

UNITED WISCONSIN, et al.,

Plaintiffs,

v.

Case No. 25-CV-1438

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**NON-PARTY BRIEF
OF THE WISCONSIN GREEN PARTY, ITS CO-CHAIRS, MICHAEL WHITE &
CURTIS BOLTON, & ITS CANDIDATES, PETE KARAS, ROBERT LONGWELL-
GRICE, DAVID SCHUPBACH, & MATTHEW ARNDT,
IN SUPPORT OF THE WISCONSIN ELECTIONS COMMISSION'S MOTION FOR
SUMMARY JUDGMENT**

Skylar R. Croy
Wisconsin Bar No. 1117831
Sarah Stout (Law Clerk)
HURLEY BURISH, S.C.
P.O. Box 1528
Madison, WI 53701-1528
scroy@hurleyburish.com
(608) 257-0945

*Counsel for the Wisconsin Green
Party et al.*

Table of Contents

I.	Introduction.....	3
II.	The Green Party’s interest in this case.....	6
III.	Background: Plaintiffs want “disaggregated” fusion voting, not “aggregated” fusion voting.....	6
IV.	Argument: Fusion voting won’t help minor parties, can’t come from a courtroom, and wouldn’t leave room for ranked-choice voting.....	7
	A. Fusion voting is a tool that the major parties will manipulate.....	7
	B. Even if fusion voting were a good idea, this Court can’t create a proper fusion voting system through constitutional litigation.....	9
	C. A newfound constitutional mandate for fusion voting will prevent a future Legislature from implementing ranked-choice voting.....	10
V.	Conclusion.....	12

I. Introduction.

Plaintiffs ask this Court to conclude that the Wisconsin Constitution mandates “fusion voting,” the practice of listing one candidate on the ballot as the nominee of multiple political parties. To illustrate, here’s the 2014 New York gubernatorial ballot, which lists the Democratic Party’s preferred candidate four times while relegating the Green Party’s preferred candidate to a single box in the bottom right (the undersigned counsel added the highlights).¹

OFFICIAL BALLOT FOR THE GENERAL ELECTION - City of New York November 8, 2014						
NYC ED's 1 Through 8						
GOVERNOR AND LIEUTENANT GOVERNOR (VOTE ONCE)	A DEMOCRATIC For Governor Andrew M. Cuomo and Kathy C. Hochul For Lieutenant Governor 1A DEMOCRATIC	B REPUBLICAN For Governor Rob Astorino and Chris Moss For Lieutenant Governor 1B REPUBLICAN	C CONSERVATIVE For Governor Rob Astorino and Chris Moss For Lieutenant Governor 1C CONSERVATIVE	D WORKING FAMILIES For Governor Andrew M. Cuomo and Kathy C. Hochul For Lieutenant Governor 1D WORKING FAMILIES	E INDEPENDENCE For Governor Andrew M. Cuomo and Kathy C. Hochul For Lieutenant Governor 1E INDEPENDENCE	WRITE-IN 1. BEFORE VOTING THIS BALLOT, PLEASE READ THE INSTRUCTIONS ON THE OTHER SIDE OF THIS BALLOT MARKING INSTRUCTIONS: Correct Mark: ●
	J LIBERTARIAN For Governor Michael McDermott and Chris Edes For Lieutenant Governor 1J LIBERTARIAN	I STOPCOMMONCORE For Governor Rob Astorino and Chris Moss For Lieutenant Governor 1I STOPCOMMONCORE	H SAPIENT For Governor Steven Cohn and Bobby K. Kalotee For Lieutenant Governor 1H SAPIENT	G WOMEN'S EQUALITY For Governor Andrew M. Cuomo and Kathy C. Hochul For Lieutenant Governor 1G WOMEN'S EQUALITY	F GREEN For Governor Howie Hawkins and Brian P. Jones For Lieutenant Governor 1F GREEN	

Wisconsin’s Legislature rejected this practice more than a century ago, and the Wisconsin Supreme Court rejected a nearly identical challenge.² Today, under Wis. Stat. §§ 8.03(1) and 8.15(7), each candidate appears only once, under one party’s name. Plaintiffs have moved for summary judgment declaring those statutes unconstitutional, theorizing that they minimize minor party influence; WEC has cross-moved to uphold them.

¹ Tomas Lopez, *Poor Ballot Design Hurts New York's Minor Parties ... Again*, Brennan Ctr. for Just. (Oct. 23, 2014), <https://www.brennancenter.org/our-work/analysis-opinion/poor-ballot-design-hurts-new-yorks-minor-partiesagain>.

² *State ex rel. Runge v. Anderson*, 100 Wis. 523, 536–37, 76 N.W. 482 (1898).

Despite what's to come in this brief, Plaintiffs and the Wisconsin Green Party share common ground. Like Plaintiffs, the Green Party is no fan of the Democrats and Republicans. The Green Party has long championed ranked-choice voting as a legislative fix to their stranglehold on Wisconsin.³ Because ranked-choice voting comes up throughout this brief, here are screenshots from the Minneapolis government illustrating how it works.⁴

How to mark your RCV ballot

Step 1: Choose your top candidate. This is your first choice candidate and will be the vote that is considered first.

Step 2: If you have a second choice (not required), you may select another candidate. This must be different from your first choice candidate.

Step 3: If you have a third choice (not required), you may choose another selection. This must be different from your first and second choices.

Sample RCV ballot using Minneapolis Parks as candidates:

STEP 1		STEP 2		STEP 3	
1	1 st Choice Select One	2	2 nd Choice If any, must be different from your 1 st choice	3	3 rd Choice If any, must be different from your 1 st and 2 nd choices
☐	WEBBER PARK Parks Party	☒	WEBBER PARK Parks Party	☐	WEBBER PARK Parks Party
☒	BELTRAMI PARK Parks United	☐	BELTRAMI PARK Parks United	☐	BELTRAMI PARK Parks United
☐	LOWRY PARK Parks United	☐	LOWRY PARK Parks United	☐	LOWRY PARK Parks United
☐	POWDERHORN PARK Parks Party	☐	POWDERHORN PARK Parks Party	☒	POWDERHORN PARK Parks Party
☐	BOSSEN FIELD PARK Parks Party	☐	BOSSEN FIELD PARK Parks Party	☐	BOSSEN FIELD PARK Parks Party

This brief defends no duopoly; instead, it's about the Green Party's ability to exist as something more than an appendage of the Democratic Party. While the Green Party believes that Plaintiffs are well meaning, the road to hell is paved with good intentions. Fusion voting serves mainly as a tool for the Democrats and Republicans to "co-opt" minor parties.⁵ It encourages these major parties to prop up new minor parties and essentially bribe existing ones. What it doesn't do: help turn minor parties into full-fledged competitors of the major parties.

³ See, e.g., *Ranked-Choice Voting: Green Party Leader Pushes for Broader Changes in How Wisconsin Elections Are Run*, Green Party US (Feb. 10, 2023), https://www.gp.org/wigp_pushes_for_broader_changes_in_how_wisconsin_elections_are_run.

⁴ *Your City. Your Vote*, Minneapolis (last visited July 10, 2026), <https://vote.minneapolismn.gov/ranked-choice-voting/details/>; see also *Ranked-Choice Voting*, *Black's Law Dictionary* (12th ed. 2024).

⁵ Bernard Tamas, *Does Fusion Undermine American Third Parties? An Analysis of House Elections from 1870 to 2016*, 39 New Pol. Sci. 609, 609 (2017).

The Green Party is also concerned that, even if fusion voting were a good idea, a high-quality fusion voting system (that wouldn't have gaps exploitable by the major parties) can't come from this Court. Like the Green Party's support for ranked-choice voting, Plaintiffs' support for fusion voting belongs in the Legislature—the primary policymaking branch—which is better suited to sort through all the practical questions raised by this lawsuit.

That's so because of the intricate, interlocking nature of election law and how all the various statutes interact. For example, Wisconsin (unlike New York) has open primaries.⁶ There's nothing in Wisconsin law that even tries to prevent the Green Party from being raided by Democrats who'd like their candidate to get an extra ballot line. And that's just one of many policy questions raised by this fusion voting lawsuit. For example, if Wisconsin were to adopt fusion voting, how should a candidate go about accepting or rejecting a second nomination? While many candidates would love an additional nomination from, e.g., the Green Party, very few would want one from the Nazi Party.

And, of particular importance to the Green Party, could the Legislature ever realistically implement ranked-choice voting if fusion voting is a constitutional mandate? Probably not. The bottom line: this Court should grant WEC's motion for summary judgment, leaving policy choices to the branch best suited to make those choices.

⁶ Compare Wis. Stat. §§ 5.62(1)(a), 5.37(4), with N.Y. Elec. Law § 1-104(9).

II. The Green Party's interest in this case.

The Green Party is the State's premier minor party. It was formed primarily to address issues of environmental justice, and now runs candidates for everything from city council to President. The Democratic Party has long viewed the Green Party as a competitor for votes and has tried to keep the Green Party from appearing on the ballot.⁷ In light of that history, the Green Party wants reforms that will increase voter choice and bring about true democracy – not “reforms” that the two major parties will exploit.

III. Background: Plaintiffs want “disaggregated” fusion voting, not “aggregated” fusion voting.

As a preliminary matter, some background on the difference between “disaggregated” and “aggregated” fusion is helpful:

- **Disaggregated fusion** lists the same candidate multiple times (like the New York example above) – once for each party's ballot line;
- **Aggregated fusion** lists each candidate only on one ballot line, but that line lists all parties that nominated the candidate.⁸

Plaintiffs want disaggregated fusion. As they say: “Fusion allows political parties to cross-nominate the same candidate, who is then listed on separate ballot lines as each party's nominee for an office.”⁹ For that reason, throughout this brief, the Green Party often uses “fusion voting” as shorthand for “disaggregated fusion voting.”

⁷ E.g., Amy Sikma, *Wisc. Democrats Move to Block Third-Party Candidate Jill Stein from Ballot – Which Would Likely Boost Harris Among Anti-Israel Voters*, N.Y. Post (Aug. 15, 2024), <https://nypost.com/2024/08/15/us-news/wisconsin-democrats-move-to-block-jill-stein-from-ballot-which-would-likely-boost-kamala-harris-among-pro-palestine-voters/>.

⁸ Deb Otis, Rachel Hutchinson & G. Michael Parsons, *FairVote's Position on Fusion Voting* (2025), <https://fairvote.org/report/fairvotes-position-on-fusion-voting/>.

⁹ Doc. 24, at 11.

This nuance matters. Even if this Court were to recognize a constitutional mandate for “fusion voting,” why it would be disaggregated fusion is unclear. The difference between the two types of fusion voting reflects a policy choice—one for the Legislature, not this Court. And as outlined below, disaggregated fusion is unrealistic to implement alongside ranked-choice voting.

IV. Argument: Fusion voting won’t help minor parties, can’t come from a courtroom, and wouldn’t leave room for ranked-choice voting.

A. Fusion voting is a tool that the major parties will manipulate.

Plaintiffs’ case rests on one mistaken premise: that the Legislature’s policy choice to reject fusion voting in the 1800s has made minor parties irrelevant.¹⁰ Being a minor party isn’t easy, but the reasons why go far beyond a policy choice rejecting fusion voting. One leading scholar, Professor Bernard Tamas, considered every U.S. House election from 1870 to 2016.¹¹ He found that fusion voting was widely used only three times—1872, 1896, and 1916—and each wave was followed by a minor party’s collapse.¹² And as to modern fusion states: “[T]he primary impact of fusion is that it helps major parties co-opt [minor] parties.”¹³ “It is a mechanism major parties use to keep third parties from dividing the vote and undermining their electoral prospects.”¹⁴ Simply put, neither history nor modern practice suggests that powerful new parties emerge when fusion voting is allowed.

¹⁰ Doc. 24, at 48.

¹¹ Tamas, *Does Fusion Undermine American Third Parties?*, *supra* note 5, at 609; *see also* Bernard Tamas, *The Demise and Rebirth of American Third Parties: Poised for Political Revival* 93 (Routledge 2018).

¹² Tamas, *Does Fusion Undermine American Third Parties?*, *supra* note 5, at 618.

¹³ *Id.* at 609.

¹⁴ Tamas, *The Demise and Rebirth of American Third Parties*, *supra* note 11, at 93.

Consider what’s happened in New York. In 2014, the Women’s Equality Party was allegedly created by the Democratic Party’s gubernatorial candidate at least partly so he could “use the ballot as a billboard.”¹⁵ That’s gamesmanship, not democracy. This isn’t NASCAR – candidates shouldn’t get festooned with endorsements.¹⁶ And in 2020, New York more than doubled the votes that a party needed to keep its ballot line in future elections.¹⁷ While minor parties that did nothing more than ride the coattails of the major parties survived the purge, the Greens and the Libertarians were erased, ceasing to be parties under New York law.¹⁸

Here’s the takeaway: Real minor parties shouldn’t get punished with extinction for maintaining independence. Yet that’s what happens with fusion voting. To suggest that fusion voting would create powerful parties that could displace the two major parties defies reality. And because Plaintiffs’ claims rest entirely on a mistaken premise, they can’t carry their significant burden.¹⁹

¹⁵ See Gregory Krieg, *Cuomo Faces Fresh Accusations of Hypocrisy over His Handling of Women’s Rights Issues*, CNN (Mar. 15, 2021), <https://www.cnn.com/2021/03/15/politics/andrew-cuomo-womens-rights>; see also Liz Benjamin, *Why Is Andrew Cuomo Making a Women’s Party?*, Politico (July 21, 2014), <https://www.politico.com/states/new-york/albany/story/2016/05/why-is-andrew-cuomo-making-a-womens-party-048075>.

¹⁶ See Celia Curtis, Comment, *Cross-Endorsement by Political Parties: A “Very Pretty Jungle”?*, 29 Pace L. Rev. 765, 791–92 (2009).

¹⁷ Rebecca C. Lewis, *Only Two Minor Parties in New York Will Keep Their Ballot Access*, City & State (Nov. 4, 2020), <https://www.cityandstateny.com/politics/2020/11/only-two-minor-parties-in-new-york-will-keep-their-ballot-access/175486/>.

¹⁸ Brian Doherty, *New York’s Libertarian and Green Parties Petition Supreme Court over New York’s Restrictive Ballot Access Laws*, Reason (Mar. 17, 2023), <https://reason.com/2023/03/17/new-yorks-libertarian-and-green-parties-petition-supreme-court-over-new-yorks-restrictive-ballot-access-laws/>.

¹⁹ See *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 361 (1997); see also Note, *The Constitutionality of Anti-Fusion and Party-Raiding Statutes*, 47 Colum. L. Rev. 1207 (1947).

B. Even if fusion voting were a good idea, this Court can't create a proper fusion voting system through constitutional litigation.

Even a court convinced that fusion voting is good policy (see Plaintiffs' many expert reports) could not order it into existence because the Wisconsin Constitution assigns choices of this nature to the Legislature. The Legislature has the prerogative to choose the "best public policy" among "alternatives available."²⁰ And the courts shouldn't resolve questions that are "essentially political in nature," i.e., policy choices.²¹ The "judicial power" vested in the courts is the power to act according to "manageable standards," i.e., rational rules derived from legal principles that are capable of objective application.²² When no such standards exist, the courts can't weigh in.²³

Plaintiffs' claims raise a host of difficult but important policy questions that this Court has no business deciding. For example, should Wisconsin use disaggregated fusion or aggregated fusion? That alone is a policy choice that this Court shouldn't decide because it has nothing to do with constitutional law. And as WEC has already argued: "It is unclear whether [WEC] has the authority to choose between aggregated and disaggregated ballot arrangement without input from the Legislature."²⁴ (It doesn't.) So, "eliminating Wisconsin's anti-fusion statutes would not guarantee that Wisconsin will use disaggregated fusion voting."²⁵

²⁰ E.g., *State ex rel. Vanko v. Kahl*, 52 Wis. 2d 206, 216, 188 N.W.2d 460 (1971); see also *Flynn v. DOA*, 216 Wis. 2d 521, 539, 576 N.W.2d 245 (1998).

²¹ *Wis. Just. Initiative, Inc. v. WEC*, 2023 WI 38, ¶70, 407 Wis. 2d 87, 990 N.W.2d 122 (Rebecca Grassl Bradley, J., concurring) (quoted source omitted).

²² *Id.*, ¶73 (Rebecca Grassl Bradley, J., concurring) (quoted sources omitted).

²³ E.g., *id.* (Rebecca Grassl Bradley, J., concurring); see also *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019); *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion).

²⁴ Doc. 58, at 38.

²⁵ Doc. 58, at 38.

That’s not the only policy choice. Must a candidate consent to a second nomination or is consent assumed absent a rejection? Even Plaintiffs’ own counsel defines fusion as nomination with “consent,” but that’s something no Wisconsin statute provides a mechanism for.²⁶ And how should the law deal with an “overvote,” i.e., if a confused voter marks the same candidate on multiple ballot lines? Again, Plaintiffs’ own counsel has spoken on this question, saying there’s an “easy fix, as demonstrated by the *election laws* [i.e., statutes] in New York”²⁷ Easy fix? Maybe by legislation. But by court order? Not so easy. Each question has several defensible answers, and each answer creates winners and losers among parties, candidates, and voters. Choosing among defensible answers to allocate political advantage is the definition of policymaking—and the Constitution puts that pen in the Legislature’s hand, not this Court’s.

C. A newfound constitutional mandate for fusion voting will prevent a future Legislature from implementing ranked-choice voting.

The Green Party is especially concerned about the collision between fusion voting and ranked-choice voting—the two are rival cures for the same disease, and the reform world has said so for years. Both attack the alleged “spoiler” problem but from opposite directions.²⁸ Fusion “solves” the problem by having the minor party endorse a Democrat or Republican. Ranked-choice voting lets a minor party more successfully run *its own* candidates: e.g., rank a Green first, a major-party candidate second. (As an aside, Plaintiffs here disregard that the ability to run a “spoiler” gives minor parties influence.)

²⁶ Jeffrey A. Mandell & Kacy C. Gurewitz, *As I See It: Understanding Fusion Voting*, Wis. Law., Apr. 2026, at 16, 17.

²⁷ *Id.* at 22 n.47.

²⁸ See Otis, Hutchinson & Parsons, *supra* note 8.

FairVote, the nation’s leading ranked-choice advocate, maintains a formal position paper on the policy choice: under fusion, minor parties must “give up” the chance at ever being a “genuine alternative to major parties.”²⁹ “As a standalone reform, only ranked-choice voting truly addresses the spoiler effect ... , and only ranked-choice voting allows parties to run their own candidates without fear of splitting the vote.”³⁰ And while perhaps aggregated fusion voting and ranked-choice voting *could* be combined, that’s much harder for disaggregated fusion voting: “While disaggregated fusion voting can technically be combined with ranked-choice voting, doing so raises novel implementation questions about ballot design, vote tallying logic, and voting system programming.”³¹

And Plaintiffs here don’t ask for a fusion voting statute; they ask for fusion *indefinitely*—a constitutional mandate that would outrank every electoral reform that the Legislature might someday prefer, including ranked-choice voting. After all, the Wisconsin Constitution is *very* hard to amend.³² The point being, today, the Legislature enjoys substantial freedom to change Wisconsin’s election laws: it could adopt fusion voting (disaggregated or aggregated), ranked-choice voting, both (although that’d be complicated), or maintain the status quo. Indeed, ranked-choice legislation has been introduced in recent sessions—legislation that the Green Party hopes will pass.³³ A constitutional mandate for fusion voting could prevent that from ever happening.

²⁹ *Id.*

³⁰ *Id.* (cleaned up).

³¹ *Id.* at n.3 (cleaned up).

³² See Wis. Const. art. XII, § 1.

³³ 2025 Assemb. Bill 1165; 2025 S.B. 594; 2025 Assemb. Bill 516; 2023 S.B. 528; 2021 S.B. 250.

V. Conclusion.

To conclude, the Green Party is exactly the kind of party that Plaintiffs here want to help—and it respectfully declines the hand that Plaintiffs extend. Fusion voting won't loosen the major parties' grip on Wisconsin; it will hand them yet another tool to exploit. They'll prop up sham parties to get an extra ballot line and do everything that they can to crush the independence of *real* minor parties. And fusion voting by judicial fiat is even worse than if it came about through legislation. A constitutional mandate would outrank every reform a future Legislature might prefer, including the one the Green Party actually wants: ranked-choice voting. If fusion voting ever comes to Wisconsin, it should come through the Capitol, not this courthouse. The Green Party asks only that this Court maintain more than a century of precedent and historical practice by granting WEC's motion for summary judgment.

Dated this 16th day of July 2026.

Respectfully submitted,

WISCONSIN GREEN PARTY et al.,

Electronically signed by Skylar R. Croy

Skylar R. Croy

Wisconsin Bar No. 1117831

Sarah Stout (Law Clerk)

HURLEY BURISH, S.C.

P.O. Box 1528

Madison, WI 53701-1528

(608) 257-0945

scroy@hurleyburish.com