

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

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO. A-3542-21T2

On appeal from final agency action
in the Department of State

Sat below: Hon. Tahesha Way,
Secretary of State

(CONSOLIDATED)

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

SUPERIOR COURT OF NEW
JERSEY
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DOCKET NO. A-3543-21T2

On appeal from final agency action
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Secretary of State

(CONSOLIDATED)

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VOLUME I (Pa1-181)**

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Secretary of State letter,
dated June 8, 2022

STATE OF NEW JERSEY
DEPARTMENT OF STATE
DIVISION OF ELECTIONS
P.O. Box 304
TRENTON, NJ 08625-0304

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

TAHESHA WAY
Secretary of State

June 8, 2022

The Honorable Tomasz P. Malinowski
15 Welisewitz Road
Ringoos, NJ 08851
tpmalinowski@gmail.com

Re: Request for Petition Filing Appointment for General Nomination Petition

Dear Congressman Malinowski:

We are in receipt of your June 7, 2022 request for direct nomination petition for the November 8, 2022 General Election under the Moderate Party designation. In accordance with N.J.S.A. 19:13-8, no candidate shall sign an acceptance of nomination on a General Election petition for nomination for an office if the candidate has signed an acceptance of nomination on a petition for the Primary Election nomination for the same office.

Because you previously submitted a petition for the June 7, 2022 Primary Election nomination of the Democratic Party for the office of United States House of Representatives, 7th Congressional District, N.J.S.A. 19:13-8 does not permit you to file a direct nomination petition for the November 8, 2022 General Election.

If you have any questions, please do not hesitate to contact the Division of Elections at (609) 292-3760.

Respectfully,

A blue ink signature of Tahesha Way, consisting of a large, stylized 'T' and 'W' connected together.

Tahesha Way
Acting Secretary of State



Secretary of State letter,
dated July 19, 2022

State of New Jersey

DEPARTMENT OF STATE

P.O. BOX 300

TRENTON, NEW JERSEY 08625

PHILIP D. MURPHY
Governor

TAHESHA WAY
Secretary of State

SHEILA Y. OLIVER
Lt. Governor

July 19, 2022

Mr. Steven P. Weissman, Esq.
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Re: General Nomination Petition- Tom Malinowski

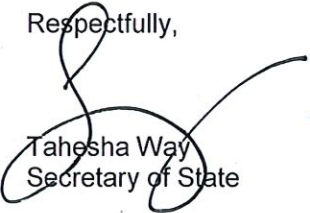
Dear Mr. Weissman:

We are in receipt of your July 8, 2022 request for reconsideration of the June 8, 2022 decision rejecting the petition submitted by the Moderate Party (the "Party"), nominating Tom Malinowski as the Party's candidate for Congress in New Jersey Congressional District 7. As noted in the June 8, 2022 decision from this office, in accordance with N.J.S.A. 19:13-8, no candidate shall sign an acceptance of nomination on a General Election petition for nomination for an office if the candidate has signed an acceptance of nomination on a petition for the Primary Election nomination for the same office. Given Congressman Malinowski previously submitted a petition for the June 7, 2022 Primary Election nomination of the Democratic Party for the office of United States House of Representatives, 7th Congressional District, he is not permitted to file a direct nomination petition for the November 8, 2022 General Election ballot.

Having reviewed the papers submitted in support of the request for reconsideration of the June 8, 2022 decision, and the arguments set forth therein, the request for reconsideration of the June 8, 2022 decision is denied.

If you have any questions, please do not hesitate to contact the Division of Elections at (609) 292-3760.

Respectfully,


Tahesha Way
Secretary of State

C: The Honorable Matthew J. Platkin, Acting Attorney General
The Honorable Congressman Tom Malinowski
Michelle Garay, President, Moderate Party
Richard A. Wolfe, Esq.
Michael Tomasco



New Jersey Judiciary
Superior Court - Appellate Division
Amended Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW) IN RE TOM MALINOWSKI, PETITION FOR NOMINATION FOR GENERAL ELECTION, NOVEMBER 8, 2022, FOR UNITED STATES HOUSE OF REPRESENTATIVES NEW JERSEY CONGRESSIONAL DISTRICT 7	ATTORNEY / LAW FIRM / PRO SE LITIGANT NAME FLAVIO L KOMUVES, Esq. STREET ADDRESS 220 DAVIDSON AVE STE 410 <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">CITY SOMERSET</td> <td style="width: 15%;">STATE NJ</td> <td style="width: 15%;">ZIP 08873</td> <td style="width: 45%;">PHONE NUMBER 732-563-4565</td> </tr> </table> EMAIL ADDRESS fkomuves@weissmanmintz.com kmarrero@weissmanmintz.com	CITY SOMERSET	STATE NJ	ZIP 08873	PHONE NUMBER 732-563-4565
CITY SOMERSET	STATE NJ	ZIP 08873	PHONE NUMBER 732-563-4565		

ON APPEAL FROM

TRIAL COURT JUDGE

 TRIAL COURT OR STATE AGENCY
STATE, DEPT OF/ELECTIONS

 TRIAL COURT OR AGENCY NUMBER
N/A

Notice is hereby given that **MODERATE PARTY (*)** appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on _____ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a ☒ State Agency decision entered on **07/19/2022**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

***EXPLAIN BRIEFLY THE REASON FOR AMENDING THE NOTICE OF APPEAL

Per instructions from Case Management, the caption is being amended, the Department of Elections is being added as a party and the 6/8/22 order is being refiled.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ specify

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

(*) truncated due to space limit. Please find full information in the additional pages of the form.

☐ Public Defender ☐ self ☐ private counsel _____

specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
--	------	-----------------

Trial Court Judge

Trial Court Division Manager

Tax Court Administrator

State Agency

STATE, DEPT OF/ELECTIONS

08/01/2022

Attorney General or Attorney for other
Governmental body pursuant to
R. 2:5-1(a), (e) or (h)

08/01/2022

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
----------------------	--	-----------------

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Attached transcript request form has been served where applicable on the following:		

(*) truncated due to space limit. Please find full information in the additional pages of the form.
Revised effective: 09/01/2008, CN 10502 (Notice of Appeal)

Name	Date of Service
Transcript Office	
Court Reporter (if applicable)	
Supervisor of Court Reporters	
Clerk of the Tax Court	
State Agency	
Exempt from submitting the transcript request form due to the following:	
<input checked="" type="checkbox"/> There is no verbatim record for this appeal.	
<input type="checkbox"/> Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).	
List the date(s) of the trial or hearing:	
<input type="checkbox"/> Motion for abbreviation of transcript filed with the court or agency below. Attach copy.	
<input type="checkbox"/> Motion for free transcript filed with the court below. Attach copy.	
I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.	
<u>08/01/2022</u> Date	<u>s/ FLAVIO L KOMUVES, Esq.</u> Signature of Attorney or Pro Se Litigant
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Name MELISSA H RAKSA, Esq.				Client STATE, DEPT OF/ELECTIONS		
Street Address 25 MARKET ST PO BOX 112		City TRENTON	State NJ	Zip 08625	Telephone Number 609-984-3900	
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Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-003542-21

STATE AGENCY

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

PROOF OF SERVICE

I hereby certify that an original of the following documents, **PROOF OF SERVICE, AMENDED NOTICE OF APPEAL** were submitted and transmitted to the parties listed below in the following format:

ELECTRONICALLY TO:

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ATTORNEY NAME: MELISSA H RAKSA, Esq.

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STATE AGENCY: STATE, DEPT OF/ELECTIONS

BY MAIL:

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

**Attorney for APPELLANT
MODERATE PARTY**

Dated: 08/01/2022

By: S/ FLAVIO L KOMUVES, Esq.



New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

AMENDED FOR: Per instructions from Case Management, amending caption, adding Department of Elections as a party and refiling the 6/8/22 order

Title in Full IN RE TOM MALINOWSKI, PETITION FOR NOMINATION FOR GENERAL ELECTION, NOVEMBER 8, 2022, FOR UNITED STATES HOUSE OF REPRESENTATIVES NEW JERSEY CONGRESSIONAL DISTRICT 7	Trial Court or Agency Docket Number N/A
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• Attach additional sheets as necessary for any information below.

Appellant's Attorney * Email Address: **fkomuves@weissmanmintz.com**
kmarrero@weissmanmintz.com

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **PETITIONER**

Name FLAVIO L KOMUVES, Esq.	Client MODERATE PARTY*
Street Address 220 DAVIDSON AVE STE 410	City SOMERSET
	State NJ
	Zip 08873
	Telephone Number 732-563-4565

Respondent's Attorney * Email Address: **dol.appeals@law.njoag.gov**
DOLAPPEALS@LPS.STATE.NJ.US

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **STATE AGENCY**

Name MELISSA H RAKSA, Esq.	Client TAHESHA WAY*
Street Address 25 MARKET ST PO BOX 112	City TRENTON
	State NJ
	Zip 08625
	Telephone Number 609-984-3900

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:

On June 7, 2022, Appellant Moderate Party timely submitted a valid nominating petition (signed by a sufficient number of individuals, including Appellant Richard Wolfe) naming Rep. Tom Malinowski as the Moderate Party's nominee and asking that his name be printed on the November 2022 general election ballot as its nominee for 7th Congressional District. On June 8, 2022, Respondent Tahesha Way, Secretary of State, issued a ruling declaring the petition to be invalid. On July 8, 2022, Appellants applied for reconsideration. On July 19, 2022, Respondent denied the application for reconsideration. This is an appeal from both the June 8, 2022 and July 19, 2022 decisions.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.) ☒ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2? ☐ Yes ☐ No ☒ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

(*) truncated due to space limit. Please find full information in the additional pages of the form.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

Were any claims dismissed without prejudice?

☐ Yes ☒ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) ☒ Yes ☐ No

Give a Brief Statement of the Facts and Procedural History:

Rep. Tom Malinowski is the incumbent United States Representative from Congressional District 7. He is running for re-election, and is the Democratic Party's nominee for the office at the November 2022 general election, having won the primary election. Rep. Malinowski has also been duly endorsed by the Moderate Party for that position.

On June 7, 2022, the Moderate Party timely submitted a valid nominating petition, signed by a sufficient number of individuals, including Appellant Richard Wolfe, naming Rep. Malinowski as its nominee and asking that his name be printed on the November 2022 general election ballot as its nominee. On June 8, 2022, Respondent Tahesha Way, Secretary of State, issued a ruling declaring the Moderate Party's petition to be invalid. The Secretary of State relied on a statutory prohibition that effectively bars the submission of more than one nominating petition by a single individual, and hence, prohibiting disaggregated fusion voting in New Jersey.

This ruling was issued despite the fact that the nominating petition was accompanied by an extensive legal memorandum and voluminous exhibits demonstrating that the statutes banning fusion violate numerous provisions of the New Jersey Constitution.

On July 8, 2022, Appellants applied for reconsideration. On July 19, 2022, Respondent denied the application for reconsideration. This is an appeal from both the June 8, 2022 and July 19, 2022 decisions.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

I. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF THE RIGHT TO ASSEMBLE

II. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE NEW JERSEY CONSTITUTION'S GUARANTEE OF THE RIGHTS TO FREE SPEECH AND ASSOCIATION

A. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE FREE SPEECH AND ASSOCIATIONAL RIGHTS CLAUSES OF THE N.J. CONSTITUTION

B. TIMMONS V. TWIN CITIES AREA NEW PARTY IS NOT BINDING ON NEW JERSEY COURTS

C. NEW JERSEY COURTS SHOULD DECLINE TO TREAT THE ANALYSIS OF THE MAJORITY IN TIMMONS AS GUIDANCE FOR INTERPRETING THE NEW JERSEY CONSTITUTION

III. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF THE RIGHT TO VOTE

IV. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION

V. NEW JERSEY MUST PERMIT DISAGGREGATED FUSION VOTING TO COMPLY WITH THE STATE CONSTITUTION

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court,

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised: 04/02/2016, CN 10501 (Appellate Civil CIS)

page 2 of 6

complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ ☐ Yes ☒ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? 07/19/2022 ☒ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ Yes ☐ No ☒ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:

- (A) Arises from substantially the same case or controversy as this appeal? ☒ Yes ☐ No
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☒ Yes ☐ No

If the answer to the question above is Yes, state:

Case Title
Tomasco v. Way

Trial Court Docket#
N/A

Party Name
Michael Tomasco

2. Was there any prior appeal involving this case or controversy?

☒ Yes ☐ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)
**IN RE TOM MALINOWSKI, PETITION FOR NOMINATION
FOR GENERAL ELECTION, NOVEMBER 8, 2022, FOR
UNITED STATES HOUSE OF REPRESENTATIVES NEW
JERSEY CONGRESSIONAL DISTRICT 7**

Appellate Division Docket Number
A-003543-21

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.

☐ Yes ☒ No

Explain your answer:

This appeal is a constitutional challenge to New Jersey's bar on disaggregated fusion voting.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

MODERATE PARTY

Name of Appellant or Respondent

FLAVIO L KOMUVES, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

08/01/2022

Date


s/ FLAVIO L KOMUVES, Esq.

Signature of Counsel of Record
(or your signature if not represented by counsel)

018891997

fkomuves@weissmanmintz.com, kmarrero@weissmanmintz.com

Bar #	Email Address
-------	---------------

		New Jersey Judiciary Superior Court - Appellate Division CIVIL Case Information Statement				
Additional appellants continued below						
Appellant's Attorney		Email Address: sweissman@weissmanmintz.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
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Street Address		City	State	Zip	Telephone Number	
220 DAVIDSON AVE STE 410		SOMERSET	NJ	08873	732-563-4565	
Appellant's Attorney		Email Address: ybromberg@bromberglawllc.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
Yael BROMBERG, Esq.		MODERATE PARTY				
Street Address		City	State	Zip	Telephone Number	
43 WEST 43RD ST STE 32		NEW YORK	NY	10036-7424	212-859-5083	
Appellant's Attorney		Email Address: bpugach@bromberglawllc.com, bmpugach@gmail.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
BRETT M PUGACH, Esq.		MODERATE PARTY				
Street Address		City	State	Zip	Telephone Number	
43 WEST 43RD ST STE 32		NEW YORK	NY	10036-7424	212-859-5083	
Appellant's Attorney		Email Address: fkomuves@weissmanmintz.com, kmarrero@weissmanmintz.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
FLAVIO L KOMUVES, Esq.		RICHARD A. WOLFE				
Street Address		City	State	Zip	Telephone Number	
220 DAVIDSON AVE STE 410		SOMERSET	NJ	08873	732-563-4565	
Appellant's Attorney		Email Address: sweissman@weissmanmintz.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
STEVEN P WEISSMAN, Esq.		RICHARD A. WOLFE				
Street Address		City	State	Zip	Telephone Number	
220 DAVIDSON AVE STE 410		SOMERSET	NJ	08873	732-563-4565	
Appellant's Attorney		Email Address: ybromberg@bromberglawllc.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
Yael BROMBERG, Esq.		RICHARD A. WOLFE				
Street Address		City	State	Zip	Telephone Number	
43 WEST 43RD ST STE 32		NEW YORK	NY	10036-7424	212-859-5083	
Appellant's Attorney		Email Address: bpugach@bromberglawllc.com, bmpugach@gmail.com				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER						
Name		Client				
BRETT M PUGACH, Esq.		RICHARD A. WOLFE				
Street Address		City	State	Zip	Telephone Number	

43 WEST 43RD ST STE 32	NEW YORK	NY	10036-7424	212-859-5083
Additional respondents continued below				
Respondent's Attorney Email Address: shirley.emehelu@njoag.gov,				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) STATE AGENCY				
Name SHIRLEY U EMEHELU, Esq.		Client TAHESHA WAY		
Street Address RJ HUGHES JUSTICE COMPLEX 25 MARKET STREET	City TRENTON	State NJ	Zip 08625	Telephone Number 609-376-3100
Respondent's Attorney Email Address: dol.appeals@law.njoag.gov,				
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) STATE AGENCY				
Name MELISSA H RAKSA, Esq.		Client STATE, DEPT OF/ELECTIONS		
Street Address 25 MARKET ST PO BOX 112	City TRENTON	State NJ	Zip 08625	Telephone Number 609-984-3900
Additional parties continued below				
Appellant's attorney email address continued below				
PARTY NAME: MODERATE PARTY ATTORNEY NAME: STEVEN P WEISSMAN, Esq. sweissman@weissmanmintz.com PARTY NAME: MODERATE PARTY ATTORNEY NAME: Yael BROMBERG, Esq. ybromberg@bromberglawllc.com PARTY NAME: MODERATE PARTY ATTORNEY NAME: BRETT M PUGACH, Esq. bpugach@bromberglawllc.com bmpugach@gmail.com PARTY NAME: RICHARD A. WOLFE ATTORNEY NAME: FLAVIO L KOMUVES, Esq. fkomuves@weissmanmintz.com kmarrero@weissmanmintz.com PARTY NAME: RICHARD A. WOLFE ATTORNEY NAME: STEVEN P WEISSMAN, Esq. sweissman@weissmanmintz.com PARTY NAME: RICHARD A. WOLFE ATTORNEY NAME: Yael BROMBERG, Esq. ybromberg@bromberglawllc.com PARTY NAME: RICHARD A. WOLFE ATTORNEY NAME: BRETT M PUGACH, Esq. bpugach@bromberglawllc.com bmpugach@gmail.com				
Respondent's attorney email address continued below				
PARTY NAME: TAHESHA WAY ATTORNEY NAME: SHIRLEY U EMEHELU, Esq. shirley.emehelu@njoag.gov PARTY NAME: STATE, DEPT OF/ELECTIONS ATTORNEY NAME: MELISSA H RAKSA, Esq. dol.appeals@law.njoag.gov				
Additional Party's attorney email address continued below				

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STE 410
SOMERSET, NJ 08873
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kmarrero@weissmanmintz.com

Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-003542-21

STATE AGENCY

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

PROOF OF SERVICE

I hereby certify that an original of the following documents, **PROOF OF SERVICE, CASE INFORMATION STATEMENT** were submitted and transmitted to the parties listed below in the following format:

ELECTRONICALLY TO:

ATTORNEY NAME: STEVEN P WEISSMAN, Esq.

sweissman@weissmanmintz.com

ATTORNEY NAME: Yael BROMBERG, Esq.

ybromberg@bromberglawllc.com

ATTORNEY NAME: BRETT M PUGACH, Esq.

bpugach@bromberglawllc.com

bmpugach@gmail.com

ATTORNEY NAME: MELISSA H RAKSA, Esq.

dol.appeals@law.njoag.gov(DOLAPPEALS@LPS.STATE.NJ.US

DOLAPPEALS@LPS.STATE.NJ.US)

ATTORNEY NAME: SHIRLEY U EMEHELU, Esq.

shirley.emehelu@njoag.gov

ATTORNEY NAME: STEVEN P WEISSMAN, Esq.

sweissman@weissmanmintz.com

ATTORNEY NAME: Yael BROMBERG, Esq.

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ATTORNEY NAME: BRETT M PUGACH, Esq.

bpugach@bromberglawllc.com

bmpugach@gmail.com

ATTORNEY NAME: MELISSA H RAKSA, Esq.

dol.appeals@law.njoag.gov

BY MAIL:

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

**Attorney for APPELLANT
MODERATE PARTY**

Dated: **08/01/2022**

By: **S/ FLAVIO L KOMUVES, Esq.**



STATE OF NEW JERSEY

DEPARTMENT OF STATE
DIVISION OF ELECTIONS
P.O. Box 304
TRENTON, NJ 08625-0304

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

TAHESHA WAY
Secretary of State

June 8, 2022

The Honorable Tomasz P. Malinowski
15 Welisewitz Road
Ringoes, NJ 08851
tpmalinowski@gmail.com

Re: Request for Petition Filing Appointment for General Nomination Petition

Dear Congressman Malinowski:

We are in receipt of your June 7, 2022 request for direct nomination petition for the November 8, 2022 General Election under the Moderate Party designation. In accordance with N.J.S.A. 19:13-8, no candidate shall sign an acceptance of nomination on a General Election petition for nomination for an office if the candidate has signed an acceptance of nomination on a petition for the Primary Election nomination for the same office.

Because you previously submitted a petition for the June 7, 2022 Primary Election nomination of the Democratic Party for the office of United States House of Representatives, 7th Congressional District, N.J.S.A. 19:13-8 does not permit you to file a direct nomination petition for the November 8, 2022 General Election.

If you have any questions, please do not hesitate to contact the Division of Elections at (609) 292-3760.

Respectfully,

A handwritten signature in black ink, appearing to read "Tahesha Way", written over a horizontal line.

Tahesha Way
Acting Secretary of State



State of New Jersey

DEPARTMENT OF STATE

P.O. Box 300

TRENTON, NEW JERSEY 08625

PHILIP D. MURPHY
Governor

TAHESHA WAY
Secretary of State

SHEILA Y. OLIVER
Lt. Governor

July 19, 2022

Mr. Steven P. Weissman, Esq.
Weissman & Mintz LLC
Attorneys at Law
220 Davidson Avenue, Suite 410
Somerset, NJ 08873

Re: General Nomination Petition- Tom Malinowski

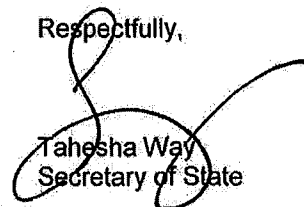
Dear Mr. Weissman:

We are in receipt of your July 8, 2022 request for reconsideration of the June 8, 2022 decision rejecting the petition submitted by the Moderate Party (the "Party"), nominating Tom Malinowski as the Party's candidate for Congress in New Jersey Congressional District 7. As noted in the June 8, 2022 decision from this office, in accordance with N.J.S.A. 19:13-8, no candidate shall sign an acceptance of nomination on a General Election petition for nomination for an office if the candidate has signed an acceptance of nomination on a petition for the Primary Election nomination for the same office. Given Congressman Malinowski previously submitted a petition for the June 7, 2022 Primary Election nomination of the Democratic Party for the office of United States House of Representatives, 7th Congressional District, he is not permitted to file a direct nomination petition for the November 8, 2022 General Election ballot.

Having reviewed the papers submitted in support of the request for reconsideration of the June 8, 2022 decision, and the arguments set forth therein, the request for reconsideration of the June 8, 2022 decision is denied.

If you have any questions, please do not hesitate to contact the Division of Elections at (609) 292-3760.

Respectfully,


Tahesha Way
Secretary of State

C: The Honorable Matthew J. Platkin, Acting Attorney General
The Honorable Congressman Tom Malinowski
Michelle Garay, President, Moderate Party
Richard A. Wolfe, Esq.
Michael Tomasco

FLAVIO L KOMUVES, Esq.
WEISSMAN & MINTZ, LLC
220 DAVIDSON AVE
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Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-003542-21

STATE AGENCY

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

PROOF OF SERVICE

I hereby certify that an original of the following documents, **PROOF OF SERVICE, TRIAL COURT ORDER/JUDGMENT/DECISION** were submitted and transmitted to the parties listed below in the following format:

ELECTRONICALLY TO:

ATTORNEY NAME: STEVEN P WEISSMAN, Esq.

sweissman@weissmanmintz.com

ATTORNEY NAME: Yael BROMBERG, Esq.

ybromberg@bromberglawllc.com

ATTORNEY NAME: BRETT M PUGACH, Esq.

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ATTORNEY NAME: MELISSA H RAKSA, Esq.

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ATTORNEY NAME: Yael BROMBERG, Esq.

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ATTORNEY NAME: BRETT M PUGACH, Esq.

bpugach@bromberglawllc.com

bmpugach@gmail.com

ATTORNEY NAME: MELISSA H RAKSA, Esq.

dol.appeals@law.njoag.gov

BY MAIL:

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

**Attorney for APPELLANT
MODERATE PARTY**

Dated: 08/01/2022

By: S/ FLAVIO L KOMUVES, Esq.



New Jersey Judiciary
Superior Court - Appellate Division
Amended Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW) IN RE TOM MALINOWSKI, PETITION FOR NOMINATION FOR GENERAL ELECTION, NOVEMBER 8, 2022, FOR UNITED STATES HOUSE OF REPRESENTATIVES NEW JERSEY CONGRESSIONAL DISTRICT 7	ATTORNEY / LAW FIRM / PRO SE LITIGANT NAME FARBOD KAYCEE FARAJI, Esq. STREET ADDRESS 2020 PENNSYLVANIA AVE. NW, SUITE#163 <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">CITY WASHINGTON DC</td> <td style="width: 15%;">STATE DC</td> <td style="width: 20%;">ZIP 20006</td> <td style="width: 40%;">PHONE NUMBER 202-579-4582</td> </tr> </table> EMAIL ADDRESS farbod.faraji@protectdemocracy.org beau.tremittiere@protectdemocracy.org				CITY WASHINGTON DC	STATE DC	ZIP 20006	PHONE NUMBER 202-579-4582
CITY WASHINGTON DC	STATE DC	ZIP 20006	PHONE NUMBER 202-579-4582					

ON APPEAL FROM		
TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY STATE, DEPT OF/ELECTIONS	TRIAL COURT OR AGENCY NUMBER N/A

Notice is hereby given that **MICHAEL TOMASCO (*)** appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on _____ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a ☒ State Agency decision entered on **07/19/2022**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

***EXPLAIN BRIEFLY THE REASON FOR AMENDING THE NOTICE OF APPEAL

Amending pursuant to a eCourts Appellate Communication request to amend.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____
specify

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel

specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
--	------	-----------------

Trial Court Judge

Trial Court Division Manager

Tax Court Administrator

State Agency	STATE, DEPT OF/ELECTIONS	07/29/2022
--------------	--------------------------	------------

Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		07/29/2022
--	--	------------

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
----------------------	--	-----------------

TAHESHA WAY	MELISSA H RAKSA, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 dol.appeals@law.njoag.gov (DOLAPPEALS@LPS.STATE.NJ.US,DOLAPPEALS@LPS.STATE.NJ.US)	07/29/2022
-------------	---	------------

TAHESHA WAY	SHIRLEY U EMEHELU, Esq. NJ DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW RJ HUGHES JUSTICE COMPLEX 25 MARKET STREET TRENTON NJ 08625 609-376-3100 shirley.emehelu@njoag.gov	07/29/2022
-------------	---	------------

STATE, DEPT OF/ELECTIONS	MELISSA H RAKSA, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625 609-984-3900 dol.appeals@law.njoag.gov	07/29/2022
-----------------------------	---	------------

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
--	------	-----------------

Transcript Office

Court Reporter (if applicable)

Supervisor of Court Reporters

Clerk of the Tax Court

State Agency

Exempt from submitting the transcript request form due to the following:

☒ There is no verbatim record for this appeal.

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

07/29/2022

Date

s/ FARBOD KAYCEE FARAJI, Esq.

Signature of Attorney or Pro Se Litigant

BAR ID #

263272018

EMAIL ADDRESS **farbod.faraji@protectdemocracy.org,beau.tremittier
e@protectdemocracy.org**



New Jersey Judiciary
Superior Court - Appellate Division
Amended Notice of Appeal

Additional appellants continued below

Appellant's Attorney

Email Address: **farbod.faraji@protectdemocracy.org, beau.tremitiere@protectdemocra**
cy.org

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **PETITIONER**

Name
FARBOD KAYCEE FARAJI, Esq.

Client
WILLIAM KIBLER

Street Address	City	State	Zip	Telephone Number
2020 PENNSYLVANIA AVE. NW, SUITE#163	WASHINGTON	DC	20006	202-579-4582
	DC			

Additional respondents continued below

Respondent's Attorney

Email Address: **shirley.emehelu@njoag.gov,**

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **STATE AGENCY**

Name
SHIRLEY U EMEHELU, Esq.

Client
TAHESHA WAY

Street Address	City	State	Zip	Telephone Number
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Respondent's Attorney

Email Address: **dol.appeals@law.njoag.gov,**

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **STATE AGENCY**

Name
MELISSA H RAKSA, Esq.

Client
STATE, DEPT OF/ELECTIONS

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Additional parties continued below

Appellant's attorney email address continued below

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PARTY NAME: STATE, DEPT OF/ELECTIONS ATTORNEY NAME: MELISSA H RAKSA, Esq.
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New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

AMENDED FOR: Amending pursuant to a eCourts Appellate Communication request to amend.

Title in Full

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

Trial Court or Agency Docket Number

N/A

- Attach additional sheets as necessary for any information below.

Appellant's Attorney *

Email Address: **farbod.faraji@protectdemocracy.org**
beau.tremittiere@protectdemocracy.org

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **PETITIONER**

Name

FARBOD KAYCEE FARAJI, Esq.

Client

MICHAEL TOMASCO*

Street Address

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DC**

State

DC

Zip

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Telephone Number

202-579-4582

Respondent's Attorney *

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DOLAPPEALS@LPS.STATE.NJ.US

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **STATE AGENCY**

Name

MELISSA H RAKSA, Esq.

Client

TAHESHA WAY*

Street Address

25 MARKET ST PO BOX 112

City

TRENTON

State

NJ

Zip

08625

Telephone Number

609-984-3900

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:

In June 2022, Michael Tomasco and William Kibler signed a valid nominating petition on behalf of the Moderate Party. This petition--which was signed by a sufficient number of individuals--was timely submitted, named Rep. Tom Malinowski as the Moderate Party's nominee, and asked that his name be printed on the November 2022 general election ballot as the Moderate Party nominee for the 7th Congressional District. On June 8, 2022, Respondent Tahesha Way, Secretary of State, issued a ruling declaring the petition invalid. On July 8, 2022, Appellants applied for reconsideration. On July 19, 2022, Respondent denied the application for reconsideration. This is an appeal from both the June 8, 2022 and July 19, 2022 decisions.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.)

☒ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2?

☐ Yes ☐ No ☒ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised: 04/02/2016, CN 10501 (Appellate Civil CIS)

page 1 of 5

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

Were any claims dismissed without prejudice?

☐ Yes ☒ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) ☒ Yes ☐ No

Give a Brief Statement of the Facts and Procedural History:

Michael Tomasco and William Kibler are voters in Congressional District 7. Rep. Tom Malinowski is the incumbent United States Representative from Congressional District 7. Rep. Tom Malinowski is running for re-election and, having won the primary election, is the Democratic Party's nominee in the November 2022 general election. Rep. Malinowski has also been duly endorsed by the Moderate Party.

In June 2022, Michael Tomasco and William Kibler signed a valid nominating petition on behalf of the Moderate Party. This petition--which was signed by a sufficient number of individuals--was timely submitted, named Rep. Tom Malinowski as the Moderate Party's nominee, and asked that his name be printed on the November 2022 general election ballot as the Moderate Party nominee for the 7th Congressional District. On June 8, 2022, Respondent Tahesha Way, Secretary of State, issued a ruling declaring the petition invalid. The Secretary of State relied on a statutory prohibition that effectively bars the submission of more than one nominating petition by a single individual, and hence, prohibiting disaggregated fusion voting in New Jersey.

This ruling was issued despite the fact that the nominating petition was accompanied by an extensive legal memorandum and voluminous exhibits demonstrating that the statutes banning fusion violate numerous provisions of the New Jersey Constitution.

On July 8, 2022, Appellants applied for reconsideration. On July 19, 2022, Respondent denied the application for reconsideration. This is an appeal from both the June 8, 2022 and July 19, 2022 decisions.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

I. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF THE RIGHT TO ASSEMBLE

II. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE NEW JERSEY CONSTITUTION'S GUARANTEE OF THE RIGHTS TO FREE SPEECH AND ASSOCIATION

A. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE FREE SPEECH AND ASSOCIATIONAL RIGHTS CLAUSES OF THE N.J. CONSTITUTION

B. TIMMONS V. TWIN CITIES AREA NEW PARTY IS NOT BINDING ON NEW JERSEY COURTS

C. NEW JERSEY COURTS SHOULD DECLINE TO TREAT THE ANALYSIS OF THE MAJORITY IN TIMMONS AS GUIDANCE FOR INTERPRETING THE NEW JERSEY CONSTITUTION

III. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF THE RIGHT TO VOTE

IV. NEW JERSEY'S ANTI-FUSION LAWS VIOLATE THE STATE CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION

V. NEW JERSEY MUST PERMIT DISAGGREGATED FUSION VOTING TO COMPLY WITH THE STATE

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised: 04/02/2016, CN 10501 (Appellate Civil CIs)

page 2 of 5

CONSTITUTION

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ ☐ Yes ☒ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? 07/19/2022 ☒ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ Yes ☐ No ☒ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:
 - (A) Arises from substantially the same case or controversy as this appeal? ☒ Yes ☐ No
 - (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☒ Yes ☐ No

If the answer to the question above is Yes, state:

Case Title Trial Court Docket# Party Name

2. Was there any prior appeal involving this case or controversy? ☐ Yes ☒ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)

**IN RE PETITION FILED BY MODERATE PARTY
NOMINATING HON. TOM MALINOWSKI FOR CONGRESS
IN CONGRESSIONAL DISTRICT 7**

Appellate Division Docket Number
A-003542-21

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. ☐ Yes ☒ No

Explain your answer:

This appeal is a constitutional challenge to New Jersey's bar on disaggregated fusion voting.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

MICHAEL TOMASCO

Name of Appellant or Respondent

FARBOD KAYCEE FARAJI, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

07/29/2022

Date


s/ FARBOD KAYCEE FARAJI, Esq.

Signature of Counsel of Record
(or your signature if not represented by counsel)

263272018

**farbod.faraji@protectdemocracy.org,beau.tremitiere
@protectdemocracy.org**

Bar #	Email Address
-------	---------------

	New Jersey Judiciary Superior Court - Appellate Division CIVIL Case Information Statement
Additional appellants continued below	
Appellant's Attorney farbod.faraji@protectdemocracy.org, beau.tremitiere@protectdemocra Email Address: cy.org	
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) PETITIONER	
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Additional respondents continued below	
Respondent's Attorney Email Address: shirley.emehelu@njoag.gov,	
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) STATE AGENCY	
Name SHIRLEY U EMEHELU, Esq. Client TAHESHA WAY	
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Respondent's Attorney Email Address: dol.appeals@law.njoag.gov,	
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) STATE AGENCY	
Name MELISSA H RAKSA, Esq. Client STATE, DEPT OF/ELECTIONS	
Street Address	City State Zip Telephone Number
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Appellant's attorney email address continued below	
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Respondent's attorney email address continued below	
PARTY NAME: TAHESHA WAY ATTORNEY NAME: SHIRLEY U EMEHELU, Esq. shirley.emehelu@njoag.gov PARTY NAME: STATE, DEPT OF/ELECTIONS ATTORNEY NAME: MELISSA H RAKSA, Esq. dol.appeals@law.njoag.gov	
Additional Party's attorney email address continued below	

Statement of Items Comprising the Record,
Filed August 2, 2022 - A-003542-21

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent,
Secretary of State
R.J. Hughes Justice Complex
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By: Steven Gleeson - Attorney ID 087092013
Deputy Attorney General
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IN RE PETITION FILED BY MODERATE
PARTY IN NOMINATING HON. TOM
MALINOWSKI FOR CONGRESS IN
CONGRESSIONAL DISTRICT 7

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003542-21

STATEMENT OF ITEMS COMPRISING
THE RECORD

TO: JOSEPH H. ORLANDO
CLERK OF THE COURT
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Trenton, New Jersey 08625

Flavio L. Komuves, Esq.
220 Davidson Ave., Ste 410
Somerset NJ, 08873
fkomuves@weissmanmintz.com

PLEASE TAKE NOTICE that the State of New Jersey, Secretary of State, hereby certifies and files, pursuant to R. 2:5-4(b), the Statement of Items Comprising the Record on Appeal in this matter.

The record consists of:

1. Letter to Steven P. Weissman, Esq from Tahesha Way, Secretary of State, denying request for reconsideration, dated July 19, 2022.
2. Letter to Tahesha Way, Secretary of State, from Steven P. Weissman, requesting reconsideration of June 8, 2022 decision, dated July 8, 2022.
3. Memorandum of Law in Support of Nominating Petition, dated July 8, 2022.
4. Certification of Alex Navarro-McKay and exhibits, dated July 5, 2022.
5. Letter to Tomasz P. Malinowski, from Tahesha Way, Acting Secretary of State, denying request for direct nomination petition, dated June 8, 2022.
6. Nominating Petitions, received June 7, 2022.
7. Memorandum of Law in Support of Nominating Petition, dated June 7, 2022.
8. Appendix in Support of Nominating Petition.
9. Corporate Consent Letter from Michelle Garay, President, Moderate Party, dated June 6, 2022.

Respectfully submitted,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/Steven Gleeson
Steven Gleeson
Deputy Attorney General

DATED: August 2, 2022

STEVEN MICHAEL GLEESON, Esq.
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Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-003542-21

STATE AGENCY

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

PROOF OF SERVICE

I hereby certify that an original of the following documents, **PROOF OF SERVICE, STATEMENT OF ITEMS COMPRISING THE RECORD** were submitted and transmitted to the parties listed below in the following format:

ELECTRONICALLY TO:

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levi.klingerchristiansen@law.njoag.gov

BY MAIL:

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

Attorney for RESPONDENT
TAHESHA WAY

Dated: **08/02/2022**

By: **S/ STEVEN MICHAEL GLEESON, Esq.**

Statement of Items Comprising the Record,
Filed August 2, 2022 - A-003543-21

MATTHEW J. PLATKIN
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Attorney for Respondent,
Secretary of State
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By: Steven Gleeson - Attorney ID 087092013
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IN RE PETITION FILED BY MODERATE
PARTY IN NOMINATING HON. TOM
MALINOWSKI FOR CONGRESS IN
CONGRESSIONAL DISTRICT 7

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003543-21

STATEMENT OF ITEMS COMPRISING
THE RECORD

TO: JOSEPH H. ORLANDO
CLERK OF THE COURT
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Trenton, New Jersey 08625

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PLEASE TAKE NOTICE that the State of New Jersey, Secretary of State, hereby certifies and files, pursuant to R. 2:5-4(b), the Statement of Items Comprising the Record on Appeal in this matter.

The record consists of:

1. Letter to Steven P. Weissman, Esq from Tahesha Way, Secretary of State, denying request for reconsideration, dated July 19, 2022.
2. Letter to Tahesha Way, Secretary of State, from Steven P. Weissman, requesting reconsideration of June 8, 2022 decision, dated July 8, 2022.
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8. Appendix in Support of Nominating Petition.
9. Corporate Consent Letter from Michelle Garay, President, Moderate Party, dated June 6, 2022.

Respectfully submitted,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/Steven Gleeson
Steven Gleeson
Deputy Attorney General

DATED: August 2, 2022

Certification of Richard A.
Wolfe, dated June 3, 2022

Schedule 1

BEFORE THE NEW JERSEY
SECRETARY OF STATE,
DIVISION OF ELECTIONS

RICHARD A. WOLFE, of full age, certifies as follows:

2. I make this Certification in support of the Moderate Party's nomination of Tom Malinowski as the Congressional candidate for Congressional District 7 and as a signer of the nominating petition endorsing him.

4. I have served three one-year terms as Mayor of East Amwell Township, a one-year term as Deputy Mayor of East Amwell Township, and am currently serving my second three-year term as a member of the Township Committee of East Amwell Township. I also currently serve, and in the past have served, on various committees and boards of the Township.

5. I have held several fundraisers for Republican candidates at my home in East Amwell Township, including for Representative Lance, several Hunterdon County Commissioners, several local candidates, and had one scheduled for State Senator Kean Jr. in March of 2020, which was canceled due to the COVID-19 outbreak.

6. I consider myself a moderately conservative Republican, loyal to the most of the values the Republican Party has historically stood for. I consider myself to be very active and involved in the Republican Party as a result of my own campaigns for public office and by the support I have previously given to other Republican candidates.

7. On this basis, I have a good sense of the beliefs and values of both rank-and-file Republicans and Republican elected officials.

8. The Republican Party's support of Donald Trump as its 2016 nominee for President of the United States, and Donald Trump's victory in the 2016 presidential race, began a process in which the Republican Party as an entity started moving away from its core values and away from voters like me who are loyal to those core values.

9. I believe in the rule of law, in science, and in facts. I believe President Trump was the legal winner of the 2016 election. I also believe President Biden was the legal winner of the 2020 election. Although I choose to vote in-person (except in the 2020 election, when that option was mostly unavailable in New Jersey), I believe in measures to promote access to the right to vote, including mail-in voting, and not burdening the rights of legally qualified voters to register, cast ballots, and have their ballots fully and fairly counted. I believe that the virus that causes COVID-19 is real, and that it caused a massive amount of illness and an incomprehensible number of deaths. I believe in the legitimacy of public health measures to control COVID-19, including the

temporary closure of offices and public spaces, the promotion of vaccines, and masking requirements during periods of high transmission.

10. A substantial number of elected Republican officials repudiate these beliefs. It is well-known that there are prominent Republicans who continue to believe, against all evidence, that the 2020 election was “stolen”; or who have made outrageously false statements about COVID-19 and the measures taken by governments to protect people against it, and have verbally attacked the proponents of those measures.

11. During Trump’s term, he, with the support of many elected Republicans, expressed views that deviated from the historical Republican and even bipartisan consensus on a number of issues. He did so in order to pander to extremist members of the Republican Party, not its core.

12. For example, Trump promoted the continued and even increased use of coal and other fossil fuels as energy sources, contrary to the long-held consensus about the desirability of scientific progress and the conservation and protection of natural resources. Trump also took aim at legal immigration, purporting to “close borders,” despite a decades-long bipartisan consensus that featured humanitarian relief and asylum rights as a prominent part of the United States’ immigration policy.

13. There was also, historically, a consensus about the United States’ leadership role in the global community, which Trump rejected in his weakening of NATO alliances and in his trade policy. He promoted the interests of Putin and the Russians in Syria, leaving in place a brutal dictator as the ruler of Damascus, and disavowing existing U.S. foreign policy.

14. Further, there was a broad bipartisan consensus that elected officials - whether the President of the United States or a local official like me - should conduct themselves seriously and with probity. Lying, endemic conflicts of interest and nepotism, and childish or otherwise inappropriate outbursts, as observed in the case of Trump, was in conflict with existing norms about how public servants should act.

15. Far-right media sources, such as Fox News, encouraged these trends by promoting these extremist beliefs to its viewers. Whereas I previously enjoyed the news and commentary offered by Fox, I have migrated to CNN for most of the news I follow through television because Fox now espouses falsehoods and extremist beliefs about the country and its government.

16. I had seen enough before the January 6, 2021 insurrection, which was triggered by Trump and his allies, to understand that the Republican Party had moved away from my views. For others that I know, the insurrection was the defining moment where they could no longer say that the Republican Party, as then (and now) constituted, was true to their own political beliefs. Elected Republicans' support for, or minimizing the seriousness of, the January 6 insurrection only furthered these trends.

17. Trump's policies and behavior managed to further polarize the country to, in my view, a dangerous level. Under Trump, many Republican elected officials moved further to the right, whereas many Democratic elected officials moved further to the left.

18. All of this has left moderates, including conservative moderates like me, in a place that I see as politically homeless. While one cannot expect complete agreement between one's personal beliefs and the goals or message of a political party, neither of the two major political parties any longer meaningfully represents my beliefs. To be

clear, this is not because I moved away from the Republican Party; rather, it moved away from me.

19. I am aware of polls and studies showing increased polarization among elected officials. I am also aware of polls and studies showing increased disapproval of the major political parties among the electorate as a whole. This accords with what I have personally observed.

20. I recently saw a television interview with Congressman Tim Ryan from Ohio, who made points that greatly resonated with me. The Congressman utilized the term “exhausted majority,” referring to his belief that, currently, the majority of the voters in the United States do not align with the ideology of either elected Democrats or elected Republicans. This majority correctly discerns that governing in Washington can be seen as tantamount to a “food fight” - with elected officials refusing to negotiate in good faith with one another, and trying to promote their own messages and attempting to deny the other party’s ability to do the same. As a tax and transactional lawyer and a local elected official, I know this is no way to do business – or to govern. When parties approach an issue entrenched in their views, having previously decided they will not negotiate with one another, as is occurring now in policy and political circles, generally nothing will be accomplished.

21. Like many Republicans, and Democrats as well, I am part of that “exhausted majority.” The national parties no longer adequately reflect my beliefs. I am frustrated and disappointed with them. This includes the Republican Party, despite my lifelong support of it. Many people I know feel the same.

22. For these reasons, and others, I joined with a number of other like-minded people who are part of the “exhausted majority” to become a member of a political party that will provide a political home for centrist voters who reject extremist Democratic and Republican officeholders and candidates.

23. The result of these efforts is the Moderate Party, a copy of the bylaws and the certificate of incorporation of which are attached as **Exhibits A and B**. The Moderate Party also has registered or is about to register with the Federal Elections Commission and the New Jersey Election Law Enforcement Commission.

24. I am a supporter of the incumbent Representative of CD-7, Tom Malinowski, who is running for re-election to Congress. The Moderate Party has also nominated and endorsed Representative Malinowski for re-election in the November 2022 general election.

25. In coming to this conclusion, the Moderate Party and I carefully reviewed and assessed the records of Senator Kean and Representative Malinowski, the two leading candidates in the general election for the office of CD-7 representative. We assessed whether either or both of these candidates, partisan labels notwithstanding, held views that accorded with those of the centrist, moderate, “exhausted majority,” and were serious candidates who believed in science and truth, or were instead focused on satisfying, and were beholden to, the extreme wings of their respective parties. Among other things, we considered recent advertising on behalf of Sen. Kean that expressly aligns him with the extreme wing of the Republican Party. **See Exhibit C.**

26. The Steering Committee and I came to the same result: we concluded that Representative Malinowski exemplifies the ideals of the Moderate Party, in that his

views are moderate, he is willing to reach across the aisle to compromise on contentious issues, and he believes that facts and science matter. Accordingly, on May 31, 2022, the Party's Steering Committee met and unanimously agreed that the Moderate Party would endorse Representative Malinowski as our candidate in this November's election, and informed the general membership including me.

27. The Steering Committee also considered but rejected the idea of identifying and endorsing a third party candidate for Congress who would run exclusively on the Moderate Party line for CD-7. This is because in general, candidates in the United States who run for office under a third-party endorsement and do not fuse with a major party candidate rarely get any traction. Such candidates may at times be competitive in local elections. However, for offices such as state legislature, Congress, or other statewide elections, running as a third party candidate without the support of the Democratic or Republican Party is usually the political equivalent of tilting at windmills.

28. Understandably, voters, like myself and other supporters of the Moderate Party, do not want to cast a vote for a candidate that has no realistic chance of winning an election. The outcome of a Congressional election, particularly in this highly polarized political environment, is far too important to cast what amounts to a symbolic vote. Elections also afford voters such as myself, an important opportunity to communicate our political views to candidates, the two major political parties, and to the electorate as a whole. State laws that deny me and other voters who identify with moderate or centrist politics the opportunity to vote for a candidate of our choice running on a party line that we support, denies us the opportunity to use the ballot box to both

vote for the candidate of our choice and at the same time convey an important political message.

29. In this particular case, the supporters of the Moderate Party who signed the nominating petition for Tom Malinowski are of the view that he is the most qualified candidate to represent our district in Congress. However, we do not want to vote for him on the Democratic Party line and thereby, inadvertently, convey our support for the policies of the Democratic Party as a whole – many of which we do not support.

30. Based upon my experience as an active and engaged Republican – one who has sought and held elected local office – I fear that there are lifelong members of the Republican Party who simply cannot bring themselves to pull the lever for a candidate who is the nominee solely of the Democratic Party. Rather than appear to support a political party whose views on certain important issues are anathema to them, my genuine concern is that these individuals will simply abstain from voting, withdrawing from engagement in the political process. These same individuals, given the option of supporting a candidate of a party whose political perspective they support, might enthusiastically embrace the opportunity to vote for a candidate with centrist views nominated by the Moderate Party – albeit a candidate who is also the nominee of the Democratic Party. In my opinion voters, like myself, should be afforded the right, under our State Constitution, not only to form a viable political party that carves a path through the center of the political spectrum, but also to have the opportunity to express our political views by voting for a centrist candidate that has a legitimate chance of winning a general election.

31. The electoral system in New Jersey, which currently includes, among other things, laws establishing plurality as the basis for election, the absence of ranked-choice or some version of instant runoff voting, the absence of fusion, and the high bar and thus practical impossibility of a third party qualifying as a political party with its own ballot column, effectively precludes identifying and running a third party candidate.

32. Within CD-7, as of May 1, 2022, the plurality of voters identify themselves with the State as unaffiliated, and understandably so, as this is a moderate district.¹ Until recently, this was also true statewide. Even though Democratic registration recently outpaced unaffiliated registration, a healthy 37 percent of New Jersey voters (as of May 1, 2022) still consider themselves unaffiliated.² Again, this is because at bottom, this is a moderate State. Coupled with moderates who affiliate with the respective parties, there is a broad swath of voters with moderate beliefs. And yet, because of the ideological preferences of many elected officials representing the Republican and Democratic Parties growing further away from the center, these moderate voters effectively have no political home.

33. Having decided to endorse Representative Malinowski, but also with an eye toward growing the scope and reach of our Party, as representative of moderate and centrist voters, the Steering Committee determined that the best course of action was to circulate a nominating petition for Representative Malinowski naming him as the Party's endorsee.

¹ <https://nj.gov/state/elections/assets/pdf/svrs-reports/2022/2022-05-voter-registration-by-congressional-district.pdf> (last visited May 30, 2022).

² Id.

34. The Party's volunteers were actively involved in the collection of signatures on the nominating petitions. Petitions are being enthusiastically signed by CD-7 voters, including some who have chosen to join the Moderate Party, and some who have not.

35. With the Representative Malinowski's consent, the Party is asking him to accept our nomination to be placed on the ballot in his own column as the nominee of the Moderate Party. We adhere to this view regardless of whether Representative Malinowski also wins the Democratic primary for this office.

36. Today, through election laws, the government limits free speech, directly leading to the silencing of voters. Specifically, not all voters who support Representative Malinowski will vote for him. In particular, we expect that certain voters, as much as they like and support the Congressman, will find it too distasteful to vote for him in the Democratic column. As noted above, the centrist, "exhausted majority," abhors the path taken by both of the two dominant parties. On the assumption that Representative Malinowski wins the Democratic primary election, centrist voters who support him but not the Democratic Party will be put to the choice of (i) casting a vote for him, which they can only do by expressing support for a party that tends to espouse political views with which they disagree; or (ii) refraining from voting altogether in the Congressional race. This prevents voters from expressing their political opinion by casting their vote for a candidate they support, who is also the nominee of a party whose political perspective most closely aligns with their own views.

37. In contrast, giving voters the opportunity to vote for Representative Malinowski under either the Moderate Party label or the Democratic Party label

(assuming he wins the primary) will allow voters to express their choice for him without compromising deeply-held beliefs about the worth of the Democratic Party.

38. We seek the option to support Representative Malinowski under the Moderate Party label not only for the foregoing reasons, but also because it is the only realistic path to gaining adherents for the Party. New Jersey has chosen to erect impossibly high barriers to groups seeking recognition as a statutory “political party.” There is no viable path to becoming a statutory political party by petitioning or by voter registration cards alone. To achieve recognition, such a group must effectively compete in almost every one of the 80 races for General Assembly seats, every two years, and win an aggregate of 10% of the votes cast in those 80 races, in each of those two year cycles. With such a barrier, it is no wonder that despite the sizeable number of New Jerseyans who refuse to embrace either “Democrat” or “Republican” labels, no organization other than the Republican and Democratic Parties has achieved recognition as a statutory “political party,” with all of the rights and privileges accorded such a group, in over 100 years in this State.

39. The Steering Committee also advised the general membership, at its recent meeting, that it is actively seeking and identifying candidates to endorse, as the Moderate Party’s nominees, for the upcoming 2023 legislative and county elections.

40. Furthermore, the existence of a Moderate Party that is able to make its own endorsements and choosing, if it wishes, to fuse with Republican or Democratic candidates, is also likely to have beneficial effects on government as a whole. In such a framework, candidates who want to win the general election will be less likely to pander to the extremist wings of the Democratic or Republican parties, but will instead run on

platforms that reflect a more even-keeled consensus view on important issues. And candidates who win such elections will be less likely to resemble the incumbent officeholders who are entrenched in their views and eschew compromises necessary to chart a reasonable path that helps ensure an effective governing model. Instead, these incumbents feel obligated to pander to an extreme base out of fear of losing a primary or general election.

41. Fusion is a simple concept, illustrated by the printer's proof of an advertisement attached hereto as **Exhibit D**, showing how voters who would opt to vote for Representative Malinowski in a fusion system would manifest their choice for him.

42. I reject the idea that expanding voters' choices to give them the ability to support a candidate under more than one party label will cause voter confusion. Voters are adaptable to changes in their voting experience without undue effort. Consider that millions of Americans move their residence every year.³ They may go from a jurisdiction that elects certain offices, using particular voting machine equipment, to another jurisdiction with different offices and different equipment. There is no epidemic of disenfranchisement or confusion from simply moving to a new jurisdiction. Millions more are new voters, including youths, new citizens, or rehabilitated criminals, who join the voter rolls every year, and face choices and voting equipment (or mail-in ballots) they have not seen before in their lives. Yes, they have to learn how to register their choices, but it is hardly an obstacle that precludes the exercise of their voting rights.

43. Moreover, New York, Connecticut, and South Carolina each allow some form of fusion voting. There is no valid argument that the good people of these states

³ <https://www.jchs.harvard.edu/blog/who-is-moving-and-why-seven-questions-about-residential-mobility> (last visited May 30, 2022).

lack the intelligence or wisdom to navigate a fusion system. And finally, in the 2020 presidential election, virtually all voters in the State (92 percent specifically) voted by mail, whereas in the prior presidential election in 2016, only 8 percent voted by mail.⁴ This substantial change in voting process did not confuse voters. To the contrary, New Jersey achieved a 75% turnout rate in the 2020 election, versus 66% in 2016⁵ when mail voting was an option, but one chosen by only 8 percent of the voters participating. Adopting fusion voting is a change, but it is manifestly one that voters can easily adapt to, as they have done with other changes to voting laws and systems.

44. The United States is the greatest country in the world. Its states must not regulate elections in a way that silences voters personally, or impairs groups of voters associating together to promote their shared interests and their chosen candidates. For the foregoing reasons, I request the Secretary of State allow the petition nominating Tom Malinowski as the endorsee of the Moderate Party and place him on a ballot column under the Moderate Party header.

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

/s/ Richard A. Wolfe

RICHARD A. WOLFE

Dated: June 3, 2022

⁴ <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html> (last visited May 30, 2022).

⁵ <http://www.electproject.org/2020g> and <http://www.electproject.org/2016g> (last visited June 2, 2022).

EXHIBIT A

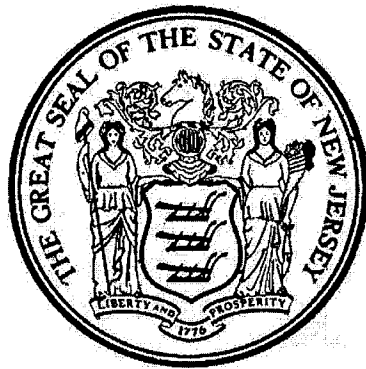
**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES**

FILING CERTIFICATION (CERTIFIED COPY)

**MODERATE PARTY INC
0450820814**

I, the Treasurer of the State of New Jersey, do hereby certify, that the above-named did file and record in this department the below listed document(s) and that the foregoing is a true copy of the formation certificate as the same is taken from and compared with the original(s) filed in this office on the date set forth on each instrument and now remaining on file and of record in my office.

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and
affixed my Official Seal
2nd day of June, 2022*



*Elizabeth Maher Muoio
State Treasurer*

*Certificate Number : 4174898972
Verify this certificate online at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp*

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES

CERTIFICATE OF INC, (NON PROFIT)

MODERATE PARTY INC
0450820814

The above-named DOMESTIC NON-PROFIT CORPORATION was duly filed in accordance with New Jersey State Law on 06/02/2022 and was assigned identification number 0450820814. Following are the articles that constitute its original certificate.

1. **Name:**
MODERATE PARTY INC
2. **Registered Agent:**
LAW OFFICES OF JILL ANNE LAZARE, LLC
3. **Registered Office:**
55 UNION PLACE
SUITE 330
SUMMIT, NEW JERSEY 07901
4. **Business Purpose:**
NOMINATING, ENDORSING, SUPPORTING, AND PROMOTING CANDIDACIES OF, INDIVIDUALS SEEKING PUBLIC ELECTIVE OFFICE WHO HOLD CENTRIST AND MODERATE POSITIONS; PROMOTING REFORM OF ELECTION LAWS TO PROTECT THE RIGHTS OF MODERATE, CENTRIST, AND UNAFFILIATED VOTERS.
5. **Duration:**
PERPETUAL
6. **Effective Date of this Filing Is:**
06/02/2022
7. **Qualification as set forth herein:**
AS SET FORTH IN THE BYLAWS
8. **Rights and Limitations of members if not previously addressed:**
AS SET FORTH IN THE BYLAWS
9. **Method of electing Trustees as set forth herein:**
AS SET FORTH IN THE BYLAWS
10. **Asset Distribution:**
AS SET FORTH IN THE BYLAWS
11. **First Board of Trustees:**
MICHELLE GARAY
PO BOX 445
BROOKSIDE, NEW JERSEY 07926

CRAIG SHRADER
PO BOX 445
BROOKSIDE, NEW JERSEY 07926

JENNIFER HOLDSWORTH
2800 SOUTH ARLINGTON RIDGE RD.
ARLINGTON, VIRGINIA 22202
12. **Incorporators:**
MICHELLE GARAY

Continued on next page ...

Page 1 of 2

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES

CERTIFICATE OF INC, (NON PROFIT)

MODERATE PARTY INC
0450820814

PO BOX 445
BROOKSIDE, NEW JERSEY 07926

CRAIG SHRADER
PO BOX 445
BROOKSIDE, NEW JERSEY 07926

13. Main Business Address:

PO BOX 455
BROOKSIDE, NEW JERSEY 07926

Signatures:

MICHELLE GARAY
INCORPORATOR
CRAIG SHRADER
INCORPORATOR



Certificate Number : 4174899081

Verify this certificate online at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

IN TESTIMONY WHEREOF, I have
hereunto set my hand and
affixed my Official Seal
2nd day of June, 2022

A handwritten signature in black ink, appearing to read "Elizabeth Maher Muoio".

Elizabeth Maher Muoio
State Treasurer

EXHIBIT B

BYLAWS OF THE MODERATE PARTY

I. Name

The name of the Party is the Moderate Party.

II. Membership

- A. A person becomes a member of the Party by paying the dues fixed by its Steering Committee or by such other means that the Steering Committee may establish, and remains a member by periodically paying the dues fixed by its Steering Committee or by such other means that the Steering Committee may establish.
- B. Any New Jersey registered voter may become a Voting Member of the Party, whether that voter is registered as a Republican, a Democrat, a member of a minority party or as unaffiliated.
- C. New Jersey residents who are not registered to vote, whether eligible to register to vote or not, may become non-voting Associate Members of the Party by paying the dues fixed by its Steering Committee or by such other means that the Steering Committee may establish.
- D. By virtue of becoming a member of the Party, a person who is a Voting Member or an Associate Member of the Party declares that they substantially agree with the Party's Visions and Beliefs and Purposes / Objectives set forth below.

III. Visions and Beliefs

The Party, recognizing that a sizeable number of New Jersey voters are not registered as a member of any political party, but rather are unaffiliated, believes that:

- A. A growing share of Democratic and Republican voters and politicians have embraced extreme political viewpoints; have come to see their political opponents as enemies; have grown hostile to compromise; have embraced their own competing sets of facts; and have made effective governance in the United States increasingly difficult.
- B. This trend is especially prevalent among elected officials who are members of the Democratic or Republican party, and among candidates running for office under the banner of either of those parties;
- C. A growing share of Americans find themselves either politically homeless or deeply unhappy with the choices offered to them by the two major parties, as evidenced by the large share of Americans who identify as "independent" or "unaffiliated."

- D. Collectively, the general election ballot laws and practices in New Jersey eliminate the ability of moderate, centrist, and unaffiliated voters from meaningfully expressing their policy preferences through ballots cast in in elections.
- E. This system forces moderate, centrist, and unaffiliated voters to either (i) cast votes for Democratic or Republican candidates, under their respective Democratic and Republican labels, whether the candidate is a true moderate who believes in a moderate, compromise-oriented approach, or is an extreme partisan hostile to compromise as outlined above, or (ii) not vote at all.
- F. Moderate, centrist, and unaffiliated voters are being deprived of their rights to express their political preferences because of the State's general election ballot laws and practices.
- G. Having taken note of the successful use of the fusion process in nearby States, the Party finds that the denial of fusion rights, both alone and when aggregated with other provisions of New Jersey election laws, violates the rights of voters and candidates.

IV. Purpose/Objectives

The Party's purposes and objectives include:

- A. Nominating, endorsing, supporting, and selecting candidates for election to public office at the Federal, state, and local levels, including by action to place their names on an election ballot as the candidate of the Party;
- B. Through the support of the Party, encouraging candidates seeking public office to adopt, endorse and further centrist/moderate positions on important issues;
- C. Undertaking activities, such as fundraising, coordinating volunteers, advertising and distributing literature, to secure the election of candidates supported by the Party;
- D. Supporting, through contributions, uncoordinated expenditures, or otherwise, the campaigns of nominated, endorsed, or selected candidates;
- E. Advocacy to reform election laws so that the rights of moderate, centrist, and unaffiliated voters are protected.

V. Officers

- A. The Officers shall be a President, Vice-President, Secretary and Treasurer.

- B. Any Voting Member of the Party may seek and hold any Officer position. There is no limit on the number of times a Voting Member may seek and/or hold an Officer position.
- C. Duties of individual officers. In addition to the duties mentioned elsewhere in these bylaws:
1. The President shall:
 - a. preside at all meetings of the Party or the Steering Committee;
 - b. After consulting with the Vice-President, Secretary and Treasurer, appoint the chair and members of all committees;
 - c. Serve as a member of all committees with the right to vote;
 - d. Faithfully execute the decisions of the Party or Steering Committee;
 - e. Oversee, directly or through appointees, the advocacy of the Party's issues, the issuance of newsletters and press releases, and public outreach through a Party website and social media channels.
 - f. Together with the Treasurer, sign all vouchers in payment of the disbursements of the Party of \$200.00 and over ;
 - g. When authorized by a vote of the membership or Steering Committee, have the authority to enter into and execute in the name of the Party, contracts or other instruments in the regular course of business; and to maintain an office and hire necessary personnel;
 - h. With the concurrence of the Treasurer, designate a banking institution as the depository of all moneys of the Party; and
 - i. Appoint a Parliamentarian as needed;
 2. The Vice-President shall:
 - a. perform such duties as the President shall assign.
 - b. In the absence of the President, preside at meetings of the Steering Committee and of the Party; and
 - c. In the event of a permanent vacancy in the office of President due to death, disability, resignation, or removal, the Vice President shall become President and shall perform such duties until an election is held.
 3. The Secretary shall:
 - a. Keep full and correct minutes of the proceedings of the Steering Committee and the Party;
 - b. Keep a complete roster of all members of the Steering Committee and the Party, including updating the roster for persons whose membership has lapsed;
 - c. Maintain all files and documents of the Steering Committee and the Party;
 - d. Be responsible for the preparation and transmission of all notices of all meetings of the Steering Committee and the Party;

- e. Attend to all matters of correspondence as may be directed by the President, the Steering Committee, or the Party;
- f. At the expiration of the term of office, deliver all Committee records in his/her possession or control to party headquarters; and
- g. When a vacancy arises in the office of Treasurer and there is no Deputy Treasurer, to fulfill all duties of the Treasurer.

4. The Treasurer shall:

- a. Receive and record all moneys, fees and contributions;
- b. Deposit in the name of the Party, all funds in his/her custody and in such bank account or accounts as the Steering Committee may designate;
- c. Keep full and complete accounts of all moneys received and disbursed;
- d. Issue all checks or otherwise make payments as approved by the membership or the Steering Committee
- e. Sign all vouchers in payment of the disbursements of the Committee, and co-sign with the President all vouchers for \$200.00 and over;
- f. Prepare and file such financial statements as may be required by applicable federal or state election or other law;
- g. Nominate, and with the advice and consent of the Steering Committee, appoint, a Deputy Treasurer; and
- h. At the expiration of the term of office, deliver all Party records in his/her possession or control to party headquarters.

- D. Initial officers shall be determined by consensus vote of the initial members of the Party. Thereafter, officers shall be elected by the Voting Members of the Party at its annual meeting.
- E. The terms of Officers are one year and shall begin at the annual meeting of the Party, and end upon their successors taking office.
- F. Any vacancy in an Officer position shall be filled by the Steering Committee on an interim basis until the next annual, regular, or special meeting of the membership, at which point the vacancy will be filled by the Voting Members for the remainder of the unexpired term; provided that (i) in the case of a permanent vacancy in the office of President, the Vice-President shall immediately become President for the remainder of the term and the vacancy in the office of Vice-President shall be filled for an interim or unexpired term; (ii) in the case of a permanent vacancy in the office of Treasurer, the Deputy Treasurer shall immediately become Treasurer until the office can be filled for the unexpired term at a membership meeting.

VI. Steering Committee; Conflict of Interest Rules

- A. The Steering Committee shall be comprised of:
 - 1. The Officers;
 - 2. County representatives: One person from each county of the State where the Party has members, elected by and from the members of the Party in such county in a manner prescribed by county bylaws, for a one-year term (or for an unexpired term, if appropriate); and
 - 3. Up to five Party members appointed by the members of the Steering Committee for one-year terms, in recognition of their skills and/or service to the Party.
- B. Powers and duties of Steering Committee. The Steering Committee has general and overall charge of the management and operations of the Party, and functions as the Party's and the corporation's board of trustees under state law. Without limitation, these powers include making federal or state tax, regulatory, election, or other filings required or permitted by law. The support or endorsement of candidates is reserved to the full voting membership of the Party, except in the instances described in Article VIII(I) and (J).
- C. Steering Committee Members, members of any Committee, and employees of the Party are "Covered Persons" and shall comply with the following conflict-of-interest provisions:
 - 1. no Covered Person or member of their immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity that is in substantial conflict with the proper discharge of their duties to the Party;
 - 2. no Covered Person shall use or attempt to use their official position to secure unwarranted privileges or advantages for themselves or others;
 - 3. no Covered Person shall act in their official capacity in any matter where they, a member of their immediate family, or a business organization in which they or the family member has an interest or a direct or indirect financial or personal involvement that might reasonably be expected to impair the Covered Person's objectivity or independence of judgement or the proper discharge of their duties to the Party;
 - 4. no Covered Person shall undertake or accept any employment, membership or service, whether compensated or not, which might reasonably be expected to prejudice their independence of judgement in the exercise of their duties to the Party;'
 - 5. no Covered Person shall use, or allow to be used, their office, or any information not generally available to the members of the public that they receive or acquire in the course of and by reason of their office, for the purpose of securing financial gain for

themselves, any member of their immediate family, or any business organization with which they are associated or have an interest; and

6. nothing shall prohibit Covered Persons, or members of their immediate family, from representing themselves in negotiations or proceedings concerning their own interests.

VII. Meetings

- A. The Party shall have an annual meeting that also serves as its convention. The meeting shall be held not less than 15 days nor more than 45 days before the date when petitions for primary candidates are due under state law. The date, time, and place of the meeting shall be fixed by the Steering Committee, taking care to schedule it to avoid conflict with periods of religious observances.
- B. The Party may have other supplemental convention meetings, regular meetings, or special meetings. Such meetings shall be called by the Steering Committee which shall determine the date, time, and place of the meeting. In addition, other convention meetings, regular meetings, or special meetings may be called by a writing or writings filed with the Secretary by not less than 10 percent of the Party's Voting Members.
- C. Except where elsewhere provided in these bylaws, approval of an action item at a meeting requires a majority vote of those present.
- D. Thirty days' notice to members is required for the annual meeting and seven days' notice to members is required for other membership meetings. Forty-eight hours' notice is required for Steering Committee meetings, but that period may be reduced on unanimous consent of its members participating in such a meeting.

VIII. Candidate endorsement and candidate support processes

- A. The Party shall select which candidates it will back by the processes of (i) endorsement and nomination (hereinafter "endorsement") or (ii) support.
- B. Candidates who are seeking public office may seek the endorsement or support of the Party. Party membership is not a condition of endorsement or support; however, no candidate may be endorsed by the Party without such candidate's consent.
- C. The ordinary process for granting a candidate the endorsement or support of the Party is by a secret ballot vote of the Voting Members of the Party at the convention or supplemental convention.

D. Convention procedures. The following apply to the Convention and, if one is called, a supplemental convention.

1. The Secretary shall place a notice and/or issue a press release soliciting any eligible and interested candidates seeking the Party's endorsement or support. The notice shall be issued at least thirty days before the date fixed for the convention and shall state the date, time, and place of the convention and describe the submissions required by this Article.
2. An applicant for endorsement or support shall, no less than three days before the convention submit:
 - (a) A resume/CV setting forth qualifications for elective office, both in general and for the particular office, commentary on the alignments between their views and the vision, beliefs, purposes, and objectives of the Party, and current contact information (home address, telephone numbers, and email address);
 - (b) No more than two letters of introduction or reference in support of their application; and
 - (c) Such other papers or submissions as the President may deem appropriate and helpful.
3. At least seven days before the Convention, the Corresponding Secretary shall provide a reminder notice to the Applicants and Members. At least two days before the Convention, the Secretary will provide the Members and Executive Committee with copies of all Applicant submissions.
4. At the Convention, each applicant shall be entitled to speak for up to five minutes. All Members, including Associate Members, may also question each Applicant within a time period to be set by the President, so long as each applicant is afforded substantially equal time. Each applicant shall speak to the membership separately and outside the presence of the other applicants.
5. The Steering Committee may establish other and further protocols to ensure the equal and fair treatment of all applicants.
6. After all applicants' presentations, the Voting Members shall deliberate privately and vote on the candidate(s) to be endorsed or supported by the Party.

E. Endorsed candidates run as the Party's standard bearers, without prejudice to the candidate's rights to be endorsed by, or to fuse with, other groups also endorsing such candidate.

- F. An endorsement entitles the candidate to use "Moderate Party" or any derivative thereof in a ballot slogan.
- G. Endorsed candidates may receive coordinated donations of Party funds or resources, in such amounts and of such nature as determined either by the membership or the Steering Committee.
- H. Supported candidates may be granted coordinated or uncoordinated expenditures of Party funds or resources, as determined by the membership or the Steering Committee.
- I. When a candidate has been endorsed or supported by the Party but withdraws, dies, or relinquishes the endorsement before the election, the Steering Committee may, by a 2/3 vote of its members present and voting, substitute another candidate to receive the endorsement or support.
- J. When a candidate seeks the support of the Party after the annual / convention meeting, the Steering Committee shall, time and resources permitting, call a supplemental convention meeting to consider the request, but may, for good cause, grant an endorsement or support without a full membership meeting by a 2/3 vote of the members present and voting of the Steering Committee.

IX. Quorum and Voting; Remote and hybrid meetings

- A. One-third of the Voting Members of the Party must be present to constitute a quorum for voting on any issues at Party meetings. A majority of the Members of the Steering Committee must be present to constitute a quorum for voting on any issues at Steering Committee meetings. Once a quorum is established at a meeting, it is not broken by the subsequent withdrawal or absence of any member.
- B. A member must be present to vote. Proxy voting is prohibited, but in instances where the specific nature of business to be transacted at a meeting is known, the Steering Committee may provide for ballots to be cast electronically by individual members.
- C. For good cause, a majority of the Steering Committee may authorize a virtual, remote, or telephonic meeting gathering in lieu of, or as a hybrid to, any in-person meeting or convention contemplated by these bylaws. A person participating in such a meeting virtually, remotely, or telephonically shall be considered "present" for purposes of this Article.

X. Committees

Standing or special committees of the Party may be created and abolished by the Steering Committee. Their members shall be appointed by the President and shall be chaired by a member appointed by the President.

XI. Amendments to Bylaws

- A. Amendments to these bylaws may be proposed by: (i) the Steering Committee; or (ii) a written petition signed by at least five percent of the Party's Voting Members. The proposal must specify the exact language proposed to be deleted, amended, or added.
- B. Amendments proposed by the Steering Committee or by petition must be forwarded to the membership within five days of the proposal.
- C. An amendment shall be voted upon at the next membership meeting occurring not less than seven days after the proposal is forwarded to the membership. A majority vote of the Voting Members of the Party shall be necessary to amend the bylaws.

XII. Rules of Order

The latest edition of Robert's Rules of Order shall be the parliamentary procedure for all meetings except to the extent inconsistent with these bylaws.

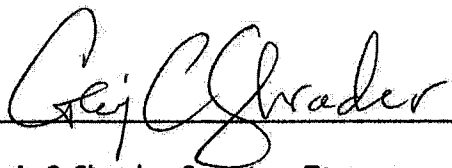
XIII. Severability

If any provision of these bylaws is determined to be void or unenforceable by a court of competent jurisdiction, the remaining provisions are severable and shall continue to be enforceable.

XIV. Dissolution

The Party may be dissolved by a 2/3 vote of the Members or the Steering Committee. Upon dissolution, the distribution of assets shall comply with the applicable provisions of the Federal Election Campaign Act, the New Jersey Campaign Contributions and Expenditures Reporting Act, the Internal Revenue Code, and title 15A of the New Jersey Statutes Annotated.

ADOPTED AT A MEETING OF THE MEMBERSHIP MAY 31, 2022



Craig C. Shrader, Secretary-Treasurer

Michelle Garay, President

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- A. Amendments to these bylaws may be proposed by: (i) the Steering Committee; or (ii) a written petition signed by at least five percent of the Party's Voting Members. The proposal must specify the exact language proposed to be deleted, amended, or added.
- B. Amendments proposed by the Steering Committee or by petition must be forwarded to the membership within five days of the proposal.
- C. An amendment shall be voted upon at the next membership meeting occurring not less than seven days after the proposal is forwarded to the membership. A majority vote of the Voting Members of the Party shall be necessary to amend the bylaws.

XII. Rules of Order

The latest edition of Robert's Rules of Order shall be the parliamentary procedure for all meetings except to the extent inconsistent with these bylaws.

XIII. Severability

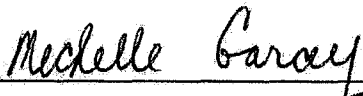
If any provision of these bylaws is determined to be void or unenforceable by a court of competent jurisdiction, the remaining provisions are severable and shall continue to be enforceable.

XIV. Dissolution

The Party may be dissolved by a 2/3 vote of the Members or the Steering Committee. Upon dissolution, the distribution of assets shall comply with the applicable provisions of the Federal Election Campaign Act, the New Jersey Campaign Contributions and Expenditures Reporting Act, the Internal Revenue Code, and title 15A of the New Jersey Statutes Annotated.

ADOPTED AT A MEETING OF THE MEMBERSHIP MAY 31, 2022

Craig C. Shrader, Secretary-Treasurer



Michelle Garay, President

EXHIBIT C

TOM KEAN JR. SUPPORTS THE TRUMP AGENDA

- ★ **Support** Police
- ★ **Secure** the Border
- ★ **Stop** Inflation

TOM KEAN

FOR CONGRESS

Connect with Tom!



Paid for by the New Jersey Republican State Committee, Inc.



**“NO MATTER WHAT TRUMP
DOES, KEAN HAS HIS BACK”**

Star Ledger Editorial | 10/11/20



United States Senator

**TIM
SCOTT**

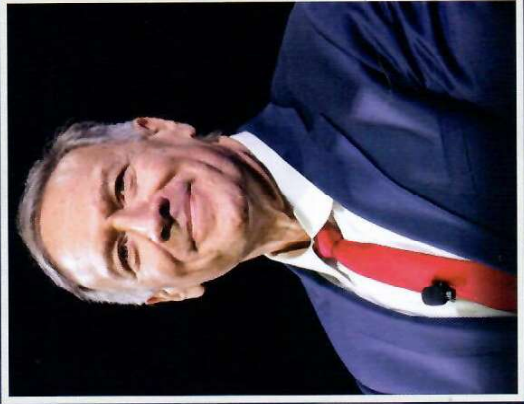
"Flipping the House from blue to red starts with having the right people for the job. We need candidates with common-sense policies, a passion for the people they represent, and the spirit to fight for our American Dream. I've searched across our great nation to find candidates that fit the bill, and one such candidate is New Jersey's own Tom Kean, Jr."



Former Speaker

**NEWT
GINGRICH**

"I'm endorsing and helping Tom Kean, Jr. because I see 2022 as one of the GOP's biggest opportunities to win back the House of Representatives since we won back the majority in 1994. But we're not going to win the majority and stop the Democrats if we don't take back seats like NJ-07."



Former United States
Secretary of State

**MIKE
POMPEO**

"Tom Kean, Jr. is the model of a true public servant. Tom has an unmatched record of standing up for his constituents and his home state of New Jersey, and I am proud to endorse him to take the fight down to Washington on behalf of the people of New Jersey. Tom is the exact kind of leader New Jersey needs to help break the back of inflation, secure our nation's borders, and put a check on the Democrats to get our country back on track."

Non-Profit Org
U.S. Postage
PAID
New Jersey
State Republican
Committee



TOM KEAN

FOR CONGRESS

**Conservative
Leaders
Stand With
Tom Kean, Jr.**

EXHIBIT D

A NEW WAY TO SUPPORT

NEW JERSEY VALUES



MODERATION

Common Sense ↑

PROBLEM-SOLVING
Compromise



VOTE FOR TOM MALINOWSKI FOR CONGRESS

✓ BY CHECKING THE MODERATE PARTY BOX

Voting for candidates endorsed by the Moderate Party Is a Vote Against Extremism by Any Side

Tom Malinowski Represents New Jersey Values

The Moderate Party supports Republicans and Democrats who reject extremism on both sides and put New Jersey first. As our Congressman, Tom Malinowski fights for common-sense solutions that rebuild our economy, give children a world-class education and support small businesses—not special interests.

Joining Together to Support Our Children and Schools

Too much of politics today is one party attacking the other. New Jersey voters are joining together to support candidates who focus on what really matters like ensuring our children have a world-class education and teachers, parents and students have the resources they need to succeed.

Fighting for Common-Sense Solutions

The Moderate Party supports candidates who are willing to work together in the spirit of bipartisan cooperation, mutual respect and problem-solving to pass common-sense solutions that support our local businesses and build back our economy stronger than ever.

Standing Up for Our Small Towns

Our small towns and middle class families are the heartbeat of Central Jersey. The Moderate Party supports Tom Malinowski because he's been a champion of tax fairness and fighting for our infrastructure.



**FOR U.S. HOUSE OF
REPRESENTATIVES**
7TH CONGRESSIONAL DISTRICT
Vote for only one

Republican

Thomas Kean Jr.
☐

Democrat

Tom Malinowski
☒

Moderate

Tom Malinowski
☒



CHECKING THE "MODERATE" BOX FOR TOM MALINOWSKI

COUNTS THE SAME AND SENDS A MESSAGE FOR NEW JERSEY VALUES

Certification of Michael Tomasco,
dated June 6, 2022

Schedule 2

In re: Nominating Petition of Hon. Tom
Malinowski for Congressional District 7

: BEFORE THE NEW JERSEY
SECRETARY OF STATE,
DIVISION OF ELECTIONS
:
_____:

MICHAEL TOMASCO, of full age, certifies as follows:

1. I am a registered voter in Chester Township, New Jersey, a small community located in the Seventh Congressional District. I have lived here for more than twenty years. This is where I've raised all three of my children.
2. I've always believed that each of us has a duty to try to make the world a better place for the next generation. What is more important than trying to shape the lives of our kids? To give them a safer, more secure future? I credit my dad for instilling these values in me—he taught in the Philadelphia public school system for years, and even went on to be the principal of a few high schools there. Since becoming a father myself, I've sought out opportunities to work with the youth in our community. I spent several years coaching youth soccer, and I loved my role leading our local Cub Scout Den. Then, in 2012, I saw there was a vacancy on the local school board, so I put my hat in the ring. Perhaps no one was more surprised than I was when I learned that I won. After nine years of proud service on the board—including four years as board

president—I recently stepped down so that another committed parent in our community could step up and take on this important, though unglamorous, work.

3. When I turned 18 years old, I registered as a Republican. Again, I’m sure part of that had to do with my father, who had long been a staunch Republican himself. But even more importantly, I believed in what the Republican Party stood for. Fiscal responsibility. Small government. Self-reliance. Freedom. Civil rights. It was the Party of Lincoln, after all. People forget that Republicans were overwhelmingly supportive of the landmark bills that came out of the Civil Rights Era, and were a central reason why they became the law of the land—I think all but *one* Republican Senator voted for the Voting Rights Act back in 1965. This is the party that I joined as soon as I was of voting age.

4. And for years, I was a reliable Republican voter. To be sure, over time I became increasingly discouraged as more and more Republican officials were pushing (what seemed to me) extreme positions on certain issues. And I was definitely disturbed by the incendiary rhetoric and gamesmanship. But, when it came time to cast my ballot on Election Day, I nonetheless believed that the Republican Party was a better choice to lead us at the local, state, and national level. Given our two-party system—a system that seems even more pronounced in New Jersey than elsewhere—I knew that my only other choice was to vote Democratic. Not only did I disagree with many Democratic Party positions, but as a lifelong Republican, even if a particular candidate seemed reasonable, the idea of voting Democratic was a tough pill to swallow.

5. In 2016, I voted for Donald Trump for President. I had my reservations, but I thought things would be different once he was elected, that the enormity of the office and its responsibilities would temper his impulses, that the smart and dedicated people and strong institutions around him would set him straight. Again, I also thought that the only alternative—a

Democratic presidency—would, on the whole, be worse for me, my family, and our country. I was wrong.

6. Plenty of others have explained the countless ways that President Trump tore this country apart, so I won't repeat them here. But just as problematic was the conduct of the Republican Party itself, a party that I had so long respected, admired, and proudly supported. In a few short years, the Republican Party seemingly did everything possible to push me away. Not only did party orthodoxy become more and more extreme, but common decency, respect, and concern for the common welfare were nowhere to be found. It seemed that they only valued limited government when it limited the other side. It was always about *beating the liberals*, scoring a political victory for its own sake, regardless of the issue involved or lives affected. Compromise became a four-letter word.

7. At the same time, folks on the left were defiantly declaring that Trump “wasn't their President.” They castigated every move by the administration—even the reasonable and productive ones—as a step towards tyranny. I saw this growing division in real-time on the school board. We used to be able to disagree without being disagreeable. But the mutual distrust and dislike I witnessed, the rapidly widening divide between neighbors—frankly, it scared me.

8. With a heavy heart, last year I formally unregistered from the Republican Party and became an independent. After a life of mostly voting straight down a party ticket, now I need to apply my own criteria to evaluating each candidate on the ballot. Do they respect the rule of law? Are they willing to accept defeat graciously? Are they committed to truly free and fair elections? Do they approach others, especially those with whom they disagree, with common decency and respect? Do they understand the value of, and the need for, compromise? Are they willing to

work hard with people who might see the world in a different way in order to make it a better place for our kids? They don't need to like folks on the other side of the aisle, but are they willing to see them as human beings, with dignity and value just like themselves? Of course, other issues matter, but these are the most important, in my view. Since 2016, these reflections have led me to vote for a number of Democratic candidates. But I've done so reluctantly, because I know that this vote sends a signal that I support everything the party stands for, and believe me, I don't.

9. I found myself in a similar position as I evaluated my choices in the upcoming congressional election, and the choice seemed clear: I would support the incumbent, Tom Malinowski. Not only does the leading Republican candidate fall woefully short in each of the areas outlined above, but Malinowski exemplifies nearly all of them. He strikes me as an eminently decent man who shares my concern about hyper-polarization, extremism, and their corrosive effects on our government and society writ large. But, as I said before, casting a ballot in the Democratic column nonetheless gives me pause, even when the choices of candidate couldn't be more clear. Do I want to defund the police? No way. Do I believe we should nationalize huge portions of the economy? Of course not. Yet, as these and other issues from the far-left gain prominence in the Democratic Party, it's impossible for a vote in the Democratic Party column to suggest anything other than tacit support for that agenda.

10. It is precisely for these reasons that I was proud to sign the nominating petition to place Tom Malinowski on the general election ballot under the column of a minor party that champions moderation, compromise, and a commitment to democracy. If I could vote for him under this column, I could support the candidate I want elected without sending the message that I agree with the radical ideas gaining traction among Malinowski's Democratic colleagues.

What's more, I would be sending a clear message of support for compromise, mutual respect, and the other principles I discussed above. I know that many other voters in Chester and surrounding communities feel like I do, and the resulting bloc of distinct moderate votes would make clear to Malinowski and other politicians that the middle path is a road to election. Acting alone, with a ballot that forces us to associate with one of two major parties if we want to cast a meaningful vote, none of us can hope to change our policies, politics, or politicians. Yet, acting together, joined under a moderate column on the ballot, who knows the limits of what voters like me could accomplish. With so many factors pulling candidates and politicians to the polar extremes, this is a powerful and increasingly necessary electoral incentive for moderation, and decency. A clear call to cool the temperature before the pot boils over.

11. I would welcome the opportunity to vote for Tom Malinowski under a separate column bearing the nomination of a minor, pro-compromise, pro-moderation party, but I understand that because of New Jersey's existing laws and the time required for courts to resolve cases like this, I know that's unlikely to happen. Therefore, I look forward to using fusion in future elections for local, state, or federal office in order to vote for candidates under a party label that matches my values and priorities. Otherwise, if cross-endorsements remain unlawful in New Jersey and the major parties continue to move to polar extremes, it seems entirely plausible that I could be forced to abstain from voting in certain races if the only way to cast a vote for a competitive candidate is to vote Democratic or Republican.

12. While my sense of civic duty compels me to conduct my own personal evaluation of candidates, I know that the Moderate Party's nomination will be an invaluable signal, the reasoned judgment by fellow citizens asking many of the same questions I'm looking to answer when weighing the choices. Unlike some other minor parties who routinely run stand-alone

candidates that either get no public support or end up being a spoiler, I understand that the Moderate Party takes a pragmatic approach to its nominations, only choosing among those candidates that have a plausible chance of winning. (I do the same thing, because I cannot understand the point of throwing away a vote on a candidate who is guaranteed to lose. Indeed, if the Moderate Party was nominating a standalone candidate in this race or did so in the future, they wouldn't have my vote. That would be counterproductive and would clearly help the less moderate of the two viable candidates get elected.) Of course, given the reality of our two-party system, that means that this pool of candidates will inevitably (in nearly every case) be limited to those who will also receive a nomination from either the Democratic Party or the Republican Party. Just because a candidate has a major party nomination, I cannot understand what could justify keeping the Moderate from putting that candidate in their ballot column too.

13. Thus, with great respect, I ask that the Secretary of State accept the petition identifying Tom Malinowski as the nominee of the Moderate Party and place him on the ballot under the Moderate Party this November. In the likely event that the Secretary of State declines to do so, I strongly urge the New Jersey courts to recognize that the state's anti-fusion laws violate the political rights guaranteed by the state constitution to me and every single voter in New Jersey.

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

/s/Michael Tomasco

Michael Tomasco

Dated: June 6, 2022

Report of Andrew W. Appel,
dated June 1, 2022

Schedule 3

From: Andrew W. Appel

To: Flavio Komuves

Date: June 1, 2022

Re: Capability of New Jersey's Voting Equipment to Support Fusion Voting

I have been asked to assess whether New Jersey could adopt fusion voting using the voting machines and election management systems that New Jersey counties currently use. The answer is yes, the voting equipment used in New Jersey can accommodate fusion voting. Furthermore—regarding voting machines that New Jersey might purchase in the future—because the major voting-machine vendors sell in a national market, in which three states already use fusion voting, new voting systems are designed to accommodate fusion voting.

My qualifications: I am a Professor of Computer Science at Princeton University. I received an A.B. (1981) from Princeton University summa cum laude in Physics, and a PhD (1985) from Carnegie Mellon University in Computer Science. I have over 40 years of experience in computer science, and 18 years of experience studying voting machines and elections. I have testified on election technology before the U.S. House of Representatives (subcommittee on information technology, 2016), the New Jersey legislature (several committees, on several occasions 2005-2018), the Superior Court of New Jersey (Mercer County, 2009; Cumberland County, 2011), the New York State Board of Elections (2019), the Freeholders of Mercer County (2017 and 2019) and Essex County (2019). I have been qualified as an expert witness on voting machines in the Superior Court of New Jersey (Mercer, 2009; Cumberland, 2011) and the U.S. District Court for the Northern District of Georgia (2019). I have published over 100 scientific articles and books, including many papers on computer security and several papers on voting machines, election technology, and election audits. Since 2008 I have published over 80 blog articles¹ about election machinery on freedom-to-tinker.com.

I attach my CV as an appendix to this report.

My sources: On the question of which voting machines are used in New Jersey and other states, I use the database maintained by the Verified Voting Foundation.² I am on the Board of Technical Advisers of Verified Voting; I have used their database many times over the past 15 years, and have found it to be reliable. Regarding the use of fusion voting in NY, CT, SC, I rely on the official state

¹ See <https://www.cs.princeton.edu/~appel/voting>

² <https://verifiedvoting.org/verifier>

web sites of those states,³⁴ on news articles and other scholarship,⁵ and on other knowledgeable individuals.⁶

Fusion voting is a system of elections in which a single individual can appear as a nominee of multiple parties, in multiple columns⁷ on the same ballot. The number of votes for each individual *in each column* are reported separately. The winner (in each contest) is the individual with the most votes combined across all the columns in which that individual appears.⁸

I will discuss both *voting machines* and *election management systems*. The voting machine directly counts votes: either in the precinct or early vote center (e.g., an “precinct-count” optical-scan machine or a touch-screen machine) or in the county election office to count absentee ballots (a “central count” optical scan machine). The *election management system* is software that normally runs on an ordinary desktop or laptop PC, and is used to prepare ballot layouts (before an election) and aggregate the vote counts from individual voting machines (after the election).

A voting system can support fusion voting provided that:

1. The voting machine and election management system can accommodate ballots where a single individual can appear as a nominee of multiple parties, in multiple columns, with the ability to identify how many votes were cast for that individual in each column.

In addition, for the convenience of County Clerks and other election officials who must report vote totals to the public and certify elections, it is helpful if,

2. The election management system can report the aggregate number of votes for the candidate from all columns, or

³ South Carolina Election Commission, “Candidates Representing More than One Party (Fusion Candidates), <https://www.scvotes.gov/candidates-representing-more-one-party-fusion-candidates> states, “The candidate’s name appears on the ballot once for each party nominating the candidate.”

⁴ Terrance Adams, “Cross-Endorsing Candidates”, report 2013-R-0046 of the Connecticut Office of Legislative Services, <https://www.cga.ct.gov/2013/rpt/2013-R-0046.htm>, states that CT,NY,SC have fusion voting with **multiple lines**, i.e., with “Vote attributed to the party line marked by the voter”.

⁵ There are dozens of news articles and peer-reviewed academic articles discussing fusion voting in New York State.

⁶ According to Dan Cantor, former National Director of the Working Families Party, disaggregated fusion voting, meaning the traditional fusion system in which parties nominate candidates to be printed on the ballot with the votes for the candidate tallied separately by party and then added together to produce the final outcome, is legal in CT, NY, and SC. The other states which have some form of fusion are either aggregated fusion, write-in fusion, or simply not operational. This report is focused on the systems used to implement disaggregated fusion voting as exists in CT, NY, and SC.

⁷ Most New Jersey counties organize their ballots with the parties ordered across the columns, and the contests ordered down the rows. Most new New York counties organizes their ballots vice versa, with the parties ordered down the rows, and the contests ordered across the columns. I will use the (predominant) New Jersey organization in discussing fusion voting. In some jurisdictions it should be understood that rows and columns are interchanged.

⁸ The definition I have given in this paragraph is sometimes called “disaggregated fusion voting” to emphasize that votes cast in each column are reported separately, to distinguish it from other variations in which, for example, a candidate appears only once on the ballot but with the names of more than one endorsing party. This latter variation is sometimes called “aggregated fusion”, and it does not indicate how many votes were received *by each party*.

3. The voting machine can report the aggregate number of votes for the candidate from all columns, on the results-report printout that is generated in the polling place immediately after the close of the polls.

Criteria 2 and 3 are not *requirements* for a fusion voting system. For example, New York has used fusion voting for many decades, but New York State statutes do not require criteria 2 and 3 as a condition of certification for use in New York. However, every voting machine currently used in New York can support criteria 1, 2, and 3.⁹

The five major U.S. voting-machine manufacturers (ES&S, Dominion, Hart, ClearBallot, Unisyn) operate in a national market, in which they aspire to sell equipment in all 50 states. Therefore, they generally design their equipment and software to accommodate the election systems of all 50 states. Three of those states (New York, Connecticut, and South Carolina) use fusion voting, and have done so for decades. Therefore we should expect practically *any* voting equipment sold by the two largest vendors (ES&S, Dominion) to support fusion voting. All of New Jersey's current voting equipment¹⁰ comes from those two vendors.

Voting Equipment Used in New Jersey

Each New Jersey county purchases its own voting machines and EMS (election management system), and may choose from any equipment certified by the Secretary of State (based on advice from a statutory voting-machine examination) committee. At present, the counties use the following equipment as shown in the following table.¹¹ In the "Fusion" column, I list the specific evidence that it supports fusion voting: generally, that the same model is used in another state that uses fusion voting.

Election Day Equipment used in New Jersey

Type of Equipment	Make	Model	Fusion
Hand-Fed Optical Scanner	Dominion	<u>ImageCast Precinct</u>	NY
Hybrid Optical Scan/DRE	Dominion	ImageCast Precinct ATI	NY
Ballot Marking Device	Dominion	ImageCast Precinct BMD	NY
Ballot Marking Device	Dominion	ImageCast X BMD	NY
Hybrid BMD/Tabulator	ES&S	<u>ExpressVote XL</u>	NY ¹²

⁹ According to a senior New York election official with many decades experience evaluating voting machines.

¹⁰ I exclude e-pollbooks because it is immaterial to the design of an e-pollbook whether the ballot design permits fusion voting. E-pollbooks are computers in the polling place use to check whether a person is registered to vote, and to record that they have voted. E-pollbooks do not handle actual ballots and votes, so the operation of E-pollbooks won't be affected by the question of whether a candidate appears in more than one place on the ballot.

¹¹ Source of this data: Verified Voting Foundation, <https://verifiedvoting.org/verifier>

¹² The ExpressVote XL is not currently certified in New York, but the obstacle to certification is a security issue unrelated to the ability to handle fusion voting.

Type of Equipment	Make	Model	Fusion
DRE-Push Button	Sequoia (Dominion)	<u>AVC Advantage</u>	NY ¹³
DRE-Touchscreen	Dominion	ImageCast X DRE	NY
DRE-Touchscreen	ES&S	<u>iVotronic</u>	SC

Early Voting Equipment used in New Jersey

Type of Equipment	Make	Model	Fusion
Hand-Fed Optical Scanner	Dominion	<u>ImageCast Precinct</u>	NY
Hand-Fed Optical Scanner	ES&S	<u>DS200</u>	NY,SC
Hybrid Optical Scan/DRE	Dominion	ImageCast Precinct ATI	NY
Ballot Marking Device	Dominion	ImageCast X BMD	NY ¹⁴
Ballot Marking Device	ES&S	<u>ExpressVote</u>	SC
Hybrid BMD/Tabulator	ES&S	<u>ExpressVote XL</u>	NY ¹⁵
DRE-Touchscreen	Dominion	ImageCast X DRE	NY

Mail Ballot/Absentee Equipment used in New Jersey

Type of Equipment	Make	Model	Fusion
Batch-Fed Optical Scanner	Dominion	<u>ImageCast Central</u>	NY
Batch-Fed Optical Scanner	ES&S	<u>DS450</u>	SC
Batch-Fed Optical Scanner	ES&S	<u>DS850</u>	NY,SC

Double Votes

¹³ The AVC Advantage was briefly certified in New York in the early 1990s, before that certification was withdrawn on the grounds that the AVC Advantage, like any DRE voting machine with no paper ballot, is fundamentally insecure. However, even in 1990 the State of New York would not have certified the AVC Advantage if it could not support fusion voting.

¹⁴ The ImageCast X BMD is not used in New York, but the ImageCast X DRE is used, which is fundamentally the same platform and software.

¹⁵ The ExpressVote XL is not currently certified in New York, but the obstacle to certification is the fundamental unreliability of its paper trail. I am not aware that the New York State Board of Elections has any specific concern about the ability of the ExpressVote XL to accommodate fusion voting.

One might be concerned about the possibility that a voter might vote for the same candidate in more than one party line.

When voters cast votes on a touchscreen voting machine (such as the AVC Advantage or ExpressVote XL in use in some New Jersey counties), it is not possible to “overvote”—to cast votes for more candidates than they are allowed to in the same contest. The user interface of the voting machine prevents that.

When voters cast votes on paper ballots, it is possible to overvote: for example, to fill in more than one oval in a contest where only one vote is permitted. When *precinct-count optical scan* is used, the voter marks a paper ballot in a polling place and then personally feeds it into the optical-scan voting machine. It is easy and routine to configure that machine to alert the voter that they have overvoted, and give the voter the option to correct the mistake by voting a fresh ballot.

When *central-count optical scan* is used—for example, for the counting of absentee ballots—overvotes cannot be corrected by the voter. If a voter votes for *two different* candidates in a contest in which only one vote is permitted, most states (perhaps all states) do not count either of those votes.

However, a state with fusion voting can recognize that votes for *the same* candidate in two different parties is really a single vote for a single person, and count it as such. Upon information and belief, at least two states do so: New York and Connecticut. Counting of such votes is entirely straightforward for the purpose of determining which candidate wins the election, but there are some policy or statutory choices for the state to make in determining how those votes are allocated among the parties. New York and Connecticut law differ in those rules.

On the question of *can New Jersey’s election equipment handle this issue*, the answer is unambiguously yes. First, regarding touchscreen voting machines, there is no problem at all: there are no double votes. Regarding the optical scanners (precinct-count and central count), every such machine used in New Jersey is also used in New York or South Carolina, other states that have fusion voting. Therefore we can expect that the software in those election systems can handle the counting of optical-scan ballots for fusion voting.

Signed on __June 1__, 2022

A handwritten signature in black ink, appearing to read "Andrew Appel", written over a horizontal line.

Andrew W. Appel

Andrew W. Appel, Curriculum Vitae

Andrew W. Appel

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<https://www.cs.princeton.edu/~appel>

Research Interests

Software verification, programming languages, computer security, compilers, semantics, software engineering, information technology policy, elections and voting technology.

Education

A.B. *summa cum laude* (physics) Princeton University, 1981
Ph.D. (computer science) Carnegie-Mellon University, 1985

Professional Appointments

Princeton University, Princeton, NJ. Eugene Higgins Professor of Computer Science, since 2011; Department Chair, 2009-15; Professor of Computer Science, since 1995; Associate Chair, 1997-2007; Assoc. Prof., 1992-95; Asst. Prof. 1986-92.

Massachusetts Institute of Technology. Visiting Professor, July-December 2013.

INRIA (Institut National de Recherche en Informatique et en Automatique), Rocquencourt, France. Visiting Professor, academic year 2005-06 & summers 2004, 2007.

Bell Laboratories, Murray Hill, NJ. Member of Technical Staff, Summer 1984. Consultant, 1983-2001.

Carnegie-Mellon University, Pittsburgh, PA. Research and teaching assistant, 1982-85.

College of Medicine, University of Illinois, Urbana, IL. Computer programmer, summers 1976-80.

Awards and Honors

Kusaka Memorial Prize in Physics, Princeton University, 1981.

National Science Foundation Graduate Student Fellowship, 1981-1984.

ACM Fellow (Association for Computing Machinery), 1998.

The Other Prize, Programming Contest of the ACM International Conference on Functional Programming, 1998.

ACM SIGPLAN Distinguished Service Award, 2002.

ACM SIGPLAN selected "Real-time Concurrent Collection on Stock Multiprocessors" (Appel, Ellis, Li 1988) as one of the 50 most influential papers in 20 years of the PLDI conference, 2002.

Professional Activities

1. Program Committee, *ACM SIGPLAN '89 Conf. on Prog. Lang. Design and Implementation*, 1989.
2. Program Committee, *Seventeenth ACM Symp. on Principles of Programming Languages*, 1990.
3. Associate Editor, *ACM Transactions on Programming Languages and Systems*, 1990-1992.
4. Associate Editor, *ACM Letters on Programming Languages and Systems*, 1991-1992.
5. Program Chair, *Nineteenth ACM Symp. on Principles of Programming Languages*, 1992.
6. Co-editor, *Journal of Functional Programming* special issue on ML, 1992.
7. Program Committee, *Sixth ACM Conf. on Functional Prog. Lang. and Computer Architecture*, 1993.
8. Editor in Chief, *ACM Transactions on Programming Languages and Systems*, 1993-97.
9. Program Committee, *International Conference on Functional Programming*, 1997.
10. General Chair, *POPL'99: 26th ACM Symp. on Principles of Programming Languages*, 1999.
11. Program Committee, *IEEE Symposium on Security and Privacy*, 2002.
12. Program Committee, *ACM SIGPLAN Workshop on Types in Language Design and Implementation*, 2003.
13. Program Committee, *Nineteenth Annual IEEE Symposium on Logic in Computer Science*, 2004.
14. Program Committee, *ACM SIGPLAN 2005 Conference on Programming Language Design and Implementation (PLDI)*, 2005.
15. Program Committee, *International Workshop on Logical Frameworks and Meta-Languages: Theory and Practice (LFMTP'06)*, 2006.
16. Program Committee, *EVT'07: 2007 Usenix/ACCURATE Electronic Voting Technology Workshop*.
17. Program Committee, *POPL'09: 36th Annual ACM SIGPLAN-SIGACT Symposium on Principles of Programming Languages*, 2009.
18. Program Committee, *PLDI 2011: 32nd ACM SIGPLAN conference on Programming Language Design and Implementation*, 2011.
19. General Co-Chair, *ITP 2012: Interactive Theorem Proving*, 2012.
20. Program Committee, *POPL 2014: 41st ACM SIGPLAN-SIGACT Symposium on Principles of Programming Languages*, 2014.
21. Award Committee, *SIGPLAN Programming Languages Software Award*, 2016.
22. Board of Advisors, *Verified Voting Foundation*, since 2015.
23. Program Committee, *POPL 2020: 47th ACM SIGPLAN Symposium on Principles of Programming Languages*, 2020.
24. Chair, Subcommittee on Voting of the ACM U.S. Technology Policy Committee, 2021-present.

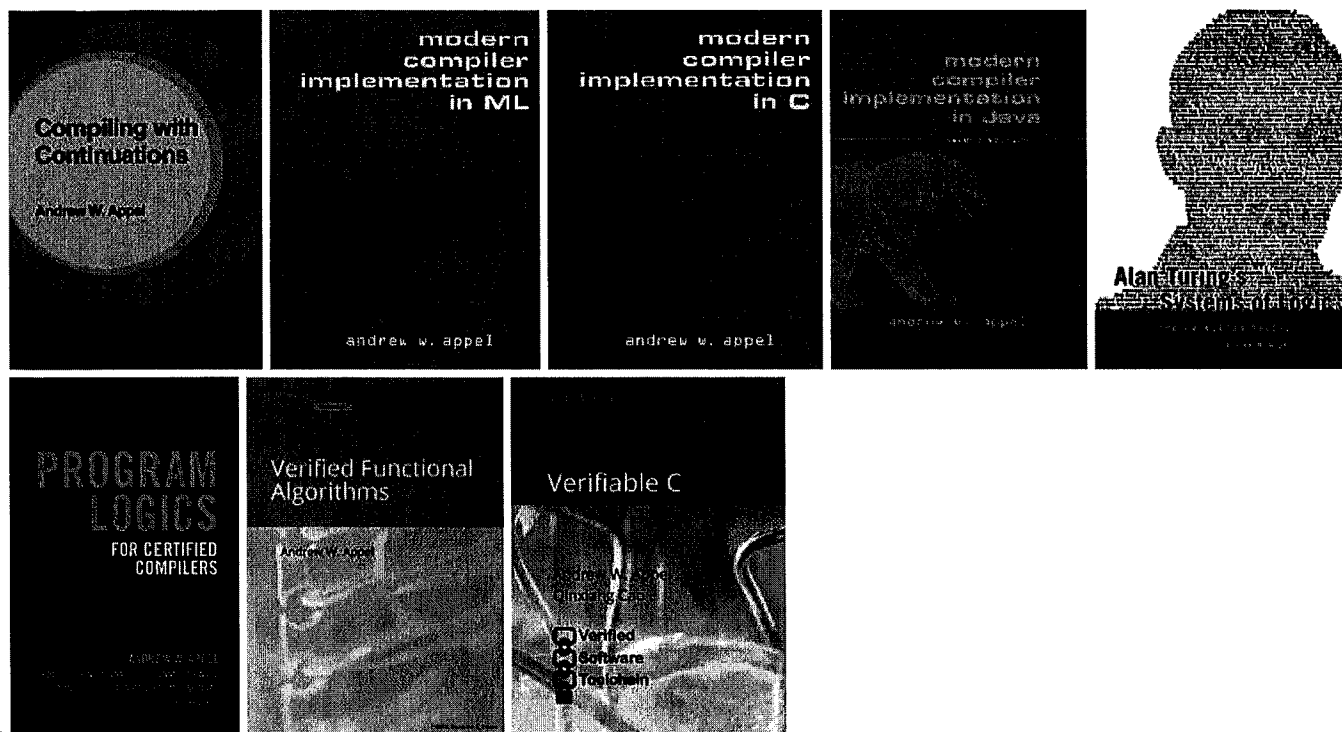
Research Grants

1. *Implementation of an efficient reducer for lambda expressions*, National Science Foundation DCR-8603453, \$115,799, 1986-88.
2. Digital Equipment Corporation Faculty Incentive Grant, \$180,000, 1986-89.
3. *Unifying compile-time and run-time evaluation*, National Science Foundation CCR-8806121, \$123,510, 1988-90.
4. *Standard ML of New Jersey software capitalization*, National Science Foundation CCR-8914570, \$119,545, 1990-91.
5. *Using immutable types for debugging and parallelism*, National Science Foundation CCR-9002786, \$174,618, 1990-92.
6. *Optimization of space usage*, National Science Foundation CCR-9200790, \$348,119, 1992-96.
7. *Framework, Algorithms, and Applications for Cross-module Inlining*, National Science Foundation CCR-9625413, \$180,331, 1996-98.
8. *Development of a HIL/LIL Framework for a National Compiler Infrastructure*, Defense Advanced Research Projects Agency and National Science Foundation (as subcontractor to Univ. of Virginia), \$1,397,293, 1996-99.

9. *Tools, Interfaces, and Access Control for Secure Programming*, National Science Foundation CCR-9870316, \$322,000, 1998-2001 (co-PI).
10. *Scaling Proof-Carrying Code to Production Compilers and Security Policies*, Defense Advanced Research Projects Agency, \$3,870,378, 1999-2004.
11. *Applying Compiler Techniques to Proof-Carrying Code*, National Science Foundation CCR-9974553, \$220,000, 1999-2002.
12. IBM University Partnership Program, \$40,000, 1999-2000.
13. *High-Assurance Common Language Runtime*, National Science Foundation CCR-0208601, \$400,000, 2002-2005.
14. *Assurance-Carrying Components*, Advanced Research and Development Agency contract NBCHC030106, \$759,910, 2003-05.
15. Sun Microsystems research grant, \$20,000, 2004.
16. *End-to-end source-to-object verification of interface safety*, National Science Foundation grant CCF-0540914, \$325,000, 2006-09.
17. *MulVAL Technologies Plan*, New Jersey Commission on Science and Technology, \$60,000, 2006.
18. Microsoft Corporation research grant, \$25,000, 2006.
19. *Evidence-based Trust in Large-scale MLS Systems*, Air Force Office of Scientific Research FA9550-09-1-0138 (as subcontractor to Kansas State University), \$1,000,000, 2009-14.
20. *Combining Foundational and Lightweight Formal Methods to Build Certifiably Dependable Software*, National Science Foundation grant CNS-0910448, \$500,000, 2009-13.
21. *CARS: A Platform for Scaling Formal Verification to Component-Based Vehicular Software Stacks*, Defense Advanced Research Projects Agency award FA8750-12-2-0293, \$6,108,346, 2012-2017.
22. *Verified HMAC*, Google Advanced Technology and Projects grant, \$95,928, 2014.
23. *Principled Optimizing Compilation of Dependently Typed Languages*, National Science Foundation grant CCF-1407794, \$600,000, 2014-17.
24. *Concurrent separation logic for C*, Intel Corporation research grant, \$238,015, 2015-16.
25. *Collaborative Research: Expeditions in Computing: The Science of Deep Specification*, National Science Foundation grant CCF-1521602, \$3,453,419, 2015-20.
26. *VeriFFI -- Formally Verified Functional+C programs*, National Science Foundation CCF-2005545, \$499,999, 2020-23.
27. *Programmable, Distributed Defense in Depth for 5G Services*, DARPA, co-PI of \$3,600,000 subcontract to Perspecta Labs, 2020-2024.

Publications

Books, chapters in books



1. "Garbage Collection," in *Topics in Advanced Language Implementation*, Peter Lee, ed. MIT Press, 1991.
2. *Compiling with Continuations*, Cambridge University Press, 1992.
3. *Modern Compiler Implementation in ML*, Cambridge University Press, 1998.
4. *Modern Compiler Implementation in Java*, Cambridge University Press, 1998.
5. *Modern Compiler Implementation in C*, Cambridge University Press, 1998.
6. *Modern Compiler Implementation in Java, 2nd edition*, with Jens Palsberg, Cambridge University Press, 2002.
7. *Alan Turing's Systems of Logic: The Princeton Thesis*, edited and introduced by Andrew W. Appel, Princeton University Press, 2012.
8. *Program Logics for Certified Compilers*, by Andrew W. Appel with Robert Dockins, Aquinas Hobor, Lennart Beringer, Josiah Dodds, Gordon Stewart, Sandrine Blazy, and Xavier Leroy. Cambridge University Press, 2014.
9. *Verified Functional Algorithms*, by Andrew W. Appel, 2017. Volume 3 of *Software Foundations*, edited by B. C. Pierce.
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11. A Microprocessor-Based CAI System with Graphic Capabilities, by Frank J. Mabry, Allan H. Levy, and Andrew W. Appel, *Proc. 1978 conference, Assoc. for Development of Computer-based Instruction Systems*.
12. Rogomatic: A Belligerent Expert System, by Michael L. Mauldin, Guy J. Jacobson, Andrew W. Appel, and Leonard G. C. Hamey. *Proc. Fifth Nat. Conf. Canadian Soc. for Computational Studies of Intelligence*, May 1984.
13. An Efficient Program for Many-Body Simulations. *SIAM Journal on Scientific and Statistical Computing* 6(1):85-103, 1985.
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15. Generalizations of the Sethi-Ullman algorithm for register allocation. Andrew W. Appel and Kenneth J. Supowit, *Software Practice and Experience* 17(6):417-421, 1987.
16. A Standard ML compiler, by Andrew W. Appel and David B. MacQueen, *Proc. Third Int'l Conf. on Functional Programming & Computer Architecture (LNCS 274, Springer-Verlag)*, Portland, Oregon, September 1987.

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21. Continuation-passing, closure-passing style, by Andrew W. Appel and Trevor Jim, *Proc. Sixteenth ACM Symposium on Principles of Programming Languages*, pp. 293-302, January 1989.
22. Simple Generational Garbage Collection and Fast Allocation. Andrew W. Appel. *Software--Practice and Experience* 19(2):171-183, February 1989.
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26. A Runtime System. *Lisp and Symbolic Computation* 3, 343-380, 1990.
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28. Debugging Standard ML without reverse engineering, by Andrew P. Tolmach and Andrew W. Appel, *Proc. 1990 ACM Conf. on Lisp and Functional Programming*, pp. 1-12, June 1990.
29. Real-time concurrent garbage collection system and method, by John R. Ellis, Kai Li, and Andrew W. Appel. U.S. Patent 5,088,036, 1992.
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54. Proof-Carrying Authentication, by Andrew W. Appel and Edward Felten, *6th ACM Conference on Computer and Communications Security*, November 1999.
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68. Using Memory Errors to Attack a Virtual Machine, by Sudhakar Govindavajhala and Andrew W. Appel, *2003 IEEE Symposium on Security and Privacy*, pp. 154-165, May 2003.
69. A Provably Sound TAL for Back-end Optimization, by Juan Chen, Dinghao Wu, Andrew W. Appel, and Hai Fang. *PLDI 2003: ACM SIGPLAN Conference on Programming Language Design and Implementation*, pp. 208-219, June 2003.
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Certification of Farbod K.
Faraji, dated June 3, 2022

Schedule 4

	:	BEFORE THE NEW JERSEY
In re: Nominating Petition of Hon. Tom	:	SECRETARY OF STATE,
Malinowski for Congressional District 7	:	DIVISION OF ELECTIONS
	:	
		_____:

FARBOD K. FARAJI, of full age, certifies as follows:

1. I am an attorney at law admitted to practice in the State of New Jersey (admitted on 05/24/2018, New Jersey Bar # 263272018). All facts set forth in this Certification have been collected by me or under my supervision.
2. This Certification analyzes and summarizes certain voluminous election records. All such election records are public records that are prepared by public officials or from otherwise reliable sources. Specifically, (i) records detailing the number of candidates and cross-endorsements in Connecticut elections can be accessed at the Connecticut Secretary of State's Election Results Archive at <https://electionhistory.ct.gov/>; (ii) records detailing the number of candidates and cross-endorsements in New York elections can be accessed at the New York State Board of Elections' Election Results webpage at <https://www.elections.ny.gov/index.html>; and (iii) official copies of the general election ballots from Connecticut can be accessed at the Connecticut Secretary of State's Ballots webpage at <https://portal.ct.gov/SOTS/Election-Services/Town-Ballots/Ballots>. I maintain in my possession the records relied upon and will

4. I have examined the last 10 years of records covering Connecticut's elections for President, Governor, U.S. Senate, and U.S. House of Representatives in order to identify the number of candidates and cross-endorsements on the general election ballot in each race. Those figures are set forth below. Connecticut did not conduct any elections for President, Governor, U.S. Senate, and U.S. Congress during the years of 2013, 2015, 2017, 2019, and 2021.

<u>2012</u>	Number of Candidates	Number of Cross-Endorsements
Statewide		
<i>President</i>	3	0
<i>U.S. Senate</i>	3	2
U.S. Congress		
<i>District 1</i>	4	1
<i>District 2</i>	4	1
<i>District 3</i>	2	1
<i>District 4</i>	2	1
<i>District 5</i>	2	2

<u>2014</u>	Number of Candidates	Number of Cross-Endorsements
Statewide		
<i>Governor</i>	3	2
U.S. Congress		

<i>District 1</i>	3	1
<i>District 2</i>	4	1
<i>District 3</i>	2	1
<i>District 4</i>	2	2
<i>District 5</i>	3	2

2016

Number of Candidates Number of Cross-Endorsements

Statewide

<i>President</i>	4	0
<i>U.S. Senate</i>	4	1

U.S. Congress

<i>District 1</i>	3	1
<i>District 2</i>	4	1
<i>District 3</i>	2	1
<i>District 4</i>	2	1
<i>District 5</i>	2	2

2018

Number of Candidates Number of Cross-Endorsements

Statewide

<i>Governor</i>	5	2
<i>U.S. Senate</i>	4	1

U.S. Congress

<i>District 1</i>	3	1
<i>District 2</i>	4	1
<i>District 3</i>	2	1

<i>District 4</i>	2	1
<i>District 5</i>	2	2

2020 **Number of Candidates** **Number of Cross-Endorsements**

Statewide

<i>President</i>	4	0
------------------	---	---

U.S. Congress

<i>District 1</i>	3	1
<i>District 2</i>	4	1
<i>District 3</i>	3	2
<i>District 4</i>	3	0
<i>District 5</i>	3	1

5. Based on the foregoing, in all 33 Connecticut elections studied, the arithmetic mean number of candidates for the stated offices per election was 3.03; the median number of candidates for the stated offices per election was 3.0; the arithmetic mean number of cross-endorsements per election was 1.15; and the median number of cross-endorsements per election was 1.

6. Based on the foregoing, in the 25 Connecticut congressional elections studied, the arithmetic mean number of candidates for the stated offices per election was 2.8; the median number of candidates for the stated offices per election was 3.0; the arithmetic mean number of cross-endorsements per election was 1.2; and the median number of cross-endorsements per election was 1.0.

7. Based on the foregoing, in the 8 Connecticut statewide elections studied, the arithmetic mean number of candidates for the stated offices per election was 3.75; the median number of

candidates for the stated offices per election was 4; the arithmetic mean number of cross-endorsements per election was 1.0; and the median number of cross-endorsements per election was 1.0.

8. I have examined the last 10 years of records covering New York's elections for President, Governor, U.S. Senate, and U.S. House of Representatives in order to identify the number of candidates and cross-endorsements on the general election ballot in each race. Those figures are set forth below. New York did not conduct any elections for President, Governor, U.S. Senate, and U.S. Congress during the years of 2013, 2017, 2019, and 2021.

<u>2012</u>	Number of Candidates	Number of Cross-Endorsements
Statewide		
<i>President</i>	6	2
U.S. House		
<i>District 1</i>	2	3
<i>District 2</i>	2	3
<i>District 3</i>	4	3
<i>District 4</i>	3	3
<i>District 5</i>	3	
<i>District 6</i>	3	2
<i>District 7</i>	2	1
<i>District 8</i>	3	2
<i>District 9</i>	3	2
<i>District 10</i>	2	2
<i>District 11</i>	3	2
<i>District 12</i>	2	3
<i>District 13</i>	3	1
<i>District 14</i>	3	2
<i>District 15</i>	2	2

<i>District 16</i>	3	1
<i>District 17</i>	3	1
<i>District 18</i>	2	2
<i>District 19</i>	2	3
<i>District 20</i>	2	3
<i>District 21</i>	3	3
<i>District 22</i>	2	1
<i>District 23</i>	2	3
<i>District 24</i>	3	3
<i>District 25</i>	2	3
<i>District 26</i>	2	3
<i>District 27</i>	2	2

2014

Number of Candidates Number of Cross-Endorsements

Statewide

<i>Governor</i>	5	5
-----------------	---	---

U.S. House

<i>District 1</i>	2	3
<i>District 2</i>	3	2
<i>District 3</i>	2	3
<i>District 4</i>	2	4
<i>District 5</i>	2	
<i>District 6</i>	1	1
<i>District 7</i>	3	1
<i>District 8</i>	2	1
<i>District 9</i>	2	1
<i>District 10</i>	3	1
<i>District 11</i>	3	3
<i>District 12</i>	2	3

<i>District 13</i>	2	1
<i>District 14</i>	2	1
<i>District 15</i>	3	1
<i>District 16</i>	1	1
<i>District 17</i>	2	2
<i>District 18</i>	3	3
<i>District 19</i>	2	3
<i>District 20</i>	2	3
<i>District 21</i>	3	3
<i>District 22</i>	1	1
<i>District 23</i>	2	3
<i>District 24</i>	2	3
<i>District 25</i>	2	2
<i>District 26</i>	2	2
<i>District 27</i>	2	3

<u>2015</u>	Number of Candidates	Number of Cross-Endorsements
U.S. House		
<i>Special Election District 11</i>	3	3

<u>2016</u>	Number of Candidates	Number of Cross-Endorsements
Statewide		
<i>President</i>	4	4
<i>U.S. Senate</i>	4	5
U.S. House		
<i>District 1</i>	2	5
<i>District 2</i>	2	5
<i>District 3</i>	2	2

<i>District 4</i>	2	4
<i>District 5</i>	3	2
<i>District 6</i>	3	3
<i>District 7</i>	2	2
<i>District 8</i>	2	1
<i>District 9</i>	2	1
<i>District 10</i>	2	5
<i>District 11</i>	3	3
<i>District 12</i>	2	1
<i>District 13</i>	4	1
<i>District 14</i>	2	3
<i>District 15</i>	3	0
<i>District 16</i>	2	2
<i>District 17</i>	1	2
<i>District 18</i>	2	5
<i>District 19</i>	2	4
<i>District 20</i>	2	5
<i>District 21</i>	3	4
<i>District 22</i>	3	3
<i>District 23</i>	2	4
<i>District 24</i>	2	4
<i>District 25</i>	2	5
<i>District 26</i>	2	3
<i>District 27</i>	2	3

2018

Statewide

	Number of Candidates	Number of Cross-Endorsements
<i>Governor</i>	5	5
<i>U.S. Senate</i>	2	5

U.S. House

<i>District 1</i>	3	4
<i>District 2</i>	2	6
<i>District 3</i>	2	5
<i>District 4</i>	2	3
<i>District 5</i>	1	0
<i>District 6</i>	2	2
<i>District 7</i>	3	1
<i>District 8</i>	3	1
<i>District 9</i>	3	2
<i>District 10</i>	2	3
<i>District 11</i>	3	5
<i>District 12</i>	3	2
<i>District 13</i>	2	2
<i>District 14</i>	4	1
<i>District 15</i>	2	2
<i>District 16</i>	1	2
<i>District 17</i>	2	2
<i>District 18</i>	2	5
<i>District 19</i>	4	5
<i>District 20</i>	2	3
<i>District 21</i>	3	5
<i>District 22</i>	2	5
<i>District 23</i>	2	4
<i>District 24</i>	2	5
<i>District 25</i>	2	5
<i>Special Election District 25</i>	2	5
<i>District 26</i>	2	2
<i>District 27</i>	3	4

2020

Number of Candidates Number of Cross-Endorsements

Statewide

<i>President</i>	5	2
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U.S. House

<i>District 1</i>	2	3
<i>District 2</i>	3	5
<i>District 3</i>	3	3
<i>District 4</i>	3	1
<i>District 5</i>	1	0
<i>District 6</i>	2	4
<i>District 7</i>	3	2
<i>District 8</i>	2	2
<i>District 9</i>	4	2
<i>District 10</i>	3	2
<i>District 11</i>	2	2
<i>District 12</i>	3	1
<i>District 13</i>	3	1
<i>District 14</i>	3	1
<i>District 15</i>	2	1
<i>District 16</i>	2	0
<i>District 17</i>	5	1
<i>District 18</i>	3	4
<i>District 19</i>	4	2
<i>District 20</i>	2	4
<i>District 21</i>	2	3
<i>District 22</i>	3	3
<i>District 23</i>	3	3
<i>District 24</i>	3	2
<i>District 25</i>	3	3

<i>District 26</i>	3	2
<i>District 27</i>	3	3
<i>Special Election District 27</i>	4	2

9. Based on the foregoing, in all 145 New York elections studied, the arithmetic mean number of candidates for the stated offices per election was 2.52; the median number of candidates for the stated offices per election was 2.0; the arithmetic mean number of cross-endorsements per election was 2.62; and the median number of cross-endorsements per election was 3.0.

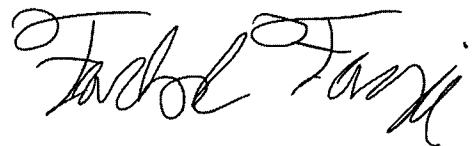
10. Based on the foregoing, in the 138 New York congressional elections studied, the arithmetic mean number of candidates for the stated offices per election was 2.43; the median number of candidates for the stated offices per election was 2.0; the arithmetic mean number of cross-endorsements per election was 2.55; and the median number of cross-endorsements per election was 2.5.

11. Based on the foregoing, in the 7 New York statewide elections studied, the arithmetic mean number of candidates for the stated offices per election was 4.43; the median number of candidates for the stated offices per election was 5.0; the arithmetic mean number of cross-endorsements per election was 4.0; and the median number of cross-endorsements per election was 5.0.

12. Another purpose of this Certification is to demonstrate the readability of actual ballots featuring cross-endorsements, as promulgated to voters in Connecticut during recent elections. Attached as Exhibit A is a copy of the ballot presented to voters in New Haven's Voting Districts 7-2, 8-2, 9-2, 10 & 12-1 during the November 2020 general election, containing cross-endorsements in the races for U.S. House and State Representative. Attached as Exhibit B is a

copy of the ballot presented to the same New Haven voters during the November 2018 general election, containing cross-endorsements in the races for Governor and Lieutenant Governor, U.S. Senator, and U.S. House. Attached as Exhibit C is a copy of the ballot presented to voters in Hartford's Voting District 1 during the November 2020 general election, containing cross-endorsements in the races for U.S. House and State Representative. Attached as Exhibit D is a copy of the ballot presented to the same Hartford voters during the November 2018 general election, containing cross-endorsements in the races for Governor and Lieutenant Governor, U.S. Senator, and U.S. House.

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

A handwritten signature in black ink, reading "Farbod K. Faraji". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Farbod K. Faraji
New Jersey Bar # 263272018

Dated: June 3, 2022

Exhibit A - November 3, 2020 State Election Ballot for
New Haven, CT

Exhibit A

State of Connecticut
Official Ballot / Voto Oficial

New Haven, Connecticut

State Election
Elección Estatal

November 3, 2020
3 Noviembre 2020

Congressional District / Distrito 3
Senatorial District / Distrito 11
Assembly District / Distrito 96
Voting Districts / Distritos 7-2, 8-2,
9-2, 10 & 12-1

<div> <div>OFFICE CARGO</div> <div> <div>PARTY PARTIDO</div> <div>↓</div> </div> </div>	1 Presidential Electors Presidenciales Para Vote for One / Vote por Uno	2 Representative in Congress Representante En Congreso Vote for One / Vote por Uno	3 State Senator Senador Estatal Vote for One / Vote por Uno	4 State Representative Representante Estatal Vote for One / Vote por Uno	5 Registrar of Voters Registrador de Votantes Vote for One / Vote por Uno	VOTE ON THE QUESTION/ VOTE EN LA PREGUNTA ↓
DEMOCRATIC PARTY	<input type="radio"/> 1A Biden and Harris	<input type="radio"/> 2A Rosa L. DeLauro	<input type="radio"/> 3A Martin M. Looney	<input type="radio"/> 4A Roland Lemar	<input type="radio"/> 5A Shannel Evans	<p>“Shall Congress prepare for health and climate crises by transferring funds from the military budget to cities for human needs, jobs, and an environmentally sustainable economy?”</p> <p>¿Debería el Congreso prepararse para crisis climáticas y de salud transfiriendo fondos del presupuesto militar a las ciudades para cubrir las necesidades humanas, el empleo y una economía ambientalmente sostenible?</p> <p><input type="radio"/> YES/SI <input type="radio"/> NO/NO</p>
REPUBLICAN PARTY	<input type="radio"/> 1B Trump and Pence	<input type="radio"/> 2B Margaret Streicker	<input type="radio"/> 3B Jameson White	<input type="radio"/> 4B Eric Michael Mastroianni Sr.	<input type="radio"/> 5B Marlene Napolitano	
INDEPENDENT PARTY	<input type="radio"/> 1C	<input type="radio"/> 2C Margaret Streicker	<input type="radio"/> 3C	<input type="radio"/> 4C Eric Michael Mastroianni Sr.	<input type="radio"/> 5C	
WORKING FAMILIES PARTY	<input type="radio"/> 1D	<input type="radio"/> 2D Rosa L. DeLauro	<input type="radio"/> 3D	<input type="radio"/> 4D Roland Lemar	<input type="radio"/> 5D Sergio Rodriguez	
LIBERTARIAN PARTY	<input type="radio"/> 1E Jorgensen and Cohen	<input type="radio"/> 2E	<input type="radio"/> 3E	<input type="radio"/> 4E	<input type="radio"/> 5E	
GREEN PARTY	<input type="radio"/> 1F Hawkins and Walker	<input type="radio"/> 2F Justin C. Paglino	<input type="radio"/> 3F	<input type="radio"/> 4F	<input type="radio"/> 5F Paul A. Garlinghouse	
PETITIONING CANDIDATE	<input type="radio"/> 1G	<input type="radio"/> 2G	<input type="radio"/> 3G Alexander Taubes	<input type="radio"/> 4G	<input type="radio"/> 5G	
WRITE-IN VOTES VOTOS POR ESCRITO	<input type="radio"/> 1H	<input type="radio"/> 2H	<input type="radio"/> 3H	<input type="radio"/> 4H	<input type="radio"/> 5H	<p>Be sure to read the instructions on the reverse side of this ballot, it will help you in voting. Asegúrese leer las instrucciones en el otro lado antes de marcar esta papeleta.</p>

Exhibit B - November 6, 2018 State Election Ballot for
New Haven, CT

Exhibit B

**Be sure to read instructions to vote.
Asegúrese de leer las instrucciones para votar.**

Congressional District / Distrito: 3
Senatorial District / Distrito: 11
Assembly District / Distrito: 96
Voting Districts / Distritos: 7-2
8-2, 9-2, 10 & 12-1

**Vote on the
Questions**

1. Shall the Constitution of the State be amended to ensure (1) that all moneys contained in the Special Transportation Fund be used solely for transportation purposes, including the payment of debts of the state incurred for transportation purposes, and (2) that sources of funds deposited in the Special Transportation Fund be deposited in said fund so long as such sources are authorized by statute to be collected or received by the state?

1. ¿Debe enmendarse la Constitución del Estado para asegurar que: (1) todos los fondos depositados en el Fondo Especial de Transporte sean usado solamente para propósitos de transporte, incluyendo el pago de deudas del estado incurridas con propósito de transporte, y (2) que el origen de los fondos depositados en el Fondo Especial de Transportes se depositen en tal fondo siempre que los estatutos autoricen que dichas fuentes pueden ser cobradas o recibidas por el Estado?

☐ YES/SI ☐ NO/NO

2. Shall the Constitution of the State be amended to require (1) a public hearing and the enactment of legislation limited in subject matter to the transfer, sale or disposition of state-owned or state-controlled real property or interests in real property in order for the General Assembly to require a state agency to sell, transfer or dispose of any real property or interest in real property that is under the custody or control of the agency, and (2) if such property is under the custody or control of the Department of Agriculture or the Department of Energy and Environmental Protection, that such enactment of legislation be passed by a two-thirds vote of the total membership of each house of the General Assembly?

2. ¿Se debe enmendar la Constitución del Estado para que sea necesaria (1) una audiencia pública y la aprobación de legislación específica sobre cuestiones de transferencia, venta o disposición de bienes inmuebles – o intereses en bienes inmuebles – de propiedad o control del estado a fin de que la Asamblea General pueda solicitar a una agencia estatal vender, transferir o desechar un bien inmueble o un interés sobre un bien inmueble que está bajo la custodia o control de la agencia? y (2) ¿si tal propiedad se encuentra bajo la custodia o control del Departamento de Agricultura o el Departamento de Energía y Protección Ambiental, ¿tal aprobación de legislación debe realizarse con dos tercios de los votos del total de los miembros de cada cámara de la Asamblea General?

☐ YES/SI ☐ NO/NO

**OFFICE
CARGO
PARTY
PARTIDO**

1 Governor and Lieutenant Governor Gobernador y Vice Gobernador Vote for One/Vote por Uno	2 United States Senator Senador De Los Estados Unidos Vote for One/Vote por Uno	3 Representative in Congress Representante En El Congreso Vote for One/Vote por Uno	4 State Senator Senador Estatal Vote for One/Vote por Uno	5 State Representative Representante Estatal Vote for One/Vote por Uno
<input type="radio"/> 1A Ned Lamont and Susan Bysiewicz	<input type="radio"/> 2A Christopher S. Murphy	<input type="radio"/> 3A Rosa L. DeLauro	<input type="radio"/> 4A Martin M. Looney	<input type="radio"/> 5A Roland Lemar
<input type="radio"/> 1B Bob Stefanowski and Joe Markley	<input type="radio"/> 2B Matthew Corey	<input type="radio"/> 3B Angel Cadena	<input type="radio"/> 4B Erin Reilly	<input type="radio"/> 5B Eric Michael Mastrolanni Sr.
<input type="radio"/> 1C Ned Lamont and Susan Bysiewicz	<input type="radio"/> 2C Christopher S. Murphy	<input type="radio"/> 3C Rosa L. DeLauro	<input type="radio"/> 4C	<input type="radio"/> 5C Roland Lemar
<input type="radio"/> 1D Bob Stefanowski and Joe Markley	<input type="radio"/> 2D	<input type="radio"/> 3D	<input type="radio"/> 4D	<input type="radio"/> 5D
<input type="radio"/> 1E Rodney Hanscomb and Jeffrey Thibeault	<input type="radio"/> 2E Richard Lion	<input type="radio"/> 3E	<input type="radio"/> 4E	<input type="radio"/> 5E
<input type="radio"/> 1F	<input type="radio"/> 2F Jeff Russell	<input type="radio"/> 3F	<input type="radio"/> 4F	<input type="radio"/> 5F
<input type="radio"/> 1G Mark Stewart Greenstein and John Demitrus	<input type="radio"/> 2G	<input type="radio"/> 3G	<input type="radio"/> 4G	<input type="radio"/> 5G
<input type="radio"/> 1H Oz Griebel and Monte E. Frank	<input type="radio"/> 2H	<input type="radio"/> 3H	<input type="radio"/> 4H	<input type="radio"/> 5H
<input type="radio"/> 1I	<input type="radio"/> 2I	<input type="radio"/> 3I	<input type="radio"/> 4I	<input type="radio"/> 5I
<input type="radio"/> 1J WRITE-IN VOTES VOTOS POR ESCRITO	<input type="radio"/> 2J	<input type="radio"/> 3J	<input type="radio"/> 4J	<input type="radio"/> 5J

**TURN
BALLOT
OVER
AND
VOTE
BOTH
SIDES

BOLETA
DE TURNO
SOBRE Y
VOTE
AMBOS
LADOS**

Exhibit C - November 3, 2020 State Election Ballot for
Hartford, CT

Exhibit C

State of Connecticut
Official Ballot /
Voto Oficial

Hartford, Connecticut

State Election November 3, 2020
Elección Estatal 3 Noviembre 2020

Congressional District /
Distrito 1
Senatorial District /
Distrito 2
Assembly District / Distrito 5
Voting District / Distrito 24

Be sure to read the instructions on the reverse side of this ballot, it will help you in voting.
Asegúrese leer las instrucciones en el otro lado antes de marcar esta papeleta.

OFFICE CARGO ↓ PARTY PARTIDO	1 Presidential Electors for Electores Presidenciales Para Vote for One / Vote por Uno	2 Representative in Congress Representante En Congreso Vote for One / Vote por Uno	3 State Senator Senador Estatal Vote for One / Vote por Uno	4 State Representative Representante Estatal Vote for One / Vote por Uno	5 Registrar of Voters Registrador de Votantes Vote for One / Vote por Uno
DEMOCRATIC PARTY	1A Biden and Harris	2A John B. Larson	3A Douglas McCrary	4A Brandon L. McGee	5A Giselle "Gigi" Feliciano
REPUBLICAN PARTY	1B Trump and Pence	2B Mary Fay	3B	4B Charles Jackson	5B Vanessa Garay- Jackson
INDEPENDENT PARTY	1C	2C	3C	4C Charles Jackson	5C
WORKING FAMILIES PARTY	1D	2D John B. Larson	3D	4D	5D
LIBERTARIAN PARTY	1E Jorgensen and Cohen	2E	3E	4E	5E
GREEN PARTY	1F Hawkins and Walker	2F Thomas E. McCormick	3F	4F	5F
	1G	2G	3G	4G	5G
	1H	2H	3H	4H	5H
PETITIONING CANDIDATE	1I	2I	3I	4I	5I Sheila N. Hall
WRITE-IN VOTES VOTOS POR ESCRITO	1J	2J	3J	4J	5J

Exhibit D - November 6, 2018 State Election Ballot for
Hartford, CT

Exhibit D

Be sure to read instructions to vote.
Asegúrese de leer las instrucciones para votar.

Vote on the
Questions

1. Shall the Constitution of the State be amended to ensure (1) that all moneys contained in the Special Transportation Fund be used solely for transportation purposes, including the payment of debts of the state incurred for transportation purposes, and (2) that sources of funds deposited in the Special Transportation Fund be deposited in said fund so long as such sources are authorized by statute to be collected or received by the state?

1. ¿Debe enmendarse la Constitución del Estado para asegurar que: (1) todos los fondos depositados en el Fondo Especial de Transporte sean usado solamente para propósitos de transporte, incluyendo el pago de deudas del estado incurridas con propósito de transporte, y (2) que el origen de los fondos depositados en el Fondo Especial de Transportes se depositen en tal fondo siempre que los estatutos autoricen que dichas fuentes pueden ser cobradas o recibidas por el Estado?

● YES/SI ● NO/NO

2. Shall the Constitution of the State be amended to require (1) a public hearing and the enactment of legislation limited in subject matter to the transfer, sale or disposition of state-owned or state-controlled real property or interests in real property in order for the General Assembly to require a state agency to sell, transfer or dispose of any real property or interest in real property that is under the custody or control of the agency, and (2) if such property is under the custody or control of the Department of Agriculture or the Department of Energy and Environmental Protection, that such enactment of legislation be passed by a two-thirds vote of the total membership of each house of the General Assembly?

2. ¿Se debe enmendar la Constitución del Estado para que sea necesaria (1) una audiencia pública y la aprobación de legislación específica sobre cuestiones de transferencia, venta o disposición de bienes inmuebles – o intereses en bienes inmuebles – de propiedad o control del estado a fin de que la Asamblea General pueda solicitar a una agencia estatal vender, transferir o desechar un bien inmueble o un interés sobre un bien inmueble que está bajo la custodia o control de la agencia? y (2) ¿si tal propiedad se encuentra bajo la custodia o control del Departamento de Agricultura o el Departamento de Energía y Protección Ambiental, ¿tal aprobación de legislación debe realizarse con dos tercios de los votos del total de los miembros de cada cámara de la Asamblea General?

● YES/SI ● NO/NO

OFFICE
CARGO
PARTY
PARTIDO

1 Governor and Lieutenant Governor Gobernador y Vice Gobernador Vote for One/Vote por Uno	2 United States Senator Senador De Los Estados Unidos Vote for One/Vote por Uno	3 Representative in Congress Representante En El Congreso Vote for One/Vote por Uno	4 State Senator Senador Estatal Vote for One/Vote por Uno	5 State Representative Representante Estatal Vote for One/Vote por Uno
DEMOCRATIC PARTY ● 1A Ned Lamont and Susan Bysiewicz	● 2A Christopher S. Murphy	● 3A John B. Larson	● 4A John W. Fonfara	● 5A Matthew Ritter
REPUBLICAN PARTY ● 1B Bob Stefanowski and Joe Markley	● 2B Matthew Corey	● 3B Jennifer T. Nye	● 4B Barbara Ruhe	5B
WORKING FAMILIES PARTY ● 1C Ned Lamont and Susan Bysiewicz	● 2C Christopher S. Murphy	● 3C John B. Larson	4C	5C
INDEPENDENT PARTY ● 1D Bob Stefanowski and Joe Markley	2D	3D	4D	5D
LIBERTARIAN PARTY ● 1E Rodney Hanscomb and Jeffrey Thibeault	● 2E Richard Lion	3E	4E	5E
GREEN PARTY 1F	● 2F Jeff Russell	● 3F Thomas McCormick	● 4F Barbara Barry	5F
AMIGO CONSTITUTION LIBERTY PARTY ● 1G Mark Stewart Greenstein and John Demitrus	2G	3G	4G	5G
GRIEBEL FRANK FOR CT PARTY ● 1H Oz Griebel and Monte E. Frank	2H	3H	4H	5H
1I	2I	3I	4I	5I
WRITE-IN VOTES VOTOS POR ESCRITO ● 1J	● 2J	● 3J	● 4J	● 5J

TURN
BALLOT
OVER
AND
VOTE
BOTH
SIDES

BOLETA
DE TURNO
SOBRE Y
VOTE
AMBOS
LADOS

Certification of Flavio L.
Komuves, dated June 3, 2022

Schedule 5

	:	BEFORE THE NEW JERSEY
In re: Nominating Petition of Hon. Tom	:	SECRETARY OF STATE,
Malinowski for Congressional District 7	:	DIVISION OF ELECTIONS
	:	

FLAVIO L. KOMUVES, of full age, certifies as follows:

1. I am an attorney at law admitted to practice in all federal and state courts in the State of New Jersey. All facts set forth in this Certification have been collected by me or under my supervision.
2. This Certification analyzes and summarizes certain voluminous election records. All such election records are public records that are prepared by public officials or from otherwise reliable sources. I maintain in my possession the records relied upon and will make them available for examination or copying, or both, by other parties at a reasonable time and place. I will produce the underlying records if ordered by the Court.
3. The purpose of this Certification is to analyze whether major contested elections in New Jersey frequently involve a proliferation of minor party candidates successfully filing to run for office and ultimately appearing on the ballot. New Jersey law requires a candidate who is not the nominee of the Democratic or Republican Parties and who is not running in a nonpartisan election for certain municipalities' local offices or for board of education to obtain 800 valid signatures of registered voters to run for U.S. President, U.S. Senate, or Governor; and 2% of turnout, but not to exceed 100 signatures, to run for the U.S. House of Representatives, State Senate, State Assembly, or county or local offices. In years following decennial redistricting

(e.g. 2022 for Congressional candidates and 2023 for state legislative candidates), the maximum number of signatures for other than statewide office is reduced to 50 valid signatures of registered voters from the new district.

4. Examination of the last 10 years of records showed the following number of candidates appeared to voters on the general election ballot as candidates in the years and for the races indicated (President, Governor, U.S. Senate, U.S. Congress).

2012

Statewide races

Presidential candidates	10
U.S. Senate candidates	11

Congressional races

District 1 candidates	4
District 2 candidates	6
District 3 candidates	7
District 4 candidates	3
District 5 candidates	3
District 6 candidates	6
District 7 candidates	4
District 8 candidates	5
District 9 candidates	4
District 10 candidates	4
District 10 special candidates	2
District 11 candidates	3
District 12 candidates	4

2013

Statewide races

Gubernatorial candidates	8
Special U.S. Senate election candidates	8

2014

Statewide races

U.S. Senate candidates	7
------------------------	---

Congressional races

District 1 candidates	7
District 1 special candidates	5
District 2 candidates	6
District 3 candidates	3
District 4 candidates	3
District 5 candidates	3
District 6 candidates	3
District 7 candidates	3
District 8 candidates	5
District 9 candidates	3
District 10 candidates	4
District 11 candidates	2
District 12 candidates	7

2015 (no statewide or Congressional races)

2016

Statewide races

Presidential candidates	9
-------------------------	---

Congressional races

District 1 candidates	5
District 2 candidates	7
District 3 candidates	3
District 4 candidates	4
District 5 candidates	3
District 6 candidates	4
District 7 candidates	4
District 8 candidates	4
District 9 candidates	4
District 10 candidates	4
District 11 candidates	4
District 12 candidates	7

2017

Statewide races	
Gubernatorial candidates	7

2018

Statewide races	
U.S. Senate candidates	8

Congressional races	
District 1 candidates	5
District 2 candidates	6
District 3 candidates	3
District 4 candidates	7
District 5 candidates	4
District 6 candidates	2
District 7 candidates	4
District 8 candidates	4
District 9 candidates	3
District 10 candidates	5
District 11 candidates	4
District 12 candidates	2

2019 (no statewide or Congressional races)

2020

Statewide races	
Presidential candidates	8
U.S. Senate candidates	5

Congressional races	
District 1 candidates	2
District 2 candidates	4
District 3 candidates	4
District 4 candidates	5
District 5 candidates	3
District 6 candidates	2
District 7 candidates	2
District 8 candidates	3
District 9 candidates	3

District 10 candidates	5
District 11 candidates	2
District 12 candidates	4

2021

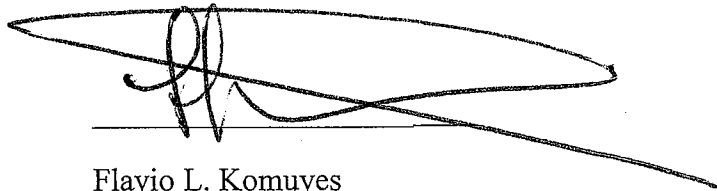
Statewide races

Gubernatorial candidates	5
--------------------------	---

5. Based on the foregoing, in all 73 elections studied, the arithmetic mean number of candidates for the stated offices per election was 4.60 and the median number of candidates for the stated offices per election was 4.

6. Based on the foregoing, in the 62 Congressional elections alone, the arithmetic mean number of candidates for the stated offices per election was 4.03 and the median number of candidates for the stated offices per election was 4.

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



Flavio L. Komuves

Dated: June 3, 2022

Certification of Matthew Waggner,
dated June 4, 2022

Schedule 6

	:	BEFORE THE NEW JERSEY
In re: Nominating Petition of Hon. Tom	:	SECRETARY OF STATE,
Malinowski for Congressional District 7	:	DIVISION OF ELECTIONS
	:	
_____	:	

MATTHEW WAGGNER, of full age, certifies as follows:

1. I am a Registrar of Voters in the Town of Fairfield, Connecticut. I have served in this role since 2009. All facts set forth in this Certification have been collected by me or under my supervision.

2. The Office of the Registrars of Voters is a department in the Fairfield municipal government that maintains the records for over 39,000 Fairfield voters, and administers all federal, state, and local elections in Fairfield in accordance with Connecticut and federal law. The other year-round staff in the Office include a second Registrar of Voters and a Secretary. Each of our roles require approximately 35 hours per week, year round. The Registrar's Office handles a partisan general election every year, with federal and statewide elections in even years and municipal elections in odd years.

3. For each general election, our staff expands to between 100 and 150 personnel in order to serve 10–12 polling places, count absentee ballots, and respond to numerous requests from the public. A conservative estimate would be that each temporary staff member works 18 hours in

the course of fulfilling their role over the course of an election. Each of these temporary staff members undergoes specific pollworking training, and some must also undergo a state certification process.

4. In administering each general election, my duties include, but are not limited to: conducting voter registration sessions; maintaining the registered voter list; establishing polling places; purchasing ballots; testing and calibrating voting machines; hiring and training pollworkers; tabulating all ballots cast by Fairfield voters; and performing post-election recanvass and audit procedures.

5. Connecticut law permits electoral fusion on the general election ballot and requires a “disaggregated” method for identifying a candidate’s share of votes attributable to each nominating party. As a result, two or more political parties often cross-endorse the same candidate in an election, meaning that the candidate’s name appears once for each nominating party. This system permits voters supporting a candidate with cross-endorsements to specify under which of the nominating parties the voter wants her vote counted. Consequently, this system also then allows for a separate subtotal of how many voters supported a candidate under each of the nominating parties.

6. Under the alternative system, known as “aggregated” fusion, all nominating parties are simply listed under a candidate’s name. Under this system, voters cannot specify under which of the nominating parties they would like their votes for cross-endorsed candidates to count, nor is it possible to calculate a subtotal of how many voters supported a candidate under each of the nominating parties.

7. In a jurisdiction where voters cast a ballot through a mechanical or electronic voting machine, it would be easy to program the machines to physically prohibit a voter from voting more than once for the same cross-endorsed candidate, in order to prevent a “double vote.” For example, if candidate John Smith is nominated by the Republican Party and Independent Party in the race for State House, the voting machine could permit the selection of John Smith on the Republican Party line *or* the Independent Party line, but not both.

8. However, in Connecticut, voters fill out hard-copy ballots, which are then processed through optical scanning tabulators. Because there is no way to physically stop a voter from marking multiple bubbles on a hard-copy ballot, a double vote for the same candidate is possible. Our ballots instruct the voter to only make one selection per race, but a voter might nonetheless vote for the preferred cross-endorsed candidate each time the candidate appears on the ballot. And in some cases, they do. Using the example above, a voter might fill in the bubble for John Smith under the Republican Party line *and* the Independent Party line.

9. Double votes for the same candidate are irrelevant for determining the winner of a given election, as the voter unambiguously expressed an intent to cast a vote for one candidate. Double votes are, however, relevant to calculating the subtotal of how many voters supported a candidate under each of the nominating parties. Previously, guidance from the Connecticut Secretary of State directed local election administrators (like myself) to count any double vote under the nominating minor party’s tally. Currently, state statute provides a mathematical formula for allocating double votes between nominating parties.

10. In any event, double votes generally represent a small percentage of total votes cast in a given election. For example, incumbent Chris Murphy was endorsed by both the Democratic

Party and Working Families Party in the 2018 election for U.S. Senate. Of the 27,526 votes cast in that election, merely 0.19% of ballots (53) included double votes for Chris Murphy on both the Democratic Party and Working Families Party lines. These figures are taken from public records that are prepared by public officials or from otherwise reliable sources, namely the Town of Fairfield Office of the Registrar of Voters Historical Elections Results webpage, which can be accessed at <https://www.fairfieldct.org/votenews/?FeedID=4479>.

11. One of the preparatory steps before an election is to conduct logic and accuracy testing on the tabulation machine and to confirm that the votes are properly registering in the system. This process requires testing a ballot with a double vote for each candidate with cross-endorsements to ensure that it is properly recorded as “unknown party” vote under the correct candidate’s name. I estimate that under \$10 in ballots are used each year in Fairfield in order to conduct this test. Further, after all actual votes are cast and tabulated, there is a process for manually reviewing data fields before submission of final figures to the Secretary of State, and that process includes some time attributable to reviewing data for each candidate with cross-endorsements receiving double votes. I estimate that these additional pre- and post-election tasks occupy no more than 2 hours of Registrar’s Office staff time each year.

12. The Registrar’s Office receives a large volume of calls, emails, letters, and other inquiries from voters, candidates, party officials, and others with questions about election administration. Only a small handful of these inquiries (approximately six or less per year) involve questions or concerns from voters as to why some candidates appear multiple times on the ballot with endorsements from multiple political parties. I estimate that such inquiries relating to fusion voting occupy no more than 10 minutes of Registrar’s Office staff time each year.

13. I cannot identify any additional Registrar's Office time or resources attributable to the presence of cross-endorsements on general election ballots and disaggregated fusion voting in Connecticut, apart from the several tasks discussed above.

14. In total, I estimate that the presence of cross-endorsements on general election ballots and disaggregated fusion voting in Connecticut occupies approximately 2 hours and 10 minutes of Registrar's Office staff time and less than \$10 in expenditures each year. By comparison, the three full-time Registrar's Office staff work approximately 5,460 hours per year, and a highly conservative estimate would be that our time is divided equally on tasks relating to the administration of primary elections versus general elections. (In reality, the share of time spent on tasks relating exclusively to primary election administration is substantially lower.) Combined with approximately 1800 hours per general election worked by pollworkers (using a conservative estimate of 100 such personnel), and a conservative estimate of 1400 hours of seasonal staffing, time spent by Registrar's Office staff on tasks attributable to the presence of cross-endorsements on general election ballots and disaggregated fusion voting in Connecticut represents 0.037% of total time spent on administering general elections in Fairfield. The annual budget of the Registrar's Office is approximately \$300,000, meaning that the additional ballots purchased for fusion-related quality control represent approximately 0.003% of total expenditures.

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

/s/Matthew Waggner

Matthew Waggner

Dated: June 4, 2022

Certification of James Albis,
dated June 2, 2022

Schedule 7

In re: Nominating Petition of Hon. Tom
Malinowski for Congressional District 7

: BEFORE THE NEW JERSEY
: SECRETARY OF STATE,
: DIVISION OF ELECTIONS
:
_____:

JAMES ALBIS, of full age, certifies as follows:

1. I am the Director of Policy and Planning for the Connecticut Department of Energy and Environmental Protection's Bureau of Materials Management and Compliance Assurance. Prior to joining the Connecticut Department of Energy and Environmental Protection, I served as a State Representative in the Connecticut General Assembly from February 2011 through January 2019. I represented District 99, which includes the town of East Haven.
2. In 2012, I was cross-endorsed by the Democratic Party and Working Families Party. I won election with 68.5% of the vote. Five-hundred and eighteen (518) of the votes that I received (totaling 6.0% of total votes cast in the election) were from the Working Families Party line. These figures, and the figures in the following paragraphs, are taken from public records prepared by public officials or from otherwise reliable sources, specifically, the Connecticut Secretary of State's Election Results Archive, which can be accessed at www.electionhistory.ct.gov.

3. In 2014, I was cross-endorsed by the Democratic Party, Working Families Party, and Independent Party. I won election with 67.3% of the vote. Five-hundred and thirty-three (533) of the votes I received (totaling 8.1% of the total votes cast in the election) were from the Working Families Party and Independent Party lines.

4. In 2016, I was cross-endorsed by the Democratic Party and Working Families Party. I won election with 50.1% of the vote. Four-hundred and forty-one (411) of the votes I received (totaling 4.4% of the total votes cast in the election) were from the Working Families Party, and this total far exceeded the margin of victory (11 votes). I am confident that I would have lost this election without the cross-endorsement of the Working Families Party and the ability of voters in my district to cast their ballot for me without having to vote under a major party line.

5. In 2018, I was cross-endorsed by the Democratic Party and Working Families Party. I won election with 58.2% of the vote. Three-hundred and eighty-four (384) of the votes I received (totaling 4.6% of the total votes cast in the election) were from the Working Families Party.

6. Obtaining the cross-endorsement of at least one minor party was essential to each of my campaigns. Like many voters in my district, my views on many issues are similar to the policy positions of the Democratic Party and are often at odds with the policy positions of the Republican Party. However, like many voters in my district, I sometimes disagree with positions taken or views expressed by Democratic Party leaders at the state or federal level, and I believe that the Democratic Party could have done more historically and should do more at present to support low- and middle-class families. Indeed, in speaking with voters in my district, I learned that a substantial number of them were deeply disillusioned with both major parties and felt that neither understood nor took sufficient action to promote their economic well-being. If I had been

limited to only receiving the Democratic Party nomination, it would have been difficult for me to convey an accurate sense of my values to the electorate, and many voters otherwise inclined to vote for me undoubtedly would have refused to do so because it would have required them to associate with and directly support the Democratic Party. Thus, I sought the cross-endorsement of a minor party to both more clearly convey my values and to make it possible for voters who shared these values and were inclined to support me to do so, even if they were unwilling to vote on the Democratic Party line.

7. In each of my campaigns, I obtained endorsements from a number of interest groups and other civic organizations. While I sought out and celebrated these endorsements as additional ways to convey my priorities to the electorate, they were different in kind than my cross-endorsements from the Working Families Party and Independent Party. The reason is simple: those minor party cross-endorsements *were on the ballot*, and fusion voting empowered voters to both individually and collectively convey their values and preferences to me. When speaking with voters disillusioned with the two major parties and politics writ large, I would often highlight a minor party cross-endorsement and my minor party line on the ballot. If the Working Families Party and Independent Party nominations were not accompanied by an opportunity for voters to cast a vote for me on a minor party line in the general election, it would have been much more difficult for me to engage and connect with disillusioned voters or for them to participate in the election in a manner consistent with their values and preferences.

8. From the perspective of a candidate and elected official, casting a ballot is one of the most meaningful ways for voters to express their preferences. When there are one or more minor party cross-endorsements on the ballot, and the vote totals for each candidate are disaggregated across each party, it is much easier for the voters to convey, and candidates and elected officials


to understand, their preferences. While I am inclined by my nature to speak my mind, the substantial support I received from the minor party line(s) would further empower me to express disagreement with my Democratic Party colleagues when I believed they were not acting in the public interest. This caused neither rancor nor discord within the Democratic Party caucus, but instead forced the party to be more responsive to the will and needs of the electorate. This dynamic is particularly important in a state like Connecticut where one of the major parties has enjoyed substantial control over state government in recent years.

9. If voters in my district lacked the opportunity to vote for candidates (such as myself) on a cross-endorsed minor party's line and were therefore compelled to vote either Democratic or Republican, I strongly believe that fewer voters would participate in our elections.

10. I am and have always been a registered member of the Democratic Party. However, I believe that the rigid two-party system that predominates national politics is undesirable and a key contributor to hyper-polarization, political dysfunction, and eroding democratic norms at the national level. I support the ability of minor parties to compete for public support and believe that our electoral rules should not unfairly favor the Democratic and Republican Parties at their expense. I believe that strong minor parties can and should play a constructive role and therefore contribute to a healthy democratic system. Indeed, I believe that the widespread use of fusion voting is a central reason why, at the state level, Connecticut boasts a highly-functioning democracy, where commitment to democratic norms by elected officials and the voting public remains much stronger than in other parts of the country. Likewise, the rising tide of anti-democratic populism elsewhere in the United States has been substantially less pronounced in Connecticut. While the Democratic Party and Republican Party remain, without question, the most important political parties in state politics, the presence of thoughtful and engaged fusion-

oriented minor parties has provided the stability and balance increasingly absent from our national politics.

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


James Albis

Dated: June 2, 2022

Schedule 8

LEE DRUTMAN
Senior Fellow
New America – Political Reform Program

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EXPERT QUALIFICATIONS

I am a senior fellow in the political reform program at New America and a lecturer at The Johns Hopkins University in the master's program for Governmental Affairs.

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I. THE EXISTENTIAL THREAT OF HYPER-PARTISAN POLARIZATION

A broad consensus exists among political experts that American democracy is in a brittle and threatened place, with an increasingly dysfunctional government that has lost the trust and goodwill of the American people. Though there are certainly many causes for this moment of crisis, the overwhelming balance of expert judgment places hyper-partisan polarization at the core.

The reasons why hyper-partisan polarization is a threat to the stability of democracy are straightforward and simple to understand. Democracy depends on a shared foundation of fairness around elections. Winning parties must win graciously and not use their newly-acquired powers to prevent their opposition from effectively challenging them in the next election. Losing parties must acknowledge that they have lost and acknowledge the legitimacy of the election. When this shared sense of fairness and fair play breaks down, violence or the threat of violence becomes the alternative. One pithy definition of democracy is that it is a system in which parties can lose elections.¹ Democracies die when one side believes that winning the next election is so important that it is willing to use extra-democratic means to achieve its goal.²

A core problem with hyper-partisan polarization is that it has a reinforcing feedback quality, what I've called "the two-party doom loop."³ That is, as the parties move further apart from each other, they engage in more aggressive hardball tactics and rhetoric. These aggressive hardball tactics and rhetoric further push them away from each other. This occurs both at the elite level and the mass level, both of which feed back on each other. The more partisan elites demonize their opponents to win elections, the more partisan voters punish leaders who compromise with "the enemy." The less compromise, the more that the trust and goodwill and cooperation necessary for governing break down. All of these processes feed on each other in an escalating spiral of tit-for-tat. What may begin as a small slight can reverberate through intensifying grudges and retaliations.

One example: federal judicial nominations in the US Senate. Once a cooperative bipartisan process in which most nominees had moderate judicial approaches and received super-majority support, it has metamorphosed into a scorched-earth process in which judges have become clearly identified with one side and are rammed through with narrow majorities.

¹ Adam Przeworski, *Democracy and the Market*, (Cambridge ; New York: Cambridge University Press, 1991). The full quote is: "Democracy is a system in which parties lose elections. There are parties: divisions of interests, values, and opinions. There is competition, organized by rules. And there are periodic winners and losers." (p 1)

² Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018).

³ Lee Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (New York: Oxford University Press, 2020).

Did the breakdown begin with the confirmation hearings of Robert Bork, or Clarence Thomas? Maybe. Did Republicans escalate with their refusal to confirm many of Obama's nominees to lower courts? Did Democrats escalate when Harry Reid led Democrats to "go nuclear" and end the filibuster for lower court judicial nominees? Did Republicans escalate with the refusal to give Merrick Garland even a hearing in 2016 on the premise that the Senate should not confirm any justice during an election year, only to confirm Amy Coney Barrett just weeks before the 2020 presidential election? This is the logic of hyper-partisan escalation. It is a steady ratchet up, with each ratchet seemingly justified by the previous escalation, and tremendous pressure on both sides not to back down. It is crucial to understand that this is a reinforcing process.⁴

It is also a process with significant consequences. The breakdown of perceived fairness in judicial nominations, for example, undermines the independence and legitimacy of the judiciary. Partisan voting for nominees makes clear the partisan allegiances of justices, which undermines their authority as independent judges, since when presented with a case, must necessarily rule in one side's favor or the other's, or, in the case of upper courts, choose to grant or deny review of lower court decisions.

If citizens see judges as tainted, illegitimate, political appointees, it follows that judicial decisions themselves will likewise suffer a crisis of legitimacy. Not surprisingly, the approval rating of the Supreme Court has suffered as hyper-partisan polarization has worsened.⁵

Achieving de-escalation in this particular doom loop of judicial hardball is difficult for two reasons. First, the escalation has caused a breakdown of trust among political elites, in this case Senators. But second, and more challengingly, the escalating rhetoric of political elites in the past has trapped them in the present. To compromise now would be to back down, a compromise that the most active partisan voters would likely reject and respond to with a primary challenge. Negotiating this impasse depends on a strong cohort of moderates, who are able to mediate between the competing sides. The disappearance of the political center over the last several decades has taken these bridge-builders out of elected office, and replaced them with partisan fighters.

This breakdown of perceived fairness now extends to almost all areas of political life. Most importantly, for the sake of continued democracy, it now extends to the basic foundation of self-governance: free and fair elections, that are not only free and fair in actuality, but widely accepted as free and fair. Electoral confidence has been declining since

⁴ Mark Tushnet, "Constitutional Hardball," *John Marshall Law Review* 37 (2004 2003): 523–54.

⁵ "America's Supreme Court Faces a Crisis of Legitimacy," *The Economist*, May 7, 2022, <http://www.economist.com/briefing/2022/05/07/americas-supreme-court-faces-a-crisis-of-legitimacy>. Noting that over 15 years, the approval rating of the Supreme Court has fallen from 60 percent to 40 percent.

2000, as hyper-partisan polarization has increased.⁶ In an era of high-stakes elections and narrow partisan margins, even small changes in voting rules can have profound consequences for election outcomes, or serve as fodder for partisan media attacks, thus further weakening the legitimacy of elections on which democratic self-governance depends.

At the same time, political elites have been challenging more of their losses with lawsuits. What election law expert Rick Hasen calls the “Voting Wars” has called more and more results into question, and courts have accordingly played a more important role in deciding electoral outcomes by being asked to weigh in more and more on voting laws and districting plans. Under hyper-partisan politics, the perceived differences between winning and losing create a justification for pursuing every possible legal angle. But as this excessive litigation becomes standard fare in close elections, it further undermines confidence in elections.⁷

Thus, the “Stop the Steal” narrative that emerged following Trump’s loss in the 2020 election was the logical continuation of two decades of hyper-partisan challenges to electoral results. Trump succeeded in spreading his lies about a stolen election because hyper-partisan polarization created an audience of fellow Republicans ready to believe that Democrats are so evil that they would cheat and commit fraud in order to steal an election.

This hatred not only leads Republicans to see Democrats as illegitimate and dangerous. It also leads them to tolerate and perhaps even welcome norm violations by their side, if that’s what it takes for them to win. Indeed, a growing body of social science shows that partisan voters are willing to support fellow partisans who break democratic norms in order to win elections. And the more strongly partisan the voters, the more enthusiastic they tend to be about breaking norms of fair play in order to win elections. These findings apply equally to Democrats and Republicans. Indeed, it is quite possible to imagine that had Trump narrowly won the 2020 election, majorities of Democrats would believe the election had been stolen, especially if entrepreneurial political and media elites on the left developed theories of foreign interference, as some did in 2016.

Even worse, hyper-partisan polarization also leads to dehumanization of political opponents, seeing them as inferior. Dehumanization is a well-known precursor to violence, since once you no longer see your opponents as fully human, you lose empathy for them and

⁶ Michael W. Sances and Charles Stewart, “Partisanship and Confidence in the Vote Count: Evidence from U.S. National Elections since 2000,” *Electoral Studies* 40 (December 1, 2015): 176–88.

⁷ Richard L. Hasen, *The Voting Wars: From Florida 2000 to the Next Election Meltdown* (Grand Rapids, Michigan: Yale University Press, 2012); Richard L. Hasen, “Research Note: Record Election Litigation Rates in the 2020 Election: An Aberration or a Sign of Things to Come?,” *Election Law Journal: Rules, Politics, and Policy*, February 15, 2022, elj.2021.0050, <https://doi.org/10.1089/elj.2021.0050>; Richard L. Hasen, “The 2016 Voting Wars: From Bad to Worse,” *William & Mary Bill of Rights Journal* 26, no. 3 (2018): 629–55.

their families. It is thus not surprising to see more and more partisans telling pollsters that they think violence might be justified if their side loses an election.⁸

The cresting of all of these inter-related trends (hyper-partisan polarization, distrust in electoral results, and increasing openness to political violence) has led a growing number of experts to anticipate a potentially violent national election in the near future, and a potential constitutional crisis. With leaders, especially on the authoritarian right, increasingly embracing violent and dehumanizing language, there are very good reasons for concern.⁹

But even without a total breakdown of democracy, hyper-partisan polarization has already contributed to a significant rise in government dysfunction, and growing failures to address significant political problems, and has created tremendous uncertainty for economic actors who see administrations whipsawing between competing approaches to regulatory and economic policy. Hyper-partisanship arguably even costs lives. The United States had considerably higher death rates from COVID than other comparable nations because support for masking and vaccinations became a partisan political issue.¹⁰ The failure to respond to rising gun violence is also a consequence of hyper-partisan polarization, as neither side wishes to compromise on the issue.

In earlier times, a large enough number of moderate representatives and Senators would have pushed back against these radicalizing tendencies to keep them at bay. These moderates served as the core of a broad cross-partisan governing coalition able to work out compromises on important and pressing policy concerns. But the slow and steady collapse of the political center has decreased the number of compromise-oriented moderates in Congress (and in many state legislatures) to hold back the forces of extremism and conflict.

To understand why structural changes are necessary, we need to understand why the current two-party system cannot and will not self-correct without institutional changes. And to understand that we need to first explore how and why the political center has collapsed.

II. THE COLLAPSE OF THE POLITICAL CENTER

⁸ Nathan P. Kalmoe and Lilliana Mason, *Radical American Partisanship: Mapping Violent Hostility, Its Causes, and the Consequences for Democracy*, Chicago Studies in American Politics (Chicago ; London: The University of Chicago Press, 2022).

⁹ George Packer, "Are We Doomed?," *The Atlantic*, December 6, 2021, <https://www.theatlantic.com/magazine/archive/2022/01/imagine-death-american-democracy-trump-insurrection/620841/>; Zack Beauchamp, "How Does This End?," *Vox*, January 3, 2022, <https://www.vox.com/policy-and-politics/22814025/democracy-trump-january-6-capitol-riot-election-violence>; Robert Kagan, "Opinion | Our Constitutional Crisis Is Already Here," *Washington Post*, September 23, 2021, sec. Opinions, <https://www.washingtonpost.com/opinions/2021/09/23/robert-kagan-constitutional-crisis/>.

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The collapse of the political center is a well-known but poorly understood development in American politics over the last four decades. It is well known because everyone knows that “moderates” in elected office have disappeared. But it is poorly understood because few people have a compelling explanation for why it happened, and even fewer understand why there was moderation to begin with. Most common explanations focus on epiphenomena of the changes, such as changes in the culture of Washington, or the failure of individual members to get to know each other's families and spend time together as people. But these changes are downstream from the simple fact that in an earlier era, the parties were overlapping coalitions in which considerable bipartisanship emerged from the fact that many Representatives and Senators held shared views that crossed party lines, and the parties were so ideologically diverse and heterogeneous that it was impossible for any one person to impose a “party line.”

The simplest way to understand this transformation is that we went from something more like a four-party system (with liberal Republicans and conservative Democrats alongside liberal Democrats and conservative Republicans) into a two-party system (with just liberal Democrats and conservative Republicans). In the four-party system, coalitions were flexible, issue dependent, and thus multi-dimensional, with few permanent enemies and many possible allies on all issues. In the two-party system, there were only two coalitions, locked in a zero-sum struggle along a single “us-vs-them” dimension.

In essence, the American two-party system is now the purest version of itself, a two-party system in which the two parties are distinct, non-overlapping coalitions that offer extremely distinct alternatives to the American people. However, contrary to expectations of a previous generation of political scientists who lauded this as a vision of “responsible party government,”¹¹ the reality is that the pure two-party system has been a disaster. It has been a disaster both because of what it does to our brains (it triggers very primal friend-vs-foe mental hardware that shuts down reason and openness to alternatives¹²) and because of its poor fit with our political institutions, which are specifically designed to force broad compromise by spreading power across competing institutions each of which is chosen by a separate electorate on a separate timeline. The result has been an unmitigated disaster for American democracy.

Though the conventional wisdom of an earlier generation of scholars was that the two-party system was a stabilizing force in America, they failed to understand the time-bound conditions on which this stability depended and they failed to appreciate that the reason the system worked was that the two parties themselves contained overlapping factions in what

¹¹ American Political Science Association, Committee on Political Parties, *Toward a More Responsible Two-Party System : A Report* (New York: Rinehart, 1950).

¹² Mason, *Uncivil Agreement*.

in retrospect looks much more like cross-cutting multiparty system within a two-party system. It is understandable that scholars of a previous generation would make these oversights, since the underlying conditions had been stable for many decades.

Thus, in assessing the contemporary challenges of American democracy, it is crucial to understand that the collapse of the multi-dimensional four-party system into the uni-dimensional two-party system was the consequence of three inter-related and reinforcing developments in US politics over the last several decades within the context of single-winner elections and two political parties: 1) the geographical sorting of the political parties; 2) the nationalization of American politics; and 3) continued close national elections.

Because these three trends are not reversible (we have no Superman to spin the earth backwards to go back in time), the conditions that previously supported a large political middle in a functioning two-party system cannot be re-created. This is why the system will not correct on its own. Instead, it must be recalibrated through active but carefully considered intervention. Let me say more briefly about each of these political developments.

A. THE GEOGRAPHICAL SORTING OF PARTIES

In 1960, in one of the closest elections in American political history, Democrats and Republicans were able to compete in most places because both parties had liberal and conservative factions. In 1960, the parties were overlapping coalitions, and at a national level, they were both broadly moderate and centrist, even if they both had some representatives at the political extremes.

In this earlier era, neither party took a strong stance on social and cultural issues because the coalitions of both parties stretched across the country, and the divisions within the parties between socio-cultural liberals and conservatives reflected the larger divisions in the country. In this respect, it is crucial to know that the Voting Rights Acts of 1964 and 1965 both passed with super-majorities in both chambers, and Republicans were actually slightly more supportive (on balance) than Democrats.

But the civil rights revolution of the 1960s set in motion a significant realignment of American politics. As the Democratic party came to “own” the issue of civil rights, the South shifted from solidly Democratic to increasingly Republican, first in presidential voting, then in congressional voting. As cultural and social issue fissures continued to develop in the 1970s around the Vietnam War, drugs, women’s rights, abortion, and other issues, both parties began to take clearer national stances on these issues.

The 1970s was largely a period of political de-alignment, in which many citizens began to reconsider their allegiances to the two major parties.¹³ During this period, many voters split their tickets, voting for one party for president and the other for Congress, and more than ever, voted for the candidate, not the party. In political science terms, elections had become “candidate-centric”, with incumbents cultivating “the personal vote.”¹⁴ Practically, it meant that individual representatives had the freedom to build their own brands and in Congress, many entrepreneurial representatives built their own cross-partisan coalitions to tackle various issues that didn’t fit a simple left-right divide.

But by the 1980s, as “culture war” politics became increasingly central to US partisan conflict, the parties took increasingly clearly differentiated stands at a national level. As southern conservatives moved from the Democratic Party to the Republican Party, the Democratic coalition became more socially liberal, and the Republican coalition became more socially conservative. Northern and coastal liberals moved more solidly into the Democratic Party at roughly the same time. Put simply, ideological liberals and conservatives sorted themselves into political parties, and less ideological partisans updated their beliefs to match their parties.¹⁵

As the Republican party became more socially conservative overall, it became harder for Republican candidates to compete in more socially liberal places. As the Democratic party became more socially liberal overall, it became harder for Democratic candidates to compete in more culturally conservative places. Because of the nature of single-winner elections, once Democrats/Republicans fell below a competitive threshold in many parts of the country, it made less and less sense for them to compete at all for voters by investing significant resources in candidate recruitment, advertising, and voter mobilization. This led Democrats/Republicans to give up on large parts of the country, narrowing their base of support even further.

With the parties now more homogeneously split on the culturally conservative/liberal divide, the US two-party system became the purest version of itself: a uniquely and historically divided two-party system with no overlap. With the Republican wave election of 2010 sweeping out the last of the Southern conservative Democrats, the four-party system almost entirely vanished, save a few legacy vestiges. A fully sorted two-party system had arrived, drawing in a new generation of candidates eager to engage in partisan warfare, and

¹³ Helmut Norpoth and Jerrold G. Rusk, “Partisan Dealignment in the American Electorate: Itemizing the Deductions since 1964,” *American Political Science Review* 76, no. 3 (September 1982): 522–37, <https://doi.org/10.2307/1963729>.

¹⁴ Bruce E. Cain, John A. Ferejohn, and Morris P. Fiorina, *The Personal Vote: Constituency Service and Electoral Independence* (Harvard University Press, 1987).

¹⁵ Matthew Levendusky, *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans*, 1 edition (Chicago: University Of Chicago Press, 2009).

discouraging the kinds of more moderate, compromise-oriented liberal Republicans and conservative Democrats who might have entered politics in the past.¹⁶

Though historical analogies are never perfect, there is only one other time in which the US party system was so clearly divided by geography and ideology: 1860.

B. THE NATIONALIZATION OF AMERICAN POLITICS

The second major change that began in the 1960s was the nationalization of American politics. The remarkable growth of both social and economic federal regulation made control of Washington, DC much more important. In short, the federal government today has a lot more power over many more areas of American life than it did 60 years ago. Before the expansion of the federal government in the 1960s and 1970s, states had much more autonomy, which meant that control of state power was often more important.

Additionally, because the Supreme Court became a more important as an arbiter of social issues (notably abortion, gay marriage, and the role of religion in public life) and many conservative evangelicals felt as though their way of life was under attack by an intrusive liberal government, control of the winner-take-all presidency in particular became much more salient.

As parties became more sorted and US politics nationalized, voters had a clearer sense of the consequences of Democrats or Republicans controlling Congress and the presidency. This meant that rather than voting for the candidate, it became more important to vote for the party. The watershed moment in this development was the 1994 House election. Newt Gingrich had noticed that while Republicans kept winning presidential elections, Democrats had controlled the House majority for 40 years. So rather than individual Republicans candidates for the House campaigning against individual popular incumbent representatives who happened to be Democrats, they campaigned against Bill Clinton and nationalized the election. Though both parties had been doing more through their coordinated congressional and Senate campaign committees and attendant networks of campaign consultants to standardize their messages, the 1994 election marks a monumental shift in American politics. Congressional and Senate elections became more about the parties and control of Congress, and voters responded accordingly. The number of split-ticket states (for Senate) and districts (for the House) has declined steadily since.

In the Senate, only six split-delegation states remain, meaning states in which both Senators and the President are not of the same party. That is far the lowest number since the direct elections of Senators went into place in 1914.¹⁷ In the House, only 16 districts

¹⁶ Danielle M. Thomsen, *Opting Out of Congress: Partisan Polarization and the Decline of Moderate Candidates* (Cambridge, United Kingdom: Cambridge University Press, 2017).

¹⁷ Lee Drutman, "Why Bipartisanship In The Senate Is Dying," *FiveThirtyEight* (blog), September 27, 2021, <https://fivethirtyeight.com/features/why-bipartisanship-in-the-senate-is-dying/>.

split their districts, voting one party for president and the other for Congress, all of them very narrowly.¹⁸ That was the lowest number in more than 100 years as well. Similarly, even state and local candidates now emphasize national issues, and voting for all levels of government closely tracks sentiment towards the party in the White House.¹⁹

The nationalization of the media is also an important part of this story. With the rise of cable news in the 1990s and the internet in the 2000s, local media began to lose share to national media, and national media became more divided to cater to competing partisan audiences, largely because conservatives built an entirely new media infrastructure to appeal to a national conservative audience.²⁰ Media consumption polarized. Again, there is a reinforcing feedback process here. As the stakes of national elections increased, national politics became more salient. As local media diminished, more citizens eager for news were further drawn to national media, and the more they were paying attention to national (as opposed to local) stories, which further diminished their interest in local media and local politics.²¹

C. CONTINUED CLOSE NATIONAL ELECTIONS

THE THIRD MAJOR DEVELOPMENT IS THAT STARTING IN 1994, AMERICAN POLITICS ENTERED INTO AN ERA IN WHICH CONTROL OF THE PRESIDENCY, THE HOUSE, AND/OR THE SENATE HAS BEEN UP FOR GRABS

¹⁸ Geoffrey Skelley, "Why Only 16 Districts Voted For A Republican And A Democrat In 2020," *FiveThirtyEight* (blog), February 24, 2021, <https://fivethirtyeight.com/features/why-only-16-districts-voted-for-a-republican-and-a-democrat-in-2020/>.

¹⁹ Daniel J. Hopkins, *The Increasingly United States: How and Why American Political Behavior Nationalized* (Chicago: University of Chicago Press, 2018); Joel Sievert and Seth C. McKee, "Nationalization in U.S. Senate and Gubernatorial Elections," *American Politics Research* 47, no. 5 (September 1, 2019): 1055–80, <https://doi.org/10.1177/1532673X18792694>; Benjamin Melusky and Jesse Richman, "When the Local Is National – A New High-Water Mark for Nationalization in the 2018 United States State Legislative Elections," *Regional & Federal Studies* 30, no. 3 (May 26, 2020): 441–60, <https://doi.org/10.1080/13597566.2020.1755656>; Sievert and McKee, "Nationalization in U.S. Senate and Gubernatorial Elections"; Daniel J. Hopkins, Eric Schickler, and David Azizi, "From Many Divides, One? The Polarization and Nationalization of American State Party Platforms, 1918-2017," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, December 21, 2020), <https://doi.org/10.2139/ssrn.3772946>; Joshua N. Zingher and Jesse Richman, "Polarization and the Nationalization of State Legislative Elections," *American Politics Research* 47, no. 5 (September 1, 2019): 1036–54, <https://doi.org/10.1177/1532673X18788050>.

²⁰ Nicole Hemmer, *Messengers of the Right: Conservative Media and the Transformation of American Politics*, *Messengers of the Right* (University of Pennsylvania Press, 2016), <https://doi.org/10.9783/9780812293074>.

²¹ Danny Hayes and Jennifer L. Lawless, *News Hole: The Demise of Local Journalism and Political Engagement*, Communication, Society and Politics (Cambridge: Cambridge University Press, 2021), <https://doi.org/10.1017/9781108876940>; Daniel J. Moskowitz, "Local News, Information, and the Nationalization of U.S. Elections," *American Political Science Review* 115, no. 1 (February 2021): 114–29, <https://doi.org/10.1017/S0003055420000829>.

EVERY ELECTION, AND NARROW VICTORIES CAN GIVE ONE PARTY TOTAL POWER. ²²THIS HAS HAD TWO CONSEQUENCES.

The first consequence of constantly close elections is it destroys the potential for cross-partisan coalition building. Because retaining power is constantly within reach for the party out of power, the party out of power has every incentive to make the party in power look bad by making it hard for the party in power to govern. This is exemplified in Senator Mitch McConnell's 2010 promise to make President Obama "a one-term president" clarified a particular logic.²³ McConnell worked very hard to keep Obama's signature healthcare legislation from being bipartisan because if it were bipartisan, Republicans would not be able to run against it in the next election. Republicans worked very hard to deny Democrats and Obama any important successes or victories, on the theory that if Democrats fail in the public eye, voters will return Republicans to power.

Notably, Obama's initial instincts upon taking the presidency were that he could bridge the partisan divide, and he worked gamely with Republicans to make his signature healthcare reform. However, after it became clear by late 2009 that Republicans would oppose his achievement no matter what happened, Democrats finally shifted to passing the legislation without a single Republican vote. The lesson learned, in this case by Democrats, was that when a party gets unified control of the federal government, they should not waste time seeking support of the minority party.

This was the logic of most Democrats in 2021, who believed that it made sense to use a narrow majority to attempt to pass major legislation on the theory that no matter what Democrats offered in terms of compromise, Republicans would reject it. Republicans similarly attempted an aggressive partisan agenda with their tax cuts (successful) and Obamacare repeal (unsuccessful) in 2017. This maximalist approach to policy making rarely succeeds with narrow majorities, but it does have the consequence of further polarizing politics and further raising the stakes of elections. Similarly, periods of divided government guarantee even more gridlock, because the party opposed to the president does not want to give the current president any "wins" he (or she) can use in the upcoming election. But bad faith begets bad faith, and demonizing and refusing to compromise sends strong signals to partisan voters that compromise is illegitimate, and that compromising moderates must be punished.

The second consequence of constantly close elections is that it makes electioneering higher-stakes, more intense, and more aggressive. When control of power in Washington is

²² Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago; London: University Of Chicago Press, 2016).

²³ Frank James, "Sen. Mitch McConnell Insists: One And Done For Obama," *NPR*, November 4, 2010, sec. Election 2010, <https://www.npr.org/sections/itsallpolitics/2010/11/04/131069048/sen-mcconnell-insists-one-term-for-obama>.

always at stake, electioneering becomes a fevered pitch of high alert, in which the “other side” is on the verge of gaining total power that they will use to enact a radical agenda. This agitated state of high-alert leads voters and politicians to demonize their political opponents even more, and to silo themselves even more in informational echo chambers, thus further deepening hyper-partisan polarization.

We have now reached the stage in this doom loop where the basic foundations of free and fair elections have become a partisan issue, and partisans on both sides support aggressively re-writing election rules, though in different directions. Moreover, if you believe the other side is trying to rig the rules in their favor through inappropriate means, this gives your side license to hit back even harder. After all, as the saying goes, only a fool brings a knife to a gun fight.

D. THESE MECHANISMS ARE NOT SELF-CORRECTING

The crucial point is that none of these mechanisms are self-correcting. Rather, they are self-reinforcing.

1. THE GEOGRAPHICAL SORTING OF PARTIES.

Currently, the Democratic Party is very strong in urban and cosmopolitan parts of the country, and very weak in rural and traditional parts of the country. Because Democrats are unable to get anywhere close to the necessary 51% in rural districts, they do not bother to contest elections in these places. Because elected Democrats overwhelmingly come from socially and culturally liberal parts of the country, Democratic leaders take very progressive stands on cultural and social issues, which makes the Democratic Party seem even more threatening to voters in more conservative and traditional parts of the country. The same is true for Republicans, but in the reverse.

The problem here is that it is extremely difficult for parties to move to the political center when their coalitions lack any meaningful overlap, as they did in an earlier era, in which the two-party system functioned well enough because it contained a multi-dimensional four-party system inside of it.

Some political observers have noted that after Democrats lost a series of presidential elections, they moved closer to the center by nominating Bill Clinton in 1992. Bill Clinton had been the four-term governor of Arkansas, a relatively conservative state. Today, Democrats are deeply underwater in Arkansas. They have no conservative coalition within their party, just as Republicans lack an internal liberal coalition.

When the four-party system existed, Democrats had many conservatives within their party coalition who could balance out the more liberal representatives, pulling the party closer to the center. These conservatives came primarily from the South and rural areas. Republicans had many liberals in their party who could also move the party closer to the middle. These centripetal forces have now been replaced by centrifugal forces. Compromise

is now punished by the threat of a primary challenge, and would-be moderates do not bother to even run.

2. THE NATIONALIZATION OF POLITICS

Though many advocates of localism and federalism argue that some polarization could be fixed by returning some power to the states and localities, the reality is that the concentration of power in Washington, DC is difficult to reverse. When Democrats are in control in Washington, they do not like to let Republican states decide policy and so impose their own mandates. When Republicans are in control in Washington, they do not like to let Democratic states decide policy and impose their own mandates.²⁴ In the areas where states do make policy, Republican-controlled states tend to focus on issues that are nationally salient and all move in the same direction on these issues. Democratic-controlled states similarly focus on nationally salient issues and move in tandem in the opposite direction. The divergence around abortion, guns or climate policy are but examples of this phenomenon.²⁵

And given the power that the federal government has to impact policy in almost all areas, it is unclear how a truce would emerge within the current state of binary hyper-partisan polarization. The doom-loop continues: hyper-partisan polarization has a strong nationalizing pull, and the nationalization of elections increases hyper-partisanship.

3. THE CLOSENESS OF ELECTIONS

Finally, national elections have been extremely close for three decades now, cycling back and forth between unified government for one party, to divided government, to unified government for the other party, to divided government, and back again through the same cycle. Despite a steady stream of think pieces promising a permanent majority for one party or the other, thermostatic public opinion and cycles of engagement and cynicism keep the parties revolving in and out of power,²⁶ with a perpetually dissatisfied and angry electorate and a split country. It seems unlikely that this cycle will end with one side winning a decisive victory, largely because so much of the country is solidly safe for one party or the other. Instead, the close elections will continue to make negative campaigning nastier and nastier, because the best way to unify and mobilize your side is always to turn up the threat of the other side winning.

4. THE BOTTOM LINE

²⁴ Mallory E. SoRelle and Alexis N. Walker, "Partisan Preemption: The Strategic Use of Federal Preemption Legislation," *Publius: The Journal of Federalism* 46, no. 4 (September 1, 2016): 486–509.

²⁵ Jacob M. Grumbach, "From Backwaters to Major Policymakers: Policy Polarization in the States, 1970–2014," *Perspectives on Politics* 16, no. 2 (June 2018): 416–35.

²⁶ Stuart N. Soroka and Christopher Wlezien, *Degrees of Democracy: Politics, Public Opinion, and Policy* (Cambridge ; New York: Cambridge University Press, 2009).

A political center existed when the four-party system provided a large space for overlap between the two parties, with liberal Republicans and conservative Democrats providing the necessary cross-partisan bridges to make the American political system function. As liberal Republicans and conservative Democrats vanished, the center collapsed, and hyper-partisan polarization began to feed on itself. This reinforcing cycle of distrust, hatred, and escalation shows no signs of stopping on its own.

III. VOTERS AND THE TWO-PARTY SYSTEM

Most voters are dissatisfied with the state of US politics, and in particular, the hyper-partisan polarization, the gridlock and failures of government, and the anxieties it generates. But they lack a mechanism to express that frustration within the two-party system. The most obvious challenge is that they can only send a very crude signal: D or R. There are rarely third-party options. Most of the third parties produced by our current system do not offer viable, moderate choices. Put simply, voters cannot clearly signal, through voting, that she wants less hyper-partisanship.

Imagine a moderate Republican voter, who is unhappy with the direction of the Republican Party moving towards a more extreme end of the political spectrum. This voter also sees the Democratic Party as very extreme, and unrepresentative of her views. What should this voter do? A vote for an extreme Republican means that the Republican Party will only become more extreme. A vote for a Democrat helps extreme Democrats hold power. Voting for a third party is a wasted protest vote, assuming a third party even mounts a candidate in this particular district. Not voting because neither candidate is appealing is giving up this voter's greatest power — the right to vote. In short, a voter who views both parties as too extreme is effectively powerless in this system.

In theory, political parties should select more moderate candidates capable of appealing to the broadest electorate. This is often known as the "median voter" theory, which posits that in a two-party system, both parties should converge on the political middle in order to maximize their vote share.

However, since three decades of parties pulling away from the center have contradicted this theory, a simpler explanation is that the theory is either wrong, or it depends on particular conditions that no longer hold. In reality, the political science consensus is now turning against the median voter theory. Some critics argue that it was at best an overly simplistic model that could hold under very specific assumptions; others believe it was simply wrong because the specific assumptions it stipulated about party and voter behavior were largely fantastical.²⁷

²⁷ Bernard Grofman, "Downs and Two-Party Convergence," *Annual Review of Political Science* 7, no. 1 (2004): 25–46. Jacob S. Hacker and Paul Pierson, "After the 'Master Theory': Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis," *Perspectives on Politics* 12, no. 03 (September 2014): 643–

Whether or not the “median voter” was a useful construct, it is nevertheless true that many voters still prefer moderation and compromise to implacable extremism. But as parties move to the extremes and refuse to work together, it is hard for voters to tell which party is more moderate, and their judgements are likely impacted by their previous allegiances. An option to vote for a moderate party that occupies the “middle ground” would by definition allow and amplify their preference for more moderation in civic life.

But no such party exists, and for a reason that any sensible person will immediately understand: in America’s plurality-voting, single-member district (PV-SMD) system, a vote for a third-party candidate is either a “spoiler” vote or a “wasted” vote.²⁸ Neither is a constructive way to participate in elections, and citizens properly understand this. Because third parties are spoilers (or just irrelevant) in our elections, all political ambition and money flows through the two major parties. This keeps third parties as marginal actors in politics: they struggle to raise money and legitimacy, are unable to recruit credible, viable candidates, and they exist only on the political fringes. Thus, even when voters want to support a third party, they’d be foolish to do so.

Thus, the fact that a moderate third party has not emerged is not because nobody has had the idea. It’s because the reality of actually building such a viable party under the current election rules makes it the longest of long shots.

IV. WHAT FUSION CAN ACCOMPLISH: COALITION POLITICS AND THE CENTRALITY OF PARTIES IN A DEMOCRACY

How might one get out of the self-reinforcing cycle of hyper-partisan polarization and create a compromise-oriented, multi-party democracy that would welcome the emergence of new and constructive political parties?

The answer lies in our own history of “fusion” voting. Once legal in all states, fusion allows and even encourages cross-party coalitions and alliances. A world in which the binary, winner-take-all, two-party system has essentially eliminated any incentives for cooperation

62. Christopher H. Achen and Larry M. Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton: Princeton University Press, 2016).

²⁸ A vote is a “spoiler” when the votes for a third party candidate are greater than the margin of victory, and the subsequent winner of the election is the less preferred candidate of the majority of the supporters of the “spoiler” candidate. A vote is a “wasted” vote when it does not contribute to the winning candidate’s margin of victory.

and collaboration cannot help but make the multi-party cooperation and coalition inherent in a fusion-legal system all the more attractive, even imperative.²⁹

Fusion refers to a system in which a candidate wins the support of more than one party – usually one major party and one “minor” party – in a marriage that is both principled and practical. Each party nominates the same candidate, and the candidate appears twice on the ballot under two distinct party labels. The votes for the candidates are tallied separately by party, and then added together to produce the final outcome.

Fusion voting does a few things at the same time: (1) It eliminates the “wasted vote” or “spoiler” dilemma that plagues minor parties in our plurality-voting, single-member district system; (2) It allows a new minor party the chance to develop an identity with voters because it is not pretending it can win elections on its own – it needs an alliance with a major party; (3) It signals to candidates and elected officials from the other, usually larger party that some portion of this new fusion-party vote carries a distinct meaning, and a competent elected official will welcome that information; and (4) It encourages principled, positive-sum coalition-building amongst the parties which are fusing on the same candidate.

Imagine an election contest between a Democratic centrist and a hardline Republican who has aggressively supported the claims of a stolen 2020 election. (Or the reverse, in which a Republican centrist faces off against a hardline Democratic leftist).

In the case of a candidate running as the fusion nominee of both the Democrats and the Moderates, it is easy to see what the Moderate Party would say to its members and supporters:

"We have evaluated the two major party Congressional candidates in our district on their commitment to bi-partisanship, civility and the rule of law. And we're recommending Jane Smith. She is also the nominee of one of the major parties, in her case the Democrats. As you know, the Moderate Party includes citizens who are Democrats, Republicans, and Independents, and after due consideration feel that Smith is far the superior candidate on the issues of bipartisanship and civility and the rule of law. If you agree that these values are important, we urge you to vote for her under the Moderate Party label. It counts the same as a vote on the major party line, but it lets her know that these values matter to you."

²⁹ Peter H. Argersinger, “A Place on the Ballot’: Fusion Politics and Antifusion Laws,” *The American Historical Review* 85, no. 2 (1980): 287–306; Lisa Disch, *The Tyranny of the Two-Party System* (New York: Columbia University Press, 2002); Howard A. Scarrow, “Duverger’s Law, Fusion, and the Decline of American ‘Third’ Parties,” *Western Political Quarterly* 39, no. 4 (December 1, 1986): 634–47, <https://doi.org/10.1177/106591298603900405>.

Election Day rolls around and Smith gets 45% on the Democratic line, Jones gets 48% as a Republican, and the last 7% is cast for Smith on the Moderate line. The votes are tallied by party and the added together to produce a 52-48% victory for Smith, the Dem-Mod nominee.

The Moderate Party can claim, with merit, to have produced the “margin of victory.” The minor, fusion party will now have a modest claim on Smith as she takes office. She’ll be more attentive to her own “home” party (Ds in this case), but she will also make sure she stays in close touch with the Moderates and takes their advice sometimes. But even more importantly, it sends a loud-and-clear message to the hard-right Republicans that they cannot win without the Moderates’ support. Rather than disappointed voters going back and forth between Democrats and Republicans in hope of elusive moderation, voters can now tell their family, friends and colleagues to vote on the moderate party line as well.

In sum, fusion not only avoids the traps of the spoiler or the wasted vote, it gives voters the ability to cast a constructive, expressive vote. And in doing so, it pushes against extremism and in favor of coalition and compromise.

A. THE CENTRALITY OF PARTIES

Whether voters like political parties or not, scholars of democracy consider it axiomatic that political parties are the central institutions of modern mass democracy. That’s because parties organize political conflict into manageable coalitions and programs, and they mobilize and engage voters in the service of winning elections. Without political parties, politics becomes chaotic. This is why every stable modern democracy has strong political parties.³⁰ Were fusion in place, moderate voters could find an identity in a center party (of whatever name) by voting regularly on that line, even if they were voting for candidates aligned with one or the other major party.

Of course, fusion wouldn’t be limited to a moderate party. Other parties could emerge, and likely will. And there would be tremendous value. Parties on the extremes might emerge as well, but since fusion is voluntary, only candidates who wish to be associated with more extreme positions will accept such nominations. Just as a moderate party label will convey information to a voter, a communist party label or a Q-Anon party label would convey information to voters. Most political candidates would reject these nominations as counter to their interests.

The history of fusion candidacies is clear on this point: it does not lead fusion to a proliferation of fringe parties because fringe parties cannot get the candidate to accept their nomination. New parties that offer valuable endorsements to either incumbents or

³⁰ Nancy L. Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton: Princeton University Press, 2008).

challengers will emerge, and those that command genuine support will last. In both Connecticut and New York, the number of active parties has rarely exceeded five. Most modern democracies have at least five active parties (and some have many more) and citizens around the world seem to manage just fine.

B. FUSION CAN INCREASE COMPETITION AND TURNOUT

Additionally, fusion could make more districts competitive because of the path for moderate parties to fuse with the less popular of the two major parties. Both more choices and more competitive elections would almost certainly increase voter participation and turnout, since the lack of choices and the lack of competition are the main reasons why the United States has low voter turnout compared to other democracies.³¹ The United States is unique in having just two major parties, and one of only a handful of democracies that use single-member districts, which tend to generate few competitive districts even when districts are drawn through independent commissions (this is because parties tend to have geographical bases, and partisans cluster in different places).³²

From the perspective of elected officials, the moderate party label becomes meaningful as a way to communicate moderation. In an era of nationalized politics, Republicans and Democrats are tied to their national parties, and typically, to the most extreme elements of their parties. Candidates can say that they are a different kind of Republican or a different kind of Democrat, but it is almost impossible to communicate this fact to voters, given that they have very few opportunities to break from their national parties, and most voters pay very limited attention to politics and largely rely on party labels.

The core problem here is that our highly nationalized political environment forecloses other more candidate-centric solutions because, under nationalized politics, parties matter to voters more than candidates. Voters may like individual candidates of an opposite party, but in competitive districts they are told repeatedly that they are not voting for a candidate; they are voting for which party gets control of the majority in Congress. And even more centrally, they are voting for or against the president, a force that individual members of Congress have no control over.

Under fusion, a moderate party could reward and incentivize moderation and compromise because it has real leverage. Unlike parties on the extreme, who have much less leverage because they are only taking votes from one side, a moderate party has much more leverage because it will almost surely endorse candidates from both sides.

³¹ Mark N. Franklin et al., *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies since 1945* (Cambridge, UK ; New York: Cambridge University Press, 2004).

³² Jonathan A. Rodden, *Why Cities Lose: The Deep Roots of the Urban-Rural Political Divide* (Basic Books, 2019).

Finally, from the perspective of potential candidates, the ability to run with a moderate party endorsement could conceivably attract a new generation of more moderate candidates. One of the reasons why the two parties have become more extreme is that more moderate candidates have chosen not to run. Scholars have identified three primary reasons why moderates do not run. First, because they do not see themselves “fitting” with either of the two parties given who represent the two parties in Congress³³; Second, because they do not wish to endure the gauntlet of running for office when they have many other career opportunities³⁴; and third, because local party leaders are more encouraging of more extreme candidates as opposed to more moderate candidates, since party leaders tend to be extreme.³⁵ By opening up an alternative path to office and the ability to gain support from a moderate party, such would-be moderates might be more inclined to run for office.

Though the geographic sorting of parties, the nationalization of politics, the close national elections have both been key drivers of hyper-partisan polarization (see above), all three of these forces have made the two-party system extremely friendly to recalibration through fusion.

The geographical sorting of parties has created very few swing districts (such as NJ-7) and the close control for Congress has made these districts extremely consequential in steering politics back to a compromise-oriented dynamic. This means that a moderate party that was able to operate even in a limited number of swing districts could have a tremendous impact in controlling Congress, just as Joe Manchin, by placing himself solidly between Democrats and Republicans, has achieved tremendous influence in the Senate. This power could be leveraged to support broader changes in the political system that would break the two-party doom loop and end the zero-sum nature of American partisan competition, such as proportional representation through multi-member districts.

The rigidity of the two-party system in this moment means that a small but thoughtful reform such as fusion could realign the US party system in productive ways that could get us out of the doom loop, and reestablish a new version of the moderate cross-partisan politics that previously existed and which allowed our system of government to muddle through. It must look different now than it did in previous times because the underlying conditions no longer hold. But we cannot simultaneously have a rigid and polarized two-party system and vibrant political middle at the same time. Since a vibrant political middle is essential to the

³³ Thomsen, *Opting Out of Congress*; Danielle M. Thomsen, “Ideological Moderates Won’t Run: How Party Fit Matters for Partisan Polarization in Congress,” *Journal of Politics* 76, no. 3 (July 2014): 786–97, <https://doi.org/10.1017/S0022381614000243>.

³⁴ Andrew B. Hall, *Who Wants to Run?: How the Devaluing of Political Office Drives Polarization*, First edition (Chicago ; London: University of Chicago Press, 2019).

³⁵ David E. Broockman et al., “Why Local Party Leaders Don’t Support Nominating Centrists,” *British Journal of Political Science*, 2020, 1–26, <https://doi.org/10.1017/S0007123419000309>.

functioning of democracy, modest changes (like the restoration of fusion balloting) that can break the rigidity of the current hyper-polarized two-party system and restore a political center would have profoundly positive effects on the health of American political life, and the functioning of the US government.

V. CONCLUSION

American democracy is in a dark and dangerous place right now, but it doesn't have to be. The escalating hyper-partisan doom loop is a consequence of changes in the party system, its geographical bases, the nationalization of American politics, and the close national competition for control of government. These are all relatively recent developments that have, over the last several decades, transformed the American system from a multi-dimensional, compromise-oriented four-party-within-two-party system to a one-dimensional, combative, hyper-polarized true two-party system, stuck in an escalating doom loop of zero-sum partisan warfare that shows no obvious resolution.

Fusion balloting is an extremely promising way to break this "doom loop" because it gives voters the ability to clearly signal: "stop the hyper-partisan fighting and work together." Without the ability to vote for a moderate party, voters can only vote for the D or the R, but without any direction. Because of the single-member system with plurality voting, a moderate party is unlikely to emerge on its own. Only fusion balloting can give that party an opportunity to represent the growing number of homeless voters in the political middle, who can then leverage their power in key elections.

The American political system has survived until now because of the ability of its citizens to creatively reform and recalibrate it in times of crisis. Supporters of fusion balloting are working in this supremely American tradition, bringing continued innovation to our continued democratic experiment, when it is most urgently needed.

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Current employment

Senior Fellow, New America, Washington DC, October 2014 - present

Education

Ph.D., 2010, *University of California, Berkeley*, Political Science

- Dissertation: "The Business of America is Lobbying: The Expansion of Corporate Political Activity and the Future of American Pluralism"

M.A., 2005, *University of California, Berkeley*, Political Science

B.A., 1999 (December), *Brown University*, English and American Literature (*Phi Beta Kappa*, *magna cum laude*)

Books

Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America, 2020, Oxford University Press.

The Business of America is Lobbying: How Corporations Became Politicized and Politics Became More Corporate, 2015, Oxford University Press. (Winner of the 2016 Robert A. Dahl Award)

Congress Overwhelmed: The Decline in Congressional Capacity and the Prospects for

Reform (editor, with Timothy M. Lapira, and Kevin R. Kosar), 2020, University of Chicago Press

Peer-reviewed academic journal articles

"More than Access: An Experiment on Moneyed Interests, Information Provision, and Legislative Action in Congress," (with Alexander C. Furnas, Timothy M. LaPira, Alexander Hertel-Fernandez and Kevin Kosar), *Political Research Quarterly* (2022)

"Moderation, Realignment, or Transformation? Evaluating Three Approaches to America's Crisis of Democracy," *The ANNALS of the American Academy of Political and Social Science*, Vol 699, no. 1 (2022), pp. 158-174

"Congressional Staff and the Revolving Door: The Impact of Regulatory Change" (with Bruce E. Cain) *Election Law Journal*, vol. 13, no. 1 (2014), pp. 27-44.

"The Inside View: Using the Enron Email Archive to Understand Business Lobbying" (with Daniel J. Hopkins) *Legislative Studies Quarterly*, vol. 38, no. 1 (2013), pp. 5-30. (winner of the 2010 Political Organizations and Parties (POP) Paper Award, honoring the best paper presented on a POP panel at the APSA Annual Meeting.)

"The Complexities of Lobbying: Towards a Deeper Understanding of the Profession" *PS: Political Science & Politics*, vol. 43, no. 4 (2010), pp. 834-837.

Law review articles

"Access and Lobbying: Looking Beyond the Corruption Paradigm" (with Dorie Apollonio and Bruce E. Cain) *Hastings Constitutional Law Quarterly*, vol. 36, no. 1 (2008), pp. 13-50

"Corporations and the Public Purpose" (with Charlie Cray) *Seattle Journal for Social Justice*, vol. 4 no. 1 (2005), pp. 305-361

Book chapters

"Capacity for What?" (with Timothy LaPira) in *Congress Overwhelmed: The Decline in Congressional Capacity and the Prospects for Reform*, eds. Lee Drutman, Timothy LaPira and Kevin Kosar University of Chicago Press, 2020

"The Interest Group Top Tier" (with Matt Grossmann and Timothy LaPira), in *Can America Govern Itself*, eds. Frances Lee and Nolan McCarty, Cambridge University Press, 2019.

"Does Regular Order Produce a More Deliberative Congress?" (with Peter C. Hanson), in *Can America Govern Itself*, eds. Frances Lee and Nolan McCarty, Cambridge University Press, 2019.

"Social Network Analysis and Lobbying" (with Alexander Furnas) in *Analytics, Policy and Governance*, eds. Jennifer Bachner, Kathryn Wagner Hill, and Benjamin Ginsberg. New Haven, CT: Yale University Press, 2015

"The Rise of Dark Money" in *Interest Group Politics*, 9th edition, eds. Allen J. Cigler and Burdett Loomis. Washington, DC: CQ Press, 2015

"Lobbying and Influence in Modern Washington" in *Developments in American Politics*, 7th edition, eds Gillian Peele, Bruce E. Cain, Guy Peters, New York, NY: Palgrave Macmillan, 2014.

"Evaluating Reforms of Lobbying and Money in Politics" in *New Directions in Interest Group Politics*, ed. Matthew Grossmann, New York, NY: Routledge, 2013

"Trade Associations, the Collective Action Dilemma, and the Problem of Cohesion," in *Interest Group Politics*, 8th edition, eds. Allen J. Cigler and Burdett Loomis. Washington, DC: CQ Press, 2012

Invited Presentations

Invited presentation at Harvard University, Ash Center, February 10, 2021

Invited presentation at University of California, Berkeley, Institute for Governmental Studies, February 19, 2019

Invited panelist at Stanford Conference on Political Reform, Stanford University, November 1, 2019

Invited presentation at Harvard University, Weatherhead Center, November 19, 2018

Invited panelist at Stanford Conference on Political Parties, Stanford University, November 2, 2018

Invited panelist at Reviving American Democracy Conference, Northwestern University, January 12-14, 2018

Corporations & Society Visiting Speaker, Stanford University Business School, November 2017

Invited panelist at Princeton/SSRN “Anxieties of Democracy” Conference, October 28-29, 2016, Princeton University.

Invited Panelist at Cornell University conference on Inequality, April 6-7, 2016.

Invited panelist at Lobbying and Political Finance, conference at Stanford University, November 14-15, 2014.

Invited panelist at “Purchasing Power: Money, Politics and Inequality,” Yale University conference, May 6, 2013

Invited panelist at “Under the Influence? Interest Groups, Lobbying, and Campaign Finance,” SUNY Buffalo Law School conference, March 8-9, 2013

Teaching Experience

Lecturer, *The Johns Hopkins University*

- Center for Advanced Governmental Studies, Spring 2012 – present (*Courses taught:* “Lobbying and Influence in Washington,” “Open Government: Transparency, Technology, and Citizen Engagement,” “Fixing American Politics”)
- Aitchison Program, Fall 2015, Fall 2016 (*Course:* “Data Visualization”)
- Institute for Policy Studies, Fall 2011 (*Course:* “The Policy Process”)

Adjunct Professor, *University of California, Washington, DC Semester Program*, Fall 2010 – Summer 2013 (*Courses:* “Lobbying and Influence in Washington,” “Washington Skills”)

Adjunct Professor, *Smith College, Jean Picker Semester-in-Washington Program*, 2011 (*Courses:* “Seminar in Policymaking,” “Seminar on Political Science Research”)

Other activities, previous employment and fellowships

Chair, American Association of Arts and Sciences committee on the size of the United States House of Representatives, 2021

Subcommittee Chair, American Political Science Association Task Force on the Modernization of Congress, 2019

Organizer, Electoral Reform Research Group, October 2019 - present

Editorial Board Member, Democracy Fund Voter Study Group, January 2018 - present

Co-Founder, Legislative Branch Capacity Working Group, May 2016-present

Senior Fellow, The Sunlight Foundation, October 2011 – August 2014

Senior Fellow, The Progressive Policy Institute, 2010 – 2011

Congressional Fellow, The American Political Science Association, Senator Robert Menendez (D-NJ), 2009 – 2010

Research Fellow, The Brookings Institution, 2008 – 2009

Academic Service

Editorial Board, *Interest Groups and Advocacy*

Selection Committee, American Political Science Association Congressional Fellowship Program

Panel Chair and Discussant, APSA, MPSA

Reviewer: *Proceedings of the National Academy of Sciences*, *American Political Science Review*, *Journal of Politics*, *Interest Groups and Advocacy*, *Legislative Studies Quarterly*, *American Politics Research*, *Business and Politics*,

Certification of Karen Scharff,
dated June 2, 2022

Schedule 9

	:	BEFORE THE NEW JERSEY
In re: Nominating Petition of Hon. Tom	:	SECRETARY OF STATE,
Malinowski for Congressional District 7	:	DIVISION OF ELECTIONS
	:	
		_____:

KAREN SCHARFF, of full age, certifies as follows:

1. I spent the last 40 years working in and around politics in New York State (NYS). My job title for the last several decades before my recent retirement was that of Director of Citizen Action of New York, one of the state's more prominent non-governmental organizations. Citizen Action focused primarily on influencing outcomes in the state capital of Albany. During much of this time, I also served as co-chair of the NY Working Families Party.
2. From that perch I served at various times as a grassroots organizer and trainer of organizers in community organizations; a campaign consultant for candidates running for county, state, and federal elective office; a lobbyist/legislative advocate on the minimum wage, health care, Rockefeller Drug Law reform, paid family leave, tax policy, campaign finance, minimum wage; and a trainer of rank-and-file members who wanted to understand more about how to be effective participants in civic and political life.
3. My career at Citizen Action can be divided into the period before and after 1998 - the year that the Working Families Party (WFP) emerged as a new, fusion party in the state. Together with a handful of other organizational leaders, I helped co-found the WFP. The clearest

way to explain what fusion balloting means is to reflect briefly on how the formation of the WFP expanded the limits of the possible for groups like mine.

4. Before 1998, Citizen Action operated within the limits that all “interest groups” face in a pluralist democracy. We recruited citizens to join and get involved in the organization. Members and elected leaders of the organization worked with the staff to develop advocacy campaigns on priority issues, and we traveled *en masse* to Albany for “lobby days.” We mobilized our members to attend candidate screenings (in our case mostly with Democratic Party candidates, but I’m sure there are interest groups that do the same with Republican candidates), chose candidates to support, and mobilized votes for our endorsed candidates in order to advance our issue agenda.

5. We tried for a while to mobilize our members to participate in internal Democratic Party matters, even electing some to the Albany County Democratic Committee, but that was an overwhelmingly inhospitable setting and our members did not last in that “insiders” game. Our grassroots members often felt the local Democratic Party structures did not reflect their values or issue positions, with the party always supporting incumbents and, especially in upstate New York, often not differing that significantly from the views of its Republican counterparts. More importantly, the Democratic Party in New York was not designed to advance issues, it was a place people could go to get access to jobs or find help with parking tickets or attend picnics to meet elected officials. After being an active volunteer leader on a campaign, I was once asked by a Democratic Party leader “what can I do for you?” He was mystified at the idea that someone volunteered out of commitment to a cause, not for personal gain.

6. Although we had our own Citizen Action elections committees that provided our members with support, training and ways to work together with other like-minded people, it was

very different from having a political party – it was less sustainable from election to election, it was less understood by voters we door-knocked or called, we lacked the tools of a party, and our work was not that important to most candidates since our work was usually a less visible part of the overall Democratic party efforts. We could not “signal” voters whom to support via the ballot itself – that function and power is reserved for *parties*.

7. Overall it would be fair to say that we helped some good candidates get elected, and we got some notice from friendly elected officials during the decade and a half when we pursued this approach, but we were not seen as “serious players” in Albany. That was reserved for the major party insiders, the lobbyists of the big real estate interests, large unions, and other groups or individuals who make or bundle substantial contributions to candidates’ campaign accounts.

8. This all changed beginning in 1998. That was a year when we joined with a few other community-based groups and labor unions to form the NY Working Families Party. What united us was the view that the Democratic Party in New York cared more about its donors than its voters, especially its low-and moderate-income voters. So we decided to build a new political party that would be both independent and relevant. It’s easy to be independent and *irrelevant*, which is what happens to non-fusion third parties, but we weren’t interested in going down that road. We hoped to build something that would push and prod both Democrats and the occasional Republican towards what we considered a sensible progressive view, using our cross-endorsement on the ballot as both a carrot and a stick. Only because New York permits fusion voting was our theory of change even possible.

9. Forming a new party took an immense amount of work. Hundreds of house meetings. Massive volunteer recruitment. Thousands of signatures gathered. Presentation after presentation to civic groups about the value of voting for this new party even though the candidate we were

backing in our inaugural, qualifying election was the same as the Democratic Party nominee (Peter Vallone). Over and over we explained that a vote for Vallone under the label of the Working Families Party counted the same as a vote on the Democratic Party line, but it also did something else. It would “send a message” that voters wanted him to do more, to take the concerns of the non-wealthy more seriously. We knew that it would be hard to get over the vote threshold required of new parties, but we also knew that if we did make it, we could build our visibility, capacity, and public standing over the coming years, and in doing so increase our influence on important legislation in Albany (and some day, Washington).

10. We made it by the skin of our teeth. And because of the fusion system, our new party has been able to grow and develop the skills, relationships, and public visibility that are needed to be taken seriously. Citizen Action, my organization, joined the Executive Committee of the WFP in 1998 and has stayed in the leadership for the last 20-plus years. In the 2020 election, the WFP had its best statewide showing ever - 390,016 votes for the top of our ticket.

11. In other words, by 2020 – after two-plus decades of work – nearly *four hundred thousand* New Yorkers showed their support for our values and policy priorities. Our voters are generally people who don’t fit inside the Democratic Party, just as the NYS Conservative Party voters don’t fit neatly into the Republican Party. But our voters are like all others in one regard – they don’t want to waste their votes on noble-but-doomed candidates running as stand-alone nominees of non-fusion third parties. They want to cast a vote for the candidate of their choice who actually could *win* under the party label that is closest to their values. That is the power of fusion voting, and I can understand why this new Moderate Party of New Jersey – whose organizers presumably don’t fit neatly into either of the Democratic or Republican boxes – want

to make fusion balloting legal again. The Moderates deserve a chance to develop a base of loyal voters.

12. The only two states in the nation in which minor parties consistently participate in political coalitions that back candidates who go on to win elections are New York and Connecticut. It is no coincidence that these are the only two states in which fusion voting is legal and common. The rules of the electoral game either encourage or discourage citizens to organize, and I firmly believe that rules which encourage self-organization and participation are precisely what is needed to realize the true promise of democracy.

13. Fusion, which gives the NY WFP the ability to endorse candidates who also are nominated by a major party, is the critical factor that makes it possible for NY WFP (and its members and member organizations) to get elected officials to pay attention to our issue priorities. That has enabled us to get key legislation passed in support of working families' needs, and gives our members and volunteers concrete reasons to get involved in politics and participate actively in the electoral process. Before 1998, without having WFP as our electoral arm, Citizen Action worked on all the same issues, but we were not taken as seriously, and did not have anything close to the same impact.

14. For example, raising the minimum wage has always been one of the key platform issues for the NY WFP. In every endorsement interview, WFP members ask candidates if they will support raising the minimum wage, and make endorsements accordingly in order to increase the number of legislators who support that position. Over the years, NY WFP has led or joined multiple state advocacy campaigns to raise the state's statutory minimum wage.

15. The first major round was a successful campaign to raise the wage in 2004 to \$7.15 over the next three years – a big win for struggling New Yorkers working in low-wage jobs. With a

state senate controlled by a Republican majority, that legislative victory required the support of the Republican Chairman of the Senate Labor Committee. He faced a very competitive re-election battle in 2004 and he wanted the endorsement and ballot-line visibility of the WFP to garner support beyond his core base of Republican voters. His work to raise the wage did indeed win him WFP's support that year, and the votes he received on the WFP line were the "margin of victory" in that election. Before 1998, when we did not have the WFP in NY, it is very unlikely that Senate Republican leadership would have sided with labor and community groups on this issue.

16. It's more or less impossible to overstate how enjoyable and energizing it is for the members of minor fusion parties to have the opportunity to meet with major party candidates, to question them on issues, and to then provide support to those candidates who are aligned with the minor party's values and platform. Members of the minor parties get involved in politics because it is an effective way to have our voices heard on major issues. And that is by definition good for democracy. With WFP's endorsement committees choosing candidates in each race (regardless of the candidate's major party affiliation) who will fight for our priority issues, our members and voters can see the direct impact of political engagement on their lives and the lives of their neighbors. This reduces alienation and encourages people to see that government can take constructive action. Crucially, each of these elements turns on the presence of WFP cross-endorsements on the ballot.

17. One other less lofty but still useful way to understand how fusion balloting constructively increases citizen involvement and strengthens democracy is to contrast it with the efforts of the non-fusion minor parties in the state. The Green, Libertarian, Socialist Workers, Marijuana, Rent Is Too Damn High and other minor parties have not used the fusion voting system, preferring to

run their own “stand-alone” candidates, which is certainly their right. Being part of a political party that runs stand-alone candidates may provide people with a way to work with other like-minded activists.

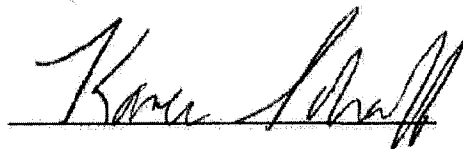
18. But our plurality voting-single member district (PV-SMD) electoral system makes life very, very difficult for minor party, stand-alone candidates. Most voters will not (and in my view, should not) “waste their vote” on non-serious candidates who can’t win, because politics is important. Every year, the non-fusion party vote totals are quite low, and they have no staying power. Most importantly, elected officials from the major parties do not care what the non-fusion parties think because they know they will never be supported by one of the so-called “purist” minor parties. Indeed the candidates rarely even bother to meet with them. Thus the non-fusion minor parties are unable to affect policy-making and their supporters lack an effective way to channel their collective action to meaningfully shape the priorities of their elected officials. As parties exist to do two things – run winning candidates and impact policy making – it’s not hard to see why fusion balloting is so essential and has played such a large role in American history, even as that history has been largely forgotten.

19. Finally, and perhaps slightly contradicting what I just said, I do note that it is possible for a minor party to win an election with a stand-alone, non-fusion candidate, but the conditions have to be just so. When the context is right in terms of (a) the strength of the WFP candidate; (b) the weakness or even absence of a major party candidate; (c) WFP’s pool of dedicated volunteers; and (d) WFP’s capacity to be competitive in raising funds, the Capital District WFP has twice nominated and elected candidates who ran on the WFP line alone. In the Capital District region, we have elected one WFP-only candidate to the Albany County Legislature, and a second to the Albany City Council. In both cases the Republicans did not field a candidate, so

the general election was simply the WFP candidate versus the Democratic Party candidate. We did not face the “spoiler” dilemma that obtains in a three-way race.

20. But I must also note that the Albany region WFP chapter has screened and endorsed candidates in more than 1,000 elections since 1998. These two exceptions all but prove the rule: stand-alone candidacies are not a viable way for minor parties to meaningfully and seriously participate in the political process, and if citizens who do not feel at home in the two major parties are to have any shot at fair play, the fusion balloting system is the bedrock for such fairness. What’s more, the two stand-alone victories noted above followed nearly a decade of cross-endorsements and the substantial party-building that would not have been possible but for our consistent and strategic use of fusion balloting.

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

A handwritten signature in black ink, appearing to read "Karen Scharff", written over a horizontal line.

Karen Scharff

Dated: June 2, 2022

Certification of Joseph Sokolovic,
dated June 3, 2022

Schedule 10

	:	BEFORE THE NEW JERSEY
In re: Nominating Petition of Hon. Tom	:	SECRETARY OF STATE,
Malinowski for Congressional District 7	:	DIVISION OF ELECTIONS
	:	
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JOSEPH SOKOLOVIC, of full age, certifies as follows:

1. I currently serve as one of nine members on the Bridgeport Public Schools Board of Education, and I have been in this role since first winning election in November 2017. The Board is responsible for overseeing and setting policy for the second largest public school district in Connecticut, which includes nearly forty schools and over twenty thousand students.
2. My son is a student in the Bridgeport Public School system, and in 2016, I was growing increasingly concerned about issues at his school. I started attending Board meetings, where I would silently but diligently listen to the proceedings, gauging whether the Board members understood and were willing to tackle the tough issues facing our schools. The answer quickly became clear: the current Board wasn't going to get it done. But I'm not just one to complain without doing something about it — so I decided I would try to win election to the Board to tackle these issues myself.
3. But it wasn't as simple as snapping my fingers and, *voila*, I'm on the Board. I had never run for public office. I didn't have connections with political insiders in Bridgeport or the state capital. And I'm somewhat of a political nomad: I am and have long been a registered

Republican, yet Bridgeport is an overwhelmingly Democratic city. I am a committed fiscal conservative who believes in limited government, yet I am repulsed by the recent direction of the Republican Party and the anti-democratic (and certainly anti-conservative) rhetoric and actions of many Republican officials. I have a progressive view when it comes to education policy, but I am at odds with the Democratic Party platform on many, many issues. But I did have two important factors in my favor: my determination to improve the schools in our community, and fusion balloting.

4. As I built my nascent campaign for the School Board, I first set out to obtain the endorsement of the Working Families Party. While I surely disagree with their party leadership and many supporters on a host of issues, I suspected that our views were in sync when it came to educating our children and the proper role of public schools. After meeting with party officials, my suspicions were confirmed, and I was excited to learn that I had earned their endorsement. I then turned to the local Republican Party and obtained their endorsement as well. While some might see these endorsements as contradictory, to me they were complimentary and the best way to reflect who I really was, and what I hoped to bring to the School Board: a commitment to sound fiscal administration, common sense governance, and progressive educational goals and objectives.

5. Equipped with these cross-endorsements on the general election ballot, I decisively won a seat on the School Board in November 2017, thanks to 957 votes from the Republican Party line and 657 votes on the Working Families Party line. Of all the non-Democratic Party candidates in the race, I gained the most votes. Yet, if I had been limited to only my Republican votes or only my Working Families Party votes, I would have dropped behind several other candidates—and lost. But that simple math doesn't even capture the full value and importance of these cross-

endorsements: with the support of two parties generally recognized as coming from opposite sides of the political spectrum, I was able to accurately convey to voters what kind of School Board member I was going to be. There is no other way I could have so clearly and emphatically showed the electorate that I was an independent thinker who always would have the public interest—and our kids' best interests—as my lodestar. Surely, voters who might have otherwise overlooked my name on the ballot were drawn to me by the signaling that my cross-endorsements provided. And because the ballot allowed voters on both sides of the political spectrum to associate with the nominating party that matched their values, they were able to cast a vote for me in good conscience. That the party cross-endorsements were *on the ballot* was crucial—to be sure, public endorsements from interest groups and civic organizations spread through newspapers, television ads, and social media can be helpful signaling a candidate's values and priorities to some portion of the electorate. Party nominations on the ballot are fundamentally different: they are guaranteed to reach *every single voter* and they permit voters to directly and formally associate with a party through the act of voting. I am certain that, without cross-endorsements of the Working Families Party and the Republican Party on the ballot, I would have lost my first campaign for School Board.

6. My re-election campaign was a different story. I again sought out and obtained the endorsement of the Working Families Party. Yet, in keeping with the troubling national trend among Republican officials, local Republican leaders came to view my refusal to adopt and parrot far-right talking points as rendering me unfit for the party nomination, so they orchestrated a primary challenge. I lost a razor-thin primary—indeed, the candidate with the highest vote total got just 59 more votes than the four-place finisher (me). Frustrated, but undeterred, I shifted my focus to the general election, where I would be a standalone candidate for the Working Families

Party, a position that surely would have doomed my candidacy if I hadn't been able to boast four years of committed, impactful, and independent-minded service on the School Board. I again won a decisive victory, outperforming two of the Republican nominees who beat me in the primary and two other standalone, non-incumbent Working Families Party candidates. (Unlike other states like New Jersey with so-called "sore loser" laws, Connecticut permits candidates like me to run under a nominating party's label even if they participate in and lose another party's primary.)

7. The preceding elections results are taken from public records prepared by public officials or from otherwise reliable sources, namely, the Connecticut Secretary of State's Election Results Archive, which can be accessed at www.electionhistory.ct.gov.

8. The only thing worse than two-party rule is one-party rule. Yet, unless electoral rules make it possible for minor parties and candidates like me—who reject the comprehensive and rigid orthodoxy of any single party—to seriously and consistently compete for election, those are the only possible outcomes. And while the Democratic Party and Republican Party retain their clear structural advantage in national and state politics, standalone minor party candidacies are simply not the answer. That was I successful in my re-election campaign as a standalone Working Families Party candidate is an exception that proves the rule: I was running in a multi-winner race, where the laws capped the number of seats the Democratic Party could win on the Board, as a respected incumbent who had given four years of exemplary service, who had previously been cross-endorsed in my first campaign. Indeed, in both of my races, *all* of the standalone minor party candidates lost.

9. Anyone paying attention to the news knows that local governments—particularly, school boards like ours—are not immune from the hyper-polarization and political extremism that have

produced historic dysfunction and threatened democratic stability at the national level. Fusion balloting is the only reason why an independent-minded, fiscally conservative, progressively-oriented education reformer like me was elected to the Bridgeport Public School Board. I am deeply concerned about school boards in other states where fusion is banned, where there is no release valve from the prevailing and destructive two-party dynamic and non-conventional candidates who are, like me, un beholden to rigid ideological agendas or retributive major party bosses, stand no chance. The stakes couldn't be higher: our children's education hangs in the balance. So too is their chance to grow up in a functioning and respectful democratic society.

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

A handwritten signature in black ink, appearing to read 'Joe Sokolovic', written over a horizontal line.

Joseph Sokolovic

Dated: June 3, 2022