

Testimony of Adam H. Morse for the Brennan Center for Justice
in support of House Bill 3040

Good morning. I'm Adam Morse of Jenner & Block, LLP, speaking on behalf of the Brennan Center for Justice at NYU School of Law. I am the principal author of the Brennan Center report on fusion that I am submitting with this testimony. I am testifying in support of House Bill 3040 to legalize fusion.

As you know, fusion, sometimes referred to as cross-endorsement or open-ballot voting, refers to a practice of candidates in partisan elections appearing on the ballot with the nominations of multiple political parties. Fusion is currently prohibited by state law. H.B. 3040 would amend the state election law to legalize fusion.

I want to highlight three ways in which the legalization of fusion voting will improve the functioning of elections.

First, fusion mobilizes additional voters and increases turnout. Second, fusion reduces the so-called "spoiler" problem that third parties can create without fusion, while allowing citizens who support a minor party to participate constructively in politics. Third, fusion provides voters and their representatives with additional information on crucial issues of the day, strengthening the core law-making functions of a representative body like this one. I will take these three points in turn.

Low voter turnout is a chronic problem in American democracy. It makes our government less representative of the actual views and desires of the people and undercuts the connection democracy creates between the people and their government. It also skews the results of elections, because certain groups, such as the poor and the young, fail to vote

disproportionately often. Fusion increases turnout and encourages more of the population to participate in elections and in civic life in general.

One of the reasons why some citizens choose not to vote is because of a belief that neither major party represents their views well enough, while voting for a third party would be “throwing away their vote” on a candidate with no meaningful chance of winning. Fusion solves that problem: a voter can cast a meaningful vote for a candidate with a credible chance of victory while still expressing their support for a third party’s agenda. By giving a constructive role to third parties, fusion can also encourage additional organization that will further mobilize voters.

Most states banned fusion in the late nineteenth and early twentieth centuries as part of a deliberate effort to de-mobilize voters. This was part of a broader set of changes in election law that were designed to systematically reduce the electorate. Perhaps the most famous such change was the introduction of relatively cumbersome voter registration requirements, aimed mostly at reducing the ability of immigrants to become voters. Because of these deliberately burdensome barriers to participation, voter participation remains uniquely low in the United States. In many elections, a majority of the eligible voters do not vote.

The bans on fusion voting that were introduced at the same time as the better known voter registration rules also contributed to suppressing voter participation. In the North, fusion was banned in various state legislatures largely through the efforts of the Republican Party, which wanted to prevent any alliance between Democrats and Populists. In the South, meanwhile, it was just the reverse. Fusion was banned there by the Democratic Party, which wanted to prevent the reverse alliance between Republicans and Populists. In both regions, the point was to prevent some citizens from voting at all. By and large, they succeeded in their goal.

Banning fusion caused a substantial, immediate decline in voter turnout. If the reinstatement of fusion voting increases turnout even by a percentage point or two, you have made a useful contribution to the democratic process.

A second advantage of fusion is that it provides a way for citizens who are supportive of a minor party to participate more constructively. We should recall that third parties can play a valuable function in our two-party system. They give a voice to citizens who feel that the major parties do not represent them and can also raise issues and bring new ideas into policy debates that the major parties have been neglecting. Some very good ideas – the abolition of slavery, women’s suffrage, the eight hour day, to name just a few – started as the ideas of third parties and were then adopted by the major parties.

Without fusion, however, citizens who back third parties face a difficult, even insurmountable, dilemma. Because the candidates of minor parties very rarely win elections, a supporter of a minor party platform does little more than cast a protest vote by voting for a minor party candidate. What’s more, third party supporters run the risk of “spoiling” an election, producing a perverse result where a candidate who is opposed by a majority of the voters can still win. Fusion significantly reduces the danger of spoilers, by allowing voters who want to send a signal by voting on a third party line to still cast a meaningful vote for a major party candidate. You might think of it as a way to allow a citizen to cast a “message vote” that counts. These votes for a candidate who is the nominee of both a major and minor party can produce the best of all worlds for minor party supporters: allowing them to express their values in support of a candidate who has a meaningful chance of winning, without any danger of spoiling.

Fusion will not undermine the basic two-party system. In New York, where fusion has been actively used for 90 years and minor parties have used and continue to use fusion, the

Republicans and the Democrats remain the dominant parties. The same is true in Connecticut and South Carolina, two other states where fusion candidacies have occasionally flourished. But fusion does allow the people who support minor parties to play a more active and productive role in political life, without the negative spoiler or wasted vote problems.

Finally, fusion gives voters another tool to get action on specific goals and to cast an “expressive” vote. If a minor party focuses its energy on winning votes for a major party candidate with a message that says “Vote for So-and So and send her a message about health care,” that will help both the voters and their elected officials. These voters will have the opportunity to better communicate their priorities through the ballot box. And it also helps the legislature better represent the people, because it gives them more information about what the voters want and expect.

Because legalizing fusion is an easy, straightforward way to improve elections and provide better representation to more of the people, the Brennan Center for Justice urges you to pass H.B. 3040.

Thank you.