

STATE OF WISCONSIN

DANE COUNTY
BRANCH ____

CIRCUIT COURT

UNITED WISCONSIN,
[REDACTED],

KRISTINE D. ANDREWS,
[REDACTED],

DAVID G. DEININGER,
[REDACTED],

DAVID J. MAHONEY,
[REDACTED],

LEE RASCH,
[REDACTED],

and

DALE W. SCHULTZ,
[REDACTED],

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION,
201 W. Washington Avenue, 2nd Floor
Madison, WI 53703,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Case No. _____

Case Code:
Declaratory Judgment 30701

1. Wisconsin law precludes Plaintiffs United Wisconsin, Kristine D. Andrews, David G. Deininger, David J. Mahoney, Lee Rasch, and Dale W. Schultz (collectively, “Plaintiffs”) from exercising rights guaranteed by the Wisconsin Constitution to advance and effectuate their goals of influencing and improving Wisconsin politics and government. Accordingly, Plaintiffs seek declaratory judgment that Wisconsin’s fusion voting ban—as embodied by Wis. Stats. §§ 8.03(1) and 8.15(7)—violates the Wisconsin Constitution and a permanent injunction barring Defendant Wisconsin Elections Commission from taking any action enforcing Wisconsin’s fusion voting ban.

BACKGROUND

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.

3. This coalition-building defined Wisconsin’s early political culture and was only possible because multiple parties could nominate the same candidate for a public office. This practice was and is known as “fusion voting.” It allows varying parties—major and minor, old and new, multi-issue and single-issue, conservative, liberal, radical, and moderate—to “fuse” their efforts to elect candidates who they believe will most effectively advance their goals and who have a credible chance of winning, unlike standalone third-party candidates.

4. For a political party, fusion is a critical strategic choice. A party may choose to associate itself with a candidate already nominated by another party,

sacrificing its opportunity to nominate its own candidate who would be more closely aligned with its supporters' ideologies. In exchange, the cross-nominating party gains both the opportunity to meaningfully affect the outcome of the election and the cross-nominated candidate's agreement to work toward certain policy outcomes.

5. Fusion voting offers other institutional benefits for parties that cross-nominate. Fusion allows a nascent political party to influence an immediate election while building its institutional capacity in hopes of having a greater influence in the future.

6. Fusion also benefits individual voters. It allows people not fully aligned with either of the major parties—that is, according to surveys, most Wisconsinites and most Americans—to organize themselves into groups based on their beliefs and then support candidates while standing for their own set of beliefs. Thus, fusion voting saves voters from being forced to choose among unappealing options: vote for one of two candidates under a banner they don't fully support, waste their vote on a third-party candidate who has no chance of success, or decline to vote at all.

7. In the absence of fusion, it is functionally impossible for voters to maintain viable third parties, and, without such parties through which to build and maintain a political presence, voters are stuck with the two major parties. This creates perverse incentives that drive the parties further and further from the voters. Elections offering only a binary choice incentivize the two major parties to be at war with one another, each constantly catering to their most fervent and extreme

supporters, reflexively rejecting policy compromises, increasingly alienating the public, and undermining the efficacy of our republic. Social scientists refer to this as the “two-party doom loop,” and, as explained below, it will not self-correct.

8. Ironically, fusion’s most familiar success story was the genesis of its downfall. In 1854, several active political parties in Wisconsin organized a meeting at a schoolhouse in Ripon, Wisconsin. They strategized about how best to advance their shared goals in opposition to the Democratic Party, which was the center of political gravity at the time. Their meeting gave birth to the Republican Party, which grew quickly in stature and power—thanks in part to fusion voting. Less than fifty years later, seeking to secure its dominance over state government, that same Republican Party enacted a prohibition on “fusion voting.” That prohibition persists in Wisconsin law today, and it is the subject of this lawsuit.

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. It worked on both counts. The Democratic Party could no longer rely on building a multi-party fusion slate anchored by a large immigrant population in Milwaukee. Minor political parties are no longer a means for political expression; they are irrelevant in our state and federal elections except on the rare occasions when as a minor party candidate might spoil the chances of a major party candidate.

10. More Wisconsin voters identify as independent than either Democratic

or Republican, yet all other parties are relegated to the role of spoiler—or they choose not to play at all.

11. This duopoly will continue to suppress the rights of Wisconsin voters as long as this unconstitutional fusion voting ban enables the major parties' chokehold on our politics. Wisconsin's fusion voting ban violates the state constitution in several ways, each independently sufficient to require its demise.

12. It is an affront to the People's right to freely associate with the political party of their choosing, forcing Wisconsinites to either violate their closely held beliefs by voting for a party they do not support or cast a meaningless vote. It is also an affront to political parties' right to freely associate with candidates who welcome their support in the most literal form possible—on the ballot.

13. Because the fusion voting ban was enacted to protect the party in power from fair competition and continues to serve that purpose, it is a violation of the Wisconsin Constitution's equal protection guarantee. It unlawfully cements in our statutes the existing political duopoly under which only two parties have a realistic chance of success.

14. The demonstrated consequences of Wisconsin's fusion voting ban, combined with its character as a clear departure from Wisconsin's founding-era practice, make clear that it violates our constitutional guarantee to every citizen that our state will "maintain[]" the "blessings of a free government ... by frequent recurrence to fundamental principles." Wis. Const. art. I, § 22.

15. For these reasons and those that follow, Wisconsin’s fusion voting ban infringes on Plaintiffs’ state constitutional rights, excluding them from meaningful participation in the political process. Plaintiffs ask this Court to vindicate the state constitution’s promises, strike down Wisconsin’s fusion voting law, and restore to them—as well as other Wisconsinites—the opportunity to build genuine alternatives to the two-party duopoly that has distorted Wisconsin politics for more than a century.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this State.

17. This Court has jurisdiction to grant declaratory relief pursuant to Wis. Stat. § 806.04 and injunctive relief pursuant to Wis. Stat. § 813.01.

18. This Court has personal jurisdiction over Defendant Wisconsin Elections Commission (WEC), a state agency organized under the laws of the State of Wisconsin.

19. Venue is appropriate in Dane County, under Wis. Stat. § 801.50, because WEC is located in and does substantial business in Dane County.

PARTIES

20. Plaintiff United Wisconsin is an association organized by Wisconsin citizens from across the political spectrum banding together in this moment of

division in order to promote legislation and candidates for public office that will advance cooperation across political party lines, compromise, and problem-solving. It wishes to be a fusion-based political party; it does not want to ask Wisconsinites to waste their votes on candidates with no realistic chance of winning—and thereby risk spoiling elections. Its members wish to support candidates who are affiliated with the two major parties, who show respect for the rule of law and our democratic institutions, who pledge support for public education and conservation of Wisconsin's natural resources, and who promise to prioritize the public good over narrow, partisan interests.

21. Wisconsin's fusion voting ban prevents Plaintiff United Wisconsin from meaningful participation in Wisconsin's political process. The organizers of United Wisconsin are responsible actors who do not want to form a party—expending time, money, and political capital for petition collection, raising the hopes of like-minded Wisconsinites, and nominating candidates—unless this Court recognizes the right to fuse that they believe the Wisconsin Constitution guarantees them. As long as Wisconsin's fusion ban remains in effect, United Wisconsin can either advocate for a major-party candidate without having a ballot line of its own, or it can instead run its own candidate against the Democrat or Republican it would otherwise place on its ballot line. This is not a meaningful choice at all. The former precludes building United Wisconsin as its own viable political organization, while the latter risks acting as a spoiler that undermines United Wisconsin's short-term goals by inadvertently aiding the election of the candidate least compatible with its goals and forecloses long-

term growth by alienating potential members.

22. Plaintiff Kristine D. Andrews is a natural person, citizen, and resident of Wisconsin. Plaintiff Andrews is a member and strong supporter of United Wisconsin, which she identifies with as her political party of choice.

23. Plaintiff David J. Mahoney is a natural person, citizen, and resident of Wisconsin. Plaintiff Mahoney is a member and strong supporter of United Wisconsin, which he identifies with as his political party of choice.

24. Plaintiff Dale W. Schultz is a natural person, citizen, and resident of Wisconsin. Plaintiff Schultz is a member and strong supporter of United Wisconsin, which he identifies with as his political party of choice.

25. Plaintiff David G. Deininger is a natural person, citizen, and resident of Wisconsin. Plaintiff Deininger would like to become a member of United Wisconsin, but only if it were able to function as a fusion party.

26. Plaintiff Lee Rasch is a natural person, citizen, and resident of Wisconsin. Plaintiff Rasch would like to become a member of United Wisconsin, but only if it were able to function as a fusion party.

27. Plaintiffs Andrews, Deininger, Mahoney, Rasch, and Schultz (collectively, “Individual Plaintiffs”) are all voters without a party. The Individual Plaintiffs feel represented by neither the Democratic Party nor the Republican Party, but they fear voting for third-party candidates in our present system.

28. Each of the Individual Plaintiffs faces an unreasonable choice (either vote for a candidate and party they do not support, waste a vote on a third party or

independent candidate and risk spoiling an election, or abstain from voting at all) in every partisan election.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

29. “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.” Wis. Const. art. I, § 1. This provision—placed first among the Declaration of Rights that occupies the first article of our state constitution—has long been interpreted to guarantee equal protection under the law.

30. Our Declaration of Rights also expressly protects Wisconsinites’ rights to free speech and assembly. *See* Wis. Const. art. I, §§ 3–4. Under those guarantees, “[n]o laws shall be passed to restrain or abridge the liberty of speech” and “[t]he right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.” *Id.*

31. Our Declaration of Rights guarantees all Wisconsinites the benefits of “a free government,” rooted in “firm adherence to justice, moderation, temperance, frugality and virtue” and a “frequent recurrence to fundamental principles.” Wis. Const. art. I, § 22.

32. Two Wisconsin statutes prohibit fusion voting. One mandates that “[n]o filing official may accept nomination papers for the same person in the same election for more than one party.” Wis. Stat. § 8.15(7). The other sets a bright-line rule for how election officials are to deal with situations where multiple parties attempt to

nominate the same candidate for the same office: “the name of any candidate who is nominated to the same office by more than one party or primary ... shall appear under the party first nominating him or her....” Wis. Stat. § 8.03(1).

FACTUAL ALLEGATIONS

A. Fusion Voting

33. Democratic systems of government generally feature multiple political parties struggling against one another—and sometimes working together—to achieve electoral and, ultimately, policy goals.

34. Under fusion voting, multiple parties can nominate the same candidate. The cross-nominated candidate then appears on the ballot under the names of both parties, and the voter may choose to vote for that candidate on the line of the party that most closely matches that voter’s values. All votes for that candidate are reported by party line, but all votes are counted toward the candidate’s final vote total.

35. With fusion voting, Candidate A—who is running for governor—may run as the Republican Party candidate and also accept the cross-nomination of the Libertarian Party. Candidate A would then be listed twice on the ballot as a candidate for governor, once as the Republican candidate and again as the Libertarian candidate. All votes for Candidate A, whether as a Republican or a Libertarian endorsee, would count equally towards Candidate A’s total.

36. This is exactly what still happens in Connecticut and New York, which permit fusion voting. In these states, candidates can and often do receive cross-nominations from different political parties.

B. Wisconsin’s Fusion Voting Ban

37. The Wisconsin Statutes explicitly ban fusion voting by prohibiting candidates from appearing more than once for the same office on the same ballot and by restricting candidates so that they may appear only on the ballot line of the first party to nominate them in that election. Wis. Stats. §§ 8.03(1), 8.15(7).

38. Wisconsin’s prohibition against a third party nominating a candidate also nominated by a major party forces a voter into an unappealing choice: register support for a political party the voter does not want to support, waste their vote on a third party “spoiler” candidate, or choose not to vote. This denies each voter a legitimate alternative choice of political expression—associating with the party that most closely aligns with their values by supporting their preferred candidate under their preferred party banner. Wisconsin’s fusion voting ban pressures voters to support a party they do not wish to support. It impairs their expressive and associational rights by sending an inaccurate signal about their values and by preventing them from signaling their true allegiances.

39. This constraint on smaller, newer, or niche parties—which represent an actual subset of voters—significantly burdens their ability to effectively organize in the short-term and in the long-term.

40. In the short-term, these parties are deprived of a key tool of inter-party negotiation and persuasion that can be used to drive electoral success. When these smaller parties have an opportunity to direct their members to vote for a major party candidate on the smaller party’s ballot line, this creates an opportunity for the

smaller party to develop influence within the major party. It increases the smaller party's chances of convincing the major party to support policies it prefers and helps build credibility with members of the major party by advocating for its candidates and, critically, not simply acting as a spoiler.¹

41. In the long-term, Wisconsin's fusion voting ban inhibits a vital party-building activity for minor parties. The basic reality of American—and Wisconsin—politics is that electoral campaigns are run through political parties, except in very rare circumstances when candidates are willing and able to personally fund their campaigns.² Even officially non-partisan races in Wisconsin have long been within the purview of political parties, because, whether we like it or not, political parties are the foundational building blocks of democracy.

42. Organizing party members around the election of specific candidates for office is the core reason for parties to exist. Because Wisconsin's smaller, newer, or niche parties have no meaningful opportunity to nominate and organize campaigns around anyone but spoilers, members of these minor parties have little incentive to

¹ Serra Okumus, *Why Is There No Third Party In The United States?*, Fiker Institute (Mar. 2022), <https://www.fikerinstitute.org/publications/why-is-there-no-third-party-in-the-us> (describing how “in the long-run, rational voters, with only one vote to cast, will appreciate the risk of voting for a party which does not have a majority” and engage in “strategic voting” because “losers do not gain any representation” and “voting for a preferred candidate who could not win a majority would be considered ‘wasting’ a vote”); Ceri Hughes, *It's Not Easy Being Green, White, Red, and Blue: Constituency Representations versus Electoral Competition in the Wisconsin Green Party*, *Int'l J. of Politics, Culture & Soc'y* (May 31, 2020) (describing “Duverger's law” that in first-past-the-post voting systems like the United States' and Wisconsin's, a two-party system is inherently favored because “voters realize that their vote is often simply wasted” when given to third-party candidates).

² Even former Wisconsin Senator Herb Kohl, who funded his own campaigns and famously ran as “No one's Senator but yours,” ran with the support and under the umbrella of a major party.

remain with the party from election to election. Unless members wish to vote for spoiler candidates, they must choose to vote for a major party or not vote at all—and if they are going to ultimately vote for the major party, there is little reason for them to affiliate with their preferred minor party who wields no influence and cannot even be listed on the ballot.

C. The Two-Party “Doom-Loop”

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. For every rare Green Party or Libertarian Party candidate who manages to win a seat on a local city council, there are thousands of local, state, and federal officials who are members of the Democratic and Republican parties. This has been the case since the introduction of fusion voting bans.

44. Even our terminology reflects this reality: in American political parlance, all parties outside the duopoly of the Republican and Democratic Parties—the “major” parties—are disparaged as “minor” or “third” parties.

45. Today, there is no single statewide elected official in Wisconsin who is not a Democrat or Republican. The same is true nationally, except for two “Independent” U.S. Senators (Angus King of Maine and Bernie Sanders of Vermont), reflecting the harsh reality that it is easier to succeed in American politics *without* a political party than running under a third-party banner.

46. To the extent third party candidates have any impact on the outcome of

an election, it is typically as a “spoiler”—that is, a candidate who, by drawing votes away from one major party’s candidate, secures victory for the other major party’s candidate. The bitter irony that inspires the “spoiler” moniker is that voting for a third-party candidate who has no chance of winning often secures victory for the candidate least preferred by the third party and its voters. Without fusion voting, third parties and voters inclined to support them find themselves in a Catch-22: voicing their political beliefs risks undermining the very interests that motivate their actions.

47. It is not just voters and nascent third parties that understand this dynamic. The two major parties similarly recognize the powerful incentives working against third parties. And they have responded rationally, by seeking to break the electorate into two cohesive parts. To accomplish this, each of our two major parties seeks to differentiate itself from its only real competitor by pursuing greater ideological homogeneity, engaging in increasingly aggressive tactics, and amping up its rhetoric.

48. This hyper-partisan polarization internally reinforces itself in a manner sometimes referred to as the “two-party doom loop.”³

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

³ See, e.g., Lee Drutman, *Breaking the Two-Party Dom Loop: The Case for Multiparty Democracy in America* (2020).

liberal Republicans and conservative Democrats hold office than ever, including in Wisconsin.

50. This cycle increases the risk of political intrusion and violence, as James Madison recognized when he stated that a greater variety of parties “make[s] it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.”

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.

D. Fusion Voting’s Rich History in Wisconsin

52. It was not always this way. 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.

53. As explained in Peter Argersinger’s seminal article on fusion voting—referenced in virtually every court opinion and law review article on the subject—fusion voting was a common feature of Wisconsin’s history until the 1890s, as was

true across the region. “Fusion was a regular feature of Gilded Age American politics. Particularly in the West and Midwest, candidates of issue-oriented parties like the Grangers, Independents, Greenbackers, and Populists often succeeded through fusion with the Democrats, and vice versa.”⁴

54. Wisconsin’s fusion voting ban did not come about by chance. It was an explicit partisan effort, and it worked extremely well, enshrining one-party dominance for decades and leaving local third parties to wither on the vine.

55. Republicans continuously controlled the Wisconsin legislature and governorship starting just after the Civil War until 1932, with just two exceptions including a critical four-year stretch essential to understanding the explicitly partisan motives behind Wisconsin’s fusion voting ban.

56. At the time of statehood, there was no two-party system—the Republican Party did not even exist yet. Wisconsin had a variety of political parties, including the Liberty Party, the Whigs, the Free Soil Party, and the Democrats. The Liberty Party played a key role in founding the state and drafting the state constitution between 1846 and 1848.⁵

57. Each of these smaller parties found different measures of success at different times. Leonard J. Farwell became Wisconsin’s first and only Whig Governor

⁴ Peter H. Argersinger, “A Place on the Ballot”: *Fusion Politics and Antifusion Laws*, 85 *Amer. Hist. Rev.* 287, 288–90 (1980).

⁵ Louise Phelps Kellogg, *The Story of Wisconsin, 1634–1848*, 3 *Wis. Mag. of Hist.* 397, 397–412 (1920).

after the Whigs and the Free Soilers fused to elect him in 1851.⁶

58. In fact, political parties used fusion to orchestrate the Republican Party's formation in Wisconsin. On March 20, 1854, Alan E. Bovay held a meeting in Ripon, Wisconsin, during the bitter debate over the Kansas-Nebraska Act, an Act that raised the possibility of expanding slavery into Western states and triggered a new crisis. Free Soilers, Independent Democrats, and Whigs met at the now-famous "Little White Schoolhouse" to start a new political party opposed to the expansion of slavery. On July 13, 1854, over a thousand delegates attended the first state convention of the Republican Party in Madison, Wisconsin, where they nominated the first Republicans for Wisconsin's three congressional seats selecting a Free Soiler, a Whig, and an Anti-Nebraska Democrat to run as Republicans. Two of the three won.

59. Using fusion as a springboard, the new Republican Party was an immediate hit in Wisconsin.

60. By the time of the Civil War, the Republican Party had become dominant in Wisconsin. From the time Republicans achieved dominance until they adopted Wisconsin's fusion voting ban, fusion was used by Democrats in efforts to challenge that dominance.

61. While Wisconsin voted for Democrats during the state's infancy, the party was "little more than a set of factions" and statewide victory was rare.⁷ Those rare successes relied on fusion voting. For example, in 1874, Democrats fused with

⁶ Kate Everest Levi, *The Wisconsin Press and Slavery*, 9 Wis. Mag. of Hist. 423, 432 (July 1926), available at <https://www.jstor.org/stable/4630623?seq=10>.

⁷ Robert Booth Fowler, *Wisconsin Votes: An Electoral History*, 7 (2008).

the Reform Party to elect William Taylor as governor.

62. These fusion dynamics played out at the state and local level. For example, Milwaukee's 1888 mayoral election was dominated by two fusion tickets, with the United Labor Party (including the Knights of Labor, Grangers, and Anti-Monopoly Party) facing off against a fusion Democratic-Republican ticket. The Democratic-Republican fusion ticket narrowly won.

63. Political parties in the nineteenth century typically produced their own ballots, with "slates" of candidates that voters would deposit in the ballot box. This made it easy for voters to back their preferred *party* (Greenback, Populist, etc.), which may have nominated only partial slates of their own candidates for various local and state offices, while simultaneously backing preferred *candidates* of other parties cross-nominated by their preferred party.

E. The Overtly Partisan History of Wisconsin's Fusion Voting Ban

64. Republicans dominated Wisconsin elections from 1857 to 1874, when they lost the governor race to William Taylor, a fusion Democratic-Reform Party candidate.

65. They dominated again from 1876 to 1890, when they lost to George Peck in another fusion campaign.

66. In 1892, Peck won re-election for governor, powered by the large margins his fusion ticket generated in Milwaukee. His win helped deliver Wisconsin for Democratic presidential candidate Grover Cleveland—the first time in four decades a Democrat had claimed Wisconsin's electoral votes.

67. In the 1890's the Populist Party (or People's Party) emerged as a political force in the Midwest, South, and West, often using fusion to achieve their political goals. For example, in 1894 the new Wisconsin People's Party fused with the Democratic Party to nominate Cyrus Butt for Wisconsin's Third Congressional District. That effort was unsuccessful, as voters across the nation punished the Democrats, blaming the Panic of 1893 and the subsequent economic crisis on the Cleveland Administration.

68. In 1896, the Republicans again faced a fusion challenge, with the Democrats and the People's Party cross-nominating William Jennings Bryant for president, as well as cross-nominating all candidates for the statewide offices. However, in the continued backlash to the country's economic circumstances, the Republicans defeated every candidate on the 1896 fusion ticket.⁸

69. Having prevailed in the 1896 elections, Wisconsin Republicans decided to end the fusion threat. Their 1896 win "opened to Republicans, given their dominance over state governments, the opportunity to use the power of the state to eliminate fusion politics and thereby alter political behavior."⁹

70. In 1897, Wisconsin Republicans banned fusion voting by passing Wisconsin Act 348. Once Republicans passed the anti-fusion law, competition against the Republican Party decreased dramatically. For three decades after 1897, only Republican Party candidates were elected to the offices of Governor, Lieutenant

⁸ *Wisconsin Blue Book*, 1895, pp. 662–64; Booth, *Wisconsin Votes*, 81–82.

⁹ Argersinger, *supra*, at 291, n.4.

Governor, Attorney General, Secretary of State, State Treasurer, Senate President, and Assembly Speaker.

F. Ongoing Barriers to Minor Political Parties in Wisconsin

71. Wisconsin has sent just eight non-major party candidates to Congress since the fusion voting ban took effect: Socialist Party candidate Victor Berger from Milwaukee in the late 1910s and early 1920s who had massive local personal popularity, and seven other candidates during the mid-Great Depression, including sons of former Republican Governor and U.S. Senator Robert La Follette Sr., who capitalized on their family name and outsized political brand to start the Progressive Party. The party folded in 1946 without a single remaining officeholder.

72. None of these eight victories demonstrates the vitality of third-party organizing after Wisconsin's fusion voting ban. To the contrary, each reflects the specific, personal brands of the candidates that allowed them to win elections for brief periods *in spite of* their inability to benefit from cross-nominations. Underscoring that these elections were about the individual candidates rather than their parties, at least one former Progressive, Congressman Merlin Hull, ran as a Republican after the Progressive Party disbanded and won every one of his subsequent elections, never receiving less than 65 percent of the vote.

73. Likewise, no non-Democrat or Republican has won a statewide election in the last 80 years, reflecting the complete demise of third parties as a serious electoral force—beyond playing the occasional spoiler role.

74. The few more recent efforts to grow third parties into a meaningful

political force have failed. The Green Party attempted to make inroads in Wisconsin in the 1980s. In 1986, it elected one county supervisor in Douglas County and one in Bayfield County (both officially non-partisan races), won several local school board seats in the 1990s, won a Racine city council seat in 2003, and at the peak of its influence after two decades of organizing, won 9 out of 13 county board seats in which it fielded candidates. But, in statewide elections, the Green Party has never occupied a role other than spoiler—drawing seven percent of the vote in the 2002 State Treasurer’s race but routinely earning less than two percent. It has never won a seat in the State Assembly or State Senate.

75. In recent years, the Wisconsin Green Party has often lost its status as a recognized party under Wisconsin law so that its candidates must routinely petition—not always successfully—for ballot access.¹⁰ After nearly 40 years of political organizing under Wisconsin’s anti-fusion regime, the Wisconsin Green Party is, at best, immaterial and, at worst, the source of victory for the major party candidate least favorable to the views its members wish to express.

76. The Green Party exemplifies how third parties in Wisconsin have been relegated to the spoiler role in closely contested statewide elections. Their options for growth and influence are extremely limited given the nature of fundraising,

¹⁰ In 2022, a Wisconsin Green Party candidate exceeded 1% of the statewide vote in the race for Secretary of State, requalifying the Wisconsin Green Party as a recognized political party and entitling it to a ballot line on the 2024 ballot. But the Green Party presidential ticket failed to obtain 1% of the statewide vote in the 2024 general election, and the Wisconsin Green Party did not sponsor a single other candidate, for state or local office, in 2024. As a result, the Wisconsin Green Party does not currently have status as a recognized political party under state law.

organizing, and alignment within a system that the state legislature—populated almost exclusively by Democrats and Republicans—has designed to benefit the two major political parties.

77. Polls consistently show that a plurality of Wisconsinites and Americans identify as political independents rather than as Republicans or Democrats.¹¹ Notwithstanding that American voters consistently express a negative view of the two major political parties and an openness to third-party candidates—that is, a clear and consistent public desire to break out of the two-party doom loop—such support fails to materialize across elections.¹²

78. Yet, since 1944, no non-major party candidate in a Wisconsin gubernatorial election has won more than 10 percent of the vote. In fact, the average gubernatorial vote share since 1944 for ***all third parties combined*** has been less than 2 percent, with the Libertarian Party and the Green Party accounting for most of this share since the 1990s. The Wisconsin public is aware of this dynamic and overwhelmingly views votes for candidates from other political parties as wasted in state elections.

79. Wisconsin’s fusion voting ban reinforces this view by making it

¹¹ See, e.g., Gallup, *Americans’ Party ID: Annual trend since 1988*, <https://news.gallup.com/poll/15370/party-affiliation.aspx> (last visited Jan. 23, 2025).

¹² Quinnipiac University, *Nearly Half of Voters Would Consider a Third-Party Presidential Candidate in 2024* (July 19, 2023), https://poll.qu.edu/poll-release?release_id=3876; Pew Research Center, *As Partisan Hostility Grows, Signs of Frustration With the Two-Party System* (Aug. 9, 2022), <https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/>; Mary Claire Evans, *Support for a Third Political Party in the U.S. Dips to 58%*, Gallup (Oct. 1, 2024), <https://news.gallup.com/poll/651278/support-third-political-party-dips.aspx>.

impossible for newer, smaller, or niche political parties to make strategic decisions to cross-nominate willing candidates for office on the ballot.¹³

80. Wisconsin's fusion voting ban imposes burdens on associational rights, frustrating any third party's ability to process voter information, mobilize volunteers, identify and recruit new members, fundraise, and calculate the electoral impact of its members' investment in these core associational activities.¹⁴ Most important, the ban frustrates a third party's ability to test whether it can deliver responsive policy through coalition with the larger parties.

81. In Wisconsin today there is simply no realistic way for a third party to seed, germinate, and grow meaningful political influence because, unlike in the nineteenth century, third parties in Wisconsin cannot cross-nominate other candidates through strategic fusion.

82. In Wisconsin, third parties have limited options, all untenable. They can spoil elections for a major party, drawing the enmity of that party's members and dampening their own chance of increasing future support. They can put forward their own candidates, who will invariably fail without a sufficient base of political support developed across multiple election cycles and the necessary practice of coalition building. Or they can shut down, leaving voters with no choice but to vote as Democrats, Republicans, or not at all.

¹³ See Tabatha Abu El-Haj, *Networking the Party: First Amendment Rights & the Pursuit of Responsive Party Government*, 118 Colum. L. Rev. 1225, 1258–63 (2018).

¹⁴ See also *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989); *Anderson v. Celebrezze*, 460 U.S. 780, 792 (1983).

83. Although Wisconsin’s fusion voting ban applies to all political parties, in practice today it exclusively burdens parties that are smaller, newer, or niche-focused. The Democratic and Republican Parties have no need for cross-nomination and benefit from its prohibition: essentially, a state-sanctioned guarantee of their duopoly position.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF FREEDOMS OF ASSOCIATION AND SPEECH WIS. CONST. ART. I, §§ 3–4

84. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if set forth herein.

85. Democracy being a core civic institution that shapes our lives, when political parties participate in that arena, the decision to endorse or not endorse any candidate is a core organizational decision and prerogative.

86. Wisconsin political parties should be able to nominate political candidates of their choosing under their rights of free speech and free association.

87. Those rights are expressly guaranteed by the Wisconsin Constitution. *See Wis. Const. art. I, §§ 3 and 4, respectively.*

88. Wisconsin’s fusion voting ban unreasonably and unjustifiably burdens candidate political speech in the forum most essential—the only avenue by which a candidate can communicate directly with voters at the moment each voter is making their electoral decision.

89. Wisconsin’s fusion voting ban also infringes the rights of political parties

to show support for a candidate through the most vital, direct, and public expression of support available to them—ballot listing. This option is precluded with respect to any candidate already nominated by a major party. The fusion ban is an unreasonable and unjustifiable burden on political party speech.

90. And Wisconsin’s fusion voting ban interferes with the rights of individual voters to associate with the political parties of their choice, as well as the rights of political parties to associate with one another and with certain candidates and potential candidates.

91. As a direct, proximate, and foreseeable result of Wisconsin’s fusion voting ban, Plaintiffs’ constitutional guarantees of free speech and association have been unlawfully burdened. It follows that Plaintiffs are entitled to judgment declaring Wisconsin’s fusion voting ban unenforceable and without further effect.

COUNT II
VIOLATION OF EQUAL PROTECTION UNDER LAW
WIS. CONST. ART. I, § 1

92. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if set forth herein.

93. Wisconsin’s fusion voting ban was implemented as an attack by a then-dominant political party on parties out of power, with the former (Republicans) using every organ of state government to deprive their opponents (Democrats and others) of a critical and historically successful tool for political organizing.

94. The historical evidence is irrefutable. Having briefly lost its hold on the Governor’s office and control of the state legislature to the Democratic Party as a

result of the fusion-reliant election in 1890, the Republican Party regained power in 1894 and—after the Democrats’ fusion-based efforts in 1896 but prior to the next gubernatorial elections in 1898—enacted Wisconsin’s fusion voting ban.

95. Wisconsin’s fusion voting ban remains in effect today, nearly 130 years later.

96. 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.

97. Conversely, there is ample evidence that fusion voting was a key tool in Wisconsin’s political culture for more than 50 years. There is ample evidence that fusion voting was especially popular in Wisconsin’s largest city, Milwaukee, a multi-ethnic immigrant stronghold that routinely voted for fusion candidates by wide majorities—divided among various ballot lines.

98. Wisconsin’s fusion voting ban was originally implemented as an effort to disenfranchise the Democratic Party and the minor, third parties that aligned with it. Wisconsin’s fusion voting ban has been maintained since to perpetuate and protect the two-party duopoly that dominates politics in Wisconsin and across the United States.

99. The ban was and is likewise a harm to Plaintiffs and similarly situated

Wisconsinites and Wisconsin political parties, all of whom are now prohibited from trying to disrupt the two-party doom loop by making common cause with major-party candidates in the most obvious and direct way—negotiating for concessions that would justify the smaller parties strategically engaging in fusion by cross-nominating candidates for office—depriving these parties of opportunities for seeding, germinating, and growing their own political influence in ways that could allow them to play more than a spoiler role in Wisconsin elections.

100. As a direct, proximate, and foreseeable result of the anti-fusion law, Plaintiffs’ constitutional guarantee of equal treatment under Wisconsin law has been violated. It follows that Plaintiffs are entitled to judgment declaring Wisconsin’s fusion voting ban unenforceable and without further effect.

COUNT III
VIOLATION OF RIGHT TO FREE GOVERNMENT
WIS. CONST. ART. I, § 22

101. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if set forth herein.

102. Wisconsin’s fusion voting ban violates Article I, Section 22 of the Wisconsin Constitution because it is an extreme departure from a “firm adherence to justice, moderation, temperance, frugality and virtue” and a “frequent recurrence to fundamental principles.” Wis. Const. art. I, § 22.

103. Article I, Section 22 protects the right to equal treatment under the law and prohibits extreme and unreasonable legislative action that upends fundamental principles of Wisconsin governance.

104. Wisconsin’s fusion voting ban violates Article I, Section 22 by inhibiting voters from organizing into new political parties and precluding new political parties from having an equal opportunity to participate in the political process.

105. Wisconsin’s fusion voting ban exists for the sole purpose of foreclosing a political practice that was not only common at the time of statehood but was instrumental in the politics around the drafting and ratification of our state constitution. It follows that Wisconsin’s fusion voting ban is inimical to the constitutional promise of “frequent recurrence to fundamental principles.” Wis. Const. art. I, § 22.

106. Wisconsin’s fusion voting ban violates Article I, Section 22 as an extreme and unreasonable legislative action that infringes on Wisconsinites’ fundamental rights and distorts the political process in the state by ensuring that the Democratic and Republican Parties, and only those parties, continue to dominate political discourse and power in the state.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter an order granting the following relief:

a. Entering a declaratory judgment that Wisconsin’s fusion voting ban—embodied in Wis. Stats. §§ 8.03(1) and 8.15(7)—violates the Wisconsin Constitution as described in Counts I through III of this Complaint;

b. Issuing a permanent injunction barring Defendant Wisconsin Elections Commission from taking any action enforcing Wisconsin’s fusion voting ban as

embodied by Wis. Stats. §§ 8.03(1) and 8.15(7); and

c. Awarding Plaintiffs costs and reasonable attorneys' fees to the extent permitted by law.

Dated: April 29, 2025

Respectfully submitted,

Electronically signed by Jeffrey A. Mandell

Jeffrey A. Mandell (SBN 1100406)

Kacy C. Gurewitz (SBN 1118507)

LAW FORWARD, INC.

222 West Washington Avenue

Suite 680

Madison, Wisconsin 57303

608-285-2485

jmandell@lawforward.org

kgurewitz@lawforward.org

John Franke (SBN 1017283)

GASS TUREK LLC

241 North Broadway

Suite 300

Milwaukee, Wisconsin 53202

414-223-3300

franke@gassturek.com

Attorneys for Plaintiffs