Expert Report

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I. INTRODUCTION

We have been asked to describe the mechanics and history of fusion voting, identify the state interests implicated by fusion bans, and evaluate the likely effects of re-legalizing fusion voting. We have also been asked to evaluate the expert reports of Dr. Lee Drutman, Dr. Lisa Disch, and Dr. Barry Burden.

The Complaint filed by United Wisconsin, supported by the reports of their designated experts, rests on a historical and theoretical narrative that characterizes the prohibition of fusion voting as a primary cause of modern political dysfunction. This narrative can be distilled into four core assertions: The Complaint and experts describe fusion voting as a foundational element of early Wisconsin politics that enabled major political shifts.[1] The Complaint and experts argue that the ban was a calculated move by the Republican Party to entrench its power.[2] The Complaint and accompanying expert reports characterize fusion as a historically proven mechanism that

[1]See for example Complaint at ¶ 2 ("Wisconsin was once a hotbed of pluralistic politics. During its pre- and early-statehood years, smaller, newer, and niche-issue political parties routinely acquired political influence through alliances with larger, better-established parties."); Complaint at ¶ 52 ("From statehood in 1848 until the end of the century, Wisconsin permitted fusion voting, and it once played a critical role in coalition-building, in the free association of disparate political constituencies, and in winning elections. In the late nineteenth century, when the major parties failed to address voters' concerns, the result was frequently that voters turned to third parties, both as an electoral option and as a way to educate, mobilize, and advance desired reforms.); and Disch Report at 5 ("Wisconsin politics remained a hotbed of robust competition, fueled by a continuation of multi-party coalitional activity that frequently took the form of fusion nominations").

[2]See for example Complaint at ¶ 9 ("In 1897, the (Republican-controlled) Wisconsin Legislature banned fusion voting in order to weaken the Democratic Party and to restrain the development of additional political parties."); Complaint at ¶ 13 ("the fusion voting ban was enacted to protect the party in power from fair competition and continues to serve that purpose."); and Disch Report at 2 ("Wisconsin's 1897 fusion ban, like that in other states, was motivated by partisan animus against challenger parties.").

would reinvigorate Wisconsin's democracy.[3] Finally, the Plaintiffs present fusion voting as a straightforward fix.[4]

Elsewhere, proponents of fusion have argued that re-legalizing fusion will improve democracy. Perhaps the clearest and most forceful articulation of this view comes from a recent open letter signed by over one hundred scholars of democracy (including all three of the Plaintiffs' experts).[5] The letter presents fusion not merely as a procedural tweak, but as a "historically proven" remedy for the specific ailments of our contemporary politics. Its revival, the signatories argue, would "reinvigorate our democracy by improving representation and accountability while strengthening voters' rights."[6]

Despite the certainty expressed in the Complaint and the expert reports, we find little to no evidence for these claims. Based on our analysis of the historical record, empirical evidence from states where fusion remains legal, and a rigorous theoretical examination of electoral incentives, we conclude that the Plaintiffs' arguments rely on a series of implausible assumptions. More critically, our analysis suggests that invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) would be unlikely to reduce polarization and would create a chaotic new regime for Wisconsin's elections.

The remainder of the report is organized as follows.

We begin in Section II with our affirmative report, which provides an independent analysis of the mechanics, history, and likely effects of fusion voting. We first examine the historical record, demonstrating that nineteenth-century "fusion" is an anachronism when compared to modern election law because it operated under a system of party-printed tickets before the adoption of state-administered ballots. We then turn to the modern practical application of fusion in New York, finding that it has failed to produce the centrist stability promised by advocates. We then detail the cascading administrative dilemmas that the state would face if forced to implement this system, including the unintended introduction of open cross-filing and the dismantling of Wisconsin's "sore loser" safeguards. Following this, we evaluate the theoretical incentives created by fusion

[3] See for example Complaint at ¶ 43 ("In states that prohibit fusion voting, political parties other than the Democratic and Republican Parties have little chance to wield influence in American elections beyond playing the role of spoiler."); Complaint at ¶ 49 ("The two-party system in Wisconsin and nationwide is stuck in this cycle, with the parties moving further apart ideologically, then taking more drastic measures to secure power, which in turn moves the parties further apart. Fewer liberal Republicans and conservative Democrats hold office than ever, including in Wisconsin."); Complaint at ¶ 51 ("Fusion voting provides a critical opportunity for third-party voters to associate with their preferred party while voting for candidates who have a genuine chance to succeed, and it offers a vital path for newer, smaller, or niche political parties to wield influence in a system that is dominated by the Democratic and Republican parties."); and Drutman Report at 2. ("[F]usion voting serves as a coalition-building mechanism that moderates rather than intensifies partisan conflict."). The logic of the Complaint rests on the premise that fusion voting is the specific structural remedy for these pathologies. Specifically, the Complaint assumes that fusion voting will provide the missing "vital path" (¶ 51) for (implicitly moderating) influence that disrupts the cycle of polarization

[4] The Complaint frames the reintroduction as a simple procedural fix: "Wisconsin's fusion voting ban—as embodied by Wis. Stats. §§ 8.03(1) and 8.15(7)", Complaint at ¶ 1. Also, "There is no historical evidence that voters were confused by the existence of fusion candidates. There is no evidence that voters found their ballots to be overly cluttered when candidates were listed multiple times under multiple parties' ballot lines. And there is no evidence that fusion voting was used in a way that undermined or realistically threatened to undermine a single election in state history." Complaint at ¶ 96.

[5] Scholars for Re-Legalizing Fusion Voting, *Open Letter from Scholars in Support of Re-Legalizing Fusion Voting* (July 11, 2024), https://medium.com/@scholarsforrelegalizingfusion/scholars-letter-in-support-of-re-legalizing-fusion-voting-72d405442720 (last visited Oct. 7, 2025).

[6] *Id.* However, despite the certainty of the letter, there is little to no evidence for the claims.

voting in Section, finding the moderation claims hypothesized by proponents to be structurally unsound. Finally, we identify the specific state interests implicated by fusion bans.

Following our overview of the affirmative report, we turn to the specific claims of the Plaintiffs' experts.

In Section III, we evaluate the report of Dr. Lee Drutman, who characterizes fusion as a "proven reform"[7] capable of generating "centripetal force"[8] to counter polarization. We find that Dr. Drutman's analysis relies on a false analogy between fusion voting and Proportional Representation. He does not demonstrate how fusion, which remains a winner-take-all system, overcomes the structural incentives of Wisconsin's elections. Furthermore, we rebut his assertions that fusion provides clear information cues to voters, that fusion ballots do not lead to confusion, and that pop-up parties do not proliferate.[9]

In Section IV, we respond to Dr. Lisa J. Disch, who identifies fusion as a "permitted practice"[10] since statehood and argues the 1897 ban was motivated by "partisan animus against challenger parties."[11] We show that Dr. Disch's report suffers from three significant analytical shortcomings. First, it omits important institutional and comparative context that would situate Wisconsin's 1897 legislation within a broader national reform movement. Second, it conflates distinct phenomena under the single label "fusion," eliding the difference between cross-party coalition-building generally and the specific institution of the fusion ballot. Third, and most critically, it draws a strong inference about legislative motive that we find the historical record cannot sustain.

In Section V, we evaluate the report of Dr. Barry Burden, whose report addresses two practical questions about reintroducing fusion voting in Wisconsin: whether existing voting equipment can accommodate fusion ballots, and whether voters would be confused by such ballots. To the extent this response takes issue with his report, it is not with the technical accuracy of his individual observations but with two significant gaps in his analysis. First, Dr. Burden does not adequately account for the interaction between ballot layout and fusion type. While the Plaintiffs seek disaggregated fusion, where a candidate's name appears multiple times, Wisconsin uses an office-block ballot layout. No state currently combines these two features, and the states Dr. Burden relies upon for evidence of feasibility use fundamentally different ballot configurations. Second, Dr. Burden's discussion of voter confusion focuses narrowly on errors in ballot marking while largely overlooking a more significant concern: confusion about the identities, ideologies, and platforms of the minor parties whose labels would appear on fusion ballots.

Overview of Opinions

Our high-level opinions are summarized as follows:

First, the historical narrative used to justify fusion voting is flawed. Advocates, including Plaintiff's expert Lisa Disch,[12] frequently cite the robust multi-party competition of the nineteenth century as evidence of fusion's efficacy. This comparison is anachronistic. The "fusion" of the nineteenth century operated under a system of party-printed tickets and public voting that bears

[7] Drutman Report at 26.
[8] Drutman Report at 20.
[9] Drutman Report at 20.
[10] Disch Report at 1.
[11] Disch Report at 2.
[12] *See* Disch Report.

little resemblance to the modern state-printed and secret ballot system. The legal bans on fusion enacted in the 1890s were part of a broader shift toward state-administered elections.

Second, the modern practice of fusion in New York, the principal laboratory for the reform, offers a cautionary tale rather than a model for success. In practice, fusion has not empowered a centrist "Center Party." Instead, the main primary minor parties in New York are ideological "flank" parties that seek to pull major-party candidates toward the extremes. Fusion voting in New York has also fostered a political culture of transactional bargaining and corruption around nominations, and has led to the proliferation of "sham" parties that serve as billboard-style slogans rather than genuine organizations.

Third, invalidating §§ 8.03(1) and 8.15(7) would trigger a series of structural administrative dilemmas for which there is no neutral solution. Striking down the current prohibitions would introduce "open cross-filing" (where candidates can run in multiple primaries) and dismantle Wisconsin's "sore loser" laws (where a candidate who loses in the primary cannot contest the general election). These changes would make Wisconsin a significant outlier in election administration. These changes would further create a larger set of dilemmas for the legislature and the Wisconsin Elections Commission.

Fourth, the theoretical mechanism by which fusion is supposed to empower the political center is structurally unsound. The argument relies on the emergence of a "Center Party" capable of organizing moderate voters to endorse the most reasonable major-party candidate, which we show is unlikely. Ultimately, fusion voting fails to address important drivers of polarization.

Fifth, the state has compelling interests in prohibiting fusion voting to maintain a clear and comprehensible ballot for all voters. Prohibiting multiple listings for a single candidate prevents voter confusion, maintains platform coherence, and protects the stability of the party system. Ultimately, the historical record does not support a strong inference that it was partisan motive rather than these state interests that motivated the ban on fusion voting.

Qualifications

This report was prepared by Nathan Atkinson and Alexander Tahk. We are both faculty members at the University of Wisconsin–Madison.

Nathan Atkinson is an Assistant Professor at the University of Wisconsin Law School. He holds a Ph.D. in Business from the Stanford Graduate School of Business and a J.D. from Stanford Law School. Professor Atkinson's research focuses on the design of legal and political institutions, with a specific emphasis on voting procedures and electoral systems. His scholarship has examined the effects of alternative voting rules, such as ranked-choice voting and top-two runoffs, and the structural drivers of political polarization. His work has been published in leading academic journals and law reviews, including the *American Law and Economics Review* and the *Yale Journal on Regulation*. He serves on the advisory board for Better Choices for Democracy and is an affiliate of the Institute for Mathematics and Democracy.

Alexander Tahk is an Associate Professor of Political Science at the University of Wisconsin–Madison and serves as the Director of the Tommy G. Thompson Center on Public Leadership. He holds a Ph.D. in Political Science and an M.S. in Statistics from Stanford University. Professor Tahk's expertise lies in political methodology, judicial politics, and voting behavior. His research involves the statistical analysis of roll-call votes, judicial citations, and the impact of ballot design

on electoral outcomes. His articles have appeared in the leading journals including the *American Political Science Review*, *Political Analysis*, and *Public Opinion Quarterly*.

In preparing this report, we have applied our expertise in political science and law to the analysis of fusion voting's history and likely effects. Our findings draw from a wide array of sources, including the specific historical record of Wisconsin's 1897 legislation, the contemporary practice of fusion in New York and Connecticut, and academic research. All opinions expressed herein represent our independent professional judgment. We reserve the right to amend our opinions if further information is provided.

II. AFFIRMATIVE REPORT

In this section, we present our independent analysis of the mechanics, history, and likely effects of fusion voting. This affirmative report is organized to move from foundational definitions and historical context to the modern empirical record, administrative consequences, and theoretical implications of the reform.

We begin in Section II.A by establishing precise definitions to distinguish between the various forms of cross-nomination, such as aggregated and disaggregated fusion. We then examine the historical record in Section II.B. We demonstrate that nineteenth-century "fusion" operated within a regime of party-printed ballots that bears little resemblance to modern election administration. Following this historical grounding, we turn to the practical application of fusion in New York, which serves as the principal laboratory for modern fusion. Our analysis reveals that the New York experience has not produced a centrist, stabilizing force but has instead empowered sham parties and ideological flank parties while fostering a culture of transactional bargaining.

In Section II.C, we detail the administrative practicalities of the reform. We first situate the prohibition of fusion as one of many necessary choices the state must make to ensure an orderly election with the adoption of the state-administered ballot in the 1890s. We then show that invalidating the current ban would implicitly introduce "open cross-filing" and dismantle Wisconsin's "sore loser" safeguards, effectively reducing the primary to a non-binding preference poll and making Wisconsin a significant outlier in election administration. We then outline new structural dilemmas that would arise following the re-legalization of fusion.

In Section II.D, we evaluate the theoretical incentives created by fusion voting and find that the "Center Party" mechanism hypothesized by proponents is structurally unsound. Political parties are typically formed by activists with intense policy preferences rather than moderate voters, who are historically the least likely to organize the complex infrastructure required to maintain a ballot line. Moreover, fusion voting fails to address the important drivers of polarization. We also discuss voter confusion, how fusion may in fact exacerbate polarization, and how it is unlikely to mitigate voter disaffection.

Finally in Section II.E, we identify the specific state interests that are implicated and served by prohibitions on fusion voting.

A. Defining Fusion Voting

Fusion voting is a system in which multiple parties may nominate the same candidate and these multiple nominations are reflected on the ballot. Thus, if Jane Doe is nominated for a legislative

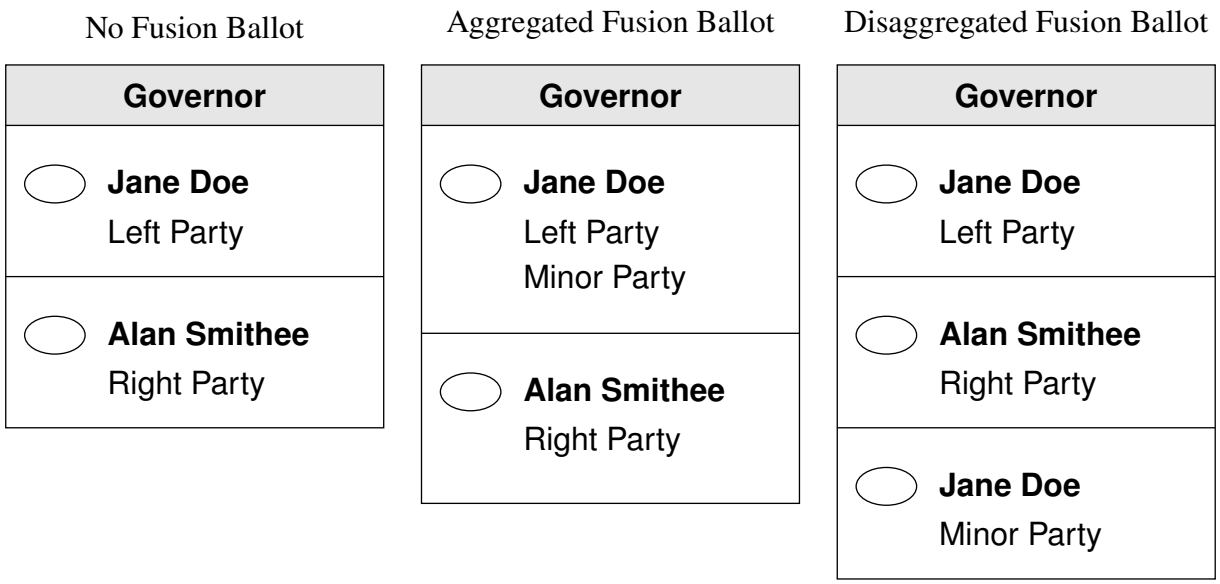


Figure 1: Hypothetical ballots comparing no fusion (left), aggregated fusion (center) and disaggregated fusion (right) voting. In all cases, the two gubernatorial candidates are Jane Doe, endorsed by the Left Party and the Minor Party, and Alan Smithee, endorsed by Right Party. Under no fusion voting, candidates can only list one party one the ballot, so Minor Party endorsement of Jane Doe is not listed.

seat by both the Left Party and the Minor Party, both nominations appear on the ballot.

The term "fusion voting" is sometimes reserved for what can be termed "disaggregated fusion voting," also known as "full fusion voting," in which a candidate nominated by multiple parties appears on the ballot multiple times, with a separate ballot line for each nominating party. An alternative is "aggregated fusion voting," also known as "partial fusion voting," in which candidates nominated by multiple parties appear on a single ballot line that lists all their nominating parties. Under disaggregated fusion voting, Jane Doe would appear once as the nominee of the Left Party and again as the nominee of the Minor Party. Votes cast on both lines for Jane Doe would be added together in determining the election winner. Under aggregated fusion voting, Jane Doe would appear a single time, with both "Jane Doe" and "Minor Party" listed below. In both cases, the ballot contains the same information that Jane Doe was nominated by both parties. The difference is that disaggregated fusion voting asks voters to differentiate between a vote for Jane Doe as nominee of the Left Party and a vote for Jane Doe as the nominee of the Minor Party while aggregated fusion voting does not. These situations are illustrated in Figure 1. Fusion voting is one of many decisions that needs to be made about ballot structure (see Section II.C.1).

The question of whether fusion voting is permitted concerns what information appears on the ballot, along with other choices of election administration (discussed further in II.C). Even where fusion voting is prohibited, parties are free to endorse the candidate placed on the ballot by another party and can choose not to nominate a competing candidate. Parties can campaign for or advocate that their supporters vote for the candidate of another party. However, this endorsement will not appear on the ballots given to voters.

Some scholars have defined fusion voting more broadly as "the electoral support of a single



Figure 2: Example ballots or "party tickets" used in the United States before the introduction of the Australian ballot. (*Source:* American Antiquarian Society)

set of candidates by two or more parties."[13] As we discuss in Section II.B, such a definition is problematic because, to the extent it is broader, it deviates from how the term is used.[14] We further discuss the problems with relying on 19th century practices in our response to Professor Disch.

B. History

1. Broader Fusion Practices

a. Cross-Endorsement

Prior to the introduction of the Australian ballot in the late 19th and early 20th century, voters in the United States either cast their votes by voice (*viva voce*) or provided their own ballots. In the latter case, voters commonly obtained their ballots from political parties, who printed their own ballots with the party's slate of candidates and provided these ballots to their supporters.[15]

Fusion voting, at least in the modern meaning of the term, is not a meaningful concept for this era. Whether fusion voting is used is a question of what appears on official or government-printed ballots, and such ballots did not exist. Just as today, parties were free to endorse or advocate for

[13] *See, e.g.*, Peter H. Argersinger, "A Place on the Ballot": Fusion Politics and Antifusion Laws, 85 American Historical Review 287 (1980). Other scholars, such as Elissa Berger, A Party That Won't Spoil: Minor Parties, State Constitutions and Fusion Voting, 70 Brooklyn Law Review (2005), make explicit reference to the ballot, as we do.

[14] Organizations that advocate for fusion voting define it in ways that make explicit reference to what appears on the ballot. For example, New America and the Center for Ballot Freedom both define fusion voting as "a practice in which a candidate can appear on a ballot as the nominee of more than one party" while Protect Democracy defines it similarly as "more than one political party nominates the same candidate on the ballot."

[15] Less common alternatives were for voters to hand-wrote a slip of paper or to cut a blank ballot from a newspaper.

the same candidate as other parties.[16] Just as today, parties were free to provide their supporters with lists of candidates they endorsed even if these lists overlapped with the lists of other parties. Party nominations did not carry legal recognition at this time.

b. Introduction of the Australian ballot

Before the adoption of the Australian (or secret) ballot, American elections operated under a system that bears little resemblance to modern practice—and even less resemblance to the institutional environment in which contemporary fusion voting proposals would operate. Nineteenth-century ballots were printed and distributed by political parties, often on brightly colored or otherwise distinctive paper, enabling party workers, employers, and others to monitor exactly how each individual voted.[17] Because voting was a public act, and votes were not generically secret in this era, the system facilitated vote buying and voter intimidation. Party machines could enforce compliance through cash payments, threats of retaliation, and the deployment of partisan crowds at polling places, producing a political order in which observability was the foundation of partisan control.[18] The result was a regime of collective, supervised voting—rather than individualized political choice—marked by high levels of coercion, fraud, and party-mediated mobilization.[19]

Reformers increasingly argued that only a publicly printed, uniform ballot marked in private could break machine control and protect the integrity of elections. The model they embraced had been pioneered in 1856 in South Australia and Victoria: the government printed a single official ballot listing every candidate, distributed ballots only at the polling place, and provided screened booths so that ballot marking occurred in secrecy.[20] British adoption followed in 1872,[21] and American reformers soon christened the idea the "Australian ballot."

This institutional shift matters for present purposes because the "fusion" practiced before the Australian ballot emerged under conditions wholly unlike those of the modern electoral system. Nineteenth-century cross-endorsements operated in a world of party-printed ballots, public voting, machine oversight, and routine coercion—precisely the practices reformers sought to eliminate. By contrast, modern fusion proposals operate within a post-reform regime intentionally designed to destroy those mechanisms. Consequently, analogies to nineteenth-century fusion overlook the

[16] One possible exception here is that nominations might have campaign-finance implications. We set this aside for several reasons. First, under *Citizens United v. Federal Election Commission*, parties cannot be limited in their ability to fundraise for campaign advertising for the nominee of another party. Any restriction, whether under state or federal campaign finance laws, would thus be limited to the ability of a party to coordinate with or contribute directly to the nominee of another party. Second, lawsuits and advocacy about fusion voting has focused essentially entirely on cross-nominations appearing on the ballot, not on a party's ability to directly transfer campaign funds or to coordinate campaign advertisements. Any campaign finance regulations that might be affected by a ban on fusion voting could be lifted without allowing candidates to appear on the ballot as nominees of multiple parties.

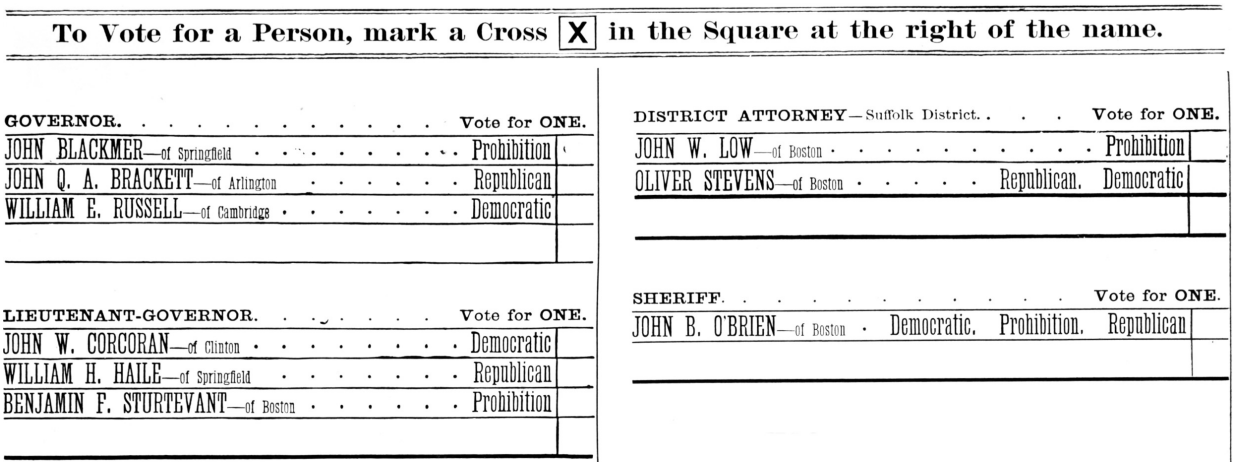
[17] *See, e.g.*, Richard Franklin Bensel, The American Ballot Box in the Mid-nineteenth Century (Cambridge University Press 2004); Peter H. Argersinger, New Perspectives on Election Fraud in the Gilded Age, 100 Political Science Quarterly 669 (1985).

[18] Bensel, *supra* note 17.

[19] Erik J. Engstrom and Samuel Kernell, Party Ballots, Reform, and the Transformation of America's Electoral System (Cambridge University Press 2014); Jerrold G. Rusk, The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876–1908, 64 American Political Science Review 1220 (1970).

[20] Lionel E. Fredman, The Australian Ballot: The Story of an American Reform (Michigan State University Press 1968), at 7.

[21] *Id.* at 15.



To Vote for a Person, mark a Cross [X] in the Square at the right of the name.

GOVERNOR. Vote for ONE.
JOHN BLACKMER—of Springfield Prohibition
JOHN Q. A. BRACKETT—of Arlington Republican
WILLIAM E. RUSSELL—of Cambridge Democratic

LIEUTENANT-GOVERNOR. Vote for ONE.
JOHN W. CORCORAN—of Clinton Democratic
WILLIAM H. HAILE—of Springfield Republican
BENJAMIN F. STURTEVANT—of Boston Prohibition

DISTRICT ATTORNEY—Suffolk District. Vote for ONE.
JOHN W. LOW—of Boston Prohibition
OLIVER STEVENS—of Boston Republican. Democratic

SHERIFF. Vote for ONE.
JOHN B. O'BRIEN—of Boston Democratic. Prohibition. Republican

Figure 3: Part of a ballot from the November 5, 1889, general election in Boston, Massachusetts. This ballot uses a office-block layout, also known as the "Massachusetts ballot," without a special provision for straight-ticket voting (*Source:* American Antiquarian Society)

profound institutional discontinuity between the two eras and risk drawing lessons from a system whose core features no longer exist.

The Australian ballot was first adopted in the United States in 1888 to govern municipal elections in Louisville, Kentucky.[22] Widespread reports of vote-buying[23] and other forms of corruption during the 1888 presidential election galvanized support for reform, and Massachusetts enacted the first statewide statute for use in the 1889 gubernatorial election.[24]

The switch to government-printed ballots opened up a new question: what should appear on those ballots? States now needed to decide which candidates should appear on the ballot, what information about them should be listed, and how their names and other information should be organized. Indeed, moving to the Australian ballot created dozens of questions that needed to be answered for the first time, with fusion being just one of them (see Section II.C.1).

When Massachusetts adopted the first statewide Australian ballot, it organized candidates into blocks grouped by office. A portion of one of the first examples of this ballot can be seen in Figure 3.[25] This office-block layout, which had also been used the previous year Kentucky, soon came to be known as the "Massachusetts ballot."

[22] Known as the "Wallace Act," the act was introduced to the Kentucky General Assembly by state legislator Arthur M. Wallace and signed by Governor Simon Bolivar Buckner on February 24, 1888. Eldon Cobb Evans, "A History of the Australian Ballot System in the United States" (PhD thesis, University of Chicago 1917) at 19. There are conflicting accounts of whether credit for drafting the bill should go to Wallace or to Lewis N. Dembitz, a local attorney and uncle of future Justice Louis Dembitz Brandeis. *See Lewis Dembitz and the Australian Ballot* (Sep. 28, 2014), https://brandeiswatch.wordpress.com/2014/09/28/lewis-dembitz-and-the-australian-ballot/ (last visited Oct. 7, 2025).

[23] The publication of correspondence with explicit instructions for vote buying sent by Republican National Committee treasurer William Wade Dudley to Republican Party county chairmen in Indiana was particularly notable. *See* Evans, *supra* note 22 at 11.

[24] *Id.* at 19; Richard A. Dana, The Corrupt Practices Act-The Nominating Machinery and the Australian Ballot System of Massachusetts, 14 The American Lawyer 163 (1906).

[25] *Ballot, General Election, Boston, Mass.* (Nov. 5, 1889), https://gigi.mwa.org/imagearchive/fileName/503953_b02_f03_0064.tif (last visited Oct. 7, 2025)

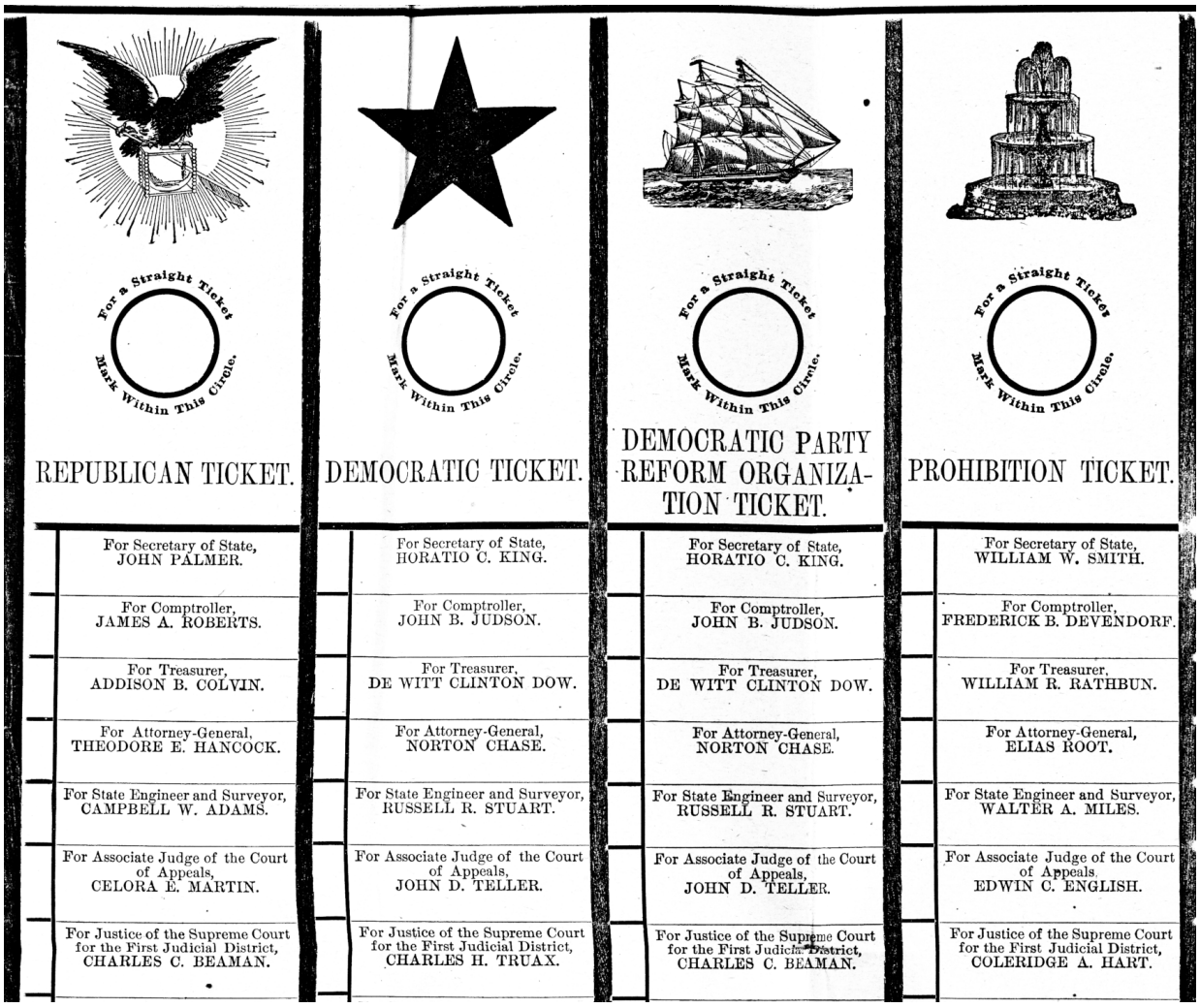


Figure 4: Part of a ballot from the November 5, 1895, general election in New York City. This ballot uses a party-column layout, also known as the "Indiana ballot," with a special provision for straight-ticket voting. (*Source:* New York Public Library)

When Indiana adopted the Australian ballot later in 1889, it did so with a new layout.[26] Rather than organizing candidates into blocks by office, as the Massachusetts ballot had done, the "Indiana ballot" used a party column layout that placed candidates into columns by party. This created a grid, with columns indicated party and row indicated office. An early example of this party column layout from New York is shown in Figure 4.[27]

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. Figure 5 shows the timing of ballot legislation, introduction of the Australian ballot, and ballot formats used from 1888 to 1910 in each of the 46 states as well as the two territories that would

[26]Fredman, *supra* note 20 at 48.

[27]*Ballot, no. 4* (Nov. 5, 1895), https://digitalcollections.nypl.org/items/ba921110-4dce-0137-e5b8-373384e0a129 (last visited Nov. 18, 2025).

become states in 1912. These frequent reforms show that Wisconsin's changes in ballot design in the 1890s were standard for the period.

In 1893, South Dakota switched from an office-block layout to a party-column layout. The law doing so included a provision that "the name of no candidate shall appear more than once on the ballot for the same office."[28] As party was to be indicated by the column in which a candidate's name appeared, this restriction effectively banned fusion voting, as it implied that a candidate could not appear on the ballot as the nominee of more than one party.

Many other states followed suit, either expressly or implicitly, by enacting statutes that prohibited a candidate from appearing on the ballot as the nominee of more than one party.[29] All but three of these states had adopted Indiana's party-column layout, which by then had become the more dominant ballot format. Adoption of such a restriction continued in other states in the following decades.

c. 19th Century "Fusion" is Not the Same as Modern Fusion Voting

Advocates of fusion voting often cite the late nineteenth century as a golden age of third-party vitality and coalition politics, arguing that re-legalizing fusion would restore this dynamic. This reliance is misplaced. It rests on a failure to distinguish between the specific legal mechanism of modern fusion voting and the entirely distinct electoral practices of the pre-Australian ballot era. Because the institutional environments of these two periods are radically different, the nineteenth-century experience offers little to no predictive value for how fusion would operate today.

First, pre-1890s fusion was a private party tactic, not a public election law. As detailed earlier, before the adoption of the Australian ballot, the state did not provide official ballots. Instead, elections were conducted using "party tickets"—slips of paper printed and distributed by the political parties themselves. In this context, "fusing" was simply the act of two parties choosing to print the same name on their respective tickets. There was no state-sanctioned "fusion line" on an official ballot because there was no official ballot. Therefore, the historical record shows only that private parties will coordinate when the state plays zero role in administering the ballot—a condition that no longer exists.

Second, these practices operated within a regime of public voting and machine control that is antithetical to modern democratic norms. Because voting was a public act (often performed with distinctively colored party tickets) party machines could monitor how individuals voted. The decision of minor parties to "fuse" in that era was frequently driven by the leverage of machine politics and the necessity of vote-trading in a non-secret environment. Modern fusion voting, by contrast, relies on the private, expressive choice of individual voters in a secret booth.

To argue that the success of nineteenth-century coalitions proves the viability of modern fusion is to ignore this profound institutional discontinuity. We cannot assume that a practice which flourished in an era of party-printed tickets and public coercion will produce similar results in an era of government-printed ballots and secret voting. Consequently, the nineteenth-century record is not a precedent to be restored, but a distinct historical chapter with few applicable lessons for the contemporary debate.

[28] Laws passed at the Third Session of the Legislature of the State of South Dakota, 1893 (Carter Publishing Co. 1893), at 137.

[29] *See* Argersinger, "A Place on the Ballot": Fusion Politics and Antifusion Laws, *supra* note 13.

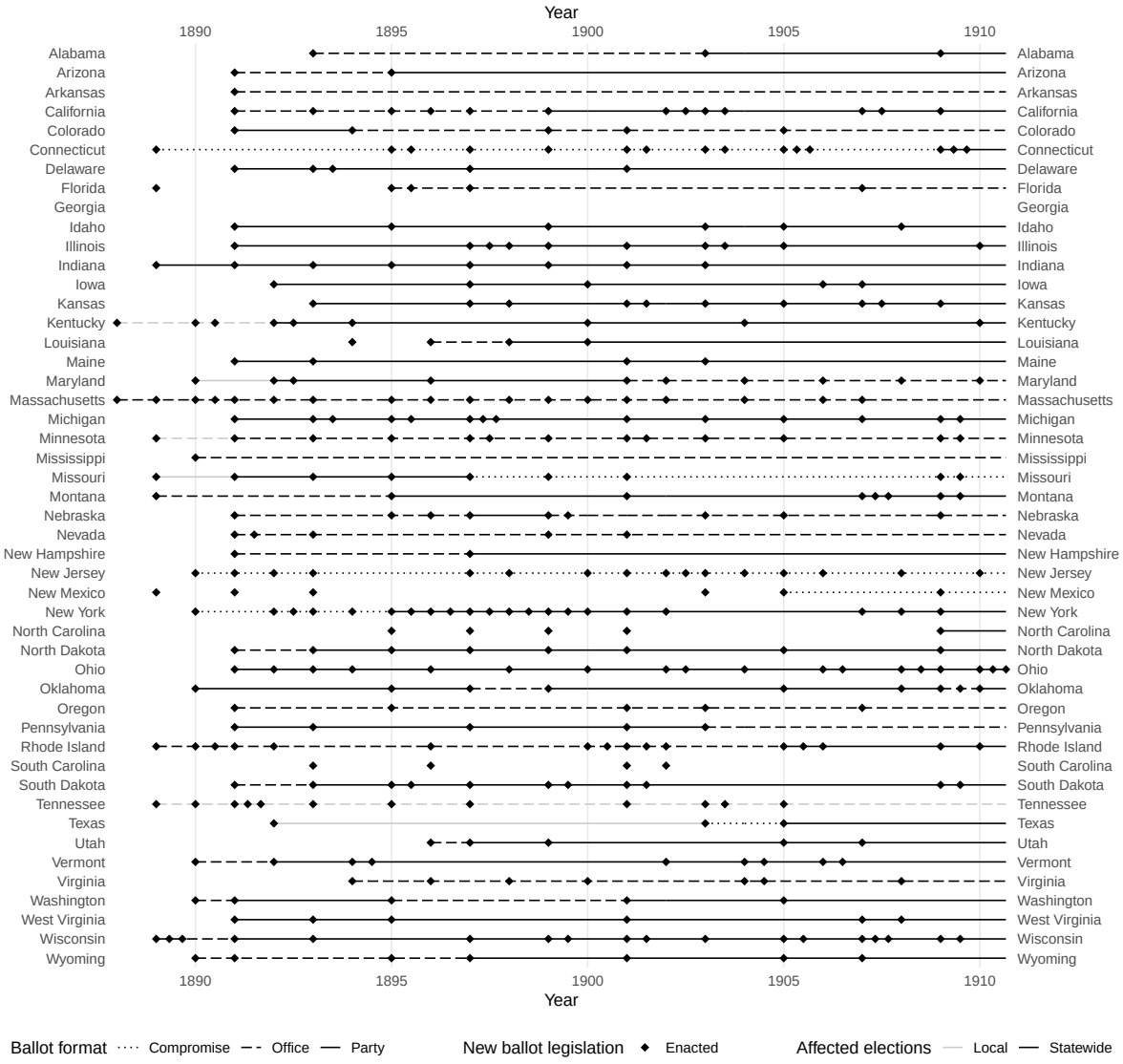


Figure 5: Ballot format and enactment of ballot legislation in U.S. states, 1888–1910. Diamonds indicated the enactment of a law or state constitutional provision modifying or regulating the ballot. Timing is only exact to year and spaced arbitrarily within year to distinguish the enactment of multiple laws within the same year. New Mexico and Arizona were territories, not states, until 1912.

2. *The Modern Case: Fusion Ballot Voting in New York State*

New York is the principal laboratory for disaggregated fusion voting (where candidates may be listed more than once on the ballot) in the United States. Although Connecticut also permits disaggregated fusion, its smaller scale and different nomination architecture limit inference. Oregon and Vermont allow only aggregated fusion. Mississippi's provision for fusion voting is effectively unused, and South Carolina ended its sporadic use with a 2022 ban.[30] As a result, virtually all modern evidence about how fusion operates in practice comes from New York's statewide and municipal contests over the last eight decades. We therefore focus on New York as the best available empirical case.

New York adopted the Australian ballot through a gradual process, beginning with a compromise approach in 1890 that provided official ballots for each party or independent group. A full adoption of the Australian ballot was completed in 1895 using the party-column layout with a provision for straight-ticket voting, as seen in Figure 4. This legislation omitted Indiana's restriction on candidates appearing on the ballot multiple times, allowing fusion voting.

In 1911, the New York State legislature passed the Levy Election Law. This legislation included a provision limiting each candidate to a single appearance on the ballot in a single party column, prohibiting fusion voting. This provision was challenged almost immediately and was struck down by the New York Court of Appeals of New York, the state's court of last resort, later that same year.[31]

a. Mechanics

Once a candidate can appear multiple times on a ballot, it raises the question of how parties nominate candidates (Discussed in detail in Section II.C.4). New York, like other states, once allowed "cross filing," the practice where a candidate could run in the primary elections of multiple parties. That is, a candidate might contest both the Republican and Democratic (and minor) Party primaries. This system led to many candidates winning both major party primaries.[32] The system was criticized for diminishing party brands.

To prevent unrestricted cross-filing, New York adopted the Wilson-Pakula Act in 1947, which introduced significant procedural barriers to cross-party nominations. Under the statute, candidates not enrolled in a particular party could only run in a partisan primary upon securing a formal authorization, colloquially known as a "Wilson-Pakula certificate," from the relevant party

[30] *See* South Carolina Association of Counties, *2022 Acts That Affect Counties* (Aug. 31, 2022), https://www.sccounties.org/sites/default/files/uploads/resources/2022_acts_final.pdf (last visited Dec. 12, 2025), at 5.

[31] *Matter of Hopper v. Britt*, 203 N.Y. 144 (1911).

[32] A notable example is that Richard Nixon won both the Republican and Democratic primaries for his California seat in the US House of Representatives in 1948.

committee.[33] The law applies broadly to primary elections, state-convention nominations, filling vacancies, and special elections. The primary goal, as articulated by one of the Act's sponsors, Irwin Pakula, was to curb the practice of "raiding of party primaries by candidates who are enrolled members of other political parties."[34] Pakula emphasized that this was necessary to preserve the distinctiveness and ideological coherence of political parties.

In practice today, the process functions as a strict gatekeeping mechanism. If a Democratic candidate for Governor seeks the Working Families Party (WFP) nomination, they cannot appeal directly to WFP voters. Instead, they must first secure a formal authorization from the WFP leadership. This authorization requires a majority vote of the party committee representing the specific political subdivision—such as the State Committee for a gubernatorial race or a County Committee for a local contest. This requirement effectively centralizes power in the hands of party activists and leaders rather than the rank-and-file electorate. Furthermore, the authorization must be filed shortly after the candidate's designating petition, typically within four days. Without this certificate, the Board of Elections invalidates the non-member's petition, removing them from the ballot before the primary campaign begins.[35] Figure 6 is a sample authorization form that a party would need to submit to allow a candidate to run for office under that party's label.

While the Wilson-Pakula Act successfully curtailed cross-filing, the value of the Wilson-Pakula authorizations it created has also laid the groundwork for instances of political corruption. The most notable case of this was a 2013 bribery scandal that resulted from attempts by state Senator Malcolm Smith, a Democrat and former Senate Majority Leader, and Dan Halloran, a Republican New York City Councilman, to buy Wilson-Pakula authorizations.[36] The politicians offered payments in exchange for the opportunity to be listed on the ballot for another party. This resulted in criminal convictions or guilty pleas for all six politicians involved.

b. Minor Parties and Party Influence in New York

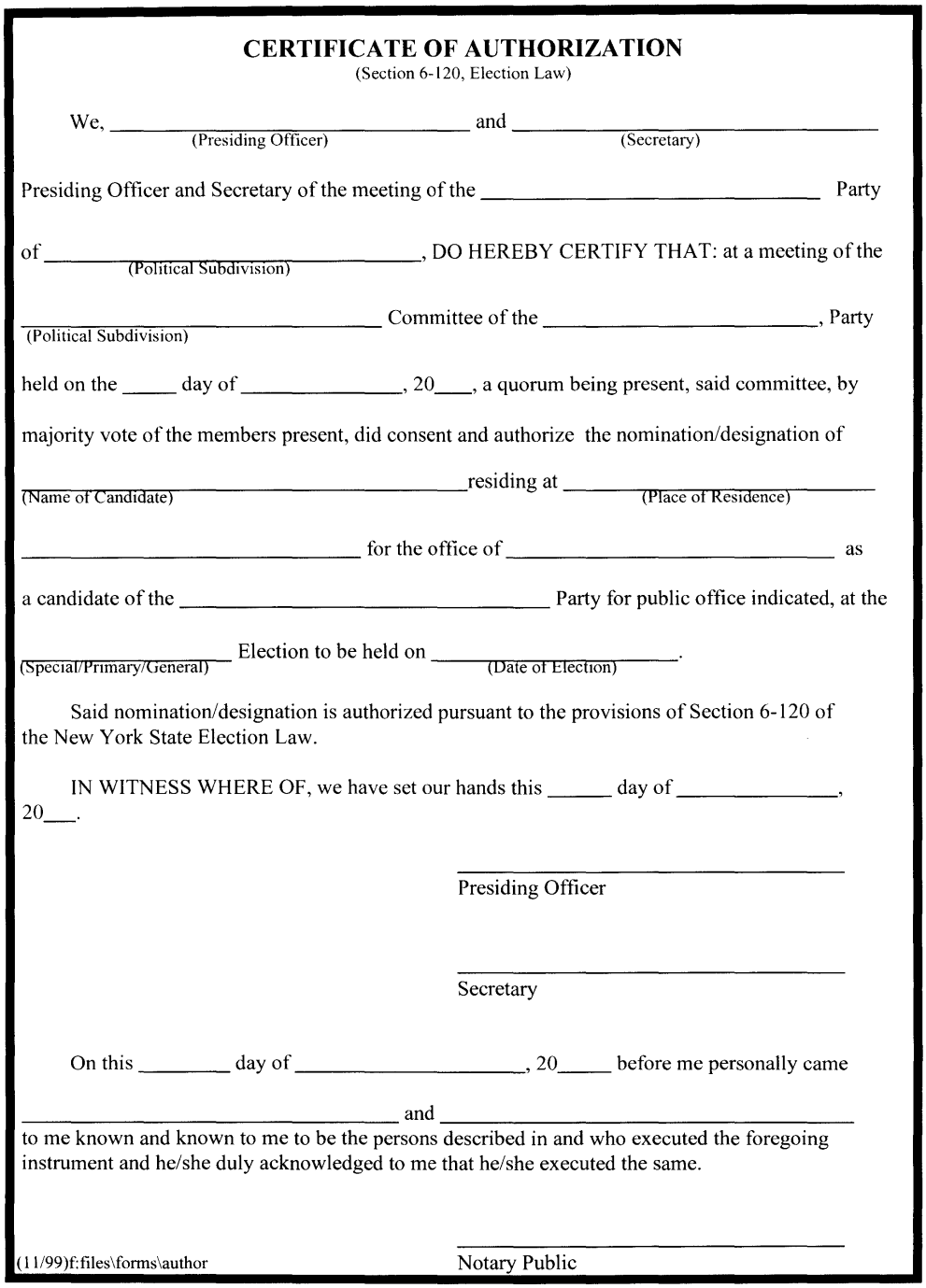
Since the reforms of the Wilson-Pakula Act, several minor parties making heavy use of fusion voting have played a notable role in New York politics. The most successful and enduring of these have been the Liberal Party of New York and the Conservative Party of New York. Both held

[33]New York Consolidated Laws, Election Law § 6-120 states in part: "A petition, except as otherwise herein provided, for the purpose of designating any person as a candidate for party nomination at a primary election shall be valid only if the person so designated is an enrolled member of the party referred to in said designating petition at the time of the filing of the petition . . . The members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee, and except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section."

[34]Sam Roberts, *Wilson-Pakula, Obscure to All but Ballot-Hopping Politicians* (Apr. 2, 2013), https://cityroom.blogs.nytimes.com/2013/04/02/wilson-pakula-obscure-to-all-but-ballot-hopping-politicians/ (last visited Oct. 7, 2025).

[35]*See Petition Information*, https://elections.ny.gov/petition-information (last visited Dec. 12, 2025) for a description of the process including sample forms.

[36]*See* Luca Marzorati, *Former State Senator Malcolm Smith Sentenced to 7 Years*, Politico (July 1, 2015), https://www.politico.com/states/new-york/albany/story/2015/07/former-state-senator-malcolm-smith-sentenced-to-7-years-090717 (last visited Dec. 12, 2025).



CERTIFICATE OF AUTHORIZATION
(Section 6-120, Election Law)

We, _____ and _____
(Presiding Officer) (Secretary)

Presiding Officer and Secretary of the meeting of the _____ Party

of _____, DO HEREBY CERTIFY THAT: at a meeting of the
(Political Subdivision)

_____ Committee of the _____, Party
(Political Subdivision)

held on the _____ day of _____, 20___, a quorum being present, said committee, by

majority vote of the members present, did consent and authorize the nomination/designation of

_____residing at _____
(Name of Candidate) (Place of Residence)

_____ for the office of _____ as

a candidate of the _____ Party for public office indicated, at the

_____ Election to be held on _____.
(Special/Primary/General) (Date of Election)

Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.

IN WITNESS WHERE OF, we have set our hands this _____ day of _____, 20___.

_____
Presiding Officer

_____
Secretary

On this _____ day of _____, 20_____ before me personally came

_____ and _____
to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

_____
(11/99)f:files\forms\author Notary Public

(Sample prepared by the State Board of Elections)

Figure 6: Sample Certificate of Authorization from the New York Board of Elections.

automatic ballot access for over fifty years.[37] Following the collapse of the Liberal Party in the late 1990s and early 2000s, its earlier role as the predominant minor party on the left was supplanted by the Working Families Party of New York.

Other minor parties have included the Independence Party of New York, the New York State Right to Life Party, the Green Party of New York, and the Libertarian Party of New York. The latter two are notable for resisting the use of fusion voting, typically nominating their own candidates rather than fusing with major party candidates.[38] However, the Conservative Party and the Working Families Party remain the most significant minor parties and the only minor parties with automatic ballot access as of 2025.[39]

Liberal Party

The Liberal Party was formed with a platform that would preserve the progressive legacy of the New Deal while firmly rejecting Communist influence.[40] Its founding principles centered on a commitment to anti-Communism, pro-labor advocacy, and support for New Deal liberalism, and sought voters who were disillusioned with the conservative tendencies of the major parties. The party primarily nominated Democratic candidates, but would occasionally nominate moderate Republicans. However, the policy positions of the Liberal Party were not positions that are typically considered centrist. For example the party platform in 1949

> Accordingly, the Liberal platform called, among other things, for fiscal policies to maintain full employment; strengthening rent control and building subsidized housing; expanding social security; national health insurance; federal aid to education; civil rights legislation, including a permanent Civil Rights Commission; defense of civil liberties, including the right of the Communist Party to function legally, but not necessarily the right of Communists to work in sensitive areas; the repeal of the Taft-Hartley Act; a vigorous anti-Communist foreign policy; and strengthening the United Nations with an eye toward world federal government.[41]

By the 1980s and 1990s, the Liberal Party's reputation as a principled progressive force had eroded. Under its leadership, endorsements often appeared to be motivated more by the promise of patronage rather than by ideological alignment. Critics accused the party of abandoning its founding values, especially after its controversial endorsements of Republican Rudy Giuliani for New York City mayor in both 1989 and 1993.[42] These decisions alienated many within the

[37] Parties in New York (like other states) need to meet certain requirements to automatically have the names of their candidates printed on the ballots. This is discussed in more detail in the Wisconsin context at Section II.C.4.

[38] *See, e.g.*, *Time To Get Rid of Electoral Fusion* (Mar. 4, 2019), https://www.gp.org/time_to_get_rid_of_electoral_fusion (last visited Dec. 12, 2025) ("Unlike the major parties' fusion allies, the Green Party runs its own candidates and offers voters an independent, electoral alternative.").

[39] Ballotpedia, *Ballot Access Requirements for Political Parties in New York*, https://ballotpedia.org/Ballot_access_requirements_for_political_parties_in_New_York (last visited Dec. 12, 2025)

[40] *See, e.g.*, Daniel Soyer, Left in the Center: The Liberal Party of New York and the Rise and Fall of American Social Democracy (Cornell University Press 2022)

[41] Daniel Soyer, 'Support the Fair Deal in the Nation; Abolish the Raw Deal in the City': The Liberal Party in 1949, 93 New York History 147 (2012), at 150.

[42] *See, e.g.*, Republican Rudolph, Liberal Giuliani, New York Times, Apr. 15, 1989, at A26; James Bennet, Giuliani Is Endorsed by New York Liberal Party, New York Times, May 16, 1993, at A34.

traditional liberal base, who viewed the party's endorsements as cynical and inconsistent with its stated principles. The perception that the Liberal Party had become little more than a patronage machine further contributed to its declining credibility. In his book on the Liberal Party, Soyer notes that over time "the party seemed to degenerate, becoming less principled and more focused on patronage. In fact, with more power and fewer people, it came to resemble a patronage club in which everyone was angling for appointed office. . . By the end, which came in 2002, the party was little more than a cynical patronage machine, more open than ever to charges of corruption."[43]

In 2002, the party failed to receive the 50,000 votes required to retain its automatic ballot access—a threshold it had met for 57 consecutive years. The loss of the ballot line marked an end to the Liberal Party's relevance in New York politics. Although the Liberal Party technically continued to exist after 2002, it became a nominal organization. It was effectively supplanted by the Working Families Party, which arose as the new home for progressive activists and labor-aligned voters seeking a minor party vehicle.

Working Families Party

The Working Families Party (WFP) of New York was founded in 1998 as a progressive response to the perceived decline and waning political influence of the state's Liberal Party.[44] From the start, the WFP sought to pull the Democratic Party leftward without acting as a spoiler in elections. Dan Cantor, a founder and long-time leader of the party, would later describe the WFP as an "independent faction" within the Democratic Party—akin to the Tea Party's relationship with Republicans.[45] The WFP adopted an ideological position within the progressive left, advocating for economic justice, labor rights, affordable housing, racial equity, and universal healthcare.[46]

The WFP is generally more progressive than the Democratic party. The fact that the WFP functions as a progressive flank rather than a centrist anchor is confirmed by the party's own explicit policy commitments. The WFP's "People's Charter"[47] outlines an agenda that is distinct from, and by the standard account to the left of, the mainstream Democratic Party platform. For instance, while the Democratic platform typically emphasizes strengthening the Affordable Care Act and lowering costs, the WFP advocates for "free and universal" health care. Similarly, regarding public safety, the Charter calls for shifting resources "away from policing, jails and detention centers," a stance that differs from the mainstream Democratic focus on funding for community policing. As noted in the *Boston Review*,[48] the WFP describes itself as the nation's "most vigorous third-party

[43] Soyer, *Left in the Center: The Liberal Party of New York and the Rise and Fall of American Social Democracy*, *supra* note 40 7–8.

[44] Abby Goodnough, Unions and Local Groups Join To Form a New Political Party, New York Times, July 7, 1998, at B6.

[45] Bill Scher, *If the Left Had a Tea Party. . . Dan Cantor and the Making of a Liberal Uprising*, Politico Magazine (June 5, 2014), https://www.politico.com/magazine/story/2014/06/if-the-left-had-a-tea-party-107501/ (last visited Oct. 7, 2025).

[46] Working Families Party, *The People's Charter: A Roadmap Out of Our Current State of Crisis* (Oct. 8, 2020), https://workingfamilies.org/2020/10/the-peoples-charter-a-roadmap-out-of-our-current-state-of-crisis/ (last visited Oct. 7, 2025).

[47] *Id.*

[48] Maurice Mitchell and Daniel Cantor, *"It's Our Job to Be Popular": A Conversation with Maurice Mitchell, National Director of the Working Families Party, on the Way Forward After the Democrats' Loss*, Boston Review (Dec. 5, 2024), https://www.bostonreview.net/articles/its-our-job-to-be-popular/ (last visited Oct. 7, 2025).

project," expressly dedicated to "promoting—and passing—progressive policy" such as "higher marginal tax rates on the wealthy."

In addition to fusing with major party candidates, the WFP is also willing to challenge centrist Democrats through primary contests.[49] The party notably supported progressive insurgent candidates over establishment Democrats. This strategy has also provoked recurrent criticism from centrist Democrats, who often accusing the WFP of endangering broader electoral coalitions by pushing the party too far to the left.[50]

Conservative Party

The Conservative Party of New York was established in 1962.[51] It emerged from a coalition of dissatisfied Republicans and anti-Communist Democrats concerned by the perceived liberal drift of the state's Republican Party.[52]. Reflecting the growing strength of "movement conservatism" as the time, the party's ideological core emphasized anti-Communism, limited government, traditional social values, and a firm commitment to law and order. Today the party's legislative priorities are firmly to the right, including policies against income taxes, a constitutional amendment on budget matters, vigorous police support, opposition to college loan forgiveness, and other conservative policies. [53] That is, the party is not a centrist party.

The Conservative Party's strategy has been its frequent use of fusing with Republican candidates. However, the party has fielded its own candidates, particularly when Republican nominees appeared insufficiently conservative, leveraging the threat of independent nominations to influence GOP platforms and candidate selections.[54]

c. Billboard Concerns and Sham Parties in New York Elections

While the Liberal, Conservative, and Working Families Parties have been the three primary minor parties in New York, there have been a proliferation of other small and often temporary parties. There have also been many "parties" on the ballot that are not genuine political organizations but instead "parties" created for a single election with an ad-hoc slogan or as a means of gaining another ballot line for a candidate. The reality of fusion voting in New York shows that many "parties" are not parties in any sense of the word.

The ballot for the most recent New York City mayoral election (2025) featured multiple "parties" that functioned precisely as single-issue billboards rather than genuine political organizations. For example, Republican candidate Curtis Sliwa utilized a "Protect Animals" party line to highlight a specific platform plank. Incumbent Eric Adams appeared as the "Safe & Affordable" and "End Anti-Semitism" candidate. Other independent candidates followed suit, with Joseph Hernandez

[49] *See, e.g.*, Jesse McKinley, Nixon Wins Endorsement Of New York Progressives, New York Times, Apr. 15, 2018, at A20.

[50] *See, e.g.*, Jason Beeferman, *The Dems' WFP Problem*, Politico New York Playbook (Nov. 18, 2025), https://www.politico.com/newsletters/new-york-playbook-pm/2025/11/18/working-families-party-spoiler-candidates-delgado-gop-00656755 (last visited Oct. 7, 2025).

[51] Conservative Party of New York State, *About* (2025), https://www.cpnys.org/about/ (last visited Oct. 7, 2025).

[52] *Id.*

[53] Conservative Party of New York State, *2025 Legislative Priorities* (2025), https://www.cpnys.org/legislative-priorities/ (last visited Oct. 7, 2025).

[54] *See, e.g.*, Robert D. McFadden, James L. Buckley, 100, Conservative Senator in Liberal New York, Dies, New York Times, Aug. 19, 2023, at A20.

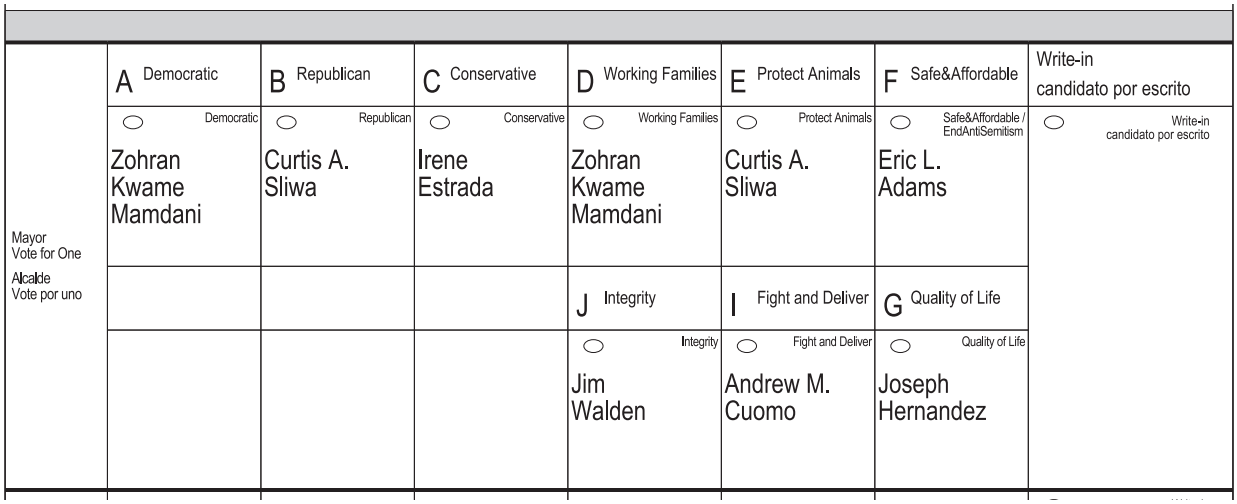


Figure 7: Mayoral election portion of the ballot for the General Election in New York City on November 4, 2025.

running on the "Quality of Life" line and James Walden running on the "Integrity" line. Figure 7 shows the ballot.

These are not political parties in the traditional sense; they are slogans repurposed as ballot lines. The existence of the "End Anti-Semitism" line is particularly illustrative: it allowed a candidate to signal a specific policy stance directly on the ballot face, independent of any genuine party organization. The risk of this "billboard" effect is not merely theoretical but very real.

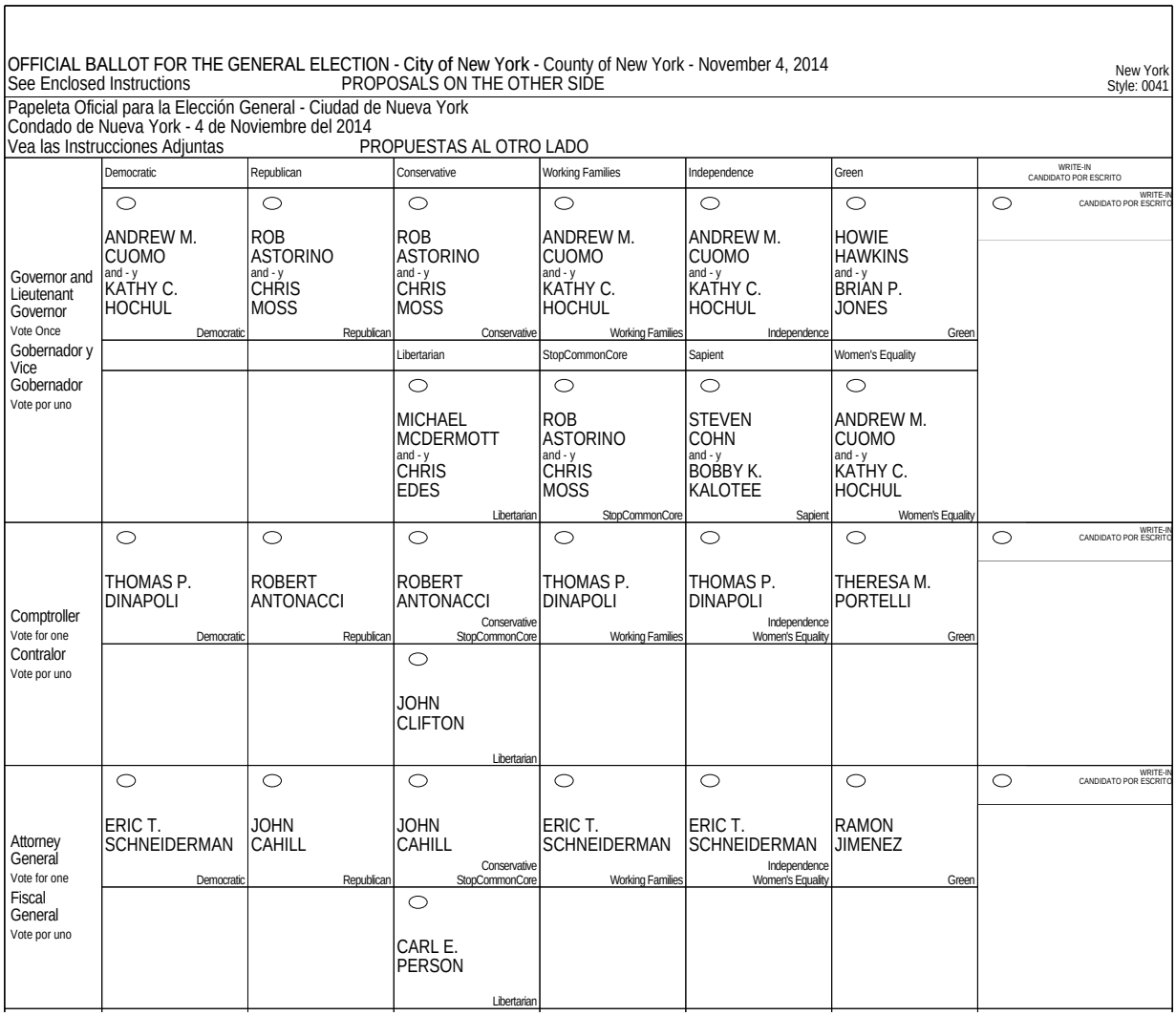
State-level elections in New York can be similar. The 2014 New York Governor's race had ten different lines on which a voter could cast a vote for the Governor. In addition to the Democratic, Republican, Conservative, Working Families, Green, and Libertarian Parties, there were also the "Independence", "Stop Common Core", "Sapient", and "Women's Equality" Parties. Figure 8 shows a portion of this ballot.

The "Stop Common Core" and "Women's Equality" in particular were never parties in any sense of the word. Instead they were created by the Republican and Democratic candidates respectively to serve as billboards on the ballot.[55]

Several other minor parties in New York have been set up by major party candidates. Critics have accused these parties of being "sham" parties set up to gain additional ballot lines or confuse voters. Michelson and Susin describe the pattern:

> In fact, many minor "parties" which appear on New York ballots are created candidates in order to send a message to voters. For example, in 1994 Republican candidate George Pataki created the "Tax Cut Now" party . . . "Various 'parties' like this appear and disappear regularly in New York, bearing such names as 'Property Tax Cut,' 'Protect Seniors,' 'Taxpayers,' and 'Save Medicare.'" The advantages to using such

[55]Christine Sisto, *Astorino Bets New Yorkers Want to Stop Common Core*, National Review (July 11, 2014), https://www.nationalreview.com/2014/07/astorino-bets-new-yorkers-want-stop-common-core-christine-sisto/ (last visited Oct. 7, 2025); Bill Mahoney, *Women's Equality Party, Under New Management, Still Likes Cuomo*, Politico (Mar. 13, 2018), https://www.politico.com/states/new-york/albany/story/2018/03/13/womens-equality-party-under-new-management-still-likes-cuomo-311509 (last visited Oct. 7, 2025).



OFFICIAL BALLOT FOR THE GENERAL ELECTION - City of New York - County of New York - November 4, 2014
See Enclosed Instructions PROPOSALS ON THE OTHER SIDE
New York
Style: 0041

Papeleta Oficial para la Elección General - Ciudad de Nueva York
Condado de Nueva York - 4 de Noviembre del 2014
Vea las Instrucciones Adjuntas PROPUESTAS AL OTRO LADO

	Democratic	Republican	Conservative	Working Families	Independence	Green	WRITE-IN CANDIDATO POR ESCRITO
Governor and Lieutenant Governor Vote Once Gobernador y Vice Gobernador Vote por uno	ANDREW M. CUOMO and - y KATHY C. HOCHUL Democratic	ROB ASTORINO and - y CHRIS MOSS Republican	ROB ASTORINO and - y CHRIS MOSS Conservative	ANDREW M. CUOMO and - y KATHY C. HOCHUL Working Families	ANDREW M. CUOMO and - y KATHY C. HOCHUL Independence	HOWIE HAWKINS and - y BRIAN P. JONES Green	WRITE-IN CANDIDATO POR ESCRITO
			Libertarian	StopCommonCore	Sapient	Women's Equality	
			MICHAEL MCDERMOTT and - y CHRIS EDES Libertarian	ROB ASTORINO and - y CHRIS MOSS StopCommonCore	STEVEN COHN and - y BOBBY K. KALOTEE Sapient	ANDREW M. CUOMO and - y KATHY C. HOCHUL Women's Equality	
Comptroller Vote for one Contralor Vote por uno	THOMAS P. DINAPOLI Democratic	ROBERT ANTONACCI Republican	ROBERT ANTONACCI Conservative StopCommonCore	THOMAS P. DINAPOLI Working Families	THOMAS P. DINAPOLI Independence Women's Equality	THERESA M. PORTELLI Green	WRITE-IN CANDIDATO POR ESCRITO
			JOHN CLIFTON Libertarian				
Attorney General Vote for one Fiscal General Vote por uno	ERIC T. SCHNEIDERMAN Democratic	JOHN CAHILL Republican	JOHN CAHILL Conservative StopCommonCore	ERIC T. SCHNEIDERMAN Working Families	ERIC T. SCHNEIDERMAN Independence Women's Equality	RAMON JIMENEZ Green	WRITE-IN CANDIDATO POR ESCRITO
			CARL E. PERSON Libertarian				

Figure 8: Portion of the ballot for the General Election in New York City on November 4, 2014.

> temporary parties, despite the state's restrictive ballot access laws, are obvious. These sorts of names are likely to appeal to voters, a to boost a candidate's vote totals.[56] (internal citations omitted)

The two most recent examples of this that gained automatic ballot are the aforementioned Tax Cut Now Party and the Women's Equality Party.

In 1994, the New York Republican State Committee filed paperwork to create the Tax Cut Now Party. This party, whose nominations were identical to the Republican Party, giving Republican nominees an additional ballot line.[57] Republican gubernatorial nominee George Pataki received just enough votes on the Tax Cut Now Party line for the party to maintain ballot access for the following election cycle.[58] After the election the party renamed itself the Freedom Party, leading to a legal challenge from a similarly named party founded by the Rev. Al Sharpton.[59] The party lost its ballot access after the 1998 election.[60]

Ten years later, Democratic governor Andrew Cuomo and his allies created the Women's Equality Party (WEP). The party's initial financing came from a loan from Cuomo's re-election campaign, with a second loan from the campaign following several months later while eschewing fund-raising activities.[61] Critics argued that the party was little more than an attempt by Cuomo to gain an extra ballot line and sow confusion with the Working Families Party, whose widely-used initialism, "WFP," was notably similar to this new party's initialism, "WEP."[62] The Women's Equality Party lost ballot access after it failed to achieve the necessary 50,000 threshold in the 2018 gubernatorial election.[63]

d. An Appraisal of Fusion Voting in New York

New York has been the principal laboratory for disaggregated fusion voting. The record is not a particularly good one. The institutional bundle of disaggregated fusion, Wilson–Pakula gatekeeping, and closed major-party primaries ultimately channels bargaining through party elites rather than mass electorates. This means that cross-party nominations hinge on leadership authorizations, not open contests, so that leverage accrues to brokers who control access to lines.

[56] Melissa R. Michelson and Scott J. Susin, What's in a Name: The Power of Fusion Politics in a Local Election, 36 Polity 301 (2004), at 305.

[57] Ian Fisher, Minor Parties File Petitions for Pataki and Rosenbaum, New York Times, Aug. 24, 1994, at B6.

[58] Michelson and Susin, *supra* note 56.

[59] *Freedom Party of New York v. N.Y. State Bd. of Elections*, 77 F.3d 660 (2d Cir. 1996).

[60] Wayne Barrett, *Andrew Cuomo and Black Voters — The Key to his Father's Victory, Will They Help the Son?*, Village Voice (Sep. 24, 2010), https://www.villagevoice.com/andrew-cuomo-and-black-voters-the-key-to-his-fathers-victory-will-they-help-the-son/ (last visited Oct. 7, 2025).

[61] Ginia Bellafante, About Cuomo's Women's Party, New York Times, May 27, 2018, at MB1.

[62] Michelle Goldberg, *The Women's Equality Party is a Joke*, The Nation (Oct. 24, 2014), https://www.thenation.com/article/archive/andrew-cuomos-farcical-womens-equality-party/ (last visited Oct. 7, 2025); Liza Featherstone, *Never Forget: Andrew Cuomo Once Started a Sham Feminist Party* (Aug. 23, 2021), https://jacobin.com/2021/08/andrew-cuomo-womens-equality-party (last visited Oct. 7, 2025); Daniel Marans, *Andrew Cuomo Once Created A Fake Women's Rights Party As Political Revenge*, Huffington Post (Mar. 12, 2021), https://www.huffpost.com/entry/andrew-cuomo-fake-womens-party_n_604be3d0c5b65bed87da88ce (last visited Oct. 7, 2025).

[63] Zach Williams, *Some Third Parties See Victory in Defeat*, City & State New York (Nov. 18, 2018), https://www.cityandstateny.com/politics/2018/11/some-third-parties-see-victory-in-defeat/177915/ (last visited Oct. 7, 2025).

No ideologically distinct centrist party has emerged. Instead, where fusion matters in New York, it has tended to empower ideological flanks, the Conservative Party on the right and the Working Families Party on the left, rather than hypothetical median-seeking centrists. An empirical study on fusion in New York found that these parties were more likely to cross-nominate candidates closer to their policy goals.[64] The authors concluded that:

> "[M]inor parties can reinforce major-party polarization. This pattern is somewhat ironic, since many voters support the idea of minor parties as a needed solution to excessive polarization (Jones, 2023). The complication is that the minor parties that form and compete are very often towards an ideological extreme. Moderate parties that could give incentives for major-party candidates to moderate simply are not the ones to successfully organize."[65]

It is also important to note that separate ballot lines do not necessarily provide clean signals about the strength of the parties. That is, the fact that Donald Trump captured 321,733 voters on the Conservative line in the 2024 presidential election does not provide clear information about why voters voted under that party line or the strength of the party. It is not always clear what drives voters to vote on the major party line versus the fused minor party line. Advocates of fusion voting allude to the votes captured by minor parties as a source of strength for the party. However, they are poor measures of constituency size or policy mandate, as we discuss this further in the next section. Meanwhile, the minor-parties in New York have been fragile: rule changes to ballot access reshaped the field,[66] and the parties that endured were precisely those with strong organizational identities at the flanks, not centrist parties.

On widely used indicators of "democratic performance," New York is not obviously better than peer states. Its voter participation has tended to lag national averages (e.g., 60.4% of the eligible population in 2024 vs. 64.1% nationally; 42.5% in 2022 vs. 46.2% nationally),[67] and its closed-primary rules, with early deadlines to change party enrollment, limit participation in many decisive contests even as the state has expanded access through statewide early voting and the John R. Lewis Voting Rights Act of New York.[68] New York also retains several institutions often associated with machine-style party control, most notably the Wilson–Pakula gatekeeping rule and judicial nominations via party-delegate conventions (upheld in *N.Y. State Bd. of Elections v. Lopez Torres*[69]), and a leadership-centric bargaining culture long described as "three men in a

[64]Daniel J. Lee and Tanner Bates, Explaining Variation in the Use of Electoral Fusion, 53 American Politics Research 339 (Mar. 11, 2025).

[65]*Id.* 348–349.

[66]As we discuss in II.C, many other legislative choices interact with fusion voting.

[67]Ballotpedia, *Voter Turnout in New York* (2025), https://ballotpedia.org/Voter_turnout_in_New_York (last visited Oct. 7, 2025); Michael McDonald and the University of Florida Election Lab, *2024 General Election Turnout* (2025), https://election.lab.ufl.edu/2024-general-election-turnout/ (last visited Oct. 7, 2025).

[68]N.Y. Elec. Law § 5-304 (McKinney 2025) (party enrollment changes); N.Y. Elec. Law § 8-600–604 (McKinney 2025) (early voting); N.Y. Elec. Law § 17-200–222 (McKinney 2025) (John R. Lewis Voting Rights Act of New York); Off. of the N.Y. Att'y Gen., *John R. Lewis Voting Rights Act of New York* (Dec. 19, 2023), https://ag.ny.gov/resources/organizations/new-york-voting-rights-act (last visited Oct. 7, 2025).

[69]*N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008).

room."[70] Finally, while the state has enacted significant voting-access reforms in recent years, New York's public life has featured high-profile corruption prosecutions and historically high federal public-corruption conviction counts in its Manhattan federal district (a metric that may reflect enforcement intensity as well as misconduct).[71] In short, by common yardsticks of participation, moderation, and institutional openness, New York's record is mixed rather than clearly superior.

C. Administrative Practicalities

Turning from history to administrative practice, fusion voting represents one in a constellation of choices that must be made in structuring an electoral system generally, and a state-printed ballot in particular. The modern Australian ballot is not a neutral vessel for voter expression, but instead a highly regulated instrument of governance. To produce an orderly election, the state must navigate a dense thicket of competing interests.

In the following sections, we first situate the regulation of fusion voting within the broader regulatory density of the modern ballot (Section II.C.1). We then analyze the immediate consequences of invalidating down Wis. Stats. §§ 8.03(1) and 8.15(7) as the Plaintiffs request. Specifically, we show that the removal of this statute would not merely permit fusion. It would also lead to the introduction of "Open Cross-Filing" (Section II.C.2) and dismantle Wisconsin's "Sore Loser" safeguards (Section II.C.3), both of which would make Wisconsin an outlier among states. Finally, we outline a set of new structural dilemmas that would arise in response to introducing fusion voting (Section II.C.4).

1. Fusion Voting is One of Many Choices About What Appears on a Ballot.

The adoption of the Australian ballot transformed the ballot from a private party artifact into a public government document. In the era of the party ticket, the state played a minimal role: parties decided who appeared on their slips of paper and how those slips were designed. Voters could also freely submit their own ballots instead of something provided by a party. Today, the state bears the exclusive burden of printing the ballot. This responsibility necessitates a comprehensive regulatory framework: the state cannot print a ballot without first deciding exactly what goes on it.

There is, therefore, no such thing as a "neutral" or unregulated ballot. Every aspect of the document, from the specific font size to the determinants of the ordering of candidate names, is the product of a deliberate government choice. These choices are essential to translate the abstract right to vote into a functional administrative reality. They are driven by the state's compelling interests in avoiding voter confusion, preventing overcrowding, ensuring fairness, and maintaining the integrity of the electoral process.

To characterize the ban on fusion voting as a unique or extraordinary burden is to ignore the density of regulation that surrounds it. The following non-exhaustive taxonomy illustrates the myriad choices a state must make to produce a viable ballot, situating the regulation of

[70] N.Y. Elec. Law § 6-120(3) (McKinney 2025) (Wilson–Pakula authorization); Jeremy M. Creelan and Laura M. Moulton, *The New York State Legislative Process: An Evaluation and Blueprint for Reform* (Brennan Center for Justice, 2004), https://www.brennancenter.org/sites/default/files/legacy/d/albanyreform_finalreport.pdf.

[71] Vital City, *Federal Public Corruption Conviction Rate by District, 1976–2021* (2025), https://www.vitalcitynyc.org/dataviz/federal-public-corruption-conviction-rate-by-district-1976-2021 (last visited Oct. 7, 2025).

cross-nomination as just one component of a much larger administrative system.[72]

A. Structural Framework and Primary Systems

1. **Choosing the Primary System Structure**: Deciding the specific format for candidate nomination, such as implementing a closed primary (where only registered party members can vote), an open primary (where all voters are eligible to participate in one party's primary), or a nonpartisan/blanket primary (where all candidates run regardless of party).
2. **Defining Voter Eligibility in Partisan Primaries**: Establishing rules that determine which registered voters are eligible to participate in a political party's primary election, particularly whether registered independent or minor party voters are legally barred from major party contests.
3. **Granting Party Rule-Making Authority**: Determining the extent to which state political parties are granted the autonomous authority to establish rules that may permit non-affiliated voters (such as registered independents) to participate in their specific primary contests.
4. **Regulating Nonpartisan Primaries**: Setting procedures for nonpartisan primaries (often referred to as blanket primaries), where all candidates appear on a single ballot regardless of party, and determining how the top candidates advance to the general election.
5. **Timing of Primary and General Registration Deadlines**: Setting the deadline for a candidate to register their party affiliation or disaffiliation relative to both the primary and general election.
6. **Sore Loser Laws**: Prohibiting a candidate who loses a primary election for a specific office from subsequently running for the same office in the general election as an independent or the nominee of another political party.
7. **Party Disaffiliation Requirements**: Establishing a mandatory period of time an individual must formally sever ties with a political party before they are eligible to file to run as an independent candidate.

B. Candidate and Party Qualification (Getting on the Ballot)

8. **Established Party Status**: Determining the minimum share of votes (electoral threshold) a political party must receive in prior elections to be granted "established political party" status and automatic, eased ballot access.

[72]This section relies on a synthesis of academic and administrative resources that catalog the extensive variations in state ballot regulations. For a comprehensive overview of the historical and strategic evolution of ballot design, see Erik J. Engstrom and Jason M. Roberts, The Politics of Ballot Design: How States Shape American Democracy (Cambridge University Press 2020) For a detailed survey of current state statutes governing candidate qualifications, ballot access, and election administration, see *State Election Legislation Database* (Oct. 1, 2025), https://www.ncsl.org/elections-and-campaigns/state-election-legislation-database. Legal analysis of these regulatory choices can be found in Eugene D. Mazo, The Oxford Handbook of American Election Law (Oxford University Press 2024), particularly the chapters discussing the constitutional framework of ballot access and party regulation.

9. **Signature Requirements for New/Minor Parties**: Establishing alternative qualification mechanisms for new or minor parties that do not meet the vote percentage threshold, typically involving petition drives or formal voter affiliation.

10. **Personal Eligibility Requirements for Candidates**: Setting standards for candidate qualifications, including minimum age, required residency, and U.S. citizenship.

11. **Filing Fees**: Deciding whether to mandate the payment of filing fees as an initial screening device to demonstrate the seriousness of a candidacy.

12. **Setting Signature Quantity**: Setting the total number of signatures required for a candidate or ballot measure to gain access, typically set as a percentage of votes cast in a prior election or registered voters.

13. **Imposing Geographic Distribution Requirements**: Mandating that signatures be collected from voters residing across a minimum number of political subdivisions (e.g., counties or legislative districts) to demonstrate broad support.

14. **Setting Signature Verification Standards**: Establishing the default standards for election officials to use when verifying signatures, such as adopting a basic presumption of validity and confirming that "exact matches are not required" to confirm validity.

15. **Establishing Verification Oversight**: Deciding whether to allow representatives of major political parties to observe each stage of the signature verification process for petitions and ballots, institutionalizing partisan oversight.

16. **Candidate Withdrawal Deadlines**: Establishing definitive deadlines by which a candidate must withdraw a declaration of candidacy to be removed from the ballot.

17. **Candidate Replacement Protocols**: Determining the rules governing how a political party may substitute a nominee if the original candidate withdraws, is disqualified, or dies after the statutory deadline.

18. **Cross-Nomination (Fusion Voting)**: Choosing whether to prohibit or permit fusion voting.

C. Ballot Measures and Direct Democracy:

19. **Defining Direct Democracy Scope**: Determining whether citizens are permitted to utilize initiatives, referenda, or recall procedures at all.

20. **Setting Measure Content Limits**: Deciding whether citizens may propose constitutional amendments or if proposals are restricted only to statutory changes.

21. **Drafting and Reviewing Measure Summaries**: Choosing which governmental body is responsible for drafting and reviewing the proposed measure's title and summary, ensuring political neutrality and accuracy.

22. **Mandating Language Clarity Standards for Measures**: Enacting laws that govern ballot measure readability and mandate that ballot questions and summaries be written in "plain language," avoiding technical jargon.

D. Administrative and Design Choices (Layout, Accessibility, and Appearance)

23. **Ballot Layout Format Choice**: Selecting the overall structural format of the ballot, such as the Party Column format (grouping candidates by party as in New York) or the Office Block format (grouping candidates by office as in Wisconsin).

24. **Determining Ballot Order**: Choosing the order in which candidates appear on the ballot (e.g., alphabetical, randomized by precinct, or ordered by party strength).

25. **Straight Ticket Voting**: Whether to allow voters to cast a vote for all candidates of a single party with one mark.

26. **Whether to Allow Party Symbol to Appear**: This choice determines if a party's official insignia, emblem, or logo (e.g., an animal, star, or geometric shape) is permitted next to its name or the names of its candidates on the ballot.

27. **Regulating Write-in Votes**: Setting rules for write-in candidacies, specifically whether a write-in vote is legally tallied and counted toward a candidate's total only if the individual has filed a prior declaration of intent or registration notice.

28. **Adoption of Technical Voting Standards**: Deciding whether to adopt the federal Voluntary Voting System Guidelines or comparable state standards for testing and certifying voting system hardware and software functionality, accessibility, and security.

29. **Setting Language Accessibility Mandates**: Determining whether to expand upon the minimum federal language assistance requirements (Section 203 of the Voting Rights Act) by providing translated election materials, such as facsimile ballots or instructions, to additional language minority groups.

30. **Setting Voter Instruction Clarity Standards**: Making administrative decisions about the clarity standards for instructional language provided to voters, prioritizing short, simple sentences, active voice, and positive phrasing to minimize voter error.

31. **Minimum Font Size Mandates**: Mandating minimum type sizes for ballots to ensure legibility.

32. **Text Case and Alignment Rules**: Setting standards for ballot text display, such as requiring the use of sans-serif fonts, favoring lowercase letters over all capital letters, and requiring left-aligned text.

33. **Nickname Restrictions**: Setting legal criteria for using a nickname on the ballot, including requiring proof that the nickname is "bona fide" and commonly used by acquaintances.

34. **Nickname and Title Exclusion**: Prohibiting the use of a nickname or designation that functions as a political slogan, title, military rank, academic degree, or spurious phrase to prevent misleading voters.

35. **Name and Nickname Length Limits**: Establishing the maximum number of spaces, letters, and punctuation (e.g., 25 spaces) allowed for a candidate's name and nickname on the ballot.

36. **Professional Designation Limits**: Limiting a candidate's description of their current profession, vocation, or occupation to a maximum number of words.

37. **Incumbency Designation Criteria**: Defining the precise conditions under which a candidate is permitted to use the word "incumbent" on the ballot (e.g., must have been elected by popular vote to the exact office sought).

38. **Name Change Disclosure**: Determining whether candidates who have legally changed their name must disclose their former name on the ballot or in filing documents to prevent voter deception.

39. **Formatting and Punctuation Rules**: Dictating the exact statutory form of the name, including required use of quotation marks around nicknames, placement of abbreviations, and use of commas with generational qualifiers (e.g., Jr. or III).

E. Voter Eligibility and Registration Administration

40. **Voter Identification Requirements**: Deciding whether to require voters to present identification at the polls, and if so, whether that ID must be a photo ID and what specific forms are acceptable.

41. **Registration Deadlines and Same-Day Registration**: Establishing the closing date for voter registration or choosing to permit "Same Day Registration" (SDR) at the polling place on Election Day.

42. **List Maintenance Procedures**: Mandating specific protocols for maintaining the accuracy of voter rolls, including participating in interstate data-sharing programs and defining the process for removing inactive or ineligible voters.

43. **Automatic Voter Registration**: Determining whether to implement systems that automatically register eligible citizens when they interact with government agencies (like the DMV) unless they opt out.

44. **Rights Restoration for Incarcerated Individuals**: Establishing the precise conditions under which voting rights are restored to individuals with felony convictions.

F. Voting Methods, Accessibility, and Polling Place Operations

45. **Absentee and No-Excuse Voting**: Deciding whether to require a specific excuse (e.g., illness or travel) to vote absentee or to adopt "no-excuse" absentee voting for any voter.

46. **Early In-Person Voting**: Establishing the timeframe, locations, and hours for early in-person voting.

47. **Tabulation Methods**: Choosing among methods for counting ballots, such as filling in ovals on a paper ballot with an electronic tabulator counting the ovals, using direct record electronic ballots, or hand-counted paper ballots.

48. **Ballot Curing Processes**: Creating a statutory process that allows voters to correct defects on absentee ballot envelopes, such as missing signatures, before the ballot is rejected.

49. **Drop Box Regulation**: Regulating the use, number, location, and security surveillance requirements for ballot drop boxes.

50. **Military and Overseas Procedures**: Setting specific timelines and transmission methods to ensure military and overseas voters can receive and return ballots in time.

51. **Electioneering Boundaries**: Defining the size of the "buffer zone" around a polling place within which political campaigning or soliciting votes is prohibited.

52. **Poll Watcher and Observer Rights**: Establishing the qualifications, rights, and limitations of partisan poll watchers, including how close they may stand to election workers and what parts of the process they may observe.

53. **Provisional Ballot Protocols**: Defining the criteria for issuing provisional ballots to voters whose eligibility is in question at the polls and the standards for adjudicating whether those ballots count.

54. **Polling Place Hours**: Setting the statutory opening and closing times for polling places and determining rules for voters standing in line at the time of closing.

G. Post-Election Procedures, Security, and Audits

55. **Voter Intent Adjudication Rules**[73]: Defining the legal standard for determining voter intent when a ballot is ambiguously or improperly marked, deciding between a strict compliance rule or one that seeks to reasonably understand the voter's choice.

56. **Automatic Recount Thresholds**: Establishing the vote differential that triggers a mandatory, automatic recount for certain races without requiring a petition.

57. **Post-Election Audit Methodology**: Choosing between methods to verify the election outcome.

58. **Cybersecurity Standards**: Mandating specific cybersecurity frameworks for voter registration databases and election reporting systems.

59. **Chain of Custody Requirements**: Establishing detailed administrative rules for the physical handling, transport, and secure storage of ballots and memory cards to maintain a documented chain of custody.

60. **Administrative Complaint Process**: Implementing administrative procedures for any person to file a formal complaint alleging a violation related to voting equipment, accessibility, or instructions.

[73] *See, e.g.*, *Voter Intent Laws* (Nov. 12, 2024), https://www.ncsl.org/elections-and-campaigns/voter-intent-laws (last visited Oct. 7, 2025).

61. **Voter Eligibility Challenge Rules**: Determining who is authorized to challenge an individual voter's eligibility (e.g., registered voters, poll workers, party challengers) and defining the sufficient grounds for such a challenge.

62. **Election Contest Procedures**: Establishing the legal process and judicial standards for formally contesting election results.

The extensive (but by no means exhaustive) number of choices demonstrates that the creation of a ballot is an exercise in exclusion as much as inclusion. The state does not print a limitless repository of voter expression; it prints a functional instrument of governance. To do so, it must constantly make decisions that privilege certain forms of information over others. The state may choose to group candidates by office rather than party, it may choose to exclude candidates who fail to pay filing fees, and it may choose to prioritize legibility over the exhaustive listing of every minor party endorsement.

Against this backdrop of necessary and routine regulation, the decision to prohibit fusion voting is neither unique nor extraordinary. It is simply one choice in the vast administrative machinery of the Australian ballot.

From an election administration perspective, the decision to list a candidate only once is one of many choices that might be made. Just as the choice of an Office Block layout may reflect a prioritization of the office over the party, the rule on candidate names appearing only once may reflect a prioritization of the candidate's individual identity over their various coalition endorsements. Viewed in this light, fusion voting is a question of ballot formatting. Like the hundreds of other decisions Wisconsin makes to ensure its elections are orderly and intelligible, the choice to list each candidate exactly once is consistent with the state's standard role in designing official election documents.

2. Invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) Would Introduce Cross Filing

The Plaintiffs are seeking fusion voting. Granting relief would also introduce cross-filing—where candidates can compete in multiple parties' primaries—which is only used in a handful of minor elections nationally. This would be a large structural changes beyond fusion voting.

Implementing fusion voting requires a mechanism for a candidate to secure the nomination of a party they do not belong to. Because the Plaintiffs seek to overturn the specific statutory bans on filing for multiple parties without proposing a replacement regulatory structure, the immediate legal consequence of their relief would be a return to Open Cross-Filing.

Cross-filing is the practice wherein a candidate is legally permitted to file nomination papers for the primary elections of multiple political parties simultaneously. While fusion voting focuses on the general election ballot (the end result), cross-filing focuses on the primary election (the selection process).

Without Wis. Stats. §§ 8.03(1) and 8.15(7), the barriers preventing a candidate from entering multiple primaries would be removed. In this system a Republican candidate could legally file to run in both the Republican and Democratic primaries, a Democratic candidate could legally file to run in the Democratic and Green Party primaries, and in fact candidates could file to run in every available primary simultaneously. While this appears to offer voters maximum choice, historical evidence suggests it fundamentally erodes the integrity of political parties by allowing "raiding" and "hostile takeovers."

The most extensive empirical test of this system occurred in California from 1913 to 1959. During this period, the state allowed unrestricted cross-filing. Candidates would be listed on the general ballot using disaggregated fusion (where candidates would appear only once on the ballot, but with all of their party affiliations). The result was not a vibrant multi-party system, but a collapse of meaningful competition as incumbents and major party candidates used the system to capture opposition nominations. In the California model, cross-filing was not limited to minor parties; major party candidates routinely ran in their opponent's primaries. 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.

The historical record provides striking examples of this capture. In 1946, Governor Earl Warren won both the Republican and Democratic primaries for Governor, appearing on the general election ballot as the nominee for both parties. Similarly, in 1948, Republican Richard Nixon cross-filed for re-election to the U.S. House, winning the GOP primary and simultaneously defeating Democrat Stephen Zetterberg in the Democratic primary. Republican Senator William Knowland achieved the same feat in 1952, winning both major-party primaries.

Figure 9 shows primary returns from the Twelfth through Fifteenth Congressional Districts in California's 1948 elections. Observe that in the Twelfth Congressional District, Richard Nixon captured both the Republican primary (where he was uncontested) and the Democratic primary. In the Thirteenth Congressional District, both Noris Poulson and Ned R. Healy contested both the Republican and Democratic primaries, with Healy also contesting the Independent-Progressive primary. The Fourteenth Congressional District shows that ballots under this system could become extremely long when several candidates each contest multiple primaries. Figure 10 shows the general election results for these districts (and several other districts).

In the modern Wisconsin context, it is unlikely that informed Republican voters would vote for a Democrat in their primary and vice versa. However, cross-filing may lead to a weakening of party brands and voter confusion. If candidates can run in multiple primaries, voters can no longer use the fact that the candidate is in a particular primary to infer the candidates policy positions. Moreover, while the California experience highlights major-party capture, the risk is even more acute for minor parties. Because minor parties typically have small electorates, they are uniquely vulnerable to raiding. In an Open Cross-Filing system, a well-funded major-party candidate can mobilize a relatively small number of their own supporters to vote in the minor party's primary. By doing so, they can seize the minor party's nomination against the wishes of its actual membership. This effectively erases the minor party's distinct identity.[74]

Political scientists analyzing the California era observed that while cross-filing reduced overt partisan conflict, it created "a corrupt environment dominated by lobbyists and business interests."[75] Without distinct party labels to guide them, voters lost the ability to hold officials accountable. The cross-filing system was widely viewed as a failure and was abolished in 1959 in favor of strict party distinctions. California retains disaggregated fusion voting for Presidential elections, but it is

[74]Observe, for example, that in the four Congressional primaries in Figure 9, the Independent-Progressive party received a small number of votes in most of the elections. If appearing on a third-party line is valuable for candidates, it would be easy for major party candidates to raid the primaries.

[75]Seth Masket, "The Costs of Party Reform: Two States' Experiences", in American Gridlock: The Sources, Character, and Impact of Political Polarization pp 222–236 (James A. Thurber & Antoine Yoshinaka, eds., Cambridge University Press 2015).

FOR REPRESENTATIVES IN CONGRESS—Continued

Twelfth Congressional District

	Los Angeles
Richard M. Nixon (Rep.)	42,509
Richard M. Nixon (Dem.)	21,411
Margaret B. Porter (Dem.)	2,769
Stephen I. Zetterberg (Dem.)	16,808
Margaret B. Porter (Indp.-Prog.)	* 194
Scattering	248

Thirteenth Congressional District

	Los Angeles
Norris Poulson (Rep.)	24,294
Ned R. Healy (Rep.)	4,126
Norris Poulson (Dem.)	17,886
Ned R. Healy (Dem.)	23,940
Ned R. Healy (Indp.-Prog.)	1,151
William E. Nielsen (Indp.-Prog.)	159
Scattering	106

Fourteenth Congressional District

	Los Angeles
Helen Gahagan Douglas (Rep.)	9,956
Robert M. Angier (Rep.)	302
W. Wallace Braden (Rep.)	10,257
Maxime A. Du Pree (Rep.)	343
W. Hiram Johnson (Rep.)	2,157
Martin J. McManus, Jr. (Rep.)	2,321
Nod I. Mulville (Rep.)	721
Russell H. Reay (Rep.)	1,207
Kenneth F. Riley (Rep.)	574
Moody Staten (Rep.)	2,023
Alec D. Williamson (Rep.)	231
Ernest E. Wood (Rep.)	1,054
Helen Gahagan Douglas (Dem.)	37,408
W. Wallace Braden (Dem.)	3,924
John S. Crowder (Dem.)	1,441
Martin J. McManus, Jr. (Dem.)	2,710
Nod I. Mulville (Dem.)	1,032
Kenneth F. Riley (Dem.)	1,429
Moody Staten (Dem.)	2,443
Alec D. Williamson (Dem.)	585
Sidney Moore (Indp.-Prog.)	574
Scattering	142

Fifteenth Congressional District

	Los Angeles
Gordon L. McDonough (Rep.)	38,049
Gordon L. McDonough (Dem.)	29,092
Maynard J. Omerberg (Dem.)	7,998
Lawrence A. Peifer (Dem.)	9,367
Allen M. Rose (Dem.)	2,946
Maynard J. Omerberg (Indp.-Prog.)	721
Scattering	161

* Disqualified on account of having lost own party nomination (Sec. 2893, Elections Code).

Figure 9: Primary returns from the Twelfth through Fifteenth US Congressional Districts in California's 1948 elections.

FOR REPRESENTATIVES IN CONGRESS—Continued

Tenth Congressional District—

	Kern	Kings	Tulare	Totals
Sam James Miller (Ind.-Prog.)	15,042	2,938	9,188	27,168
Thomas H. Werdel (Rep.) (Dem.)	36,170	6,741	24,537	67,448
Scattering	8	----	7	15

Eleventh Congressional District—

	Monterey	San Luis Obispo	Santa Barbara	Ventura	Totals
Ernest K. Bramblett (Rep.) (Dem.)	25,583	13,628	26,259	21,673	87,143
Cole Weston (Ind.-Prog.)	4,885	2,776	3,163	3,758	14,582
George E. Outland (Write-in)	392	485	1,632	3,648	6,157
Scattering	22	11	7	18	58

Twelfth Congressional District—

	Los Angeles
Richard M. Nixon (Rep.) (Dem.)	141,509
Una W. Rice (Ind.-Prog.)	19,631
Scattering	1,667

Thirteenth Congressional District—

	Los Angeles
Norris Poulson (Rep.)	62,951
Ned R. Healy (Dem.) (Ind.-Prog.)	56,624
Scattering	47

Fourteenth Congressional District—

	Los Angeles
Helen Gahagan Douglas (Dem.)	89,581
W. Wallace Braden (Rep.)	44,611
Sidney Moore (Ind.-Prog.)	2,904
Scattering	25

Fifteenth Congressional District—

	Los Angeles
Gordon L. McDonough (Rep.) (Dem.)	131,933
Maynard J. Omerberg (Ind.-Prog.)	27,007
Scattering	91

Sixteenth Congressional District—

	Los Angeles
Donald L. Jackson (Rep.)	121,198
Ellis E. Patterson (Dem.) (Ind.-Prog.)	91,268
Scattering	87

Seventeenth Congressional District—

	Los Angeles
Cecil R. King (Dem.) (Rep.)	194,782
Scattering	205

Eighteenth Congressional District—

	Los Angeles
Willis W. Bradley (Rep.)	92,721
Clyde Doyle (Dem.)	105,687
Stanley Moffatt (Ind.-Prog.)	8,232
Scattering	15

Nineteenth Congressional District—

	Los Angeles
Chet Holifield (Dem.)	72,900
Jacob Berman (Ind.-Prog.)	1,915
Joseph Francis Quigley (Rep.)	28,698
Myra Tanner Weiss (Ind.)	1,013
Scattering	16

Twentieth Congressional District—

	Los Angeles
Carl Hinshaw (Rep.) (Dem.)	204,710
William B. Esterman (Ind.-Prog.)	46,232
Scattering	160

Figure 10: General Election returns from the Tenth through Twentieth US Congressional Districts in California's 1948 elections.

largely unused.

Cross-filing is not widely available in the United States. Our research found a few sporadic cases of its use:

- Pennsylvania. Pennsylvania allows cross-filing for some local offices including school board elections and magisterial judge elections.[76]
- Maryland. Maryland allows cross-filing for judge of the circuit court and judge of the orphan court elections.[77]

In these jurisdictions, we see candidates running in multiple primaries. For example, a Democrat running in a 2023 school board election in Pittsburgh made the strategic decision to also run as a Republican, stating "It doesn't change my stance on things. . . I'm not going to stand down from those parts of my platform."[78]

Our research did not reveal a single state that allows cross filing. Implementing it in Wisconsin would be a large and potentially chaotic change to elections.

3. Invalidating Wis. Stats. §§ 8.03(1) and 8.15(7) Would Allow Sore Losers

In the American electoral context, "sore loser" laws refer to the set of statutes and regulations designed to 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.[79] Every state except New York and Connecticut have sore loser laws in place.[80] The primary objective of these laws is to protect the integrity of the nominating process by ensuring that the results of a primary are definitive. Without such safeguards, the primary election ceases to function as a winnowing mechanism for parties and instead serves merely as a non-binding preference poll. By requiring candidates to accept the primary outcome as a final determination of their eligibility for the general ballot, these laws promote political stability, prevent voter confusion, and mitigate the "spoiler effect" that occurs when multiple candidates from the same ideological faction compete in a general election.

In Wisconsin, Wis. Stats. §§ 8.03(1) and 8.15(7) serve as the state's "sore loser" law. Invalidating this provision thus carries consequences that extend well beyond the cross-filing discussed above. Because Wisconsin's prohibition on fusion voting is structurally intertwined with its "sore loser" protections, granting the requested relief would likely dismantle the state's mechanism for ensuring the finality of primary elections, allowing defeated primary candidates to appear on the general election ballot as independents or third-party nominees.

Wis. Stat. § 8.03(1) states:

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[76] Ballotpedia, *Pennsylvania Judicial Elections*, https://ballotpedia.org/Pennsylvania_judicial_elections (last visited Dec. 12, 2025).

[77] Ballotpedia, *Maryland Judicial Elections*, https://ballotpedia.org/Maryland_judicial_elections (last visited Dec. 12, 2025).

[78] Kate Huangpu, *Party Affiliation Can Be Misleading in Local Pa. Elections. Here's Why*, Spotlight PA (May 3, 2023), https://www.spotlightpa.org/news/2023/05/cross-file-school-board-republican-democrat-pennsylvania/ (last visited Oct. 7, 2025).

[79] See e.g. Ballotpedia, *Sore Loser Laws by State*, https://ballotpedia.org/Sore_loser_laws_by_state (last visited Dec. 12, 2025)

[80] *See* Elijah Meltzer, *Only Two States Welcome Sore Losers in Their Elections* (Sep. 17, 2025), https://www.ncsl.org/state-legislatures-news/details/only-two-states-welcome-sore-losers-in-their-elections (last visited Dec. 12, 2025).

> "The name of any candidate who is nominated to the same office by more than one party or primary or nominated for more than one partisan or state nonpartisan office shall appear under the party first nominating him or her or under the office to which he or she was first nominated. If the double nomination is simultaneous, the candidate who is nominated, before the deadline for filing nomination papers shall file a written statement with the same person with whom he or she files nomination papers stating the person's party or office preference. If the candidate fails to select the party or office, the filing officer shall place the candidate's name on the ballot under either party or office, but may not permit it to appear more than once. If a candidate is nominated at a primary election for partisan office or nonpartisan state office on a ballot where his or her name appears or by nomination papers filed by the candidate, and is also nominated by write-in votes at the primary election to another office, or to the same office as the candidate of a different party, the candidate does not have a choice, but shall be placed on the ballot for the election under the office and party for which the candidate's name appeared on the primary ballot or for which the candidate had filed nomination papers."

Wis. Stat. § 8.15(7) states in relevant part:

> "A candidate may not run in more than one party primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. A person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election."[81]

This provision serves a dual administrative function. First, as discussed above, it prevents cross-filing and ensures a candidate's name is associated with only one nomination. Second, it functions as Wisconsin's "sore loser" law. By requiring candidates to commit to a single ballot line at the time of filing, the state ensures that the primary election serves as a definitive winnowing stage for the general election.[82]

If Wis. Stats. §§ 8.03(1) and 8.15(7) were struck down, a candidate would no longer be forced to choose a single path to the general election. Instead, a candidate could legally 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

[81] Wis. Stat. § 8.15(7) (2025).

[82] Indeed, sore loser laws are intertwined with laws on cross-filling nationally. The National Conference of State Legislatures explains:

> The legal mechanisms of sore loser laws vary by state, but the most common one is a prohibition on cross-filing. . . Some states, such as Arkansas, explicitly prohibit candidates from appearing under multiple party designations in the same election cycle. Other states, including Delaware, prohibit cross-filing implicitly by setting a minimum amount of time that a candidate must be registered with a party to run. Still other states, such as South Carolina, have more targeted sore loser laws, barring defeated candidates from running again in the same election cycle, regardless of party. See Meltzer, *supra* note 80.

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lose primary elections. A candidate would be legally permitted to file for the Democratic primary *and* concurrently file as an Independent (or as the nominee of a "sham" party). This capability permits candidates to effectively "hedge" against rejection by the primary electorate. Currently, the primary election functions as a definitive elimination stage: the defeated candidate is removed from contention. If Wis. Stats. §§ 8.03(1) and 8.15(7) were removed, the primary would be reduced to a mere recommendation. A candidate defeated in the Democratic primary could simply persist into the general election using the Independent ballot line they previously secured.

Such a change would relegate Wisconsin to the small minority of jurisdictions, presently limited to New York and Connecticut, that permit "sore losers" to appear on the general election ballot.[83] In these states, general elections frequently devolve into re-litigations of primary contests.[84]

Consequently, striking Wis. Stats. §§ 8.03(1) and 8.15(7) would dismantle the legal infrastructure that stops sore losers from acting as spoilers. As we discuss further below, the state has an interest in the finality of elections and the prevention of voter confusion. By prohibiting candidates from hedging their bets across multiple lines, Wis. Stats. §§ 8.03(1) and 8.15(7) protects the integrity of the primary process. The invalidation would effectively repeal the state's ability to manage the size and stability of the general election ballot, leading to an environment where the primary election loses its functional significance in the democratic process.

4. The New Administrative Dilemmas (and Unintended Consequences) of Fusion Voting

If Wis. Stat. §§ 8.03(1) and 8.15(7) were eliminated, it would not restore a comprehensive system of fusion voting because no such system exists. Instead, Wisconsin would be forced to create an entirely new election regime. Because "fusion voting" is not a monolithic practice, but rather an umbrella term for several distinct institutional arrangements, the state would immediately confront a series of consequential choices.

The implementation of a functional fusion system would require the resolution of structural conflicts for which there is no neutral or cost-free solution. Each decision involves fundamental trade-offs between party brand integrity, ballot legibility, and the prevention of strategic manipulation. We identify four primary dilemmas that would necessitate intervention:

- **The Ballot Format Dilemma:** Choosing between disaggregated (New York style) or aggregated (Oregon style) layouts, a decision complicated by Wisconsin's existing Office-Block structure.
- **The Nomination Dilemma:** Establishing a gatekeeping mechanism (such as New York's Wilson-Pakula certificates) or abandoning Wisconsin's open primary system to prevent major parties from raiding minor party primaries.
- **The Ballot Access Dilemma:** Redefining the 1% performance threshold for recognized party status in a system where votes are shared across multiple lines.
- **The "Sham Party" Dilemma:** Crafting regulations to prevent candidates from using minor party lines as mere "billboard" slogans or campaign advertisements.

[83] *See* Meltzer, *supra* note 80.

[84] This recently occurred, for example, in the 2025 New York Mayoral race, where Andrew Cuomo ran in the general election after losing the Democratic primary.

a. The Ballot Format Dilemma

The first choice concerns how the multiple nominations are presented to the voter.

The state could choose to list the candidate multiple times (disaggregated fusion), once for each nominating party (the New York model). This maximizes the "signaling" function for the minor party but maximizes ballot clutter. As noted in the response to Dr. Burden (below), this choice is particularly fraught in Wisconsin because the state uses an Office-Block ballot layout. Inserting multiple lines for the same candidate within an Office Block creates a confusing visual redundancy that no other state currently employs.

Alternatively, the state could list the candidate once (aggregated fusion), with multiple party labels printed beneath their name (the Vermont/Oregon model). While this reduces clutter, it obscures the number of votes for the minor party, as votes are cast for the candidate rather than the specific party line.[85]

b. The Nomination Dilemma

The state must decide how a major-party candidate secures a minor-party nomination. This forces a choice between eroding party identity through unrestricted "raiding" or concentrating decision-making power with a narrow group of party elites.

Because the Plaintiffs seek to overturn the specific statutory bans on cross-filing without proposing a replacement mechanism, the immediate legal default would be Open Cross-Filing. Under this regime, filing restrictions are removed entirely, allowing any candidate to enter the primary of any party. This resurrects the specific electoral system used in California during the mid-20th century, a period widely cited by political scientists as a cautionary tale.

In the California model, cross-filing was not limited to minor parties. Major party candidates routinely ran in their opponent's primaries. 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. Major party candidates could also run in minor party primaries.

To prevent this free-for-all, the Legislature could intervene by adopting a Wilson-Pakula model (as in New York), which restricts access by requiring candidates to secure formal permission from party leaders to enter a primary. However, as the New York experience demonstrates, this creates a democratic deficit of its own: it transforms the nomination into a tradable asset controlled by party bosses. The state is thus forced to choose between a default system of cross-filing that failed spectacularly in California or a regulated system of gatekeeping as in New York.

Another way that the legislature could intervene to mitigate the raiding concerns would be by changing the structure of Wisconsin primaries. Wisconsin has a completely "Open Primary" system.[86] That is, voters do not register by party, and any voter may participate in the primary of their choice. This tradition poses difficulties with the mechanics of fusion voting nominations.

Fusion relies on the premise that a minor party is a distinct entity making a distinct choice. However, in an open primary, the minor party's electorate is undefined. If the state maintains the Open Primary system, minor party primaries will be susceptible to hostile takeovers by voters from

[85] See Section II.D.2 for the reasons that the number of votes for a minor party is not a reliable indicator of party strength.

[86] Wis. Stat. § 5.62 (2025) (partisan primary ballots).

major parties. For example, opposition voters legally crossing over to nominate a spoiler candidate (or their preferred candidate) on the minor party line. That is, nothing prevents Democratic or Republican voters from voting in a minor party primary (such as the United Wisconsin party primary) to get a candidate that they prefer. To protect the integrity of the minor party nomination , the Legislature would likely be forced to abandon the Open Primary and institute Partisan Voter Registration (or party gatekeeping). Thus, the state faces a choice: expose minor parties to raiding, or abandon Wisconsin's historic commitment to the Open Primary system.

c. The Ballot Access Dilemma

Wisconsin law currently grants recognized status (and automatic ballot access) to political parties based on whether they achieve at least 1% of the total vote in a statewide election.[87] This statute relies on a one-to-one relationship between a vote for a candidate and a vote for a party. Fusion voting breaks this relationship, forcing the Legislature to decide between two distinct methods of calculation, each with significant drawbacks.

The Legislature could choose to count votes separately for each ballot line, as in New York. If a voter selects the minor party line, the vote counts toward that party's 1% threshold. This method credits the minor party with support that may belong entirely to the candidate.[88] A minor party can thus secure permanent ballot access not by building its own constituency, but by strategically cross-endorsing a popular major-party incumbent. This forces the state to maintain ballot lines for parties that may have little organic support, such as the "Tax Cut Now" party in New York.

Alternatively, if the state uses an aggregated ballot (as in Oregon) or chooses not to distinguish between lines, the Legislature must decide how to determine ballot access. Oregon, for example, gives initial ballot access based on petition, and maintaining ballot access is based either on vote share or on officially registered members.[89] In aggregated fusion, even if a minor party contributes significantly to a candidate's victory, the official tally shows only the candidate's total. The Legislature would then be forced to abandon the performance-based test (the 1% rule) and create a completely new, administrative hurdle for party qualification—such as mandatory party registration totals or significantly higher petition requirements, thereby changing the rules for every political party in the state.

d. The "Sham Party" Dilemma

Finally, the state must decide how to regulate the creation of new parties in a fusion environment to prevent the ballot from becoming a billboard. If the barrier to entry is low, major party candidates have a strong incentive to create ad-hoc "Sham Parties" as occurs in New York (e.g., the "Tax Cut Now" party or "Stop Common Core") solely to highlight a campaign slogan on the ballot. To prevent this, the state must erect high barriers to party formation (e.g., difficult petitioning requirements). However, high barriers insulate incumbent minor parties from competition and make it difficult for genuine new movements to emerge. The state is thus forced to choose between a ballot cluttered with billboard slogans or a system that freezes the status quo.

[87] Wis. Stat. § 5.62.

[88] E.g., did the Conservative Party "earn" the 321,733 votes that were cast for Donald Trump on their line in 2024?

[89] Or. Rev. Stat. § 248.008 (2023) (qualification as minor political party).

D. Evaluating the Potential of Fusion Voting to Affect Democratic Outcomes

The resurgence of interest in fusion voting is driven by a powerful claim: that its revival could remedy some of the most pressing dysfunctions in modern American democracy. Proponents contend that fusion voting would mitigate partisan polarization, increase accountability, and ultimately produce more representative elected officials. However, as discussed above, there is little historical or empirical evidence for these claims. Therefore, these purported benefits rest on a series of assumptions about the behavior of voters, parties, and candidates that demand rigorous scrutiny. Would the adoption of fusion voting likely generate the democratic benefits that its advocates claim?

1. Baseline: No Fusion Voting

To understand the potential impact of fusion voting, we must first establish a clear baseline of how the current electoral system functions. A fundamental driver of polarization in the status quo is the two-stage nature of American elections: the partisan primary followed by the general election.

In a simple general election between two candidates, political theory suggests that both candidates should move toward the political center. Because the winner is determined by the "median" or average voter, a candidate who moves too far to the extreme risks losing moderate votes to their opponent. Therefore, in a single-stage election, we would expect candidates to converge on moderate positions.

However, in the current system, candidates cannot compete for the median voter in the general election until they have won the support of a primary electorate. Primary voters are typically far more partisan and ideologically distinct than the general electorate. This creates a "primary filter". First, to win a nomination, a Democrat must appeal to the left-leaning primary base, and a Republican must appeal to the right-leaning primary base. Second, a moderate candidate who would be highly competitive in the general election often cannot survive the primary because they are viewed as insufficiently ideological by the party base. Third, by the time the general election arrives, the surviving candidates have already committed to positions far from the center.

This structural reality creates a tension where the incentives of the first stage (the primary) run directly counter to the incentives of the second stage (the general election). The result is that general election voters are frequently presented with a choice between two unrepresentative candidates. This is the specific dysfunction that fusion voting proponents claim to solve; therefore, the efficacy of fusion must be judged by whether it can forcibly overcome this powerful "primary filter."

The preceding analysis illustrates how the "primary filter" pulls candidates away from the general electorate's center. Can fusion voting provide a countervailing force—a "centripetal" pressure—that pushes candidates back toward moderation?

To evaluate this question, we must recognize that fusion voting is a *party-based* reform. Unlike reforms that change how votes are counted (such as Ranked Choice Voting), fusion voting only changes outcomes if it alters the behavior of political parties. Specifically, it relies on the existence of minor parties that are capable of strategically granting or withholding endorsements to discipline major party candidates.

Our analysis below demonstrates that the conditions required for fusion voting to produce

moderation are exceptionally demanding and unlikely to hold. In fact, the strategic incentives created by fusion voting are more likely to empower ideological extremists than moderates. We analyze the three possible mechanisms below.

2. Fusion Voting - Mechanisms

a. The "Center Party" Illusion

The most optimistic argument for fusion voting is that a "Center Party" or "Moderate Party" will emerge, endorse the most reasonable major-party candidate, and provide the margin of victory. This would theoretically force Democrats and Republicans to compete for the center to win the fusion endorsement. This scenario is very unlikely for two reasons: organizational reality and informational logic.

First, political parties are not created by abstract median voters; they are created by activists with intense policy preferences. A party that seeks to appeal to centrist voters is a party that is trying to appeal to a set of voters who are well-known to be less politically engaged.[90] History and political science consistently show that third parties form to press for specific issues ignored by the major parties (e.g., abolition, prohibition, green politics, or nativism). There is no historical precedent for a sustainable "party of the median." The voters in the middle are typically the least politically active,[91] and the least likely to organize the complex infrastructure required to maintain a ballot line.

Second, even if a "Center Party" existed, the mechanism relies on a contradiction regarding voter behavior. Moderate voters are more likely to be "low-information" voters who do not know much about the candidates.[92] Proponents argue fusion helps these voters find the moderate candidate. But if a voter is too uninformed to know that the Democratic nominee is a moderate, how will they know that the "Center Party" is a credible arbiter of moderation? This opens the door to "sham" parties, where major party operatives create sounding-board parties (e.g., "Tax Cut Now" as in New York) simply to trick low-information voters. That is, it does not make sense to assume that voters are low-information in that they cannot make sense of the candidates' positions, but can trust the credibility of a new political party that may itself be a front for an established candidate (again, as happens in New York). In the next section we discuss survey evidence that shows voters have a hard time assessing the policy positions of minor parties.

If instead voters are high-information, they do not need a fusion line to tell them which candidate is more moderate; they can simply vote for that candidate on the major party line. In short, for the "Center Party" mechanism to work, one must assume a minor party that has no activist base but massive organizational capacity, appealing to voters who are informed enough to trust the party but uninformed enough not to know the candidates.

All of the above assumes that "the party" does the nominating. However, as discussed in Section II.C.2 the invalidation of §§ 8.03(1) and 8.15(7) would introduce open cross filing coupled with open primaries, which calls into question whether the third party's nomination is meaningful (i.e. from the base of that party) or whether it was secured through raiding by major-party voters.

[90] Paul R Abramson and John H Aldrich, The Decline of Electoral Participation in America, 76 American Political Science Review 502 (1982)

[91] *Id.*

[92] Donald R Kinder and Nathan P Kalmoe, Neither Liberal nor Conservative: Ideological Innocence in the American Public (University of Chicago Press 2017)

A third issue is identifying the "influence" of the third party. This is often gauged by the number of votes that a candidate receives on a given party line. Aggregated fusion (where candidates appear once next to multiple parties) provides no information about what party line a voter voted on. Disaggregated fusion (where candidates can be listed more than once) provides results broken down by which party voters voted under. What can be made of this information?

Advocates of fusion voting often point to election results to prove their case. For example, if a candidate wins by 1,000 votes and received 5,000 votes on a minor party line, advocates claim the minor party "provided the margin of victory." This reasoning is fundamentally flawed because it confuses *where* a vote was recorded with *why* it was cast. Election returns tell us which line a voter selected, but they cannot tell us what that voter would have done in a world without fusion.

To understand why raw vote counts are misleading, we must distinguish between two very different types of voters who choose a minor party line. The first type is the "Re-Labeler." This voter prefers the major party candidate and would have voted for them anyway on the major party line. When they choose the minor party line, they are simply re-labeling a vote the candidate already had. In this case, fusion changes the tally's appearance but does not affect the election's outcome. The second type is the "New Recruit." This voter would *not* have voted for the candidate on the major party line, perhaps staying home or voting for a different candidate. Only the presence of the fusion line persuaded them to support the candidate. In this case, fusion actually added a new vote.

The problem is that the ballot box does not distinguish between a Re-Labeler and a New Recruit. A vote on the Conservative Party line looks identical whether it came from a lifelong Republican who just wanted to signal their values or a disaffected independent who was brought off the sidelines. That is, some of the 321,733 voters who voted for Donald Trump on the Conservative line in the 2024 presidential election in New York surely would have voted for him on the Republican line if that were their only option. However, there is no way to determine how the votes would have been cast in the absence fusion.

Moreover, raw vote counts also hide the potential *negative* effects of fusion. It is possible that a minor party endorsement actually repels moderate voters. Imagine a Republican candidate fuses with a controversial far-right party. This endorsement might attract 500 New Recruits on the far right, but the association with the far-right party might simultaneously alienate 600 moderate voters who would otherwise have supported the Republican. The raw returns will show 500 votes on the fusion line, leading observers to claim the party "helped." But in reality, the fusion endorsement cost the candidate a net 100 votes.

Because we cannot observe the alternative reality where fusion was not used, we cannot measure the "causal effect" of the minor party line. Treating every vote on a fusion line as a vote "delivered" by that party, and assuming the candidate would have lost those votes otherwise, is a logical error that misjudges the influence of minor parties.

b. Voter Confusion in Surveys

An important question is whether voters understand the ideological commitments of minor parties. Loepp and Melusky conducted a survey experiment of 863 voters to evaluate how fusion ballots influence voter perceptions.[93] To ensure the findings were applicable to real-world fusion

[93]Eric Loepp and Benjamin Melusky, Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting, 21 Election Law Journal: Rules, Politics, and Policy (2022).

contexts, the sample included a representative subset of residents from fusion states.

The experiment presented voters with a series of ballots including the Working Families Party (WFP) and the Conservative Party to test whether these labels provided accurate heuristics or "information cues." The results undermine the claim that fusion labels inherently clarify candidate ideology. The study found that because the name "Working Families Party" does not send an explicit ideological signal, voters incorrectly assumed it was a moderate organization (below we discuss the progressive orientation of the WFP in more detail).

Recent polling data from March 2025 provides confirmation of this confusion.[94] In a messaging survey commissioned by the Working Families Party, voters were asked about their perceptions of party ideology on a scale of 0 (Very Conservative) to 100 (Very Progressive). Figure 11 presents a screenshot of the survey results.

Respondents placed the Democratic Party at 57.8, identifying it as leaning progressive. Respondents placed the Republican party at 29.2, identifying it as leaning conservative. These both track with common perceptions of the parties. However, respondents placed the Working Families Party at 47.2—actually positioning it to the *right* of the Democratic Party and slightly to the *conservative* side of the neutral midpoint. Even more telling is the distribution of these views. Despite the WFP's status as a progressive flank party, 38% of respondents rated it as "Conservative" (0–39), while another 25% rated it as "Moderate". Only 37% identified it as belonging to the liberal/progressive bloc. As discussed in detail in II.B.2.b, the WFP holds positions that are generally considered to be to the Left of the Democratic party.

Like the Loepp and Melusky study, this study was done nationally, and does not isolate the views of New York voters. This makes it difficult to draw inferences, because the Working Families Party is not widely known outside of New York (we could not find any evidence about how well-known the WFP is within New York).

However, the same study also asked about views of the Green Party, which has a national presence. The survey found that 48% of respondents rated the Green Party as "Conservative," producing a mean score of 38.9, suggesting that voters viewed the Green Party as significantly more conservative than the Democratic Party. This contrasts with the Green Party's party platform, which favors policies to the left of the Democratic Party, including free childcare,[95] universal basic income,[96] and an explicit policy of opposing capitalism.[97]

This data provides evidence against the argument that fusion labels serve as clear information cues. If nearly half the electorate believes the Green Party is conservative, and a clear majority believes the Working Families Party is more conservative than the Democrats, then these ballot labels are not informing voters.

c. There is No Viable Path to Running as a Third-Party Candidate

A second possible argument is that fusion allows a genuinely moderate third candidate to run and win, breaking the duopoly. This is unlikely because fusion does not change any of the dynamics that limit third-party candidates from successfully contesting elections.

[94] Working Families Party, *WFP Messaging Study* (Mar. 18, 2025), https://drive.google.com/file/d/16JOQLG0sJLAA73LqvczBAnWyDc3eUfmi/view (last visited Oct. 7, 2025).

[95] https://www.gp.org/democracy#dem_families

[96] https://www.gp.org/economic_justice_and_sustainability/#ejLivableIncome

[97] https://www.gp.org/economic_justice_and_sustainability#ecosoc

On a scale of 0-to-100, where 0 means very conservative and 100 means very progressive, where would you place each of the following parties?

100. Democratic Party

Conservative (0-39)	29%
Moderate (40-60)	22%
Liberal/Progressive (61-100)	49%
Mean	57.8

101. Republican Party

Conservative (0-39)	66%
Moderate (40-60)	15%
Liberal/Progressive (61-100)	19%
Mean	29.2

102. Green Party

Conservative (0-39)	48%
Moderate (40-60)	25%
Liberal (61-100)	26%
Mean	38.9

103. Working Families Party

Conservative (0-39)	38%
Moderate (40-60)	25%
Liberal/Progressive (61-100)	37%
Mean	47.2

104. The Libertarian Party

Conservative (0-39)	52%
Moderate (40-60)	28%
Liberal/Progressive (61-100)	19%
Mean	35.2

Figure 11: Excerpt of survey results from Working Families Party, *WFP Messaging Study* (Mar. 18, 2025), https://drive.google.com/file/d/16JOQLG0sJLAA73LqvczBAnWyDc3eUfmi/view (last visited Oct. 7, 2025), at 17.

Fusion voting operates within the standard plurality (winner-take-all) system. If a Moderate Party nominates its own distinct candidate (rather than cross-endorsing), that candidate still faces the exact same dynamics as any third-party candidate today. If a moderate voter believes the third-party candidate cannot win, they will still vote for the "lesser of two evils" major-party candidate to avoid wasting their vote. Fusion does nothing to change the math of plurality voting. It does not transfer votes or eliminate the spoiler effect. Alternatively, if the moderate candidate attempts to use fusion to bypass the "primary filter" by running in a major party primary *and* holding a minor party line, they still face the original hurdle: the partisan primary electorate. Possession of a fusion line does not make a candidate more appealing to the partisan base; in fact, being labeled a "centrist" outsider often hurts candidates in closed primaries. Fusion offers no bypass around the structural barrier of the primary.

d. The "Flank Effect": How Fusion May Increase Polarization

The most likely outcome of fusion voting is not moderation, but increased polarization. While "Center Parties" are hypothetical constructs that lack a natural constituency, "Flank Parties" are realities. These are parties organized to the left of the Democrats (e.g., the Working Families Party) or to the right of the Republicans (e.g., the Conservative Party).

These parties function as ideological enforcers. They do not work by pulling candidates toward the center, but instead work by pulling them toward the extremes. The mechanism of this influence is the credible threat of the spoiler.

To understand this dynamic, consider a general election between a center-left Democrat and a right-wing Republican. In a standard two-party contest, the center-left Democrat is closer to the median voter and is the probable winner.

A "Left Party" (e.g., the Working Families Party) demands that the Democrat adopt more radical positions as the price of their endorsement. If the Democrat refuses, the Left Party threatens to run its own candidate on its own line. This creates a "spoiler" scenario: the Left Party candidate splits the liberal vote, allowing the Republican to win with a plurality.

The power of the minor party in this negotiation does not come from its ability to elect its own candidate. Rather, its bargaining power stems entirely from its ability to hand the seat to the opposition. As noted by the pro-fusion organization New America, fusion gives minor parties influence specifically "when they can withhold endorsements [and] credibly threaten to spoil a race."[98]

To avoid this outcome, the Democrat must capitulate. They must move to the left (away from the median voter) to secure the fusion line and prevent the spoiler. This effectively acts as "insurance" against a left-flank defection. The result is a major party nominee who is less representative of the general electorate than they would have been without fusion.

Fusion allows a minor party to say, "We will not spoil this election if you adopt some part of our platform." By giving the flank party a dedicated ballot line, fusion maximizes the credibility of the spoiler threat while providing a mechanism for the major party to buy them off. This is a credibility that minor parties do not have in non-fusion elections.

The practical effect of this leverage is to export the polarization of the primary election into the general election. In the current system, incumbents worry about being "primaried" by an

[98]Oscar Pocasangre and Maresa Strano, *What We Know About Fusion Voting* (New America, 2024), https://www.newamerica.org/political-reform/reports/what-we-know-about-fusion-voting/.

ideological challenger. This forces them to move to the extremes early in the cycle. Fusion creates a second checkpoint. Even if a moderate Democrat survives the primary, they must then negotiate with the flank party as well.

This is the observable dynamic in New York. The Conservative Party and the Working Families Party function as ideological anchors, seeking to prevent major party candidates from drifting toward the center. So while fusion voting should not be expected to move outcomes towards the center, it may move policy *away* from the median voter.

3. Will Fusion Voting Mitigate Voter Disaffection?

Beyond the mechanical claims about election outcomes, proponents argue that fusion voting provides a psychological or "expressive" benefit. The argument is that many voters feel "politically homeless." For example, a "Constitutional Republican" who dislikes Donald Trump but cannot bring themselves to vote for a Democrat, or a socialist who finds the Democratic platform too corporate. Proponents claim that fusion allows these voters to "find voice and electoral respect" by voting for a major-party candidate under a minor-party banner that better reflects their values.[99]

This argument conflates the *feeling* of representation with the *reality* of political choice. Upon scrutiny, the purported cure for disaffection acts more as a placebo than a structural remedy.

The fundamental source of voter disaffection in the United States is the perception that the political system offers a binary choice between two unsatisfactory options. Fusion voting does not alter this reality, it merely re-packages it.

Consider the hypothetical "Constitutional Republican." Under fusion, this voter might have the option to vote for the Democratic nominee on a "Conservative Democrats" or "Never Trump" line. While this may offer a moment of expressive satisfaction in the voting booth, the instrumental outcome remains identical: the election of the standard Democratic nominee. If the source of disaffection is *policy*, that is, the voter dislikes Democratic policies, voting for a Democrat on a fusion line does not change the policy outcomes. The elected official will still caucus with the Democrats and vote for the Democratic platform. Re-labeling a binary choice does not make it less binary; offering a voter six different ways to vote for the same two candidates does not expand the menu of options, it only expands the packaging. To argue that a different label cures disaffection is to treat voters as easily placated by aesthetics, assuming that voters are frustrated by the *name* of the party rather than the *substance* of the governance. There is no evidence that putting a new label on the same major-party candidate resolves the deep-seated frustration with the two-party system. Disaffected voters often stay home because they believe their vote does not matter or that neither candidate represents them. Fusion voting does not fix this.

4. An Appraisal of the Theoretical Effectiveness of Fusion Voting

Proponents paint fusion voting as a way to empower the political center and improve American democracy. However, a rigorous analysis of electoral incentives reveals that fusion is more likely to have little or no moderating effect and is much more likely to have a polarizing effect.

The central failure of the pro-fusion argument is that it relies on the emergence of a "Center Party" that lacks a natural constituency of activists to organize it *and* a natural constituency of voters to vote with it. In the absence of such a party, the mechanisms of fusion do not produce

[99] Scholars for Re-Legalizing Fusion Voting, *supra* note 5.

centripetal force toward moderation. If anything it may produce centrifugal force toward the extremes. It allows them to turn the general election into a secondary primary, enforcing ideological purity and punishing major-party candidates who attempt to moderate.

Even if we assume for the sake of argument that a robust Center Party were to emerge, it would remain structurally impotent given partisan primaries. Fusion voting is a general-election mechanism, but the much of the polarization of candidates occurs in the partisan primaries. By the time a Center Party is positioned to offer its endorsement, the major-party nominees have already been selected by their respective bases. Major-party candidates may view the threat of a primary challenge as existential, whereas the benefit of a fusion endorsement is unclear. Consequently, they are unlikely to moderate their positions to satisfy a Center Party if doing so risks alienating their primary base. The Center Party is thus left with a hollow choice: endorse a polarized major-party nominee as the lesser of two evils, thereby validating the status quo, or run a spoiler candidate that paradoxically aids the more extreme opponent.

And in the Wisconsin context, given that eliminating Wis. Stats. §§ 8.03(1) and 8.15(7) also would institute cross filing, it is possible that both the Republican and Democratic candidates would contest the primaries of third parties like United Wisconsin. Given the large number of Democratic and Republican voters and that Wisconsin has open primaries, it may be that these voters would swamp any "true" United Wisconsin voters in the primary.

This theoretical conclusion is consistent with the empirical reality in New York, where fusion has acted through primarily through parties on the wing (the Conservative and Working Families parties) rather than through a hypothetical centrist bloc. Furthermore, the reliance on raw vote returns to justify the reform is methodologically unsound. These returns conflate the re-labeling of existing votes with the recruitment of new ones, masking potential alienation of moderate voters.

Ultimately, fusion voting should not be expected to lead to more representative candidates. It is not likely to allow a third party candidate to successfully contest general elections. It is not likely to incentivize the creation of centrist parties. It is not likely to send meaningful signals to voters. It is not likely to provide useful information from vote shares. It is not likely to lead to more moderate candidates winning partisan primaries. It offers the illusion of greater choice while leaving the binary reality of the two-party system intact.

E. State Interests Implicated by Fusion Bans

There are multiple state interests implicated by fusion voting bans. Any of these interests, or a combination thereof, may have motivated the various state legislatures who enacted laws to ban fusion voting.

1. Ballot integrity and clarity

a. Platform coherence

Early critics of fusion voting often characterized parties as expositors of a coherent platform and doubted whether a single candidate could simultaneously represent two distinct platforms. The modern academic literature is more skeptical that platforms are unitary or static, but the state's interest can be reframed as avoiding a ballot presentation that implies a candidate is, at once, the standard-bearer for potentially incompatible brands. The Supreme Court in *Timmons v. Twin Cities Area New Party* translated that worry into a narrower ballot-formatting claim: the state may

prevent message multiplication on the ballot without silencing speech elsewhere. That is not a theory about truth policing so much as one about the state's prerogative to standardize the one instrument all voters must use.[100]

b. Risk of voter confusion

States have an interest in maintaining a clear and comprehensible ballot. The principal concern is not the well-informed voter who understands the mechanics of cross-endorsement, but the marginal or low-information voter for whom party labels operate as heuristics. In that population, a candidate listed more than once with different party cues could plausibly mislead or at least distract. The empirical literature on "choice fatigue" and ballot complexity underscores that adding options or cues can degrade decision quality at the point of selection. Studies find that longer, more complex ballots increase abstention and reliance on shortcuts—precisely the context in which labels carry disproportionate weight.[101] There is also real-world evidence that minor-party cues can be misunderstood, such as evidence survey respondents on average placing the Green Party as significantly more conservative than the Democratic Party (as discussed in Section II.D.2.b above) and evidence that most voters who registered with the Independence Party of New York had intended to register as independents.[102]

Shorter, simpler ballots reduce cognitive load and poll-site error. Even small additions can matter where voters face dozens of choices; again, the choice-fatigue literature suggests nontrivial effects at the margin. The experience in New York shows that the proliferation of minor parties under fusion voting can lead to poor ballot design. The number of minor parties in some New York elections has sometimes led to confusing ballot designs in which multiple minor parties would share a single column.[103]

2. Stability and the efficacy of the party system

a. Party strength as a governance value

Another family of interests emphasizes system stability—maintaining parties strong enough to recruit, vet, and discipline candidates and to broker coalitions in government. Contemporary political science gives this interest fresh footing. Yale political scientists Rosenbluth and Shapiro argue that American parties have grown too weak as organizational actors, hollowed out by candidate-centered politics and primary-centric nomination rules, leaving them less able to coordinate platforms, discipline officeholders, or assemble broad governing coalitions.[104] In this frame, strong, programmatic parties function as a public good: they provide voters meaningful brands and structure legislative bargaining.

[100] *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).

[101] *See, e.g.*, Ned Augenblick and Scott Nicholson, Ballot Position, Choice Fatigue, and Voter Behaviour, 83 The Review of Economic Studies 460 (2016).

[102] A survey conducted by the *New York Daily News* suggested that a majority of the party's registered members did not intend to affiliate with the party at all Voters are Vics: Registration Word Games Fool Even the High and Mighty, New York Daily News, Dec. 11, 2012, at 14.

[103] See for example the 2014 New York Gubernatorial election ballot in Figure 8 in which the Republican and Democratic candidates received their own columns and other parties shared columns.

[104] Frances Rosenbluth and Ian Shapiro, Responsible Parties: Saving Democracy from Itself (Yale University Press 2018).

From that vantage, ballot rules that multiply party labels for the same candidate—including cross-endorsement—risk turning parties into fluid brands or transactional coalitions rather than coherent governing organizations. Rosenbluth and Shapiro warn that reforms making party labels more fluid risk further weakening parties' gatekeeping capacity and exacerbating candidate-centered, polarized politics.[105] In an article for *Boston Review*, Shapiro makes this point directly in critiquing fusion as "the wrong direction" for party system health.[106]

b. Polarization and legislative performance

A related contention is that fusion can intensify policy-seeking leverage by ideologically distinctive minor parties (e.g., New York's Conservative and Working Families parties), pulling major-party nominees toward poles and, over time, contributing to polarized caucuses. Advocates of fusion often argue the opposite—that it can empower moderates and strengthen the center. However, there is both theoretical and empirical reason to think that it is more likely that fusion voting would exacerbate polarization than the reverse.[107]

This is not an uncontestable proof that fusion has had a polarizing effect in New York or that the effects would be the same under the conditions in other states. Still, when courts apply the *Timmons* framework, they generally require only "sufficiently weighty" interests, not airtight social-science proofs. Whatever the direction, there is broad empirical literature linking polarization to diminished lawmaking effectiveness, which states can plausibly cite as a governance harm to be mitigated.

F. Conclusion

The Plaintiffs' complaint frames the re-legalization of fusion voting as a discrete, restorative act—a simple matter of allowing a candidate's name to appear twice on a ballot. This framing fundamentally obscures the administrative reality. Fusion voting is not a standalone rule that can be toggled on without consequence. Instead, it is a complex institutional arrangement that conflicts with the specific architecture of Wisconsin's election laws. To mandate fusion is to compel the State of Wisconsin to dismantle and rebuild its electoral code.

As the dilemmas detailed above demonstrate, there is no "neutral" or "cost-free" way to implement this reform. Instead, eliminating the two statutory provisions that Plaintiffs challenge would force the Legislature and the Wisconsin Elections Commission into a series of choices where every administrative solution has real tradeoffs. These are not merely technical hurdles to be smoothed over by administrative rulemaking. They are fundamental normative questions about the nature of representation and the structure of the party system.

III. RESPONSE TO DR. LEE DRUTMAN

We find much to agree with Dr. Drutman in his diagnosis of the current political climate. Our evaluation does not take issue with the scale of the problems Dr. Drutman identifies. Instead, our disagreement centers on the efficacy of the proposed remedy. We find that his conclusions regarding the moderating effects of fusion voting rely on a false analogy between fusion and

[105] Rosenbluth and Shapiro, *supra* note 104.
[106] Ian Shapiro, The Wrong Direction, Boston Review, 2024, at 68.
[107] *See* Section II.D.2.

Proportional Representation and ignore the structural realities of the partisan primary. Accordingly, we find his characterization of fusion as a "proven reform"[108] capable of generating "centripetal force"[109] to be unsupported by the evidence.

A. Definitions

A threshold defect in Dr. Drutman's report is its reliance on imprecise and shifting definitions of central concepts. For an expert opinion to be reliable, it must define its terms clearly so that cause and effect can be measured. Dr. Drutman's report, however, treats distinct historical and political concepts as interchangeable. This lack of precision makes it difficult to analyze his central claims around the likely effects of re-legalizing fusion voting.

1. The Definition of Fusion Voting

Dr. Drutman speaks of "fusion voting" as a single, uniform reform, defining it broadly as any system where a candidate accepts nominations from multiple parties. This definition is overbroad because it conflates three distinct institutional arrangements, glossing over critical differences in how they function in the real world.

a. Conflation of Pre- and Post-Australian Ballot Systems

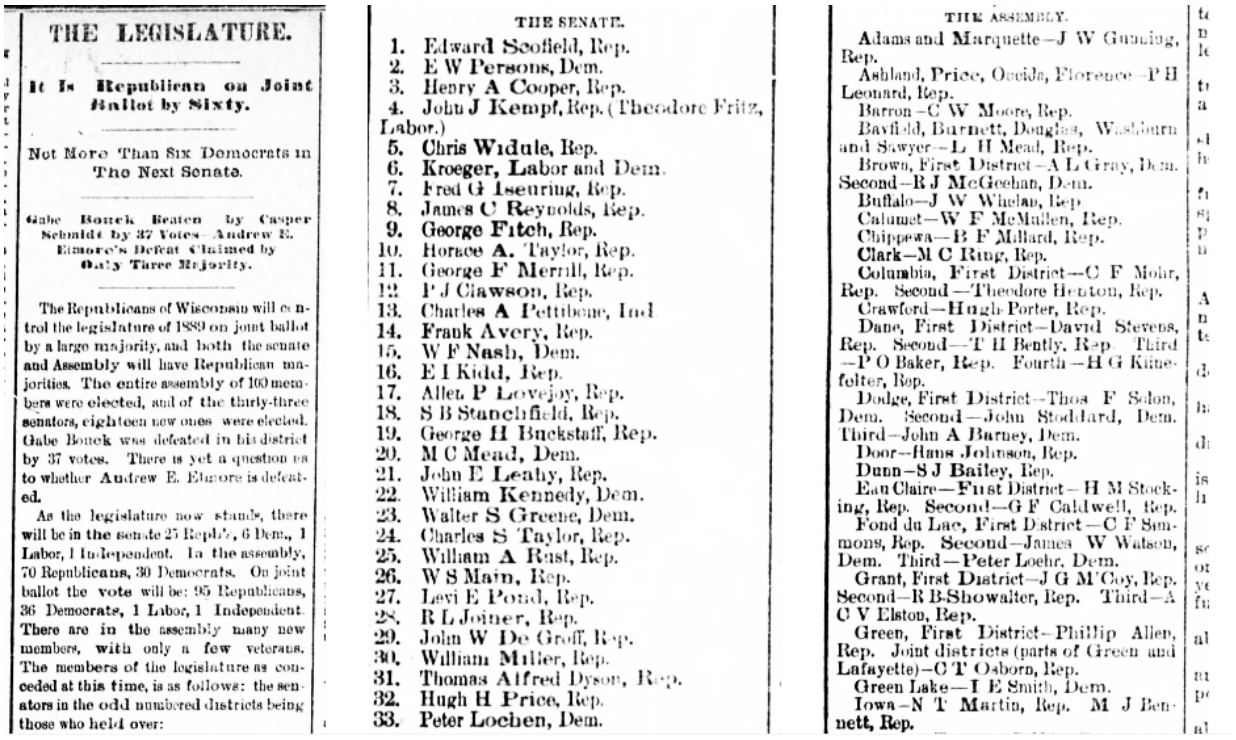
Most importantly, the Drutman Report fails to distinguish between modern fusion voting and the electoral practices of the nineteenth century. As detailed in our affirmative report, the term "fusion voting," which refers to a specific rule of ballot design, is anachronistic when applied to the pre-1890s era.

In that period, the government generally did not print "ballots" at all. Instead, political parties printed and distributed their own "tickets" to voters. "Fusion" in that era simply meant that different parties distributed tickets that happened to list the same candidate. This took place in a system of public, often coerced voting that bears little resemblance to the modern, state-administered secret ballot. By grouping these nineteenth-century practices under the same label as modern fusion, Dr. Drutman improperly draws lessons from a chaotic, defunct system to predict outcomes in our modern regulatory environment. Consequently, his conclusion that "historical evidence from fusion's widespread use in the late nineteenth century... demonstrate[s] that fusion voting serves as a coalition-building mechanism that moderates rather than intensifies partisan conflict" is historically unsound. As we discuss in our affirmative report (II.B), the 19th-century history of party-printed ballots does not provide meaningful evidence of how to think about fusion voting today.

b. Conflation of Aggregated and Disaggregated Fusion

Even within the modern era, Dr. Drutman ignores the material difference between "disaggregated fusion" and "aggregated fusion." Disaggregated fusion (used in New York and Connecticut) lists a candidate multiple times on the ballot—once for each party. Aggregated fusion (used in Vermont and Oregon) lists a candidate only once, with multiple party labels printed underneath. Dr. Drutman

[108] Drutman Report at 25.
[109] Drutman Report at 20.



THE LEGISLATURE.

It Is Republican on Joint Ballot by Sixty.

Not More Than Six Democrats in The Next Senate.

Gabe Bouck Beaten by Casper Schmidt by 37 Votes—Andrew E. Elmore's Defeat Claimed by Only Three Majority.

The Republicans of Wisconsin will control the legislature of 1889 on joint ballot by a large majority, and both the senate and Assembly will have Republican majorities. The entire assembly of 100 members were elected, and of the thirty-three senators, eighteen new ones were elected. Gabe Bouck was defeated in his district by 37 votes. There is yet a question as to whether Andrew E. Elmore is defeated.

As the legislature now stands, there will be in the senate 25 Repb's, 6 Dem., 1 Labor, 1 Independent. In the assembly, 70 Republicans, 30 Democrats. On joint ballot the vote will be: 95 Republicans, 36 Democrats, 1 Labor, 1 Independent. There are in the assembly many new members, with only a few veterans. The members of the legislature as conceded at this time, is as follows: the senators in the odd numbered districts being those who held over:

THE SENATE.

1. Edward Scofield, Rep.
2. E W Persons, Dem.
3. Henry A Cooper, Rep.
4. John J Kempf, Rep. (Theodore Fritz, Labor.)
5. Chris Widule, Rep.
6. Kroeger, Labor and Dem.
7. Fred G Iseuring, Rep.
8. James C Reynolds, Rep.
9. George Fitch, Rep.
10. Horace A. Taylor, Rep.
11. George F Merrill, Rep.
12. P J Clawson, Rep.
13. Charles A Pettibone, Ind.
14. Frank Avery, Rep.
15. W F Nash, Dem.
16. E I Kidd, Rep.
17. Allen P Lovejoy, Rep.
18. S B Stanchfield, Rep.
19. George H Buckstaff, Rep.
20. M C Mead, Dem.
21. John E Leahy, Rep.
22. William Kennedy, Dem.
23. Walter S Greene, Dem.
24. Charles S Taylor, Rep.
25. William A Rust, Rep.
26. W S Main, Rep.
27. Levi E Pond, Rep.
28. R L Joiner, Rep.
29. John W De Groff, Rep.
30. William Miller, Rep.
31. Thomas Alfred Dyson, Rep.
32. Hugh H Price, Rep.
33. Peter Lochen, Dem.

THE ASSEMBLY.

Adams and Marquette—J W Gunning, Rep.

Ashland, Price, Oneida, Florence—P H Leonard, Rep.

Barron—C W Moore, Rep.

Bayfield, Burnett, Douglas, Washburn and Sawyer—L H Mead, Rep.

Brown, First District—A L Gray, Dem. Second—R J McGeehan, Dem.

Buffalo—J W Whelan, Rep.

Calumet—W F McMullen, Rep.

Chippewa—B F Millard, Rep.

Clark—M C Ring, Rep.

Columbia, First District—C F Mohr, Rep. Second—Theodore Henton, Rep.

Crawford—Hugh Porter, Rep.

Dane, First District—David Stevens, Rep. Second—T H Bently, Rep. Third—P O Baker, Rep. Fourth—H G Klinefelter, Rep.

Dodge, First District—Thos F Solon, Dem. Second—John Stoddard, Dem. Third—John A Barney, Dem.

Door—Hans Johnson, Rep.

Dunn—S J Bailey, Rep.

Eau Claire—First District—H M Stocking, Rep. Second—G F Caldwell, Rep.

Fond du Lac, First District—C F Simmons, Rep. Second—James W Watson, Dem. Third—Peter Loehr, Dem.

Grant, First District—J G M'Coy, Rep. Second—R B Showalter, Rep. Third—A C V Elston, Rep.

Green, First District—Phillip Allen, Rep. Joint districts (parts of Green and Lafayette)—C T Osborn, Rep.

Green Lake—I E Smith, Dem.

Iowa—N T Martin, Rep. M J Bennett, Rep.

Figure 12: *Green Bay Press-Gazette* (Green Bay, Wis.), Nov. 9, 1888, at 2.

argues that fusion provides a powerful "signal" that voters can send regarding their preferences.[110] But aggregated fusion obscures that signal significantly compared to the disaggregated model, as the vote tally is not separated by party line, so that a candidate does not know what proportion of their support came from the minor party.[111] By treating these distinct rules as a monolithic "fusion voting" reform, the report oversimplifies the mechanics at issue. It is unclear which of Dr. Drutman's conclusions are meant to follow from the general adoption of fusion voting, and which rely specifically on the mechanics of disaggregated fusion. Indeed, it is not clear whether votes were frequently (or ever) disaggregated in the pre-Australian ballot period. The Blue Book of the State of Wisconsin only appears to list the total votes that a candidate received, not any information about which party line that candidate received votes under. That is, unless the vote tallies were widely disaggregated, then, at best, the pre-Australian ballot results would speak only to aggregated fusion, not disaggregated fusion. While we have not done a comprehensive survey of the newspapers of the day, Figure 12 is an excerpt from the Green Bay Press-Gazette reporting on the 1888 election.[112] Notably, there is no breakdown of votes by fusing party.

c. Limited Wisconsin Sample

Dr. Drutman's reliance on history is particularly weak regarding Wisconsin. Wisconsin adopted the Australian ballot in 1891 and banned fusion in 1897. This means the state had only a

[110] Drutman Report at 20.

[111] Moreover, as we discuss in our affirmative report, even disaggregated fusion does not provide any meaningful information to candidates absent additional (untested) assumptions about voter behavior.

[112] The Legislature: It Is Republican on Joint Ballot by Sixty, GREEN BAY PRESS-GAZETTE, Nov. 9, 1888, at 2.

six-year window—covering just three general elections—where the secret ballot and fusion voting co-existed. Given the massive structural changes accompanying the introduction of the Australian ballot—specifically the shift from privately distributed party tickets to a state-administered secret ballot, and the sudden imposition of novel regulations regarding ballot access and layout—it is unclear what valid inferences about the "stability" or "moderation" of fusion voting can be drawn from such a small sample of elections that occurred more than a century ago. Moreover, as discussed above, it is not clear whether votes were disaggregated in Wisconsin the pre-Australian ballot period. So, unless the vote tallies were widely disaggregated, then, at best, the pre-Australian ballot results would speak only to aggregated fusion, not disaggregated fusion.

2. Conflation of Stability and Depolarization

Dr. Drutman relies heavily on the concept of "political stability" without ever defining what he means.

The report begins by citing the Supreme Court's decision in *Timmons*, which upheld fusion bans to protect "political stability." In the context of *Timmons*, stability referred to the preservation of the two-party system itself and the avoidance of factional splintering that could make governance difficult. Dr. Drutman, however, implicitly redefines "stability" to mean "moderation" or a lack of "polarization." He seems to argues that the current system is "unstable" simply because it is polarized.[113]

This is a conceptual error. "Stability" and "polarization" are not the same thing. A political system can be deeply polarized (with fierce disagreement between parties) yet structurally stable (enduring over time without collapse). Conversely, a system with low polarization can be unstable (prone to fragile coalitions falling apart). For example, European democracies can sometimes go years without governments.[114] By conflating these terms, Dr. Drutman avoids showing how fusion voting might produce stability. Instead, he assumes that because fusion might theoretically encourage "cross-cutting coalitions," it is therefore "stabilizing." Without a fixed definition, this claim cannot be tested or proven.

3. Flexibility

Dr. Drutman introduces a new variable, "political flexibility," arguing that fusion provided this benefit in the nineteenth century.[115] It is unclear how "flexibility" relates to his insistence on "stability." In many contexts, flexibility (the ability of coalitions to shift rapidly) is the opposite of stability (predictability and durability). Belgium, for example, has governments that form through coalitional bargaining, but this also led to instability that led to nearly two years without having a government.[116]

Dr. Drutman credits fusion with creating "flexibility" in the past while simultaneously claiming it will restore "stability" today. Because he does not define "flexibility," he can attribute contradictory virtues to the same reform without explaining the mechanism. He offers no evidence for how a

[113]Drutman Report at 11.

[114]*See, e.g.*, Jennifer Rankin, *Brussels Breaks Belgium Record for Longest Period Without a Government*, The Guardian (Dec. 2, 2025), https://www.theguardian.com/world/2025/dec/02/brussels-breaks-belgium-record-longest-period-without-government (last visited Dec. 12, 2025).

[115]Drutman Report at 18.

[116]Rankin, *supra* note 114.

single ballot rule can simultaneously maximize the fluidity of coalitions and the stability of the political system.

Taken together, these definitional problems make it difficult to assess what claims are being made and what evidence there is to back up those claims.

B. Polarization and Its Causes

While we disagree with Dr. Drutman's prescriptive conclusions, we agree with much of his diagnosis of the current political climate. It is widely agreed that American politics has become increasingly polarized and that this polarization presents challenges to democratic governance. However, the existence of a problem does not prove the efficacy of any specific solution. The fundamental defect in the Drutman Report is its failure to establish a causal link between the specific remedy of fusion voting and the mitigation of the deep-seated structural forces driving polarization.

Dr. Drutman explicitly acknowledges that the current dysfunction is driven by a complex array of powerful factors. He identifies "geographic sorting,"[117] noting that parties are now regionally concentrated in ways that eliminate swing districts, which couples with rampant gerrymandering.[118] He points to the "nationalization" of politics,[119] where local issues are subsumed by federal partisan divisions. He highlights "culture war dominance,"[120] observing a shift from economic bargaining to zero-sum identity conflict. He also cites aggressive gerrymandering and the use of single-member districts rather than proportional representation as structural issues.

These are massive, systemic forces that exist independently of ballot design. Yet, after listing these formidable causes, Dr. Drutman essentially asserts, *without explaining the mechanism*, that changing the rules of ballot design to permit fusion voting will reverse them. He offers no rigorous theory or evidence to explain how allowing a minor party to cross-endorse a major-party candidate will undo these effects.

From a methodological standpoint, a reliable analysis requires isolating the impact of the specific variable in question to the best extent possible. Because Dr. Drutman admits that polarization has multiple causes, he cannot simply point to the rise in polarization over the last thirty years and attribute it to the absence of fusion voting. Indeed, the "overlapping, cross-cutting coalitions" he praises[121] from the mid-20th century existed during a period when fusion voting was largely banned. This demonstrates that fusion is not necessary to achieve such coalitions, just as its absence is not sufficient to destroy them.

By failing to control for these confounding variables, the Drutman Report relies on a logical leap. He effectively argues that because the current system is flawed, fusion voting must be the cure. But given the scale of the causes he himself identifies, it is scientifically unsound to assume that a procedural change to ballot labels would serve as a sufficient corrective. Without a mechanism to explain how fusion overcomes these specific structural barriers, his conclusion is speculative.

[117] Drutman Report at 13.
[118] Drutman Report at 10.
[119] Drutman Report at 14.
[120] Drutman Report at 14.
[121] Drutman Report at 12.

C. The Supposed "Stabilizing" and Moderating Effects of Fusion Voting.

Central to Dr. Drutman's report is the assertion that fusion voting is a "proven reform"[122] that will generate "centripetal force" to counteract polarization.[123] He argues that re-legalizing the practice will stabilize American democracy by fostering "overlapping, cross-cutting coalitions." This conclusion, however, is supported by neither the historical record nor political theory.

1. Historical Inconsistencies

Dr. Drutman's own historical narrative contradicts his claim that fusion voting is an effective mechanism for creating stable, cross-cutting coalitions. He praises the "four-party system"[124] of the mid-twentieth century—a period characterized by high levels of cooperation between liberal Republicans, conservative Democrats, and their respective party mainstreams. Yet, as his report acknowledges, this period of high stability and robust "overlapping" coalitions occurred precisely when fusion voting was banned in the vast majority of the country.

This historical fact demonstrates that fusion voting is not a necessary condition for the existence of cross-cutting coalitions, nor is its prohibition sufficient to destroy them. If the mid-20th century political order was able to achieve the very stability Dr. Drutman seeks while fusion bans were in full effect, it follows that the subsequent collapse of that order was driven by the broader structural forces he identifies elsewhere (e.g. geographic sorting and nationalization) rather than the formatting of the ballot.

Furthermore, the report's reliance on the modern experience of New York and Connecticut lacks supporting evidence. Dr. Drutman repeatedly points to these states as evidence that fusion "establish[es] a meaningful centrist force," but he offers no specific data to support this characterization.[125] As detailed in our affirmative report, the actual track record in New York suggests the opposite. The most enduring third parties in that state—the Conservative Party and the Working Families Party—function primarily as ideological enforcers on the flanks, pressuring major party candidates to move away from the center, not toward it. Dr. Drutman's report largely waves away this reality, asserting a moderating effect without engaging with the evidence that fusion often empowers the extremes.

2. Fusion is Not Proportional Representation

Dr. Drutman Report relies on a false analogy between the mechanics of Proportional Representation (PR) and the likely effects of fusion voting. Dr. Drutman devotes a substantial portion of his report to arguing that the United States is a global "outlier" for its instability and that "multiparty democracies using proportional representation consistently outperform two-party majoritarian systems." Again, European democracies with PR can go years without governments, something his report ignores. He claims that these systems foster stability, minority representation, and higher voter satisfaction.[126]

However, this comparative evidence is largely irrelevant to the specific reform at issue in this case because fusion voting is not Proportional Representation. As Dr. Drutman acknowledges, the

[122] Drutman Report at 26.
[123] Drutman Report at 20.
[124] Drutman Report at 12.
[125] Drutman Report at 20.
[126] Drutman Report at 2.

United States uses single-member districts with winner-take-all elections. Fusion voting operates entirely within this framework. The distinction is fundamental to the distribution of power. In a Proportional Representation system, a minor party that secures 10% of the vote typically secures roughly 10% of the legislative seats, allowing it to govern and bargain with independent leverage. Under fusion voting in a winner-take-all system, a minor party that secures 10% of the vote secures zero seats unless it cross-endorses the winning major-party candidate. Even if it does cross-endorse the winner, it holds no independent legislative seats, only the "influence" it can attempt to exert on the major-party winner

Dr. Drutman uses the stability and representational outcomes that he claims exist in PR systems to argue for the adoption of fusion voting, yet fusion voting retains the very winner-take-all mechanics—specifically the zero-sum nature of the contest—that he identifies as the source of the current "doom loop." By conflating the claimed outcomes of multiparty proportional systems (again, European democracies can go years without governments) with the mechanics of single-member fusion systems, the report relies on a false analogy. It promises the structural stability of one system while advocating for a reform that leaves many of the defining features of our existing electoral systems intact.

3. Theoretical Gaps

From a theoretical perspective, the report fails to explain why fusion voting would necessarily, or even usually, produce moderation rather than radicalization. Dr. Drutman argues that fusion allows voters to support a major party candidate while "registering support for moderation."[127] This assumes, without evidence, that the minor parties utilizing fusion will be centrist parties.

However, as Dr. Drutman himself concedes, minor parties struggle to survive in single-member, winner-take-all districts. In such an environment, the parties most likely to overcome the barriers to organization are not amorphous "centrist" parties, but ideologically distinct parties with committed activist bases—precisely the type of "flank" parties seen in New York. If fusion empowers these groups to withhold endorsements or threaten to act as spoilers, the rational strategic response for major-party candidates is to shift toward those extremes to secure their support, as discussed in the affirtmative report. Dr. Drutman's theory presumes a "Moderate Party" will organically emerge and discipline the system; he provides no mechanism for why organized partisans would not instead use fusion to push the major parties towards more extreme positions.

Finally, the report's argument regarding the "lesser of two evils"[128] is logically circular. Dr. Drutman argues that fusion allows voters to avoid the dilemma of holding their nose to vote for a candidate they dislike. Yet, under fusion, the candidate on the minor-party line is usually the same individual as the major-party nominee. A vote for a polarizing candidate on a "Moderate Party" line remains, effectively, a vote for that polarizing candidate. Unless fusion creates a viable path for a different and genuinely moderate candidate to win, a path Dr. Drutman admits is blocked by the winner-take-all system, it does not solve the voter's dilemma; it merely relabels it. For example, he argues:

> When there are only two sides, dissenters on each side have limited options. Many Republicans were uncomfortable with aspects of Trump's MAGA populism in 2016,

[127] Drutman Report at 20.
[128] Drutman Report at 20.

> but their only alternative was to support Democrats or vote for a third party (which would effectively help Democrats). This dynamic led many Republicans to rationalize alignment with positions they might otherwise have questioned.[129]

This assumes that voters did not vote for Clinton because she was a Democrat. We know of no experimental studies that test this proposition. However, the same logic could be used in the 2016 election to rationalize Republican voters voting for Trump rather than Clinton. That is, suppose that there were a "MAGA Party" that fused with Trump and a "Center Party" that fused with Clinton. Dr. Drutman's implicit argument is that the presence of the "Center Party" label would mean that some conservative voters would now feel comfortable voting for Clinton. However, it may be that with the existence of the "MAGA" label, perhaps these voters would feel comfortable registering their support for standard Republican (rather than MAGA) positions and would therefore vote for Trump on the Republican line. Much more behavioral research would be needed to understand what the effect of fusion is on voters' behavior.

4. Billboard Concerns and Confusion

Dr. Drutman argues that fusion voting provides valuable "information cues" to voters,[130] helping them make more informed decisions by signaling a candidate's specific ideological commitments. He relies on research by Loepp and Melusky to suggest that these additional labels act as helpful heuristics rather than sources of confusion. However, this argument rests on the fundamental assumption that the signals provided by fusion labels are accurate. The very research Dr. Drutman cites suggests they are not, as discussed in our affirmative report above.

This confusion is exacerbated when the "parties" on the ballot are not even genuine political organizations but ad-hoc slogans created for a single election. Dr. Drutman explicitly dismisses the concern, often cited by courts and legislators, that fusion voting turns the ballot into a "billboard for political advertising." He argues that this fear is unfounded because "pop-up parties do not proliferate" and that establishing a party requires "real work and genuine support."[131] He posits that candidates would be wary of accepting single-issue labels and that state regulations effectively prevent this outcome. However, as we discuss in our affirmative report above, the reality of fusion voting in New York directly contradicts this contention.[132]

D. Conclusion

In sum, while Dr. Drutman identifies genuine pathologies in contemporary American politics, his report fails to establish a credible causal link between those pathologies and the prohibition of fusion voting. His analysis rests on a series of fundamental category errors such as conflating modern ballot design with nineteenth-century party tickets, and conflating majoritarian fusion

[129] Drutman Report at 19.

[130] Drutman Report at 22.

[131] Drutman Report at 22.

[132] Recall, that the ballot for the most recent New York City mayoral election (2025) featured multiple "parties" that functioned precisely as single-issue billboards rather than genuine political organizations. For example, Republican candidate Curtis Sliwa utilized a "Protect Animals" party line to highlight a specific platform plank. Incumbent Eric Adams appeared as the "Safe & Affordable" and "End Anti-Semitism " candidate. Other independent candidates followed suit, with Joseph Hernandez running on the "Quality of Life" line and James Walden running on the "Integrity" line.

with proportional representation. Dr. Drutman promises a moderating effect that is theoretically improbable and empirically unsupported. Ultimately, his characterization of fusion as a "proven reform" for moderation is not an analytical finding based on the record, but a prescriptive hope that ignores the structural realities of the electoral system he seeks to change.

IV. RESPONSE TO DR. LISA DISCH

The factual claims in Dr. Disch's historical narrative about Wisconsin appear generally accurate. She has marshaled an impressive array of primary sources documenting Wisconsin's tradition of cross-party alliances, and her account of the various forms such cooperation took—mergers, joint conventions, non-compete agreements, and shared nominations—is richly detailed. To the extent this rebuttal takes issue with her report, it is not with her historical description but with the interpretive weight she places upon it.

Dr. Disch's report suffers from three significant analytical shortcomings. First, it omits important institutional and comparative context that would situate Wisconsin's 1897 legislation within a broader national reform movement. Second, it conflates distinct phenomena under the single label "fusion," eliding the difference between cross-party coalition-building generally and the specific institution of the fusion ballot. Third, and most critically, it draws a strong inference about legislative motive that the historical record cannot sustain.

The evidence Dr. Disch cites is at least as consistent with non-partisan or mixed motives—concerns about ballot design, electoral integrity, and the perceived legitimacy of "combination tickets"—as with an intent to impair challenger parties. This rebuttal addresses each of these analytical deficiencies in turn, then concludes with observations about the appropriate standard for inferring legislative motive from historical evidence.

A. The Factual History Omits Important Context

1. Missing Comparative Context from Outside Wisconsin

Dr. Disch correctly describes Wisconsin's long tradition of cross-party alliances and the timing of the 1897 statutory change. What is largely absent from her report, however, is the broader national context in which similar anti-fusion measures were adopted across multiple states during the 1890s. In these jurisdictions, legislators and governors publicly defended such provisions on grounds unrelated to partisan entrenchment: ballot clarity and the avoidance of voter confusion; concern about "deceptive" or "combination" tickets; and skepticism of coalitions perceived as purely office-seeking rather than principle-driven.

Kansas Governor William E. Stanley, for example, argued in 1901 that:

> Honesty in elections can hardly be expected where duplicity is openly practiced in the nomination of candidates, and when the ballot to be cast at the election is a deception. Some higher motive ought to characterize a political party than the desire for office, and this is hardly possible where the fusion of opposing elements, actuated by no higher desire than the spoils of office, is permitted. Deception and pretense in nominating conventions and in the arrangement of the ballot is as much a fraud upon the rights of the voter, and is as great a menace to an honest election as any other

> species of fraud. If a candidate's name appears once upon the ballot it gives every elector an opportunity of voting for him for the office which he seeks, and it sho'd appear only once. Fusion is a fraud and should not be tolerated. Fusion of principles is impossible.[133]

Whatever one thinks of this argument on the merits, it represents a normative critique of fusion as ballot design and as a style of politics—not a hidden confession of partisan entrenchment. Debates in other states—including contemporaneous debate in neighboring Iowa and Illinois,[134] which enacted fusion bans the same year as Wisconsin—featured similarly open discussion of these justifications, and comparable reasoning appears in judicial opinions upholding anti-fusion provisions.

Nor were these arguments limited to politicians. Newspapers supporting fusion bans offered similar arguments. For example, a story in the Republican-aligned *Minneapolis Journal* argued that "[t]he possibility of getting upon the ballot in more than one place has led ambitious aspirants for office to court nominations at the hands of more than one convention, which has resulting in the complete obliteration of party lines and the confusion of the voter."[135] State court judges also offered similar justifications for fusion bans when ruling on legal challenges to them at the time.[136]

These rationales may or may not be persuasive as a matter of policy. But they constitute evidence that, in at least some places, proponents sincerely believed that eliminating fusion ballots promoted cleaner, more intelligible elections and more honest party branding—even when the change plainly carried partisan consequences. By presenting Wisconsin's debate largely in isolation, Dr. Disch makes it easier to read the 1897 enactment as a *sui generis* partisan maneuver rather than as one state's version of a broader, widely defended set of reforms.

2. The Need to Distinguish "Fusion" from "Fusion Ballot"

Dr. Disch is explicit that nineteenth-century actors used "fusion" as an umbrella term covering many kinds of party cooperation: mergers, non-compete agreements, joint tickets, and what we would now call multiple-party nominations. In her normative discussion, however, she tends to move between two quite different concepts without always marking the transition. "Fusion" in the broad historical sense refers to any cross-party coalition or merger. "Fusion ballot" in the modern sense refers to an official ballot on which one candidate's name appears under multiple party labels, with votes separately tallied and then combined.

This distinction matters considerably for understanding what the 1897 law did and did not do.

a. What "Fusion Ballot" Actually Means

As the term is used in contemporary election law and practice, a "fusion ballot" is an official, state-printed ballot on which the same candidate appears more than once, each appearance labeled

[133]The Governor's Message, Russel Record, Jan. 12, 1901, at 2.

[134]The contemporaneous legislative efforts at fusion bans in these states received some coverage in Wisconsin newspapers, particularly those located near the borders with these states. *See, e.g.*, Iowa's Fusion Law, The Evening Telegram, Feb. 19, 1897, at 3; Strikes as Fusion, Chippewa Herald-Telegram, Feb. 20, 1897, at 1; Ottawa is Defeated, Kenosha News, Apr. 2, 1897, at 1.

[135]Tis a Perfect Law, Minneapolis Journal, Mar. 12, 1897, at 9.

[136]*See, e.g.*, *State ex rel. Runge v. Anderson*, 100 Wis. 523 (1898); *State ex rel. Dunn v. Coburn*, 260 Mo. 177 (Mo. Sup. Ct. 1914).

with a different party, and the votes on each party line tabulated separately before being combined into a single total for purposes of determining the winner. This is the system New York and Connecticut use today, and it is what Plaintiffs seek in this case.

b. Pre-Australian-Ballot "Fusion" Was Structurally Different

Before the Australian ballot's adoption, there was no official, state-printed ballot at all. Voters brought a party "ticket" or wrote their own. Party tickets were privately printed by parties or newspapers, listed only that party's candidates, and did not present a single, state-sanctioned sheet on which a candidate could appear in multiple party columns.

The various "fusion" arrangements Dr. Disch describes from the 1840s through the 1870s—joint conventions, "People's Tickets," non-compete agreements, and shared nominations—operated predominantly at the level of party organization and ticket-making, not at the level of an official ballot. Most of the "fusion" she discusses is coalition politics in this broader sense; only a subset implicates what we now call a fusion ballot.

c. Fusion Bans Regulate the Ballot, Not the Coalition

This institutional difference is crucial. A ban on fusion ballots dictates that an official ballot list a candidate only once. It does not forbid parties from endorsing another party's nominee, instructing supporters to vote for that nominee, merging organizations, entering into joint conventions, or campaigning together. Even after the 1897 law, Wisconsin parties remained free to engage in many forms of cross-party cooperation—alliances, strategic withdrawals, non-compete agreements, and outright mergers. What changed was a specific mode of ballot presentation, not the underlying capacity for political cooperation.

When "fusion ballots" and "fusion politics" are conflated, the 1897 provision appears to be an attack on coalition-building itself. Once the law's scope is properly understood as limited to ballot format, the story becomes more modest: the statute removed one particularly visible method of expressing a coalition on the state-printed ballot while leaving many other avenues of cooperation intact.

d. Minor Parties Struggled Even in the Party-Ticket Era

Even before the Australian ballot—when fusion ballots as such were not at issue—minor parties frequently proved fragile. The Anti-Masonic Party, the original Free Soil Party, the Greenback Party, and the People's (Populist) Party each enjoyed national or regional moments of strength before fading within roughly a decade as significant independent forces.

This pattern is important for two reasons. It demonstrates that third-party fragility was a recurrent feature of American politics even in institutional environments highly favorable to party-printed tickets and informal fusion. And it means that the limited durability of minor parties cannot be attributed to anti-fusion ballot rules that did not yet exist. If minor parties struggled to maintain organization and identity without such rules, then later difficulties cannot simply be treated as "effects" of the rules—still less as proof of an anti-third-party motive behind their adoption.

B. The Evidence Does Not Support a Strong Inference of Partisan Motive

Dr. Disch's core claim is that "[t]aken as a whole, the historical evidence supports a strong inference that the fusion ban was motivated by a partisan desire to impair the operations of political parties that sought to challenge the Republican Party for power in Wisconsin."

Yet even accepting Dr. Disch's chronology and factual description, her conclusion does not follow. The key pieces of evidence she emphasizes—the absence of floor debate, post-enactment newspaper surprise, the Republican majority, and subsequent Republican success—are weak circumstantial indicators at best. Each is consistent with non-partisan or mixed motives, and none provides direct evidence of the legislature's actual reasoning.

1. Lack of Floor Debate Does Not Establish Partisan Intent

Dr. Disch stresses that the anti-fusion clause was adopted as part of a larger election-administration bill and apparently passed without floor debate. She treats this as evidence of "stealth" and partisan design. This inference is not compelled by the evidence.

Uncontroversial measures routinely move by consent. Provisions perceived as technical or broadly acceptable are frequently adopted without extended floor debate, particularly when folded into omnibus bills. The 1897 Legislature was overwhelmingly Republican; if members understood the measure as a partisan advantage, there is nothing paradoxical about its passing easily and quietly. Supermajorities do not typically need to hide provisions they have the votes to enact openly.

Quiet passage may indicate low salience rather than dark motive. The absence of controversy can suggest that members of both parties did not regard the question as especially momentous. Dr. Disch acknowledges "[i]t is challenging to definitively determine the intent of the legislators who passed this bill at the time."[137]

The law was enacted on April 24, 1897, and published on April 30.[138] The following day, the *Portage Register* reported on the provision.[139] Its reporting was reprinted in several other newspapers.[140] Scattered newspaper coverage appeared the following month.

While Dr. Disch describes this coverage as "almost uniformly express shock" at the method of passage,[141] most of the articles themselves are more muted. For example, the closest to this expressed in the *Wisconsin State Journal* article cited by Dr. Disch is reference that "[c]onsiderable surprise is manifested in certain circles, especially by the Milwaukee News" before going on to say that "the bill was regularly passed and all its provisions open to the inspection of those who now do not like it."[142] Similarly, an article originally published in the *Chicago Tribune* and cited by Dr. Disch[143] as "breathlessly announced,"[144] in full,

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[137]Disch Report at 32.

[138]The Laws of Wisconsin, 1897 (Democrat Printing Company 1897), at 788.

[139]Portage Daily Register, May 1, 1897, at 1.

[140]The article from the *Waupun Leader* on May 14, 1897, that is cited by Dr. Disch in fact reprints the text of this article originally published in the *Portage Register* on May 1, 1897. The *Waupun Leader* cites the *Portage Register* as its source. *See* Waupun Leader, May 14, 1897, at 4.

[141]Disch Report at 32.

[142]Fusion and the Secret Ballot, Wisconsin State Journal, June 26, 1897, at 2.

[143]Dr. Disch credits this article to the *Hartford Times*, which reprinted it a week later. Disch Report at 32 n.185.

[144]Disch Report at 32 n.185.

> It has just come to light that the Legislature, which adjourned in April, passed a law which will prevent in the future any such fusion of political parties in Wisconsin as there was last fall. The law provides that when any person is nominated for the same office by more than one party his name shall be placed upon the ticket under the designation of the party which first nominated him; or if he was nominated by more than one party at the same time he shall within the time fixed by law for filing certificates of nomination file with the officer with whom his certificate of nomination is required to be filed a written statement indicating the party under which he desires his name to be printed on the ballots.[145]

While Dr. Disch adds emphasis to the *Chicago Tribune*'s claim that the law's passage "has just come to light," this is a questionable claim given that the *Portage Register* and other Wisconsin newspapers had reported on it over a month earlier.[146] After a handful more articles "trickled out"[147] in June, 1897, newspaper coverage of the law's passage seems to have largely ended. If the provision had been widely viewed as a major assault on democratic practice, one would expect more shock or opposition than this.

Nor does the reporting on the bill's adoption suggest anything unusual in the legislative process. As Dr. Disch notes, the fusion clause was added in committee.[148] Committees are precisely where policy language is routinely inserted into broader bills; a short ballot-format provision inside a lengthy elections statute is typical, not unusual. If minority-party members on the committee failed to object, that may simply reflect a judgment—even if mistaken—that the provision was unremarkable. If no committee member opposed it, that is evidence not of conspiracy but of low perceived stakes at the time. Committee amendment is ordinary legislative practice, not evidence of concealment.

The chairman's professed lack of recall is not inherently suspicious. One newspaper quoted Senator Julius Roehr, the committee chair, as saying he did not recall the specific anti-fusion language. Dr. Disch finds this "unlikely given his position."[149] But legislative practice suggests otherwise: committee chairs regularly shepherd lengthy, technical bills through the process. It is unreasonable to expect them—especially one as inexperienced as Roehr, who was in his first year in the legislature[150]—to retain vivid memories of each provision.[151] That an elections bill addressing straight-ticket voting also limited multiple ballot listings is not the sort of singular event guaranteed to stick in memory.

In short, the absence of floor debate and the committee-drafting process are entirely consistent with viewing the clause as a technical refinement of the Australian ballot regime—perhaps

[145]Fusion is Prevented in Wisconsin, Chicago Tribune, June 12, 1897, at 4; Fusion Prevented in Wisconsin, Hartford Times, June 17, 1897, at 1.

[146]*See, e.g.*, , *supra* note 139; Aimed at Pop. Fusion, Wisconsin State Journal, May 10, 1897, at 2.

[147]Disch Report at 32.

[148]Disch Report at 33.

[149]Disch Report at 32.

[150]Wisconsin Blue Book, 1897 (Democrat Printing Company 1897), at 661.

[151]Consider the reply of Senator Roscoe Conkling, then Chairman of the Senate Committee on Commerce, to a question from another senator regarding a bill that had just been reported from Conkling's committee: "I have not read the bill as carefully as I should to be able to give the Senator much information about it. I arose to call attention to it." Proceedings and Debates of the U.S. Senate, 8 Cong. Rec. 1753 (Feb. 22, 1879).

debatable, but far from a constitutional crisis. These facts do not, by themselves, support a strong inference of partisan overreach.

2. Newspaper Commentary Offers Little Evidence of Legislative Purpose

Dr. Disch highlights post-enactment newspaper reactions, noting that some publications expressed surprise at how quietly a "consequential" provision had passed, and that some framed it as an anti-Populist, anti-Democratic measure. This evidence illuminates how contemporary commentators understood the law; it tells us little about the legislature's actual motives.

Press reaction is not legislative history. Newspapers of the era were openly partisan actors. Populist- and Democratic-leaning papers had every incentive to decry a law they believed would disadvantage their coalition-building efforts, while Republican-leaning papers had every incentive to celebrate the hobbling of their opponents. Such rhetorical posturing is exactly what one would expect after any rule change with partisan implications—including one adopted for principled reasons.

Moreover, contemporaneous coverage was not uniformly partisan in its framing. Some Wisconsin newspapers discussed the issue in terms of ballot integrity and clarity. The *Wisconsin State Journal*, for instance, 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."[152] After the Wisconsin Supreme Court upheld the law,[153] the *Sheboygan Telegram* welcomed the law on the ground that it "will lessen the chances of having some mouthy blatherskite who is the leader of some little factional party being hoisted into office through the fusion process."[154]

The rhetoric is coarse, but the underlying concern—that fusion ballots enabled minor-party leaders to wield disproportionate influence—was not limited to Republican officeholders. Some contemporaries genuinely viewed multiple ballot listings as an invitation to manipulation and a distortion of straightforward party competition.

3. The Runge *Decision Articulates Neutral Ballot-Design Rationales*

The year after the fusion ban was enacted, the Wisconsin Supreme Court upheld the ban against challenges to its constitutionality. In doing so, the Court's majority opinion offered reasons that have nothing to do with entrenching Republicans or punishing challenger parties:

> "Men are supposed to stand for principles when placed in nomination by political parties, and when the candidates of one party are identical with those of another it is supposed, and not unreasonably, that for the time being at least, though there be two organizations there is but one platform of principles, and that one party designation on the official ballot will satisfy all legitimate requirements of both. The confusion and uncertainty that would arise in such a case from the double printing of names, furnishes a strong reason for prohibiting it, and that, with the other reasons mentioned, strongly support the wisdom of the prohibition as a proper legislative regulation."[155]

[152] Fusion and the Secret Ballot, *supra* note 142.
[153] *See Runge*, 100 Wis. 523 (1898).
[154] Sheboygan Telegram, Sep. 21, 1898, at 1.
[155] *Runge*, 100 Wis. 523 (1898).

One may contest this reasoning. But it is plainly grounded in a belief that ballot labels should track substantive principle, a concern about voter confusion from duplicate listings, and a view that a single listing adequately expresses a coalition. Courts in multiple jurisdictions have accepted similar justifications; they are not obviously pretextual. Their articulation undermines the claim that only naked partisan entrenchment can explain the law's enactment or defense.

4. Comparative Evidence Cuts Against the "Stealth Partisan" Narrative

Dr. Disch emphasizes that Wisconsin's adoption of the anti-fusion provision was "stealthy," contrasting it with the more openly contested debates in neighboring states like Iowa. This observation, however, cuts both ways.

In Iowa and Illinois, anti-fusion ballot provisions were debated publicly, justified on non-partisan grounds, and adopted by substantial margins despite opposition. This pattern suggests that such provisions were plausibly defensible on grounds other than partisan entrenchment—and that contemporaries, including Democrats who opposed them, understood the argument even as they rejected it.

If neighboring legislatures felt no need to conceal their anti-fusion provisions, why would Wisconsin's Republicans have believed secrecy essential? They controlled approximately 90% of Assembly seats and nearly 90% of Senate seats. A supermajority of that magnitude does not require stealth to pass ordinary legislation, let alone a modest ballot-format rule.

The simpler explanation is that the clause was one component of a technical ballot-reform bill, supported for a mixture of reasons that may have included partisan advantage, that was not viewed as momentous at the time and, therefore, was not extensively debated. This is unremarkable legislative behavior, not evidence of a scheme to suppress political competition.

5. Subsequent Republican Success Does Not Establish Prior Partisan Motive

Dr. Disch notes that Republicans dominated Wisconsin politics for decades following the 1897 ban, not losing a gubernatorial election or surrendering the Assembly Speaker's gavel until 1933. She treats this as evidence that the ban achieved its intended purpose.

Correlation, however, is not causation. Attributing Republican dominance in this primarily to a ballot-format rule, rather than unrelated political forces, requires much more than temporal coincidence. And there are ample grounds for believing that the Republican Party's dominance in this era was driven by other factors.

Consider how dominant the Republican Party had become in Wisconsin by the 1896 election—the last election *before* the fusion ban was enacted. In that election, Republicans won 90 of 100 seats in the Wisconsin State Assembly and 29 of 33 seats in the Wisconsin Senate. Republican presidential nominee William McKinley won Wisconsin's electoral votes that year with 60% of the vote—soundly defeating his opponent, William Jennings Bryan, despite Bryan appearing on the ballot as fusion candidate under both the the Democratic Party and the People's (Populist) Party.

Shortly thereafter, Robert La Follette emerged as a dominant figure in Wisconsin politics, becoming "the most celebrated figure in Wisconsin history."[156] Elected as a Republican, La Follette's time as Governor of Wisconsin and then United States Senator lasted from 1901 until his death in 1925—a majority of the period in question. It is not difficult to imagine that La

[156]John D Buenker, The History of Wisconsin, Volume IV: The Progressive Era, 1893–1914 (Wisconsin Historical Society 2013), at 490.

Follette's popularity would have further buoyed an already dominant Republican Party in Wisconsin regardless of whether fusion voting was permitted.

C. Conclusion

Dr. Disch's report offers a valuable contribution to the historical record. Her account of Wisconsin's tradition of cross-party coalitions, and of the various institutional forms such cooperation assumed from statehood through the late nineteenth century, is detailed and largely accurate. Any fair assessment must acknowledge the quality of her archival research.

Where her analysis falls short is in the inferential leap from historical description to legislative motive. The circumstantial evidence she emphasizes—timing, partisan composition, quiet passage, and subsequent electoral outcomes—is consistent with multiple interpretations. It does not compel—and arguably does not even favor—the conclusion that the 1897 Legislature acted from partisan animus rather than from a mix of institutional, ideological, and political considerations.

Historical inference about legislative motive is inherently difficult. Legislators rarely announce their true reasons; floor debates, where they occur, may be performative; and post-hoc commentary by partisans on all sides is self-interested. When direct evidence of motive is unavailable, the responsible approach is to acknowledge interpretive uncertainty rather than to assert a "strong inference"[157] that the evidence cannot bear.

The most the record supports is this: Wisconsin's Legislature, dominated by Republicans, adopted a ballot-format rule that contemporaries defended on grounds of ballot clarity, voter comprehension, and skepticism toward multi-label candidacies—grounds that courts and commentators in multiple states found plausible—and that also aligned with the majority party's political interests. Such a blend of institutional and partisan motives is common in legislative history. It does not establish the targeted, animus-driven campaign against challenger parties that Dr. Disch's report describes.

V. RESPONSE TO DR. BARRY BURDEN

Dr. Burden's report addresses two practical questions about reintroducing fusion voting in Wisconsin: whether existing voting equipment can accommodate fusion ballots, and whether voters would be confused by such ballots. His analysis is competent and his review of the relevant academic literature is generally accurate. To the extent this response takes issue with his report, it is not with the technical accuracy of his individual observations but with two significant gaps in his analysis.

First, Dr. Burden does not adequately account for the interaction between ballot layout and fusion type. According to Dr. Burden, the Plaintiffs seek disaggregated fusion—where a candidate's name appears multiple times, once for each nominating party—but Wisconsin uses an office-block ballot layout.[158] No state currently combines these two features. The states Dr. Burden relies upon for evidence of equipment compatibility and voter comprehension all use different ballot configurations. Second, Dr. Burden's discussion of voter confusion focuses narrowly on errors in

[157] Disch Report at 34.

[158] This does not appear to be explicit in the Plaintiffs' complaint, but might reasonably be read as implicit given their arguments.

ballot marking while largely overlooking a more significant concern: confusion about the identities, ideologies, and platforms of the minor parties whose labels would appear on fusion ballots.

A. Wisconsin's Ballot Layout Creates an Untested Configuration

There are two distinct forms of fusion voting: disaggregated fusion and aggregated fusion. There are also two common ballot layouts: a party-column layout and an office-block layout. These two distinctions matter for understanding what the Plaintiffs seek and whether existing evidence supports its feasibility. While Dr. Burden notes the former distinction, he overlooks its interaction with the latter distinction.

1. The Two Forms of Fusion

In disaggregated fusion, a cross-nominated candidate's name appears on the ballot once for each party that nominates them. Votes cast on each party line are tabulated separately, then combined to determine the winner. This is the system used in Connecticut and New York—and the system Dr. Burden says the Plaintiffs seek for Wisconsin.

In aggregated fusion, a candidate's name appears only once on the ballot, with all nominating parties listed together on that single line. Oregon and Vermont use variants of this approach.

2. The Two Ballot Layouts

In a party-column layout, candidates are arranged in a grid. Each party is assigned a column (or, less traditionally, a row), and each office is assigned a row (or, less traditionally, a column).[159] A voter scanning across a row sees the same office contested by candidates from different parties, each in their respective party's column.

In an office-block layout, candidates are organized by the office they seek, not by party.[160] A candidate's party affiliation typically appears beneath their name. There are no party columns, and the ballot does not visually group candidates by partisan affiliation.

3. Current Practice Reveals a Consistent Pattern

A notable pattern emerges when one examines which states use which combination of fusion type and ballot layout:

- States with disaggregated fusion (Connecticut and New York) use party-column ballots.
- States with aggregated fusion (Oregon and Vermont) use office-block ballots.

This pattern is not coincidental. Disaggregated fusion fits naturally with a party-column layout: when each party has its own column, listing the same candidate in multiple columns presents no design difficulty. Conversely, aggregated fusion fits naturally with an office-block layout: listing multiple party endorsements beneath a single candidate name is straightforward when candidates are not sorted into party columns.

[159]Connecticut and New York State With the exception of New York City now typically assign a party to a row and an office to a column. Because it is functionally similar, we still refer to this as a "party-column" layout even though it is more literally a "party-row" layout.

[160]For primary elections with an office-block layout, candidates are typically grouped by party first and then by office. This remains distinct from a grid-like party-column layout.

4. Wisconsin Would Be an Outlier

Wisconsin uses an office-block layout.[161] The Plaintiffs seek disaggregated fusion. If the relief sought were granted without changing the ballot layout, Wisconsin would become the only state combining disaggregated fusion with an office-block ballot—an untested configuration.

Dr. Burden does not address this tension. His comparisons to Connecticut and New York implicitly assume that lessons from those states transfer directly to Wisconsin, but those states use a different ballot layout. As illustrated in Appendix A, the same candidate appearing twice on a party-column ballot has visual logic: the candidate occupies two cells in a grid, one in each nominating party's column.[162] The same candidate appearing twice on an office-block ballot lacks this organizing principle. A voter might reasonably wonder why a candidate is listed multiple times when the ballot is not organized by party.

5. The Evidence Base Does Not Cover Wisconsin's Proposed Configuration

The limitations of Dr. Burden's evidence base follow directly from this structural difference. The Loepp and Melusky study that Dr. Burden cites to support his conclusions about voter confusion employed a party-column ballot design, consistent with disaggregated fusion as practiced in New York. The study's findings about voter comprehension and ballot-marking errors may not generalize to an office-block layout, where the visual cues are different and the rationale for duplicate listings is less apparent.[163]

This is not to say that the combination has been shown to be unworkable—only that the evidence Dr. Burden marshals does not speak to it. The question of how voters and voting systems would handle disaggregated fusion on an office-block ballot remains empirically untested.

B. Voter Confusion Extends Beyond Ballot-Marking Errors

Dr. Burden argues 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 error."[164] This conclusion rests primarily on the Loepp and Melusky study,[165] which found that experimental subjects who marked fusion ballots reported similar levels of ease and clarity as those who marked non-fusion ballots.

This evidence addresses one type of confusion: confusion about how to mark the ballot correctly. But it largely overlooks a more significant concern: confusion about the minor parties themselves.

1. Minor Party Labels Can Mislead Voters

Loepp and Melusky's study points to this problem. They report that "when a minor party does not send a clear ideological signal, voters tend to presume it is an ideologically centrist entity."

[161] During primary elections, candidates are grouped by party first and then by office, as is typical for primary-election ballots with an office-block layout.

[162] *See* Appendix A for more discussion and illustrations from past ballots.

[163] For example, voters might find the combination more confusing because an office-block layout provides no obvious visual rationale for why a candidate would be listed more than once.

[164] Burden Report at 1.

[165] Loepp and Melusky, *supra* note 93.

The "ideological signal" comes primarily from the party's name. As the authors observe, a label like "Conservative Party" conveys a recognizable ideological position because "conservative" is "a ubiquitous and widely understood term in contemporary political discourse." By contrast, "a name like 'Working Families Party' may be harder to decipher."

This creates an opportunity for strategic manipulation. Party names can send ideological signals that are unclear, misleading, or outright false—and fusion voting places these labels prominently on the ballot alongside major-party candidates.

2. New York's Experience Illustrates the Problem

New York's long experience with fusion voting offers several cautionary examples.

In its later years, the Liberal Party was criticized for no longer representing the liberal ideological positions its name implied. Voters who selected a candidate on the Liberal Party line believing that they were supporting a distinctively liberal platform may have been acting on a false signal.

The Women's Equality Party, created by Governor Andrew Cuomo and his allies "to rally—or, critics contend, to confuse—female voters in his Democratic primary race against Fordham Law School professor Zephyr Teachout."[166] Critics alleged that the party not only sought to mislead voters—in each Democratic gubernatorial primary, it endorsed Cuomo over a more progressive female opponent—but had chosen a name to create confusion confusion between itself and the Working Families Party through their similar initialisms—WEP and WFP.

Perhaps most strikingly, New York's Independence Party appears to have benefited from voter confusion between registering with the Independence Party and registering as an independent voter. A survey conducted by the *New York Daily News* suggested that a majority of the party's registered members did not intend to affiliate with the party at all.[167]

3. No Mechanism Prevents Misleading Party Names

Dr. Burden's analysis does not address these risks. There is no mechanism in Wisconsin—or, for that matter, in New York or Connecticut—that ensures party names accurately represent party ideology, prevents names that send misleading signals, or protects voters from strategic exploitation of ambiguous or deceptive labels.

Under fusion voting, these labels gain heightened salience. Without fusion, a minor party's name would not signal information about major party candidates. With fusion, a minor party can cross-nominate a major party candidate. Thus, the minor party's name can influence—or mislead—voters perceptions about the major party candidates.

The confusion at issue here is not about how to mark the ballot—it is about what the ballot means. This form of confusion is arguably more consequential than occasional marking errors, and the evidence Dr. Burden cites does not address it.

[166] Aaron Short, *The Women's Equality Party is More of a Casual Get-together*, City & State New York (July 10, 2018), https://www.cityandstateny.com/politics/2018/07/the-womens-equality-party-is-more-of-a-casual-get-together/178287/ (last visited Oct. 7, 2025).

[167] Voters are Vics: Registration Word Games Fool Even the High and Mighty, *supra* note 102.

C. Conclusion

Dr. Burden's report provides useful technical information about voting equipment and a fair summary of the academic literature on ballot-marking behavior. Where his analysis falls short is in two respects. First, it does not account for the fact that Wisconsin's ballot layout differs from the layouts used in states where disaggregated fusion is currently practiced. The Plaintiffs seek to introduce a combination—disaggregated fusion on an office-block ballot—that no state currently uses and for which no direct evidence of feasibility exists. Second, his treatment of voter confusion focuses on mechanical errors in ballot marking while largely ignoring the more significant risk that minor party labels may mislead voters about ideology, platform, or party identity.

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Appendix A. NATURAL PAIRINGS OF BALLOT LAYOUT AND FUSION VOTING

Ballot layout and fusion voting interact in predictable ways. Fusion voting allows multiple parties to nominate the same candidate, but how that shared nomination appears on the ballot depends on the ballot's structure. The two main layouts—party-column and office-block—each pair naturally with a different approach to displaying fusion candidates. This appendix examines examples from Connecticut and Oregon to illustrate these pairings, then applies this logic to the current ballot layout in Wisconsin if fusion voting were to be adopted.

1. Connecticut: Party-Column Layout with Disaggregated Fusion

Connecticut uses a party-column layout for its ballots.[168] It also uses disaggregated fusion, meaning that a candidate nominated by multiple parties appears on the ballot multiple times—once for each nominating party.

Figure A1 shows a sample Connecticut ballot organized as a grid. Each party occupies a row, and each office occupies a column. A nominee's name appears at the intersection of the nominating party's row and the office's column.

Consider Harry Arora, who was nominated by both the Republican Party and the Independent Party for "Representative in Congress." The Republican Party occupies Row B, and the Independent Party occupies Row D (highlighted in green). The Representative in Congress race appears in Column 3 (highlighted in blue). Arora's name therefore appears twice: once in Row B, Column 3, and once in Row D, Column 3 (highlighted in yellow).

This example illustrates why disaggregated fusion pairs naturally with party-column layouts. The grid structure has no obvious way to indicate multiple nominations without listing a candidate's name in each relevant cell. Aggregated fusion—where candidates appear only once with all their nominating parties listed together—is difficult to reconcile with this format. For this reason, every state that currently combines a party-column layout with fusion voting uses disaggregated fusion.

2. Oregon: Office-Block Layout with Aggregated Fusion

Oregon uses an office-block layout for its ballots along with aggregated fusion, meaning that a candidate nominated by multiple parties appears only once, with all nominating parties listed beneath their name.

Figure A2 shows a sample Oregon ballot organized into blocks, one per office. All candidates for a given office appear together in the same block, regardless of which parties nominated them. The nominating parties are simply listed under each candidate's name.

Consider Levi Leatherberry, who was nominated by both the Independent Party and the Libertarian Party for "US Representative, 4th District." All nominees for this office appear in a

[168] We use "party-column" to describe Connecticut's grid-based layout even though parties occupy rows rather than columns. The term originated with early ballots that placed parties in columns and offices in rows, known as "party-column" or "Indiana" ballots. Since transposing rows and columns does not affect how the ballot functions, we apply the term to both arrangements.

single block (highlighted in blue). Leatherberry's name appears just once (highlighted in yellow), with both nominating parties listed beneath it.

This example illustrates why aggregated fusion pairs naturally with office-block layouts. The format easily accommodates multiple party nominations under a single name, avoiding redundant listings. Disaggregated fusion—listing a candidate multiple times—would seem arbitrary without the grid structure that makes such repetition logical. For this reason, every state that currently combines an office-block layout with fusion voting uses aggregated fusion.

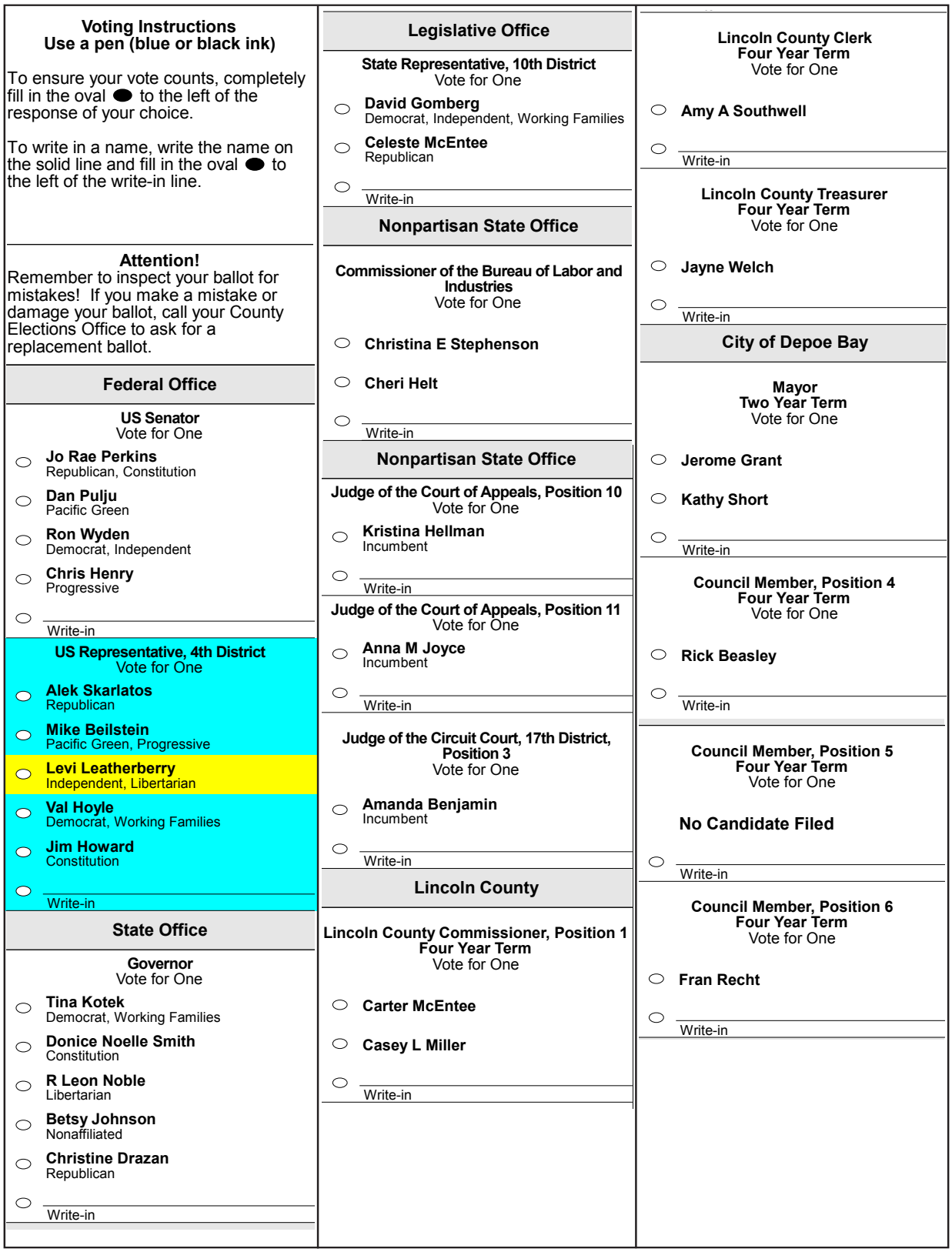
3. Wisconsin: Office-Block Layout without Fusion

Wisconsin also uses an office-block layout.[169] Figure A3 shows a sample Wisconsin ballot, which closely resembles Oregon's in organization and lacks Connecticut's grid structure. This similarity suggests that if Wisconsin were to adopt fusion voting, aggregated fusion would be the more natural choice—disaggregated fusion would be untested with this ballot format and would likely require redesigning the layout to work effectively.

[169] During primary elections, candidates are grouped by party first and then by office, as is typical for primary-election ballots with an office-block layout. Parties are not assigned a single column, and the layout remains different from a grid-like party-column layout.

PARTY \ OFFICE	1 Governor and Lieutenant Governor Vote for One	2 United States Senator Vote for One	3 Representative in Congress Vote for One	4 State Senator Vote for One	5 State Representative Vote for One	6 Secretary of the State Vote for One
DEMOCRATIC PARTY	1A Ned Lamont and Susan Bysiewicz	2A Christopher S. Murphy	3A Jim Himes	4A Carlo Leone	5A David Michel	6A Denise W. Merrill
REPUBLICAN PARTY	1B Bob Stefanowski and Joe Markley	2B Matthew Corey	3B Harry Arora	4B Jerry Bosak	5B Dan Pannone	6B Susan Chapman
WORKING FAMILIES PARTY	1C Ned Lamont and Susan Bysiewicz	2C Christopher S. Murphy	3C	4C	5C	6C Denise W. Merrill
INDEPENDENT PARTY	1D Bob Stefanowski and Joe Markley	2D	3D Harry Arora	4D Jerry Bosak	5D	6D Susan Chapman
LIBERTARIAN PARTY	1E Rodney Hanscomb and Jeffrey Thibeault	2E Richard Lion	3E	4E	5E	6E Heather Lynn Sylvestre Gwynn
GREEN PARTY	1F	2F Jeff Russell	3F	4F Cora M. Santaguida	5F	6F S. Michael DeRosa
AMIGO CONSTITUTION LIBERTY PARTY	1G Mark Stewart Greenstein and John Demitrus	2G	3G	4G	5G	6G
GRIEBEL FRANK FOR CT PARTY	1H Oz Griebel and Monte E. Frank	2H	3H	4H	5H	6H
	1I	2I	3I	4I	5I	6I
WRITE-IN VOTES	1J	2J	3J	4J	5J	6J

Figure A1: Portion of the ballot for the General Election in Stamford, Connecticut, on November 6, 2018, with highlighting for the nomination of Harry Arora.



Voting Instructions
Use a pen (blue or black ink)

To ensure your vote counts, completely fill in the oval ⬬ to the left of the response of your choice.

To write in a name, write the name on the solid line and fill in the oval ⬬ to the left of the write-in line.

Attention!
Remember to inspect your ballot for mistakes! If you make a mistake or damage your ballot, call your County Elections Office to ask for a replacement ballot.

Federal Office

US Senator
Vote for One

- **Jo Rae Perkins** — Republican, Constitution
- **Dan Pulju** — Pacific Green
- **Ron Wyden** — Democrat, Independent
- **Chris Henry** — Progressive
- Write-in

US Representative, 4th District
Vote for One

- **Alek Skarlatos** — Republican
- **Mike Beilstein** — Pacific Green, Progressive
- **Levi Leatherberry** — Independent, Libertarian
- **Val Hoyle** — Democrat, Working Families
- **Jim Howard** — Constitution
- Write-in

State Office

Governor
Vote for One

- **Tina Kotek** — Democrat, Working Families
- **Donice Noelle Smith** — Constitution
- **R Leon Noble** — Libertarian
- **Betsy Johnson** — Nonaffiliated
- **Christine Drazan** — Republican
- Write-in

Legislative Office

State Representative, 10th District
Vote for One

- **David Gomberg** — Democrat, Independent, Working Families
- **Celeste McEntee** — Republican
- Write-in

Nonpartisan State Office

Commissioner of the Bureau of Labor and Industries
Vote for One

- **Christina E Stephenson**
- **Cheri Helt**
- Write-in

Nonpartisan State Office

Judge of the Court of Appeals, Position 10
Vote for One

- **Kristina Hellman** — Incumbent
- Write-in

Judge of the Court of Appeals, Position 11
Vote for One

- **Anna M Joyce** — Incumbent
- Write-in

Judge of the Circuit Court, 17th District, Position 3
Vote for One

- **Amanda Benjamin** — Incumbent
- Write-in

Lincoln County

Lincoln County Commissioner, Position 1
Four Year Term
Vote for One

- **Carter McEntee**
- **Casey L Miller**
- Write-in

Lincoln County Clerk
Four Year Term
Vote for One

- **Amy A Southwell**
- Write-in

Lincoln County Treasurer
Four Year Term
Vote for One

- **Jayne Welch**
- Write-in

City of Depoe Bay

Mayor
Two Year Term
Vote for One

- **Jerome Grant**
- **Kathy Short**
- Write-in

Council Member, Position 4
Four Year Term
Vote for One

- **Rick Beasley**
- Write-in

Council Member, Position 5
Four Year Term
Vote for One

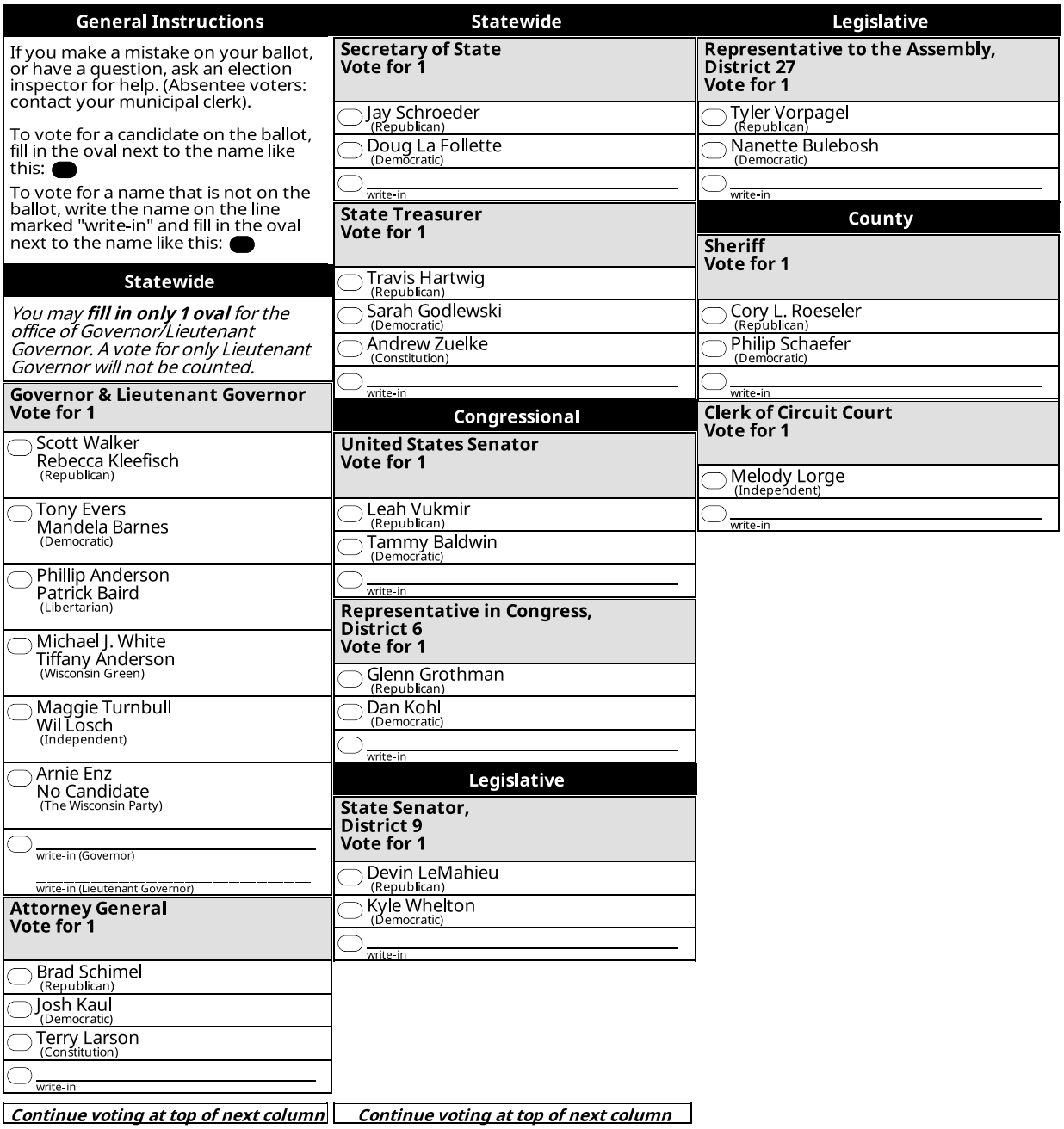
No Candidate Filed

- Write-in

Council Member, Position 6
Four Year Term
Vote for One

- **Fran Recht**
- Write-in

Figure A2: Portion of the ballot for the General Election in Depoe Bay, Oregon, on November 8, 2022, with highlighting for the nomination of Levi Leatherberry.



General Instructions

If you make a mistake on your ballot, or have a question, ask an election inspector for help. (Absentee voters: contact your municipal clerk).

To vote for a candidate on the ballot, fill in the oval next to the name like this: ⬬

To vote for a name that is not on the ballot, write the name on the line marked "write-in" and fill in the oval next to the name like this: ⬬

Statewide

*You may **fill in only 1 oval** for the office of Governor/Lieutenant Governor. A vote for only Lieutenant Governor will not be counted.*

Governor & Lieutenant Governor
Vote for 1

- ◯ Scott Walker / Rebecca Kleefisch (Republican)
- ◯ Tony Evers / Mandela Barnes (Democratic)
- ◯ Phillip Anderson / Patrick Baird (Libertarian)
- ◯ Michael J. White / Tiffany Anderson (Wisconsin Green)
- ◯ Maggie Turnbull / Wil Losch (Independent)
- ◯ Arnie Enz / No Candidate (The Wisconsin Party)
- ◯ _____ write-in (Governor)
- _____ write-in (Lieutenant Governor)

Attorney General
Vote for 1

- ◯ Brad Schimel (Republican)
- ◯ Josh Kaul (Democratic)
- ◯ Terry Larson (Constitution)
- ◯ _____ write-in

Continue voting at top of next column

Statewide

Secretary of State
Vote for 1

- ◯ Jay Schroeder (Republican)
- ◯ Doug La Follette (Democratic)
- ◯ _____ write-in

State Treasurer
Vote for 1

- ◯ Travis Hartwig (Republican)
- ◯ Sarah Godlewski (Democratic)
- ◯ Andrew Zuelke (Constitution)
- ◯ _____ write-in

Congressional

United States Senator
Vote for 1

- ◯ Leah Vukmir (Republican)
- ◯ Tammy Baldwin (Democratic)
- ◯ _____ write-in

Representative in Congress, District 6
Vote for 1

- ◯ Glenn Grothman (Republican)
- ◯ Dan Kohl (Democratic)
- ◯ _____ write-in

Legislative

State Senator, District 9
Vote for 1

- ◯ Devin LeMahieu (Republican)
- ◯ Kyle Whelton (Democratic)
- ◯ _____ write-in

Continue voting at top of next column

Legislative

Representative to the Assembly, District 27
Vote for 1

- ◯ Tyler Vorpagel (Republican)
- ◯ Nanette Bulebosh (Democratic)
- ◯ _____ write-in

County

Sheriff
Vote for 1

- ◯ Cory L. Roeseler (Republican)
- ◯ Philip Schaefer (Democratic)
- ◯ _____ write-in

Clerk of Circuit Court
Vote for 1

- ◯ Melody Lorge (Independent)
- ◯ _____ write-in

Figure A3: Portion of the ballot for the General Election in Sheboygan, Wisconsin, on November 6, 2018.