

FILED
08-07-2026
CIRCUIT COURT
DANE COUNTY, WI
2025CV001438

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 12

UNITED WISCONSIN, *et al.*,

Plaintiffs,

V.

Case No. 2025CV1438

WISCONSIN ELECTIONS COMMISSION,

Defendant.

DECLARATION OF SCOTT MCDONELL

I, Scott McDonell, hereby declare as follows:

1. I am an adult citizen of the United States. I am competent to testify in court and, if called to testify, would speak, from personal knowledge, my own experience, and my personal observations, consistent with the following:

2. I have served as the Dane County Clerk since 2013. Pursuant to Wis. Stat. § 59.23(2)(i), I am the chief election officer for Dane County. Pursuant to Wis. Stat. § 7.60(2), as County Clerk, I also serve as the Chair of the Dane County Board of Canvassers. That board reviews and certifies election returns from all municipalities located in Dane County and conducts any statutorily required recounts. I have overseen two county-wide presidential recounts.

3. Prior to serving as County Clerk, I was an elected supervisor on the Dane County Board of Supervisors for 17 years and served as County Board Chair for 8 years.

4. I have a bachelor's degree in political science from the University of Wisconsin – Madison.

5. As County Clerk, my duties include designing the ballots used in every municipality in Dane County for elections that include candidates for county, state, or federal office.

6. I am familiar with the concept of fusion voting and how it is used in other states.

7. I have reviewed the Declaration of Robert Kehoe (“Kehoe Decl.”) and Defendant’s Combined Brief in Support of Motion for Summary Judgment and in Response to Plaintiffs’ Motion for Summary Judgment (“WEC Br.”), both filed on June 15, 2026, in this case. These documents overstate the logistical challenges of implementing fusion voting in Wisconsin were the Court to find that the statutory ban on cross-nominations violates the Wisconsin Constitution.

8. I have also reviewed the Declaration of Dr. Barry Burden dated April 10, 2026, and the expert reports attached as exhibits to that declaration. Based upon my experience, I agree with the opinions and conclusions of Dr. Burden.

9. Mr. Kehoe expresses concern about the ways in which implementing fusion voting would “create gaps in Wisconsin’s existing statutory and regulatory election law framework.” (Kehoe Decl., ¶4) Based upon my experience, it is my opinion that this concern is overstated. Wisconsin’s existing statutory and regulatory election law framework is full of gaps, none of which foreclose us holding free, full, and fair elections.

10. Mr. Kehoe also expresses concern that “Wisconsin’s voting equipment and technology may be incompatible with fusion voting.” (Kehoe Decl. at 11) Based on my experience, this is not correct for several reasons, including the following:

- a. In Dane County, as in the rest of the state, all electronic voting machines used are certified by WEC.

- b. Every model of voting machines approved for use in Wisconsin is also approved for use in New York and Connecticut, where those machines handle elections that feature disaggregated fusion voting. (In New York City, the voting machines accommodate ranked-choice voting for primary elections and fusion voting for general elections.)
- c. Dr. Burden looked at this issue in detail and reached conclusions that align with my experience.

11. Relatedly, WEC Chair Don Millis has publicly asserted that reintroducing fusion would require that “every piece of voting equipment we have in the state would have to be programmed and recertified.”¹ This echoes Mr. Kehoe’s statement that “implementation [of fusion] *may* necessitate the re-certification of existing equipment and software, or the certification and testing of new equipment and software” such that “[e]very existing type of voting equipment would need to be submitted for recertification before [WEC].” (Kehoe Decl., ¶30 (emphasis added)) In my opinion this, too, is overstated for the following reasons:

- a. Before every Wisconsin election, clerks around the state update the software on our election machines, check the settings are properly optimized for the ballots we are using, and then test those machines to ensure they are functioning properly.
- b. Reimplementing fusion voting would require changing some of the settings in our election software, but that is neither a particularly heavy lift nor something that would in and of itself require more testing than is already undertaken before each and every election.

¹ Kyle Jones, *Two parties, one candidate: Lawsuit challenges Wisconsin’s fusion voting ban*, Channel3000 (June 19, 2026), available at https://www.channel3000.com/news/two-parties-one-candidate-lawsuit-challenges-wisconsins-fusion-voting-ban/article_8c36eacf-ed7f-4460-8392-1fae17e2e33f.html.

12. As I understand the court documents, the Plaintiffs in this action are expressly seeking disaggregated fusion voting and argue that lesser remedies (including aggregated fusion) would not vindicate their constitutional rights.

13. Based on my experience, I do not believe that disaggregated fusion voting would create undue ballot clutter or increase voter confusion. New York and Connecticut both use disaggregated fusion voting without significant reports of confusion or other problems. In my opinion, Wisconsin voters are no less intelligent, sophisticated, or diligent than voters in those states, and I have no reason to think that today's voters are less intelligent, sophisticated, or diligent than Wisconsin voters in the late-nineteenth century, who used fusion ballots.

14. Any change to election processes requires some degree of public education. During the 13 years that I have served as Dane County Clerk, there have been changes to election laws that have required explanation and public education. In my opinion, reintroducing fusion voting in Wisconsin would be no different and would not pose an exceptional problem.

15. WEC's concerns about ballot status are without merit. Disaggregated fusion voting would not itself increase the number of parties that qualify for ballot status. The only way that disaggregated fusion would lead to more parties meeting the thresholds for ballot status would be if those parties attracted significant public support, as measured by votes for the candidates they nominated. If voters want to cast their votes for minor parties, that is not an administrative inconvenience, much less a problem, so much as it is democracy at work.

16. As Dane County Clerk, I serve as the filing officer for a variety of elections for offices within Dane County. In that capacity, I accept and review nomination papers submitted by candidates who wish to be included on that ballot as candidates in those elections. Filing clerks, including myself, are tasked with assessing the completeness and validity of nominating papers

submitted to us. In my experience, this is not a problem, and each filing officer has the ability and the duty to construe Wisconsin law and determine whether the nomination papers submitted to us qualify the candidates for ballot status.

17. Mr. Kehoe expresses concern that “if Wis. Stat. §§ 8.03(1) and 8.15(7) were invalidated, there would be no statutory prohibition on candidates who do not receive the greatest number of votes at their party’s primary from appearing on the General Election ballot anyways as independent or third-party candidates.” (Kehoe Decl., ¶13) This “sore loser” scenario is illusory because Wisconsin law already addresses the issue:

- a. Under Wis. Stat. § 8.20(8), nominations for independent (or third-party) candidates are generally due by 4:30 p.m. on June 1 preceding the partisan primary. (In certain circumstances that do not change the analysis here, there can be a 72-hour extension.)
- b. Because such nominations are due at the same time as nominations for the partisan primary, months before that primary, there is no mechanism under Wisconsin law for a candidate who loses a major-party primary to then get added to the ballot as a minor-party candidate; for this reason, the “sore loser” concern does not apply.

18. WEC argues that disaggregated fusion voting would likely increase the risk of overvoted ballots. (WEC Br. at 40) Once again this claim is overstated. Mr. Kehoe states correctly “a ballot with overvotes is considered invalid and therefore not counted.” (Kehoe Decl., ¶21) But, in practice the likelihood of an invalidated ballot is not so great, for several reasons:

- a. For a ballot cast in person—whether on Election Day or at in-person absentee voting—the electronic voting machine immediately notifies the voter of an overvote and requires the voter to fix it. This is true as a practical matter of how the

machines work and will remain true because this functionality is required by both state and federal law.

- b. For mail-in absentee ballots that have an overvote in one or more races, the statutes prescribe a process for the ballot to be remade so that the votes on that ballot are still counted in every race where the ballot does not contain an overvote.
- c. Moreover, to the extent that election officials can clearly discern the intent of the voter such that an apparent overvote can be resolved, the vote, even in that race, is to be counted as part of remaking the ballot.

19. With or without fusion voting, in instances where a mail-in absentee voter appears to have marked their ballot for more candidates than they are allowed to vote for, that is an overvote and, absent a clear indication that the apparent overvote is a reversible error so that election officials can remake the ballot to effectuate the voter's clear intent, that voter's preference in that particular race cannot be counted.

20. In states that use disaggregated fusion voting, candidates' names can appear on the ballot multiple times for the same office if they are cross-nominated by multiple parties.

- a. As Dr. Burden has explained, states that use disaggregated fusion voting have various approaches to dealing with situations where a voter marks their ballot more than once for the same candidate.
- b. This differs from a typical overvote, because the voter clearly intends to vote for the marked candidate and the only question is on which ballot line the vote for the candidate should be counted.
- c. If Wisconsin resumes using fusion voting, the Legislature can determine how to handle the situation where a voter marks their ballot more than once for the same

candidate. If the issue arises before the Legislature makes provision for counting such votes, then local election officials, canvass boards, WEC, and, if need be, state courts, will address that situation.

21. 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 6th day of August, 2026, at Madison, Wisconsin.

/s/ Electronically Signed by Scott McDonell
Scott McDonell