be taking an oath to serve as Wisconsin’s new governor that day. But word that the state’s first Republican governor was going to be inaugurated “circulated with marvelous rapidity,” and soon the Wisconsin Supreme Court Room “filled with spectators” who

Although the State Board of Canvassers had declared William Barstow the winner, Chief Justice Edward Whiton administered the oath of office to Coles Bashford, guaranteeing a dramatic confrontation.



watched as Wisconsin Supreme Court Chief Justice Edward Whiton administered the governor's oath of office to Bashford.<sup>83</sup>

Chief Justice Whiton had previously served in Wisconsin's territorial legislature as a Whig, and since then, most Whigs—Bashford among them—had become Republicans. There is no way to know whether Whiton harbored any political agenda. However, the chief justice's personal history suggests that the state's laws—and the court established to interpret them—mattered more to him than the ascendance of any one political party. Whiton had codified Wisconsin's territorial laws, served on the state's first supreme court, and handed down that court's landmark decision regarding the Fugitive Slave Act.<sup>84</sup> As another justice later opined, "his history [became] the history of the bench itself."<sup>85</sup> Whatever motivation determined Whiton's decision to administer the oath of office to Bashford on the same day that Barstow would be sworn in, he would surely have understood that this decision would force a dramatic reckoning.

The next day, Bashford proceeded to the governor's executive chambers in the capitol to formally demand that Barstow give up his possession of the office. Barstow declined.<sup>86</sup>

But Bashford did not give up. Having confirmed that a polite request would not budge Barstow from the governor's office, he moved quickly to contest Barstow's right to the seat in the Wisconsin Supreme Court. On January 11, 1856, four days after the dual inaugurations, Bashford met with newly elected Attorney General William Smith in his office at the capitol to announce his intentions of contesting the election. Wisconsin law authorized Smith to challenge Barstow's right to the governorship by filing a *quo warranto* (Latin for "by what authority") action in the courts. Bashford and his attorneys believed that Smith, recently elected as a Democrat, would be favorable to Barstow's claim on the office. But they also hoped that Smith would decline to file Bashford's *quo warranto* action with the supreme court, thereby allowing Bashford's lawyers to file the action themselves. In the meantime, Bashford assented to Smith's request that he file his application for the *quo warranto* in writing.<sup>87</sup>

To this end, Bashford's attorneys drafted a lengthy document that alleged the falsifications of election results from six counties—Chippewa, Dunn, Monroe, Polk, Sheboygan, and Waupaca—from which the State Board of Canvassers had received suspiciously late-arriving returns.<sup>88</sup> The day after Bashford confronted Attorney General Smith, Smith attended a performance at Fairchild's Hall, a theater just blocks from the capitol that put on plays while the Wisconsin Legislature was in session.<sup>89</sup> That evening, one of Smith's companions gestured to a gentlemen at the entrance of their box. There stood attorney James Knowlton, who passed along a "packet of paper tied with tape," which Smith took before receding into

## THE PRESS IN 1850s WISCONSIN

Throughout the nineteenth century, partisan newspapers proliferated across the United States. Starting in the 1830s, pioneering journalists in Wisconsin produced an array of papers that flattered the platforms and candidates of the political parties with which they were affiliated. In return, party and government officials in territorial Wisconsin often rewarded loyal newspaper editors with lucrative government printing contracts. In 1848, the adoption of article IV, section 25, of the state constitution sought to stop that practice by requiring that state printing contracts go to the lowest bidder. But as demonstrated by the insults that certain newspapers supporting Barstow and others supporting Bashford hurled back and forth vigorously, partisan journalism was still prevalent when the two men faced off in 1855.

the box.<sup>90</sup> This exchange likely attracted attention in the small theatre, which occupied a space of less than 1,500 square feet and catered to legislators.<sup>91</sup> In this conspicuous way, Bashford and his attorneys launched one of the most important legal proceedings in Wisconsin's history.

Attorney General Smith proceeded to file his own document with the supreme court. It stated that Barstow had “usurped, intruded into and unlawfully held and exercised” the office of governor “in contempt of the people of the State of Wisconsin” and that Barstow should “be made to answer” for his actions.<sup>92</sup> Yet, notably, Smith's brief made no mention of the instances of fraud that Bashford's counsel had detailed in their original application. To contemporary readers, Smith's language may seem harsh—as if he were abandoning party loyalties to accuse fellow Democrat Barstow of having stolen the governorship. But Bashford's lawyers recognized Smith's move as a politically motivated effort to control the proceedings and wrest any such control away from Bashford and his attorneys. By failing to describe any potential election tampering, the Democratic attorney general's filing almost certainly derailed the possibility of any substantive investigation into election fraud and thus hampered Bashford's ability to make his case. As a result, the court might have dismissed the case altogether.

For these reasons, Bashford and his attorneys asked the court if they could argue the case in lieu of the attorney general, who—they alleged—would seek only to delay or hinder the case. Speaking before the court on January 22, Knowlton stated that the information filed by Attorney General Smith was “calculated to

delay and hinder [Bashford] in the prosecution of his rights.”<sup>93</sup> Barstow’s attorneys and Attorney General Smith, arguing on behalf of the state, objected—and the court found in their favor. The justices ruled that Bashford’s counsel had no right to control the action or dictate the form of the information filed.<sup>94</sup> Smith represented the interests of the people of Wisconsin, and until he exhibited outright hostility to Bashford or failed to perform the duties that he assumed when he filed the information, the court would not interfere.<sup>95</sup>

Although Bashford’s attorneys failed to convince the court on this point, they were correct in assuming that Barstow and his allies would attempt to delay the proceedings by any means possible.<sup>96</sup> After the court issued a summons ordering Barstow to appear on February 5, Barstow’s counsel requested that the court bring the case to argument during the June term to give them enough time to prepare arguments.<sup>97</sup> Chief Justice Whiton denied the request, insisting that the case be brought to argument during the court’s current term.<sup>98</sup> Whiton’s colleague, Justice Abram Smith, stated that “no movement ought to be made for purposes of delay.”<sup>99</sup>

Then, on February 2, Barstow’s lead attorney, Jonathan Arnold, filed a formal motion to quash the summons

and dismiss all proceedings based on the claim that the court had no jurisdiction to intervene in the contested election. Arnold also requested to delay proceedings for thirty days to prepare for the arguments concerning the court’s jurisdiction, citing “the importance and novelty of the case” and “the weighty questions involved.”<sup>100</sup> The court denied the request and fixed the date to hear the oral arguments on the dismissal motion for February 11, giving both sides just over a week to prepare.<sup>101</sup>

As the case finally began, this friction between the contested governor and the court foreshadowed broader tensions between the executive and judicial branches themselves.

The case was not just about who was the lawful governor, but about the authority of the state’s courts and the wider balance of power in government.



WHS IMAGE ID 118979

Attorney Jonathan Arnold argued that the Wisconsin Supreme Court could not intervene in contested elections—a challenge to the authority of the judicial branch.

## IV. THE COURT'S AUTHORITY CHALLENGED

As their opening gambit, Barstow's counsel once again moved that the case be dismissed outright. In short, rather than argue their client's innocence against allegations of election fraud, they disputed the state supreme court's jurisdiction over any such allegations. This motion quickly transformed the case. Instead of only a dispute over the governorship, it became a dispute over the authority of the state supreme court. Could the court decide whether a governor legitimately held office? This question now eclipsed every other issue at stake in the case—including the alleged election fraud.

Towering figures in Wisconsin's legal world stood on both sides of the case.<sup>102</sup> Representing incumbent governor Barstow were Democrats Matthew Carpenter, Jonathan Arnold, and Harlow Orton.<sup>103</sup> Carpenter himself had been embroiled in a similar legal dispute months earlier: having lost his race for the office of Rock County District Attorney, Carpenter successfully argued that he had received more votes and that on this basis, a circuit court could overrule the canvassing board to determine the election's rightful winner.<sup>104</sup> Carpenter now set out to undermine his own claim, arguing that the supreme court could not decide the outcome of an election.<sup>105</sup>

Speaking on Bashford's behalf were attorneys James Knowlton, Timothy Howe, Alexander Randall, and Edward Ryan. Only three years earlier, Ryan had led the effort to impeach Supreme Court Justice Levi Hubbell in a trial akin to a “soap opera”<sup>106</sup> that tarnished the court's reputation.<sup>107</sup> Now he sought to elevate the court's standing. Although not a Republican, Ryan's deep-seated notion of “governmental integrity” trumped partisan politics.<sup>108</sup>

On February 11, Carpenter opened arguments by briefly summarizing the reasons the court should dismiss the case. Each branch of government, he explained, served as the “ultimate judge” of its members. Accordingly, the state supreme court could not determine the rightful governor: only the executive branch possessed this authority, and the governor and the executive branch were one and the same.<sup>109</sup>

Bashford's lawyers, including Edward G. Ryan, based their arguments on the theory of separation of powers, under which no man—even the governor—was above the law.





This argument departed from conventional notions of the separation of powers doctrine, wherein each of the three coequal branches of government acts independently but checks the powers of the other two branches. In Carpenter's estimation, the judicial branch was entitled to barely any power. Legal scholar Joseph Ranney notes that this position was "dated but by no means frivolous," as early Americans remained wary of powerful courts.<sup>110</sup> Carpenter and his colleagues frequently quoted Thomas Jefferson to illustrate the American founders' apparent mistrust of the judicial branch.<sup>111</sup>

In addition to the founders, Barstow's attorneys also alluded to European monarchs. Orton, for example, compared the governor to "a constitutional king" — "in him resides the power of the state, from him emanates the force of the state."<sup>112</sup> There was no distinction between the office of the governor and the man who occupied that office, Carpenter added. The constitution "breathed" executive power into Barstow, who "can no more separate himself from his official character than he can depart from his soul."<sup>113</sup> These points skirted dangerously close to theories of power that Americans had vehemently rejected in 1776 by declaring their independence from King George III of England.

Still, Barstow's attorneys continually referred to English and European history—rather than American history—to argue that the case against their client was unprecedented. To contemporary Americans, these frequent references to foreign, monarchical traditions might seem jarring in the context of a case about domestic democratic systems. But nineteenth-century lawyers in the United States regularly cited English case law and theory, and Barstow's legal team followed that tradition. No English court, Carpenter noted, had ever dethroned a monarch—although several had been violently overthrown.<sup>114</sup> He even suggested that violence was a more appropriate means to resolve disputes over executive authority. "What would Napoleon have done," Carpenter asked, if he had returned from battle and "found some jack-a-nape . . . calling himself Emperor?" Rather than "blubbing into a court of justice," Napoleon would have forcefully ejected the usurper.<sup>115</sup> Likewise, Bashford and his allies could unseat Barstow "only by force," because the Wisconsin Constitution provided no other solution.<sup>116</sup>

This proposition—that "might makes right"<sup>117</sup>—may have alarmed those in the courtroom who held faith in the rule of law. But Carpenter warned the court that its intervention in this case posed a more dangerous threat: "[I]f you remove Governor Barstow, you may remove any Governor, and place your friend or servant in his place."<sup>118</sup> On the basis of this precedent, he argued, nothing could stop a corrupt court from making the governor a mere extension of its power.

Bashford's counsel rejected these arguments and asserted the court's authority to intervene in the disputed election. The American founders, they said,

envisioned a system of democracy that distributed power among three branches, each of which served as a check against the corruption of the other two.<sup>119</sup> This system did not concentrate “monstrous authority” in any one individual.<sup>120</sup> As Knowlton observed, the governor did not embody the executive branch, which could not “get drunk [or] go on a frolic” as he could.<sup>121</sup> No man—no matter his office or title—was above the law under the American system.

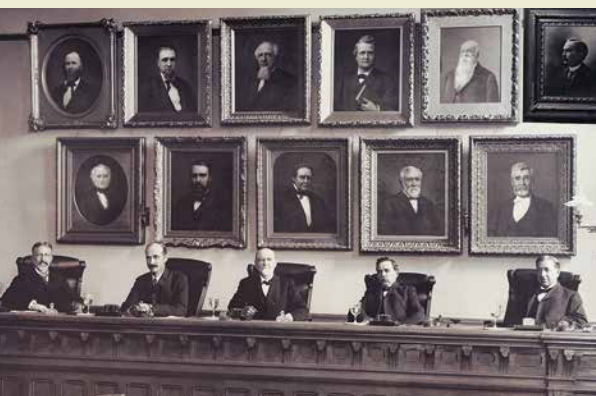
Bashford’s attorneys argued that this new system likewise entitled all Wisconsinites to seek justice in the courts. To this point, Timothy Howe quoted article I, section 9, of the Wisconsin Constitution: “Every person is entitled to a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property, or character.”<sup>122</sup> Just as the court could resolve a dispute between a landowner and a squatter, it could also offer a remedy to a candidate denied the office to which he had been elected.<sup>123</sup> Such an intervention posed no dangerous precedent, Howe argued. The court could not *make* Bashford governor: it could only “determine . . . his right to the office.”<sup>124</sup> Such was the duty of the state supreme court as “the Court of last resort to determine to all time the rights of individuals and the State.”<sup>125</sup> A fair process was all Bashford sought.

This process was a far cry from force, which was the only means of resolution that Barstow’s attorneys had proposed. Addressing this point, Howe and his colleagues flatly rejected the notion that the framers of either the U.S. Constitution or the Wisconsin Constitution had intended for candidates to settle electoral disputes violently: “Revolutions have often been resorted to for the purpose of over-throwing governments, but never to get possession of an office under a government.”<sup>126</sup> By deciding electoral disputes, the state supreme court could forestall chaos and assert order. Howe emphasized this point with his closing comment: “Here, we are to try our wager of law and not a wager of battle.”<sup>127</sup>

These back-and-forth arguments on the motion to dismiss consumed three full days, interrupted only when the “trampling of feet” overhead—a rowdy group had gathered to address unrelated business in the assembly chambers above—drowned out the attorneys’ arguments.<sup>128</sup> Although marathon in length, the arguments captured the attention of spectators and justices alike. Years later, Wisconsin Chief Justice John Bradley Winslow remarked admiringly on the “[t]rope and simile, metaphor and classic allusion, apt quotation and biting satire” that “abounded” in the attorneys’ speeches.<sup>129</sup>

However, the ornate speeches from Barstow’s counsel failed to sway the justices, who unanimously rejected the arguments brought forth by Barstow’s counsel. On February 18, Chief Justice Whiton delivered the opinion of the court, which denied the motion to dismiss and affirmed the court’s jurisdiction over the disputed election. After summarizing the questions before the court,

## DECISIONS OF THE EARLY COURT



WHS IMAGE ID 23436

Chief Justice John Bradley Winslow, second from left, served on the court from 1891 to 1920 and published an extensive history of the court that included a chapter on the contested governorship.

In the 1850s, the Wisconsin Supreme Court operated quite differently than it does today. The chief justice delivered the court's decision orally, and lawyers packed into the court to hear the ruling, since a written decision would not be published for weeks or months. To begin, the chief justice would state the facts of the case, which were usually "long, complicated and involved" but stated "without reference to any notes or memoranda." As Chief Justice John Bradley Winslow explained in 1912,

"This marvelous exhibition of memory on the part of the chief justice was always a matter of wonder and of deep interest to the bar, and none of those who listened paid more rapt attention than his associates upon the bench." The other justices "made no sign by word or look" if they detected any error in the chief justice's delivery.

Source: John Bradley Winslow, *The Story of a Great Court; Being a Sketch History of the Supreme Court of Wisconsin, Its Judges and Their Times from the Admission of the State to the Death of Chief Justice Ryan* (Chicago, IL: T. H. Flood & Company, 1912), 61–62.

Whiton dismissed the notion that the governor alone should be the judge of his qualifications, finding no basis for this claim in either the constitution or the laws of the state. Instead, he cited article V, section 3, of the Wisconsin Constitution, which directly stated that the candidate receiving the highest number of votes from the qualified electors of the state must be elected governor.<sup>130</sup> On the basis of this clause, Barstow had "no legal right to the office" if he had not received the highest number of votes. Bashford, by contrast, had a "perfect right" to the office if it were proven that he received the highest number of votes.<sup>131</sup> The constitution established these rights, and the state supreme court simply enforced them as a "mere instrument" of the constitution.<sup>132</sup> By intervening in the disputed election, the court did not intrude on the powers of the executive branch, but rather was

performing its duties and exercising the powers of the judicial branch as spelled out in the constitution.

By contrast, Governor Barstow had openly disobeyed the constitution, as Justice Smith noted in his concurring opinion. With his “bald, naked, successful usurpation of the office of governor,” Barstow held office “in defiance of the constitution.”<sup>133</sup> And in placing himself beyond the constitution, he forfeited any claim to its protection.

These statements represented a striking rebuke to Governor Barstow. Still, the justices chose their words carefully to avoid courting controversy—or worse. By this point, some observers feared that the situation would end in “armed conflict between the partisans of Barstow and Bashford.”<sup>134</sup> Given this possible outcome, Justice Whiton framed the court’s decision in conservative terms to minimize its “sweeping effect.” The court intervened only out of solemn duty to the Wisconsin Constitution, and by no means relished in such an intervention.<sup>135</sup> Still, the court’s work was not yet done. Having established its authority to do so, the court set out to answer the question before it: Who was the rightful governor of Wisconsin?

## V. WISCONSIN’S RIGHTFUL GOVERNOR

After establishing its jurisdiction over the case, the court in late February directed both sides to present evidence supporting their client’s claim to hold office as the rightful governor of Wisconsin. Whereas Bashford’s attorneys welcomed this opportunity, Barstow’s counsel consistently sought to wriggle out of this responsibility at every turn, and Barstow himself openly flouted the court’s authority.

First, the governor’s attorneys argued that they “ought not . . . be compelled to answer” to the court. The State Board of Canvassers had already determined the person elected governor, and on that basis, they argued, Barstow had lawfully assumed the governorship.<sup>136</sup> Asked to support this position, Barstow’s attorneys stalled.<sup>137</sup> Only one of them, Harlow Orton, bothered to appear before the court when first ordered to do so. And even then, Orton felt “too weak to engage in the discussion alone” and requested a postponement.<sup>138</sup> Although Chief Justice Whiton initially relented,<sup>139</sup> his patience eventually wore thin. The court fixed March 8 as the final day for Barstow’s counsel to prove their client’s authority to serve as governor.<sup>140</sup>

When that day came, Barstow abruptly backed down. Standing before the court at ten o’clock in the morning on March 8, Matthew Carpenter announced to the court that Barstow had decided to withdraw from the case.<sup>141</sup> No evidence would be presented because none had been gathered. Instead, he delivered a letter from Barstow to the court.

In withdrawing, Barstow had not admitted defeat. Instead, he announced his intention to rebel against the judicial process rather than participate in it. He spelled out his intentions in the letter that Carpenter delivered to the court—but that the justices “refused to receive . . . on account of the indecent language in which it was couched.”<sup>142</sup> Although the court refused to acknowledge this message, its contents circulated widely, since Barstow had enclosed it within another letter to the legislature.<sup>143</sup>

Barstow began by stating that he had hitherto cooperated out of respect for the court, although it had “no jurisdiction” over the dispute.<sup>144</sup> Now, however, the court seemed to demand his “full and unreserved submission”—which he summarily refused.<sup>145</sup> And, continuing in high dudgeon, he went on to formally protest the court’s decision by announcing his “imperative duty to repel . . . any infringement upon the rights and powers which I exercise under the Constitution.”<sup>146</sup>

Barstow would not speculate as to whether the court had been “reckless and partisan” or simply “misguided.” But in his “warlike” communication, as historian Parker McCobb Reed later described it, Barstow denounced the court’s decision as “a bold and dangerous assumption and usurpation of power.”<sup>147</sup> He invited Wisconsinites to reject the court’s decision, writing that “it is the duty of . . . every good citizen in the State to resist it to the last.”<sup>148</sup> Moreover, he invited the legislature to reject the authority of the judicial branch and restore the “balance” of state government by asserting its own authority.<sup>149</sup>

To some observers, Barstow’s letter implicitly promised “armed resistance” to any court decision declaring Bashford to be the rightful governor.<sup>150</sup> In it, he even seemed to entertain his attorneys’ argument that force was the appropriate means to resolve the conflict. In fact, privately, Barstow briefly considered requesting the support of federal troops from U.S. President Franklin Pierce, but abandoned the plan as one likely to ruin his reputation.<sup>151</sup>

Instead, Barstow settled on a more peaceful but still crafty scheme: he would resign, placing control of the governorship with a friend and fellow Democrat,



**Arthur McArthur.**

Born in Glasgow, Scotland, where he was educated; came to Milwaukee in 1848; elected city attorney for Milwaukee in '52; elected lieutenant-governor on the Democratic ticket in 1855; was acting governor four days after Barstow's resignation; he was elected circuit judge of the Milwaukee circuit in 1863, for the second time; appointed associate justice of the Supreme court for the District of Columbia by Gen. Grant, from which he retired in 1888, at the age of 73 years. He died in Washington in 1896.

WHS IMAGE ID 117534

In a last-ditch effort to prevent Bashford from becoming governor, Barstow resigned, whereupon Lieutenant Governor Arthur McArthur became governor—an office he held for four days.

Lieutenant Governor Arthur McArthur. He predicted that the court would be inclined to drop the case, leaving control of the executive branch in Democratic hands.<sup>152</sup> On March 21, Barstow carried out this plan, resigning from office after serving only six weeks of his second term. In his resignation announcement, Barstow railed against the court case as an “extra-judicial proceeding” and characterized the eventual judgment against him as “a foregone conclusion.”<sup>153</sup> Against this backdrop, he presented himself as sacrificing his own position for the safety of the state: “In this alarming and perilous emergency of the State government, the public demands a sacrifice, to save the State from the calamities of civil strife, and to preserve public peace”<sup>154</sup> Upon Barstow’s resignation, Lieutenant Governor Arthur McArthur became the fourth Governor of Wisconsin.

Barstow was sorely mistaken: this peaceful transfer of power did not lay the case to rest. The court continued to hear evidence of election tampering on March 21 as if nothing had changed. In opening the proceedings, Chief Justice Whiton reminded Bashford’s attorneys that “We assume the statement of the Board of Canvassers to be true, until it is disproved,” but then proceeded as normal.<sup>155</sup> In subsequent days, Edward Ryan methodically set about casting suspicion on certain late-arriving election returns that materialized in mid-December 1855 and turned the tide of the election in Barstow’s favor.

Most egregiously, Ryan began, certain late-arriving election returns came from nonexistent polling places. Although a town called Gilbert’s Mill had produced 53 votes for Barstow and 14 for Bashford, the few inhabitants of the area—nearly all of them workers at Mr. Gilbert’s sawmill—reported no knowledge of any election held there.<sup>156</sup> In fact, Mr. Gilbert himself said that “he thought of getting a poll established there, but he found his men would not vote to suit him, and he did not therefore procure it.”<sup>157</sup> Casting further doubt on the authenticity of the returns, Representative Donald Cameron—whose district encompassed Gilbert’s Mill and who had visited every voting precinct in his district before the election—had neither heard of the place nor any of the men who had signed its election returns.<sup>158</sup>

Late-arriving returns also came from parts of the state that were wholly uninhabited. One such place was referred to only as Township 25, near present-day Amherst. Representative Charles Burchard of Dodge said he had been “hunting up and locating land” in the area but had “neither saw nor heard of any settlers or improvement.”<sup>159</sup> The county surveyor testified that the place was “uninhabited,”<sup>160</sup> and another witness described it as “a wilderness.”<sup>161</sup> Still, the elusive inhabitants of Township 25 had managed to produce 83 votes for Barstow (and only seven votes for Bashford), edging Barstow ahead of Bashford in Waupaca County.<sup>162</sup> “I never heard there was any settlement in Town 25,” witness Alfred Woodward said wryly, “until I heard about voting there,” adding, “there used to

be plenty of wolves there.”<sup>163</sup> At this point, the justices pressed Ryan on whether it was possible that “men might camp out” in the wilderness and consequently vote there. To this Ryan quipped, “I do not see how there could be any voters, unless Mr. Woodward’s wolves voted.”<sup>164</sup>

Where polling places did exist, Ryan suggested that local election returns had been tampered with before they reached the State Board of Canvassers. To this end, he called firsthand witnesses of the local canvasses. In Waupacca Village, for example, both the election and the canvass took place in Jeremiah Jones’s tavern. Just before sundown, Jones stole a moment away from waiting tables to vote minutes before the polls closed. Then the canvass of votes began in his dining room. Later, as the dining room grew cold, Jones recalled, “[the canvassers] went

## EARLY SETTLEMENT AND DISPLACEMENT



WHS IMAGE ID 3350

Depiction of Indians on Madeline Island, dated 1852.

In court, Coles Bashford’s attorneys argued that certain supposed voting precincts were “uninhabited.” But indigenous peoples had lived for centuries on lands that white settlers considered uninhabited or uninhabitable—catching fish, hunting game, and growing crops like corn and squash. Having survived the competition, disease, and displacement that began with the first arrival of Europeans in the Upper Midwest, Indians faced the U.S. government’s aggressive attempts to “remove”

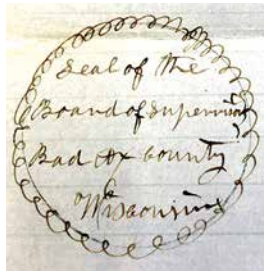
them from Wisconsin and other Western territories in the nineteenth century. From the mid-1820s onward, the federal government often pressured Wisconsin tribes to cede their lands and sometimes forcefully relocated them altogether. Not satisfied with having dramatically circumscribed Native lands, the government later began a policy of allotment, i.e., dividing up tribal lands among individual members in a manner intended to “economically exploit Native lands and resources.” Lands held by the Oneida tribe, for example, decreased by over 75 percent after the General Allotment Act of 1887.

Source: Patty Loew, *Indian Nations of Wisconsin: Histories of Endurance and Renewal* (Madison, WI: Wisconsin Historical Society Press, 2001).

**Tabular Statement** of the Votes polled for Governor, Lieutenant Governor, Secretary of State, Treasurer, State Towns, Wards, and Election Precincts in the County of Waupaca, State of Wis.

NAME OF OFFICE AND Towns, &c.	GOVERNOR.			LIEUTENANT GOVERNOR.			SECRETARY OF STATE.			STATE
	William A. Barstow.	Colas Bashford.	Scat-tering.	Arthur McArthur.	Charles C. Sholes.	Scat-tering.	David W. Jones.	Samuel D. Hastings.	Scat-tering.	Charles Kuehn.
Amurhut	21	71		23	69			69	23	23
Belmont	4	19		4	19			19	4	4
Dayton	20	75		27	70			71	26	26
Farmington	58	41		58	42			43	58	59
Jola	1	28		3	27			27	3	3
Little Wolf	4	30		5	18			18	5	5
St. Lawrence	9	37		9	34			34	12	12
Scandinavia	63	28		63	29		1	29	62	63
Waupaca	<u>543</u>	<u>59</u>		<u>544</u>	<u>58</u>			<u>56</u>	<u>545</u>	<u>555</u>
	733	378		735	366	+ 788		366	737	749
Precincts Total	806	7		84	6		84	6		90
	<u>806</u>	<u>385</u>		<u>819</u>	<u>472</u>		<u>822</u>	<u>372</u>		<u>839</u>

SUPPLEMENTARY ELECTIONS RETURNS, WISCONSIN HISTORICAL SOCIETY ARCHIVES, BARSTOW-BASHFORD CONTESTED ELECTION PAPERS, SERIES 211, BOX 3.



Before the court, Bashford’s attorneys presented evidence that official election documentation—including the seals and tabular statement seen here—had been forged.

into the room where my wife and I slept.” There, the election officials tallied votes until sunrise, and Jones periodically got up and “looked over their shoulders” to see how the candidates were faring.<sup>165</sup> After completing the canvass, election official John Chandler left behind some papers with the final tally: Barstow 288 to Bashford 219. To Jones’ surprise, he read weeks later in the *Waupacca Spirit* that Barstow had won in Waupacca Village on a lopsided vote of 538 to 59.<sup>166</sup> Someone had meddled with the vote count before the final canvass by the State Board of Canvassers.

To this point, Ryan presented various proofs of amateurish forgery, directing the justices to closely examine certain returns with their magnifying glasses. “Though apparently written in a bold, free hand,” Ryan noted, “they have been what is called *painted*, changing their original appearance.”<sup>167</sup> Here, he drew attention to two copies of a document bearing the name “Henry Allen.” On one copy, the name “Arthur Stewart” was faintly legible beneath “Henry Allen,” despite apparent attempts to scratch it off with a knife. Neither name corresponded to a real person—but the



forger had mistakenly employed two fictitious names in lieu of *one*, and sought to correct the error.<sup>168</sup>

Elsewhere, returns from disparate parts of the state bore suspicious similarities. Although purportedly produced one hundred miles apart, returns from Spring Creek and Gilbert's Mill contained identical errors—the word “inspector” had been scratched out and replaced with “clerk.” Moreover, they were written on the same paper—stamped with the name “Plymouth”—and in the same handwriting. Or, as Ryan dramatically exclaimed to the court: “The same mistake, the same correction, and the same hand writing!”<sup>169</sup>

Though there were a variety of defects, all of these suspicious returns smiled more favorably on Barstow in comparison to the initial returns, which the state board received in the weeks immediately following the election. For example, the addition of supplemental returns for Spring Creek dramatically changed the total tally of votes in Polk County. Whereas the original tally stood at 42 votes for Barstow to seven votes for Bashford, Barstow shot ahead 149 to 20 with the addition of the late-arriving returns.<sup>170</sup>

Having presented all the evidence, Ryan concluded with some remarks on the significance of election tampering. He asserted that securing any office by this means—even the most humble elected office, like “fence-viewer or dog-killer”—constituted “a loud and crying insult to the public morality of the people of the State.”<sup>171</sup> Using particularly colorful language, he proposed that it was far less offensive for someone to walk the streets naked than for a man “clothed with the ermine of office” to present himself in public “reeking with corruption and foul with vermin like this.”<sup>172</sup> Finally, he noted that while he himself was practically “born a Democrat,” the party had no future if it sacrificed all its principles.<sup>173</sup> For their part, Democrats disputed the testimony of witnesses like Jeremiah Jones as “puerile gossip.”<sup>174</sup> However, in withdrawing from the case, Barstow and his attorneys had forfeited any opportunity to cross-examine the witnesses, challenge their credibility, and thereby undermine Ryan's narrative of election tampering.

The court adjourned on the evening of Friday, March 21, leaving Wisconsinites to wonder until Monday whether or how the court would weigh on the question of who was the rightful governor of Wisconsin. Some still feared that continued intervention on the court's part would provoke violence. In the wee hours of Monday, March 24, Justice Cole woke to “loud tapping at his window,” finding a friend there “who seriously advised him not to go in with the court on the following day, as they would certainly be mobbed.”<sup>175</sup>

At ten o'clock in the morning, Justice Cole delivered the opinion of the court and promised not to “say more than is required.”<sup>176</sup> The decision began by referring at length to the statutes to underscore the fact that the election itself, not

the board of canvassers, should determine the winner of an election. In this instance, Justice Cole continued, the state board had based its statement on election returns that were “wholly unauthorized”—and that turned the election in Barstow’s favor.<sup>177</sup> The court declined to comment on whether such returns were “fraudulent.” However, it concluded that if these returns were discounted, “the Relator was elected to the office of Governor by a plurality of votes.”<sup>178</sup> More than four months after Wisconsin voters had cast their ballots, the court found that Republican Coles Bashford was the state’s rightful governor.

In accordance with the court’s judgment, Bashford strode into the capitol on March 25 to reclaim the governorship from Governor McArthur, who had occupied the executive chamber for less than a week. What transpired between the two men is not entirely clear. As they had done while covering Barstow’s inauguration in January, leading partisan newspapers offered directly contradictory accounts. According to Republican papers, Bashford proudly and peacefully reclaimed his rightful position. Crowds of citizens—“unarmed, but strong in their reverence for justice”—gathered at the entrance of the capitol and followed Bashford into the building, packing into the rotunda and stairways.<sup>179</sup> Before these spectators, Bashford stated that he would take possession of the office “without the employment of force,” and only by force “if necessary.”<sup>180</sup> Inside, the “rush of people was so great,” the *Daily State Journal* reported, that Bashford briefly shut the door of the executive chamber to converse with McArthur.<sup>181</sup> As they spoke privately, the *Daily Wisconsin Patriot* added, “anxious spectators” were soon joined by members of the senate, who took a recess to “to see the fun.”<sup>182</sup> For nearly an hour, the “calm and quiet” crowd waited for someone—anyone—to emerge from the chamber.<sup>183</sup>

In sharp contrast to this triumphant scene, Democratic newspapers depicted a confrontation laden with the implicit threat of violence. According to the *Argus and Democrat*, a “mob of 50 to 60 men” followed on Bashford’s heels as he marched to the executive office with a copy of the court’s judgment and “demanded” possession of the office.<sup>184</sup> Blocking the doorway of the chamber, Bashford reportedly “threatened” to exercise the “force of the mob” to unseat MacArthur.<sup>185</sup>

On one point, all papers agreed: Governor McArthur made no last-ditch effort to remain in office. The prolonged fight to block Bashford from assuming office was officially over. As the *Argus and Democrat* explained, McArthur told Bashford that he had “no force for resistance” nor any “disposition to exercise it.” He proceeded to sign a few bills and then “retired from the presence of *The Governor of the Supreme Court*.”<sup>186</sup> Here, the paper took a sharp jab at Bashford, implying that the supreme court, rather than the electors themselves, had made him governor. Although Democrats had not managed to prevent the Republican from taking office, they would nevertheless seek to delegitimize him.

As if answering these attempts to undermine Bashford's authority, Republican papers depicted Wisconsin citizens as wholeheartedly embracing their new governor. According to the *Patriot*, members of the crowd rushed into the chamber following McArthur's departure, and "took the Governor by the hand, one by one" to congratulate him.<sup>187</sup> After Bashford dismissed them in order to get down to business, his admirers filed to the eastern end of the capitol, where they gave nine "long and loud cheers" which "moved the very night-caps of the old dome."<sup>188</sup>

In the coming days, legislators under "the old dome" would vote to recognize Bashford as the state's rightful governor and, in so doing, acknowledge the coequal authority of the judicial branch.<sup>189</sup> In the meantime, the people themselves signaled their acceptance of the supreme court's decision and the peaceful resolution to the crisis it had wrought. After the crowds at the capitol quietly dispersed, "bonfires were kindled" throughout Madison in a spontaneous celebration of Bashford's ascension.<sup>190</sup> According to the *Daily State Journal*, cheers for Bashford and his lawyers were so loud that people living as far as three miles from the city could distinctly hear them.<sup>191</sup> Accounts like these asserted Bashford's claim to represent the will of the people, as affirmed by the state supreme court.

## EPILOGUE

Occurring at a time when political and social institutions in new frontier states were just beginning to emerge, the political crisis Wisconsin faced in 1855–56 could have played out differently. When the Bashford trial began in 1856, internecine warfare had already broken out in the Kansas territory over the issue of slavery. Even in well-established states like Rhode Island, where citizens formed a militia in 1842 to fight for broader voting rights, it was not uncommon for disputes over state and territorial law to end in bloodshed. In Wisconsin, either one of the state's two sworn-in governors could have mobilized troops to bring his opponent down. Alternatively, citizens could have taken to the streets to force Barstow or Bashford (or both) out of office, or the federal government could have intervened. Yet the political conflict and the lawsuit it triggered gave the Wisconsin Supreme Court an early opportunity to exercise the right to review the actions of other branches of government granted to it under the Wisconsin Constitution—and the court seized that opportunity. With its carefully considered ruling in *Bashford v. Barstow*, the court provided citizens with much needed stability and a clear path forward.


*Bashford v. Barstow* has become an essential touchstone in Wisconsin legal history. Like *Marbury v. Madison*, the 1803 U.S. Supreme Court case that affirmed

the federal court's right of judicial review, the Wisconsin Supreme Court's ruling in *Bashford* clearly demonstrated the court's authority and, in the words of legal scholar Joseph Ranney, "permanently fixed the court's right to have the final say over interpretation of Wisconsin law."<sup>192</sup>

Any lawyer coming before the court or any justice sitting on the bench is likely to have pored over the ruling Chief Justice Whiton and his colleagues made in *Bashford v. Barstow*. For almost 160 years, the Wisconsin Supreme Court has cited important precedents set by the famous case in subsequent rulings. References to *Bashford* are a longstanding staple of state supreme court decisions in cases concerning election disputes. For example, the court's decision in *State ex rel McDill v. State Canvassers*, a case concerning canvass procedures, alluded to the near-sanctity of *Bashford*: "That decision, made, as it was, in a case of great public concern, and after the most mature deliberation by the court, we cannot overrule or disturb. Its influence in preserving the purity of the ballot box cannot well be overestimated."

The Wisconsin Supreme Court has also cited *Bashford* in rulings concerning the source of the court's authority and the powers of the legislative and executive departments. In *State v. Cannon* (1928), the court held that it possessed certain "inherent" powers, including the power to regulate its members' professional conduct. In his partial dissent, Justice Charles Crownhart firmly rejected this notion of inherent powers and, citing *Bashford*, reasoned that the powers of each branch of government flow from the constitution and nowhere else. As Crownhart observed, the *Bashford* ruling came at a time "shortly after our constitution was adopted, when its spirit pervaded the state." And so for Chief Justice Whiton and his colleagues, Crownhart continued, there was "no thought" of "inherent power outside the constitution," because the court "bottomed its power upon the constitution" and regarded it as its "efficient and only source of power."<sup>193</sup> Most recently, the court's holding in *SEIU v. Vos* (2020) referred to *Bashford* in its discussion of the separation of legislative and executive powers under the Wisconsin Constitution.

Wisconsin could have lost control of its new government in 1856, but instead, the ruling in *Bashford v. Barstow* allowed the state to resolve its first major political crisis through peaceful action and solidified the role of the court as a primary actor in Wisconsin's constitutional system. Justice Smith, rejecting Barstow's argument that the case could not go forward for lack of precedent, noted that the court already had a clear roadmap it could follow as it decided matters of great civic importance: the state constitution. That document, "adopted by the people of Wisconsin," was all the young state needed to continue finding its footing and forge its own path forward, Smith observed:

Let us then look to that constitution and endeavor to ascertain its true intent and meaning . . . [L]et it be remarked, that our conclusions must be guided and determined, not by theories of speculators upon the science of government, not by the opinion of jurists of other states reasoning upon philosophical abstractions or political postulates, but by the plain, simple, but authoritative and mandatory provisions of our own constitution.<sup>194</sup> 

## NOTES

1. “Wisconsin’s Gala Day,” *Weekly Argus and Democrat* (Madison, WI), January 15, 1856, 1.
2. “The Oath of Office, as Governor, Taken by Mr. Bashford,” *Daily State Journal* (Madison, WI), January 8, 1856; “Another Scene in the Farce,” *Weekly Argus and Democrat* (Madison, WI), January 15, 1856.
3. “Vote for Governor in General Elections Since 1848,” *Wisconsin Blue Book* (Madison, WI: Wisconsin Legislative Reference Bureau, 2019), 476.
4. Joseph A. Ranney, *Wisconsin and the Shaping of American Law* (Madison, WI: The University of Wisconsin Press, 2017), 26.
5. Population figures drawn from the U.S. Census. See “Wisconsin,” in chapter 10 of the U.S. Census (1940), 1157–80. <https://www2.census.gov/library/publications/decennial/1940/population-volume-1/33973538v1ch10.pdf>.
6. See “The People Who Came” in *Wisconsin: A Guide to the Badger State*, Writers’ Program of the Works Projects Administration in the State of Wisconsin, comp., (New York: Duell, Sloan and Pearce, 1941), 46–50.
7. From William Hodges, June 11, 1856, *Letter, 1856*, SC 73, Wisconsin Historical Society, River Falls, WI, accessed from the UWDC State of Wisconsin Collection. <http://digital.library.wisc.edu/1711.dl/WI.Hodges1i>.
8. From Gunleik Asmundson Bondal, January 17, 1854, *Letter, 1854*, M94-396, Wisconsin Historical Society, Madison, WI, accessed from the UWDC State of Wisconsin Collection. <http://digital.library.wisc.edu/1711.dl/WI.Bondal2m>.
9. From Lucy Hastings, January 25, 1857, *Family correspondence, 1838, 1855–1874*, Eau Claire SC 35, Wisconsin Historical Society, accessed from the UWDC State of Wisconsin Collection. <http://digicoll.library.wisc.edu/cgi-bin/WI/WI-idx?type=article&did=WI.Hastings1k.Hasti05&id=WI.Hastings1k&size=M>.
10. Lillian Krueger, “Social Life in Wisconsin: Pre-Territorial through the Mid-Sixties,” *Wisconsin Magazine of History* 22 (December 1938), 156–76: 160.
11. Howard Feigenbaum, “The Lawyer in Wisconsin, 1836–1860: A Profile,” *Wisconsin Magazine of History* 55, no. 2 (Winter, 1971–1972): 100–106, 103.
12. Wis. Rev. Stat. ch. 87 § 26 (1849).
13. William H. Seaman, speech, February 22, 1898, in *Report of the Meetings of State Bar*, 174–75. Quoted from the original in Ranney, *Wisconsin and the Shaping of American Law*, 25.
14. Ranney, *Shaping of American Law*, 25.
15. Ranney, 26. John Bradley Winslow, *The Story of a Great Court; Being a Sketch History of the Supreme Court of Wisconsin, Its Judges and Their Times from the Admission of the State to the Death of Chief Justice Ryan* (Chicago, IL: T. H. Flood & Company, 1912), 16.
16. Joseph A. Ranney, *Trusting Nothing to Providence: A History of Wisconsin’s Legal System* (Madison, WI: University of Wisconsin Law School, Continuing Education and Outreach, 1999), 78.
17. Winslow, *Story of a Great Court*, 103.
18. Robert Booth Fowler, *Wisconsin Votes: An Electoral History* (Madison, WI: University of Wisconsin Press, 2008), 16.

19. Ranney, *Shaping of American Law*, 16–17. For a longer discussion of Western farmers' opposition to the plantation system and enslaved labor generally, see Adam Wesley Dean, "A Question of Slavery in the West" in *An Agrarian Republic: Farming, Antislavery Politics, and Nature Parks in the Civil War Era* (Chapel Hill, NC: University of North Carolina Press, 2016), 11–39.
20. Michael J. McManus, "Freedom and Liberty First, and the Union Afterwards': State Rights and the Wisconsin Republican Party, 1854–1861," in David W. Blight and Brooks D. Simpson, eds., *Union & Emancipation: Essays on Politics and Race in the Civil War Era* (Kent, OH: Kent State University Press, 1997), 34.
21. McManus, "Freedom and Liberty First," 38–39. For a useful discussion of the case, see the Wisconsin Courts' summary of it. "In Re: Booth," *Famous Cases of the Supreme Court*, Wisconsin Court System, accessed October 16, 2020. <https://www.wicourts.gov/courts/supreme/docs/famouscases01.pdf>.
22. McManus, "Freedom and Liberty First," 40.
23. Richard N. Current, *The History of Wisconsin*, vol. 2, *The Civil War Era, 1848–1873* (Madison, WI: Wisconsin Historical Society Press, 2013), 197–230.
24. For a concise and helpful summary of the Kansas-Nebraska Act and its effect on Wisconsin politics, see Fowler, *Wisconsin Votes*, 15–16.
25. Fowler, *Wisconsin Votes*, 20–22. On the emergence of the Republican Party around opposition to slavery, see McManus, "Freedom and Liberty First."
26. "William Augustus Barstow" in *Portrait and Biographical Album of Racine and Kenosha Counties, Wisconsin* [ . . . ] (Chicago, IL: Lake City Publishing, 1892), 134.
27. "William Augustus Barstow," 133–34.
28. "Wisconsin's Former Governors" in M. G. Toepel and Hazel L. Kuehn, eds., *The Wisconsin Blue Book* (Madison, WI: State of Wisconsin, 1960), 80–82.
29. *Wisconsin Blue Book 2019–2020* (Madison, WI: Wisconsin Legislative Reference Bureau, 2019), 476.
30. "Wisconsin's Former Governors," in *The Wisconsin Blue Book* (Madison: State of Wisconsin, 1960), 80–82.
31. Current, *The History of Wisconsin*, 225.
32. *Portrait and Biographical Album of Rock County, Wisconsin* [ . . . ] (Chicago, IL: Acme Publishing, 1889), 137.
33. "Wisconsin's Former Governors," in M. G. Toepel and Hazel L. Kuehn, eds., *The Wisconsin Blue Book* (Madison: State of Wisconsin, 1960), 88–90; "Serving the State: Wisconsin Legislators, 1848–2019," Wisconsin History Project 1, no. 1 (Madison, WI: Wisconsin Legislative Reference Bureau), April 2019.
34. Current, *History of Wisconsin*, 225.
35. Tyler Anbinder, *Nativism and Slavery: The Northern Know Nothings and the Politics of the 1850s* (New York: Oxford University Press, 1992), 54.
36. Jennifer Depew, "'The Glorious American Banner Floating High Above the Ramparts': The Rise and Fall of Know-Nothingism in Wisconsin," *Oshkosh Scholar* 13 (December 2018): 8–9; "Lynch Law in Wisconsin," *New York Times*, August 16, 1855.
37. Current, *History of Wisconsin*, 226.
38. Current, *History of Wisconsin*, 226.
39. See, generally, Anbinder, *Nativism and Slavery*; Bruce Levine, "Conservatism, Nativism, and Slavery: Thomas R. Whitney and the Origins of the Know-Nothing Party," *Journal of American History* 88, no. 2 (Sept. 2001), 455–488.
40. "Sticking to It," *Weekly Argus and Democrat* (Madison, WI), October 23, 1855.
41. "Mass Meeting," *Sauk Co. Democrat* (Baraboo, WI), October 11, 1855.
42. "One Week More," *Tribune* (Mineral Point, WI), October 30, 1855.
43. "Rich Developments—K.N. Movements," *Daily State Journal* (Madison, WI), August 21, 1855.
44. "Coles Bashford," *Waupaca Spirit* (Waupaca, WI), October 9, 1855.
45. "Know Nothingism," *Democratic Standard* (Janesville, WI), October 10, 1855.
46. Michael J. McManus, *Political Abolitionism in Wisconsin, 1840–1861* (Kent, OH: Kent State University Press, 1998), 252.
47. Fowler, *Wisconsin Votes*, 4–7.
48. Robert Carrington Nesbit and William F. Thompson, *Wisconsin: A History* (Madison, WI: University of Wisconsin Press, 2004), 239. See also McManus, *Political Abolitionism in Wisconsin*, 252.

49. Depew, "The Glorious American Banner," 12; Current, *History of Wisconsin*, 227.
50. Wis. Rev. Stat. ch. 6, § 26 (1849).
51. Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York: Cambridge University Press, 2004), 9–15.
52. Roy G. Saltman, *The History and Politics of Voting Technology: In Quest of Integrity and Public Confidence* (New York: Palgrave MacMillan, 2006). For more on the "ticket" system, see Bensel, *American Ballot Box*, 15–16, 30.
53. Wis. Rev. Stat. ch. 6, § 29 (1849).
54. Jon Grinspan, *The Virgin Vote: How Young Americans Made Democracy Social, Politics Personal, and Voting Popular in the Nineteenth Century* (Chapel Hill, NC: University of North Carolina Press, 2016), 66.
55. Wis. Rev. Stat. ch. 6, §§ 20–24 (1849).
56. These procedures are described under Wis. Rev. Stat. ch. 6, §§ 38–42 (1849).
57. Wis. Rev. Stat. ch. 6, §§ 47–48 (local canvass), ch. 6, §§ 51–52 (county canvass), ch. 6, §§ 67 (district canvass) (1849).
58. Wis. Rev. Stat. ch. 6 § 56 (1849).
59. Wis. Rev. Stat. ch. 6 § 79 (1849).
60. "The State Canvass," *Daily State Journal* (Madison, WI), December 18, 1855.
61. "The Legislature," *Daily State Journal* (Madison, WI), November 13, 1855.
62. "The Result of the Governor," *Daily State Journal* (Madison, WI), November 21, 1855.
63. "The Election News—Who Will Be Our Governor," *Daily State Journal* (Madison, WI), November 24, 1855.
64. "The Insolence of Office," *Daily State Journal* (Madison, WI), November 25, 1855.
65. "Waupaca County," *Daily State Journal* (Madison, WI), December 1, 1855.
66. "The Election Frauds in Waupacca County," *Daily State Journal* (Madison, WI), December 6, 1855.
67. Parker McCobb Reed, *The Bench and the Bar of Wisconsin: History and Biography, with Portrait Illustrations*, (Milwaukee, WI): P.M. Reed (1882), 481.
68. Barstow received 30,405 votes out of 55,683, over 8,500 votes more than his opponent. *Wisconsin Blue Book 2019–2020* (Madison, WI: Wisconsin Legislative Reference Bureau, 2019), 476.
69. See James R. Donoghue, *How Wisconsin Voted, 1848–1960* (Madison, WI: Bureau of Government, University of Wisconsin, 1962); Fowler, *Wisconsin Votes*.
70. "Inauguration of the State Officers," *Weekly Argus and Democrat* (Madison, WI), January 15, 1856.
71. "Barstow Celebration—The 'Milingtary,'" *Daily State Journal* (Madison, WI), January 1, 1856.
72. "Inauguration of the State Officers."
73. "Inauguration of the State Officers."
74. "Inauguration of the State Officers."
75. "Inauguration of the State Officers."
76. "Inauguration of the State Officers."
77. "The Barstow Pow-Wow," *Daily Wisconsin Patriot*, January 9, 1856.
78. "The Barstow Celebration Yesterday—The Military and the Festival," *Daily State Journal* (Madison, WI), January 8, 1856.
79. "Barstow Celebration Yesterday."
80. "Barstow Pow-Wow."
81. "Barstow Pow-Wow."
82. "Barstow Pow-Wow."
83. "The Oath of Office, as Governor, Taken by Mr. Bashford," *Daily State Journal* (Madison, WI), January 8, 1856.
84. "Justice Edward V. Whiton," Wisconsin Court System, accessed October 14, 2020, <https://www.wicourts.gov/courts/supreme/justices/retired/whiton.htm>. See also Winslow, "Personal Recollections of Whiton by Henry M. Lewis," in *Story of a Great Court*, 13–16, 59–66, 76–77. See also "Obituary: Chief Justice Edward Vernon Whiton"

in Abram Smith, *Reports of Cases Argued and Determined in the Supreme Court of the State of Wisconsin, Before June Term, 1859* (Madison: Atwood, Rublee & Reed, 1860), v–xiii.

85. Winslow, *Story of a Great Court*, 13.
86. *Biographical Album of Rock County*, 138.
87. Coles Bashford, *The Trial in the Supreme Court, of the Information in the Nature of a Quo Warranto Filed by the Attorney General, on the Relation of Coles Bashford vs. Wm. A. Barstow, Contesting the Right to the Office of Governor of Wisconsin* (Madison, WI: Calkins & Proudfit, and Atwood & Rublee, 1856), 31.
88. Bashford, *Trial in the Supreme Court*, 12–20.
89. David Mollenhoff, *Madison: A History of the Formative Years* (Madison, WI: University of Wisconsin Press, 2003), 22.
90. Bashford, *Trial in the Supreme Court*, 23.
91. Henry C. Youngerman, “Theater Buildings in Madison Wisconsin, 1836–1900,” *Wisconsin Magazine of History*, March 1947, 274–5.
92. Bashford, *Trial in the Supreme Court*, 10.
93. Bashford, 9.
94. Bashford, 36–37.
95. Bashford, 37.
96. Reed, *Bench and the Bar*, 489.
97. Bashford, *Trial in the Supreme Court*, 39.
98. Bashford, 39.
99. Bashford, 39.
100. Bashford, 40.
101. Bashford, 40.
102. Nearly every last one of them became a state supreme court justice, governor, or U.S. senator. Ranney, *Trusting Nothing to Providence*, 84.
103. Ranney, 84.
104. These arguments proved successful before a circuit court and were eventually affirmed by the Wisconsin Supreme Court in June 1856. *Carpenter v. Ely*, 4 Wis. 420 (1856).
105. Current, *History of Wisconsin*, 228.
106. Ranney, *Trusting Nothing to Providence*, 81.
107. Ranney, *Shaping of American Law*, 28.
108. Ranney, *Trusting Nothing to Providence*, 84.
109. Bashford, *Trial in the Supreme Court*, 45.
110. Ranney, *Shaping of American Law*, 28.
111. See, for example, Bashford, *Trial in the Supreme Court*, 51, 78, 82.
112. Bashford, 75–76.
113. Bashford, 55.
114. Bashford, 43–44.
115. Bashford, 65.
116. Bashford, 85. See also, Bashford, 117.
117. Ranney, *Shaping of American Law*, 86.
118. Bashford, *Trial in the Supreme Court*, 53.
119. Bashford, 104.
120. Bashford, 101.
121. Bashford, 94.
122. Bashford, 107; Wis. Const. art. I, § 9 (1849).
123. Bashford, *Trial in the Supreme Court*, 100.



124. Bashford, 109.
125. Bashford, 72.
126. Bashford, 99.
127. Bashford, 110.
128. Bashford, 105.
129. Winslow, *Story of a Great Court*, 103.
130. Attorney Gen. ex rel. Bashford v. Barstow, 4 Wis. 567, 672 (1856).
131. Bashford at 672.
132. *Id.* at 672.
133. *Id.* at 677.
134. Winslow, *Story of a Great Court*, 107.
135. Ranney, *Shaping of American Law*, 29.
136. Bashford, *Trial in the Supreme Court*, 144–45.
137. Bashford, 161.
138. Bashford, 160.
139. Bashford, 162.
140. Bashford, 225.
141. Bashford, 226.
142. Bashford, 226.
143. Reed, *Bench and the Bar*, 487.
144. Bashford, *Trial in the Supreme Court*, 360.
145. Bashford, 361.
146. Bashford, 362.
147. Reed, *Bench and the Bar*, 487.
148. Bashford, 362.
149. Bashford, 362.
150. Winslow, *Story of a Great Court*, 105.
151. Ranney, *Trusting Nothing to Providence*, 86–87; Reed, *Bench and the Bar*, 490.
152. Reed, *Bench and the Bar*, 490.
153. Bashford, *Trial in the Supreme Court*, 363–64.
154. Bashford, 364.
155. Bashford, 288.
156. Bashford, 292–93.
157. Bashford, 330.
158. Bashford, 331–32.
159. Bashford, 319.
160. Bashford, 314.
161. Bashford, 319.
162. Bashford, 312.
163. Bashford, 327.
164. Bashford, 328.
165. Bashford, 320–321.
166. Bashford, 323.
167. Bashford, 295.
168. Bashford, 298.

169. Bashford, 297–300.
170. Bashford, 298.
171. Bashford, 342.
172. Bashford, 343.
173. Bashford, 343.
174. “The Evidence,” *Weekly Argus and Democrat* (Madison, WI), March 25, 1856.
175. Reed, *Bench and the Bar*, 490.
176. Bashford, 344.
177. Bashford, 352.
178. Bashford, 353.
179. “Governor Bashford Instated,” *Daily State Journal* (Madison, WI), March 26, 1856.
180. “Governor Bashford Instated.”
181. “Governor Bashford Instated.”
182. “The Finale of the Finality,” *Daily Wisconsin Patriot*, March 26, 1856.
183. “Governor Bashford Instated,” *Daily State Journal*, March 26, 1856.
184. “Gov’ Bashford in Office,” *Weekly Argus and Democrat* (Madison, WI), April 1, 1856, 1.
185. “Gov’ Bashford in Office.”
186. “Gov’ Bashford in Office.”
187. “Gov’ Bashford in Office.”
188. “Gov’ Bashford in Office.”
189. The senate recognized Bashford on March 25, and after some deliberation, the Democrat-controlled assembly voted to recognize him on March 27 by a vote of 37 to 9. “The Matter Ended,” *Daily Wisconsin Patriot*, March 27, 1856.
190. “A Popular Demonstration,” *Daily State Journal* (Madison, WI), March 27, 1856.
191. “A Popular Demonstration.”
192. Ranney, *Shaping of American Law*, 29.
193. *State v. Cannon*, 196 Wis. 534 at 543–45 (1928).
194. *Attorney Gen. ex rel. Bashford v. Barstow*, 4 Wis. 567, 785 (1856).