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CIRCUIT COURT
DANE COUNTY, WI
2025CV001438

STATE OF
WISCONSIN

CIRCUIT
COURT

DANE
COUNTY

UNITED WISCONSIN, et al.,

Plaintiffs,

vs.

Case No. 25-CV-1438

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**NON-PARTY AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT BY
HONEST ELECTIONS PROJECT**

INTEREST OF AMICUS CURIAE

The Honest Elections Project ("HEP") is a nonpartisan organization devoted to defending the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, HEP defends fair and reasonable measures that legislatures adopt to protect the integrity of voting, and it opposes efforts to reshape or manipulate election rules for partisan gain.

HEP has appeared as amicus curiae in election law litigation, including on fusion laws in New Jersey and Kansas, and offers this Court the benefit of that comparative, multi-jurisdictional perspective on the state interests at stake in Wisconsin's own fusion ban, Wis. Stat. §§ 8.03(1), 8.15(7).

HEP has a significant interest in this case, which implicates the constitutionally preeminent authority of Wisconsin to regulate its elections.



INTRODUCTION AND SUMMARY OF ARGUMENTS

Wisconsin's prohibition on fusion voting is a reasonable, longstanding ballot regulation that the Wisconsin Supreme Court upheld a year after enactment. *See State ex rel. Runge v. Anderson*, 100 Wis. 523, 536–37, 76 N.W. 482, 487 (1898). Courts have repeatedly reaffirmed that reasonable ballot regulations, including a ban on fusion voting, are a valid state interest. *See, e.g., Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 369–70 (1997). Including as recently as 2025. *See In re Malinowski*, 332 A.3d 755, 769 (N.J. Super. Ct. App. Div. 2025), *cert. denied*, 346 A.3d 1220 (N.J. 2025). Defendant Wisconsin Elections Commission has thoroughly briefed the controlling *Anderson-Burdick* framework and this Court's own precedent applying it. HEP does not repeat that analysis. Instead, HEP offers three points that add value beyond the existing record.

First, the enactment and continued vitality of anti-fusion laws by nearly every legislature in the Nation confirm that state laws prohibiting political parties from listing a candidate multiple times under different party labels are a pragmatic and nonpartisan exercise of a legislature's authority to regulate its elections. Accordingly, Wisconsin's laws are normative, and not unique artifacts of Wisconsin's 1890s politics.

Second, the contemporaneous record corroborates that valid state interests still discussed today, such as preventing voter confusion and ballot clarity, were part of the public understanding of the law at the time.

Third, analogous litigation in which a newly formed minor party unsuccessfully sought to overturn New Jersey's fusion voting ban offers a modern illustration of an apparent sham party and a state's real, not hypothetical, interest in reasonable ballot regulation.

For these reasons, and those set forth by Defendant, the Court should grant summary judgment to Defendant and deny Plaintiffs' motion for summary judgment.

ARGUMENT

I. The bipartisan efforts that continue in the 21st century to prohibit fusion voting confirm an enduring state interest

If Wisconsin's fusion ban were just a vestige of nineteenth-century partisan maneuvering by the Republican Party then in power, the modern legislative trend would run toward repeal as party fortunes shifted. The opposite happened. Fusion voting bans remain active, interconnected features of election administration nationwide, spanning most states of every political composition. *Timmons*, 520 U.S. at 357 ("[I]n this century, fusion has become the exception, not the rule.").

After *Timmons* and into the 21st century, we have seen states with dramatically different ideological and partisan compositions consider and enact fusion voting bans. For example, Democratic-controlled Delaware enacted an anti-fusion law in 2011, and Republican-controlled South Carolina followed in 2022. Del. Code Ann. tit. 15, § 3301(j); S.C. Code Ann. § 7-11-10. Notably, South Carolina's measure passed unanimously in both chambers, and Delaware's with near-unanimous support. S.B. 108, 2022 Gen. Assemb., 124th Sess. (S.C. 2022); H.B. 11, 2011 Gen. Assemb., 146th Sess. (Del. 2011).

Equally telling is what has not happened: HEP is aware of no state that abandoned a fusion voting ban and then restored fusion voting through the ordinary legislative process. In fact, states like New Jersey, which expressly permitted fusion voting from 1911 to 1921, subsequently prohibited it after their experience with it. See N.J. Stat. Ann. §§ 19:13-4, :13-8; Jeffrey Monginello, *Fusion Voting and the New Jersey Constitution: A Reaction to New Jersey's Partisan Political Culture*, 41 Seton Hall L. Rev. 1111, 1121 (2011). Further, 26 years later, in 1947, New Jersey rewrote its Constitution, and its Constitutional Framers rejected the establishment of a constitutional right to fusion voting. See 2 Proceedings of the New Jersey Constitutional

Convention of 1947, at 1010, 1078 (recording consideration and rejection of “Proposal 25” authorizing fusion candidacies).

There is a reason why, for nearly half of our Nation’s existence, state legislatures across ideological and partisan composition have adopted fusion voting bans as key features of their electoral systems and never restored fusion voting once rejected. This is irreconcilable with the theory that these laws serve only a partisan interest to maintain majority control. *See Timmons*, 520 U.S. at 357 n.6 (observing that, in 1997, approximately forty states prohibited fusion voting). Instead, it reflects a considered, recurring judgment, held across ideologically opposed legislatures and eras, that permitting a single candidate to appear multiple times on the ballot under different party labels poses risks to the electoral process that are not worth the marginal benefit fusion offers minor parties.

And that judgment merits substantial deference from this Court under rational-basis and *Anderson-Burdick* review alike. *Cf. State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473, 480 (1949) (noting that the Legislature has "constitutional power to say how, when and where" a ballot shall be cast, subject to reasonableness review); *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 17–18, 128 N.W. 1041, 1046–47 (1910) (extending *State ex rel. Runge v. Anderson*, 76 N.W. 482, and holding that once a candidate has enjoyed "the right of one party characterization upon the official ballot," the Constitution confers no further right to "demand a second such characterization by another body" "for mere sentimental or selfish reasons," because only legislative interference that "destructively" impairs a party's ability "to further legitimate ends of party existence" implicates the right to vote).

II. The contemporaneous Wisconsin press record corroborates the ballot-integrity rationale the State advances today

Plaintiffs argue that Wisconsin's 1897 adoption of Act 348 should be subjected to heightened scrutiny because it was designed to entrench Republican majorities. (Dkt. 24 at 23.) Defendant's experts have rebutted this claim, pointing to the broader, nonpartisan Progressive Era impulse behind ballot-access reform and to analogous laws enacted by both parties in other states. (Dkt. 61 at 55, 61.) HEP takes no position on that scholarly dispute and instead offers contemporaneous sources not yet in the record. These sources suggest that concerns involving fusion voting were shared by the broader public and not just by the Wisconsin Legislature.

Contemporaneous press coverage reflects the same themes the Defendant advances today. *The Wisconsin State Journal's* report on the 1897 law addressed the practice of allowing a candidate to appear under multiple party nominations, *Aimed at Pop. Fusion*, Wis. STATE J., May 10, 1897, at 2 (on file with Newspapers.com, <https://www.newspapers.com/image/406206891>) (last visited July 16, 2026). A later piece observed that the law resolved 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." *Fusion and the Secret Ballot*, Wis. State J., June 26, 1897, at 2 (on file with Newspapers.com, <https://madison.newspapers.com/image/406208153/>) (last visited July 16, 2026).

The Sheboygan Telegram, discussing the passage of Wisconsin's anti-fusion law, characterized it as forbidding political gamesmanship, "prevent[ing] political barter" by "forc[ing] the voter to vote for individuals regardless of party." THE SHEBOYGAN TELEGRAM, June 19, 1897, at 4 (on file with Newspapers.com, <https://www.newspapers.com/image/1128193751>) (last visited July 16, 2026).

And the *Milwaukee Sentinel* argued that the anti-fusion voting provision’s “obvious object is to *save the voter from confusion* and to protect candidates regularly nominated . . . against trickery and fraudulent candidacies.” MILWAUKEE J. SENTINEL, June 18, 1897, at 4 (emphasis added) (on file with Newspapers.com, <https://www.newspapers.com/image/1298497526>). The article went on to say that the anti-fusion provision will prevent the use of fusion to “deceive the voter, and from multiplying the appearance of their candidates’ names on the ballot until the average voter will need a guide and a chart and a constitutional lawyer to avoid voting from some of them.” *Id.*

These articles consistently reflect a public understanding that the new rule was meant to simplify ballots and compel clearer candidate–party affiliations, whatever the individual writer’s view of fusion itself. These articles describe an effort that occurred throughout the country after the election of 1896 to regulate and reform the electoral process.

This is offered to demonstrate that the rationales the Defendant advances that ballot clarity, prevention of voter confusion, and discouragement of untoward political gamesmanship that would be contrary to those aims are not modern concerns or inventions. Rather, these concerns were part of the public discourse when the law was enacted, and it remains a legitimate basis for state regulation in Wisconsin.

III. The valid authority and interests of the legislature to prohibit fusion voting easily outweigh the minimal burden on voters and candidates.

A. Anti-fusion bans are within the core of the Wisconsin Legislature’s authority

Defendant’s briefing thoroughly establishes that *Anderson-Burdick*’s interest-balancing framework governs this challenge, and that Wisconsin’s ban satisfies it. (Dkt. 58 at 12-19.). HEP does not restate that analysis but writes instead to supply the state-interest illustration that follows.

One point from this authority warrants emphasis: in *Fine v. Elections Board of Wisconsin*, the Wisconsin Supreme Court recognized the State’s “paramount interest . . . in regulating elections . . . to insure that they are conducted as fairly as possible and in such a way as to insure that the will of the electorate is accurately ascertained,” while cautioning that any regulation must actually serve, rather than undermine, that clarity interest. 95 Wis. 2d 162, 172, 289 N.W.2d 823, 827–28 (1980) (acknowledging the State’s authority to limit the number of candidates on a ballot but holding that a candidate may use his full legal name on the ballot by which they are commonly known).

Wisconsin’s fusion ban meets that test and is aligned with Wisconsin’s precedent recognizing the state’s paramount interest in regulating elections. It neither prevents any voter from voting for the candidate of his or her choice nor prevents any party from endorsing whomever it wishes; it simply prevents a single candidate from appearing on the government-printed ballot more than once. *Timmons*, 520 U.S. at 363–66; Wis. Stat. §§ 8.03(1), 8.15(7).

B. The State’s interests easily outweigh any burden.

A recent New Jersey episode provides a pointed illustration of why this limited restriction serves the very interests Defendant has articulated, specifically regarding the risk of sham parties and voter confusion. (Dkt. 58 at 16-17.)

In June 2022, shortly before New Jersey’s nomination filing deadline, a newly incorporated entity called “Moderate Party Inc.” petitioned to nominate Democratic Party nominee Tom Malinowski as its own general-election nominee in his Congressional race against Thomas Kean Jr. See *In re Malinowski*, 332 A.3d at 759–60.

The Moderate Party’s board of trustees included a former Political Director of the New Jersey Democratic State Committee, and the Executive Director of the New Jersey Working

Families Party circulated the nominating petition. See Matt Friedman, *The Democratic, I Mean, 'Moderate Party'*, Politico (Oct. 14, 2022), <https://www.politico.com/newsletters/new-jersey-playbook/2022/10/14/the-democratic-i-mean-moderate-party-00061806> ("[W]hile the face of the Moderate Party is a Republican committeeman from Malinowski's hometown, I and my fellow New Jersey reporters have long made clear that it's in large part pushed by the left, if not the New Jersey Democratic establishment. So, the fact that it's funded by Democrats shouldn't be a surprise.").

In 2024, Thomas Kean, Jr., after being elected to Congress, ran against the aforementioned Executive Director of the Working Families Party, who circulated nomination petitions for the Moderate Party; but in 2024, she ran as the Democratic Party nominee. N.J. Div. of Elec., *2024 Elec. Results*, N.J. Div. of Elections, <https://www.nj.gov/state/elections/assets/pdf/election-results/2024/2024-official-general-results-us-house-district7.pdf> (last visited July 19, 2026).

And most recently, in July 2026, the Moderate Party terminated its New Jersey incorporation. N.J. Dep't of Treasury, Bus. Status Rep., Moderate Party, Inc. (Entity ID 0450820814), Div. of Rev. & Enter. Serv., *Entity Status Report Search*, <https://www.njportal.com/DOR/businessrecords/EntityDocs/BusinessCopies.aspx> (search "Entity ID" for entity number 0450820814) (last visited July 19, 2026). The agent listed on the Moderate Party's termination filing was a former political opponent of then-State Senator Thomas Kean, Jr. and ran against him in 2017 general election as the Democrat party nominee. *Id.*; N.J. Div. of Elections, *2017 Election Results*, <https://www.nj.gov/state/elections/assets/pdf/election-results/2017/2017-general-election-results-gen-assembly-state-senate-district-21.pdf> (last visited July 19, 2026).

In 2022, the New Jersey's Secretary of State properly rejected the Moderate Party's nominating petition under the state's anti-fusion voting provision. *In re Malinowski*, 332 A.3d at 760. The Moderate Party appealed, raising similar state constitutional claims at issue here. *Id.* The Appellate Division affirmed the administrative ruling, holding that New Jersey's anti-fusion statute advances "important election-regulatory interests," including "preventing ballot manipulation, political gamesmanship, voter confusion, and decreased voter choice, maintaining voter confidence in party accountability, and maintaining the stability of the political system." *Id.* at 769.

Importantly, New Jersey's fusion ban did not infringe the Moderate Party's, its organizers', or its allies' rights to advocate for their preferred candidate. In 2022, they established a federal Super PAC called "Moderate Party Independent Fund," and received a single \$500,000 contribution from House Majority PAC, an entity dedicated to "protecting the Democratic House majority." See David Wildstein, *N.J. Moderate Party Funded by Pelosi Super PAC*, N.J. Globe (Oct. 13, 2022), <https://newjerseyglobe.com/congress/n-j-moderate-party-funded-by-pelosi-super-pac> (last visited July 19, 2026). With that funding, the federal Super PAC fund spent \$378,947 in independent expenditures supporting Malinowski's candidacy. See also Fed. Election Comm'n, *Moderate Party Independent Fund Spending 07/01/2022 to 12/31/2022*, <https://www.fec.gov/data/committee/C00822379/?cycle=2022#total-spent> (last visited July 19, 2026).

Like the Moderate Party in New Jersey, Plaintiffs and other minor parties are free to exercise their constitutional rights to support, promote, or associate with whatever candidate they wish. But Plaintiffs cannot overturn longstanding precedent by asserting a right to list a candidate already on the ballot a second time under a different party label.

What happened with the New Jersey Moderate Party in the 2022 election is settled. But this illustrates Wisconsin's interest in reasonable ballot regulations and the need for an electoral system that promotes clarity and stability and that resists political gamesmanship on the ballot. Wisconsin's fusion voting ban does this.

This is precisely what *Timmons* identified as a legitimate legislative concern: that "a candidate or party could easily exploit fusion as a way of associating his or its name with popular slogans" and that minor parties might be used to "capitalize on the popularity of another party's candidate, rather than on their own appeal to the voters." *Timmons*, 520 U.S. at 364–66. It also directly tests the hypothetical on which Plaintiffs' own summary judgment brief relies: a "novel moderate party" that would cross-nominate major-party candidates and direct its supporters through values-based ballot messaging. (Dkt. 24 at 1-2.)

New Jersey shows how such an entity can be organized within days — by operatives affiliated with an existing major party and financed by that party's national allies. The result is the appearance of independent, cross-partisan support where none genuinely exists.

A state legislature need not wait for such a scheme before guarding its electoral system. Wisconsin is entitled to enact reasonable rules to foreclose these risks. And like most other states, Wisconsin has done that for over a century.

CONCLUSION

Wisconsin's fusion ban reflects a durable, bipartisan judgment shared by most state legislatures for more than a century. The rationale behind this judgment is corroborated by the contemporaneous public record and, more recently, by New Jersey's experience with what appears to be an apparent sham party designed to manipulate the ballot and thus the electoral process by partisan opponents.

For these reasons, and for those outlined in WEC's briefing, this Court should grant summary judgment in favor of Defendant Wisconsin Elections Commission and deny Plaintiffs' motion for summary judgment.

Dated this 21st day of July, 2026.

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