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Group sues to let candidates run under multiple parties

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A new bipartisan group has sued the state with hopes of reviving a once-popular electoral practice in Wisconsin aimed at building coalitions and strengthening minor political parties.

The lawsuit was filed Tuesday in Dane County Circuit Court on behalf of current and prospective members of [United Wisconsin](#), which advocates for a system known as “[fusion voting](#).”

The process allows the same candidate to be nominated by more than one political party. The idea is to give independents and third-party voters more say in elections and force major party candidates to cater more to those in the middle of the political spectrum.

Attorneys with Law Forward and Gass Turek argue the state’s ban on fusion voting infringes on voters’ state constitutional rights to equal protection, freedom of association, speech and assembly and maintenance of free government.

Existing anti-fusion laws are an “affront” to voters’ right to freely associate with the candidate and political party of their choosing — particularly with third-party candidates, who have been largely relegated to playing spoiler in state and national elections — and leaves voters “stuck with the two major parties,” attorneys note in the lawsuit.

“This creates perverse incentives that drive the parties further and further from the voters,” the lawsuit states. “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.”

Under fusion voting, voters would still vote only once in each race, but they can choose their preferred candidate without supporting a party they may disagree with.

In practice, that means some candidates would appear more than once on a ballot. For example, “Jane Doe, Republican” could appear on the same ballot with “Jane Doe, Green Party.”

All votes cast for an individual candidate — whether nominated by a major political party or a minor party — would then “fuse” together to create a final vote tally for that candidate.

Proponents of fusion voting say the goal is to give minor parties more influence over statewide elections, which can often be decided by razor-thin margins in the battleground state.

“Even if it’s just 4%, 6%, if the new party can deliver that percent, that can often make the difference and the hope is that then candidates will pay attention to them and their views that they don’t feel they can express now being limited to the two-party choices,” said Gass Turek attorney John Franke, a former Wisconsin circuit court judge and Republican appointee to the former Wisconsin Government Accountability Board.

At least two states, Connecticut and New York, still permit fusion voting.

The practice was commonplace across the country in the 19th century and allowed third-party groups the ability to create the Republican Party in Wisconsin in 1854. Less than 50 years later, in 1897, the GOP-controlled state Legislature banned fusion voting.

Wisconsin law states that election clerks “may accept nomination papers for the same person in the same election for more than one party,” but candidates who file nomination papers under a recognized political party also may not run as an independent candidate for the same office in the same election.

State law also requires that candidates nominated to the same office by more than one party only appear on the ballot under the party that first nominated them.

United Wisconsin co-chair Dale Schultz said in a statement that before the group invests in becoming a political party, “we’d like to see the state courts affirm that we have a constitutional right to associate with whomever we want.”

Group is seeking ‘meaningful choice’

Leaders of United Wisconsin have said the group would prefer not to nominate independent candidates but rather interview and nominate a candidate from one of the two major parties. If fusion voting were allowed, the candidate would appear on the ballot twice, once under their major party and again under United Wisconsin’s banner.

Attorneys say the current structure leaves groups like United Wisconsin with two options: either advocate for a major party candidate without having a ballot line of its own, or run its own third-party candidate.

“This is not a meaningful choice at all,” attorneys wrote in the lawsuit. “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.”

The lawsuit is filed against the Wisconsin Elections Commission. Plaintiffs include United Wisconsin members, including the group’s executive director, Kristine Andrews; former Democratic Dane County Sheriff David Mahoney; and Schultz, a former Republican state Senate Majority Leader.

Additional plaintiffs include prospective United Wisconsin members like former Republican state Rep. David Deininger, a former member of the Wisconsin Government Accountability Board and retired Court of Appeals judge, and Lee Rasch, executive director of La Crosse-based nonprofit Leader Ethics, which seeks to restore trust in public institutions.

Deininger, who described himself as “a man without a party,” said in a statement fusion voting would provide “one mechanism to allow people with my independent inclinations and mainstream worldview to find a home and cast a vote that means something.”

Roughly one-third of Wisconsin voters identify as independent.

It’s possible the case could work its way to the Wisconsin Supreme Court, which currently holds a 4-3 liberal lean.

Proponents of fusion voting have predicted the effort will receive pushback from both major political parties, but attorneys behind the lawsuit said a fundamental principle in the state Constitution dictates that there must be a rational basis for any law, particularly those that limit individual rights.

“We have a clear duopoly that exists to protect and to entrench the two major parties and those with power don’t generally give up power easily, but this is one of the reasons that we have a fair, nonpartisan court system so hopefully that’s not an issue,” said Law Forward attorney Jeff Mandell.

Existing anti-fusion laws are an “affront” to voters’ right to freely associate with the candidate and political party of their choosing, the lawsuit argues.

