

FILED
08-07-2026
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.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S PROPOSED FINDINGS OF FACT IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

A. Relevant Background

1. Fusion voting is a system in which multiple parties may nominate the same candidate and these multiple nominations are reflected on the ballot. (Lodahl Decl. Ex. A:5 (“Atkinson-Tahk Rep.”).)

Plaintiffs' Response: Plaintiffs object to the term “system” as vague and unclear. To the extent that fusion voting allows multiple parties to nominate the same candidate and the ballot to reflect those multiple nominations, no dispute.

2. Fusion voting may be employed with either an aggregated or disaggregated ballot arrangement. (Atkinson-Tahk Rep. at 6); Kehoe Decl. ¶ 6.)

Plaintiffs' Response: Plaintiffs do not dispute that “aggregated” fusion voting has been employed in certain states, but Plaintiffs here seek only disaggregated fusion and have defined “fusion voting” as such. (See, e.g., Dkt. 2 at 5, 13 (Complaint ¶¶3, 34))

3. In aggregated fusion voting, each candidate appears once on the ballot but may have more than one party printed below their name. (*Id.*)

Plaintiffs' Response: Undisputed.

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.*)

Plaintiffs' Response: Undisputed.

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”).)

Plaintiffs' Response: Plaintiffs object that the terms “currently employed” are vague and unclear. To the extent that “currently employed” means “frequently used,” Plaintiffs do not dispute this proposed fact. Plaintiffs note that disaggregated fusion is also currently legal, and sometimes used, in Mississippi. (Dkt. 26 at 22 (Burden rebuttal at 7))

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.)

Plaintiffs' Response: Plaintiffs dispute Defendant’s conclusions that Wisconsin’s anti-fusion laws sought to “reform the electoral system ... as part of a broader shift toward state-administered elections” and that the election reforms enacted in the late-1800s required or in any way caused Wisconsin’s ban on fusion voting. In fact, the historical record demonstrates that state anti-fusion laws were primarily adopted by Republican-run legislatures—and signed into law by Republican governors—over a several-year period, and that they were widely understood to disadvantage minor parties and the Democratic Party, which had relied far more frequently on fusion in the nineteenth century. (*See* Dkt. 27 at 9, 25–34, 36 (Disch rep. at 6, 22–31, 33); Dkt. 27 at 60, 62, 64–67, 70 (Disch rebuttal at 15, 17, 19–22, 25); Dkt. 28 at 21–22 (Drutman rep. at 18–19)) Subject to the foregoing, Plaintiffs do not dispute that Wisconsin’s ban on fusion voting was enacted in the late-nineteenth century, near in time, although largely separate from, other efforts to reform the electoral system. Otherwise, Plaintiffs dispute.

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

Plaintiffs' Response: Plaintiffs object to the term “standardized,” as Australian-style ballot reforms were implemented somewhat differently in each state. Subject to that

objection and to the extent that “standardized” means standard only across the State of Wisconsin, undisputed.

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.)

Plaintiffs’ Response: Plaintiffs clarify that Wisconsin, since its founding, required voting by ballot and not by voice. Wis. Const. art. III, § 3 (1848). Plaintiffs object to the extent that the form voting took in states other than Wisconsin is irrelevant to their claims here. Otherwise, undisputed.

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.*)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, including as to the clause “voters were provided with their own ballots” and as to the term “introduction.” Subject to the foregoing objection, Plaintiffs do not dispute that, prior to the enactment of the Australian-style ballot reform statutes in Wisconsin, the State did not provide voters with ballots, and often the political parties provided voters with ballots.

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.)

Plaintiffs’ Response: Plaintiffs object to the term “facilitated” to the extent that it implies a deliberate effort to invite certain undesirable conduct. To the extent that “facilitated” means “made possible,” Plaintiffs do not dispute this proposed fact.

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.)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact to the extent its cited evidentiary authority offers no Wisconsin-based evidence or examples, though such dispute is immaterial for purposes of summary judgment.

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.*)

Plaintiffs' Response: Undisputed.

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.)

Plaintiffs' Response: Undisputed.

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.)

Plaintiffs' Response: Undisputed, except to the extent that Defendant implies that bans on fusion voting were adopted as a routine matter of election administration or necessary feature of a state-printed ballot. If this is the implication, Plaintiffs dispute this assertion and note that Defendant does not dispute Plaintiffs' Proposed Fact Number 37, which states that "Australian electoral reform does not require the prohibition of fusion." (Dkt. 95 ¶37) Plaintiffs assert that the historical record demonstrates state anti-fusion laws were primarily adopted by Republican-run legislatures—and signed into law by Republican governors—over a several-year period and were widely understood to disadvantage minor parties and the Democratic Party, which had relied far more frequently on fusion in the nineteenth century. (*See* Dkt 27 at 9, 25–34, 36 (Disch rep. at 6, 22–31, 33); Dkt. 27 at 60, 62, 64–67, 70 (Disch rebuttal at 15, 17, 19–22, 25); Dkt. 28 at 21–22 (Drutman rep. at 18–19)) Plaintiffs further assert that Wisconsin differed from other states that adopted fusion bans because Wisconsin, uniquely, had a statute expressly authorizing fusion voting. (Dkt. 27 at 69–70 (Disch rebuttal at 24–25)) Subject to the foregoing, Plaintiffs do not dispute that Wisconsin enacted a ban on fusion voting that operated by prohibiting any candidate from appearing on the ballot as the nominee of more than one party.

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

Plaintiffs' Response: Plaintiffs clarify that the legislation referred to in this proposed fact does not adopt a ballot identical to that adopted in Australia. To the extent that Defendants mean that Wisconsin adopted a ballot styled after the Australian ballot reforms of the time, as described in the proffered citation, Plaintiffs do not dispute this proposed fact.

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

Plaintiffs' Response: Plaintiffs dispute this proposed fact insofar as it omits critical context; namely, that the legislation in 1897 repealed existing law expressly protecting fusion voting. Otherwise, no dispute.

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.)

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed, although Plaintiffs clarify that, within this same period, Wisconsin uniquely adopted legislation expressly protecting fusion voting. (Dkt. 27 at 69–70 (Disch rebuttal at 24–25))

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact on the basis that it is not supported by the cited evidence. Plaintiffs dispute this proposed fact insofar as it suggests that legislators and citizens unanimously supported banning fusion (*see, e.g.*, Dkt. 25 at 100 (Atkinson-Tahk rep. at 61) (referring to debate over and opposition to statutory bans on fusion voting)) and to the extent that the debate over fusion voting was not highly partisan (*see also* Dkt. 27 at 48, 61–62 (Disch rebuttal at 2, 16–17)). Plaintiffs also dispute that Wisconsin's measure was “publicly supported” by such claims prior to passage, as the measure received no notice until afterwards, and even then, was received, even among newspapers aligned with the Republican Party, with an acute awareness that the law would immediately disadvantage minor parties and the Democratic Party that often fused with them. (*See* Dkt. 27 at 33–37 (Disch rep. at 30–34); Dkt. 27 at 59–67, 70 (Disch rebuttal at 14–22, 25))

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.)

Plaintiffs’ Response: Undisputed as to the content of the cited article, the language of which was also quoted in Professor Disch’s report at 33 (Dkt. 27 at 36).

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as it constitutes a characterization of fact, rather than a fact itself. Further, subject to the foregoing objection, this fact is disputed. Plaintiffs’ expert, Professor Disch, relies on a rigorous academic and historical methodology (Dkt. 27 at 35–37 (Disch rep. at 32–34)) as the foundation for her conclusion that “the abolition of fusion voting ... was motivated by partisan animus and a desire to impair the operations of political parties that sought to challenge the Republican Party for power in Wisconsin.” (Dkt. 27 at 48 (Disch rebuttal at 2); *see also* Dkt. 27 at 61–62 (Disch rebuttal at 16–17)) By contrast, Defendant’s experts offer a competing conclusion based on an “insufficiently rigorous ... approach to the historical record and the rich academic literature,” “ignor[ing] areas of historical consensus.” (Dkt. 27 at 47–48 (Disch rebuttal at 2–3)); *see also* Plaintiffs’ response to paragraph 19, *supra*)

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.)

Plaintiffs’ Response: Plaintiffs object insofar as this proposed fact asserts a legal conclusion rather than a factual one. Subject to and without waiving this objection, Plaintiffs dispute the proposed fact for the reasons stated in Dkt. 24 at 24–25.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as it constitutes a characterization of fact, rather than a fact itself. Plaintiffs further object to this proposed fact as expressly speculative and hypothetical ("could plausibly"). Further, subject to the foregoing objections, Plaintiffs dispute this proposed fact. Plaintiffs' expert, Dr. Burden, offers substantial evidence that fusion does not cause and is not likely to cause meaningful misunderstanding or "distraction." (*See* Dkt. 26 at 27–28 (Burden rebuttal at 12–13)) Another of Plaintiffs' experts, Dr. Drutman, likewise demonstrates that this is not a realistic concern. (*See* Dkt. 28 at 25–27 (Drutman rep. at 22–24); Dkt. 28 at 33–37 (Drutman rebuttal at 3–7))

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as it constitutes a characterization of fact, rather than a fact itself. Plaintiffs further object to this proposed fact as speculative and hypothetical ("can lead to"). Further, subject to the foregoing objections, Plaintiffs dispute this "fact." As Plaintiffs' expert, Dr. Burden, points out, Defendant's evidentiary support for this point—its sole expert report—is "unreliably overdependent on the peculiar experiences of New York." (Dkt. 26 at 17 (Burden rebuttal at 2); *see also* Dkt. 26 at 25 (Burden rebuttal at 10))

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

Plaintiffs' Response: Plaintiffs dispute this proposed fact. As Plaintiffs' experts demonstrate, the evidence strongly supports the conclusion that "confusion among voters about fusion candidacies is likely to be modest, to reduce over time with repeated use, and not to be consequential for generating voter errors." (Dkt. 26 at 4 (Burden rep. at 1); *see also* Dkt. 26 at 10–14 (Burden rep. at 7–11); Dkt. 26 at 19–20, 27–28 (Burden rebuttal at 4–5, 12–13)) Another of Plaintiffs' experts, Dr. Drutman, likewise demonstrates that this is not a realistic concern. (*See* Dkt. 28 at 25–27 (Drutman rep. at 22–24); Dkt. 28 at 33–37 (Drutman rebuttal at 3–7))

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as speculative and hypothetical. Further, subject to the foregoing objections, Plaintiffs dispute this proposed fact. As Plaintiffs' expert, Dr. Burden, points out, Wisconsin law already invites this possibility, yet Defendant's concern has not meaningfully materialized here (Dkt. 26 at 26 (Burden rebuttal at 11)), and there are ways to manage this problem should abuse occur (Dkt. 26 at 26 (Burden rebuttal at 11 (noting that striking

only the first two sentences of Wis. Stat. § 8.15(7) but leaving intact the third and/or increasing the number of signatures required for ballot access may address this concern))) without the constitutional violations that Wisconsin's fusion ban imposes. Plaintiffs further note Defendant's experts fail to cite any examples from Mississippi, where disaggregated fusion is legal; South Carolina, where disaggregated fusion was legal until recently; or any state with aggregated fusion. (*See* Dkt. 26 at 22 (Burden rebuttal at 7))

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.)

Plaintiffs' Response: Plaintiffs do not dispute that candidates in New York elections have run under such party names. However, Plaintiffs dispute that this has been a problem. As Plaintiffs' expert, Dr. Drutman, recounts, "*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 ... 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." (Dkt. 28 at 42 (Drutman rebuttal at 12)) Plaintiffs also dispute the proposed fact to the extent it suggests that such abuse is likely to meaningfully occur in Wisconsin, for which there is no evidence, notwithstanding that Wisconsin's current ballot-access laws allow this practice, as noted in response to paragraph 26, *supra*. *See also* Wis. Stat. §§ 5.62(b)1., (2)(a); *id.* §§ 8.17, 11.0303, 11.0402 (examples of barriers to party formation in Wisconsin). Regardless, any dispute as to this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact on the basis that it is vague and unclear, including as to the terms "allowing," "highlight," "cluttered," and "exacerbate." Subject to the foregoing objections, Plaintiffs dispute this proposed fact to the extent it suggests that there are meaningful voter-confusion concerns related to fusion voting in Wisconsin or elsewhere. The record strongly rebuts such a suggestion. (*See, e.g.*, Dkt. 26 at 4 (Burden rep. at 1); *see also* Dkt. 26 at 10–14 (Burden rep. at 7–11); Dkt. 26 at 19–20, 27–28 (Burden rebuttal at 4–5, 12–13); Dkt. 28 at 25 (Drutman rep. at 22); Dkt. 28 at 33–37, 41–42, 50–54 (Drutman rebuttal at 3–7, 11–12, 20–24))

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.*)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as speculative and hypothetical (“could try”) and also because the report cited does not offer a single supporting citation or any meaningful discussion in support of this claim. Plaintiffs also object to this proposed fact as irrelevant, as it has no bearing on fusion voting, the subject of this litigation. Subject to the foregoing objections, Plaintiffs dispute this proposed fact as assuming without evidentiary basis that Wisconsin does not already have “high barriers to party formation.” *But see, e.g.,* Wis. Stat. §§ 8.17, 11.0303, 11.0402. Regardless, such dispute is immaterial for purposes of summary judgment.

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.)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact to the extent “immediate legal default” refers to the laws that would be in place by the time of the next election under which a fusion regime would be in place—whether the Legislature and Defendant will dutifully, timely implement a ruling by this Court in Plaintiffs’ favor is speculative. Regardless, such dispute is immaterial for the purposes of summary judgment.

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

Plaintiffs’ Response: Plaintiffs dispute this proposed fact to the extent that candidates must meet certain statutory requirements to enter a party primary. Plaintiffs otherwise do not dispute, though Plaintiffs note that the proposed fact is immaterial for the purposes of summary judgment.

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

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, including as to the terms “history,” “erode,” “integrity, and “allowing.” Plaintiffs dispute this proposed fact, as the cited support lacks evidentiary basis for its conclusion. Defendant’s experts provide a few examples, all from California in the early- to mid-twentieth century, in which candidates won the nomination for both major parties. But they provide no support for the conclusion that such cross-nominations “eroded” the major political parties in California (or anywhere else). Plaintiffs further dispute this proposed fact because the cited evidence does not support the conclusion that “raiding,” or hostile takeovers, actually occurred in California, much less anywhere else, as opposed to the few examples highlighting

temporary episodes of bipartisan support for exceptional candidates. Plaintiffs further dispute this fact to the extent that the cited material does not support the concept that open cross-filing is what opens the door to “raiding,” given that Wisconsin’s open primary system and nonpartisan voter registration already permit such skullduggery, demonstrating that this is not a legitimate or real policy interest of Wisconsin government.

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.)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact as to the characterization that this happened “routinely.” Plaintiffs do not dispute that Defendant’s expert report identifies three instances, when California allowed open cross-filing, of major-party candidates running in their opponents’ primaries.

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.*)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact as to the characterization that this happened “often.” Plaintiffs do not dispute that Defendant’s expert report identifies three instances, when California allowed open cross-filing, of major-party candidates running in their opponents’ primaries.

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.)

Plaintiffs’ Response: Undisputed that Earl Warren and Richard Nixon, both of whom were popular politicians who succeeded both in California and on the national stage, each once succeeded in winning both major party primaries.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as speculative and hypothetical (“could try”). Further, subject to the foregoing objections, Plaintiffs

dispute this proposed fact. As Plaintiffs' expert, Dr. Burden, points out, there is little reason to think that Wisconsin's elections will resemble New York's elections merely by reimplementing fusion voting. (Dkt. 26 at 21–23 (Burden rebuttal at 6–8)) Further, the cited material does not support the claim for which Defendant uses it. While Defendant's experts say that New York's so-called "Wilson-Pakula" system has "laid the groundwork for [multiple] instances of political corruption," they rely on a single example, which did not include any minor parties and was immediately detected and prosecuted. (Dkt. 25 at 53 (Atkinson-Tahk rep. at 14) (citing Luca Marzorati, *Former State Senator Malcolm Smith Sentenced to 7 Years*, POLITICO (July 1, 2015))) Likewise, the risk the Atkinson-Tahk report notes of party power becoming "centralize[d] in the hands of party activists and leaders rather than the rank-and-file electorate" (Dkt. 25 at 53 (Atkinson-Tahk rep. at 14)) This is not a valid concern: the U.S. Supreme Court has rejected the argument that a system in which party leaders and activists control the primary-selection process is constitutionally problematic. *See N.Y. State Bd. of Elections v. Lopez*, 552 U.S. 196, 202–03, 205 (2008) ("None of our cases establishes an individual's constitutional right to have a 'fair shot' at winning the party's nomination."). Regardless, this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs' Response: Undisputed, though this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs' Response: Plaintiffs dispute that any such centralization of power or instances of political corruption can be causally attributed to the "Wilson-Pakula system." Further, the cited material does not support the claim for which Defendant uses it. While Defendant's experts say that New York's so-called "Wilson-Pakula system" has "laid the groundwork for [multiple] instances of political corruption," they rely on a single example, which did not include any minor parties and was immediately detected and prosecuted. (Dkt. 25 at 53 (Atkinson-Tahk rep. at 14) (citing Luca Marzorati, *Former State Senator Malcolm Smith Sentenced to 7 Years*, POLITICO (July 1, 2015))) Likewise, the risk the Atkinson-Tahk report notes of party power becoming "centralize[d] in the hands of party activists and leaders rather than

the rank-and-file electorate” (Dkt. 25 at 53 (Atkinson-Tahk rep. at 14)) is not a valid concern: the U.S. Supreme Court has rejected the argument that a system in which party leaders and activists control the primary-selection process is constitutionally problematic. *See N.Y. State Bd. of Elections v. Lopez*, 552 U.S. 196, 202–03, 205 (2008) (“None of our cases establishes an individual’s constitutional right to have a ‘fair shot’ at winning the party’s nomination.”). Regardless, this proposed fact is immaterial for purposes of summary judgment.

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.

Plaintiffs’ Response: Undisputed, though this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs’ Response: Undisputed, though this proposed fact is immaterial for purposes of summary judgment.

41. This system poses difficulties with the mechanics of fusion voting nominations.

(*Id.*)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact to the extent it suggests that fusion voting is incompatible with open primaries. Regardless, this proposed fact is immaterial for purposes of summary judgment.

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

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, and, as such, Plaintiffs are unable to respond. Subject to and without waiving the foregoing objections, this fact is disputed. The Court may take notice of the fact that political parties are distinct entities that choose who to support for various electoral positions through procedures consistent with their internal rules and governing state election law (which, in practice, usually means through primary elections, caucuses, or state conventions).

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as speculative and hypothetical. Further, subject to the foregoing objections, Plaintiffs dispute this proposed fact to the extent it suggests that there is meaningful risk of “hostile takeovers” in Wisconsin were fusion voting to be reimplemented, though this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as irrelevant; fusion voting is distinct from the “risk of party capture,” which is a function of an open primary process like Wisconsin. Plaintiffs also dispute this proposed fact because the cited material makes the cited claim without examples that any party’s nomination has been “seized” contrary to membership’s wishes due to members of a major party infiltrating and participating in a minor party’s primary under an open primary system. This problem simply does not exist in any demonstrable form justified with evidence. Plaintiffs also dispute this proposed fact because it is based on a set of flawed assumptions, including that (1) the major party would not, itself, have a contested primary election drawing its members attention, (2) the minor party would not have sufficient turnout of its own membership to overcome any attempt at raiding, and (3) as to congressional, state legislative, and municipal elections, the major party would actually have sufficient membership in a given area—and have the time and energy available—to organize accordingly. This scenario is a remote, implausible possibility in reality, one which Defendant has provided no evidence has occurred in reality as between major and minor parties, including in any of the states which still allow fusion voting in any form.

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.)

Plaintiffs’ Response: Plaintiffs dispute that these “three choices” are the *only* choices the State would have were fusion voting to be reimplemented in Wisconsin, and for

the reasons noted in response to Proposed Fact Number 44, dispute that the “raiding problem” is either real or a function of fusion voting. Otherwise, Plaintiffs do not dispute.

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.)

Plaintiffs’ Response: Undisputed.

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.*)

Plaintiffs’ Response: Plaintiffs dispute this proposed fact. Candidates who lose a partisan primary can still run a campaign as a write-in candidate. (See Dkt. 26 at 26–27 (Burden rebuttal at 11–12))

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

Plaintiffs’ Response: Plaintiffs dispute this proposed fact and incorporate their response to Proposed Fact Number 47, *supra*. Plaintiffs also dispute this proposed fact because it comes from Defendant’s experts’ report without supporting citation or evidence beyond their say-so. Plaintiffs also dispute this proposed fact because, as Defendant’s experts point out on the same page of their report, neither New York nor Connecticut has a “sore loser” law in place (Dkt. 25 at 72 (Atkinson-Tahk rep. at 33))—yet Atkinson and Tahk identify no problems with political instability, voter confusion, or spoiler problems in those States, but instead simply speculate. Regardless, this proposed fact is not material for summary judgment purposes.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as speculative and hypothetical (“could”). Plaintiffs also dispute this proposed fact. As demonstrated by Plaintiffs’ expert, Dr. Burden, fusion is unlikely to result in a “chaotic new paradigm,” especially as Wisconsin law “allowing for ‘sore loser’ write-in candidates has not created ‘chaos’ in Wisconsin.” (Dkt. 26 at 27 (Burden rebuttal at 12)) Plaintiffs likewise dispute this proposed fact because Defendant’s experts do not identify what “chaos” would ensue or provide a single supporting citation or example of such chaos from jurisdictions with unrestricted “sore loser” filings, but instead simply speculate.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as speculative and hypothetical (“could increase”). Further, subject to the foregoing objections, Plaintiffs dispute this proposed fact. As demonstrated by Plaintiffs’ expert, Dr. Drutman, the evidence suggests the opposite—that fusion voting has a moderating, rather than polarizing, effect by offering more leverage to moderate or centrist parties than to flank parties. (*See* Dkt. 28 at 32–34, 37–40 (Drutman rebuttal at 2–4, 7–10)) Plaintiffs also dispute this assertion as Dr. Drutman shows that ideological leanings tend to be guided by other factors, such as regional dispositions. (Dkt. 28 at 37–40 (Drutman rebuttal at 7–10)) Plaintiffs further dispute the proposed fact to the extent its evidentiary basis relies on data from New York without accounting for the myriad differences between New York and Wisconsin.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, including as to the highly subjective terms “strong,” “coordinate,” “discipline,” and “broad.” Subject to those objections, Plaintiffs dispute this proposed fact. As demonstrated by Plaintiffs’ expert, Dr. Drutman, the evidence suggests that even the major parties’ platforms are not consistently coherent to voters. (Dkt. 28 at 41–42 (Drutman rebuttal at 11–12)) Further, Plaintiffs dispute that the major parties, to the

extent that is what is meant by “strong political parties,” appropriately or even often discipline officeholders. Consider, for example, Democratic U.S. Senators Joe Lieberman and Joe Manchin each endorsing Republican presidential candidates and suffering no apparent sanction or consequences from their own party. *See* J. Taylor Rushing, *Renegade Lieberman works well with Obama*, THE HILL (June 17, 2009), available at <https://thehill.com/homenews/news/43447-renegade-lieberman-works-well-with-obama/>; Timothy Cama, *Manchin to keep Energy gavel after dumping Democratic Party*, E&E NEWS BY POLITICO (May 31, 2024), available at <https://www.eenews.net/articles/manchin-to-keep-energy-gavel-after-dumping-democratic-party/> (both last visited Aug. 7, 2026).

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

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, especially as to the terms “fluid brands” and “transactional coalitions,” and also object as it is hypothetical and speculative (“risks”). Plaintiffs are unable to respond beyond noting that their expert, Dr. Drutman, relays that “[c]ontemporary major parties encompass starkly incompatible positions” and that the “premise that major parties maintain coherent platforms is” demonstrably untrue. (Dkt. 28 at 41 (Drutman rebuttal at 11)) Subject to and without waiving the foregoing objections, this fact is disputed.

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

Plaintiffs’ Response: Plaintiffs reiterate and incorporate their response and objections to paragraph 52, *supra*.

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.)

Plaintiffs’ Response: Plaintiffs object that this proposed fact is a conclusion of law. Plaintiffs dispute this proposed fact as to the characterization of “immediately” and to the extent Defendant implies that it and the Legislature will be unable to dutifully, timely implement a ruling by this Court in Plaintiffs’ favor before an unspecified future election. Subject to that objection, Plaintiffs dispute this proposed fact. As Dane County Clerk Scott McDonnell testifies, “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.” (McDonell Decl., ¶9) Regardless, this proposed fact is immaterial for the purposes of summary judgment.

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.*)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Plaintiffs dispute this proposed fact as to the characterization of “significant,” and to the extent Defendant implies that it and the Legislature will be unable to dutifully, timely implement a ruling by this Court in Plaintiffs’ favor before an unspecified future election. Otherwise, Plaintiffs do not dispute to the extent that “Wisconsin’s existing statutory and regulatory election law framework is full of gaps, none of which foreclose us holding free, full, and fair elections.” (McDonell Decl., ¶9)

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.*)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, including as to the terms “need,” “gaps,” “implement,” and “choices.” Plaintiffs further object to this proposed fact as speculative and as offering a legal conclusion rather than any assertion of fact. Subject to those objections, Plaintiffs dispute this proposed fact and refer the Court to Wis. Stat. §§ 5.05(1)(f), 5.05(5t), and 7.08(1). Any dispute as to this proposed fact is immaterial for purposes of summary judgment.

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.)

Plaintiffs’ Response: Undisputed, though this proposed fact is immaterial for purposes of summary judgment.

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.*)

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact and refer the Court to Wis. Stat. §§ 5.05(1)(f), 5.05(5t), and 7.08(1). Further, Plaintiffs' claims require disaggregated fusion as a constitutional imperative, so any dispute as to this proposed fact is immaterial.

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

Plaintiffs' Response: Plaintiffs dispute the proposed fact to the extent that it suggests such a “choice” is triggered by their claims here, and object to this proposed fact as ambiguous in its use of the subjective term “significant.” Plaintiffs' claims require disaggregated fusion as a constitutional imperative, so any dispute as to this proposed fact is immaterial.

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.)

Plaintiffs' Response: Plaintiffs dispute the proposed fact to the extent that it asserts without evidentiary support that “disaggregated fusion would ‘maximize[] ballot clutter’ and thereby increase confusion risks.” As demonstrated by Plaintiffs' expert, Dr. Burden, reimplementing fusion voting in Wisconsin is not likely to result in meaningful voter confusion. (Dkt. 26 at 10–14 (Burden rep. at 7–11)) Another of Plaintiffs' experts, Dr. Drutman, likewise supports this conclusion. (Dkt. 28 at 23–27 (Drutman rep. at 20–24); Dkt. 28 at 33–37, 41–42 (Drutman rebuttal at 3–7, 11–12)) Plaintiffs do not dispute that aggregated fusion, though not an option here, risks obscuring the votes received on a specific party line.

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.)

Plaintiffs' Response: Plaintiffs dispute the proposed fact to the extent that it suggests such a “deci[sion]” can be triggered by their claims here. Plaintiffs' claims require disaggregated fusion as a constitutional imperative, so any dispute as to this proposed fact is immaterial.

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.*)

Plaintiffs’ Response: Plaintiffs dispute the proposed fact to the extent that it suggests such a “decision” can be triggered by their claims here. Plaintiffs’ claims require disaggregated fusion as a constitutional imperative, so any dispute as to this proposed fact is immaterial. Plaintiffs further dispute this proposed fact to the extent it suggests that the Wisconsin Constitution does not constitute “existing law” that WEC must follow.

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact. Under current Wisconsin law, candidates who seek election to partisan office appear on partisan primary ballots so long as the party they identify on their nomination papers has ballot status, regardless of how many candidates from the same party have filed nomination papers. *See* Wis. Stat. §§ 5.62, 8.15.

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).

Plaintiffs’ Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs do not dispute the proposed fact.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs do not dispute the proposed fact.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as (1) not supported by the cited material, (2) speculative and hypothetical (“likely”), and (3) offering a legal conclusion rather than an assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact to the extent it suggests that the Commission does not have the authority described. *See* Wis. Stat. §§ 5.05(1)(f), 5.05(5t), and 7.08(1).

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.

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact to the extent that it is *parties* that are granted “ballot status,” not candidates. Otherwise, undisputed.

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

Plaintiffs' Response: Undisputed.

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).

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs do

not dispute the proposed fact, other than to the extent that Wis. Stat. § 8.15(7) is not the proper citation here; § 8.16(7) is.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact on the basis that their claims do not seek aggregated fusion voting, and thus there is no "immediate question" raised by aggregated fusion. Plaintiffs dispute this proposed fact to the extent Defendant implies that it and the Legislature will not dutifully, timely implement a ruling by this Court in Plaintiffs' favor in time for an unspecified future election. Otherwise, Plaintiffs do not dispute that *if* aggregated fusion voting were to be adopted, such a question would be raised.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as not supported by the cited evidence. Subject to that objection, Plaintiffs dispute this proposed fact to the extent it suggests that fusion voting is likely to result in a "cluttered ballot." (See Dkt. 28 at 23–24 (Drutman rep. at 20–21)) Otherwise, undisputed as immaterial, as the number of parties that access the ballot is not relevant in this case, nor limited by existing law.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact to the extent Defendant implies that it and the Legislature will not dutifully, timely implement a ruling by this Court in Plaintiffs' favor in time

for an unspecified future election. Otherwise, Plaintiffs object that this proposed fact is immaterial to the legal questions in this case.

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

Plaintiffs' Response: Plaintiffs object to this proposed fact as vague and unclear, including as to what is meant by “this.” Plaintiffs further object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact to the extent Defendant implies that it and the Legislature will not dutifully, timely implement a ruling by this Court in Plaintiffs' favor in time for an unspecified future election.

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.)

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs do not dispute the proposed fact.

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

Plaintiffs' Response: Plaintiffs object to this proposed fact as offering a legal conclusion rather than any assertion of fact. Subject to that objection, Plaintiffs dispute this proposed fact. For in-person voters, federal and state law requires voting equipment and/or election officials to “notify the voter of any overvotes and provide an opportunity to correct or replace the ballot.” (Dkt. 26 at 13 (Burden rep. at 10)) For absentee voters, election workers are required to remake a voter's ballot if they can determine the will of the voter. ELECTION LAW & ADMINISTRATION IN WISCONSIN, WIS. ELECTIONS COMM'N, 126, 211–14 (1st ed. 2026).

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.)

Plaintiffs' Response: Plaintiffs object that this proposed fact constitutes a legal conclusion. Plaintiffs dispute this proposed fact to the extent that in both New York and Connecticut, a “disaggregated fusion ballot on which the same candidate is

selected multiple times” is considered an “overvote,” but both states have “established ways to accommodate this potential problem.” (Dkt. 26 at 13 (Burden rep. at 10); *see also* Dkt. 26 at 13–14 (Burden rep. at 10–11)) In fact, as Dr. Burden details,

This approach to overvotes is actually more accommodating of voter mistakes than in states where fusion is banned. In those states, including Wisconsin (§ 5.85[(2)](b)1.), when an absentee voter who mistakenly votes multiple times in a contest where only one candidate is to be elected, no vote is recorded for that race, and the voter is essentially disenfranchised in the contest in which the overvote was cast. On a fusion ballot, a voter who makes an error by selecting multiple candidates for an office will be treated the same way voters are treated today who overvote on non-fusion ballots, but voters who make an error of voting for the same candidate on multiple party lines can have their candidate choices retained under fusion. In sum, even if some voters are confused by the initial reintroduction of fusion, practices at both in person polling places and absentee voting will mitigate or entirely eliminate any overvoting errors that result.

(Dkt. 26 at 14 (Burden rep. at 11))

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, especially as to what “choices” Defendant refers to. Subject to that objection, Plaintiffs dispute this proposed fact to the extent that it characterizes such choices as “difficult” without any supporting evidence. Plaintiffs further dispute this proposed fact to the extent it suggests the Commission may not have authority to make such decisions. *See* Wis. Stat. §§ 5.05(1)(f), 5.05(5t), and 7.08(1).

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.)

Plaintiffs’ Response: Plaintiffs object to this proposed fact as vague and unclear, particularly as to what is meant by “the same kind of ballot status questions presented above.” Subject to that objection, Plaintiffs do not dispute that this question may arise but assert that it is not material for purposes of summary judgment.

Dated this 7th day of August 2026.

Respectfully submitted,

Electronically signed by Jeffrey A. Mandell

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