

4. In disaggregated fusion voting, each candidate may appear on more than one candidate line per office (one for each party that they are representing) and thereby appear multiple times on the ballot. (*Id.*)

5. Disaggregated fusion voting is currently employed in only two states: New York and Connecticut. (Atkinson-Tahk Report 13; *see also* Doc. 28:1 (“Drutman Report”).)

B. Historical background of Wisconsin’s anti-fusion laws.

6. States’ anti-fusion laws are rooted in historical efforts to reform the electoral system and were enacted as part of a broader shift toward state-administered elections in the late 1800s. (Atkinson-Tahk Report 7–11.)

7. The so-called Australian ballot describes a standardized, government-printed secret ballot system. (*Id.* at 8.)

8. Prior to the introduction of the Australian ballot, voters in the United States either cast their votes by voice or provided their own ballots. (*Id.* at 7.)

9. When, prior to the introduction of the Australian ballot, voters were provided with their own ballots, voters commonly obtained their ballots from political parties, who printed their own ballots with the party’s slate of candidates. (*Id.*)

10. Because political parties commonly printed and distributed their own ballots, usually on distinctive paper that allowed party employees to monitor how people voted, “the system facilitated vote buying and voter intimidation.” (*Id.* at 8.)

11. Widespread reports of corruption during the 1888 presidential election galvanized support for electoral reform, including a transition to government-printed ballots. (*Id.* at 9.)

12. The switch to government-printed ballots meant that states needed to make choices about how candidates may appear on the ballot and how ballots should be organized. (*Id.*)

13. States' newfound power to design an official ballot led to frequent ballot legislation during this period, with shifts between ballot layouts and experimentation with other rules and regulations. (*Id.* at 10.)

14. Among other reforms, many states enacted statutes that prohibited a candidate from appearing on the ballot as the nominee of more than one party, including Wisconsin. (*Id.* at 10–11.)

15. Wisconsin adopted the Australian ballot for statewide use in 1889. (Doc. 27:5 (“Disch Report”).)

16. In 1897, Wisconsin enacted legislation that prohibited a candidate from appearing multiple times on the ballot. (Atkinson-Tahk Report 55; Disch Report 5.)

C. Legislative intent behind Wisconsin's anti-fusion statutes.

17. Wisconsin's 1897 anti-fusion legislation was not accompanied by a statement of legislative intent. (*See* Atkinson-Tahk Report 55.)

18. However, the legislation was adopted at a time when multiple states nationwide were enacting similar measures. (*Id.*)

19. In these jurisdictions, including neighboring Illinois and Iowa, legislators and citizens alike publicly supported anti-fusion measures as promoting ballot clarity, minimizing voter confusion, and addressing concern about “deceptive” or “combination” tickets. (*Id.* at 55, 61.)

20. In Wisconsin, the *Wisconsin State Journal* observed: “It is a debatable subject whether a candidate should be allowed to spread himself over an official ballot or be compelled to choose his party and stand or fall with it. The legislature of 1897 apparently . . . concluded that one column was enough for him.” (*Id.* at 60.)

21. As to legislative motive, the historical record shows, at most, that the 1897 Legislature was acting “from a mix of institutional, ideological, and political considerations” that, at minimum, also included “ballot clarity, voter comprehension, and skepticism toward multi-label candidacies.” (*Id.* at 58–62.)

D. State interests supporting Wisconsin’s anti-fusion statutes.

22. Wisconsin’s anti-fusion statutes, Wis. Stat. §§ 8.03(1) and 8.15(7), serve multiple important state interests. (*Id.* at 45–47.)

i. Avoiding risk of voter confusion.

23. Multiple listings of the same candidate “could plausibly mislead or at least distract” the kind of “marginal or low-information voter for whom party labels operate as heuristics,” in part because “minor-party cues can be misunderstood.” (*Id.* at 46; *see also id.* at 40–41.)

24. Moreover, “the proliferation of minor parties under fusion voting can lead to poor ballot design,” as has happened in New York elections. (*Id.* at 46; *see also id.* at 19–20.)

25. There is evidence that fusion ballots cause voter confusion. (*Id.* at 19–21, 40–41, 46, 54, 64–65.)

ii. Preventing sham parties.

26. Without a fusion restriction, “major party candidates have a strong incentive to create ad-hoc ‘Sham Parties.’” (*Id.* at 37.)

27. That has happened in New York, with major party candidates also running on lines for parties with names like “Protect Animals” and “Tax Cut Now.” (*Id.* at 18–21, 39.)

28. Allowing candidates to “highlight a campaign slogan on the ballot” risks “a ballot cluttered” with such material, exacerbating voter confusion concerns. (*Id.* at 37.)

29. Wisconsin could try to prevent this problem by “erect[ing] high barriers to party formation,” but that would “insulate incumbent minor parties from competition and make it difficult for genuine new movements to emerge.” (*Id.*)

iii. Preventing cross-filing and “raiding.”

30. If Wisconsin’s statutory bans on cross-filing are invalidated without a replacement mechanism, the immediate legal default would be open cross-filing. (*Id.* at 36; *see also* Kehoe Decl. ¶ 10.)

31. Under an open cross-filing system, any candidate may enter the primary of any party simultaneously. (Atkinson-Tahk Report at 29.)

32. History shows that open cross-filing can “erode[] the integrity of political parties by allowing ‘raiding’ and ‘hostile takeovers.’” (*Id.*)

33. For example, during California’s mid-20th century period of open cross-filing, major party candidates routinely ran in their opponent’s primaries. (*Id.* at 36.)

34. Incumbents with high name recognition often won the nominations of both the Democratic and Republican parties, effectively ending the contest in the primary and rendering the general election meaningless. (*Id.*)

35. For instance, before California decided to ban fusion voting, Earl Warren and Richard Nixon once won the nominations of both major parties when running for Governor and U.S. House, respectively. (*Id.* at 30.)

36. Wisconsin could try to avoid this dilemma by requiring candidates to secure approval from a party committee before seeking the party’s nomination, but that centralized party-approval process may create its own serious corruption problems, as shown by New York’s experience. (*Id.* at 13–14, 16–17, 36–37.)

37. New York uses the so-called “Wilson-Pakula” system to mitigate the risk of raiding through cross-filing, whereby “candidates not enrolled in a particular party [can] only run in a partisan primary upon securing a formal authorization . . . from the relevant party committee.” (*Id.* at 13–14.)

38. In practice, this has both “centralize[d] power in the hands of party activists and leaders rather than the rank-and-file electorate” and “laid the groundwork for instances of political corruption.” (*Id.* at 14; *see also id.* at 16–17.)

iv. *Maintaining the tradition and system of open primaries.*

39. Wisconsin has an open primary system—a tradition that has existed since 1903. (*Id.* at 36); *see also* 1903 Wis. Laws ch. 451.

40. In an open primary system, voters do not register by party, and any voter may participate in the primary of their choice. (Atkinson-Tahk Report 36.)

41. This system poses difficulties with the mechanics of fusion voting nominations. (*Id.*)

42. The purported benefits of fusion voting rely on the premise that a minor party is a distinct entity making a distinct choice. (*Id.*)

43. In an open primary system, minor party primaries will be susceptible to hostile takeovers by voters from major parties—*i.e.*, opposition voters legally crossing over to nominate a spoiler candidate (or their preferred candidate) on the minor party line. (*Id.* at 36–37.)

44. The risk of party capture is “more acute for minor parties” as opposed to major parties due to their small electorates: a major party candidate “can mobilize a relatively small number of their own supporters to vote in the minor party’s primary” and thus “seize the minor party’s nomination against the wishes of its actual membership.” (*Id.* at 30.)

45. If Wisconsin’s anti-fusion statutes are invalidated, the state would have three choices: (1) accept the raiding problem; (2) abandon the open primary and institute partisan voter registration; or (3) introduce a Wilson-Pakula-type or party gatekeeping system. (*Id.* at 37.)

v. Preventing sore losers.

46. “[S]ore loser” laws “prevent a candidate who has been defeated in a primary election from subsequently appearing on the general election ballot for that same office in the same year.” (*Id.* at 33.)

47. They “ensur[e] that the results of a primary are definitive,” in that they force candidates “to accept the primary outcome as a final determination of their eligibility for the general ballot.” (*Id.*)

48. This “promote[s] political stability, prevent voter confusion, and mitigate the ‘spoiler effect’ that occurs when multiple candidates from the same ideological faction compete in a general election.” (*Id.*)

49. Without Wisconsin’s anti-fusion laws, candidates could “file nomination papers for a major party primary while *simultaneously* filing as an independent or as the nominee of a minor party, resulting in a chaotic new paradigm concerning candidates who lose primary elections” by allowing them to “‘hedge’ against rejection by the primary electorate.” (*Id.* at 34–35; *see also* Kehoe Decl. ¶ 13.)

vi. Avoiding polarization.

50. Both theory and experience indicate that fusion voting could increase polarization in the electorate. (*See* Atkinson-Tahk Report 17–18, 39–40, 43–44, 47.)

vii. *Maintaining party strength.*

51. Strong political parties “function as a public good,” in that they can more easily “coordinate platforms, discipline officeholders, or assemble broad governing coalitions.” (*Id.* at 46.)

52. But fusion voting “risk[s] turning parties into fluid brands or transactional coalitions rather than coherent governing organizations.” (*Id.* at 47.)

53. This could “weaken[] parties’ gatekeeping capacity and exacerbat[e] candidate-centered, polarized politics.” (*Id.*)

E. *Wisconsin’s anti-fusion statutes in the context of the Election Code, and the regulatory gaps that would result from the statutes’ invalidation.*

54. The Wisconsin Elections Commission (the “Commission”) would be unable to immediately implement fusion voting if Wis. Stat. §§ 8.03(1) and 8.15(7) were invalidated. (Kehoe Decl. ¶ 4.)

55. Invalidating Wis. Stat. §§ 8.03(1) and 8.15(7) would create significant gaps in Wisconsin’s existing statutory and regulatory election law framework. (*Id.*)

56. The Commission would need to fill those gaps (assuming it has authority to do so) and make choices about how to implement fusion voting in Wisconsin, without legislation to guide those choices. (*Id.*)

i. *Aggregated versus disaggregated ballot arrangement.*

57. Existing Wisconsin law does not specify how, if a candidate is nominated by multiple parties, those multiple nominations should be represented on a

ballot—that is, whether ballots should use an aggregated or disaggregated arrangement. (*Id.* ¶ 6.)

58. It is unclear whether the Commission has the authority to choose between an aggregated and disaggregated ballot arrangement without input from the Legislature. (*Id.*)

59. The choice between an aggregated or disaggregated ballot arrangement involves significant policy trade-offs. (Atkinson-Tahk Report 36, 48–49.)

60. Selecting disaggregated fusion would “maximize[] ballot clutter” and thereby increase confusion risks, but instead selecting aggregated fusion would “obscure[] the number of votes for the minor party.” (*Id.* at 36.)

61. Even assuming the Commission could rely on its authority under Wis. Stat. § 7.08(1)(a) to decide between an aggregated or disaggregated ballot style, it would need to make this decision through formal rulemaking or by majority vote in an open session meeting. (Kehoe Decl. ¶ 8.)

62. That decision would necessarily turn on the Commission’s own assessment of the tradeoffs of the two arrangements, since existing law provides no guidance or requirements regarding which one the Commission should choose. (*Id.*)

ii. *Cross-filing by a candidate in multiple primaries.*

63. In Wisconsin, partisan candidates appear on the partisan primary ballot if they file nomination papers for an office in which another candidate from the same party has also filed. (*Id.* ¶ 9.)

64. There is no statutory party membership requirement—the candidate simply indicates the political party they are seeking to represent. (*Id.*); Wis. Stat. § 8.15(5)(a).

65. Without Wis. Stat. § 8.15(7), there is no statutory bar preventing a single person from filing multiple sets of nomination papers to run as a candidate for multiple parties, thereby appearing on the ballot for multiple primaries. (Kehoe Decl. ¶ 9; Atkinson-Tahk Report 36.)

66. The Commission likely does not have existing statutory authority to reject multiple sets of nomination papers, which means that new legislation would be needed to prevent one candidate from appearing on the ballot for multiple primaries. (Kehoe Decl. ¶ 9.)

iii. *Ballot status issues.*

67. In Wisconsin, if a partisan candidate receives at least one percent of the total vote for any office in a statewide election, they are granted “ballot status.” (Kehoe Decl. ¶ 14); Wis. Stat. § 5.62(1)(b)1.

68. Having “ballot status” means that the candidate’s political party gets to participate in the August partisan primary. *Id.*

69. Those parties also gain the benefit of being able to nominate presidential and vice-presidential candidates directly at their nominating conventions, which replaces the requirement for those candidates to circulate and file nomination papers. (Kehoe Decl. ¶ 14); Wis. Stat. § 8.15(7).

70. Invalidating Wis. Stat. §§ 8.03(1) and 8.15(7) would create an immediate question that existing law does not answer, if the Commission adopted an aggregated fusion ballot style: if one candidate is nominated by two parties, how are the two parties credited with the candidate's single vote total for "ballot status" purposes? (Kehoe Decl. ¶ 15.)

71. If the Commission were instead to adopt a disaggregated ballot style, that could significantly increase the number of parties that meet ballot status thresholds. (*Id.* ¶ 16.)

iv. *Nomination papers.*

72. If Wis. Stat. §§ 8.03(1) and 8.15(7) were invalidated, current law would not answer whether candidates could list more than one party on one set of nomination papers (meaning they only circulate and file once), or whether they must circulate and file one set of nomination papers for each party nominating them. (*Id.* ¶ 18.)

73. Again, it is unclear if the Commission could decide whether this is permissible without new legislation. (*Id.*)

v. *Overvoting.*

74. An "overvoted" ballot is one in which a voter has voted for more than the maximum number of selections allowed in at least one contest. (*Id.* ¶ 20.)

75. Ordinarily, a ballot with overvotes is considered invalid and therefore not counted. (*Id.* ¶ 21); Wis. Stat. § 5.85(2)(b)1.

76. It is unclear whether, as a matter of law, a disaggregated fusion ballot on which the same candidate is selected multiple times would be considered an invalid “overvote.” (Kehoe Decl. ¶ 21.)

77. In the absence of new legislation creating an exception that allows election officials to count such ballots, the Commission would again be presented with difficult choices to make (assuming it has legal authority to make them at all). (*Id.* ¶¶ 22–23.)

78. The Commission would face the same kind of ballot status questions presented above: if the same candidate is selected under multiple party lines, which party receives credit for the vote for ballot status purposes? And, if only a single selection on the ballot should be credited, which one? (*Id.* ¶ 23.)

Dated this 15th day of June 2026.

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Defendant's Proposed Findings of Fact in Support of its Motion for Summary Judgment with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 15th day of June 2026.

Electronically signed by:

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