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J. N. Andrews Honors Program  
Andrews University

Fusion in New York Politics

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## Abstract

This descriptive study seeks to answer the question: “How does fusion function in the New York state electoral system, and how does that translate into the operations of the New York Legislature—such as, possible policy coalitions and the allegiances of candidates who are anomalies in the endorsements they receive?” “Fusion” is when parties cross-endorse a candidate for political office with this support appearing on the general election ballot. “Anomalies” are defined as legislators who receive support from parties in addition to their own that do not occupy the same position in the left-right ideological continuum as their political registration. The research looks at the impact of fusion historically (the elections 1934 and 1936 in New York) and more recent demographics (1998 to the present). While there have been some studies on fusion, more research is needed. This study tries to fill part of the void by looking at the elected officials and tracing their history with minor parties from elections to the legislature and seeing the policies where the legislators collaborate together on behalf of the minor parties. In short, the study finds that while minor parties do not appear to be well-represented when we analyse party membership among legislators, these parties tend to find ways to overcome this shortcoming by strategically cross-endorsing members from both political parties. In the process, the parties can claim association with numerous Senators and Assembly members.

## Outline-Fusion in New York Politics

- I. Proposal
  - a. Definition of fusion
  - b. Research question: “How does fusion work in the New York state electoral system, and how does that translate into how things operate in the New York Legislature?”
  - c. Why this is an important topic
  - d. Membership representation
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    - iii. Interviews via phone to elected officials – Institutional Review Board
    - iv. Making phone calls to staff clarify some things
    - v. Who I have already spoken to
    - vi. A look at the recent changes to the sections of election law pertaining to fusion by looking at copies and microfilms of passed and signed legislation
  - l. Literature Review Subcategories
- II. History of fusion
  - i. Its use during the “Gilded Age” of politics
  - ii. Anti-fusion laws
  - iii. The year fusion was reinstated in New York
  - iv. *Timmons v. Twin Cities Area New Party*, 520 US 351 (1997)
- III. Results of fusion in New York
  - a. Description of the demographics of the New York Legislature
  - b. Trends in anomalies
  - c. Possible implications of fusion
  - d. General patterns of cross-endorsement
- IV. Discussion/Conclusion

## Introduction

Fusion is when parties cross-endorse a candidate for political office with this support appearing on the general election ballot. For example, in New York there is the Conservative Party and the Working Families Party. Most of the time, the former minor party will cross-endorse the Republican Party candidate with the latter cross-endorsing the Democratic candidate. With fusion, most of the time, the names of candidates can appear multiple times on the ballot (in what is called “disaggregation”) (*Harvard Law Review* 1996, 1305). In determining the winner of an election, the votes garnered by a candidate on each party line listing him or her are added together. My research seeks to understand fusion’s function in the New York state electoral system, and how does that translate into how things operate in the New York Legislature, for example, possible policy coalitions and the allegiances of candidates who are anomalies in the endorsements they receive? I will be using a descriptive method to address these questions. While Kaseman (2008) conducted a descriptive study on fusion, however his focus was on the question of whether or not the field of political science should regard New York’s minor parties as parties at all. He also was looking at the role money played as a potential influence in determining cross-endorsements. Finally, while Kaseman did examine election data, he did not zero in his focus on simply the elected officials as I have done here.

Conducting a descriptive study on fusion in the context of the legislature and its members is important because I believe it will contribute to existing ground-breaking research on this topic. It will hopefully give us a better understanding of this alternative to the conventional two party system that is found throughout the U.S. and of a different approach to policy in the legislature. Furthermore, fusion is a unique way of electing candidates. In theory it makes it easier for minor parties to gain representation in the state legislature. My hypothesis is that fusion will allow minor parties to gain greater representation than in other states where fusion is not used but that this method of voting ultimately does not alter the

two-party system when the parties caucus and allocate positions of leadership in the New York Senate and New York State Assembly. Representation takes a different meaning if most of the members are not registered with the other minor parties that cross-endorse them. Nevertheless, there should be benefits to be gained by fusion in the way of policies. I also anticipate that the anomalies will have a special role in crafting legislation with the other side of the aisle that serves the interests of the minor party doing the cross-endorsing. For example, I anticipate that the Democratic candidate who is cross-endorsed by the Conservative Party will work closely with Republicans also cross-endorsed by the Conservative Party on legislation important to the Conservative party.

In this study, minor parties are considered those parties that are neither Republican nor Democrat but have nevertheless garnered the fifty thousand vote minimum in a gubernatorial election to maintain a presence on the ballot. Furthermore, I have chosen to use the term “anomaly” to refer to cross-endorsements of candidates who would be considered unique, as when a candidate is registered with a party that generally occupies one end of the political ideological spectrum with this candidate, in turn, supported by a party that is usually associated with the other side of the political continuum. New York was chosen as a state for this research, because it has a long history with fusion. Of the ten states that have fusion, it is only one of two states that actually use this voting practice prevalently (the other being Arkansas) (Donovan, Mooney, and Smith 2011, 161-163). Furthermore, I have observed New York politics for several years now. Thus, I felt it would be easier to focus on New York for this study as opposed to Arkansas.

### *Methodology*

Legislative Manuals from 1935 (1000-1053) and 1937 (1069-1119) are used in this study to provide a before-and-after comparison of the elections, the former year’s volume containing the results of the 1934 election prior to fusion’s statutory reinstatement and the

latter showing results for the 1936 election after fusion's re-introduction in state election law. Kaseman and the Legislative Manual show that fusion was already occurring prior to changes in statute. Kaseman (2008) mentions intervention by the courts in determining fusion's existence in New York. This became clearer to me when I noticed that the 1934 and 1936 election results showed the existence of fusion.

Unfortunately, the election results in the Legislative Manuals (1935 and 1937) only convey the breakdown of votes received on each line ("disaggregation," Harvard 1996) for the State Senate districts. The results for the State Assembly districts indicate the cross-endorsements that a candidate received but does not list the votes garnered on each individual party line (i.e., demonstrating disaggregation). This information will help me answer the question of the number of candidates who were cross-endorsed, what kinds of support were typical, for example a candidate running with the Democratic Party and the American Labor Party, and the number of anomalies. Another source used in this research are bill jackets that contain passed legislation that defines current New York election laws pertaining to fusion. This source indicates the changes that fusion has undergone, although alterations to election law may be minor. The New York State Board of Elections website ([elections.ny.gov](http://elections.ny.gov)) was also used to access election data and election law as well as any additional information that may assist me in studying fusion.

To better understand fusion and elections of the New York Legislature in a broad sense, the data analysed is from the New York State Board of Elections website, looking at election data from 1998 to the present. The year 1998 was chosen as a starting point, because its election results are the oldest that are up on the state's Board of Elections website. This helps us understand the demographics of minor party representation and see what kinds of anomalies were elected.

Fusion, while discussed in political science, does not seem to be an area that has



generated much academic inquiry. Fusion has been analysed from a historical perspective, looking at the United States as a whole (Argersinger 1980), a legal perspective (Amy 2002; Fitts 2002; *Harvard Law Review* 1996; *Timmons v. Twin Cities Area New Party*, 1997; West's 2000), a journalistic perspective going back just a few years from the present (Katz 2005, Katz 2010, Healey 2006-2007 (Winter), and even through a descriptive study on the topic (Kaseman 2008). However, there has not been a comprehensive look at New York fusion's contributing role in the legislature until this study.

### *Literature Review*

Argersinger (1980) along with Hirano and Snyder (2007) address the historical context of fusion. A court opinion in *Timmons v. Twin Cities Area New Party*, 520 US 351 (1997) is an important case (see also West's 2000). Amy (2002) and Fitts (2002) discuss fusion and ballot-access law. There is also the journalistic work of Alyssa Katz (Katz 2005 and Katz 2010) in portraying the more contemporary applications of fusion in New York.

### *Articles on Fusion's History*

Fusion, once a prevalent factor in politics throughout the United States in the "Gilded Age" of politics, is now only legal in ten states but is solely used extensively in New York and Arkansas (Argersinger 1980, Donovan, Mooney, and Smith 2011, 161-163). Argersinger has analysed the anti-fusion laws that emerged at "the turn of [the twentieth] century" (Argersinger 1980, 287). Fusion was most effective prior to the introduction of the Australian ballot, a ballot where all the parties' candidates are listed. Once this was introduced, the ballot was no longer a creation of the parties but of the state. Thus the state could now regulate the ballot. This provided an opportunity for the Republicans to create the regulations that outlawed fusion. The Republicans, at this point in time, were anxious to bring about the end of fusion due to the Democratic and Populist parties endorsing the same candidate or candidates. This also adds to the understanding of fusion by showing the methods used by the

Republican Party to outlaw fusion (Argersinger 1980; Donovan, Mooney, and Smith 2011).

Hirano and Snyder (2007) address the decline of third party voting in the United States from the late 1800s to the 1940s. There was “no statistically significant correlation between the antifusion laws and third-party vote shares,” (Hirano and Snyder 2007, 7). This article demonstrates the need for caution in touting too much the correlation between third-party support and fusion, because, as the authors point out, historically the bans were often done in conjunction with other ballot changes (Hirano and Snyder 2007, 6-7, 14). Hence, finding causation is difficult. Another challenge that Hirano and Snyder mention in determining what caused the decline in third party voting is that the 1930s saw success and popularity with the Democratic Party and Franklin Roosevelt at this time. During this time a progressive agenda was being implemented under this leadership, taking away fodder for the leftist minor parties (Hirano and Snyder 2007, 7-12, 14).

#### *Fusion and the Supreme Court*

In *Timmons v. Twin Cities Area New Party* (1997), the U.S. Supreme Court upheld Minnesota’s ban on fusion. The Supreme Court used Argersinger’s work as a source for history on fusion (*Timmons* 356-357/*West’s* 2000, 1368-1369, *Rehnquist/Court Opinion footnote 1/West’s* 2000 1367, and *Justice Stevens’ dissent footnote 6/West’s* 2000 1379-1380). In addition, a footnote in the majority opinion served as a springboard for understanding the events that have led to today’s use of fusion in New York by mentioning that 1936 was the last time fusion was reinstated in the state and by citing current New York Election Law regarding fusion (*Timmons: Rehnquist/Court Opinion footnote 7?/West’s* 2000, 1369). The case adds to our understanding of the U.S. Supreme Court’s view on fusion, because it explains that states have the right to set up their own electoral laws and that the state government can choose to promote the two-party system through laws that prohibit fusion. This case helps to explain why fusion voting is not more prevalent in the United

States (*Timmons*, 351-370/*West's 2000 1364-1382*).

Amy (2002) claims that the Supreme Court's assertions in *Timmons v. Twin Cities Area New Party* are not backed up empirically. He demonstrates the stability of proportional representation systems. Fitts describes the challenges that the court faces when dealing with issues such as fusion in *Timmons v. Twin Cities Area New Party*, because the Constitution does not explicitly mention parties. Furthermore, Fitts asserts that the U.S. Supreme Court have upheld a state's right to ban fusion, having "[avoided] First Amendment scrutiny" by saying "that ballots are not '[forums] for political expression'" [Fitts 2002, 104; *Timmons v. Twin Cities Area New Party*, 357-363/*West's 2000*, 1369-1372, 374-382/*West's 2000*, 1378-1381 (see also Justice Stevens' footnote 6)]. In addition, the Supreme Court's decision in *Timmons* made claims of multi-party systems that could be contested empirically. The Court expressed a view that multi-party systems tend to create chaotic situations in legislative bodies, which is not always the case (Fitts 2002 and *Timmons v. Twin Cities Area New Party* 1997).

#### *Literature Review Conclusions*

Argersinger's information is probably one of the best treatments of fusion that exist, serving as a jumping off point for Hirano and Snyder and being used in *Timmons*.

Argersinger's article, appearing in a history periodical, is qualitative in nature. Hirano and Snyder, on the other hand, incorporate Argersinger in some of their quantitative analysis.

Amy and Fitts discuss the courts and their recognition of state prohibition of fusion voting.

#### *Fusion in New York*

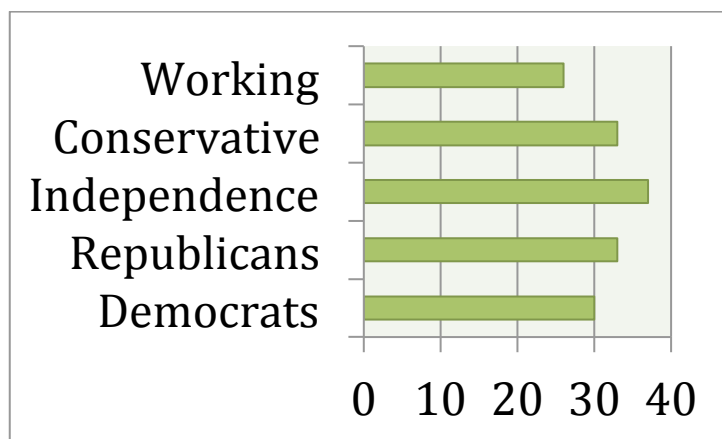
Fusion was last reinstated in New York statutes in 1936 (*Timmons v. Twin Cities Area New Party*, 520 US 351 (1997)). However, an analysis of election results from this time period [Legislative Manuals (1935 and 1937)] as well as commentary by Kaseman (2008) would suggest that this change in election law was simply a way to conform to the already-

existent fusion ballot structure as mandated by the courts. Thus, New York has had additional political structures that influence politics outside of the Republican and Democratic parties for some time.

In the New York Legislature, caucusing is done within the framework of the two major parties. Caucusing is the grouping of members to choose party leaders and facilitates the process of assigning members to committees. This is important, because it means that minor party representation in the legislature is limited, having to operate in a system dominated by the two major parties. This is ironic, given that there are more members affiliated with the Independence Party, a minor party in the State Senate, than any other party. Nevertheless, the leadership is primarily tied to the Republican Party and the Democratic Party (New York State Senate, “Leadership” 2012, New York State Assembly, “Leadership” 2012). Perhaps it is simply easier for the legislature to organize around traditional political fault lines.

Figure 1: New York State Senate Bar Graph

Party Name (Y-axis)



Members with Party-affiliation (X-axis)

In New York, a party secures ballot access when they attain fifty thousand votes in a gubernatorial election. Therefore, there may be more pressure for a minor party that has previously attained this recognition to cross-endorse one of the major party candidates to

retain this status and hope that there will be enough voters who will choose to vote for this candidate on their party line/column. When a party nominates a candidate who is not registered with the party, the organization's officials have to grant their approval of the candidate in what is called a "Wilson Pakula." The majority of a party committee can choose to nominate a candidate outside their party, filing a Certificate of Authorization with the New York State Board of Elections (New York State Board of Elections, New York Election Law).

Fusion presents an interesting twist to the conventional two-party system by allowing parties to cross-endorse candidates of other parties. However, it is not commonly used outside of New York and Arkansas. This is due to the U.S. Supreme Court not viewing fusion as a voting method that is required under the Constitution with either First Amendment rights or Rights of Association. It should be noted that besides New York and Arkansas, there are eight other states where fusion is legal. However, fusion has not taken hold in these places. New York is an ideal state to pick to study fusion due to the said reasons. Could it be that fusion affords us an opportunity to see minor parties thrive in the United States? (*Harvard Law Review* 1996; *Timmons v. Twin Cities Area New Party* 1997; West's 2000; Amy 2002; Fitts 2002; Donovan, Mooney, and Smith 2011).

There are no studies that really deal with fusion and the elected officials of the New York legislature that answer the questions of my research, though Kaseman (2008) does research legislative races as a whole. My study is looking at a historical as well as a contemporary view of fusion and focuses on the candidates that were elected. I have chosen to look at the elections of 1934 and 1936, having thought that this would give me a before and after view of fusion's reinstatement in New York. I had requested and received the *Manual for the Use of the Legislature of the State of New York* for 1935 and 1937 but was unsure if the 1936 reinstatement of fusion was able to take effect by the time of the 1936

election. Fusion was found to exist in both the 1934 and 1936 legislative elections. The data of the disaggregation of votes for the State Senate elections is provided in these results (Legislative Manuals 1935 and 1937). Disaggregation means that we can tell the number of votes the candidate received on separate party lines (*Harvard Law Review* 1996). As the Note in the *Harvard Law Review* illustrates, without disaggregation, minor parties really do not benefit from fusion. It is only through the parties receiving their own party line that they are able to determine whether or not they have met a voting threshold (*Harvard Law Review* 1996, 1302, 1305-1310, 1333-1337). When it came to the election data on the State Assembly elections of 1934 and 1936, the results of the total votes received by each candidate is mentioned without breaking down the information into the number of votes the candidate received from each party line. Though this does not necessarily imply a lack of disaggregation on the ballot in those races, it makes it more difficult to try and gauge minor party influence on these elections. While fusion was reinstated in New York in 1936, I found in the 1935 Legislative Manual (containing election results from 1934) that fusion was already occurring. This could be the result of court cases where fusion's reintroduction was mandated, a factor that Kaseman (2008) mentioned in his historical look/recap of fusion.

Hirano and Snyder (2007) found that there was a decline in third-party voting because of the Democrats co-opting the agenda items of the other parties of the left through the New Deal legislation. Fusion may have provided an exception in New York whereby parties like American Labor were able to support the candidacies of Democratic candidates and thus remain a viable party. The Socialist party in New York did limited cross-endorsement. However, the election results of 1934 also show the Republicans benefitting from cross-endorsements by minor parties of their candidates (Legislative Manual 1934 and Legislative Manual 1936). It should be noted that today the American Labor Party no longer has a presence in New York.

The more contemporary election data analysed are from 1998 to the present. These years were chosen because election results beginning with this year are found on the New York State Board of Elections website. While I cannot speak with certainty as to the New York ballot structure of the past, the present ballot in New York is a party-bloc ballot with candidates grouped by party in rows or columns. With fusion, a candidate's name is thus listed multiple times on the ballot according to party. However, there are exceptions where a candidate is capped as far as how many times his or her name can be listed on the ballot. In the City of New York we find an example of this. In 2005, the city's mayor, Michael Bloomberg, received the support of several parties that his endorsement from the Liberal Party had to be listed alongside the support received by the Republican Party. Thus, on the ballot it had Bloomberg's name and below that the words "Republican/Liberal" ("Crossover Mayor Re-Cap NYC.pdf" 2005). This is an example of fusion without disaggregation (*Harvard Law Review* 1996).

There are a few minor parties in New York. They have garnered fifty thousand votes on their party line during the last gubernatorial elections, making ballot access easier. Thus, the parties that one could expect to find on the New York ballot in addition to the Democratic Party and the Republican Party are the Conservative Party, the Independence Party, and the Working Families Party. (Kaseman 2008, Katz 2005, Katz 2010, see also election results from NYS Board of Elections).

Since caucusing is done within the framework of the two major parties, there should be interesting anomalies in political ballot coalitions. An example would be Democratic State Senator Kennedy's cross-endorsment by the Conservative Party or if a Republican assemblyman were to be cross-endorsed by the Working Families Party (New York State Senate-Kennedy; see also election results from NYS Board of Elections). How do these members work with their colleagues of the other caucus who had been cross-endorsed by

these same minor parties? I seek to answer this question via phone or e-mail interviews of political leaders in the New York legislature, chosen for the fact that they were cross-endorsed by different parties and also because they were anomalies as mentioned above. Conducting interviews advances my research by giving me concrete information in regards to the process by which the elected officials received support from a party or parties that were not their own. Part of my research seeks to understand some of the mechanisms by which candidates receive support from multiple parties. The interviews will help me in answering some of these questions. When I was forming the questions, I drew from my background in attending a Conservative Party meeting leading up to the November 2009 New York City mayoral election when the party was trying to decide to nominate as their candidate for mayor.

My research faces some limits in that the State Board of Elections does not publish the party candidates are *registered with*. For example, they may list the elected officials but will list them by party caucus (unfortunately not making this distinction explicit and seemingly denoting party registration). To illustrate, Assemblyman Thiele is registered with the Independence Party. However, he is listed as “Democratic.” Nevertheless, Assemblyman Thiele may be the only elected official in the New York legislature registered with a minor party (NYS Board of Elections).

There are some interesting questions that have emerged in this research due to the election results and cross-endorsements of New York State Assembly candidates as posted by the State Board of Elections as well as inquiries from my oral presentation of my research at a colloquium of the History and Political Science Department. It appears that there are instances where cross-endorsements were not crucial for winning, and yet they were granted or sought. One of the possible benefits that minor parties gain when they cross-endorse candidates is a sense that they can claim the elected official as having been their candidate

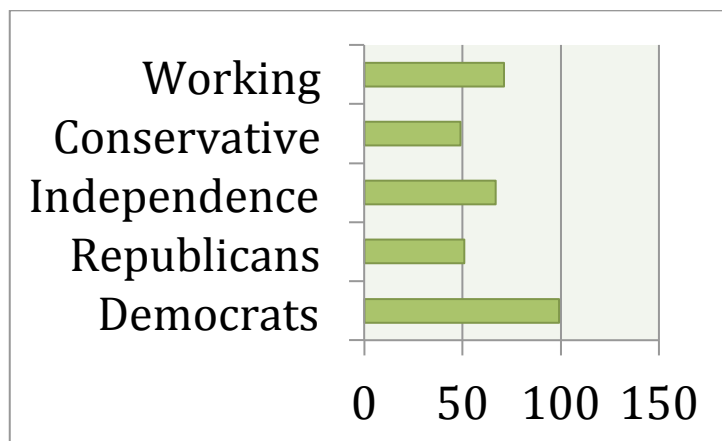


and feel like they have an influence in the political process. However, I am also led to ask whether or not there is a good representation of legislators who are actually registered with minor parties. If not, then the only purpose of the minor parties would be to influence candidates from the major parties externally instead of working through state primaries as is customary in other states.

When analysing the party affiliations (not to be confused with party registration) of the legislators, we can see that the Independence Party has the greatest number of seats than any other party. However, the members of the two major political parties hold the party leadership positions in both the Senate and the State Assembly. Thus, the multiple parties that were involved in the election of these legislators get channelled in the two-party caucus system (see figures 2 and 3).

Figure 2: New York State Assembly Bar Graph

Party Name (Y-axis)



Members with Party-affiliation (X-axis)

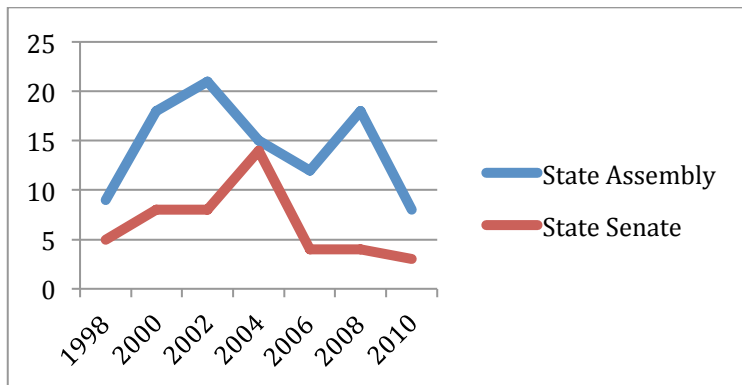
### *Anomalies in the New York Legislature*

Part of my research sought to find out the number of anomalies that have been in the legislature from the last general election in 2010 and going back in time. I found that there has been a recent and noticeable drop in the number of anomalies in 2010. However, I noticed that the situation is not earth shattering. There were also few anomalies in 1998.

However, I wonder if the drop in the number of anomalies in 2010 was due to the Tea Party movement as well as the increased polarization of the parties on a national level with this, in turn, affecting New York politics.

Figure 3: Anomalies Found in the New York Legislature

Number of Anomalies (Y-axis)



General Elections for the State Assembly and State Senate (excludes Special Elections)

#### *Changes in New York Election Law*

I looked at some aspects of New York Election Law to see if there have been any major changes in the last few decades to the voting process in the state as it pertains to fusion and did not find any substantial change. The legislation that I looked at with the bill jackets made minor changes and were passed unanimously or with very little opposition [bill jackets for bills of N. Y. Elec. Law §§ 6-120, 6-146(1) as mentioned in *Timmons v. Twin Cities Area New Party* (1997)].

#### *Phone Calls*

Due to a scarcity of information of the actual party registration of the legislators (with information listing all the cross-endorsements candidates received, I wanted to make a significant number of phone calls to validate my claim that fusion, while allowing minor parties influence in some respect through policy crafted in the legislature, can only help minor parties in a limited sense. Minor parties, while witnessing many of their supported candidates get elected, apparently do not do a good job of electing their own, if they even try

to put up their own candidates. I found out that it is indeed true that, with the exception of Assemblyman Thiele, most of the Assembly Members are registered as either Republicans or Democrats.

#### *Further Insights/Inquiries*

As Kaseman (2008) points out, there are serious questions about whether or not the minor parties in New York can be considered parties at all due to the funding that they receive from the major parties. In addition, it is possible that minor parties are pressured into cross-endorsing the major party gubernatorial candidates, since the votes that they garner in this election determine whether or not they maintain automatic ballot access. It may be that this factors into my research of fusion. Amy (2002), Fitts (2002), and *Timmons v. Twin Cities Area New Party* (1997) demonstrate how there can be varying opinions on the effectiveness of minor parties with or without fusion existing in the state. The question of gubernatorial elections and ballot access is one of these issues. Consider this scenario in states where fusion does not exist. If a party wishes to support a gubernatorial candidate of the major parties and cannot do so through disaggregated fusion, then they will forfeit their ability to gain ballot access, provided that the state's election laws require a party to garner a certain number of votes in a gubernatorial election (*Harvard Law Review* 1996).

#### *Discussion/Conclusion*

Fusion voting is certainly a unique practice that allows minor parties to have greater influence over the political process. However, it comes with a trade-off. The parties have to agree to support major party candidates every once in a while to remain viable. Furthermore, the minor parties do not seem to have a chance of changing the two-party caucus structure of the legislature anytime soon. It also does not seem like we will be witnessing widespread fusion voting throughout the U.S. anytime soon [recall *Timmons* (1997) and West's (2000)]. Nevertheless, we should take note of New York's longstanding usage of fusion.



## Appendix

In arranging to interview politicians who are anomalies, I contacted their Albany office (state capital), district office, or both by phone and e-mail. In planning for my interviews with the anomalies, the following would have been asked:

- “Describe the process by which you were cross-endorsed by [mention parties that the candidate received support from but which the candidate was not enrolled with]. Have you had a long-time relationship with the [party/parties name(s)]?”
- “Were you asked by [the said party of which s/he was not registered as a voter personally] to give your stance on certain policy issues? What policies did the [party/parties name(s)] believe you shared with them?”
- [If the candidate is an anomaly in the combination of parties from which s/he received support]: “How does support from [mention the party on the other end of the political spectrum as compared to the party the legislator is enrolled with] affect your standing in the party caucus? Do you ever collaborate with members of the other party who were cross-endorsed by [the said party of which the elected official was not enrolled]?”

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