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CIRCUIT COURT
DANE COUNTY, WI
2025CV001438

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

United Wisconsin, et al.

Plaintiffs,

v.

Case No.: 25-CV-1438

Case Code: 30701

Wisconsin Elections Commission,

Defendant.

**BRIEF OF AMICI CURIAE BIPARTISAN FORMER MEMBERS
OF CONGRESS STEVEN C. GUNDERSON, REID J. RIBBLE,
RICHARD A. GEPHARDT, AND DAVID A. TROTT**

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INTEREST OF *AMICI CURIAE*

Steven C. Gunderson, Reid J. Ribble, Richard A. Gephardt, and David A. Trott (collectively “Amici”), are former United States Congressmen. Steven C. Gunderson was elected to represent Wisconsin’s 3rd Congressional District in the U.S. House of Representatives after serving in the Wisconsin State Assembly. He also served as House Republican Chief Deputy Whip during his tenure. Reid J. Ribble represented Wisconsin’s 8th Congressional District from 2011-2017. Richard A. Gephardt represented Missouri’s 3rd Congressional District in the U.S. House of Representatives from 1977-2005, during which time he served as the House Democratic majority and minority leader. And, David A. Trott was elected to represent Michigan’s 11th Congressional District from 2015-2019. Collectively, Amici have served in Congress for 29 terms; run as congressional candidates in 30 elections; and, represented the people of their respective districts, including those in the Midwest, for 58 years. Although Amici no longer serve their communities as elected officials, they continue to do so by advocating for solutions to extreme political polarization and democratic dysfunction.

INTRODUCTION

Amici write to urge the Court to declare that Wisconsin’s fusion-voting ban, Wis. Stat. § 8.15(7), violates the Wisconsin Constitution. Wisconsin’s fusion-voting ban impinges on Wisconsinites’ rights to a free government (Wis. Const. art. I, § 22); to the equal and effective opportunity to participate in the electoral process (Wis. Const. art. I, § 1); and, to speak and associate freely in service of electoral goals (Wis. Const. art. I, §§ 3-4).

Fusion-voting bans like Wis. Stat. § 8.15(7) contribute to the present crisis and instability in American democracy by suppressing the political power, equal protection, speech, and associational rights of moderates, and by elevating the political influence of partisan extremists. As set forth below, fusion voting would allow moderates, who represent approximately one-third

of Wisconsin's registered voters,² to express their policy preferences and exert greater political influence by organizing into political parties that exist for the purpose of cross nominating major-party candidates. Allowing moderate voters to form political parties that “fuse” with major parties would lead to the election of more moderate candidates, reduce extreme political polarization and partisan gridlock, increase moderate participation in government, and enhance the health and stability of American democracy.

ARGUMENT

I. American Democracy is in Crisis.

That America is in the midst of a democratic crisis is well known and borne out by numerous interrelated indicia, including extreme polarization, partisan gridlock, declining public trust, high voter dissatisfaction, and low voter participation, each of which Amici address in turn.

Scholars agree that polarization in American politics has reached extreme and unprecedented levels.³ Political parties and elected officials have become more ideologically divided and entrenched,⁴ particularly at the state level, including in Wisconsin.⁵ The number of moderate candidates nominated by either party has dwindled.⁶ Bipartisanship has broken down. And, cross-partisan animosity is alarmingly high.⁷ For instance, in the lead up to the 2022 midterm

² Craig Gilbert, *Will moderate voters find a home in Wisconsin's governor's race?*, Milwaukee J. Sentinel (June 22, 2026), <https://www.jsonline.com/story/news/politics/analysis/2026/06/22/will-moderates-find-a-home-in-wisconsins-governors-race/90596437007/>.

³ See, e.g., Megan Brennan, *U.S. Political Parties Historically Polarized Ideologically*, Gallup (Jan. 16, 2025), <https://news.gallup.com/poll/655190/political-parties-historically-polarized-ideologically.aspx>.

⁴ Drew DeSilver, *The polarization in today's Congress has roots that go back decades*, Pew Research Center (Mar. 10, 2022), <https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/>; Boris Shor & Nolan McCarty, *Two Decades of Polarization in American State Legislatures*, 3 J. of Pol. Insts. & Pol. Econ. 343, 344 (2022).

⁵ Shor & McCarty, *supra* note 4, at 352, 357, 364-65.

⁶ DeSilver, *supra* note 4.

⁷ See Levi Boxell et al., *Cross-Country Trends in Affective Polarization* (Nat'l Bureau of Econ. Rsch. Working Paper, Paper No. 26669, 2020), <https://www.nber.org/papers/w26669>.

elections, an NBC poll found that 81% of Democrats said they believed that the Republican Party's agenda could "destroy America as we know it," while 79% of Republicans believed the same of the Democratic Party's agenda.⁸ A Fox News poll from the same time period found that only 18% of Democrats and 9% of Republicans believe that the other party wants "what's best for the country."⁹ "[T]he more partisans come to see the other side as extreme and norm-breaking, regardless of facts, the more willing they become to accept undemocratic actions on behalf of policy wins they want,"¹⁰ including engaging in extreme partisan gerrymandering, questioning the validity of elections, and supporting political violence.

Extreme polarization promotes partisan gridlock, which has rendered government increasingly dysfunctional at both the state and national levels.¹¹ Partisan gridlock makes the passing of routine legislation a gargantuan task and renders all but futile attempts to pass forward-thinking legislation to address our most pressing problems. Amici and several of their former colleagues have observed as much firsthand. Amicus Representative David A. Trott, who served from 2015 to 2019, noted that "Congress was 'completely dysfunctional'" during his tenure and that "it's only 'gotten worse' and 'more toxic' with the focus now being solely on 'beating the other party' and 'playing the blame game.'"¹² Amici's former colleague, Congressman and Democratic Chairman of the House Budget Committee, John Yarmuth of Kentucky, similarly

⁸ Mark Murray, *'Anger on their minds': NBC News poll finds sky-high interest and polarization ahead of midterms*, CNBC (Oct. 23, 2022), <https://www.cnbc.com/2022/10/23/nbc-news-poll-finds-sky-high-interest-and-polarization-ahead-of-midterms.html>.

⁹ Dana Blanton, *Fox News Poll: Polarization defines the midterm election*, Fox News (Oct. 16, 2022), <https://www.foxnews.com/official-polls/fox-news-poll-polarization-defines-midterm-election>.

¹⁰ Dan Cantor, *Fusion Voting, Fusion Parties: Escaping the Two-Party Doom Loop*, Democracy Journal (Winter 2026, No. 79), <https://democracyjournal.org/magazine/79/fusion-voting-fusion-parties-escaping-the-two-party-doom-loop/>.

¹¹ See Shor & McCarty, *supra* note 4 (explaining how extreme polarization contributes to government dysfunction).

¹² Lee Moran, *Ex-GOP Rep. Dishes On Current Lawmakers' Private Confessions: 'Miserable'*, MSN (Nov. 26, 2025), <https://www.msn.com/en-us/news/politics/ex-gop-rep-dishes-on-current-lawmakers-private-confessions-miserable/ar-AA1RaZiO>.

observed: “There are far more members here who are engaged in performance art and performance art only now, and they really have no interest in governing.”¹³ When reflecting on the 118th Congress, Yarmouth warned: “The next two years are really going to be brutally painful, and they’re going to be painful for the country.”¹⁴

Despite these deep partisan divides and entrenched gridlock, a super-majority of Americans agree on a significant number of policy proposals. For instance, a study conducted by the University of Maryland’s School of Public Policy found that across each of 21 categories of public policy, ranging from healthcare to police reform, there were over 100 policy proposals that garnered the support of more than two-thirds of Americans—the vast majority of which Congress and state legislatures have failed to enact.¹⁵

It should come as no surprise that the electorate has become increasingly dissatisfied, distrustful, and discouraged by this state of affairs. Voters are increasingly dissatisfied with their governmental and political institutions. Only 15% of Americans approve of Congress;¹⁶ just 4% say our political system is working extremely or very well;¹⁷ only 23% say that it is working somewhat well;¹⁸ and, six-in-ten Americans express little to no confidence in the future of our political system.¹⁹ Public trust in our political institutions has likewise plummeted. Just 17% of

¹³ Emily Cochrane, *Retiring Congress Members See Rough Roads Ahead. They Won’t Miss the Gridlock.*, N.Y. Times (Jan. 1, 2023), <https://www.nytimes.com/2023/01/01/us/politics/senate-house-retiring-burr-shelby.html>.

¹⁴ *Id.*

¹⁵ Program for Public Consultation, Univ. of Md., *Common Ground of the American People: Policy Positions Supported By Both Democrats & Republicans*, (Feb. 2024), <https://vop.org/wp-content/uploads/2024/02/CGOAP-Brochure-2024-V12.pdf>.

¹⁶ *Congress and the Public*, Gallup, <https://news.gallup.com/poll/1600/congress-public.aspx> (last visited July 15, 2026).

¹⁷ *Americans’ Dismal Views of the Nation’s Politics*, Pew Research Center (Sep. 19, 2023), <https://www.pewresearch.org/politics/2023/09/19/americans-dismal-views-of-the-nations-politics/>.

¹⁸ *Id.*

¹⁹ *Id.*

Americans trust the government to do what is right all of the time, and, only 15% trust it to do so “most of the time.”²⁰ 85% of Americans do not believe elected officials care what people like them think.²¹ Extreme polarization, government dysfunction, low voter satisfaction, and high public distrust have also led to low voter turnout, particularly among moderates who dislike both of the major parties.²² When moderate voters’ voices are suppressed, they decline to participate in the political process, extremist candidates win elections, and the cycle of extreme polarization, partisan gridlock, public distrust, and dissatisfaction, only continues.

II. Anti-Fusion Voting Laws Artificially Depress the Political Influence and Participation of Moderates and Exacerbate America’s Democratic Crisis.

Americans are increasingly dissatisfied with the rigid two-party system and long for reform. A recent Gallup survey found that 62% of U.S. adults believe “the two major political parties are doing such a poor job that a third party is needed.”²³ Over eight-in-ten Americans (86%) believe that “Republicans and Democrats are more focused on fighting each other than on solving problems.”²⁴ And, fewer Americans now subscribe to a major-political party, with a record high 45% of U.S. adults identifying as political independents.²⁵

²⁰ *Public Trust in Government: 1958-2025*, Pew Research Center (Dec. 4, 2025), <https://www.pewresearch.org/politics/2025/12/04/public-trust-in-government-1958-2025/>.

²¹ Caludia Deane, *Americans’ Deepening Mistrust of Institutions*, Pew Research Center (Oct. 17, 2024), <https://www.pew.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions>.

²² See Catherine Clifford, *‘I don’t plan to vote ever again’: The psychology of why so many people don’t vote, even in 2020*, CNBC (Oct. 30, 2020), <https://www.cnbc.com/2020/10/30/why-people-choose-not-to-vote.html>; John LaLoggia, *6 facts about U.S. political independents*, Pew Research Center (May 15, 2019), <https://www.pewresearch.org/fact-tank/2019/05/15/facts-about-us-political-independents/>.

²³ Jeffrey M. Jones, *Americans See Need for Third Party, but Offer Soft Support*, Gallup (Oct. 20, 2025), <https://news.gallup.com/poll/696521/americans-need-third-party-offer-soft-support.aspx>.

²⁴ *Americans’ Dismal Views of the Nation’s Politics*, *supra* note 17.

²⁵ Jeffrey M. Jones, *New High of 45% in U.S. Identify as Political Independents*, Gallup (Jan. 12, 2026), <https://news.gallup.com/poll/700499/new-hihg-identify-political-independents.aspx>.

Despite 45% of Americans identifying as independents and 62% of Americans believing that a third-party is needed, third parties face numerous barriers to achieving political power,²⁶ including fusion-voting bans. Fusion-voting bans, like Wis. Stat. § 8.15(7), prohibit moderate third-party voters from fusing together with like-minded voters of another party to nominate shared candidates and advance shared policy goals. They instead force third parties to run their own candidates, who function as symbols, at best, or spoilers, at worst.²⁷ Many moderate voters strategically avoid voting for third-party candidates, even when they support the third-party's platform, because they do not want to “waste” their votes or “spoil” the election.²⁸ Moderates instead either cast their votes for a major-party candidate, despite strong disagreements with the party's platform, or refrain from voting entirely. Likewise, because third-party candidates are all but guaranteed electoral defeat, moderate consensus-building politicians strategically avoid seeking the nomination of third parties and instead either refrain from seeking office or seek the nomination of a major party, where their odds of success are increasingly slim.²⁹ By forbidding third parties from associating with candidates of their choosing, and instead forcing them to run their own candidates, fusion-voting bans prevent even the most well-funded moderate third parties from amassing the support their platforms would otherwise garner and from exerting any political influence.³⁰

²⁶ Jones, *supra* note 24.

²⁷ See Beau Tremiere, *Without Fusion Voting, It's an Uphill Climb for Independents Like Missouri's John Wood*, Real Clear Policy (July 14, 2022), https://www.realclearpolicy.com/articles/2022/07/14/without_fusion_voting_its_an_uphill_climb_for_independents_like_missouris_john_wood_842365.html.

²⁸ *Id.*

²⁹ Anna Kristoff, *Third parties on Wisconsin presidential ballot could divert Trump, Biden votes*, Badger Herald (Apr. 19, 2024), <https://badgerherald.com/news/wisconsin/2024/04/19/third-parties-on-wisconsin-presidential-ballot-could-divert-trump-biden-votes/> (discussing how third parties often have a “hard time getting anybody to step up and actually join the movement”).

³⁰ See Tremiere, *supra* note 27; Kristoff, *supra* note 29.

III. Fusion Voting Would Stabilize American Democracy by Increasing the Influence and Participation of Moderates.

Fusion voting would stabilize American democracy by affording moderates a means to exert political influence. Fusion voting would accomplish this end by allowing moderates to form third parties that, rather than running their own ideologically pure candidates in competitive races, would exist to “fuse” with, or “cross-nominate,” moderate Republicans and Democrats.³¹ The ability of these moderate third parties to cross nominate a major-party candidate would allow the approximately 33% of Wisconsin’s registered voters who identify as politically moderate to express their policy preferences without wasting their ballots on a third-party candidate who faces little to no odds of success.³² Under the current regime, these moderate voters often decide elections. Yet, they receive little to no credit from major parties for delivering them victory, and the major parties therefore have no incentive to govern moderately. Instead, the major parties exacerbate polarization to secure their perceived “base” voters. By permitting a moderate third-party to cross-nominate a major-party candidate, fusion voting would allow moderate voters to communicate *why* a candidate has earned their backing. This transparency would, in turn, afford moderate voters greater bargaining power over the major-parties’ platforms, the candidates whom the parties nominate, and the votes of the major-party elected officials whom the moderates helped to elect.³³ Major parties would be more inclined to nominate candidates with broad centrist appeal who are capable of forming the cross-partisan coalitions necessary to enact the legislation that supermajorities of Americans support. The election of such moderate candidates would, in turn, help to reduce extreme polarization, overcome partisan gridlock, and increase public trust and participation.

CONCLUSION

For the above stated reasons, this Court should grant United Wisconsin's relief and conclude that Wisconsin's fusion-voting ban, Wis. Stat. § 8.15(7), unconstitutionally impinges on Wisconsinites', particularly moderate Wisconsinites', rights to a free government (Wis. Const. art. I, § 22); to the equal and effective, opportunity to participate in the electoral process (Wis. Const. art. I, § 1), and, to speak and associate freely in service of electoral goals (Wis. Const. art. I, §§ 3-4).

Dated: July 16, 2026.

Respectfully submitted,

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³¹ Lee Drutman, *More Parties, Better Parties: The Case for Pro-Parties Democracy Reform* 80-84, New America (July 7, 2023), https://d1y8sb8igg2f8e.cloudfront.net/documents/More_Parties_Better_Parties_2023.pdf.

³² *See id.*

³³ *See id.*; *see also* R. Douglas Arnold, *The Logic of Congressional Action* 60-87 (1992).