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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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**IN RE TOM MALINOWSKI, PETITION FOR
NOMINATION FOR GENERAL ELECTION,
NOVEMBER 8, 2022, FOR UNITED STATES
HOUSE OF REPRESENTATIVES
NEW JERSEY CONGRESSIONAL
DISTRICT 7**

Docket No: A-003542-21

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**BRIEF OF PROFESSORS PETER ARGERSINGER, DALE BAUM, COREY
BROOKS, LISA DISCH, COLIN GORDON, IRA KATZNELSON, MICHAEL
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STATEMENT OF INTEREST BY AMICUS CURIAE

Amici here are historians and experts on fusion voting in the United States, including in New Jersey. The Court is respectfully referred to the Certification for more information. Amici prepared this brief without compensation.

PRELIMINARY STATEMENT

This brief traces the history of fusion voting from its origins to the present day. Historically, fusion voting has strengthened democracy by expanding participation in the democratic process, facilitating individuals to associate more expansively.

This has been true since the early nineteenth century, when minor parties started cross-nominating competitive candidates in New Jersey and elsewhere throughout the country.

The benefits of fusion voting also became apparent when it was either outlawed or discouraged, leading to a weakening of the democratic process by restricting voter choice.

Where fusion voting still exists, most prominently in New York and Connecticut, its contribution to the democratic process is clear.

ARGUMENT

1. Fusion Played a Crucial Role Throughout the 19th Century

For nearly as long as the United States has had formal political parties, “third,” or minor, parties have leveraged their cross-nominations to support and elect competitive candidates.¹ In the 1840s and 1850s, when the two major parties either acquiesced to the perpetuation of slavery or sought its continued expansion, the Liberty Party, Free Soil Party, and other minor parties opposing slavery strategically used cross-nominations to elect abolitionists at the state and federal level. This dynamic was historically important in forming the antislavery Republican Party as the new major party to replace the ambivalent Whig Party.

Scholars likewise credit fusion with enabling many of the electoral successes recorded by minor parties later in the 19th century. From 1874 to 1892, such parties received at least 20% of the vote in one or more elections in more than half of the non-southern states based upon their cross-nominations.² As a result, in some states these parties played a

¹ Howard A. Scarrow, *Duverger’s Law, Fusion and the Decline of American “Third” Parties*, State Univ. of N.Y. (1986). The term “third party” is used interchangeably with “minor party” in this brief to highlight the way fusion actually works in elections.

² See Peter H. Argersinger, *“A Place on the Ballot”*: Fusion Politics and Antifusion Law, Oxford Univ. Press (1980), at 289 (hereinafter Argersinger 1980).

critical role throughout this era, because the two major political parties were closely matched numerically and the minor parties therefore held the balance of power.³ This made these parties and the social movements they represented a consequential force in important areas of public policy, particular regarding economic development, governmental reform, and the political rights of African-Americans and the working class. Thus, fusion voting permitted legislatures to secure long-lasting reforms in states like North Carolina and Kansas, where different varieties of partisan polarization had previously prevented coalitions representing the interests of the majority of the states' populations from taking power.

Given the ubiquity of cross-nominations throughout 19th century elections, an exhaustive accounting of the era is beyond the scope of this brief.⁴ The following is therefore a brief survey of fusion's role in New Jersey and several other states during this period.

1. New Jersey

Throughout the 19th and early 20th centuries, more than one hundred candidates for elective office in New Jersey received cross-

³ Argersinger 1980, *supra* note 2, at 289 (“Between 1878 and 1892 minor parties held the balance of power at least once in every state but Vermont, and from the mid-1880s they held that power in a majority of states in nearly every election.”).

⁴ Scarrow, *supra* note 1.

nominations. (Pa271-74.) Minor parties started making cross-nominations in New Jersey as early as 1826, when congressional candidate George Holcombe ran on both the Democratic Party line and a minor line as well.⁵ In 1856, just two years after the Republican Party's founding, two of New Jersey's congressmen were elected through a fusion of the Republican and American parties.⁶

New Jersey's 1878 congressional elections also highlighted the role of fusion. In that election, as was often true during this political era, the Greenback Party (which focused on anti-monopoly, pro-labor issues, most notably support for non-gold-backed paper currency, an eight-hour work day, and union protections) mostly nominated Democratic candidates for office. The Democratic candidates who also had the support of the Greenbackers typically won, and those without them lost.⁷ As such, fusion voting played a critical role in allowing voters to associate *and* actually impact the outcome of elections. Cross-nominations continued into the early 20th century.⁸

⁵ Bruce A. Bendler, *The Steam Mill and Jacksonian Politics: The Career of William N. Jeffers*, 4 NJS: An Interdisciplinary Journal 41, 56 (2018).

⁶ Michael J. Dubin, *United States Congressional Elections, 1788-1997*, 87, 176 (1998).

⁷ *Annual Returns of the General Elections of 1876-1884* (Camden, NJ: The Courier Publishing Association, 1885).

⁸ See Appellants' Brief, Appendix, *In re Malinowski*, Docket No. A-3542-21T2 (N.J. Sup. Ct. Dec. 16, 2022).

2. *Pennsylvania*

In another historical example of fusion voting, the Pennsylvania Working Men's Party was formed by the growing union movement in the early 1800s.⁹ The party's height of success was when it nominated twenty-one joint candidates with the Jackson Democrats in the 1828 elections, all of whom were elected.¹⁰ Indeed, *both* major parties tried to ally themselves with the Working Men's Party, thus ensuring that labor interests would be at the forefront of the elections.¹¹ This was particularly critical at the time because land-ownership was a requirement to seek public office and many workers could not run for office themselves – thereby compelling them to support one of the two main party candidates.¹² Sometimes the Working Men's Party nominated their own candidates, but, only when they ran cross-nominated candidates did their nominees get elected.¹³ Thus, it was only through fusion that voters supporting the Working Men's Party's platform were able to effectively support their goals in elections.

⁹ Helen L. Sumner, *Citizenship (1827-1833)*, History of Labour in the United States 201(1918), <https://archive.org/details/historyoflabouri01commuoft/page/198/mode/2up>.

¹⁰ *Id.* at 198.

¹¹ *Id.* at 199.

¹² Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 Stanford L. Rev. 335, 341-42 (1989).

¹³ Sumner, *supra* note 9, at 198.

3. *Iowa and Vermont*

In the decades preceding the Civil War, minor parties committed to the abolition of slavery used fusion to successfully champion their agenda despite long-standing complicity or antagonism from the two major parties, the Whigs and Democrats.

In Iowa, Whigs and antislavery advocates used a fusion cross-nomination strategy that elevated the issue of slavery to become a major policy question there. After the Kansas-Nebraska Act was introduced, the Iowa Free Soil Party persuaded the Whig Party to nominate antislavery candidate James Grimes for governor, whom the Free Soil Party would cross-nominate as well. The Free Soil support proved decisive, as Grimes won narrowly, while Whigs and Free Soilers divided the anti-Democratic vote on down ballot offices where they ran their own, non-cross-nominated candidates. The effects of this election were larger than just the governorship, however, as the experience of cross-party fusion voting paved the way for the emergence of a new major party—the Republicans—that better represented the electorate's evolving views on slavery and other key issues. As governor, Grimes supported antislavery policies, and he would

later emerge as the Iowa Republican Party's primary leader, winning reelection as a Republican in 1856.¹⁴

In strongly antislavery Vermont, Free Democrats and Whigs nominated the same candidates for many offices in the elections of 1854, again in response to the Kansas-Nebraska Act. The Whig Party nominated Free Democrat Ryland Fletcher for Lieutenant Governor in order to win antislavery voters, and, reciprocally, Free Democrats supported two Whig candidates in congressional races, but chose their own, non-cross-nominated candidate in a third congressional race. Fletcher received approximately 1,000 votes more than other statewide Whig candidates, demonstrating that cross-nomination could be used as a vehicle to earn votes from those with strong antislavery sentiment who did not otherwise support Whigs. Free Soilers could in turn consider this a victory for both the party and the cause. Fusion voting allowed Vermont Whigs to maintain control of the state government and forced them to further adopt an antislavery agenda that had not previously received enough attention despite its popularity with voters there. Just like in Iowa, the issue became so important to voters that the

¹⁴ *Muscatine Journal*, Mar. 10, 1854, Bloomington, Ia.; Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War*, 866-868 Oxford Univ. Press(1999); Robert R. Dykstra, *Bright Radical Star: Black Freedom and White Supremacy on the Hawkeye Frontier* Harvard Univ. Press 116-117(1993); William Salter, *The Life of James W. Grimes, governor of Iowa, 1854-1858; a senator of the United States, 1859-1869* Oxford Univ. Press 115-116(1876).

Vermont Whig Party and the rest of the state's antislavery political community reconstituted themselves as the new Vermont Republican Party.¹⁵

4. *North Carolina*

The history of fusion in North Carolina also underscores its potency. In the late 1800s and early 1900s, the alliance of the Populists and Republican Party in that state fostered the defeat of the segregationist "Bourbon Democratic" machine from 1894 through 1898. Without fusion, increased Black political participation and success at the polls would not have occurred, and neither would have important policy reforms.¹⁶ Indeed, Populist-Republican fusion produced the highest turnout—85% for both white and Black voters—in a post-Reconstruction southern election, leading to education and economic reform that benefited Black Americans.¹⁷ Unfortunately, the success of fusion was short-lived because of white-supremacist backlash.

¹⁵ Ryland Fletcher to John Porter (Chair of Vermont Whig State Committee), July 28, 1854, *Burlington Free Press* (Aug., 21, 1854); Montpelier *Green Mountain Freeman* (Sept. 14, 1854); Montpelier *Daily Journal*, (Oct. 14, 1854); Holt, *Rise and Fall*, 871-872, 940.

¹⁶ Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894-1901* 218, Univ. of N.C. Press (1951).

¹⁷ J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* 182-187 Yale Univ. Press (1974); J. Morgan Kousser, *Progressivism for Middle-Class Whites Only: The Distribution of Taxation and Expenditures for Education in North Carolina, 1880-1910*, *Journal of Southern Hist.* 46 (1980).

The specifics of electoral fusion in North Carolina are worth recounting. It involved the alliance of local Populists—based in the Farmers’ Alliance, which represented smallholding white farmers—and the Republicans, who many white voters were unwilling to support due to their identification as the party of Abraham Lincoln and Black voters. This coalition won control of state government following North Carolina’s state election in 1894.¹⁸ The newly elected Republican-Populist legislature immediately enacted laws addressing the plight of farmers, including lending reform, levying a school tax, and designating federal monies to deliver on the promise of four months’ public school, and further “crowned its achievements” with two rounds of election reform, first in 1895 and then again following another sweeping fusionist victory in 1897.¹⁹ These new laws were the result of grassroots demands: the legislature was “[r]esponsive to their black and poor white core,” and “put through a remarkably (small-d) democratic program.”²⁰

Specifically, the legislature enacted electoral reforms to secure the voting rights of “tenant farmers, sharecroppers, [and] city workers, white

¹⁸ *Id.* at 37-38.

¹⁹ *Id.* at 41.

²⁰ J. Morgan Kousser, *When African-Americans Were Republicans in North Carolina, The Target of Suppressive Laws Was Black Republicans. Now That They Are Democrats, The Target Is Black Democrats. The Constant is Race* 10, ACLU(2014).

and black.”²¹ Reform began in 1895 with a wholesale repeal of the election laws of 1877, which Democrats had designed to give themselves sole control over supervising elections and to suppress the votes of “unwary Negroes from 1876 to 1894” and those of “Populists from 1892 to 1894.”²² The fusion-elected alliance repealed such laws, including “intricate” voter registration requirements that Democrats had relied on to reject voters or even arrest them on Election Day on trumped-up charges. In place of such draconian laws that suppressed Black voting, the alliance enacted laws that imposed restrictions on voter challenges, a practice that Democrats had used to deny registered voters at the polls.

All told, voting rights reforms by the fusion-inspired alliance helped promote an increase of greater than 15,000 additional votes cast in the “Black counties” from 1892 to 1896, almost doubling the number of votes cast in those counties.²³

As a result of these and other reforms enacted by the alliance government, North Carolina had “probably the fairest and most democratic election law in the post-Reconstruction South”²⁴ – and it occurred only because fusion permitted two culturally distinct but

²¹ Edmonds, *supra* note 16, at 70, 77.

²² Edmonds, *supra* note 16, at 70.

²³ See Edmonds, *supra* note 16, at 56.

²⁴ Kousser, *Supra* note 17 at 187.

politically aligned groups of voters to set aside their differences and work together effectively.

5. *Kansas*

Kansas Populists and Democrats also used fusion strategically in the early 1890s to increase their power over “strictly local and state political matters.”²⁵ Fusion voting by the two parties arose in response to an increasingly dissatisfied farmer population, which did not see itself represented by either Democrats or Republicans. Due to economic downturns, farmers in Kansas began demanding reforms but were ignored by both major parties, both of whom were hostile to the interests of small landholders.²⁶

Indeed, as a result of its alliance with the Democrats, in 1897, the Populists were able to obtain a majority in both houses of the state legislature, allowing for the enactment of major reforms. These included “laws providing for railroad regulation, ballot reform, stockyard regulation, the creation of a state grain-inspection department, banking regulation, a school-textbook commission, taxation of deficiency judgments, regulation of life insurance companies, municipal

²⁵ Peter H. Argersinger, *The Limits of Agrarian Radicalism: Western Populism and American Politics* 21, 105, Univ. Press of Kan. (1995) (hereinafter Argersinger 1995).

²⁶ See Jeffrey Ostler, *Why the Populist Party Was Strong in Kansas and Nebraska but Weak in Iowa*, 23 *Western Hist. Q.* 451, 471 (1992).

ownership, antitrust legislation, conservation, and a series of labor protections ... [such as] anti-blacklisting, ... and improved health and safety conditions for miners.”²⁷

The Populists thrived in Kansas and neighboring Nebraska because fusion “encouraged farmers to form an independent political party” that could then align with major party candidates willing to fight for their priorities.

2. In the Guise of Ballot Reform, Two-Party Dominance

Undermined Fusion Voting

Minor political parties began to decline in the 1890s with the replacement of the “party ticket” system with the so-called “Australian Ballot.” Under the party ticket system, voters selected the ballot of their chosen party and deposited it into the ballot box.²⁸ The Australian Ballot, in contrast, was a uniform, state-sponsored, state-regulated ballot used by all voters, which contained all of the candidate nominations approved by the state.

²⁷ Argersinger 1995, *supra* note 25, at 189.

²⁸ Argersinger 1995, *supra* note 25 at 157.

Adoption of the Australian Ballot was ostensibly motivated²⁹ by a need after the fraudulent presidential elections of the 1880s to eliminate corrupt practices like vote-buying and stuffing the ballot box, and succeeded in eliminating many “unsavory aspects” from elections.³⁰ However, because implementation of the Australian Ballot was mainly orchestrated by legislatures controlled by the two major parties, “those who controlled the state ... [had] the power to structure the system in their own behalf, to frustrate or weaken their opponents, in a manner that would have astounded their predecessors and that was not only effective but by definition legal.”³¹ For example, most states adopted threshold requirements that allowed nominees of political parties “securing a certain percentage of the total vote in the preceding election” to be listed on the ballot simply by filing a certificate of nomination.³² Such regulation of ballot access by past performance of course “bestowed benefits on the major parties that were not immediately available to the frequent but evanescent third parties of the period.”³³

²⁹ Some scholars have observed that the Australian Ballot also had the intentional effect of making voting more difficult for illiterate voters, including newly free Black voters. J. Morgan Kousser, *The Shaping of Southern Politics* *supra* note 17, at 54.

³⁰ Argersinger 1995, *supra* note 25, at 136.

³¹ Argersinger 1995, *supra* note 25, at 136.

³² Argersinger 1995, *supra* note 25, at 159.

³³ Argersinger 1995, *supra* note 25, at 159.

With this self-protection spirit in mind, the two major parties ensured that dozens of states passed laws, either expressly or functionally, to prohibit cross-nominations and force minor parties to instead run independent candidates. Many state laws at the time undermined fusion by barring the listing of a candidate's name "more than once" on the ballot.³⁴ That simple ban effectively eviscerated fusion voting in the late 19th century. Many legislatures coupled the ban on multiple listings with a provision "requiring the candidate of two or more parties to be listed within the column of the party first filing nomination papers."³⁵ This additional provision not only prevented fusion but also facilitated "divisive competition" between parties that otherwise might have cross-endorsed and cooperated.³⁶

As a result, such laws in many states led to a general collapse of once viable third parties and the electoral competition they provided, and, in so doing, restricted the associational rights of their voters. While many lawmakers sought to frame anti-fusion regulations as a salutary reform, others were more candid. A Republican lawmaker in Michigan famously admitted the partisan motives: "We don't propose to let the

³⁴ Argersinger 1995, *supra* note 25, at 20.

³⁵ Argersinger 1995, *supra* note 25, at 139.

³⁶ Argersinger 1995, *supra* note 25, at 139.

Democrats make allies of the Populists, Prohibitionists, or any other party, and get up combination tickets against us. We can whip them single-handed, but don't intend to fight all creation."³⁷ After all, the problematic aspects of party ticket voting had nothing to do with minor party cross-nominations, and Australian Ballot reform might have been enacted without imposing such restrictions against fusion. Indeed, eighteen states, including New Jersey, initially adopted the new ballot format *without* imposing harsh requirements on third parties.³⁸

In fact, New Jersey was among the states banning fusion, not once, but twice—in 1907, and then after a brief period of legalizing fusion again, in 1920. Since then, New Jersey has not permitted fusion voting, and New Jersey voters who wish to associate with a minor party acting in conjunction with a major party have been stymied.

3. Anti-Fusion Laws Have Had Serious Anti-Democratic Effects

1. Voter Suppression

Anti-fusion laws suppressed votes of third-party and major-party voters alike. For example, in 1897, amid an anti-fusion campaign in

³⁷ Argersinger 1980, *supra* note 2, at 296.

³⁸ Of these states, six were “strongholds of Populist candidate James Weaver,” suggesting that in these instances the populist People’s Party had sufficient force already due to prior fusionism to fend off access restrictions. See Stephen J. Rosenstone and John Mark Hansen. 1993. *Mobilization, Participation, and Democracy in America*. Longman Press.

Iowa, which coupled the ban on multiple listings with a requirement that jointly sponsored candidates appear in the column of the first-to-file party, one Populist critic characterized the fusion prohibition as intending “to stifle [third-party] voters and either prevent [their] voting or divide them up into different parties, though they may agree.”³⁹

Another underscored how running a fusion candidate under the “Democratic heading,” would suppress turnout by curtailing the Populist Party’s longevity: he predicted that it would “produce many ‘stay-at-home votes, as it wipes us out so that in the future we will have to get on the ballot by petition.’”⁴⁰

The 1892 presidential race in Oregon demonstrates the acuity of such critics regarding the voting effects of anti-fusion laws. In that election, voters received differently configured ballots depending on whether they voted in counties under Democratic or Republican control. Democratic-controlled counties designed the ballot to facilitate fusion by twice listing the name of Nathan Pierce, a Democratic-Populist elector for Grover Cleveland, once on each of the two political party lines. In counties controlled by Republicans, Pierce’s name appeared on the

³⁹ Argersinger 1995, *supra* note 25, at 142.

⁴⁰ Argersinger 1995, *supra* note 25, at 150.

ballot only once, identified as a Populist-Democrat. The Republican ballot design thus forced Pierce supporters to support him as a Democrat, while the Democrat-designed ballots allowed both Populists and Democrats to vote for Pierce on the party line of their choice. In Democratic counties, Pierce received near unanimous support from Populist voters and 92% of the Democratic vote. In counties with the Republican-designed ballots, 9% of the Populists withheld their votes, as did even higher numbers of Democrats. In those counties, Pierce barely edged out his Republican opponent. In short, the aggregated ballot design apparently suppressed approximately 5,000 Democrat and Populist votes.⁴¹

2. *Establishing the Two-Party System as the Status Quo*

Anti-fusion laws have unmistakably changed the default setting of the political party system throughout the nation. As indicated above, following the presidential election of 1896, “when the possibility of defeat through a fusion of their opponents had thoroughly alarmed Republicans,” anti-fusion legislation spread rapidly throughout

⁴¹ See Argersinger 1980, *supra* note 2, at 294.

Republican-dominated legislatures.⁴² Indeed, once the political significance of anti-fusion laws “became evident in the 1893 and 1894 elections,” the “law became so widely adopted in other states—and so useful politically to the dominant party—that its provisions came to be seen *as logically necessary and unexceptionable*.”⁴³ Anti-fusion laws transformed a competitive political system where fusion was commonplace and facilitated serious third parties into one where the two major parties usually face no threat at the ballot. Indeed, fusion has become seen as a minor abnormality that has been critiqued as out of the mainstream of American politics.⁴⁴

In fact, anti-fusion laws have limited the “responsiveness of the party system to changing political circumstances.”⁴⁵ When voters are forced to support one or the other major party to cast a meaningful vote, those parties often have a greater incentive to mobilize their core voters than to adjust their priorities to reflect public sentiment. Instead, when a minor party can offer a cross-nomination, major party candidates have an opportunity and imperative to engage a broader swath of the

⁴² Argersinger 1995, *supra* note 25, at 20.

⁴³ Argersinger 1995, *supra* note 25, at 161, 165 (emphasis added).

⁴⁴ See Scarrow, *supra* note 1, at 639.

⁴⁵ Mark Kornblush, *Why America Stopped Voting: The Decline Of Participatory Democracy And The Emergence Of Modern American Politics* 125 (N.Y.U. Press ed., 2000).

electorate. Key issues of public concern in the 19th century, from slavery to monopolistic abuses, were largely neglected by the major parties until voters formed new minor parties to prioritize those issues and condition their nominations on candidate support.

As history has taught, fusion in the United States facilitated a more robust political dynamic than exists without it.

4. Modern Fusion Voting: New York and Connecticut as Models

Despite fusion voting's disappearance in most states, New York and Connecticut have maintained a system of electoral fusion resembling that used during the 19th century.⁴⁶ The fact that these two states share much in common with New Jersey demonstrates how the re-institution of fusion could improve New Jersey's politics.

1. New York

Like in other states, the New York Legislature sought to ban fusion voting, but its highest court, the New York Court of Appeals, repeatedly ruled during the early 20th century that the anti-fusion

⁴⁶ A few other states, such as California, New Hampshire, Vermont, and Oregon, either allow fusion in specific, limited circumstances or allow multiple nominations but prohibit parties from having their own lines on the ballot.

statutes violated the state constitution.⁴⁷ While Democrats and Republicans have remained New York's dominant political parties, there have typically been a small number of influential minor parties at any given time. As voter preferences, key issues, and areas of major party neglect change over time, so have the minor parties in the Empire State. On the whole, these parties have often generated increased political activity, provided the margin of victory for many competitive candidates, and facilitated greater government responsiveness.

For instance, John F. Kennedy won New York's electoral votes (and thus the 1960 presidential election) with a margin of victory owing to the number of votes he received on the Liberal Party line.⁴⁸ Similarly, in the 1993 New York City mayoral election, Republican nominee Rudolph Giuliani also ran on the Liberal Party line, and, as a result, prevailed in his election over incumbent mayor David Dinkins.⁴⁹

2. *Connecticut*

In Connecticut, cross-nominations have routinely been on the ballot for the last few decades. In the early 1990s, a coalition of

⁴⁷ See Unsigned Note, *The Constitutionality of Anti-Fusion and Party-Raiding Statutes*, 7 Colum. L. Rev. 1207, 1211-12 (1947).

⁴⁸ William R. Kirschner, *Fusion and the Associational Rights of Minor Political Parties*, 95 Columbia L.R. 683, 683 n.2 (1995)

⁴⁹ See Melissa R. Michelson & Scott J. Susin, *What's in a Name: The Power of Fusion Politics in a Local Election* The University of Chicago Press on behalf of the Northeastern Political Science Association 301-321 (2004). at 306.

moderate Democrats, Republicans, and independents supported the formation of the politically moderate A Connecticut Party (“ACP”).⁵⁰ The ACP cross-nominated a mix of Democratic and Republican candidates, and among the cross-nominated candidates who won was the Democratic Secretary of State Miles Rapoport, whose 127,000 ACP votes far exceeded his 2,700 vote margin of victory. (Pa202-18.)

While the retirement of key ACP leadership facilitated the party’s demise in the ensuing years, the ACP built meaningful support for a moderate “good government” agenda in its brief existence. But for the leadership vacuum, the ACP may have continued to grow and consolidate itself, as many predicted it would.⁵¹

More recently, the Independent Party of Connecticut has likewise used its cross-nomination to support the election of moderates on both sides of the aisle. (Pa242-54.)

The Connecticut Working Families Party was founded in 2002 by a group of labor unions and activists, and by 2008, they had become a qualified party with default ballot access throughout the state.⁵² In the

⁵⁰ See Kirk Johnson, *The 1990 Elections: Connecticut – Battle for Governor; Weicker Triumphs Narrowly As Loner in a 3-Way Race*, N.Y. Times (Nov. 7, 1990).

⁵¹ See Andrew L. Yarrow, *Third Party Celebrates Its Second Year*, N.Y. Times (July 27, 1992).

⁵² See Bilal Sekou, “The New York and Connecticut Working Families Party,” in *Beyond Donkeys and Elephants: Minor Political Parties in Contemporary American Politics* (Richards Davis, ed.) (2020) (hereinafter, “Sekou”), at 108-09.

close 2010 election, Democratic candidate Daniel Malloy received 26,308 votes on the WFP line, greater than his margin of victory over Republican Tom Foley.⁵³ Malloy subsequently pursued an aggressive reform agenda, including minimum wage hikes and a first-in-the-nation paid-sick-leave law. While the WFP has typically nominated Democratic candidates, it has nominated philosophically-aligned Republicans too.⁵⁴ (Pa176-81.) Thus, fusion in Connecticut has succeeded in bringing new voices and new voters into the political process.⁵⁵

Therefore, both New York and Connecticut's fusion voting shows how alliances between and among various political parties expand the associational rights of voters, facilitates a more dynamic and responsive political system, and can make the difference in an election.

CONCLUSION

Fusion voting has at times in New Jersey and American history provided a vast array of benefits to the nation's political system. Indeed, while it has been eliminated in New Jersey and many other states, it still

⁵³ Alana Semuels, *Can the Working Families Party Keep Winning?*, The Atlantic (Aug. 15, 2016), <https://www.theatlantic.com/business/archive/2016/08/working-families-party-connecticut/495593/>

⁵⁴ Brian Lockhart and Keila Torres Ocasio, *Working Families Party Claims Big Victory*, C.T. Post (Feb. 28, 2015), <https://www.ctpost.com/local/article/Working-Families-Party-claims-big-victory-6108415.php>; Sekou, *supra* note 52, at 111.

⁵⁵ Sekou, *supra* note 52, at 109.

today has the potential to play a positive role in the state’s politics. This includes providing a political home for many voters, including those who feel that neither major party represents their views or is focused on a particular issue.

To allow fusion voting is to allow more freedom of choice within the political system—freedom that, as history has shown, allows reforms in a moderated and deliberate fashion.

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SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

DOCKET NOS. A 3542-21T2,
A-3543-21T2

CIVIL ACTION

CERTIFICATION OF ERIC S. ARONSON

ON APPEAL FROM:
FINAL AGENCY ACTION IN THE
DEPARTMENT OF STATE
HON. TAHESHA WAY, SECRETARY OF
STATE

I, Eric S. Aronson, hereby certify the following:

1. I am an attorney admitted to practice law in the State of New Jersey and am a partner with the law firm Stroock & Stroock & Lavan LLP. I represent proposed amici curiae, Professors Peter Argersinger, Dale Baum, Corey Brooks, Lisa Disch, Colin Gordon, Ira Katznelson, Michael Kazin, and J. Morgan Kousser (together, the “Professors”) in the above-captioned matter.
2. I submit this Certification in support of the Professors’ motion for leave to file an

amicus brief pursuant to New Jersey Rule 1:13-9. I have personal knowledge of the facts set forth herein.

3. Peter Argersinger is Professor of History Emeritus at Southern Illinois University. He is the author of *Populism and Politics: William Alfred Peffer and The Peoples' Party; Structure, Process, and Party; The Limits of Agrarian Radicalism: Western Populism and American Politics*; and numerous other publications. He earned his Ph. D from the University of Wisconsin.

4. Dale Baum is Professor Emeritus at Texas A&M University. He is the author of *The Civil War Party System: The Case of Massachusetts, 1848-1876; The Shattering of Texas Unionism: Politics in the Lone Star State during the Civil War Era; Counterfeit Justice: The Judicial Odyssey of Texas Freedwoman Azeline Hearne*; and numerous other publications. He earned his B.A. from Georgetown University, M.A. from the University of Minnesota, and Ph. D. from the University of Minnesota.

5. Corey Brooks is the Chair of the History and Political Science Department and an Associate Professor at York College of Pennsylvania. He is the author of *Liberty Power: Antislavery Third Parties and Transformation of American Politics*, and numerous other publications. He earned his B.A. from the University of Pennsylvania, M.A. from the University of California, Berkeley, and his Ph. D. from the University of California, Berkeley.

6. Lisa Disch is a Professor of Political Science at the University of Michigan. She is the author of *The Tyranny of the Two-Party System; Making Constituencies: Representation as Mobilization in Mass Democracy*; and numerous other publications. She earned her B.A. from Kenyon College, and her Ph. D. from Rutgers University.

7. Colin Gordon is the F. Wendell Miller Professor of History at the University of Iowa. He is the author of *New Deals: Business, Labor and Politics*; *Dead on Arrival: The Politics of Health in Twentieth Century America*; *Growing Apart: A Political History of American Inequality*; and numerous other publications.

8. Ira Katznelson is the Ruggles Professor of Political Science and History, and Deputy Director of Columbia World Projects at Columbia University. He is the author of *Fear Itself: The New Deal and the Origins of Our Time*; *Southern Nation: Congress and White Supremacy After Reconstruction*; *Liberal Beginnings: A Republic for Moderns*; and numerous other publications. He earned his B.A. from Columbia College and his Ph. D. from the University of Cambridge.

9. Michael Kazin is a professor at Georgetown University. He is the author of *What It Took to Win: A History of the Democratic Party*; *War Against War: The American Fight for Peace, 1914-1918*; *American Dreamers: How the Left Changed a Nation*; and numerous other publications. He earned his B.A. from Harvard University and his Ph. D. from Stanford University.

10. J. Morgan Kousser is Professor of History and Social Science, Emeritus, at the California Institute of Technology. He is the author of *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*; *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction*; and numerous other publications. He earned his A.B. from Princeton University, M. Phil. from Yale University, and Ph. D. from Yale University.

11. Amici curiae participation is appropriate in this case because it has “broad

implications,” *Taxpayers Association of Weymouth Twp. v. Weymouth Twp.*, 80 N.J. 6, 17 (1976), and is of “general public interest.” *Casey v. Male*, 63 N.J. Super. 255, 259 (N.J. Super. Ct. 1960).

12. This case raises crucial questions and concepts, including regarding the state’s anti-fusion laws, in which each proposed amicus curiae has relevant expertise.

13. The special interest and expertise of each proposed amicus curiae in this area of law are substantial. I respectfully submit that the participation of these proposed amici curiae will assist the Court in the resolution of the significant issues of public importance implicated by this appeal.

I hereby certify that all of the foregoing statements are true and accurate, and that I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: July 10, 2023

STROOCK & STROOCK & LAVAN LLP

By: /s/ Eric S. Aronson
Eric S. Aronson

Counsel for Amici Curiae Professors Peter Argersinger, Dale Baum, Corey Brooks, Lisa Disch, Colin Gordon, Ira Katznelson, Michael Kazin, and J. Morgan Kousser