

UNITED WISCONSIN, *et al.*,

Plaintiffs,

v.

Case No. 2025-CV-1438

WISCONSIN ELECTIONS COMMISSION,

Defendant.

AMICUS BRIEF OF WISCONSIN BUSINESS LEADERS FOR DEMOCRACY

INTRODUCTION

Plaintiffs identify four separate provisions of the Declaration of Rights in the Wisconsin Constitution that Wisconsin’s statutory ban on fusion voting violates.¹ Wisconsinites’ fundamental rights and that of its business leaders have been impaired by the fusion ban for generation after generation. It is past time for this to stop.

The past decade and a half has been politically chaotic and democratically challenging in Wisconsin.² In the midst of the resulting tumult, the anchor has been the Wisconsin Constitution, which “reflects the policy choices of the people,” *Serv. Emps. Int’l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶28, 393 Wis. 2d 38, 946 N.W.2d 35, and was designed, as the president of our constitutional convention phrased it, to “guard the honor, promote the prosperity, and secure the permanent welfare of our beloved country,” *The Attainment of Statehood* 883 (Milo M. Quaife, ed. 1928).

¹ Wis. Const., art. I, §§ 1, 3, 4, 22.

² See generally, e.g., Jason Stein & Patrick Marley, *More than They Bargained For: Scott Walker, Unions, and the Fight for Wisconsin* (Univ. of Wis. Press 2013); Katherine J. Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (Univ. of Chicago Press, 2016); Dan Kaufman, *The Fall of Wisconsin: The Conservative Conquest of a Progressive Bastion and the Future of American Politics* (W.W. Norton 2019).

Through the Constitution, “[t]he people have granted power and delineated its limits.” *Wis. Legis. v. Palm*, 2020 WI 42, ¶173, 391 Wis. 2d 497, 942 N.W.2d 400 (Hagedorn, J., dissenting). “Elected officials on whom the people have conferred powers may not circumvent the constitutional confines of their authority.” *Fabick v. Evers*, 2021 WI 28, ¶50, 396 Wis. 2d 231, 956 N.W.2d 856 (R.G. Bradley, J., concurring).

The fusion ban’s particular circumvention of constitutional confines is problematic not only because it has persisted for so long, but also because it is so self-serving for those in power. As the detailed historical record in this case shows, the ban on fusion voting was intended to, and successfully does, inhibit competition, artificially propping up the duopoly that dominates—and impedes—our politics.

INTERESTS OF AMICIUS CURIAE

Wisconsin Business Leaders for Democracy (WBLD) is a non-partisan association of business leaders in Wisconsin dedicated to helping ensure equitable access to voting, non-partisan, transparent election policy and administration, and unbiased representation. WBLD supports a set of core principles that include defending the rule of law, increasing competitiveness in the political system to improve the quality of governance, supporting civic participation, and planting seeds for longer-term national growth and prosperity. Preserving responsive, democratic government is critical to the American economy and touches the lives of all Americans.

WBLD submits this amicus curiae brief to support Plaintiffs’ efforts to overturn Wisconsin’s statutory ban on fusion voting. WBLD offers this Court unique insight from WBLD’s perspective as an association of business leaders with a broad focus on preserving and advancing democracy in Wisconsin and the United States. WBLD regards Wisconsin’s fusion ban as a

constitutional violation, a market distortion, and an obstacle to growing Wisconsin’s democracy and its economy.³

ARGUMENT

I. Wisconsin’s Ban on Fusion Voting Impairs Our Marketplace of Ideas and Muffles the Vibrant Public Square a Thriving Democracy Needs.

The most daunting challenges our democracy faces arise from the stranglehold over our public square that major parties jointly hold.⁴ Our contemporary politics offers “a textbook example of a duopoly, an industry dominated by two entrenched players” with “[o]ur two major parties, the Democrats and the Republicans, [] the rivals at the center.”⁵ In business terms, this kind of duopoly creates a market failure that has significant disadvantages: less competition, limited consumer choice, obstacles that make it particularly difficult for new entrants to become competitive, and a greater tendency toward collusion.⁶

The duopoly model aptly describes Wisconsin’s political sphere. There are many ideas—in terms of both policy and politics—that the duopoly parties ignore or deprioritize,

³ WBLD is the lead plaintiff in another case about electoral competition. See *Wis. Bus. Leaders for Democracy v. Wis. Elections Comm’n*, No. 2026AP1008 (Wis., oral argument set for Sept. 16, 2026). There, WBLD and individual voters are challenging Wisconsin’s current congressional districts as an anti-competitive gerrymander. WBLD argues there that electoral districts deliberately drawn to stifle competitive elections unconstitutionally harm voters. That is entirely consistent with WBLD’s participation here, advocating to reduce restrictions on additional political parties’ participation in Wisconsin’s electoral system. In both instances—where the two major parties divvy up electoral districts between them and prevent competition from smaller parties—increased competition would improve our democracy and advance constitutional principles.

⁴ See generally Lee Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (Oxford Univ. Press 2020).

⁵ Katherine M. Gehl & Michael E. Porter, *Why Competition in the Politics Industry Is Failing America* at 12, Harv. Bus. Sch. (Sept. 2017), <https://www.hbs.edu/competitiveness/Documents/why-competition-in-the-politics-industry-is-failing-america.pdf>.

⁶ Prateek Agarwal, *Duopoly Market Structure*, Intelligent Economist (Feb. 2, 2022), <https://www.intelligenteconomist.com/duopoly-market-structure/>.

notwithstanding these ideas garnering widespread popular support.⁷ In a properly functioning market, recognizing that the major parties were not sufficiently addressing popular priorities, disenchanted voters would combine forces and build new parties to elevate the ideas they believe require greater attention. Those new parties would then enter the marketplace and vie with the major parties and other parties for attention, money, and votes. But this competition is not occurring, in part because the ban on parties cross-nominating candidates hobbles minor parties (lest they be cast as “spoilers”), disincentivizing both those who would create such parties and those who would support them from doing so. As a result, Wisconsin’s fusion ban ensures that the duopoly parties face no real challenge in the political marketplace.⁸

Campaign finance law bears this out as well. 2015 Wis. Act 117 (enacted December 15, 2015) repealed and recreated Chapter 11 of the Wisconsin statutes governing campaign finance. Among other things, Act 117 eliminated limits on individual contributions to political parties, and restrictions on coordinated expenditures between political parties and candidate committees. The recent *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, No. 24-621, slip op. (U.S. June 30, 2026) decision, in overturning the Federal Election Campaign Act’s limits on political parties coordinating expenditures with candidates’ campaigns, expanded this scheme nationally.

⁷ See, e.g., Jacob Alabab-Moser, *Fact Brief: Do most Wisconsinites support Medicaid expansion, paid parental leave, lead pipe replacement and marijuana legalization?*, Wisconsin Watch (May 18, 2023), <https://wisconsinwatch.org/2023/05/do-most-wisconsinites-support-medicare-expansion-paid-parental-leave-lead-pipe-replacement-and-marijuana-legalization/> (“Yes.”); see also, e.g., Alan Greenblatt, *Why Polarization in Wisconsin Is ‘Uniquely Severe’*, *Governing* (Sept. 15, 2023), <https://www.governing.com/politics/why-polarization-in-wisconsin-is-uniquely-severe> (“The normal process of give and take, with legislators and the governor coming up with offers and counter-offers, almost never happens. ‘Polarization and partisan brinksmanship are nationwide trends,’ [UW–La Crosse political scientist] Chergosky says, ‘but those trends are uniquely severe in Wisconsin.’”).

⁸ See Gehl & Porter, *supra*, at 12 (lamenting that “the nature of the political competition that the current parties have created ... insulat[es them] from new competition that would better serve the public interest”).

Major political parties and their donors now can pour virtually unlimited funds into races, further burying small parties.

This undermines the spirit of competition that animates nearly every facet of American society—and especially our public square. This competitive spirit is a feature, not a bug, of our system. In our representative democracy, competition serves to ensure that our elected officials are responsive and accountable. There is a virtuous circle, in which candidates for office solicit input from would-be voters, and in which those voters, as constituents, continue those conversations with their elected officials. This feedback loop helps maintain the vibrancy of our democracy, keeping elected officials in touch with the pulse of those whom they represent and keeping constituents informed about the work our government does. This model of engagement increases the citizenry's trust in our system of government, which translates to lower anxiety, greater wellbeing, and economic growth. (The converse is also true: when the political environment is driven by extremes and voters do not feel represented or enfranchised, that exacerbates anxiety and disengagement, which carry into the workplace, diminishing productivity and economic output.)

But competition does more than fuel the feedback loops representative democracy needs to work; it also spurs innovation. The nexus between competition and innovation is apparent through our society: it inspires manufacturers to create new products, service providers to find creative ways of meeting needs, and political parties to promote fresh policy prescriptions and to pioneer novel political strategies. Such innovation can ameliorate the intense partisan polarization damaging both Wisconsin and the nation. Policy innovation introduces into our civic discourse refreshing ideas and breakthrough solutions to pressing problems. Political innovation facilitates previously unimagined ways to advance policy initiatives, the candidates that favor those

initiatives, and the political parties that endorse those candidates. These two dynamics work hand-in-hand, creating possibilities for assembling coalitions that will break down the duopoly's partisan ossification.

Wisconsin's statutory fusion ban relegates minor parties to the periphery of the public square.⁹ That stymies competition and thereby quashes innovation, because effective political candidates will not choose to align themselves with parties that, as a result of the governing rules, have no realistic chance of winning. Even worse, voters will not support political parties whose candidates, as a result of the governing rules, have no realistic chance of winning. But if minor parties have more options to compete—if they can choose when to run their own candidates and when to fuse with others to advance shared goals while building their own public profiles and increasing their leverage—that would allow our politics to more closely resemble an efficient marketplace. It would facilitate new entrants, enhance competition, promote consumer (voter) choice, incentivize innovation. And all Wisconsinites would benefit.

None of this is novel, much less revolutionary. But it is more apparent, even stark, from a business perspective than from one within politics or law.

II. Wisconsin's Ban on Fusion Voting Makes It Harder To Grow Wisconsin's Democracy and Economy.

The market failure caused by the calcified duopoly that diminishes Wisconsin politics would not be so objectionable if it did not have such pervasive and pernicious consequences. Put simply, our state and our nation are facing serious, complicated challenges. And our current

⁹ See Gehl & Porter, *supra*, at 13–14 (“[T]he duopoly does exactly what one would fear: The rivals distort the rules of competition in their favor” and by doing so “pervert some of the basic principles of what most of us think we know about representative democracy.”).

political system has proven itself unable to identify solutions, much less to implement them effectively.

To succeed, representative democracy “must be a contest of ideas where competition can drive innovation and change.”¹⁰ But Wisconsin does not have such a contest because “[t]he marketplace of political competition is decidedly broken.”¹¹ This has practical consequences: “Americans are more dissatisfied with their government than are citizens in almost every other democracy, according to polling.”¹² Fewer than 1 in 5 Americans trust our government to do what’s right at least most of the time.¹³ When asked about “our country’s future as a democracy,” only 11% are “very optimistic” and nearly half reject any optimism at all.¹⁴ These polls are distressing but not surprising. On issue after issue—from the cost of living to health care, education to environmental protection, immigration reform to our tax system—our government officials, in D.C. and Wisconsin alike, have been incapable of implementing solutions. Even where specific policy ideas have broad, bipartisan support, they too often get caught up in partisan gridlock.

All of this has practical consequences for business as well as for individuals. Political stability and predictability are essential conditions for a thriving economy and business environment.¹⁵ Entrenched hyper-partisanship and “[t]he uncertainty associated with an erosion

¹⁰ Lee Drutman, *Escaping the Partisan Death Spiral*, Cato Inst. Pol’y Rep. (July/Aug. 2020), <https://www.cato.org/policy-report/july/august-2020/escaping-partisan-death-spiral>.

¹¹ *Id.*

¹² Dan Balz & Clara Ence Morse, *American democracy is cracking. These forces help explain why.*, Washington Post (Aug. 18, 2023), <https://www.washingtonpost.com/politics/2023/08/18/american-democracy-political-system-failures/>.

¹³ Marquette Law School Supreme Court Poll June 9–15, 2026, <https://law.marquette.edu/assets/community/poll/MLSPSC33/MLSPSC33Toplines.html#trust-government>.

¹⁴ Marquette Law School Supreme Court Poll June 9–15, 2026, <https://law.marquette.edu/assets/community/poll/MLSPSC33/MLSPSC33Toplines.html#optimism-about-democracy>.

¹⁵ Sarah Repucci, *Democracy Is Good for Business*, Freedom House (Aug. 3, 2015), <https://perma.cc/WU6V-G8BG> (“Stable, transparent governments built on respect for human rights and the

of democratic values can generate volatility as well as higher costs of capital, for business as well as for municipal sovereign borrowers.”¹⁶ More plainly put: the two-party doom loop not only hobbles our democracy but also risks both short- and long-term harm to the State’s economy. While the recent 2026 State of the States report ranks Wisconsin fairly well, it also “indicates that Wisconsin’s strong standing may be at risk” because “[o]ur state is losing ground relative to the nation on significantly more metrics than it is gaining.”¹⁷ Moreover, “the only two measures” in the 2026 State of the States “for which Wisconsin ranks in the lowest third of states are trust in the federal government and satisfaction with current life.”¹⁸ Regardless of how widely known these various statistics may be, what matters is that they are measuring real phenomena that contribute to the atmosphere in Wisconsin. That atmosphere—the vibe, if you will—colors business prospects. It affects access to capital, the perception of the state’s amenability to business activity, and the ability of businesses to recruit top talent to employment opportunities in Wisconsin. For Wisconsin’s economy to thrive, it needs its democracy to thrive, not only in absolute terms, but in ways that help enhance residents’ satisfaction with their lives. To do better economically, we must do better as a state.

rule of law tend to foster environments that are conducive to the establishment and unfettered operation of private enterprises.”).

¹⁶ Layna Mosley, *The Financial and Economic Dangers of Democratic Backsliding* at 3, Brookings Inst. (July 2023), <https://perma.cc/JL7Q-FERW>; see also Maximilian Dirks & Torsten Schmidt, *The Relationship Between Political Instability and Economic Growth in Advanced Economies: Empirical Evidence from a Panel VAR and a Dynamic Panel FE-IV Analysis*, Ruhr Economic Papers, No. 1000 (Feb. 2023), <https://perma.cc/92XB-FG7C>.

¹⁷ Wisconsin Policy Forum, *Wisconsin fares well in rankings, but worsens on some measures* at 1 (July 2026), <https://wispolicyforum.org/wp-content/uploads/2026/07/Focus-XX-2026-State-of-the-States.pdf>; see also *id.* at 5 (“Relative to the nation, Wisconsin is worsening on 13 of the report’s 31 measures, while it is improving on eight of them. For the remaining 10, its trend relative to the nation is mixed, stable, or unclear.”).

¹⁸ *Id.* at 4.

CONCLUSION

WBLD is neither partisan nor ideological. It comprises a variety of business leaders from across Wisconsin with experience in numerous industries. On many issues, not all WBLD members agree. What unites WBLD is a shared commitment to rebuilding Wisconsin's democracy as a precondition to growing Wisconsin's business climate. WBLD recognizes that fundamental business principles, including the importance of robust competition, strengthen our democracy and benefit our state. That is what motivates WBLD to file this brief and share the insights above. For the reasons contained in this brief, WBLD urges the Court to engage with Plaintiffs' constitutional claims, to strike down Wisconsin's statutory ban on fusion voting, and to reinvigorate Wisconsin's tradition of innovative, coalitional politics. Wisconsin has the possibility to help show the nation a better path.

Dated at Milwaukee, Wisconsin, this 4th day of August, 2026,

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