

FILED
04-10-2026
CIRCUIT COURT
DANE COUNTY, WI
2025CV001438

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

UNITED WISCONSIN, et al.,

Plaintiffs,

v.

Case No. 2025CV1438

Code: 30701

Declaratory Judgment

WISCONSIN ELECTIONS COMMISSION,

Defendant.

DECLARATION OF PLAINTIFFS' EXPERT DR. LEE DRUTMAN

I, Lee Drutman, hereby declare as follows:

1. I am a political scientist and a Senior Fellow at the New America Foundation.
2. I was retained by counsel for Plaintiffs to testify to expert opinions in this action.
3. I previously prepared a report in this action. The report was provided to the defendants and their counsel on October 17, 2025.
4. A true and correct copy of that report is attached as Exhibit A.
5. I affirm the report in its entirety and adopt it as my testimony in this case.
6. I also prepared a rebuttal report in this case. The rebuttal report was provided to Defendant's counsel on February 13, 2026.
7. A true and correct copy of that rebuttal report is attached as Exhibit B.
8. I affirm the report in its entirety and also adopt it as my testimony in this case.
9. My deposition was not taken in this action. My understanding is that although I was tendered for deposition, the defendants declined to take my deposition.
10. Pursuant to Wis. Stat. § 887.015, I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 10th day of April, 2026, at Washington, District of Columbia.

Electronically Signed By Dr. Lee Drutman
Dr. Lee Drutman

EXHIBIT A

Expert Report of Dr. Lee Drutman: Partisan Polarization, Two-Party Systems, and Fusion Voting in Wisconsin

Introduction

This case, *United Wisconsin et al. v. Wisconsin Elections Commission et al.* (No. 2025-cv-1438), presents a constitutional challenge to Wisconsin's prohibition on fusion voting. The challenge targets two statutory provisions: §8.15(7) bars election officials from accepting nomination papers when a candidate seeks nomination from multiple parties, while §8.03(1) restricts ballot listing to only the first party that nominates a candidate who receives multiple party endorsements.

Fusion voting permits candidates to accept nominations from more than one political party and appear on the general election ballot under each party's label. Voters supporting that candidate may choose which party line to vote under, with all votes across party lines counted together in the candidate's total. Wisconsin abolished fusion in 1897. Two states—Connecticut and New York—maintain fusion systems today.

When the Supreme Court upheld Minnesota's fusion ban in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), the majority relied heavily on an empirical claim: that two-party systems promote "political stability" and states may therefore restrict fusion to preserve that stability. This rationale reflected conventional wisdom among American politics scholars in the mid-1990s—a period when the discipline viewed the U.S. party system as fundamentally sound, if occasionally prone to partisan excess that would self-correct through electoral competition.

Nearly three decades later, that scholarly consensus has collapsed. My investigation examines three core questions: (1) Does the American two-party system continue to generate the stability that Timmons presumed? (2) What does comparative evidence reveal about the relationship between party systems and democratic stability? (3) Would fusion voting exacerbate partisan conflict or provide a mechanism for reducing it?

My conclusions can be stated directly. The two-party system no longer functions as a stabilizing force in American democracy. By every standard measure of polarization—roll-call voting patterns, geographic sorting, affective partisan hostility—the current system has produced unprecedented levels of dysfunction both nationally and in Wisconsin specifically. Far from moderating conflict, the pure binary competition between two internally homogeneous parties has created what I have termed a "doom loop" of escalating partisan warfare, in which each round of hardball politics justifies the next, with no obvious resolution.

The comparative evidence is equally clear: multiparty democracies using proportional representation consistently outperform two-party majoritarian systems on measures of stability, voter satisfaction, minority representation, and policy responsiveness. The United States is a global outlier, not a model. Among presidential democracies with strong democratic records, only a handful use the American-style majoritarian system, while the overwhelming majority have adopted proportional representation with multiparty competition.

Finally, both historical evidence from fusion's widespread use in the late nineteenth century and contemporary experience in Connecticut and New York demonstrate that fusion voting serves as a coalition-building mechanism that moderates rather than intensifies partisan conflict. By allowing voters to signal preferences beyond the binary choice and creating incentives for major-party candidates to build broader coalitions, fusion voting offers precisely the kind of cross-cutting dynamic that our current system desperately lacks.

The transformation of American politics since 1997 fundamentally undermines the empirical foundations that the Supreme Court of the United States used to conclude in the *Timmons* decision that under the federal constitution, states could ban fusion. Whatever stability arguments might have been plausible when that case was decided, they cannot withstand scrutiny in 2025.

Qualifications

I am a Senior Fellow in the Political Reform program at New America, where I have conducted research and analysis on American political institutions, democratic reform, and electoral systems since October 2014.

I earned my Ph.D. in Political Science from the University of California, Berkeley in 2010, and my M.A. in Political Science from the same institution in 2005. My undergraduate degree is a B.A. in English and American Literature from Brown University, which I received in 1999.

My expertise centers on American political parties, partisan polarization, electoral systems, and democratic reform. I am the author of *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (Oxford University Press, 2020), which examines the structural causes of hyper-partisan polarization and makes the case for multiparty democracy as a solution. I am also the author of *The Business of America is Lobbying: How Corporations Became Politicized and Politics Became More Corporate* (Oxford University Press, 2015), which won the 2016 Robert A. Dahl Award from the American Political Science Association for outstanding scholarship on democracy.

I have published extensively in peer-reviewed academic journals including *Political Research Quarterly*, *The ANNALS of the American Academy of Political and Social Science*, *Legislative Studies Quarterly*, and *Interest Groups & Advocacy*. I have also contributed a law review article on multiracial democracy to the *New York University Law Review* (2021) and written numerous chapters in edited volumes on electoral reform, polarization, and democratic governance published by leading university presses.

I have served on multiple expert committees addressing democratic reform and electoral systems. I recently served as a member of the American Academy of Arts and Sciences Committee on Multimember Districts (2024) and previously chaired the AAAS Committee on the Size of the United States House of Representatives (2021). I served as a member and Chair of the Subcommittee on Proportional Representation for the Electoral Reform Task Force, a committee chaired by Larry Diamond, Ned Foley, and Rick Pildes. I also served as

Subcommittee Chair for the American Political Science Association Task Force on the Modernization of Congress (2019).

I have authored or co-authored major research reports on electoral reform, including "What We Know About Fusion Voting" (with Maresa Strano, 2021), "More Parties, Better Parties" (2023), "The Case for Multiparty Presidentialism in the US" (with Scott Mainwaring, 2023), and "How Democracies Revive" (2022). My research has been cited widely in academic and policy discussions of democratic reform.

I am a lecturer at The Johns Hopkins University, where I have taught courses on lobbying, policymaking, and governmental processes since Spring 2012.

My analysis and commentary on American politics and democratic reform appears regularly in major national publications including The New York Times, The Washington Post, The Atlantic, Foreign Policy, Vox, Politico, and FiveThirtyEight. I also author a newsletter on Substack titled "Undercurrent Events" with almost 6,000 subscribers.

I have been invited to present my research at leading universities and conferences, including Princeton, Harvard, Stanford, Northwestern, Yale, Cornell, UC Berkeley, UC San Diego, and the University of Notre Dame. My work on democratic reform has led Washingtonian magazine to recognize me as one of Washington's Most Influential People from 2021 through 2024.

My opinions in this case draw directly on my extensive research into partisan polarization, party systems, fusion voting, and comparative electoral institutions—topics I have studied intensively over many years and on which I have published widely.

The Threats to American Democracy

A substantial body of scholarly work indicates that American democracy faces serious challenges, with considerable evidence of governmental dysfunction and declining public trust. While multiple factors contribute to these challenges, extensive expert analysis identifies hyper-partisan polarization as a central driver.

The reasons why hyper-partisan polarization is a threat to the stability of democracy are straightforward and simple to understand. Democracy depends on a shared foundation of fairness around elections. Winning parties must win graciously and not use their newly-acquired powers to prevent their opposition from effectively challenging them in the next election. Losing parties must acknowledge that they have lost and acknowledge the legitimacy of the election. When this shared sense of fairness breaks down, violence or the threat of violence becomes the alternative. One pithy definition of democracy is that it is a system in which parties can lose elections.¹ Democracies die when one side believes that winning the next election is so important that it is willing to use extra-democratic means to achieve its goal.²

A core problem with hyper-partisan polarization is that it has a reinforcing feedback quality, what I've called "the two-party doom loop."³ That is, as the parties move further apart from each other, they engage in more aggressive hardball tactics and rhetoric. These aggressive hardball tactics and rhetoric further push them away from each other. This occurs both at the elite level and the mass level, both of which feed back on each other. The more partisan elites demonize their opponents to win elections, the more partisan voters punish leaders who compromise with "the enemy." The less compromise, the more that the trust and goodwill and cooperation necessary for governing break down. All of these processes feed on one another in an escalating spiral of tit-for-tat. What may begin as a small slight can reverberate through intensifying grudges and retaliations.

¹Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), 1 ("Democracy is a system in which parties lose elections. There are parties: divisions of interests, values, and opinions. There is competition, organized by rules. And there are periodic winners and losers.").

² Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018).

³ Lee Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (New York: Oxford University Press, 2020).

Measuring Polarization, Nationally and in Wisconsin

The most common way in which political scientists measure polarization is through analysis of roll-call votes. Specifically, scholars measure how far apart parties have moved through a statistical scaling technique called DW-NOMINATE.⁴

By this measure, polarization in the US Congress has increased steadily since the 1980s, reaching levels in the 2020s that are unprecedented in US history.⁵

This method has also been applied to state-level roll-call voting. States have also become more polarized.⁶

Using the Shor-McCarty scores for state-level roll call votes, I have tracked polarization in Wisconsin since 2000. Throughout this entire period, Wisconsin has been in the top 20-25% of most polarized state legislatures, above the national median. Both the national state median and Wisconsin polarization have increased during the past two decades.

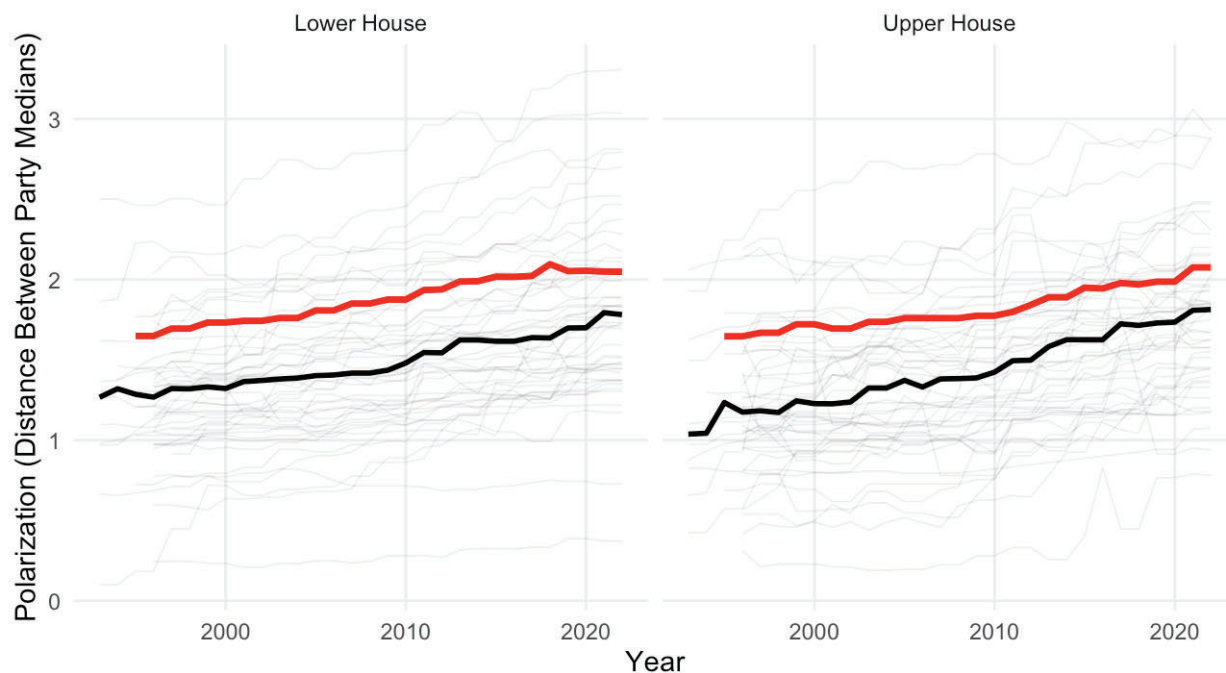
⁴ UCLA Department of Political Science, "Voteview | About Us," *Voteview*, <https://voteview.com/about> [<https://perma.cc/KS5B-GRYT>] (last visited Oct. 17, 2025).

⁵ Christopher Hare and Keith T. Poole, "The Polarization of Contemporary American Politics," *Polity* 46, no. 3 (2014): 411–29; Anthony Fowler, "Partisan Constituencies and Congressional Polarization," *Journal of Political Institutions and Political Economy* 5, no. 3 (2024): 335–61; David R. Jones and Baruch College, "Party Polarization and Legislative Gridlock," *Political Research Quarterly*, (2022): 18; Nolan McCarty, *Polarization: What Everyone Needs to Know* (Oxford University Press, 2019).

⁶ Boris Shor and Nolan McCarty. "Two Decades of Polarization in American State Legislatures." *Journal of Political Institutions and Political Economy* 3, nos. 3–4 (2022): 343–70. <https://doi.org/10.1561/113.00000063>.

Wisconsin vs. National Median: Legislative Polarization by Chamber

Wisconsin (red) vs. National Median (black)



Source: Aggregate State Legislator Shor-McCarty Ideology Data, January 2025 update

Polarization is widely associated with instability in politics, because it makes necessary compromise more difficult, particularly in closely-divided polities along lines of geography, race, culture or other “formative rifts.”⁷

Wisconsin, a perpetual “swing state” is a closely divided polity, making it especially prone to the risks and dangers that partisan polarization poses for democratic governance. Narrow balances of power in winner-take-all systems dramatize zero-sum high-stakes hardball that often precedes democratic backsliding or civil war.⁸

⁷ Jennifer McCoy, Tahmina Rahman, and Murat Somer, “Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Polities,” *American Behavioral Scientist* 62, no. 1 (2018): 16–42. <https://doi.org/10.1177/0002764218759576>; Barbara F. Walter, *How Civil Wars Start: And How to Stop Them* (Crown Publishing Group, 2022).

⁸ Barbara F. Walter, *How Civil Wars Start: And How to Stop Them*.

Partisan Polarization and Stability in Wisconsin

For many in national politics, Wisconsin has been seen as a warning sign. Here's how the Washington Post's Dan Balz put it in 2021:

“For the past decade the state has been an incubator for the kind of tribal politics and deep divisions that characterize civic life in Washington and much of the rest of the nation. While Wisconsin has been closely divided for a long time — four of the last six presidential elections were decided by less than a percentage point — the widening gulf between the two parties exposed in 2011 foreshadowed the extent to which American politics would come to focus more on the extremes rather than the middle of the political spectrum.”⁹

Increasing state-level polarization has corresponded to aggressive hardball partisan politics in Wisconsin. One of the most destabilizing breaches of democratic norms occurred during the December 2018 extraordinary legislative session. Rather than accept the electoral outcome, Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald convened this session less than one month after the election—before the newly elected officials could take office.¹⁰ The session resulted in the passage of 2017 Wisconsin Acts 369 and 370, which systematically transferred powers from the executive branch to the legislature, effectively nullifying key aspects of the election voters had just conducted.¹¹

The scope of these power transfers was extensive. The legislation established requirements for legislative approval of attorney general lawsuit settlements and blocked the incoming governor from making administrative changes to state laws or withdrawing from pending litigation, including a multi-state lawsuit challenging the Affordable Care Act—a direct repudiation of a central campaign commitment on which Evers was elected.¹² The

⁹ Dan Balz, “Wisconsin: The Incubator for America’s Tribal Politics,” *The Washington Post* (Oct. 8, 2021), <https://www.washingtonpost.com/politics/2021/10/08/wisconsin-polarization-democrats-republicans/> [https://perma.cc/V4SP-Y68J].

¹⁰ Ari Berman, *Minority Rule: The Right-Wing Attack on the Will of the People* (New York: Farrar, Straus and Giroux, 2024), 224.

¹¹ Wisconsin Legislative Council, *SEIU v. Vos*, Issue Brief (July 2020).

¹² Berman, *Minority Rule*, 224.

legislature confirmed eighty-two gubernatorial nominees from the outgoing Walker administration before the new governor could take office, in many cases without conducting hearings.¹³ The legislation also shortened the state's early voting period, which had contributed to record turnout in the 2018 election that produced Democratic victories for all statewide offices.¹⁴ The legislative maps remained sufficiently gerrymandered that, though Democratic candidates got 54% of all votes cast in the legislative contests, that translated into only 36% of the seats, barely preventing a GOP supermajority.

The procedural circumstances of the lame-duck session underscored the breakdown of deliberative norms. The concluding bill was considered in the early morning hours of December 5, 2018, without advance review by Democratic members. The bill passed the state senate at 6:04 a.m., one hour before sunrise.¹⁵

Polling indicated voters disapproved of the lame-duck efforts by a two-to-one margin.¹⁶ More than 1,400 individuals registered to testify against the proposals at the legislative hearing, while not a single member of the public spoke in favor.¹⁷ Protesters gathered at the state capitol, holding what they termed a “funeral for democracy.”¹⁸ Assembly Speaker Vos's justification revealed the extent to which gerrymandering had altered basic democratic logic: “If you took Madison and Milwaukee out of the state election formula, we would have a clear majority”¹⁹ — an argument that the legislature's claim to govern legitimately required excluding the state's two largest cities, containing approximately 850,000 residents.²⁰

¹³ *Id.*

¹⁴ *Id.* at 224–25.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

The constitutionality of the extraordinary session legislation was challenged. In *Service Employees International Union, Local 1 (SEIU) v. Robin Vos*, 2020 WI 67, the Wisconsin Supreme Court largely upheld the legislation, finding the laws relating to legislative involvement in litigation, capitol security, multiple suspensions of administrative rules, and agency deference to be facially constitutional.²¹ The court struck down only specified provisions affecting administrative agency “guidance documents” as unconstitutional intrusions upon core executive branch powers.²² More recently, in *Kaul v. Legislature*, the Wisconsin Supreme Court held that certain settlement approval requirements are unconstitutional as applied to specific categories of cases, while emphasizing that the *SEIU v. Vos* decision remains “good law.”²³ Other portions of *SEIU v. Vos* were struck down recently in *Evers v. Marklein*.²⁴

All of this traces back to the gerrymander, which had its own alarming procedural circumstances: Following the 2010 census, Wisconsin’s Republican-controlled legislature undertook a redistricting process characterized by unprecedented secrecy. The new legislative maps were introduced on July 11, 2011, without any prior review by Democratic members.²⁵ One public hearing was held two days later, and the legislature approved the new districts the following week on a party-line vote.²⁶ Documents later disclosed through litigation revealed talking points distributed to Republican legislators instructing: “Public

²¹ *Service Employees International Union, Local 1 (SEIU) v. Robin Vos*, 2020 WI 67, ¶¶ 63-64 (holding that laws relating to legislative involvement in litigation, capitol security, multiple suspensions of administrative rules, and agency deference are facially constitutional); Wisconsin Legislative Council, *SEIU v. Vos*, Issue Brief (July 2020).

²² *SEIU v. Vos*, 2020 WI 67, ¶ 73 (opinion of Kelly, J.) (concluding certain provisions of Act 369 concerning guidance documents are unconstitutional).

²³ Wisconsin Legislative Council, *Legislative Oversight of DOJ Settlements*, Issue Brief (June 2025) (summarizing *Kaul v. Legislature* holding that settlement approval requirements are unconstitutional as applied to specific categories while affirming *SEIU v. Vos* remains “good law”).

²⁴ 2025 WI 36.

²⁵ Berman, 13–14.

²⁶ *Id.* at 14.

comments on this map may be different than what you hear in this room. Ignore the public comments.”²⁷

The 2012 elections revealed the gerrymander’s effectiveness. President Obama carried Wisconsin by seven percentage points and Democratic legislative candidates received 51.4 percent of the statewide vote.²⁸ Yet Republicans retained 60 percent of seats in the state assembly.²⁹ By 2018, the efficiency gap had widened further: Democrats won 54% of statewide Assembly votes yet secured only 36% of legislative seats.³⁰ A federal court observed that under the Republican maps, “even when Republicans are an electoral minority, their legislative power remains secure.”³¹

This polarization has also impacted judicial elections. Wisconsin Supreme Court elections devolved from low-profile contests into partisan warfare costing over \$100 million in recent cycles. The 2023 Wisconsin Supreme Court race explicitly featured candidates campaigning on abortion rights and redistricting, abandoning traditional judicial restraint. Elon Musk’s at least \$25 million expenditure in the 2025 Wisconsin Supreme Court race represents an unprecedented level of outside spending in state judicial elections.

Two-party Systems and Stability

Wisconsin is a two-party system. It has not been very stable in recent years.

The United States is a two-party system. It also has not been very stable in recent years.

However, in earlier eras, both the United States and Wisconsin were relatively stable two-party systems.

²⁷ *Id.* at 13.

²⁸ *Id.* at 15.

²⁹ *Id.*

³⁰ *Id.* at 225 (noting Republican candidates won 46% of vote but retained 64% of seats, meaning Democrats won 54% but secured only 36% of seats).

³¹ *Id.* at 16.

What made both the U.S. and Wisconsin more stable in earlier periods was not the two-party system per se, but rather the extent to which it contained overlapping, cross-cutting coalitions.

From the mid-1950s through the mid-1990s, the national two-party system operated more like a hidden four-party system, with liberal Democrats and liberal Republicans concentrated in the culturally liberal Northeast and Upper Midwest, the West Coast, and major cities, alongside conservative Democrats and conservative Republicans based in rural, traditional regions and the South.³² Each faction represented distinct voting coalitions. None commanded a majority on its own. Bipartisan relationship-building emerged from the practical necessity of assembling cross-party coalitions on an issue-by-issue basis.³³

The crucial insight here is that when the “two-party system” worked, it functioned as a multiparty system disguised within a two-party framework. When it became a genuine two-party system, this stabilizing dynamic collapsed.

This transformation fundamentally reshaped American partisan competition. Since the 1990s, America has experienced a genuinely binary two-party system in which the two parties represent distinct, non-overlapping coalitions offering starkly different alternatives to voters.³⁴ This represents the purest expression of two-party competition—and the most dysfunctional.

Pure Two-Party Systems Generate Instability

Over the last two decades, American politics has fallen into a self-reinforcing dynamic of escalating partisan warfare. Binary zero-sum politics triggers ancient mental circuits of us-

³² Drutman, *Breaking the Two-Party Doom Loop*.

³³ On how bipartisan coalitions emerged from the internal diversity of both parties and decentralized committee-driven legislative processes during this period, see Drutman, *Breaking the Two-Party Doom Loop*, 85-87; on the four-party system’s structure and operation, see also American Political Science Association, Committee on Political Parties, *Toward a More Responsible Two-Party System: A Report* (New York: Rinehart, 1950).

³⁴ On the transformation to distinct, non-overlapping party coalitions, see Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge, MA: MIT Press, 2006); Matthew Levendusky, *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans* (Chicago: University of Chicago Press, 2009).

versus-them thinking. A fully divided two-party system without overlap fundamentally alters how citizens perceive one another—transforming political opponents who merit respectful disagreement into enemies requiring delegitimization and destruction.³⁵

This polarization proves especially dangerous when the partisan balance of power remains narrow, as it does both nationally and in Wisconsin. The close national balance combined with repeated pendulum swings of partisan control creates perverse incentives for party leaders: During divided government, do not compromise; Hold out for unified control. During unified government, accomplish as much as possible by whatever means necessary, knowing that control could be temporary.³⁶

Three features of the current political environment, filtered through the system of single-winner two-party elections, have undermined the ability of our political system to self-correct:

1. Geographic Sorting: Parties are now regionally concentrated

The geographic sorting of American political parties represents a fundamental transformation from the overlapping coalitions of the mid-twentieth century. In 1960, Democrats and Republicans competed in most places because both parties contained liberal and conservative factions. The civil rights revolution of the 1960s set this realignment in motion, and by the 1990s, as “culture war” politics became central to national political debate, ideological liberals and conservatives sorted themselves into political parties.³⁷

Wisconsin exemplifies this urban-rural sorting. Democrats are now concentrated in Madison and Milwaukee—the state’s two largest cities—while Republicans dominate rural counties and exurban areas. This geographic concentration, combined with aggressive

³⁵ Lilliana Mason, *Uncivil Agreement: How Politics Became Our Identity* (Chicago: University of Chicago Press, 2018); Marilyn B. Brewer, “The Social Self: On Being the Same and Different at the Same Time,” *Personality and Social Psychology Bulletin* 17, no. 5 (October 1991): 475-82; Henri Tajfel, *Human Groups and Social Categories: Studies in Social Psychology* (Cambridge: Cambridge University Press, 1981).

³⁶ Drutman, *Breaking the Two-Party Doom Loop*, 103; Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).

³⁷ Drutman, *Breaking the Two-Party Doom Loop*, 120-145; Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America*.

gerrymandering after 2010, has created a system where, as one federal court noted, “even when Republicans are an electoral minority, their legislative power remains secure.” The state that was once competitive throughout has been carved into safe Republican and safe Democratic territory, with swing districts all but eliminated.³⁸

2. Nationalization: Local politics tracks national partisan divisions

The nationalization of American politics represents the second major transformation. Starting in the 1960s, the growth of federal social and economic regulation made control of Washington far more consequential. By the 2010s, even state and local candidates emphasized national issues, and voting at all levels tracked sentiment toward the party in the White House.³⁹

3. Culture War Dominance: Cultural identity-based rather than policy-based competition

The shift from economic to cultural conflict transformed American partisan competition from bargaining over “how much” questions (tax rates, spending levels) to zero-sum battles over “who are we” questions of national identity.⁴⁰

All three features are present both nationally and statewide in Wisconsin.

Testing the Assumptions of Timmons

In the Timmons case, the majority held that states could ban fusion voting to protect the “political stability” provided by the two-party system.⁴¹

³⁸ Berman, 15-16.

³⁹ Drutman, *Breaking the Two-Party Doom Loop*, 146-162; Frances E. Lee, *Insecure Majorities*.

⁴⁰ Drutman, *Breaking the Two-Party Doom Loop*, Chapter 4; see also: Lilliana Mason, “A Cross-Cutting Calm: How Social Sorting Drives [US] Affective Polarization,” *Public Opinion Quarterly* 80, no. S1 (2016): 351-377; Matthew Levendusky, *The Partisan Sort*.

⁴¹ *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997) (“States also have a strong interest in the stability of their political systems.”).

In 1997, when the justices heard the case, the assumption that a two-party system offers stability was consistent with the then-prevailing perspective among political scientists who studied American politics.

However, the scholarship on American political systems has evolved considerably since that time, and the political reality has changed even more dramatically. Many scholars who study American politics have historically had limited engagement with comparative political systems, potentially limiting cross-national perspectives that might have provided important context.

The dominant view in American political science during the 2000s generally regarded the American political system as reasonably functional. The median voter theory, sometimes called the “master theory”⁴² of the discipline, remained influential, and while polarization was recognized as a trend, many anticipated it would naturally self-correct. The primary questions guiding the discipline in the 2000s were often treated as intellectual puzzles rather than existential challenges to democratic governance. That perspective has proven incorrect.

Starting in the 2010s, scholars began to express more serious concerns about partisan polarization in American politics, noticing the increasingly confrontational style of politics in both Washington DC and many state capitols (including Madison, Wisconsin). But it was not until the 2020s that American political scientists began to question the two-party system more fundamentally.

In 2022, more than 200 leading scholars signed a public letter in support of proportional representation,⁴³ which would lead to more parties, noting that, “Our arcane, single-member districting process divides, polarizes, and isolates us from each other. It has effectively extinguished competitive elections for most Americans, and produced a deeply divided

⁴² Jacob S. Hacker, and Paul Pierson. “After the ‘Master Theory’: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis.” *Perspectives on Politics* 12, no. 03 (2014): 643–62.

⁴³ “Over 200 Democracy Scholars Call on Congress to End Single-Member Congressional Districts and Adopt Proportional Representation,” *Protect Democracy*, Sept. 19, 2022, <https://protectdemocracy.org/work/democracy-scholars-end-single-member-districts/> [<https://perma.cc/45L7-RXAQ>].

political system that is incapable of responding to changing demands and emerging challenges with necessary legitimacy.”

In 2024, more than 100 leading scholars signed a public letter in support of fusion voting, noting:

“Today that two-party system is clearly under strain... Political parties are the essential institution of modern mass democracy because they uniquely organize representation for large groups of citizens and connect them to their government. When so many citizens are disengaged, parties struggle to provide their crucial representation and mediation functions. But while parties are necessary to democracy, in a society as diverse as the U.S., no two parties can together manage to represent everyone.”⁴⁴

This changing scholarly consensus reflects a necessary response to the dramatically changed reality of U.S. politics. The political environment of 2025 is fundamentally different from that of 1997. The parties are far more divided and antithetical. Starting in the 1980s and especially since the 1990s, voting patterns across issues have shown increasing alignment along a single left-right dimension, with recent analyses suggesting that approximately 97 percent of congressional voting now follows partisan lines.⁴⁵ Partisan animosity has increased to significantly higher levels through processes of partisan sorting and affective polarization.⁴⁶ The last significant burst of landmark bipartisan lawmaking took place in 1990, when a Democratic Congress and Republican President George H. W. Bush signed the Clean Air Act, the Americans with Disabilities Act, the Immigration Act of 1990, and the Budget Enforcement Act of 1990—all reflecting serious, bipartisan, evidence-based,

⁴⁴ Henry Aaron et. al., “Open Letter from Scholars in Support of Re-Legalizing Fusion Voting”, *Medium*, August 15, 2024, <https://medium.com/@scholarsforrelegalizingfusion/scholars-letter-in-support-of-re-legalizing-fusion-voting-72d405442720> [<https://perma.cc/9M42-LYQZ>].

⁴⁵ Drutman, *Breaking the Two-Party Doom Loop*, 87; Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America*.

⁴⁶ Shanto Iyengar and Sean J. Westwood, “Fear and Loathing across Party Lines: New Evidence on Group Polarization,” *American Journal of Political Science* 59, no. 3 (July 2015): 690-707; Alan I. Abramowitz and Steven W. Webster, “Negative Partisanship: Why Americans Dislike Parties but Behave Like Rabid Partisans,” *Political Psychology* 39 (February 2018): 119-35; Lilliana Mason, “A Cross-Cutting Calm”.

committee-driven processes.⁴⁷ The rest of the 1990s into the early 2000s produced only a dwindling handful of major bipartisan bills: welfare reform in 1996, telecommunications reform in 1996, the Children’s Health Insurance Program in 1997, and No Child Left Behind in 2001.⁴⁸ But since Republicans achieved unified government control in 2003, all major legislation has been effectively partisan legislation.⁴⁹ Cross-partisan governance capacity has collapsed as Congress has become dysfunctional and weak,⁵⁰ with gridlock and centralized partisan leadership replacing flexible and fluid bipartisan, compromise-oriented legislating.⁵¹

Whatever stability the two-party system may have provided up through the mid-1990s has diminished substantially in the twenty-first century. And as a two-party system, the United States represents an outlier among advanced democracies.

The assumption in Timmons that two-party systems are necessary for political stability finds limited support in comparative evidence. Most of the world’s stable democracies feature multiparty systems. Among OECD countries, the United States has an “effective number of parties” of just two, placing it at the lower end of the distribution.⁵² Many well-functioning

⁴⁷ Drutman, *Breaking the Two-Party Doom Loop*, 95-96.

⁴⁸ *Id.* at 96.

⁴⁹ *Id.*

⁵⁰ Sarah Binder, “The Dysfunctional Congress,” *Annual Review of Political Science* 18, no. 1 (2015): 96; Frances E. Lee, “How Party Polarization Affects Governance,” *Annual Review of Political Science* 18, no. 1 (2015): 261-82; Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006).

⁵¹ William Bendix, “Bypassing Congressional Committees: Parties, Panel Rosters, and Deliberative Processes,” *Legislative Studies Quarterly* 41, no. 3 (2016): 687-714; James M. Curry, *Legislating in the Dark: Information and Power in the House of Representatives* (Chicago: University of Chicago Press, 2015); Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (Norman: University of Oklahoma Press, 2006).

⁵² Drutman, *Breaking the Two-Party Doom Loop*, 209.

democracies operate with more than two parties, suggesting that multiparty competition is compatible with democratic stability.⁵³

Indeed, many of the world's stable and well-functioning democracies operate with multiparty systems rather than binary two-party systems, claims that a two-party structure is essential to functional government are difficult to sustain based on comparative evidence.

When Timmons was decided, many candidates and elected officials touted their bipartisanship and praised their colleagues across the aisle, and voters followed the cues of elites. This has changed dramatically. Today's political incentives revolve around majority control rather than bipartisan cooperation. Party leaders actively discourage compromise because it "muddies the partisan brand." The old system is not returning on its own.

Fusion as a Mechanism for Stability and Moderation

Historical evidence demonstrates that in the latter nineteenth century fusion voting served as an effective mechanism for coalition-building dynamics that contributed to political flexibility.⁵⁴ By enabling cross-party endorsements and coalition politics, fusion facilitated cross-cutting alliances, allowing voters to express more nuanced political preferences without the strategic dilemma of "wasting" their votes on minor parties.⁵⁵ While fusion operated within a different political and media environment, the core dynamics it enabled remain relevant to contemporary concerns about polarization.

As Peter Argersinger documented in his foundational historical analysis, fusion "enabled Democrats to secure the votes of independents or disaffected Republicans who never considered voting directly for the Democracy they hated; it permitted such voters to register their discontent effectively without directly supporting a party that represented negative

⁵³ Lee Drutman, "Proportional Representation," in *Electoral Reform in the United States: Proposals for Combating Polarization and Extremism*, ed. Larry Diamond, Edward B. Foley, and Richard Pildes (Lynne Rienner Publishers, Inc., 2024).

⁵⁴ Lisa Jane Disch, *The Tyranny of the Two-Party System* (Columbia University Press, 2002). <https://doi.org/10.7312/disc11034>.

⁵⁵ Peter H. Argersinger, "'A Place on the Ballot': Fusion Politics and Antifusion Laws," *The American Historical Review* 85, no. 2 (1980): 290.

reference groups and rarely offered acceptable policy alternatives.”⁵⁶ The use of separate party ballots in the nineteenth century facilitated this dynamic: “This election system allowed partisans of fusing parties to cast their votes without explicitly acknowledging their shared behavior or its significance, and it enabled a party to pursue fusion with an unwilling partner.”⁵⁷

This coalition-building mechanism provided third-party movements a pathway to electoral influence, and may have encouraged major party candidates to expand their coalitions beyond their traditional base to capture cross-nominated support.⁵⁸ Early twentieth-century political scientists recognized fusion as relevant to third-party effectiveness, with James Bryce observing that fusion “helps to keep a minor party going, and gives to its vote a practical result otherwise unattainable.”⁵⁹

Contemporary analysis strongly suggests that fusion balloting offers a promising mechanism to address the current polarization crisis. It gives voters a clear way to signal: ‘stop the hyper-partisan fighting.’ It also provides partisans unhappy with their own party’s extremism a way to signal that displeasure without fully defecting to the opposition.

Most importantly, fusion can re-empower the political center, which currently lacks institutional representation.

When there are only two sides, dissenters on each side have limited options. Many Republicans were uncomfortable with aspects of Trump’s MAGA populism in 2016, but their only alternative was to support Democrats or vote for a third party (which would effectively help Democrats). This dynamic led many Republicans to rationalize alignment with positions they might otherwise have questioned.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Lisa Disch, *The Tyranny of the Two-Party System* (New York: Columbia University Press, 2002), <https://doi.org/10.7312/disc11034>; Oscar Pocasangre and Maresa Strano, “What We Know About Fusion Voting,” *New America*, July 2024, <http://newamerica.org/political-reform/reports/what-we-know-about-fusion-voting/> [<https://perma.cc/2XF2-PTER>], 33.

⁵⁹ *Id.* at 97.

With fusion voting, pro-democracy conservatives would not have to choose between their democratic principles and their conservative policy preferences. Partisans would not need to justify voting for the lesser of two evils by convincing themselves the other side is irredeemably dangerous.

Fusion voting provides an elegant mechanism for breaking the binary that has made contemporary American politics so dysfunctional. It allows candidates to be nominated by more than one party, which in turn allows voters to cast more meaningful and informative votes.

Using fusion voting, a Wisconsin voter who supports a moderate Democrat for Congress over an extreme Republican candidate, or a moderate Republican over an extreme Democrat, can signal that preference clearly. The vote counts for a viable major party candidate while also registering support for moderation by being cast on the fusion party line.

By creating institutional space for the political center, fusion voting can generate a centripetal force to counteract the centrifugal forces driving polarization.

Fusion voting has been proposed as a practical approach to these challenges. By allowing citizens to vote their values while supporting viable candidates, it creates institutional space for new political alignments and allows dissenting voices to exercise electoral influence. The evidence from New York and Connecticut demonstrates that fusion can establish a meaningful centrist force in civic and political life.

Addressing the “Billboard” Concern

Critics of fusion voting sometimes argue that if fusion voting were widely legal, ballots would become cluttered with minor parties using fusion as “a billboard for political advertising.”⁶⁰

If this were the case, we would expect to see a proliferation of tiny political parties in New York State, where fusion has been legal for more than a century. In practice, nothing close to this bugbear scenario has happened. Besides the dominant Democratic and Republican Parties, New York State has a left-oriented Working Families Party and a right-oriented

⁶⁰ *Timmons*, 520 U.S. at 365 (describing concern that fusion could transform the ballot “from a means of choosing candidates to a billboard for political advertising”).

Conservative Party. Some other parties have come and gone over the years. Ballots in the Empire State are far from billboards. Nor are they billboards in neighboring Connecticut, also a fusion-legal state.

There are three main reasons why ballots do not become billboards.

First, candidates must consent to be listed under a party label. If a new party emerged out of nowhere, a candidate might be wary of accepting the label. Similarly, a candidate might be wary of accepting a label of a single-issue party, like a gun rights party or an abortion rights party. After all, candidates are trying to appeal broadly to many voters. A ballot commitment to such a party does not help in a competitive election, and is worthless in non-competitive election. This is a likely explanation for why such parties have not emerged.

Second, organizing parties requires real work and genuine support in the electorate. Convincing voters to vote on a fusion party line requires a significant organization. Fly-by-night one-off parties simply cannot generate the credibility that candidates want to associate with. Voter education and communication is costly work.

Third, states regulate party formation and ballot access. All states maintain some regulations around ballot access. Parties must demonstrate some level of support (usually signatures) to gain ballot access. They must maintain consistent support (usually vote shares) to maintain ballot access. Sensible regulations around ballot access can prevent both abuse and exclusion.

Additionally, third parties that exist primarily to secure patronage tend to fail. The Liberal Party in New York is a good example. Once a genuine party, it became corrupt and used its ballot line to bargain with the major parties for patronage and campaign contributions. As a result, it lost support and ultimately its ballot line.⁶¹

⁶¹ Lynn Adelman, "The Misguided Rejection of Fusion Voting," *Idaho Law Review* 56 (2020): 112.

Addressing the Voter Confusion Concern

Another common argument against fusion voting is that it leads to voter confusion. The evidence does not support this claim. Rather, research indicates the opposite.⁶²

As a recent report summarizing research on fusion voting noted, rather than confuse voters, the additional party labels help inform voters, by giving them more information about the candidates.⁶³

As another report notes, “Voters who do not follow politics or do not have the bandwidth to research all the candidates that appear on the ballot may use the fused ballot as a heuristic, choosing to vote for those candidates that have been endorsed by their preferred minor party.”⁶⁴

Of course, these information cues only help if parties establish meaningful identities — another reason why pop-up parties do not proliferate. Organizing and sustaining a political party takes resources.

As the report notes, “For fusion ballots to provide additional information to voters, minor parties need to develop a strong and recognizable brand. The experience of parties using independent-related labels illustrates the power of a strong brand.”⁶⁵

Fusion and Distinct Party Identities

Another concern sometimes raised is that fusion voting would undermine the distinct identities of the two parties. Historical evidence demonstrates the opposite.

In the 1880s and 1890s, when fusion was widely legal and most commonly used throughout the country across several states (including Wisconsin), the two major parties maintained

⁶² Eric Loepp and Benjamin Melusky “Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting,” *Election Law Journal: Rules, Politics, and Policy* 21, no. 2 (2022): 105–23, <https://doi.org/10.1089/elj.2021.0037>.

⁶³ *Ibid.*

⁶⁴ Pocasangre and Strano, “What We Know About Fusion Voting,” 16.

⁶⁵ *Ibid.*

intensely distinct identities. Partisanship during this era was, as Peter Argersinger documents, “intense, rooted not only in shared values but in hatreds engendered by cultural and sectional conflict.”⁶⁶ Party loyalty ran so deep that changes in party control resulted less from voter conversion than from differential rates of partisan turnout or from the effect of third parties.⁶⁷

Yet despite—or perhaps because of—these strong partisan identities, minor parties flourished and regularly captured significant shares of the popular vote. Between 1874 and 1892, minor parties held the balance of power at least once in every state but Vermont, and from the mid-1880s they held that power in a majority of states in nearly every election.⁶⁸ In the 1892 election cycle, neither major party secured a majority of the electorate in nearly three-quarters of the states.⁶⁹

Fusion enabled these minor parties to exercise real political influence without requiring voters to abandon their fundamental party allegiances. As Argersinger explains, the tactic “enabled Democrats to secure the votes of independents or disaffected Republicans who never considered voting directly for the Democracy they hated; it permitted such voters to register their discontent effectively without directly supporting a party that represented negative reference groups and rarely offered acceptable policy alternatives.”⁷⁰ Crucially, “this election system allowed partisans of fusing parties to cast their votes without explicitly acknowledging their shared behavior or its significance, and it enabled a party to pursue fusion with an unwilling partner.”⁷¹

⁶⁶ Argersinger, “A Place on the Ballot,” 289.

⁶⁷ *Id.*

⁶⁸ *Id.* at 289 (documenting that “Minor parties regularly captured a significant share of the popular vote and received at least 20 percent in one or more elections from 1874 to 1892 in more than half of the non-Southern states” and that “[b]etween 1878 and 1892 minor parties held the balance of power at least once in every state but Vermont, and from the mid-1880s they held that power in a majority of states in nearly every election, culminating in 1892 when neither major party secured a majority of the electorate in nearly three-quarters of the states”).

⁶⁹ *Id.*

⁷⁰ *Id.* at 290.

⁷¹ *Id.*

The Populists exemplified how fusion allowed minor parties to maintain distinct identities while building effective coalitions. As Argersinger notes, Populists and Democrats named separate state tickets in order to maintain their parties' organization and independence, though each party conceded that such separation would lead to a Republican victory. The weaker Democrats, in particular, feared that under antifusion laws cooperation with Populists would be "not fusion but absorption."⁷²

This dynamic fostered political innovation and realignment. Minor parties introduced new cross-cutting conflicts, including many progressive reforms, which coincided with an era of significant policy innovation. The fusion era ultimately drove a political realignment at the end of the 1890s that reshaped American politics.⁷³

By contrast, in the mid-twentieth century, when fusion was banned across most states, the two major parties were least distinct from each other. They overlapped to such a degree that voters often struggled to tell them apart. This was the era of what I've called the four-party system, when liberal Republicans and conservative Democrats served alongside conservative Republicans and liberal Democrats. For much of this era, both conservatives and Democrats had majorities in Congress. Ideology and partisanship were often cross-cutting. Without fusion, there was no mechanism through which new political identities could gain traction and force major parties to differentiate themselves on emerging issues.

Minor Parties Struggle Under the Existing Rules

Without fusion voting, third parties play a marginal role in the American system of single-winner elections. Occasionally, a third-party candidate may gain a significant share of the vote, such as the 2002 gubernatorial race in Wisconsin, when Libertarian Ed Thompson won 10.5 percent of the vote, helping Democrat Jim Doyle win with 45 percent of the vote.

⁷² *Id.* at 297 (describing fusion dynamics in Minnesota and South Dakota, where "Populists and Democrats named separate state tickets in order to maintain their parties' organization and independence, though each party conceded that such separation would lead to a Republican victory. The weaker Democrats, in particular, feared that under the new law cooperation with Populists would be 'not fusion but absorption'").

⁷³ *Id.* at 287–306.

But that was more than 20 years ago. As in most states, third party activity in Wisconsin is extremely limited.

This is because, like all U.S. States, Wisconsin uses winner-take-all majoritarian elections, which are hostile to third-party candidates. If there can only be one winner, a candidate who is not in one of the two leading parties is viewed as a potential spoiler candidate. A vote for a candidate who cannot win is a wasted vote. This leads voters to shy away from third party candidates. More importantly, it leads candidates, organizers, and donors to direct all their energy and ambition into the major parties, which actually have a shot at winning. Political scientists call this pattern Duverger's Law, after the French political scientist Maurice Duverger, who was the first to codify this pattern.⁷⁴

Absent electoral reform, third parties will remain spoilers and wasted votes. Fusion voting encourages new parties to organize because their votes will become meaningful.

Conclusion

American democracy faces serious challenges. The processes of hyper-partisan polarization have been driven by fundamental changes in the party system, geographic realignment, the nationalization of American politics, and intensely close competition for control of government. These developments have, over the last several decades, transformed the American system from a multi-dimensional, compromise-oriented political environment to a polarized, binary system characterized by zero-sum partisan competition.

Fusion voting offers a realistic and practical mechanism for addressing these challenges. It provides voters a way to signal preferences for moderation without the strategic voting dilemmas inherent in the current system. By creating institutional space for a moderate party, fusion voting would give representation to voters in the political middle who are currently underserved by both major parties. These voters could then leverage electoral influence in competitive elections to pull parties back toward the center.

⁷⁴ Maurice Duverger, *Political Parties, Their Organization and Activity in the Modern State*. (Methuen; Wiley, 1954).

The American political system has demonstrated capacity for institutional adaptation during periods of stress. Fusion voting represents a proven reform with historical precedent in American democracy—one that could help address the current crisis of polarization and democratic dysfunction.

EXHIBIT B

Response to Opposition Expert Report

Lee Drutman, Ph.D.

Senior Fellow, New America

I. Introduction

The purpose of this report is to serve as a rebuttal to the State's undated expert report by professors Nathan Atkinson and Alexander Tahk submitted in the case of *United Wisconsin et al. v. Wisconsin Elections Commission* (No. 2025-cv-1438, Dane Cnty.). In this report I respond to criticisms of my initial report and to other affirmative aspects of the State's expert report that warrant additional context, reframing, or correction.

The Atkinson-Tahk Report raises eleven objections to my analysis of fusion voting and its potential effects on political competition in Wisconsin. While the objections vary in analytical rigor, none withstands scrutiny. The objections fall into three categories: (1) arguments that rely on selective or mischaracterized evidence; (2) arguments that contain internal logical errors; and (3) arguments that, even if valid, support rather than undermine the case for fusion voting.

The Atkinson-Tahk Report acknowledges that its authors "find much to agree with" in my "diagnosis of the current political climate" and do "not take issue with the scale of the problems" I identify.¹ This concession frames the central question: if the two-party system is producing the dysfunction the State concedes, what justifies maintaining rules that entrench it?

¹ Atkinson-Tahk Report at 47.

II. Minor Parties and Polarization (Objections 1–2)

A. The State’s Claim

The Atkinson-Tahk Report cites Lee and Bates (2025) for the proposition that “minor parties can reinforce major-party polarization” and that “moderate parties that could give incentives for major-party candidates to moderate simply are not the ones to successfully organize.”²

B. Response

1. *The Historical Record Contradicts the Claim*

The assertion that no centrist party has emerged under fusion is factually incorrect. The Liberal Party of New York operated as a cross-partisan, moderating force for nearly sixty years (1944–2002).³ The Liberal Party nominated Republicans when such candidates better served its strategic interests:

- *John V. Lindsay, 1965, 1969*: As a Republican Party candidate for Mayor of New York City in 1965, Lindsay was cross-nominated by the Liberal Party and received votes on the Liberal Party line exceeding his margin of victory. In 1969, after losing the Republican primary, Lindsay won reelection running primarily on the Liberal Party line.⁴
- *Jacob Javits, 1980*: When U.S. Senator Javits lost the Republican primary in his race for re-election, he ran as the Liberal Party’s candidate.
- *Rudolph Giuliani, 1989, 1993*: The Liberal Party cross-nominated Giuliani, a Republican, over Democratic candidates in both mayoral races. The Liberal Party’s

² Atkinson-Tahk Report at 22.

³ On the Liberal Party’s cross-partisan role, see Daniel Soyer, *Left in the Center: The Liberal Party of New York and the Rise and Fall of American Social Democracy* (Ithaca: Cornell University Press, 2022); Lisa J. Disch, *The Tyranny of the Two-Party System* (New York: Columbia University Press, 2002), 155–56. On ideological sorting of the major parties, see Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches*, 2nd ed. (Cambridge: MIT Press, 2016); Matt Grossmann and David A. Hopkins, *Asymmetric Politics: Ideological Republicans and Group Interest Democrats* (New York: Oxford University Press, 2016).

⁴ See 1965 and 1969 New York City Mayoral Election Results; Vincent J. Cannato, *The Ungovernable City: John Lindsay and His Struggle to Save New York* (2001).

shift demonstrated the cross-partisan discipline that fusion enables: it withdrew its ballot line from an insufficiently moderate Democrat (incumbent David Dinkins, who was seeking reelection) and transferred it to Giuliani, who was running as a moderate Republican. Votes on the Liberal Party line were decisive in Giuliani's 1993 reelection.⁵

Connecticut, which has operated under fusion rules for nearly three decades without the instability or confusion the Atkinson-Tahk Report predicts, provides additional confirmation. A centrist party named A Connecticut Party cross-nominated Miles Rapoport, who served in the Connecticut General Assembly and later as Secretary of State. In his 1992 campaign for reelection to the General Assembly, Rapoport won more than one-third of his votes on the A Connecticut Party line. In his 1994 race for Secretary of State, over 127,000 of his votes—more than a quarter of his total—came on the A Connecticut Party line, providing his margin of victory in a race decided by fewer than 2,300 votes.⁶

The Atkinson-Tahk Report also offers no evidence of democratic instability, voter confusion, or party-system dysfunction from Mississippi, South Carolina, or Delaware—the other states that have permitted some form of fusion voting in recent decades. If fusion produced the harms that the Atkinson-Tahk Report theorizes, evidence would exist from these jurisdictions. Yet the Atkinson-Tahk Report offers none.⁷

Current developments further undermine the State's claim that centrist parties cannot emerge under fusion. In Michigan, the Common Sense Party is currently organizing to use fusion voting to advance centrist candidates. In New Jersey, the Moderate Party—a plaintiff in separate fusion litigation—is building infrastructure for cross-partisan nominations. In

⁵ Soyer, *supra* note 3. "In 1993, Rudolph W. Giuliani defeated Mayor David N. Dinkins by 53,581... . Final figures give Mr. Giuliani 927,925 votes – 865,574 on the Republican party line and 62,351 on the Liberal, for a total of 51 percent of the 1.82 million ballots cast." Associated Press, *Final Count Reported on Mayoral Election*, N.Y. Times (Dec. 11, 1993), available at <https://www.nytimes.com/1993/12/11/nyregion/final-count-reported-on-mayoral-election.html>.

⁶ Conn. Sec'y of State, Election Results Archive, available at <https://electionhistory.ct.gov>.

⁷ The State's experts cite no evidence of voter confusion, party-system dysfunction, or democratic instability from Mississippi, South Carolina, or Delaware—all of which have permitted fusion voting in some form. See Tahk & Atkinson Report (containing no discussion of democratic outcomes in these fusion-permitting jurisdictions).

Kansas, United Kansas is organizing as a centrist minor party. In South Carolina, the Alliance Party used fusion to cross-nominate candidates from both major parties before the legislature banned the practice in 2023.⁸

These concurrent efforts across multiple states demonstrate that political entrepreneurs continue to view minor-party formation under fusion as a viable mechanism for centrist political expression, even in an era of intense polarization.⁹

2. Current Flank-Party Dominance Reflects Environment, Not Structure

The Atkinson-Tahk Report observes that flank parties (Working Families Party, Conservative Party) currently dominate New York's minor-party landscape.¹⁰ And it asserts this is a result of fusion voting. That assertion conflates correlation with causation. The relevant question is whether fusion structurally favors flank parties over centrist parties. It does not.

During the mid-twentieth century, when both major parties contained ideological diversity, the Liberal Party of New York operated as a cross-partisan vehicle.¹¹ As the major parties sorted ideologically—a phenomenon driven by national forces unrelated to fusion—the party system adapted. The Liberal Party collapsed in 2002 due to organizational failures, not structural nonviability.

⁸ See Alliance Party of South Carolina, “About,” <https://www.alliancepartysc.org> (describing mission of “putting country over party”); see also S.C. Code Ann. § 7-11-10 (2023) (amended to prohibit fusion nominations). The Alliance Party cross-nominated candidates from both major parties in multiple election cycles before the legislature’s ban.

⁹ See, e.g., Common Sense Party (Michigan), <https://commonsenseparty.us>; see also Moderate Party (plaintiff in *Moderate Party v. Way*, New Jersey fusion litigation); United Kansas Party organizational filings.

¹⁰ Oscar Pocasangre and Maresa Strano, *What We Know About Fusion Voting* (New America, 2024), 34 (“Currently ... the minor parties that most participate in elections through fusion ballots in New York are flank parties: the Conservative Party on the right and the Working Families Party (WFP) on the left.”).

¹¹ See *supra* note 3.

3. *The Organizational Question*

The Atkinson-Tahk Report argues that “median voters” cannot organize parties. This framing is analytically confused. Parties are organized by political entrepreneurs, not by abstract voter categories.¹²

The identity of Plaintiff United Wisconsin itself refutes this claim. United Wisconsin was founded by Dale Schultz, former Wisconsin Senate Majority Leader (elected and repeatedly reelected as a Republican), and Dave Mahoney, former Dane County Sheriff (elected and repeatedly reelected as a Democrat)—seasoned political professionals with extensive organizational experience. The infrastructure exists; only the legal pathway is blocked.

III. Voter Confusion (Objection 3)

A. The State’s Claim

The Atkinson-Tahk Report contends that fusion voting confuses voters because minor party names fail to provide accurate ideological heuristics, citing survey evidence that respondents misidentify party positions.¹³

B. Response

1. *The Survey Evidence Is Inapposite*

The Atkinson-Tahk Report relies on a national survey measuring impressions of parties that most respondents have never encountered on a ballot. The report concedes this limitation: “This study was done nationally, and does not isolate the views of New York voters.”¹⁴ Voters in non-fusion states have no reason to know what the Working Families Party stands for. The

¹² See Kathleen Bawn et al., *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, *Perspectives on Politics* 10, no. 3 (September 2012): 571–97; John H. Aldrich, *Why Parties? A Second Look* (Chicago: University of Chicago Press, 2011), chap. 2; Seth Maskett, *The Inevitable Party: Why Attempts to Kill the Party System Fail and How They Weaken Democracy* (New York: Oxford University Press, 2016).

¹³ Atkinson-Tahk Report at 41, 46.

¹⁴ Atkinson-Tahk Report at 41.

relevant question is whether voters in fusion jurisdictions understand the parties on their ballots, particularly those that would appeal to them.

2. The Baseline Comparison Error

The Atkinson-Tahk Report compares fusion to perfect voter information rather than to its actual alternative—a ballot without any fusion. Under current rules, voters see only major-party labels, which tell them nothing about whether a candidate has earned support from labor organizations, business groups, or centrist coalitions. Even imperfect additional information exceeds no information.¹⁵

The relevant question is not whether every voter can accurately place every minor party on an ideological spectrum. It is whether voters who find a particular minor party's signal useful can act on it. A pro-labor voter who recognizes the Working Families Party label gains information. A voter indifferent to that distinction loses nothing. The baseline is not perfect information but the current ballot, which offers no such signal at all.

3. Major-Party Labels Are Equally Imprecise

If imprecise ideological signaling justified ballot restrictions, that would not justify a prohibition on fusion voting, because major-party labels are equally suspect. The “Republican” label encompasses positions ranging from Susan Collins—the Maine senator who voted to convict President Trump in his second impeachment trial and opposed his signature legislation—to Rick Scott, the Florida senator who challenged Mitch McConnell for party leadership from the right and proposed sunseting Social Security and Medicare. The “Democrat” label encompasses positions ranging from Marie Gluesenkamp Pérez—the Washington congresswoman and Blue Dog Coalition co-chair who won a Trump-carried district running as a working-class pragmatist—to Ilhan Omar, the Minnesota congresswoman and Congressional Progressive Caucus deputy chair currently leading

¹⁵ The appropriate baseline comparison is between a ballot with fusion and a ballot without it—not between fusion and an idealized state of perfect voter information. See Pocasangre and Strano, *supra* note 10, at 34 (describing how fusion parties can serve as “information cues” to voters); see also Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, *Am. Pol. Sci. Rev.* 88, no. 1 (1994): 63–76.

efforts to defund Immigration and Customs Enforcement.¹⁶ The Atkinson-Tahk Report does not propose abolishing major-party designations.

4. No Demonstrated Harm

Connecticut and New York (among others) have conducted fusion elections for decades. If voter confusion were a serious practical problem, evidence would exist: contested elections, systematic studies, documented degraded outcomes. The Atkinson-Tahk Report offers none.¹⁷

IV. The “Flank Effect” (Objection 4)

A. The State’s Claim

The Atkinson-Tahk Report argues that fusion will increase polarization because flank parties will function as “ideological enforcers” that pull major-party candidates toward extremes through spoiler threats.¹⁸

B. Response

1. The Empirical Evidence Refutes the Flank Effect Theory

If the flank effect theory were correct, we would expect states that utilize fusion voting to exhibit (a) major-party legislators further from the ideological center than their counterparts in non-fusion states, and (b) higher levels of legislative polarization. The Shor-McCarty state legislative polarization dataset—the standard measure in political science—reveals the opposite pattern.¹⁹

Table 1: State Legislative Ideology and Polarization (2022)

¹⁶ See Jeffrey B. Lewis et al., *Voteview: Congressional Roll-Call Votes Database*, <https://voteview.com> (providing first-dimension NOMINATE scores for all members of Congress); Boris Shor and Nolan McCarty, *The Ideological Mapping of American Legislatures*, *Am. Pol. Sci. Rev.* 105, no. 3 (2011): 530–51.

¹⁷ Atkinson-Tahk Report at 43–44.

¹⁸ Atkinson-Tahk Report at 45–46.

¹⁹ Boris Shor & Nolan McCarty, *Two Decades of Polarization in American State Legislatures*, 30 *J. Pol. Sci.* 1 (2022); January 2025 data release available at <https://americanlegislatures.com/>.

State	Fusion	Hou. Dem.	Hou. Rep.	Sen. Dem.	Sen. Rep.	Hou. Polar.	Sen. Polar.
Colorado	No	-1.904	1.650	-1.627	1.349	1.968	1.689
New Mexico	No	-1.670	1.118	-1.144	1.159	1.635	1.291
Arizona	No	-1.590	1.335	-1.863	1.163	1.729	1.772
California	No	-1.566	1.264	-1.486	1.263	1.461	1.343
Washington	No	-1.423	1.057	-1.354	0.976	1.418	1.327
Oregon	No	-1.407	0.930	-1.519	0.884	1.303	1.396
Minnesota	No	-1.400	1.062	-1.257	0.910	1.404	1.272
Texas	No	-1.323	1.541	-1.087	1.389	1.703	1.456
New York	Yes	-1.317	0.135	-1.508	0.063	0.821	0.892
Wisconsin	No	-1.259	0.828	-1.231	0.872	1.098	1.113
Maine	No	-1.218	0.857	-1.052	0.705	1.161	0.966
Connecticut	Yes	-1.203	0.263	-1.236	0.217	0.794	0.810
Massachusetts	No	-1.177	0.178	-1.145	0.092	0.544	0.313
New Jersey	No	-1.171	0.088	-1.058	0.123	0.709	0.648
Vermont	No	-1.070	0.577	-0.996	0.894	0.973	1.022
New Hampshire	No	-1.068	0.938	-1.401	0.893	1.182	1.324
Rhode Island	No	-0.508	-0.130	-0.543	0.346	0.151	0.322
<i>Nat'l Median</i>		<i>-1.026</i>	<i>0.878</i>	<i>-1.026</i>	<i>0.893</i>	<i>0.976</i>	<i>1.001</i>

Source: Boris Shor and Nolan McCarty, "Aggregate State Legislator Shor-McCarty Ideology Data," January 2025 release. Negative scores = more liberal; positive scores = more conservative. Polarization = ideological distance between party means. National median computed across all 49 states with bicameral lower-chamber data (50 for Senate).²⁰

²⁰ Author's calculations from Boris Shor and Nolan McCarty, "Aggregate State Legislator Shor-McCarty Ideology Data," January 2025 release. Standard deviation calculations measure each

The methodology underlying this table is straightforward. The Shor-McCarty dataset provides ideology scores for state legislators in a common ideological space, enabling direct comparison across states. For each state and year, the dataset reports the mean ideology score for each party's legislative caucus in each chamber. Polarization is measured as the distance between the Democratic and Republican party means. I computed the national median and standard deviation across all states for each measure, then calculated how many standard deviations each state falls from the national median. This permits direct comparison of how "typical" or "atypical" each state's legislators are relative to national patterns.²¹

The data contradict the flank effect theory at every point. New York and Connecticut Democrats are somewhat more liberal than the national median, but not overwhelmingly so. If flank parties functioned as "ideological enforcers," we would expect far larger deviations. New York and Connecticut are also generally liberal states.

More striking: New York and Connecticut Republicans are dramatically more moderate than the national median (-1.98 and -1.64 standard deviations for House Republicans). New York House Republicans score 0.13 on the Shor-McCarty scale; the national median is 0.88 . This is not statistical noise—it represents the most moderate Republican legislative caucus in the nation outside of a few New England states.

The low polarization in fusion states derives primarily from moderate Republicans, not extreme Democrats. This pattern is the opposite of what the Atkinson-Tahk Report's flank effect theory predicts.

state's party mean relative to the national distribution of all state party means. For methodological details, see Shor and McCarty, *supra* note 19, at 343–70.

²¹ The Shor-McCarty dataset provides ideology scores for state legislators in a common ideological space calibrated through National Political Awareness Test (NPAT) survey responses and roll-call voting patterns. Scores enable direct comparison across states and over time. For each state, the dataset reports the mean ideology score for each party's legislative caucus. The national median and standard deviation are computed across all states with available data for a given measure, and z-scores indicate how many standard deviations a given state's party caucus falls from the national median. See Shor and McCarty, *supra* note 19, at 343–70; see also Shor-McCarty State Legislative Aggregate Ideology Data Codebook (January 2025).

The inclusion of New England comparators and New Jersey permits a rigorous test of the alternative hypothesis that regional effects, rather than fusion, explain these patterns. New Jersey Republicans are similarly moderate (House score 0.09, -2.10 standard deviations from the national median)—but New Jersey does not have fusion voting. This suggests that northeastern geography contributes to Republican moderation. However, the argument survives this test: if the Atkinson-Tahk Report’s flank effect theory were correct, fusion should counteract whatever regional ideological pattern exists, pushing legislators toward extremes. Instead, New York and Connecticut fit comfortably within their regional pattern. Fusion does not produce the extremism that the Atkinson-Tahk Report predicts; it coexists with moderation.²²

2. The Theoretical Model Is Flawed

Flank party leverage is asymmetric and self-limiting: it can only pressure one major party, and exercising that pressure risks electing the flank party’s worst-case outcome.²³ “Move toward our extreme or we will spoil the race and elect your worst enemy.” This kamikaze strategy requires the flank party to accept catastrophic collateral damage.

Center party leverage is superior: “Move toward the center or we will nominate your opponent.” This threat requires no self-immolation. The center party can add votes to either side; flank parties can only subtract from one side.

²² New Jersey’s inclusion tests and survives the regional-effect hypothesis. NJ Republicans are similarly moderate to NY and CT Republicans, yet NJ lacks fusion. This confirms that northeastern geography contributes to Republican moderation—but also confirms that fusion does not push legislators toward extremes, as the Atkinson-Tahk Report’s flank effect theory predicts it should.

²³ This dynamic is illustrated by the Liberal Party of New York’s cross-partisan nomination history. See Disch, *supra* note 3, at 156 n.117; Soyer, *supra* note 3, at chap. 8; Pocasangre and Strano, *supra* note 10, at 39.

V. Platform Coherence (Objection 5)

A. The State's Claim

The Atkinson-Tahk Report argues that the state has a legitimate interest in preserving “platform coherence”—preventing the situation where a single candidate simultaneously represents parties with distinct platforms.²⁴

B. Response

1. Major Parties Do Not Have Coherent Platforms

Contemporary major parties encompass starkly incompatible positions. The Democratic Party simultaneously includes democratic socialists and anti-abortion moderates. The Republican Party simultaneously includes Trump impeachment supporters and election denials. The premise that major parties maintain coherent platforms is further undermined by the Republican Party's decision in 2020 to forgo adopting a platform entirely, instead passing a resolution stating that “the Republican Party has and will continue to enthusiastically support the President's America-first agenda.”²⁵ If the State's interest in “platform coherence” were genuine, the current two-party system would already fail that test. If a principle of “platform coherence” justified ballot restrictions, it would require abolishing major parties.

2. Cross-Nomination Is Self-Correcting

Cross-nomination is a voluntary act. Parties do not nominate candidates who contradict their core commitments. The Working Families Party will not nominate candidates who oppose union organizing; the Conservative Party will not nominate candidates who support abortion access.²⁶ If platforms were genuinely incompatible, the nomination would not occur.

²⁴ Atkinson-Tahk Report at 50.

²⁵ Republican National Committee, “Resolution Regarding the Republican Party Platform” (Aug. 24, 2020), available at https://prod-cdn-static.gop.com/docs/Resolution_Platform_2020.pdf.

²⁶ See Working Families Party, “The People's Charter: A Roadmap Out of Our Current State of Crisis” (Oct. 8, 2020), <https://workingfamilies.org/2020/10/the-peoples-charter/>; Conservative Party of New York State, “Legislative Priorities,” <https://www.cpnys.org>. See also Atkinson-Tahk Report at 27–29.

3. The “Billboard” Problem Has Never Materialized

Timmons hypothesized that fusion could create “billboard” parties cluttering the ballot with sloganeering. The minor parties that have achieved and maintained ballot access in New York—WFP, Conservative Party, Liberal Party—are genuine organizations with membership structures, policy agendas, and decades of sustained operation. Ephemeral vanity lines have not gained meaningful traction in New York’s century of fusion practice.

VI. Pre-Australian Ballot Evidence (Objection 6)

A. The State’s Claim

The Atkinson-Tahk Report argues that evidence from the 1880s–1890s fusion era is inadmissible because it predates the Australian ballot, creating a “profound institutional discontinuity.”

B. Response

1. No Such Periodization Exists in Political Science

Political science employs multiple periodization frameworks—the party systems literature (first through sixth party systems), critical realignment theory, pre/post-war distinctions.²⁷ The adoption of the Australian ballot in the 1890s appears in none of these as a recognized historical break.²⁸ To the extent scholars discuss ballot reform as historically significant, they treat it as part of a suite of Progressive Era changes—including fusion bans—that caused third-party decline.²⁹ This literature supports, rather than undermines, the plaintiffs’

²⁷ Sundquist, James L. *Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States* (Brookings Institution Press, 1983).

²⁸ See, e.g., Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: Norton, 1970); V.O. Key, Jr., *A Theory of Critical Elections*, *J. of Pol.* 17, no. 1 (1955): 3–18; David R. Mayhew, *Electoral Realignments: A Critique of an American Genre* (New Haven: Yale University Press, 2002). No standard periodization framework treats the adoption of the Australian ballot as a fundamental “discontinuity” dividing political eras.

²⁹ Bernard Tamas, *The Demise and Rebirth of American Third Parties: Poised for Political Revival?* (Routledge, 2018), <http://ebookcentral.proquest.com/lib/jhu/detail.action?docID=5323366>; Shigeo Hirano and James M. Snyder Jr., *The Decline of Third-Party Voting in the United States*, *J. of Pol.* 69, no. 1 (2007): 1–16.

case. The Atkinson-Tahk Report's proposed "epistemological firewall" is an invention of litigation, not a principle of political science.

2. The Australian Ballot Changed Administration, Not Political Logic

The Australian ballot was an administrative reform affecting ballot production and secrecy.³⁰ It did not change the underlying logic of coalition-building. The spoiler problem existed before the Australian ballot and exists today. The wasted-vote problem existed before the Australian ballot and exists today. The same incentive structure that made cross-party nominations valuable makes them valuable today.

3. The Historical Evidence Is Directly Probative

Peter Argersinger's research demonstrates fusion's causal effects with precision. In Kansas, after antifusion laws forced Populists to vote under Democratic rather than Populist headings, those who had voted fusion under their own party's heading were nearly as likely to vote Republican (40%) as to vote for the same fusion candidates under a Democratic heading (45%). Antifusion laws "brought an end to ... the importance and even existence of significant third parties."³¹

VII. Stability and Polarization (Objection 7)

A. The State's Claim

The Atkinson-Tahk Report argues I commit a "conceptual error" by conflating "stability" and "polarization," noting that "a political system can be deeply polarized ... yet structurally stable."³²

³⁰ Peter H. Argersinger, "'A Place on the Ballot': Fusion Politics and Antifusion Laws," *American Historical Review* 85, no. 2 (1980): 290–91; L.E. Fredman, *The Australian Ballot: The Story of an American Reform* (East Lansing: Michigan State University Press, 1968); Howard A. Scarrow, *Duverger's Law, Fusion and the Decline of American 'Third' Parties*, *W. Pol. Quarterly* 39, no. 4 (1986): 634–47.

³¹ Argersinger, *supra* note 30.

³² Atkinson-Tahk Report at 50.

B. Response

1. *The Problem Is Polarization Without a Fulcrum*

A polarized system can be stable—if there is a moderating mechanism preventing either pole from gaining unchecked power. In multiparty systems, center parties serve as fulcrums.³³

The American two-party system lacks this mechanism. When polarization intensifies, there is no fulcrum—no center party that can shift support based on which major party is more willing to compromise. Each election becomes a zero-sum contest for total control.³⁴

2. *The Two-Party Lacks a Release Valve*

The danger is not polarization alone but the self-reinforcing feedback loop that emerges when two parties view each other as existential threats.³⁵ Parties diverge; stakes increase. Higher stakes intensify animosity. Animosity erodes democratic norms. Norm erosion further intensifies polarization. The cycle repeats. This is the dynamic the Framers warned against. Fusion voting provides a moderating mechanism—the missing fulcrum.

3. *Anthony Downs Predicted This*

While Downs is famous for the median voter theorem, he also wrote: “A two-party democracy cannot provide stable and effective government unless there is a large measure of

³³ Michael Laver and Norman Schofield, *Multiparty Government: The Politics of Coalition in Europe* (Oxford University Press, 1990); Norman Schofield and Itai Sened, *Multiparty Democracy: Elections and Legislative Politics* (Cambridge University Press, 2006); Michael Laver, *Policy and the Dynamics of Political Competition*, *Am. Pol. Sci. Rev.* 99, no. 2 (2005): 263–81.

³⁴ Lee Drutman, *Breaking the Two-Party Doom Loop* (New York: Oxford University Press, 2020), 222–28; see also Juan J. Linz, *The Perils of Presidentialism*, *J. of Democracy* 1, no. 1 (1990): 51–69; Jennifer McCoy, Tahmina Rahman, and Murat Somer, *Polarization and the Global Crisis of Democracy*, *Am. Behav. Scientist* 62, no. 1 (2018): 16–42.

³⁵ Drutman, *supra* note 34, at 27–30, 103–10; see also Lilliana Mason, *Uncivil Agreement: How Politics Became Our Identity* (Chicago: University of Chicago Press, 2018); Barbara F. Walter, *How Civil Wars Start: And How to Stop Them* (New York: Crown, 2022).

ideological consensus among its citizens.”³⁶ When that consensus disappears, the system polarizes toward collapse. That prediction is now proving accurate.

VIII. Flexibility and Stability (Objection 8)

A. The State’s Claim

The Atkinson-Tahk Report argues that “flexibility” is “the opposite of stability,” citing Belgium’s extended government-formation periods.³⁷

B. Response

The Atkinson-Tahk Report demands a definition of “flexibility” while asserting it is “the opposite of stability.” In political systems, flexibility refers to the capacity of the system to accommodate changing voter preferences, absorb shocks, and adjust governing coalitions without systemic crisis. A flexible system allows dissatisfied voters to realign, allows new issues to find political expression, and allows governing coalitions to reconfigure in response to changed circumstances—all without requiring the kind of wholesale party collapse or democratic erosion that occurs when a rigid system can no longer contain the pressures building within it.³⁸

1. *The Engineering Principle*

In every field that studies system dynamics—engineering, economics, ecology—flexibility is the prerequisite for stability, not its opposite. Suspension bridges flex in high winds; rigid structures crack. Circuit breakers interrupt current to prevent fires. Pressure vessels include relief valves to prevent explosions. The Federal Reserve adjusts interest rates to maintain

³⁶ Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957), 114. See also Jacob S. Hacker and Paul Pierson, *After the “Master Theory”: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis*, *Perspectives on Pol.* 12, no. 3 (September 2014): 643–62.

³⁷ Atkinson-Tahk Report at 50.

³⁸ This definition draws on the concept of “resilience” in complex adaptive systems theory. See C.S. Holling, *Resilience and Stability of Ecological Systems*, *Annual Rev. of Ecology and Systematics* 4 (1973): 1–23; Brian Walker and David Salt, *Resilience Thinking: Sustaining Ecosystems and People in a Changing World* (Washington, DC: Island Press, 2006). In political systems, flexibility—the capacity to accommodate changing preferences without systemic breakdown—is analytically distinct from instability. Belgium’s extended government-formation periods illustrate flexibility; the January 6 insurrection illustrates the consequences of rigidity.

economic stability. Systems that cannot respond to perturbations accumulate stress until they fail catastrophically.

2. *The Two-Party System Lacks Release Valves*

The American two-party system is a structure without shock absorbers.³⁹ Voters dissatisfied with both parties have no meaningful alternative. Politicians who wish to moderate risk primary challenges. The system is rigid precisely where it needs flexibility. This rigidity does not produce stability; it produces the doom loop.

3. *Belgium Is Not a Counterexample*

Belgium's government-formation delays occurred because the country faces genuine, deep linguistic and regional divisions.⁴⁰ The multiparty system allows these divisions to be processed through negotiation. The alternative—suppressing diversity through a rigid two-party system—would not eliminate the divisions; it would merely prevent their expression until they manifested as secession movements or civil unrest. Belgium's "instability" is the sound of democracy processing disagreement. America's apparent "stability" is the sound of a rigid structure accumulating stress—and beginning to crack.

IX. The Four-Party System (Objection 9)

A. The State's Claim

The Atkinson-Tahk Report argues that I "praise the 'four-party system' of the mid-twentieth century" yet "this period ... occurred precisely when fusion voting was banned," proving fusion is unnecessary for cross-cutting coalitions.⁴¹

³⁹ See Drutman, *supra* note 34, at 93–96; see also Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016); Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge: Harvard University Press, 1970).

⁴⁰ See Alejandro Ecker and Thomas M. Meyer, *The Duration of Government Formation Processes in Europe*, Res. & Pol. 2, no. 4 (October 2015); Sona N. Golder, *Bargaining Delays in the Government Formation Process*, Comparative Political Studies 43, no. 1 (January 2010): 3–32. Belgium continued to function under a caretaker government throughout these periods—no services were disrupted and no constitutional crisis occurred.

⁴¹ Atkinson-Tahk Report at 52.

B. Response

1. *The Four-Party System Was Not a Two-Party System*

The mid-twentieth-century system was functionally a four-party system: liberal Democrats, conservative Democrats, liberal Republicans, and conservative Republicans. Because both parties contained liberal and conservative factions, governing coalitions formed across party lines on an issue-by-issue basis. This intra-party diversity provided an alternative mechanism for cross-cutting coalitions.

2. *That World Is Gone*

The four-party system collapsed because American politics nationalized.⁴² Conservative Democrats went extinct after the civil rights realignment. Liberal Republicans went extinct through primary challenges and an increasingly centralized congressional leadership structure. When Newt Gingrich assumed the speakership in 1995, he slashed committee staffing, hand-picked committee chairs based on party loyalty rather than seniority, and concentrated legislative power in the Speaker's office—a centralization that Tom DeLay intensified as Majority Leader.⁴³ Every Speaker since has kept or expanded this leadership structure. The parties sorted ideologically.⁴⁴ Geographic sorting reinforced partisan sorting.⁴⁵ These changes were driven by forces far larger than ballot design.

Congressional party unity—the rate at which individual members vote with the majority of

⁴² McCarty, Poole, and Rosenthal, *supra* note 3, at chap. 2; Daniel DiSalvo, *Engines of Change: Party Factions in American Politics, 1868–2010* (New York: Oxford University Press, 2012); Geoffrey Kabaservice, *Rule and Ruin: The Downfall of Moderation and the Destruction of the Republican Party, from Eisenhower to the Tea Party* (New York: Oxford University Press, 2012).

⁴³ Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006). See also Drutman, *supra* note 34, at 92–93.

⁴⁴ Christopher Hare & Keith T. Poole, *The Polarization of Contemporary American Politics*, 46 *Polity* 411, 416 (2014) (finding 97% of roll call votes fall along party lines).

⁴⁵ Jacob R. Brown and Ryan D. Enos, “The Measurement of Partisan Sorting for 180 Million Voters,” *Nature Human Behaviour*, March 8, 2021, 1–11, <https://doi.org/10.1038/s41562-021-01066-z>; Corey Lang and Shanna Pearson-Merkowitz, “Partisan Sorting in the United States, 1972–2012: New Evidence from a Dynamic Analysis,” *Political Geography* 48 (September 2015): 119–29, <https://doi.org/10.1016/j.polgeo.2014.09.015>.

their own party on votes where the two parties oppose each other—has reached historic highs over the past decade. According to CQ Roll Call, which has tracked these scores continuously since the end of World War II, the average House Democrat voted with the party 98 percent of the time in 2021 and 2022, the highest rate on record, while House Republicans hit their own record of 93 percent in 2016 and 2021. In the Senate, both parties reached all-time peaks of 97 percent—Republicans in 2017, Democrats in 2021. These figures represent a dramatic transformation from the mid-twentieth century, when party loyalty scores routinely hovered in the 60s: House Democrats hit a low of 58 percent in 1970 and 1972, while Senate Democrats bottomed out at just 51 percent in 1968. As CQ Roll Call noted in its 2024 vote studies, narrow margins in both chambers left “diminishing room for dissent,” but the trend toward near-total party cohesion has been building steadily for four decades.⁴⁶

In short: The four-party system is not coming back any time soon.

3. Fusion Provides a New Mechanism

The argument for fusion is not that it will restore the 1950s. It is that fusion provides a new mechanism for cross-cutting coalitions in an era when the old mechanism has disappeared. You cannot restore the four-party system through nostalgia. The civil rights realignment cannot be undone; media nationalization cannot be reversed. Fusion offers a viable path forward within existing institutional constraints.

X. The Proportional Representation Analogy (Objection 10)

A. The State’s Claim

The Atkinson-Tahk Report argues that I rely on a “false analogy” between proportional representation and fusion voting, because fusion is not proportional representation.⁴⁷

⁴⁶ Niels Lesniewski and Ryan Kelly, *Vote Studies 2024: House GOP Unity Inched Up as Senate Democrats Set Record*, CQ Roll Call (Feb. 18, 2025), available at <https://rollcall.com/2025/02/18/congress-party-unity-vote-studies/>.

⁴⁷ Atkinson-Tahk Report at 52–53.

B. Response

1. *The Argument the Atkinson-Tahk Report Attributes to Me*

The Atkinson-Tahk Report suggests that I argue: (1) proportional representation produces stability; (2) fusion is like proportional representation; (3) therefore fusion produces stability. That is not my argument.

2. *The Argument I Am Actually Making*

My actual argument: *Timmons* upheld fusion bans partly because Minnesota had an interest in preserving “political stability” through the two-party system. The empirical claim underlying this interest—that two-party systems produce stability—is false.⁴⁸ Comparative evidence demonstrates multiparty democracies outperform two-party systems on measures of democratic health. Fusion introduces some multiparty dynamics—cross-cutting coalitions, minor party viability, centripetal pressure—within the existing single-member-district framework. Therefore, fusion can help address two-party pathologies without requiring wholesale adoption of proportional representation. The comparative evidence challenges the *Timmons* premise. It is not offered to prove fusion replicates proportional representation. If the Atkinson-Tahk Report agrees the two-party system is producing dysfunction, the State cannot justify maintaining rules that entrench it by appealing to “stability.”

⁴⁸ See Drutman Initial Expert Report at 2 (introducing the relationship between the two-party system and instability), 5–7 (analyzing comparative evidence from multiparty democracies), 8–11 (presenting evidence that the two-party system is producing democratic dysfunction), 12–13 (discussing polarization trends), 14–15 (assessing the *Timmons* stability interest), 17–18 (concluding that the empirical premises underlying *Timmons* no longer hold). These arguments were developed at length in my initial report; the Atkinson-Tahk Report mischaracterizes rather than engages them.

XI. Why Moderate Parties Over Extreme Parties? (Objection 11)

A. The State's Claim

The Atkinson-Tahk Report argues that I “fail to explain why fusion voting would necessarily, or even usually, produce moderation rather than radicalization,” assuming without evidence that centrist parties rather than flank parties will emerge.⁴⁹

B. Response

1. *The Leverage Asymmetry*

The mechanism that makes center parties more influential than flank parties is straightforward: a center party can shift its nomination between major parties; a flank party cannot.

A flank party can only pressure one major party. The Working Families Party can threaten Democrats but has minimal leverage over Republicans. If the WFP withholds its nomination and the Democrat loses to the Republican, the WFP achieves its worst possible outcome. Its threat to effectuate that result is not fully credible.

A center party can pressure both major parties. It can nominate the Democrat, the Republican, or neither. Both major-party candidates have reason to seek its nomination. Unlike flank parties, the center party does not face a “lesser of two evils” constraint—it can always nominate the more moderate candidate, whichever party that candidate represents. This creates competitive pressure toward moderation from both directions.

The distinction between flank and center leverage does not mean flank parties are without influence. The Working Families Party's sustained pressure contributed to New York's adoption of a \$15 minimum wage—policy change achieved through demonstrating an organized constituency whose support major-party candidates wished to claim.⁵⁰ But this

⁴⁹ Atkinson-Tahk Report at 53–54.

⁵⁰ See Jesse McKinley, *Raising Minimum Wage, N.Y. Becomes a Test Case*, N.Y. Times (Apr. 1, 2016). The WFP's advocacy resulted in New York becoming only the second state to pass a \$15 minimum wage, overcoming veto threats through coalition pressure that demonstrated minor-party electoral leverage translating into policy outcomes.

influence operates within a narrow band: flank parties can push their allied major party on specific policy commitments. They cannot discipline the opposing party or create cross-partisan incentives for moderation. Only a center party can do that.

2. The Liberal Party Demonstrated This Dynamic

The Liberal Party nominated candidates from both parties based on positions, not affiliation. As discussed above, under New York’s Wilson-Pakula Act, minor party nominations require authorization by a majority vote of the party’s committee—a deliberative process in which party leaders evaluate candidates’ ideological alignment with the party’s platform.⁵¹ Its nomination was sought because it could go either way. John Lindsay, Jacob Javits, and Rudolph Giuliani were Republicans who won Liberal Party nominations because they were perceived as more moderate than their Democratic opponents or more aligned with Liberal Party values.

3. Information Signaling Matters

The Atkinson-Tahk Report argues that fusion is “logically circular” because a vote on the Moderate Party line elects the same candidate as a vote on the major-party line. This misunderstands the function of information in democratic systems.⁵²

When a candidate receives 60% of votes on the major-party line and 40% on the Moderate Party line, they know a substantial portion of their coalition prioritizes moderation. This is precisely the information the current system suppresses.⁵³

⁵¹ N.Y. Election Law § 6-120; see also Tahk & Atkinson Report at 14–15 (describing the Wilson-Pakula authorization process).

⁵² The argument that fusion is “circular” because it elects the same candidate confuses outcome with information. See Lupia, *supra* note 15, at 63–76; Samuel L. Popkin, *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns* (Chicago: University of Chicago Press, 1994); Eric Loepp and Benjamin Melusky, *Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting*, Election L. J. 21, no. 2 (2022): 105–23. The Atkinson-Tahk Report’s “circularity” objection would equally invalidate primary elections—which also produce the same nominee regardless of whether the winning margin came from moderates or ideologues—yet no one argues primaries are therefore uninformative.

⁵³ See R. Douglas Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1990), 60–87; David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974); Richard F. Fenno, Jr., *Home Style: House Members in Their Districts* (Boston: Little, Brown, 1978), 1–30. Disaggregated fusion returns provide precisely the kind of coalition-

4. The Organizational Question: Possibility vs. Certainty

The Atkinson-Tahk Report argues that “ideologically distinct parties with committed activist bases” are easier to organize than “amorphous centrist parties.”⁵⁴ This may have some validity as a general observation: passionate minorities are often easier to organize than diffuse majorities.

But the State’s argument proves too much. The Atkinson-Tahk Report describes the structural trap facing a hypothetical center party under current rules: it would be “left with a hollow choice: endorse a polarized major-party nominee as the lesser of two evils, thereby validating the status quo, or run a spoiler candidate that paradoxically aids the more extreme opponent.”⁵⁵ This is a precise description of the spoiler dilemma—the very problem fusion voting is designed to solve. Under fusion, a center party does not face this “hollow choice.” It cross-nominates the more moderate major-party candidate, adding votes rather than splitting them. That is the entire point.

The Atkinson-Tahk Report’s argument is therefore circular. It reasons as follows: (1) the fusion ban forces all third parties into the spoiler trap; (2) the spoiler trap makes center parties nonviable; (3) the absence of viable center parties proves fusion would not produce them; (4) therefore the fusion ban is justified. The conclusion assumes the premise. The Atkinson-Tahk Report points to the consequences of the ban as evidence for the ban’s necessity.

The State’s organizational objection rests on a category error. The Atkinson-Tahk Report cites research showing that moderate voters are less politically engaged and less ideologically motivated than voters at the extremes.⁵⁶ I do not dispute this characterization

composition data that these scholars identify as shaping legislative behavior. See *also* Pocasangre and Strano, *supra* note 10, at 34.

⁵⁴ Atkinson-Tahk Report at 53–54.

⁵⁵ Atkinson-Tahk Report at 53–54.

⁵⁶ Atkinson-Tahk Report at 38–39, citing Donald R. Kinder and Nathan P. Kalmoe, *Neither Liberal nor Conservative: Ideological Innocence in the American Public* (Chicago: University of Chicago Press, 2017); Paul R. Abramson and John H. Aldrich, *The Decline of Electoral Participation in America*, 76 *Am. Pol. Sci. Rev.* 502 (1982). These studies describe mass voter behavior and are not disputed here. The error is in treating mass-level disengagement as evidence that political entrepreneurs cannot organize moderate parties. See Bawn, *supra* note 12 (defining parties as

of mass behavior. Moderate voters are, as a descriptive matter, more diffuse and less organized than ideological activists. But the Atkinson-Tahk Report draws the wrong conclusion from this observation. Parties are not formed by ordinary voters. They are formed by political entrepreneurs: candidates, donors, strategists, and organizers who identify a strategic opportunity and build institutional infrastructure to exploit it.⁵⁷

The political science literature on party formation is clear on this distinction. Bawn et al. (2012) define parties as coalitions of “intense policy demanders”—not mass electorates but organized groups and political professionals who coordinate to advance shared goals. Aldrich (2011) treats party formation as a problem of elite coordination: parties emerge when political entrepreneurs determine that collective action through party organizations is more effective than individual action. The Atkinson-Tahk Report conflates the behavior of moderate voters with the organizational capacity of moderate elites. These are different populations with different incentive structures.

Indeed, the very finding that moderate voters appear disengaged may itself be an artifact of the system fusion would change. As Zaller (1992) demonstrates, mass opinion is largely a reflection of elite cues: ordinary citizens adopt positions in response to signals from political leaders and party organizations.⁵⁸ Lenz (2012) confirms and extends this finding, showing that voters follow elite leads rather than the reverse. If no moderate elite institutions exist to provide cues—because the electoral system makes such institutions nonviable—then moderate voters will appear disorganized and incoherent in surveys. The Atkinson-Tahk Report treats this pattern as a fixed sociological fact. It is better understood as a consequence of the institutional environment. Moderate voters appear diffuse in part

coalitions of organized “intense policy demanders,” not mass electorates); Aldrich, *supra* note 12 (treating party formation as elite coordination).

⁵⁷ See Bawn, *supra* note 12, at 571–97; Aldrich, *supra* note 12, at chap. 2; Masket, *supra* note 12.

⁵⁸ John R. Zaller, *The Nature and Origins of Mass Opinion* (Cambridge: Cambridge University Press, 1992) (demonstrating that citizens form political opinions largely in response to elite-supplied information and cues); Gabriel S. Lenz, *Follow the Leader? How Voters Respond to Politicians’ Policies and Performance* (Chicago: University of Chicago Press, 2012) (finding that voters adopt the policy positions of leaders they support, rather than choosing leaders based on pre-existing policy preferences). If mass moderation is downstream of elite cues, then the absence of moderate party organizations suppresses the very moderate voter mobilization the State’s experts treat as a fixed sociological constraint.

because there are no moderate party organizations mobilizing and cueing them. The absence of moderate parties is not evidence that moderate parties cannot form; it is evidence that the current system suppresses the elite coordination that would make moderate voter mobilization possible.

Consider the plaintiffs in this case. United Wisconsin was founded by Dale Schultz, former Wisconsin Senate Majority Leader, and Dave Mahoney, former Dane County Sheriff—experienced politicians with decades of organizational capacity, donor networks, and strategic expertise. These are not “abstract median voters.” They are precisely the kind of political entrepreneurs the party-formation literature identifies as the necessary precondition for new parties. They have the organizational infrastructure. They have the strategic vision. What they lack is the legal pathway. The fusion ban eliminates the mechanism—cross-nomination without spoiler risk—that would make their organizational investment viable.

The question is not whether center parties are guaranteed to form under fusion. Nothing in democratic politics is guaranteed. The question is whether fusion permits citizens who wish to form such parties to do so without being condemned to spoiler status—and whether the current system forecloses that possibility entirely.

It does. Under Wisconsin’s current rules, a center party cannot cross-nominate. It cannot demonstrate electoral significance without risking the election of its least-preferred candidate. It cannot build a track record of influence across election cycles. The fusion ban does not merely make center parties difficult. It eliminates the strategic niche a center party would occupy.

The Atkinson-Tahk Report demands certainty from the plaintiffs—proof that fusion will produce moderate parties—while maintaining a system that makes the evidence impossible to generate. This is not a standard any reform could meet. It is an argument for the permanent entrenchment of the status quo, regardless of the pathologies the Atkinson-Tahk Report acknowledges that status quo is producing.

XII. Conclusion

The Atkinson-Tahk Report’s objections share a common structure: they identify theoretical concerns that might arise under fusion voting while ignoring (1) that the theoretical concerns

are contradicted by empirical evidence from states that practice fusion, (2) that the specific concerns they raise—voter confusion, platform incoherence, instability—apply with equal or greater force to the existing two-party system, and (3) that the existing two-party system is not merely imperfect but actively producing escalating polarization, democratic erosion, and the very instability the Atkinson-Tahk Report claims fusion would cause.

Fusion voting is not a panacea. It will not eliminate polarization, restore mid-century bipartisanship, or solve every problem afflicting American democracy. What it will do is provide a mechanism—modest, incremental, but real—for introducing cross-cutting coalitions, centripetal pressure, and multiparty dynamics into a system that currently lacks them.

The alternative is the doom loop.